

Letter Template for Students and Parents to Give to Schools
Regarding Rights with Police in Schools

[Date]

[School Address]

Dear [Principal/Superintendent]:

My name is _____ and I am the parent of _____ who attends [name of school]. I am concerned with the way my child was recently treated at school. I want to work together with the teachers and principal at the school to make sure that my child and all students feel safe, protected, and welcomed.

All children in New York, regardless of immigration status, have the right to attend school if they can meet New York State's age and residency requirements.¹ School districts may not deny students access to a free public education because they are undocumented or are non-citizens without violating the United States Constitution.²

Rights of Immigrant & Non-Citizen Children When Interacting with ICE & Police in Schools

Students in New York public schools have a variety of rights under both state and federal law.³ Immigration officials have agreed not to directly target schools because of an understanding that they are "sensitive locations," and parents should not be afraid to send their children to school.⁴ However, U.S. Immigration officials are collaborating with local police on Long Island for the purpose of immigration enforcement.⁵

Even though police, including School Resource Officers (SROs), are present in schools throughout Long Island,⁶ no school personnel should ask students about their immigration status. SROs must respect the right of students to remain silent when interacting with police in schools.⁷ If an SRO interrogates a student, NYSED policy requires parental consent first, except in

¹ MaryEllen Elia & Eric T. Schneiderman, Letter from Commissioner Elia and NYS Attorney General Regarding U.S. Immigration and Customs Enforcement (NYSED Letter), NYSED.gov (Feb. 27, 2017), <http://www.nysed.gov/common/nysed/files/oag-sed-letter-ice-2-27-17.pdf>.

² See Plyler v. Doe, 457 U.S. 202 (1982).

³ *Id.*; see also NYSED Letter, NYSED.gov (Feb. 27, 2017), <http://www.nysed.gov/common/nysed/files/oag-sed-letter-ice-2-27-17.pdf>; N.Y. EDUC. LAW §§ 3202, 3205, 3209.

⁴ U.S. Immigr. and Customs Enf't, FAQ on Sensitive Locations and Courthouse Arrests, <https://www.ice.gov/ero/enforcement/sensitive-loc> (last visited Mar. 27, 2018).

⁵ Julianne Hing, *ICE Admits Gang Operations are Designed to Lock Up Immigrants*, NATION (Nov. 30, 2017), <https://www.thenation.com/article/ice-admits-gang-operations-are-designed-to-lock-up-immigrants/>.

⁶ In Suffolk County, SROs are employees of the Suffolk County Police Department. See Suffolk County Police Department, *Community Relations Bureau*, <http://suffolkpd.org/Community.aspx> [<https://perma.cc/45S2-UG9S>] (last visited Jan. 19, 2018).

⁷ While police in schools may stop, question, and arrest students, students may remain silent to protect themselves against self-incrimination. See NYSED Letter, NYSED.gov (Feb. 27, 2017), <http://www.nysed.gov/common/nysed/files/oag-sed-letter-ice-2-27-17.pdf>; New York Civil Liberties Union, *Palm Card: Know Your Rights with Police in Schools*, NYCLU, <https://www.nyclu.org/en/palm-card-know-your-rights->

Letter Template for Students and Parents to Give to Schools
Regarding Rights with Police in Schools

the very limited situations where the police officer has a warrant or where a crime was committed at the school.⁸

If any school official or immigration officer wants to question my child, please notify me immediately for my permission before asking my child questions, sharing any information about my child, or asking my child to sign any written statement.

The NYSED advises that school officials—including SROs—cannot and should not share information about students or family members with any immigration official because it may violate federal privacy laws.⁹ The NYSED says that “upon receipt of a request from immigration officials to access student education records, school districts should immediately consult with their attorneys, as compliance with such request through disclosure may violate FERPA” as it appears that “a request from ICE or other federal immigration officials to access student . . . education records does not appear to satisfy any of the FERPA exceptions to the general rule that a parent or eligible student must consent to disclosures to third parties.”¹⁰

School Commitment to a Safe and Supportive Learning Environment for All Students

[Name] School District should recommit to creating a safe and welcoming environment to all of its students and do the following:

1. Remove any policy or practice that requires a student or family member to disclose their immigration status.

2. Review the privacy and security of all student information.

police-schools (last visited Apr. 25, 2018); *see also* J.D.B. v. North Carolina, 564 U.S. 261 (2011) (holding that a child’s age informs whether the child was in custody and entitled to a *Miranda* warning so long as the child’s age was known to the officer at the time of questioning); NYSED Counsel’s Opinion 148 (Feb. 23, 1965) (“The school particularly does not have custody of pupils for the purpose of authorizing law enforcement officers or other third parties to interrogate pupils or to remove them from the premises for any purpose whatever.”). Further, police officers must make all reasonable efforts to immediately contact a child’s parent or guardian when the child is taken into custody, and the child cannot be interrogated without the presence or opportunity of the parent or guardian to attend the interrogation. N.Y. FAM. CT. ACT § 305.2; Matter of Jimmy D., 15 N.Y.3d 417 (2010).

⁸ “It has long been SED’s position that law enforcement officers may not remove a student from school property or interrogate a student without the consent of the student’s parent or person in parental relation, except in very limited situations (e.g., when law enforcement officers have a valid warrant or when a crime has been committed on school property).” NYSED Letter, NYSED.gov (Feb. 27 2017), <http://www.nysed.gov/common/nysed/files/oag-sed-letter-ice-2-27-17.pdf>.

⁹ In New York, the confidentiality of student records is protected by the New York Family Court Act, N.Y. FAM. CT. ACT §§ 305.1, 305.2 (2010), and the federal Family Educational Rights Privacy Act (FERPA), 12 U.S.C. § 1232g. If ICE requests information about any student from the school, the NYSED advises that “[p]rior to responding to any such request, school district employees should work with their superintendents and attorneys to determine whether honoring such a request could cause the school district to violate a law of general applicability.” NYSED Letter, NYSED.gov (Feb. 27 2017), <http://www.nysed.gov/common/nysed/files/oag-sed-letter-ice-2-27-17.pdf>.

¹⁰ NYSED Letter, NYSED.gov (Feb. 27 2017), <http://www.nysed.gov/common/nysed/files/oag-sed-letter-ice-2-27-17.pdf>.

Letter Template for Students and Parents to Give to Schools
Regarding Rights with Police in Schools

3. Ensure SROs or other school personnel do not divulge student information to Suffolk County Police Department and/or ICE in violation of New York state law, NYSED policy, and possibly in violation of federal law.
4. Agree to review the practices of SROs to refocus attention on protecting all students from threats outside of the school community and from unnecessary police activity within schools.
5. Provide teachers with adequate training and resources to foster a safe and supportive learning environment for noncitizen students and their families.
6. Inform students of their rights when interacting with immigration officials, police in schools, school officials, and when they are facing in-school or Superintendent's suspensions.

Thank you for taking the time to read my letter and hear my concerns. I look forward to working together to ensure that students like [student name] at [name of school] are free to go to school with the confidence that they and their families are welcome, protected, and seen as an important part of the school community here.

Sincerely,
[Name]