



February 3, 2025

*Via email*

**To all Pennsylvania School District Superintendents, Charter School CEOs and Executive Directors of Intermediate Units**

***Re: Legal Rights of Immigrant Students in Pennsylvania Schools***

Dear Superintendent / CEO / Executive Director:

Recognizing the sensitivity of schools and certain other locations, U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP) previously maintained a “sensitive locations” policy across several different presidential administrations that limited immigration enforcement at schools, hospitals, and places of worship.<sup>1</sup> On January 21, 2025, however, the Trump administration rescinded this policy.<sup>2</sup> Accordingly, ICE and CBP policy now permits these agencies to engage in enforcement operations at or near schools, school playgrounds, or bus stops. But simply because internal agency guidance may permit activity does not mean that schools must, or even can consistent with law, allow immigration agents to enter schools, inspect records, or engage with students and staff. No agency directive can override federal laws and the U.S. Constitution.

We have heard concerns from many educators and school administrators about how the federal government’s revocation of the “sensitive locations” policy will affect their ability to educate their students. Educators have reached out to us with questions about how best to serve their immigrant students, what is required to meet their legal obligations, and what they can do to ensure that schools will remain safe places for all children to learn and grow.

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<sup>1</sup> Alejandro N. Mayorkas, U.S. Dep’t of Homeland Sec., *Guidelines for Enforcement Actions in or Near Protected Areas* (Oct. 27, 2021), [https://www.dhs.gov/sites/default/files/publications/21\\_1027\\_opa\\_guidelines-enforcement-actions-in-near-protected-areas.pdf](https://www.dhs.gov/sites/default/files/publications/21_1027_opa_guidelines-enforcement-actions-in-near-protected-areas.pdf).

<sup>2</sup> *Protected Areas and Courthouse Arrests*, U.S. IMMIGR. AND CUSTOMS ENF’T, <https://www.ice.gov/about-ice/ero/protected-areas> (last visited Feb. 3, 2025).

We are writing to provide you with answers to some common questions, and general guidance to help you ensure that all students in your district feel welcome.<sup>3</sup>

At the outset, it is important to understand that the federal government’s revocation of the “sensitive locations” policy does not alter the constitutional right of immigrant children to an education; does not change the legal responsibilities of school districts towards their students; and does not affect a school’s own legal rights and obligations regarding who enters their property and what private information they may divulge. Federal law has not changed. The end of the “sensitive locations” policy, however, makes it more likely that immigration enforcement operations will occur at schools, targeting your students or their family members when they come to schools. Therefore, it is critically important for schools to understand both students’ rights and schools’ responsibilities.

### **Federal and State Law Protects Students Regardless of Immigration Status**

Federal laws prohibit discrimination in public education, including discrimination on the basis of race, color, or national origin.<sup>4</sup> 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.”<sup>5</sup> The Supreme Court, in the landmark case *Plyler v. Doe*,<sup>6</sup> held that the Constitution forbids discrimination on the basis of immigration status in access to basic public education. As the Court explained, denying access to education “imposes a lifetime hardship on a discrete class of children not accountable for their disabling status.”<sup>7</sup>

Pennsylvania law also entitles immigrant students, like all students, to “a meaningful opportunity to succeed academically, socially, and civically . . . .”<sup>8</sup> Their success “requires” that they have “access to a comprehensive, effective, and contemporary system of public education.”<sup>9</sup> The Pennsylvania Human Relations Act independently protects students’ interests by prohibiting discrimination in schools based on race, color, sex, religion, disability, ancestry, and national origin.<sup>10</sup>

Other sources of Pennsylvania law provide more specific protections for students, regardless of immigration status. For instance, *all children* have the right to attend school in Pennsylvania from the earliest kindergarten admission age (no later than 6 years old) until the end of the school term when they

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<sup>3</sup> This letter should not be construed as legal advice, but rather as a strong recommendation that you seek legal guidance promptly relative to issues in this letter. The law in this area is complex and every situation is different.

<sup>4</sup> Title IV of the Civil Rights Act of 1964, 42 U.S.C. § 2000c-6 (public elementary and secondary education); Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (recipients of federal funds).

<sup>5</sup> 28 C.F.R. § 42.104(b)(2); 34 C.F.R. § 100.3(b)(2).

<sup>6</sup> 457 U.S. 202 (1982).

