



# Sensitive Locations

*How Federal Immigration Policies Affect Students and Schools*

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# Immigration Policies Affect America's Schools and Students

Public K-12 schools are one of the most important democratic institutions in American society. They have long-standing constitutional and legal obligations to provide an education free of charge to all school-aged children, regardless of immigration status or country of origin.<sup>1</sup> While every presidential administration in recent history has enacted policies that directly impact immigrant children and their families, President Donald Trump's recent executive orders on immigration are a notable departure from decades of federal precedent, with an immediate impact on students and schools. Amid ambiguity and confusion about these orders, it is important for district and school-site leaders to focus on facts and operate with accurate information about both the rights of immigrant students and the protections for those students who are in mixed-status families (households in which some members are undocumented and others have permanent legal status, including citizenship<sup>2</sup>).

**Note:** Fictionalized examples and related recommendations included in this resource guide are not a substitute for legal counsel. Districts, state and local education agencies, and school leaders and staff should retain legal expertise to ensure compliance with any specific law or policy and its application in any individual circumstance.

**This resource guide provides a summary of the specific federal immigration laws and policies that are important for school and system leaders to understand so that they can serve their students, families, and communities.** The focus is on federal protections because the federal government has the exclusive power to regulate immigration and states cannot override federal laws.<sup>3</sup> Federal law does allow states to offer support to immigrants, including access to federally funded public benefits such as Medicaid.<sup>4</sup> Since the reelection of President Trump, however, the administration has issued guidance or enacted policies that would severely reduce the ability of undocumented immigrants to access those federal programs.<sup>5</sup> In addition to describing key federal immigration laws and policies, this resource guide also includes scenarios and considerations for district leaders as they navigate complex legal frameworks that affect immigrant students and their families.

In addition to the constitutional requirement for public schools to enroll all students, it is also sound public policy for every child to attend school. First, in any democracy, it is in the best interest of society for young people to be educated and engaged civic participants. Second, in order to fully participate in the workforce as adults, young people need to have a high-quality education that equips them with the skills employers need. For immigrant students, this can enable them to achieve high rates of upward mobility — even higher than their U.S.-born peers.<sup>6</sup> Lastly, public schools also serve as free, safe, and accessible spaces for acculturation and integration — they are the primary place where many immigrant students learn about American history and how to speak English.

In early 2025, the Trump administration rescinded a long-standing policy that strongly discouraged immigration enforcement actions in “sensitive locations,” which included schools.<sup>7</sup> The rescission of this policy means that schools, hospitals, and churches are no longer protected areas and immigration enforcement actions may take place there. As a result, immigrant children and their families are more likely to be targeted with immigration enforcement actions in those locations, which has created a culture of fear and has led to reports of increased absences among students.

Regular school attendance for students is strongly associated with a number of positive outcomes, including improved academic performance and a higher likelihood of graduating from high school. Ensuring that all children, regardless of their immigration status, are able to attend school remains a legal responsibility and a public policy priority. School officials must understand that many federal policies that protect students and families remain unchanged. There are three domains of responsibility that remain under the control of school and/or district officials — so long as they operate within the bounds of current law — as advised by their legal counsel and with any expert consultation:

- Student services, including enrollment.
- Educational records.
- Nonpublic areas: entry and searches.



## K-12 Immigration Facts and Figures in the United States

- In 2023, about **17.9 million** children under the age of 18 lived with at least one immigrant parent.<sup>8</sup>
- **5.5 million** children who were born in the U.S. live in households with at least one undocumented resident, including **1.8 million** children with two undocumented parents.<sup>9</sup>
- Approximately **620,000** K-12 students across the country are undocumented.<sup>10</sup>
- In 2023, **117,789** unaccompanied children were transferred to the U.S. Department of Health and Human Services’ Office of Refugee Resettlement.<sup>11</sup>

# Key Terms

The following key terms are important to immigration policy; many are referenced throughout this resource guide. To develop a shared understanding, many definitions come straight from the text of federal laws. In other cases, there are terms that carry both objective and subjective implications. In addition, there is some legal terminology that, while technically accurate, can be dehumanizing. As such, this resource guide uses the common phrase “undocumented immigrant” in place of “illegal alien” (although the latter is the formal legal term). This resource guide also includes key data points about immigrant children and their families.

