Spectrum Charter School

Board of Trustees Policy 826

STUDENT & EMPLOYEE POLICY PERTAINING TO UNITED STATES CITIZENSHIP

Purpose:

This section applies to all students and staff regardless of immigration or citizenship status. In response to increased immigration enforcement by the federal government and adjustments to federal regulations pertaining to schools and other "sensitive" areas, the Board of Trustees ("Board") for the Spectrum Charter School ("Charter School") adopts the following policy regarding students and employees regardless of actual or perceived immigration or citizenship status.

The Charter School is proud to reaffirm that our schools are and will remain dedicated to the safety, respect, and inclusion of all students, regardless of their background or circumstances. The Charter School is committed to ensuring our schools are safe spaces where each and every student can focus on learning and growing, free from discrimination or harassment based on ancestry, national origin, language, or immigration status.

The purpose of this policy is to advise students, parents, and Charter School Board members, administrators, faculty, and staff, of the rights of all students regardless of actual or perceived immigration or citizenship status.

Authority

The Board declares it to be its policy to provide an equal opportunity and education for all students, regardless of actual or perceived immigration or citizenship status. At no time shall the Charter School, including the Board, fail to admit a child conditioned on the child's immigration status. At no time shall the Charter Schools' board members, administration, faculty or staff, inquire regarding the immigration status of a student as part of the admission process. 22 Pa Code § 11.11(d).

The Board also declares it to be its policy to have updated information regarding its employees' immigration statuses, ensure that all employees' I-9 forms are up to date, and kept in a separate employee file. If any employees cannot provide updated immigration documents required on an I-9, that employee must be terminated.

Furthermore, if the Charter School is presented with a government warrant for immigration records, it should contact legal counsel for review before providing those records.

Student Rights Regardless of Immigration Status:

Enrollment

In 1982, the United States Supreme Court held that public schools must be accessible to all children regardless of immigration status.[1] Subsequently, the Charter School will not inquire about students' or their parents' immigration status. The Charter School does not conduct, participate, or otherwise enforce immigration action(s). The Charter School does not distinguish between categories of immigration status for purposes of student access to education.

At the state level, Pennsylvania recognizes the right to public education as a fundamental right and prohibits public schools from conditioning a child's access to education on the child's immigration status. 22 Pa Code § 11.11(d). Since a child's right to be admitted may not be conditioned on his/her immigration status, a school cannot inquire about the immigration status as part of the admission process. This was affirmed in the Commonwealth Court case of *William Penn School District v. Pennsylvania Department of Education (2023).*[2]

The provision does not relieve a student who has obtained an F-1 visa (international students) from the student's obligation to pay tuition under Federal law.

In compliance with Pennsylvania and Federal law, no board member, administrator, faculty or staff member of the Charter School shall inquire about a student's immigration status, before or after the admission process. The Charter School may require proof of residency from the student's parents, but which may be demonstrated through a variety of documents and shall not require proof of citizenship or immigration status.

The Charter School shall administer a home language survey to all students seeking first time enrollment in its schools in accordance with requirements of the United States Department of Education's Office for Civil Rights.

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[1] Plyler v. Doe, 457 U.S. 202, 212 (1982).

[2] 22 Pa. Code § 11.11(d) (2009) (noting that "a school may not inquire regarding the immigration status of a student as part of the admission process"); see also William Penn Sch. Dist. v. Pennsylvania Dep't of Educ., 294 A.3d 537, 947 (Pa. Commw. Ct. 2023).

The Charter School shall not treat students differently based on actual or perceived immigration status, including students who are lawfully present, have temporary status, or whose status is unknown.

Personally Identifiable Student Information/Records

Students' educational record(s) cannot be shared without the written consent of a student's parent, guardian or the student (if 18 or older), pursuant to 22 Pa. Code § 15.9 and 34 C.F.R. Part 99.The Charter School has an obligation under federal law, the Family Educational Rights and Privacy Act (FERPA)[3], to maintain the confidentiality of student records. FERPA permits disclosure of student records when the Charter School properly receives a judicial order, a judicial warrant, or a subpoena. These privacy protections apply to all students and their families, regardless of immigration or citizenship status. FERPA's data protections include information that might indirectly reveal a student's immigration status. The Charter School will utilize legal counsel to determine whether we are required to provide FERPA-protected information to immigration officials if and when judicial orders, warrants, or subpoenas are received.

FERPA generally prohibits schools that receive federal funds from disclosing any student's records without the written consent of the parent or adult (over age 18) student. FERPA applies to "education records", which are those directly related to a student and those that are maintained by an educational agency or institution. FERPA permits disclosure of student education records in compliance with a "judicial order or lawfully issued subpoena." If served with a valid judicial order, warrant, or subpoena requesting disclosure of FERPA-covered information, the Charter School must make a "reasonable effort to notify" the parent or the student in advance of compliance to give them a chance to challenge the court order or subpoena, unless a court has ordered that the existence of the subpoena may not be disclosed.

In the immigration enforcement context, courts have not addressed whether an administrative warrant or a subpoena issued by the Department of Homeland Security is a "judicial order" or "lawfully issued subpoena" under FERPA.

Immigration Status of Employees:

The Charter School shall ensure that all of its employees' I-9 forms are up to date, and all supporting documentation is on file. Forms can be retained on paper or microform, or electronically.

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[3] 20 U.S.C. § 1232g(a)(4)(A).