<sup>7</sup> *Id.* at 223.

<sup>8</sup> *William Penn Sch. Dist. v. Pa. Dep’t of Educ.*, 294 A.3d 537, 892 (Pa. Commw. Ct. 2023).

<sup>9</sup> *Id.*

<sup>10</sup> Pa. Human Relations Act (PHRA), 43 P.S. §§ 951-963.

turn 21 or until they graduate with a regular high school diploma, whichever comes first.<sup>11</sup> Pennsylvania law expressly prohibits inquiry into a child’s immigration status in the enrollment process.<sup>12</sup> And all students have the right to be free from bullying and harassment, which includes adverse treatment based on race, ethnicity, national origin, immigration status, or language.<sup>13</sup> In sum, any threat or insinuation that immigrant children and their families are unwelcome in Pennsylvania schools could violate the law.

### **School Districts Should Have Procedures to Respond If Immigration Agents Take Enforcement Action at Schools**

Every district—if it has not done so already—should develop procedures in consultation with legal counsel to prepare for immigration enforcement at or near schools, school events, bus stops, etc. Schools must protect students’ rights, including their Fourth Amendment rights against unreasonable searches and seizures, their Fifth Amendment right against self-incrimination, and their privacy rights under Family Educational Rights and Privacy Act (FERPA)<sup>14</sup> and many other laws.

While longstanding law requires schools to comply with valid *judicial* warrants and subpoenas, immigration agents often serve what are known as *administrative* warrants, which do not have the same legal force. To be valid, a judicial warrant must:

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<sup>11</sup> 22 Pa. Code § 11.12; 24 P.S. § 13-1326; *see also* 22 Pa. Code § 11.11(a)(1) (“A school age child is entitled to attend the public schools of the child’s district of residence.”).

<sup>12</sup> 22 Pa. Code § 11.11(d) (“A child’s right to be admitted to school may not be conditioned on the child’s immigration status.”); *Enrollment of Students Basic Education Circular*, PA. DEP’T EDUC. (Nov. 1, 2024), <https://www.pa.gov/agencies/education/resources/policies-acts-and-laws/basic-education-circulars-beecs/purdons-statutes/enrollment-of-students.html> (hereinafter “Enrollment BEC”).

<sup>13</sup> Title IV of the Civil Rights Act of 1964, 42 U.S.C. § 2000c-6(a) (prohibiting discrimination in schools on the basis of race, color, religion, sex, or national origin); Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (forbidding schools that receive federal financial assistance from discriminating against students based on race, color, or national origin); Pa. Human Relations Act (PHRA), 43 P.S. §§ 951-963 (prohibiting discrimination because of a current student’s race, color, sex, religion, disability, ancestry, or national origin); Pa. Fair Educ. Opportunities Act, 24 P.S. §§ 5001-5010; 16 Pa. Code §§ 41.204, 41.207 (PHRA regulations defining ethnic characteristics to include physical and linguistic, and race discrimination to include national origin and specifically Hispanic ancestry); U.S. Dep’t of Educ. Off. for Civ. Rts. Resolution Letter to the Superintendent of Indep. Sch. Dist. #761, OCR Docket # 05-10-1148 (May 4, 2011), <https://ocrcas.ed.gov/sites/default/files/ocr-letters-and-agreements/05101148-a.pdf> (finding that the school district was required to develop strategies to avoid, address, and remedy harassment of Somali students based on national origin, and provide equal access to honors and Advanced Placement courses); U.S. Dep’t of Educ. Off. for Civ. Rts. Resolution Letter to the Superintendent of St. Cloud Area Sch. Dist. #742, OCR Docket # 05-10-1146 (Nov. 16, 2011), <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/05101146-a.pdf> (finding that the school district was required to develop strategies to avoid, address, and remedy harassment of Somali students based on their national origin).

<sup>14</sup> 20 U.S.C. § 1232(g)

- Be issued by a judicial court;<sup>15</sup>
- Be signed by a state or federal judge or magistrate (not merely authorized by an immigration judge or agent within the Department of Homeland Security or ICE);<sup>16</sup>
- State the address of the premises to be searched (check for your school’s exact address); and
- Be executed within the limited time period specified on the warrant.

