



FREQUENTLY ASKED QUESTIONS FOR SCHOOL OFFICIALS: WHAT TO DO IF ICE SHOWS UP AT YOUR SCHOOL

As a result of Trump’s immigration agenda -- as evidenced by two separate Immigration Executive Orders¹ (issued January 27) and the related implementation memos issued by DHS Secretary Kelly on February 21, communities around the country that support immigrants are working to develop plans to protect vulnerable families. Among these efforts are those initiated by public school systems around the country, all of which are uniquely affected by the federal government’s enforcement activity.

This document, which consists of Frequently Asked Questions (“FAQs”), seeks to help educators – including School Superintendents -- as they work to ensure immigrant students’ right to an education is not undermined by federal immigration enforcement efforts.

1. Can immigration officials or local police acting as immigration officials conduct raids at schools?

- School grounds are unlikely places for immigration raids. This is because both Customs and Border Patrol and Immigration and Customs Enforcement issued policy memoranda from 2011² that directs agents not to engage in enforcement activity at “sensitive locations” unless there are exigent circumstances or prior supervisory approval. Schools have been designated sensitive locations and thus far the sensitive locations memos remain in effect.

There have been reports of immigration agents stopping people on their way to dropping their kids off at school and it’s critical to report such incidents immediately to enable advocates and legal teams to keep track.

¹ <https://www.whitehouse.gov/the-press-office/2017/01/25/executive-order-border-security-and->

² <https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf>;

<https://foiarr.cbp.gov/streamingWord.asp?i=1251>

- It is important to note that the U.S. Supreme Court has established that public schools must be accessible to all children regardless of immigration status³ and further that when children are present in school buildings, the school is responsible for their care in place of their parents. In combination, these mean that schools have significant authority -- and the obligation to take steps to protect children, including undocumented children.
- There is no legal precedent requiring or encouraging a school to be accessible to immigration officials for immigration enforcement purposes. There is also no law that obligates a public school to assist immigration officials in an enforcement action, including but not limited to an effort to screen students at a school to identify who may be undocumented.

2. What power does the Superintendent have if the federal government requests information on a student or parent for the purposes of immigration enforcement?

- In general, The Family Education Rights and Privacy Act of 1974 (FERPA) requires that schools withhold information that could identify students to third parties, including federal immigration officials.
- Furthermore, FERPA prohibits schools from disclosing personally identifiable information in a student's education records without parental consent or a subpoena. Even if presented with a subpoena, the Superintendent should consult with the school attorney to determine the validity of the subpoena before disclosing any information.
- Moreover, schools do not need to and should not inquire about or keep records on the immigration status of students and/or their family members.
- It is recommended that school Superintendents establish clear protocols for educators to follow if an immigration official asks a school for student information or for access to a student.

3. What should the Superintendent do if immigration officials approach the school district?

- Immigration officials should be referred to the Superintendent's Office or to the office of an appropriate administrator designated by the

³ See Plyer v. Doe <http://caselaw.findlaw.com/us-supreme-court/457/202.html>

- Superintendent.
- The Superintendent should ask for the agent's credentials and ask why s/he is requesting access to information. The Superintendent should also ask why the agency is not following its own policy of not conducting enforcement actions on school property, which are considered sensitive locations. The Superintendent should request to (i) see written authority that instructs the agents to enter the school grounds and (ii) speak to the immigration official's supervisor to learn why immigration officials are not following the sensitive locations policy.
 - The ICE Morton memo requires supervisory authority that instructs agents to enter the school property and describes the purpose for this. Prior approval must come from one of the following officials: Assistant Director of Operations, Homeland Security Investigations (HSI); the Executive Associate Director of HSI; or the Assistant Director of Field Operations, Enforcement and Removal Operations (ERO).
 - The Superintendent or designated agent should consult with the school district's attorney before taking any action.
4. **If the purpose of the request to enter school property is to interview a student, what can the Superintendent do?**
- If immigration officials request an interview with a student, the Superintendent should consult the school district's attorney before taking any action. Failure to protect a student's legal rights against action by immigration officials could subject a school district to legal liability.
 - 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. The child should be advised of the right to remain silent.
 - The Superintendent should notify parents that immigration officials have requested an interview with the child.
 - The Superintendent should immediately contact local organizations providing free legal assistance to immigrant communities and have a lawyer dispatched to stand with the child and deter any further action by immigration officials. For a list of immigrant-serving organizations visit Informedimmigrant.com.

5. What if immigration officials come to a school and have an arrest warrant?

- This is an unusual scenario but if immigration officials are seeking to arrest a student, the Superintendent should ask for a valid arrest warrant. A valid arrest warrant will show the name of the person that they are seeking to arrest (spelled out correctly) and must be signed by a judge as is required by Article III of the United States Constitution.
- It is important to note that ICE has in the past presented what it calls an “administrative warrant” rather than a judicial warrant, which is signed by a judge. Administrative warrants are issued by ICE agents or other officials and are not signed by a judge. An administrative warrant may not provide a legal basis for someone's arrest. An administrative warrant does not compel a school district to take any action, only a warrant from a judge can compel action. If an administrative warrant is presented, the Superintendent should not honor the request. Similarly, any document that does not name the child specifically and correctly is not binding and should not be honored.
- The Superintendent should consult with the school district's attorney before taking any action.
- If a determination is made that a valid warrant is presented, the Superintendent may want to request that the arrest does not take place in school property, and/or negotiate the place of arrest so that other children are protected from viewing such an arrest. In any such case, the Superintendent should contact any local organizations providing legal assistance to immigrant communities immediately and request that a lawyer be present to stand with the child. In addition, the Superintendent should advise immigration officials not to ask the child any questions.

