



FAQ FOR EDUCATORS ON IMMIGRANT STUDENTS IN PUBLIC SCHOOLS

In recent months, the ACLU has received numerous inquiries, questions, and concerns about the vulnerabilities and rights of immigrant and perceived immigrant students in our public education system. Educators and school districts have been among those seeking guidance on how best to serve their immigrant students and meet their legal obligations. Below are answers to some common questions we have received.

This information is not intended as legal advice and is for informational purposes only.

What does federal law say about immigrant students?

Federal laws prohibit discrimination in public education, including discrimination on the basis of race, color, or national origin.¹ Federal law specifically prohibits schools from “utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.”²

The Supreme Court, in the case *Plyler v. Doe*,³ also held that discrimination on the basis of immigration status in access to basic public education (i.e. elementary and secondary school) violates the Constitution.

What does the *Plyler v. Doe* decision mean for me as an educator?

Requiring students or students’ parents to provide schools with information regarding their immigration status, or taking other actions that significantly interfere with the right to a basic public education, violates the constitutional principles set out in *Plyler*.⁴

Can my school district require students to provide a social security number?

No. Schools cannot require students to provide a social security number and, consistent with *Plyler*, should identify a range of documents (e.g., birth certificate, family bible, parent affidavit) that may be used to establish a child’s age. Federal law prohibits denial of a benefit for refusal

¹ Title IV of the Civil Rights Act of 1964, 42 U.S.C. § 2000c-6 (public elementary and secondary education); Title VI, 42 U.S.C. § 2000d (recipients of federal funds).

² 28 C.F.R. § 42.104(B)(2); 34 C.F.R. § 100.3(b)(2); see also U.S. Dep’t of Educ., Office for Civil Rights & Office of the General Counsel, U.S. Dep’t of Just., Civil Rights Div., *Dear Colleague Letter: School Enrollment Procedures 1* (May 8, 2014).

³ 457 U.S. 202 (1982).

⁴ See *Hispanic Interest Coal. of Alabama v. Governor of Alabama*, 691 F.3d 1236, 1245 (11th Cir. 2012); *League of United Latin Am. Citizens v. Wilson*, 908 F. Supp. 755, 774 (C.D. Cal. 1995), on reconsideration in part, 997 F. Supp. 1244 (C.D. Cal. 1997).

to supply a social security number,⁵ and a school district collecting social security numbers must inform individuals that the disclosure is voluntary, and must explain both the statutory or other basis for seeking the numbers, and how the district intends to use the numbers.⁶

What other rules apply to collecting information from students?

Schools cannot delay enrollment of homeless children, even if they are unable to produce these records.⁷ The Federal Educational Rights and Privacy Act (FERPA) prevents schools from releasing students' education records, including information about immigration status, except in exceptional circumstances. A school may only disclose information to ICE officials with the consent of a parent or student (if 18 or older) or if necessary to comply with a judicial order or a subpoena signed by a judge.⁸ If a school receives an administrative subpoena, school officials can still seek review by legal counsel and could potentially challenge the reasonableness of the subpoena.⁹

What is the best way for schools to go about collecting educational information from students?

School administrators should limit the information collected from students, provide a variety of means for establishing necessary information for enrollment (including alternatives for students who lack traditional proof of residence), and review district policies and practices regarding the management and use of student data.

Schools should not ask students for information such as place of birth that may indicate a student's immigration status. To further remove barriers to enrollment, schools can limit the information required to enroll to proof of residency, proof of age, and immunization records, and request any other information after enrollment.

How can a school protect the information that it collects from students?

To properly protect students' rights, educators must also ensure that contractors, consultants, and other agency partners who come into contact with students or who access student records respect students' rights. In particular, school police should commit through a signed agreement

⁵ Pub. L. No. 93-579, § 7(a)(2) (except as required by a federal statute).

⁶ See 5 U.S.C. § 552a.

⁷ McKinney-Vento Homeless Assistance Act, 42 U.S.C. § 11432(g)(3)(C)(1). The National Center for Homeless Education provides Best Practices Guides, including a guide to enrolling students without records. See National Center for Homeless Education, *Prompt and Proper Placement, Enrolling Students without Records* (2006), <http://nche.ed.gov/downloads/briefs/assessment.pdf>.

⁸ 34 C.F.R. § 99.31(a)(9)(i).

⁹ *Donovan v. Lone Steer, Inc.*, 464 U.S. 408, 415 (1984); *In re Ramirez*, 905 F.2d 97, 99 (1990) (recipient of administrative immigration subpoena who wishes to challenge enforceability should refuse to comply and await enforcement action); 20 U.S.C. § 1232g; 34 CFR Part 99; cf. 20 U.S.C. § 1232g(5)(A) (allowing only directory information to be shared on an opt-out basis). The U.S. Department of Education Privacy Technical Assistance Center provides a Data Security Checklist that schools can consult. Privacy Technical Assistance Center, *Data Security Checklist* (rev. 2015), <http://ptac.ed.gov/sites/default/files/Data%20Security%20Checklist.pdf>.

or official policy not to inquire about immigration status or to detain or report students and family members for purposes of immigration enforcement.