However, ICE typically does not use judicial warrants. Instead, ICE commonly relies on administrative warrants, signed by an immigration officer<sup>17</sup> or immigration judge. Unlike judicial warrants, administrative warrants *do not* give ICE agents authority to enter areas of school property that are not otherwise open to the public.<sup>18</sup> To enter those places (absent a judicial warrant), ICE would need the school’s consent, which school officials have no legal obligation to give.

In short, it is critically important to examine warrants presented by ICE agents to determine who issued it: an ICE officer or a federal judge. A useful fact sheet explaining what is required and how to respond to different types of warrants and subpoenas is available at: [https://www.nilc.org/wp-content/uploads/2025/01/Subpoenas-Warrants\\_-2025.pdf](https://www.nilc.org/wp-content/uploads/2025/01/Subpoenas-Warrants_-2025.pdf).

Other important steps school districts can take include:

- Train all school staff, based on your protocols, that if immigration agents come to a school, staff should immediately inform a designated trained contact person (for example, the principal), who should then consult the superintendent and school’s attorney. School staff should be instructed

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<sup>15</sup> Judicial orders are required by the Fourth Amendment’s guarantee to be free from unreasonable searches and seizures of persons or objects. *See* U.S. CONST. amend. IV. As courts have explained, administrative warrants “lack the independent assurance guaranteed by the Fourth Amendment” and therefore are insufficient to enter a constitutionally protected area. *See, e.g., Kidd v. Mayorkas*, 734 F. Supp. 3d 967, 979–80 (C.D. Cal. 2024) (holding that ICE’s “knock and talk” policy violated Fourth Amendment); *see also infra* note 18.

<sup>16</sup> An immigration judge (IJ) presides exclusively in immigration court over administrative deportation proceedings, and an IJ’s authority to issue administrative warrants and administrative subpoenas exists only in the immigration court context. *See* 8 C.F.R. § 1240.41. Warrants and subpoenas signed or otherwise authorized or issued by an immigration judge are not judicial warrants or judicial subpoenas.

<sup>17</sup> “Immigration officer” is a term that designates employees and agents of U.S. Immigration and Customs Enforcement (ICE), U.S. Citizenship and Immigration Services (USCIS), and U.S. Customs and Border Protection (CBP). *See* Immigration and Nationality Act (INA), 8 U.S.C. § 1101(a)(18).

<sup>18</sup> U.S. CONST. amend. IV (“[N]o Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”); *Johnson v. United States*, 333 U.S. 10, 14 (1948) (warrant must be issued by “neutral and detached magistrate”); *Coolidge v. New Hampshire*, 403 U.S. 443, 453 (1971) (Fourth Amendment “neutral and detached magistrate” requirement not satisfied if person issuing warrant belongs to executive branch rather than member of judiciary); *United States v. Brignoni-Ponce*, 422 U.S. 873 (1975) (Fourth Amendment protections apply to interactions between immigration officials and people they suspect to be undocumented); *Santos v. Frederick Cnty. Bd. of Comm’rs*, 725 F.3d 451, 468 (4th Cir. 2013) (deputies conducting arrest based on ICE civil arrest warrant violated noncitizen’s Fourth Amendment rights). *See also, ICE Administrative Removal Warrants*, FED. L. ENF’T TRAINING CTRS., <https://www.fletec.gov/ice-administrative-removal-warrants-mp3> (last visited Feb. 3, 2025) (“The primary difference [between an ICE warrant and a criminal warrant] is that, unlike a criminal warrant issued by the federal court, a removal warrant does not authorize the ICE officer to enter into an REP [Reasonable Expectation of Privacy] area to execute the warrant.”).

not to consent to immigration enforcement officers entering non-public areas and should not allow immigration enforcement officers to interview students.

- Clearly demarcate the public and non-public areas in your schools. If school playgrounds, sports fields, etc., are not open to the public during certain hours, you can also post signage setting out those limits. Train staff that ICE is not permitted to enter any non-public areas without a judicial warrant.
- Establish protocols for exactly what school staff should do if immigration agents come to a school. The following school districts provide examples. *See, e.g.*, policies of Norristown Area School District,<sup>19</sup> Wilkinsburg School District,<sup>20</sup> and Pittsburgh Public Schools.<sup>21</sup> A template is also attached to this letter.
- Instruct school staff that immigration agents sometimes wear clothing intended to suggest they are police. Regardless of how they dress, federal immigration enforcement officials should not be allowed entry to a school and other non-public areas on school grounds absent a valid judicial warrant.
- Have an attorney review any requests from immigration enforcement, including any warrant or subpoena presented. The attorney can ensure that schools are acting consistent with their legal responsibilities to students and can provide advice to school decision makers about how to proceed. Schools may face legal repercussions under FERPA if staff provide student information to immigration agents, which is why legal review of all requests for student information is critical.
- The school's attorney and decision makers should hold immigration agents to the limits in the warrant or subpoena. *Note that judicial warrants and subpoenas are often limited to particular spaces within an address or certain identified people.*
- Observe and document any actions by immigration agents on school property. Schools should make copies of officers' identification documents, as well as any warrants or subpoenas.