Requirements for using an electronic storage system include:

- Reasonable controls to ensure the integrity, accuracy and reliability of the system;
- Reasonable controls to detect and prevent the unauthorized or accidental creation of, addition to, alteration of, deletion or deterioration of an electronically completed or stored I-9 form, including the electronic signature, if used;
- An inspection and quality assurance program evidenced by regular evaluations of the electronic generation or storage system, including periodic checks of the electronically store I-9 form, including the electronic signature, if used;
- In the case of electronically retained I-9 forms, a retrieval system that includes an indexing system that permits searches consistent with the requirements of 8 C.F.R. §274a.2 (e)(6); and
- The ability to reproduce legible and readable hardcopies.

The Charter School shall require all new hires to complete and sign an I-9 form, and present required documentation upon hire. Within three business days of hire, the Charter School shall review the form and supporting documentation. If the I-9 form is compliant and required documentation is presented, a representative from the Charter School shall complete an attestation on the I-9 form under penalty of perjury. 8 C.F.R. §274a.2(b)(i) and (ii).

All I-9 forms and other immigration forms shall be kept in a secure separate file, or an immigration compliance file. While copies of government-issued documentation (such as Social Security cards, driver's licenses, and birth certificates) may be kept in an employee's regular file, copies shall also be kept with the I-9 forms in an employee's immigration compliance file. If an employee at the Charter School is not a citizen, but legally permitted to be in the United States and permitted to work in the United States, then copies of any immigration documents showing legal work status and/or documents required by the I-9 form must be kept in the file.

The Charter School shall take note of the expiration of any I-9 form required documents, and if any of those documents are expired or nearing expiration, ask the employee for updated documentation. A copy of the original signed version of the I-9 form must be retained by an employer for three years after the date of the hire or one year after the date the individual's employment is terminated, whichever is later.

The Charter School complies with all applicable federal laws regarding employment eligibility verification. If an employee is unable to provide documentation establishing employment authorization as required by federal law, the Charter School will take appropriate action consistent with applicable law. It is a violation of the law for a Charter School to continue to employ an undocumented immigrant. 8 U.S.C.A. § 1324a.

Warrants:

The Fourth Amendment is the constitutional right for all individuals to be free from illegal searches or seizures. (U.S. Const. amend. IV). Under the Fourth Amendment, the reasonableness of a search depends on whether a person has a reasonable expectation of privacy in the areas searched. School facilities are considered non-public areas since students and staff maintain a reasonable expectation of privacy, and the Charter School limits public access to school facilities. If an immigration official seeks to enter a non-public area, the officer needs either a "warrant or the consent of the owner or other person in control of the site to be inspected." The Fourth Amendment protects individuals whenever the government invades an area in which a person entertains a reasonable expectation of privacy. This was affirmed in the case of *U.S. v. Jenkins (1995).*[4]

If the Charter School is presented with a warrant from the Office of Immigration and Customs Enforcement ("ICE") for immigration purposes, or for any purpose, the Charter School should present that warrant to legal counsel for review before it complies with the warrant. The Charter School will utilize legal counsel to determine whether we are legally required to comply with the intended enforcement actions of immigration officials if and when judicial orders, warrants, or subpoenas are received.

An "ICE warrant" or "administrative warrant" is a form issued by certain immigration officers that names an allegedly deportable non-citizen and directs various federal immigration enforcement agents to arrest that individual. These warrants are signed by federal immigration officials for civil violations of immigration law, not criminal charges and therefore, do not require the same burden of proof that a judicial warrant requires. Unlike criminal warrants, an ICE warrant is not reviewed or issued by a neutral magistrate. In the case of *See v. City of Seattle (1967)*[5], it was determined that administrative warrants do not confer authority to enter private spaces to execute an arrest or search. This was affirmed in *Galarza v. Szalczyk (2014*[6]*)*, where the Court determined that ICE detainers are permissive rather than mandatory and public schools are not obligated to honor ICE detainers or requests. The United States Supreme Court has held that constitutionally sufficient warrants are issued only upon oath or affirmation of facts submitted to a judicial officer who is neutral and detached from enforcement activities. *Coolidge v. New Hampshire*, 403 U.S. 443, 450 (1971). As these ICE administrative warrants are not signed by a judge or neutral party, if presented to the

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[4] U.S. v. Jenkins, 5 OCAHO 743 (Mar. 24, 1995)

[5] See v. City of Seattle, 387 U.S. 541 (1967) (holding that administrative entry to areas not open to the public may only be compelled through the warrant procedure); see also 8 C.F.R. § 287.8(f)(2).

[6] Galarza v. Szalczyk, 745 F.3d 634, 642 (3d Cir. 2014).

Charter School, these warrants should be reviewed immediately by legal counsel to determine whether the Charter School must comply.

The Charter School and its officials will cooperate with law enforcement officers and immigration officers who have proper and lawful jurisdiction and will fully comply with all valid judicial orders, warrants, and/or subpoenas, after review by the Charter School's legal counsel.

Nothing in this policy shall be interpreted to limit the rights of any student under federal or state law, regardless of immigration or citizenship status.

All Charter Schol staff members will receive detailed procedures, including identification of a specific point of contact, should the Charter School need to interact with immigration officials or need to comply with warrants or subpoenas.

TO THE EXTENT THAT ANYTHING IN THIS POLICY COULD BE CONSTRUED TO CONFLICT WITH THE CHARTER OR APPLICABLE STATE AND/OR FEDERAL LAWS, THE APPLICABLE STATE AND/OR FEDERAL LAWS AND/OR CHARTER CONTROL.

ADOPTED this 20th day of October 2026

President

Secretary