Further, the district should review its policing practices to focus attention on protecting the school community from outside threats and limit law enforcement engagement with students to immediate threats to physical safety.

Can U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP) arrest immigrants while at school?

ICE and CBP maintain a policy which provides that they will not engage in immigration enforcement in sensitive locations like schools absent prior approval by a supervisor or exigent circumstances.¹⁰ This policy has recently been reaffirmed by the Department of Homeland Security.¹¹ This means that ICE and CBP generally will not arrest, interview, search, or surveil a person for immigration enforcement purposes while at a school, a known school bus stop, or an educational activity.¹²

What should school officials do if they or others witness ICE or CBP enforcement actions within my school?

Schools can reassure their students that enforcement actions *within schools* are very unlikely. Although there have been distressing reports about arrests near schools, we are not aware of any recent immigration arrests within schools. Both Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) continue to adhere to their policy, described above, of avoiding enforcement actions within schools. If such an incident occurs, school staff should:

- Direct ICE/CBP agents to the Superintendent.
- The Superintendent should request to see written legal authorization and verify the identity of the agent(s).
 - If agents do not supply a judicial warrant, signed by a judge, request legal review before permitting agents further into the school. Only a judicial warrant, not an

¹⁰ U.S. Immigration and Custom Enforcement, Sensitive Locations FAQs, <https://www.ice.gov/ero/enforcement/sensitive-loc>.

¹¹ U.S. Department of Homeland Security, Q&A: DHS Implementation of the Executive Order on Border Security and Immigration Enforcement (Feb. 21, 2017) (“Q28: The implementation guidance references rescinding all previous immigration enforcement memos. Does this include the ICE and CBP memorandum on sensitive locations? A28: No, the sensitive locations guidance remains in effect for both ICE and CBP.”), <https://www.dhs.gov/news/2017/02/21/qa-dhs-implementation-executive-order-border-security-and-immigration-enforcement>.

¹² Specifically, the sensitive locations memo includes these locations: “Schools, such as known and licensed daycares, pre-schools and other early learning programs; primary schools; secondary schools; post-secondary schools up to and including colleges and universities; as well as scholastic or education-related activities or events, and school bus stops that are marked and/or known to the officer, during periods when school children are present at the stop . . .” U.S. Immigration and Custom Enforcement, Sensitive Locations FAQs, <https://www.ice.gov/ero/enforcement/sensitive-loc>.

administrative warrant, will allow ICE agents to enter locations in which there is a reasonable expectation of privacy.¹³

- The Superintendent should advise agents of the school district's *Plyler* obligations, refer agents to the ICE/CBP sensitive locations memos, and request that officers not conduct the enforcement action at school/school activities.
- Consistent with the school district's *Plyler* obligations, school officials must not affirmatively aid in removing a student from school based upon her immigration status.
- If agents detain a student, the school district should promptly notify the student's parent or guardian.
- As soon as possible, notify your local ACLU affiliate. You can also lodge a complaint with ICE or CBP through their websites.¹⁴

What other steps can school officials take to safeguard education for immigrant students (and all students)?

- Communicating with district families that all students are welcome in district schools, including through the adoption of a resolution,¹⁵ can go a long way in assuaging community fears and strengthening the school community.
- Educators can also adopt a number of practices to instill a positive school climate.¹⁶

Where can school officials and educators get more information on these issues?

There are many organizations that publish resources for educators, including the National Immigration Law Center (NILC). The NILC webpage about education is <https://www.nilc.org/issues/education/>. In particular, they provide a detailed guide for educators and school support staff available at <https://www.nilc.org/wp-content/uploads/2016/06/ICE-Raids-Educators-Guide-2016-06.pdf>.

¹³ Compare *See v. City of Seattle*, 387 U.S. 541 (1967) (administrative warrant not sufficient to allow entry to non-public areas of business) with *Blackie's House of Beef, Inc. v. Castillo & INS*, 659 F.2d 1211, 1218-19 (D.C. Cir. 1981) (discussing probable cause standard for warrant issued by neutral magistrate).

¹⁴ See ICE, Sensitive Locations FAQs, <https://www.ice.gov/ero/enforcement/sensitive-loc>.

¹⁵ See National Immigration Law Center, Model Campus Safe Zones Resolution Language (K-12) (Dec. 2016), <https://www.nilc.org/issues/immigration-enforcement/campus-safe-zones-language-k-12/>.

¹⁶ TESOL has compiled numerous resources for supporting immigrant and refugee students. See TESOL, Resources on Immigration and Refugee Concerns, <http://www.tesol.org/advance-the-field/advocacy-resources/resources-on-immigration-and-refugee-concerns>. The National School Climate Center also provides many resources for developing positive school climate. See National School Climate Center, <http://www.schoolclimate.org/>.