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<sup>19</sup> *Federal Procedure Change*, NORRISTOWN AREA SCH. DISTR. (Jan. 28, 2025), <https://www.nasd.k12.pa.us/page/federal-procedure-change>.

<sup>20</sup> *A Resolution of the Board of School Directors of the Wilkinsburg School District Affirming its Commitment to a Safe and Supportive School Environment for all Students, Regardless of Immigration Status*, WILKINSBURG SCH. DIST. (Dec. 17, 2024), [https://go.boarddocs.com/pa/wlkn/Board.nsf/files/DBWREW6DB232/\\$file/WSD%20Sanctuary%20Resolution\(20654320.1\).pdf](https://go.boarddocs.com/pa/wlkn/Board.nsf/files/DBWREW6DB232/$file/WSD%20Sanctuary%20Resolution(20654320.1).pdf).

<sup>21</sup> *Immigrant Families*, Pittsburgh Pub. Schs., <https://www.pghschools.org/community/immigrant-families> (last visited Feb. 3, 2025).

## School Districts Cannot Require Information About Students’, or their Families’, Immigration Status and Should Limit the Other Information They Collect

Requiring students, parents, or guardians 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 v. Doe* and established Pennsylvania law.<sup>22</sup>

The information required to enroll is limited under state law to proof of residency, proof of age, immunization records, and a parent’s statement about the student’s prior discipline history.<sup>23</sup> Schools cannot require students to provide any information relating to immigration status. Specifically:

- Schools cannot ask about, or require students to provide proof of, immigration status.<sup>24</sup>
- Schools cannot ask students for information such as social security numbers or place of birth that may indicate a student’s immigration status,<sup>25</sup> with the limited exception that schools are required to identify those students born outside the United States who are eligible to participate in Title III federal education programs.<sup>26</sup>
- Schools cannot require documents for determining residency or age that only people with U.S. citizenship or current immigration status can have (e.g. U.S. passport, driver’s license, etc.). Instead, schools must provide a variety of means for establishing information necessary for enrollment. The Pennsylvania Department of Education’s guidance explains that “schools should be flexible in consideration of the child’s circumstances” and provides a “non-exhaustive” list including: baptismal certificate or record of baptism; notarized statement from the parents or another relative indicating the date of birth; prior school record indicating the date of birth.<sup>27</sup>
- School administrators should limit the information collected from students, parents, and guardians. Student education records should be limited to basic student information, such as

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<sup>22</sup> 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); see also 22 Pa. Code § 11.11(d) (“A school may not inquire regarding the immigration status of a student as part of the admission process”).

<sup>23</sup> 22 Pa. Code § 11.11(b); 24 P.S. § 13-1317.2; 24 P.S. § 13-1318.1(g).

<sup>24</sup> 22 Pa. Code § 11.11(d) (“A school may not inquire regarding the immigration status of a student as part of the admission process”). See also, *Foreign Students’ Eligibility for Enrollment Basic Education Circular*, PA. DEP’T EDUC. (Sept. 24, 2007), <https://www.pa.gov/agencies/education/resources/policies-acts-and-laws/basic-education-circulars-beecs/pa-code/foreign-students-eligibility-for-enrollment.html>; Enrollment BEC, *supra*, note 12; *Plyler*, 457 U.S. at 223.

<sup>25</sup> See Enrollment BEC, *supra* note 12.

<sup>26</sup> See 20 U.S.C. § 7011(5) (defining “immigrant children” eligible to receive federal funding for language instruction as students who “were not born in any State” and “have not been attending one or more schools in any one or more States for more than three full academic years”).

