

# **Immigration Enforcement – Guidance for Schools**

## **Relevant Laws**

### **Family Education Rights and Privacy Act of 1974 (FERPA)**

- FERPA generally prohibits schools and school districts that receive federal funds from releasing personal information contained in students' education records without the written consent of the parent or adult (if over 18) student.
- FERPA requires schools and school districts to maintain a record, within the student's record, of all individuals, agencies, and organizations that have requested the student's personal information.
- FERPA has two law enforcement related exceptions, including for ICE: (1) exception for subpoena, (2) exception for school officials.

### ***Plyer v. Doe*, 457 U.S. 202 (1982)**

- The U.S. Supreme Court held that a state may not deny access to public K-12 education to any child residing in the state, whether present in the U.S. with or without current immigration status.

### **Title IV and VI of the Civil Rights Act of 1964**

- Prohibits discrimination based on race, color, or national origin, among other factors, by public elementary and secondary schools, and other (private) schools and programs that accept federal funding.

### **4<sup>th</sup>, 5<sup>th</sup>, and 6<sup>th</sup> Amendments**

- The Fourth Amendment is a constitutional right for all individuals to be free from illegal searches or seizures. Under the Fourth Amendment, the reasonableness of a search depends on whether a person has a reasonable expectation of privacy in the areas searched.
- It is likely that a student has a reasonable expectation of privacy in the classroom, cafeteria, playground, and administrative offices. School policies may designate more areas as private areas, such as bus stops and lobbies. All private areas should be clearly demarcated and enforced.
- The Fifth and Sixth Amendments provide the constitutional rights for all individuals to have an attorney and to remain silent during “custodial interrogations” and arrests. Custodial interrogations are when a law enforcement officer makes you feel as though you cannot leave, usually because they are asking you questions – this threshold is likely much lower for children.

## **FAQs**

### **Are schools required to enforce immigration laws?**

- No. Schools are not required and cannot be forced to enforce immigration laws.

### **What protections are in place for immigrant students and their families?**

- Public schools are prohibited from: asking students or their parents about their immigration status for the purposes of enrollment; revealing a student's or their parent's immigration status without their permission; and, requiring social security numbers from students.
- Schools are prohibited from sharing a student's or their family's private information contained in education records without the written consent of a parent, guardian, or the student (if over 18 years old). Exceptions include if the information is considered directory information or if a valid judicial order or subpoena is presented.

**Does the Family Education Rights and Privacy Act of 1974 (FERPA) exception related to law enforcement with a valid judicial warrant allow ICE agents to obtain personal information?**

- Yes, but the court order or judicial warrant should be elevated to the school superintendent and validated by the school's district attorney. No action should be taken until these steps are taken.
- If personal information must be shared because of this exception, affected family must be alerted unless the order or warrant explicitly states that you may not.

**What rights do students have?**

- All students, regardless of their immigration status, have the right to enroll in and attend a public K-12 school.
- A child also has the right against self-incrimination and may not be required to provide any information that would establish his or her residency status.

**Are schools public places and how does this impact immigration enforcement?**

- Generally, schools are not considered public places and limitations are in place on who may enter. Schools can prevent immigration officials from entering private space if they don't have a judicial warrant.
- Thus, it is strongly recommended that schools identify and distinguish (ideally with legal advice) their private spaces from their public ones, if any. This can be done by placing signs identifying private areas, or by placing security guards tasked with signing in visitors at main entrances.

**Can an immigration official question or remove a student from school?**

- Schools should not permit an immigration official to question or remove a student from school without the consent of a parent or guardian in the absence of a valid judicial warrant.
- A valid judicial warrant is signed and issued by a judge and should be reviewed by the district attorney. This is different than an administrative warrant, which is a document signed by an ICE agent.

**What if a judicial warrant is presented?**

- The Superintendent should consult with the school district’s attorney before taking any action.

### **Can immigration officials be stationed outside or near a school?**

- Yes, ICE can be stationed outside of a school. If there are ICE agents outside or near your establishment, you can send a designated, well-trained staff member outside to ascertain the identity of the individuals.
- If they are able to confirm that they are immigration agents, that person can reenter the school and remind people of their rights or prepare should the agents attempt to gain entry.

### **Can school personnel who are aware of the undocumented status of a student or family assist the student to avoid detection?**

- No, it may be a crime to take affirmative and active steps to conceal, harbor, or shield from detection an undocumented person, with knowledge of or reckless disregard for that person’s undocumented status.
- However, school personnel are not obligated to report an undocumented student or family member to ICE, or to assist ICE in apprehending that student, and have the common law responsibility to care for children in place of their parents while children are at school. The relevant laws governing schools and students give the school the authority and the obligation to protect undocumented students, including from ICE.

## **Recommendations for Schools**

### **1. Prepare and implement an internal policy to protect students from immigration enforcement.**

- Internal policies should include:
  - The distinction between public and private spaces.
  - Internal protocol on the procedure to interact with immigration agents, including protocol for handling law enforcement requests.
  - Limits to what information is in the school directory, such as not requiring information on immigration status.
  - Written privacy policies regarding student’s information.
  - Designation of a well-trained individual or immigration advocacy group personnel to approach ICE agents outside or near the property.
  - Establish rapid response teams to assist students if their parent or guardian has been detained.

### **2. Create and disseminate educational materials and “Know Your Rights” trainings for school personnel.**

- [ACLU Know Your Rights: Immigration Enforcement](#)
- [Sample Presentation for School Administrators](#) (ACLU of Nebraska)
- [KYR graphics and wallet cards](#) (ACLU)

**3. Communicate with Superintendents about clear protocols for schools to follow if asked for student information or for access to a student.**

- [DC schools immigration guidance](#) (DC OAG)
- [Welcoming schools and safety protocol](#) (ACLU of PA)

**4. Host or provide emergency safety planning for immigrant families.**

- [Family Safety Plan](#) (ILRC)

**5. Compile and provide contact information for local organizations providing free legal assistance for families.**

- [Immigration Advocates Network](#)

**6. Advocate for model policies with your school board and local government.**

- [Model school board policy](#) (NEA)
- [School campus model policy](#) (ACLU of ME)
- [School campus model resolution](#) (ACLU of ME)
- [Welcoming schools and safety protocol](#) (ACLU of PA)
- [Legal rights of students letter to schools](#) (ACLU of PA)

## **Resources**

- [ACLU Know Your Rights: Immigration Enforcement](#) (ACLU)
- [KYR graphics and wallet cards](#) (ACLU)
- [Sanctuary policies fact sheet](#) (ILRC)
- [Family Safety Plan](#) (ILRC)
- [Warrants and subpoenas guidance](#) (NILC)
- [Sample Presentation for School Administrators](#) (ACLU of Nebraska)
- [FAQs for School Officials](#) (FIRM)
- [DC schools immigration guidance](#) (DC OAG)
- [Preparing for ICE raids](#) (AIDArkansas)
- [NEA schools and immigration page](#) (NEA)
- [Educator advocacy toolkit](#) (NEA)
- [Model school board policy](#) (NEA)
- [Legal rights of students letter](#) (ACLU of MI)
- [School campus model policy](#) (ACLU of ME)
- [School campus model resolution](#) (ACLU of ME)
- [Welcoming schools and safety protocol](#) (ACLU of PA)
- [Legal rights of students letter to schools](#) (ACLU of PA)
- [Immigration Advocates Network](#)

- [Department of Education Student Privacy Policy Office \(SPPO\)](#)
- [Dept. Of Ed and Dept. Of Justice Plyer v. Doe guidance letter \(DoJ AND DoE\)](#)