6. What happens if immigration officials request access to student and/or school records?

- If immigration officials request access to records, these should only be allowed if the requesting agency has a valid court order or subpoena in compliance with FERPA or immigration laws or regulations⁴. The Superintendent should consult with the school district's attorney.
- The school district must also make reasonable efforts to notify the parent or eligible student in advance of disclosing the documents so that the

⁴ 8 U.S.C. § 1225; 34 CFR § 99.31(a)(9)(i); Educ. Code §§ 49076; 49077.

parent or eligible student may seek protective action, unless the court order or subpoena relates to a federal jury investigation or law enforcement purpose, or relating to domestic or international terrorism.”⁵⁶

7. Can immigration officials be stationed outside of a school? What if they come to a school, stand outside and start asking students and/or parents questions?

- According to the sensitive locations policies, immigration officials will only give special consideration to a request to conduct enforcement actions at or near school property if the only known address for a target is at or near a school. ICE must still obtain supervisory approval to conduct such enforcement actions from one of the following officials: Assistant Director of Operations, Homeland Security Investigations (HSI); the Executive Associate Director of HSI; or the Assistant Director of Field Operations, Enforcement and Removal Operations (ERO).
- Because surveillance by immigration officials near a school serves little purpose other than to scare families, it serves no legitimate law enforcement purpose. Such an action undermines fundamental civil and educational rights. Thus, an appropriate response to end this behavior should include legal and community actions. These include:
 - Contacting local immigrant rights groups to mobilize trained advocates to monitor the situation and remind students and parents of their rights.
 - Contacting the offices of congressional representatives. Ask them to immediately contact the Secretary of DHS and the Director of ICE to put an end to the surveillance.
 - We also suggest filing a complaint with ICE Enforcement and Removal Operations (ERO) and the Civil Liberties Division of the ICE Office of Diversity and Civil Rights if ICE is conducting investigations near school property without the proper authorization.
 - You may contact ICE Enforcement and Removal Operations (ERO) through the Detention Reporting and Information Line at (888) 351-4024 or through the ERO information email address at ERO.INFO@ice.dhs.gov, also available at <https://www.ice.gov/webform/ero-contact-form>.

⁵ <http://www.acsa.org/Advocacy/Federal-Issues/undocumented-students-families-facts>

⁶ 34 CFR § 99.31(a)(9)(ii); Educ. Code § 49077

- The Civil Liberties Division of the ICE Office of Diversity and Civil Rights may be contacted at (202) 732-0092 or ICE.Civil.Liberties@ice.dhs.gov.

- You may contact CBP via the CBP Information Center by phone at 1 (877) 227-5511, or submit an email through the website at <https://help.cbp.gov>.

Ways That School Officials Can Support Immigrant Students and Families

The nation's public school systems are on solid ground providing resources to families concerned about their immigration status. Already, the Los Angeles Unified School District has created a comprehensive guidebook and online resource center for such families.⁷ Similarly, New York City's public libraries are hosting "Know Your Rights" workshops for undocumented families, and the New Haven Public School system has plans to issue guidelines for supporting immigrant students and their families when responding to requests from immigration officials. Many school districts around the country have also enacted policies to make their school grounds safe zones for immigrants regardless of immigration status, including Los Angeles, Oakland, Nashville, Denver, Santa Fe, El Paso, and more.

Below are examples of actions educators can take to ensure their students' right to education is upheld:

- School districts around the country are enacting policies and resolutions making schools "safe zones" free from any type of immigration enforcement activity. Many jurisdictions have already passed resolutions declaring schools safe zones, including: Nashville, Minneapolis, Los Angeles, Oakland, and more. Organizations including the National Immigration Law Center (NILC) and the National Education Association (NEA) have created sample resolutions that can be submitted to school boards. The sample NILC resolution can be found at: <https://www.nilc.org/wp-content/uploads/2016/12/Model-Campus-Safe-Zones-Language-K12-countrywide-2016-12.pdf>.
- The NEA – a national organization representing three million educators – has publicly committed to supporting local efforts to ensure immigrant students are safe at school. You can learn more about NAE's efforts here: <http://educationvotes.nea.org/stand-immigrant-students-communities/>.
- Provide resources for undocumented families by creating connections with community organizations and legal support. School districts can provide materials to families on their website as well as through workshops, mailings and via tables at school buildings. Making this information available to parents helps allay their concerns and thus

⁷ Available here: <http://achieve.lausd.net/Page/11959>

encourages student attendance.

- Hold “Know Your Rights” trainings for immigrant students and families in the appropriate languages. Many community organizations offer to conduct these trainings, often at no cost. School buildings are safe and trusted spaces for families and holding these workshops in these locations will ensure strong turnout. This will also help undocumented parents feel more secure sending their children to school, knowing that the schools are on their side.

- Partner with local families, community-based organizations, city agencies, and legal service organizations to create rapid response networks to assist children whose family members have been detained and are facing deportation.

- Hold trainings for teachers on how to respond to immigration agents and other law enforcement. The trainings should explain the issues, describe procedures for notifying families about any efforts by the federal government to obtain information about students for immigration purposes and instruct teachers on ways to support students whose parents have been deported or incarcerated. Community organizations in many areas are able to provide these trainings. **For a list of community organizations in your area, visit Informedimmigrant.com.**