<sup>27</sup> See Enrollment BEC, *supra* note 12; *Student Enrollment FAQ*, PA. DEP’T EDUC., <https://www.pa.gov/agencies/education/resources/policies-acts-and-laws/basic-education-circulars-beecs/purdons-statutes/enrollment-of-students/student-enrollment-faq.html#accordion-609f6a3163-item-6c36a9b217> (last visited Feb. 3, 2025).

grades, transcripts, course schedules, health records, directory information, enrollment dates, special education records, and disciplinary records. Beyond that, consider the general rule of thumb: *If there is no reason to collect it, then do not collect it.*

Schools should also review what information is contained in school directories, and remind parents, guardians, and adult students that *they have a right to opt out* of having their information included in the directory.<sup>28</sup> While directory information is often released under FERPA, it requires notice to parents regarding their right to refuse disclosure.<sup>29</sup>

### **School Districts Must Protect the Privacy of Student Records**

FERPA generally prohibits schools and school districts that receive U.S. Department of Education funds from releasing personal information contained in a student’s education records without the written consent of the parent/guardian or adult student.<sup>30</sup> FERPA embodies the principle that schools should act with sensitivity in collecting and retaining information regarding children, and should take precautions to ensure that school records are not disclosed or used in a way that could harm students.<sup>31</sup>

Absent one of the narrow emergency exceptions discussed in the next paragraph, schools may disclose information to a law enforcement officer only *if* they have a valid court order or subpoena.<sup>32</sup> Any subpoena presented by immigration agents should be reviewed by legal counsel before the district produces any information. In addition, schools must make a reasonable effort to alert parents or adult students to a subpoena before providing the student’s information so they may seek protective action, with some exceptions.<sup>33</sup> Administrative subpoenas are *not* judicial subpoenas and are not enforceable on their own, absent a separate judicial order or legal proceeding to enforce the subpoena.<sup>34</sup>

While FERPA includes a health or safety emergency provision, it is extremely limited and permits disclosures only when necessary due to an actual, impending, or imminent emergency, such as a natural

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<sup>28</sup> 20 U.S.C. § 1232g(a)(5)(B).

<sup>29</sup> 34 C.F.R. § 99.37.

<sup>30</sup> See 20 U.S.C. § 1232g; 34 C.F.R. §§ 99.1-99.67. We use “adult student” here for simplicity; those same protections extend to minors enrolled in postsecondary classes as an “eligible student.” 34 C.F.R. § 99.5.

<sup>31</sup> 20 U.S.C. § 1232g; 34 C.F.R. §§ 99.1-99.67. The U.S. Department of Education Privacy Technical Assistance Center provides a Data Security Checklist that schools can consult. See Priv. Tech. Assistance Ctr., U.S. Dep’t. Educ., *Data Security Checklist* (rev. 2015),

[https://studentprivacy.ed.gov/sites/default/files/resource\\_document/file/Data%20Security%20Checklist\\_0.pdf](https://studentprivacy.ed.gov/sites/default/files/resource_document/file/Data%20Security%20Checklist_0.pdf).

<sup>32</sup> 20 U.S.C. § 1232g(b)(2)(B), (b)(1)(J).

<sup>33</sup> See 34 C.F.R. § 99.31(a)(9)(ii).

<sup>34</sup> See National Immigration Law Center, *Warrants and Subpoenas: What to Look Out For and How to Respond*, 4-6 (2025), [https://www.nilc.org/wp-content/uploads/2025/01/2025-Subpoenas-Warrants\\_.pdf](https://www.nilc.org/wp-content/uploads/2025/01/2025-Subpoenas-Warrants_.pdf). Off. Legal Pol’y, U.S. Dep’t Just., *Report to Congress on the Use of Administrative Subpoena Authorities by Executive Branch Agencies and Entities*, Section II.A.2 (2002), [https://www.justice.gov/archive/olp/rpt\\_to\\_congress.htm#2a2](https://www.justice.gov/archive/olp/rpt_to_congress.htm#2a2) (“Congress has consistently required that agencies and departments seek enforcement of administrative subpoenas through a federal district court. Federal courts have generally recognized that “[b]ifurcation of the power, on the one hand of the agency to issue subpoenas and on the other hand of the courts to enforce them, is an inherent protection against abuse of subpoena power.””).



disaster, terrorist attack, campus shooting, or outbreak of an epidemic disease.<sup>35</sup> This exception does not allow for any blanket release of a student’s education records and applies equally to the records of an individual student and records about a group of students. Likewise, releasing directory information for immigration enforcement purposes could violate the law.<sup>36</sup> Therefore, a school’s attorney should also review requests for directory information by immigration agents.

