

Education Providers and Immigration Enforcement: Know Your Rights, Know Your Students' Rights

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The Trump administration has increased the threat of immigration enforcement in our communities. The government also has canceled the long-standing policy of limiting immigration enforcement in schools and other [protected areas](#) and replaced it with a [directive](#) that gives ICE agents unbridled power to take enforcement actions in any of these areas using “common sense.” As a result, many immigrant students and families are living in fear of arrest, detention, separation, and deportation.

This FAQ provides information and best practices for public K-12 school leaders, administrators, educators, faculty, and staff (“education providers”) to ensure they can continue to provide a safe and welcoming learning environment for students and their families.

DISCLAIMER: The information in this document does not constitute legal advice. It is a compilation of best practices developed over the years. Schools should work with their superintendent and counsel, ideally with knowledge of applicable federal, state, county, and city laws and policies, to develop their own policies and procedures.

Q: How might immigration enforcement happen at a school?

A: U.S. Immigration and Customs Enforcement (ICE) is the enforcement agency within the U.S. Department of Homeland Security (DHS) that works in the interior of the United States. U.S. Customs and Border Protection (CBP), another agency within DHS, is responsible for enforcement at or near the nation’s borders. Under the Trump administration, federal DHS immigration law enforcement officers may be working in conjunction with other federal, state, or local law enforcement agencies. For purposes of this piece, we will refer to them collectively as “law enforcement officers.” During an enforcement action, these law enforcement officers may attempt to arrest a specific person or to question everyone in a particular area. Law enforcement officers may seek information about a specific person, or records or data on a group of people.

In the school setting, law enforcement officers might seek to enter a school to investigate, speak with, or detain a student or to request a search of an area or records, or data collected by the school.

Q: Which laws or policies limit law enforcement officers’ ability to physically enter the school or demand information from a school?

A: DHS' previous and long-standing "[protected areas](#)" policy imposed some limits on immigration enforcement in or near schools and other sensitive locations such as hospitals and religious institutions. The Trump administration, however, rescinded that policy. Immigration enforcement power is still limited by laws including:

- ▶ **The Fourth Amendment.** Law enforcement officers' power to enforce immigration law is limited by the constitutional protection against unreasonable search and seizure. Under the Fourth Amendment to the U.S. Constitution, a law enforcement officer's ability to conduct a search depends on whether a person has a reasonable expectation of privacy in the area searched. To determine the legality of a search, [courts ask](#): at the time of the search, was it the person's subjective, actual expectation that the place or things searched were private, and was that expectation objectively reasonable, i.e., would it be generally recognized by society? The more private, closed, and controlled a school campus is, the greater the likelihood that school administrators can help preserve its students' Fourth Amendment rights.
- ▶ **Plyler protections.** Over forty years ago, the United States Supreme Court ensured access to public K-12 education for undocumented students in the landmark case [Plyler v. Doe](#). *Plyler* held that denying children access to a free public K-12 education violates the Equal Protection Clause of the Constitution. Law enforcement presence at or near schools may infringe on Plyer's protections by creating a chilling effect that prevents parents from taking children to school.
- ▶ **Information Protections.** Several federal and state laws and policies protect students' information, with some exceptions and limitations. Under the [Family Educational Rights and Privacy Act \(FERPA\)](#), for example, schools generally may not disclose [personally identifiable information](#) (PII) from students' education records to outside parties unless the parent or eligible student has provided prior written consent. PII is information that can be used to directly identify a person like a student's name, ID number, or to draw linkages to identify a person's identity such as by knowing their date of birth. However, the definition of PII does not cover "[directory information](#)" which is information contained in the student records that would not generally be considered harmful or an invasion of privacy if disclosed. Directory information could include, for example, the student's name, address, phone number, and date of birth. A student's place of birth may also be included in directory information. However, since a person's birth abroad can prompt further investigation by immigration officers, we recommend that schools not include this information in directories. Schools may, but are not required to, disclose designated "directory information" with proper public notice. The schools must also offer parents and eligible students a reasonable time to inform the school that they do not want that information released without prior consent.

State, local, district, and school level policies and initiatives can further limit immigration enforcement. We encourage you to identify the laws and policies that apply to your school.

Q: What can our school do to prepare for possible immigration enforcement presence?

