

To: Tina Kelly

Re: Illegal Immigrants in Schools



As your lawyer and adviser I am writing to provide you with legal counsel regarding the situation at Liberty School District involving the citizenship status of your student Juan Suarez. In your letter to me, you asked whether you are required to report what you overheard from another student which led you to believe that Juan is an undocumented immigrant. I am writing to advise you that it is in your best interest not to report your suspicion. I understand you are afraid of facing punishment from your employer, Liberty School District, for not reporting your suspicion. I, however, would like to reassure you that if you are punished for not reporting this information, that would be illegal. We could and should sue the school for any punishment they wage against you because the policy which they use to punish you is in violation of federal law. A policy requiring you as a teacher to report these suspicions violates FERPA (Family Educational Rights and Privacy Act). This act states that schools cannot disclose a student's records without parental consent.<sup>1</sup> By requiring teachers to disclose suspicions, you have reasonable evidence to assume that the school district would want this information in order to share it with authorities.

While there are exceptions to FERPA, your case does not qualify for any of these exceptions. One would be if a parent specifically signed a form to waive FERPA rights. The second would be if the documents and information were necessary for a court trial. If for some

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<sup>1</sup> Little, Mia, and Amelia Vance. "Law Enforcement Access to Student Records: What Is the Law? - Ferpa: Sherpa." Ferpa, Collaborative Communications, 2 Oct. 2019, [ferpasherpa.org/law-enforcement-access-to-student-records/](http://ferpasherpa.org/law-enforcement-access-to-student-records/).

reason the family were to be on trial regarding their citizenship status, this information could be subject to release.<sup>2</sup>

The Office of Civil Rights which is part of the Department of Education released a statement saying that “a public school or district should not ask about, nor is a student under any obligation to disclose information on, immigration status. The status of a student’s citizenship and documentation are not considered relevant to establishing district residency, nor is it Constitutional to use this information in determining access.”<sup>3</sup> In other words, there is no reason that your district needs to know this information unless they intend to violate FERPA. There is no relevance to that information and it is unconstitutional to compel you as a teacher to disclose it. You described yourself as a “straight shooter” and you cannot be any more of a straight shooter than by adhering to the rules and protections provided by the Constitution. The 1981 Supreme Court decision in Plyler v. Doe<sup>4</sup> established that children are entitled to an education regardless of immigration status. Furthermore, immigrants are protected by the Fourteenth Amendment<sup>5</sup> which guarantees them a right to education. Juan Suarez has a right to an education in the Liberty School District and it is inappropriate for the district to pursue information in order to limit his access. The school can continue to educate Juan, and should pride themselves on being a safe place for undocumented students — not one that compels teachers to undermine their education and play integral roles in their deportation.

In a 2014 letter to schools across the country from the U.S. Department of Education, officials from the Department of Education and the Department of Justice outline expectations

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<sup>2</sup> Tomar, Dave. “DACA and Other Key Laws Impacting Undocumented Students.” TheBestSchools.org, Thebestschools.org, 7 June 2019, thebestschools.org/resources/undocumented-students-daca-laws/.

<sup>3</sup> Tomar, Dave. “DACA and Other Key Laws Impacting Undocumented Students.” TheBestSchools.org, Thebestschools.org, 7 June 2019, thebestschools.org/resources/undocumented-students-daca-laws/.

<sup>4</sup> Lhamon, Catherine E, et al. “Dear Colleague Letter: School Enrollment Procedures.” 8 May 2014.

<sup>5</sup> U.S. Const. amend. XIV

for educating undocumented students or students with undocumented parents. The letter states, “a school district may not bar a student from enrolling in its schools because he or she lacks a birth certificate or has records that indicate a foreign place of birth, such as a foreign birth certificate.”<sup>6</sup> In other words, there is no reason for the policy required by your district. If they cannot bar Juan from attending school because of his citizenship status then why do they need to know about concerns related to it? In short, they do not.

Further evidence can be found in the September 2017, Future of Privacy Forum’s (FPH) “Law Enforcement Access to Student Records: A Guide for School Administrators & Ed Tech Service Providers” to help teachers and administrators like you. The guide states that “Schools should only be collecting the information they need to help students, and, if the disclosure of that information could cause a greater harm than benefit to students, schools should consider deleting that information.”<sup>7</sup> The information that your district is attempting to collect by instituting a policy forcing you to report suspicions about undocumented students violates this principle. Collecting and documenting unfounded suspicions is not “information they need to help students” and in fact it could actually cause greater harm to Juan and his family. Instead of collecting this information, this guide actually suggests that the information should be discarded.

Additionally, the information that you have to report is mere hearsay. You overheard a student saying that they would “send him back” which could be interpreted as referring to his immigration status. The sentiment is far too vague to be certain what exactly it is referring to. It is presumptuous to pair this comment with Juan’s shy and uncertain behavior in class and his Puerto Rican heritage, and come to the conclusion that he is an undocumented immigrant. To

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<sup>6</sup> Lhamon, Catherine E, et al. “Dear Colleague Letter: School Enrollment Procedures.” 8 May 2014.

<sup>7</sup> Little, Mia, and Amelia Vance. “Law Enforcement Access to Student Records: What Is the Law? - Ferpa: Sherpa.” Ferpa, Collaborative Communications, 2 Oct. 2019, [ferpasherpa.org/law-enforcement-access-to-student-records/](http://ferpasherpa.org/law-enforcement-access-to-student-records/).

report it would be to act on an assumption that would ultimately harm the relationship of trust that is imperative between teacher and student. The students at Liberty School District would be better served by investigating the other student for bullying and intimidating a minority student with their potentially racist comments. The best way for a school district to deal with potentially undocumented students is to educate teachers and students about immigration policy and rights of undocumented people, rather than scare them. Leaving young students to sort out what it means to be undocumented will only lead to bullying and the spread of potentially false rumors that make students feel unwanted and scared.

As a lawyer and immigration rights specialist, I advise you to keep your suspicion to yourself. If for some reason your district found out you had these suspicions and decides to punish you, I would be happy to defend you in suing the district. Their policy itself is unconstitutional.

Props to you, Ms. Kelly, for being concerned about your student and reaching out to find out the appropriate course of action. I hope my advice is helpful. If you would like to read further into the topics I have discussed, please see the sources I used below.

Sincerely,

## Works Cited

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“What Is FERPA?” What Is FERPA? | Protecting Student Privacy, U.S. Department of Education, [studentprivacy.ed.gov/faq/what-ferpa](https://studentprivacy.ed.gov/faq/what-ferpa).