As a general practice, districts should review policies and practices regarding the management and use of student data. Districts must ensure that staff, contractors, consultants, agency partners, and volunteers who come into contact with students or who access student records respect students’ FERPA rights.

### **Districts Must Ensure Any School Security Officers Abide By Student Privacy Laws**

To protect students’ privacy rights, districts with school security officers, school resource officers or other police officers assigned to schools (including those employed by a school or district) must ensure that such security officers do not have general access to FERPA-protected records.

Under FERPA, school security officers may access FERPA-protected information only if they have been designated as a “school official” in order to fulfill a “legitimate educational interest.”<sup>37</sup> Schools may only do so if the school has informed parents of the criteria for the terms “school official” and “legitimate educational interest” in their annual FERPA notification letter.<sup>38</sup> Importantly, a security officer is considered a “school official” only if a school has direct control over the officer’s maintenance and use of education records<sup>39</sup> and student information can only be re-disclosed for the purposes for which the disclosure was made, unless it does so on behalf of the school and under one of FERPA’s exceptions.<sup>40</sup> In these instances, school security officers may not re-disclose that information to other law enforcement officers who are not acting as “school officials” for the same task—or for a non-

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<sup>35</sup> See 34 C.F.R. §§ 99.31(a)(10) 99.36; Student Priv. Pol’y Off., U.S. Dep’t Educ., *FERPA and the Coronavirus Disease 2019 (COVID-19): Frequently Asked Questions*, 3-4 (2020), [https://studentprivacy.ed.gov/sites/default/files/resource\\_document/file/FERPA%20and%20Coronavirus%20Frequently%20Asked%20Questions.pdf](https://studentprivacy.ed.gov/sites/default/files/resource_document/file/FERPA%20and%20Coronavirus%20Frequently%20Asked%20Questions.pdf) (requiring that “there [be] a specific emergency is not based on a generalized or distant threat of a possible or eventual emergency for which the likelihood of occurrence is unknown, such as would be addressed in general emergency preparedness activities”); U.S. Dep’t of Educ., *Family Educational Rights and Privacy Act (FERPA) and H1N1*, 3 (2009), [https://studentprivacy.ed.gov/sites/default/files/resource\\_document/file/ferpa-h1n1.pdf](https://studentprivacy.ed.gov/sites/default/files/resource_document/file/ferpa-h1n1.pdf) (requiring that school officials determine that the emergency exists “in the particular school or school district”).

<sup>36</sup> See, e.g., *Hispanic Interest Coalition of Alabama v. Governor of Alabama*, 691 F.3d 1236 (11th Cir. 2012).

<sup>37</sup> 34 C.F.R. § 99.8(b)(2); 34 C.F.R. § 99.31(a)(1)(i)(A).

<sup>38</sup> 34 C.F.R. § 99.7(a)(3)(iii) (schools must notify parents of “specification of criteria for determining who constitutes a school official and what constitutes a legitimate educational interest”).

<sup>39</sup> 34 C.F.R. § 99.31(a)(1)(i)(B)(2)

<sup>40</sup> 34 C.F.R. § 99.33(a)(2).



educational purpose such as law enforcement.<sup>41</sup> To be clear, immigration enforcement is not a “legitimate educational interest.”<sup>42</sup>

School officials have a continuing legal responsibility to protect student privacy, including how student records are used, when those records are shared with “school officials” having “legitimate educational interests.” This means that school officials are responsible for ensuring that security officers do not improperly use or re-disclose protected information released to contractors, school security, etc.

We recommend that:

- Districts require school security staff to commit—through a signed agreement or official policy—not to inquire about immigration status, not to engage in immigration enforcement activities, and not to detain students and family members for purposes of immigration enforcement.
- Districts educate school security officers about the legal protections for immigrant students and inform them that if they engage in immigration enforcement activities, they run the risk of violating federal and state law.

