

Subject: Resolution No. 99-22A2

Urging the City and County of San Francisco to Remember its status as a “City and County of Refuge” as set forth in San Francisco Administrative Code Chapter 12H and Encouraging the City and County to Respect Due Process Principles for Our Youth ~~Condemning the City for Reporting Undocumented SFUSD Students to Immigration and Customs Enforcement (ICE)~~

Commissioners Jane Kim, Kim-Shree Maufas, Norman Yee, Sandra Lee Fewer, Rachel Norton, Jill Wynns, and Student Delegates Andie Rose Crug and Tristan Leder

WHEREAS: The City and County of San Francisco adopted Ordinance No. 375-89 on October 24, 1989, making the City and County a “City and County of Refuge”; and,

WHEREAS: Under Ordinance No. 375-89, “No department, agency, commission, officer or employee of the City and County of San Francisco shall use any City funds or resources to assist in the enforcement of federal immigration law or to gather or disseminate information regarding the immigration status of individuals in the City and County of San Francisco unless such assistance is required by federal or State statute, regulation or court decision”; and,

WHEREAS: The Board of Education of the San Francisco Unified School District has recently learned that employees and agents of the City and County of San Francisco have been reporting undocumented students of the District to Immigrations and Customs Enforcement Officials without providing youth with due process pursuant to a new policy issued by Juvenile Probation on or about August 2008; and

WHEREAS: San Francisco enacted the Sanctuary Ordinance in 1989 to prohibit the use of City funds or resources to assist the federal government with immigration investigations or arrests except in limited circumstances;

WHEREAS: the Sanctuary Ordinance promotes public safety by creating trust between immigrant communities and local law enforcement, such that fewer crimes go unreported;

WHEREAS: immigrants are less likely than the native-born to be in prison, high rates of immigration are not associated with higher rates of crime,¹ and in San Francisco an increase in the immigrant population coincided with a decrease in violent crime rates from 2000 to 2005;²

WHEREAS: The Board of Education of the San Francisco Unified School District is mindful of its duty and responsibility to provide each child in the District with a high quality public education in a safe and nurturing environment free from unnecessary conflict and tension; and

WHEREAS: In 1982, the United States Supreme Court decided the case *Plyler v. Doe* (457 U.S. 202), holding that the state of Texas could not withhold funds from local school districts for the education of children who were not “legally admitted” into the United States, because to do so would violate the Equal Protection Clause of the Fourteenth Amendment; and

WHEREAS: In the 25 years since its announcement, *Plyler v. Doe* has been recognized as guaranteeing to all persons, regardless of immigration status, the right to a free elementary and secondary public education on Equal Protection grounds; and

¹ Immigration Policy Center, *Debunking Immigrant Criminality*, July 2008.

² Public Policy Institute of California, *Crime, Corrections, and California: What Does Immigration Have to Do with it? California Counts, Populations Trends and Profiles*, Vol. 9 No. 3., pgs. 9, 17.

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WHEREAS: The *Plyler* Court recognized that the Equal Protection Clause “was intended to work nothing less than the abolition of all caste-based and invidious class-based legislation”; and

WHEREAS: The Board of Education of the San Francisco Unified School District agrees with the United States Supreme Court that both “the importance of education in maintaining our basic institutions, and the lasting impact of its deprivation on the life of the child,” distinguish public education as paramount in our society, and, further, that the courts “have recognized ‘the public schools as a most vital civic institution for the preservation of a democratic system of government,’ and as the primary vehicle for transmitting ‘the values on which our society rests.’ [citations omitted]” *Plyler v. Doe* 475 U.S. 202, 221; and,

WHEREAS: As the Supreme Court stated, “it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.” *Plyler v. Doe* 475 U.S. 202, 222 [citing *Brown v. Board of Education* (1954) 347 U.S. 483, 493]; and

WHEREAS: The Board of Education of the San Francisco Unified School District believes that reporting a student’s immigration status to ICE may create a chilling effect on access to public education in the City and County of San Francisco, deterring some parents from sending their children to school for fear that their children may be prosecuted by ICE and deported. This chilling effect may deny students their right to a public education as established by *Plyler*; and

WHEREAS: The denial of access to an SFUSD education to undocumented students would “impose[] a lifetime hardship on a discrete class of children not accountable for their disabling status. The stigma of illiteracy will mark them for the rest of their lives. By denying these children a basic education, we deny them the ability to live within the structure of our civic institutions, and foreclose any realistic possibility that they will contribute in even the smallest way to the progress of our Nation,” as recognized by the Supreme Court in *Plyer*, 457 U.S. 202, 223.

THEREFORE BE IT RESOLVED: That the Board of Education of the San Francisco Unified School District hereby condemns the practice of the City and County of San Francisco of reporting undocumented students to U.S. Immigrations and Customs Enforcement as a violation of Ordinance No. 375-89. The Board further encourages the City and County to cease and desist in any action that might serve to chill access to a public education, remembering that the City and County is a City and County of Refuge, and that access to a public education is a critical and important right protected by the U.S. Supreme Court’s decision in *Plyler v. Doe*; and

BE IT FURTHER RESOLVED: That the Board of Education hereby supports an ~~proposed~~ amendment to the City and County of Refuge ordinance ~~introduced on August 18, 2009, by Supervisor David Campos and co-sponsored by Supervisors John Avalos, David Chiu, Chris Daly, Bovan Dufty, Eric Mar, Sophie Maxwell, and Ross Mirkarimi,~~ that would restore due process rights to undocumented youth in the juvenile justice system. The amendment serves the vital purpose of ensuring that youth receive due process in juvenile court regarding alleged charges before any decision by Juvenile Probation to refer a youth to ICE; and

FURTHER BE IT RESOLVED: That the Board of Education hereby urges all members of the Board of Supervisors to support the above referenced amendment to restore due process to undocumented youth.

9/22/09