A school can help protect its immigrant students and families in many ways, including:

- ▶ Develop or update school district wide [resolutions](#) committing to protect and welcome immigrant students and their families. We recommend making these resolutions accessible to students and parents/guardians, at minimum through the school district's website and available in multiple languages.
- ▶ Establish a centralized procedure or protocol for how to respond to any law enforcement presence at schools. The protocol should be shared with all school employees in written form and through trainings. Ensure that all school employees are aware of the policy and will know what to do if an officer appears.
- ▶ Establish a written policy and put up signs clearly identifying which areas at the school are private and are not open to the public (e.g. anything past the visitors' side of a school's front desk including the inside of a school and classrooms) to preserve Fourth Amendment rights.
- ▶ Create strict procedures for any guest, including law enforcement officers, to enter the school premises. For example, require all visitors to pass through an administrative office or screening before entering, and require law enforcement officers to present a valid judicial warrant or judicial subpoena before entering the property. This document should be subject to a review by a designated trained individual (explained below).
- ▶ Designate a trained individual, preferably a principal, superintendent or district counsel, to evaluate the law enforcement officer's request and review the warrant or subpoena presented.
- ▶ Avoid collecting information about immigration status and birthplace information, since a person's birth abroad can prompt further investigation by immigration officers.

Q: Do I need to allow law enforcement officers to enter my school if they show up and demand to speak to a student?

No. You can deny them access while a designated trained individual evaluates their request. Under the Fourth Amendment, law enforcement officers cannot enter private areas without a valid judicial warrant. A designated person should review the warrant to determine if it is an enforceable judicial warrant or an unenforceable warrant signed by an agency such as DHS. To be enforceable, a [warrant](#) must be issued by a court, signed by a judge, state the full name and address of the person they'd like to speak to, and be presented within the valid time period specified in the warrant (i.e. not expired).

If the warrant is not a valid judicial warrant, you can deny the request. If the judicial warrant authorizes the arrest of a particular individual, you can ask that individual to come to the front of the school to meet the officer rather than giving the officer access to enter the school. Providing the officer access to enter the school can be construed as consent to a search and seizure regardless of whether they have a judicial warrant and what/who is listed in the warrant. An officer for example may then question people they encounter along the way, which could possibly lead to collateral arrests.

Q: Do I need to allow law enforcement officers to enter my school if they show up and demand to search an area of the school or see a school record?

No. You can deny them access while a designated trained individual evaluates their request. Under the Fourth Amendment, law enforcement officers cannot enter private areas without a valid judicial warrant. A designated person should review the warrant to see if it is an enforceable judicial warrant or judicial subpoena or an unenforceable warrant or subpoena signed by an agency such as DHS. To be enforceable, a [warrant or subpoena](#) must be issued by a court, signed by a judge, state the place (e.g. address) or item to be searched, and be presented within the valid time period specified in the warrant (i.e. not expired).

If the warrant is not a valid judicial warrant, you can deny the request. If the judicial warrant authorizes a search only of a particular office in your school, law enforcement may not use it as a basis for searching other offices, classrooms, storage rooms, etc. You can object if the law enforcement officer goes beyond the scope of the warrant or subpoena's authority, beyond what the document states they can do.

Q: What else can I do to support immigrant students and their families?

There are many additional ways to help immigrant students and their families including by:

- ▶ **Providing educational [Know-Your-Rights materials](#).**
 - Provide posters, educational materials, and trainings advising immigrant students and families that they have the right to refuse to answer questions from immigration agents and other law enforcement officers and to insist that they have a lawyer present if they are questioned. We recommend emphasizing the importance of not providing false information, not running away from an officer, and carrying at all times proof that they have been in the country for at least two years to reduce the likelihood of being placed in fast tracked deportation proceedings.
 - Print and make available [know-your-rights cards](#) that students can hand to officers asserting their rights.
 - Encourage families who may be at risk of immigration enforcement to create a [family immigration raid emergency plan](#) and make sure the emergency

contacts are up to date (e.g. who will pick up the student from school if a parent or guardian is detained?).

- ▶ **Limiting and protecting data.** Determine how to limit to the extent possible the information that is collected from students and their families. You should consider for what purpose you're asking for the data, if the data is stored in a secure manner, and who should have access to it. Avoid collecting information about immigration status and birthplace information, which creates a significant chilling effect on families and [possibly violates Plyler](#). If information is collected, make sure it is stored and is not visible in plain view, which could allow law enforcement to rely on its contents. If visitors, including an officer, can see papers and files clearly visible from the visitors' side of a school's front desk, for example, they are likely in "plain view" and could be an exception to the warrant requirement to search.

Immigration enforcement policies and practices evolve, with dramatic changes sometimes occurring after presidential transitions, but constitutional rights remain. The most important piece of any preparedness strategy is to simply be there for immigrant students and families during these difficult times. You can let them know that they can turn to you for support and for trusted information which you may have or know where to find. The safer and more secure students feel at school with education providers they trust, the better they will learn, develop, and grow.