Districts must also ensure that such school security officers properly follow Fourth and Fifth Amendment standards for detention, interrogation, search, and seizure, and are not arresting students for incidents that can be handled as matters of school discipline. These concerns carry extra weight for immigrant students, for whom school policing has the potential to undermine the education rights outlined in *Plyler*. Too often, police in schools arrest students for misdemeanor offenses like disorderly conduct when the school disciplinary process could better address such behaviors.<sup>43</sup> Police in schools sometimes also collect intelligence on students, for example to enter them into a database of alleged gang associates. In addition to numerous detrimental impacts these forms of policing have on any student,<sup>44</sup> immigrant students risk having their application for citizenship or other immigration benefits placed in jeopardy or being prioritized for deportation. We recommend that:

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<sup>41</sup> See 34 C.F.R. §§ 99.31(a)(1)(i)(B), 99.31(a)(1)(ii), 99.33(a)(2).

<sup>42</sup> See Priv. Tech. Assistance Ctr., U.S. Dep’t Educ., *School Resource Officers, School Law Enforcement Units, and the Family Educational Rights and Privacy Act (FERPA)*, 15-17 (2019), <https://studentprivacy.ed.gov/resources/school-resource-officers-school-law-enforcement-units-and-ferpa>.

<sup>43</sup> See, e.g., Chongmin Na & Denise Gottfredson, *Police Officers in Schools: Effects on School Crime and the Processing of Offending Behaviors*, 30 JUST. Q. 619, 620 (2013); Steven C. Teske, *A Study of Zero Tolerance Policies in Schools: A Multi-integrate System Approach to Improve Outcomes for Adolescents*, 24 J. OF CHILD AND ADOLESCENT PSYCHIATRIC NURSING 88 (2011); Matthew T. Theriot, *School Resource Officers and the Criminalization of Student Behavior*, 37 J. OF CRIM. JUST. 280 (2009).

<sup>44</sup> See, e.g., Sarah E. Redfield & Jason P. Nance, American Bar Association, *Preliminary Report: School-to-Prison Pipeline* (Feb. 2016), [https://www.americanbar.org/content/dam/aba/publications/criminaljustice/school\\_to\\_prison\\_pipeline\\_report.pdf](https://www.americanbar.org/content/dam/aba/publications/criminaljustice/school_to_prison_pipeline_report.pdf); American Psychological Association Zero Tolerance Taskforce, *Are Zero Tolerance Policies Effective in the Schools?: An Evidentiary Review and Recommendations*, 63 AM. PSYCHOLOGIST 852 (Dec. 2008), <https://www.apa.org/pubs/info/reports/zero-tolerance.pdf>; Gary Sweeten, *Who Will Graduate? Disruption of High School Education by Arrest and Court Involvement*, 23 JUST. Q. 462 (2006) (finding that a first time arrest during high school almost doubles the odds of drop out); Paul Hirschfield, *Another Way Out: The Impact of Juvenile Arrests on High School Dropout*, 82 SOCIO. OF EDUC. 368 (2009).

- Districts review their policing practices to focus attention on protecting the school community from outside threats and limit law enforcement interactions with students to immediate threats to physical safety.

### **Steps Schools Can Take to Ensure They Are Welcoming for All Students**

Districts can take many steps to support their immigrant students. To help districts on this journey, we have attached a model *Welcoming Schools* resolution and protocol to this message, along with a list of best practices for school districts to follow when developing their own policies. We hope this will be a useful tool for your district or charter school.

In addition, we encourage you to communicate to district families that all students continue to be welcome in your schools.<sup>45</sup> Districts should adopt policies for how staff should handle interactions with law enforcement, including ICE, that are consistent with federal and state law. Districts should clearly communicate these policies to the school community to help assuage fears and minimize misinformation. Districts should also share with the school community that they are committed to ensuring an emotionally and physically safe learning environment for all students. To that end, schools should inform students and their families that they are entitled to, and welcome to use, all school services and resources.

Children and families in your district may well be afraid. As educators, you know the importance of information and clear communications, and we encourage you to share resources with all families (not only those suspected of being undocumented) including:

- **Update Forms with Emergency Contacts and Permissions to Pick Up a Child:** Schools should remind parents and guardians to update their emergency contact information and permissions for non-parent individuals to pick up their child from school. These forms should be circulated by schools for updates at regular intervals for all students, including now.
- **Non-Parent Caregiver Enrollment and Education Decision Maker:** In the event a parent is detained or deported, Pennsylvania law allows a non-parent with whom the child is living to enroll the student in school and act as the student’s education decision maker, even if the non-parent does not have legal guardianship of the child.<sup>46</sup> While this form should not be submitted unless custodial parent(s) are unavailable, families should consider the option and their preferred

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<sup>45</sup> For a sample letter, see Christopher T. Dormer, *Federal Procedure Change*, NORRISTOWN AREA SCH. DIST. (Jan. 25, 2025), <https://www.nasd.k12.pa.us/page/federal-procedure-change>; Tony B. Watlington Sr., School District of Philadelphia Reaffirms Commitment to Safe and Welcoming Schools for All, SCH. DIST. OF PHILA. (Jan. 27, 2025), <https://www.philasd.org/blog/2025/01/27/welcomingschoolsstatement25/>.

<sup>46</sup> 24 P.S. § 13-1302(a.2)(2).

designation in advance. More information and sample forms are available from ELC in English<sup>47</sup> and Spanish.<sup>48</sup>

- **Planning for Custody: An Informational Guide for Immigrant Families:** Family law is state-specific. Information and sample forms under Pennsylvania law regarding child custody or temporary custodian arrangements, parent and child separation, involvement with the Department of Human Services, options for detained or deported parents, and International Travel and Relocation are available from Philadelphia Legal Assistance, <https://philalegal.org/resources/planning-custody-informational-guide-immigrant-families>.

We also encourage you to share other Know Your Rights materials about immigration enforcement, such as those available on the websites of the ACLU and the ACLU of Pennsylvania ([www.aclu.org/know-your-rights/immigrants-rights](http://www.aclu.org/know-your-rights/immigrants-rights) and <https://www.aclupa.org/en/know-your-rights/know-your-rights-police-and-immigration-agents>). Additional resources regarding the rights of immigrant students are available on Education Law Center's website (<https://www.elc-pa.org/wp-content/uploads/2024/09/Rights-of-Multilingual-Culturally-Diverse-Students-Families-2024.pdf>).

If immigration enforcement agents arrest a family member or child, schools should advise the family to immediately seek legal advice from an immigration attorney. Schools should familiarize themselves with local resources for immigrant families. If needed, the statewide Pennsylvania Immigration Coalition or Pennsylvania Immigrant Family Unity Project can connect families with resources.<sup>49</sup>

If there is immigration enforcement action at school, all school community members should be connected with counseling and mental health supports as needed.

### **How Can Schools Learn More and Stay Up to Date?**

Many organizations are working to provide up-to-date information for educators even as there has been a daily barrage of new executive orders and policies relating to immigration. In addition to the resources from the ACLU of Pennsylvania and Education Law Center-PA, the following resources may be helpful:

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<sup>47</sup> *Fact Sheet: How to Enroll a Child Living with Someone Other than Their Parent*, EDUC. L. CENT. (Aug. 2024), <https://www.elc-pa.org/wp-content/uploads/2024/09/How-to-Enroll-Child-Living-w-Someone-Other-Than-Parent-2024.pdf>.

<sup>48</sup> *Fact Sheet: Cómo inscribir a un niño que vive con alguien que no es su padre/madre*, EDUC. L. CENT. (Aug. 2024), <https://www.elc-pa.org/wp-content/uploads/2024/01/How-to-Enroll-Child-Living-w-Someone-Other-Than-Parent-Spanish-2023.pdf>.

<sup>49</sup> Contact Pa. Immigr. Coalition at <https://www.paimmigrant.org/contact> or PA Family Unity Project at <https://www.paifup.org/contact-us>.

- The National Immigration Law Center (<https://www.nilc.org/resources>) is an excellent source for current information about changing immigration policies.
- The National Education Association's *Guidance on Immigration Issues* (<https://www.nea.org/resource-library/guidance-immigration-issues>) has information specifically for educators.

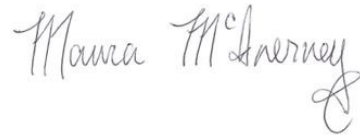
Thank you for your important work to ensure that all Pennsylvania children receive the education they need in order to thrive. If your district would like to discuss your district's policies or any of the contents of this letter in greater detail, please contact [info@aclupa.org](mailto:info@aclupa.org) or [info@elc-pa.org](mailto:info@elc-pa.org).

Respectfully,



Witold J. Walczak  
Legal Director

American Civil Liberties Union of Pennsylvania



Maura McInerney  
Legal Director

Education Law Center-Pennsylvania