## FEDERAL LAWS AND AGENCIES FOCUSED ON IMMIGRATION ENFORCEMENT

**Immigration and Nationality Act (INA):** First enacted in 1952, this law is one of the central legal frameworks in the U.S. immigration system.<sup>12</sup> While the INA reinforces that the federal government is the primary authority over immigration policy, section 287(g) of INA also allows for the delegation of certain immigration enforcement functions to state and local law enforcement agencies.<sup>13</sup> These 287(g) agreements enable state or local officers to investigate, apprehend, or detain individuals without legal status, with oversight from U.S. Immigration and Customs Enforcement (ICE).

**U.S. Department of Homeland Security (DHS):** The federal agency charged with enacting immigration policy. Within DHS, there are three agencies that focus on immigration: ICE, U.S. Customs and Border Protection, and U.S. Citizenship and Immigration Services.<sup>14</sup>

**Office of Refugee Resettlement (ORR):** An office within the U.S. Department of Health and Human Services that is charged with supporting the well-being of refugees, asylees, and unaccompanied children.<sup>15</sup> Unaccompanied children are typically referred to the ORR through DHS; the agency does not play a role in the initial detention of children.<sup>16</sup>

**U.S. Citizen:** An individual can become a U.S. citizen through either birth or naturalization. There are a few pathways for an individual to adjust their immigration status through naturalization, and in many cases, these pathways can take years or even decades due to court and administrative backlogs.<sup>17</sup>

**Undocumented Immigrant:** Individuals without legal residency or visitor status in the country.<sup>18</sup> They enter the U.S. without inspection or have overstayed a period of lawful entry, like a visitor or student visa. Immigration violations are civil offenses, not crimes.<sup>19</sup>

**Refugee:** An individual who does not reside in and is unable to or unwilling to return to their country of origin because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.<sup>20</sup>

**Asylum Seeker:** A form of protection available to people who meet the definition of refugee, are already in the United States, and are seeking admission at a port of entry.<sup>21</sup> Individuals may apply for asylum in the U.S. regardless of their country of origin or current immigration status. They must also apply for asylum within a year of their last arrival in the United States.<sup>22</sup>

**Legal Permanent Resident (LPR):** Also known as “green card” holders, these individuals are lawfully authorized to live permanently within the United States. LPRs can work, receive federal financial assistance at public institutions of higher education, and join the U.S. armed forces.<sup>23</sup> They may also apply to become U.S. citizens if they meet certain eligibility requirements.

**Deportation:** Also known as “removal,” this is the formal legal process by which immigration courts remove a person without legal status from the U.S. for violating immigration law.<sup>24</sup> It is a civil (not criminal) proceeding.

**Unaccompanied Children:** Someone who is under the age of 18 and entered the U.S. without lawful status and without an accompanying parent or legal guardian.<sup>25</sup>

**Migrant Student:** A K-12 student whose parent or guardian is a migrant agricultural worker or fisher and who has moved from one school district to another during the regular school year.<sup>26</sup> Migrant students may be immigrants and/or English learners, but many are not.<sup>27</sup>

**Special Immigrant Juveniles:** A classification that allows certain children to apply for lawful permanent resident status in the U.S.<sup>28</sup> These children have been subject to state juvenile court proceedings related to parental abuse, neglect, abandonment, or a similar basis under state law.<sup>29</sup>

**Newcomer Student:** K-12 students born outside the United States who have arrived in the country in the last three years and are still learning English.<sup>30</sup>

**Temporary Protected Status (TPS):** Individuals born in another country may receive TPS if the conditions in that country temporarily prevent the country’s nationals from returning safely.<sup>31</sup> Individuals with TPS cannot be removed from the United States and cannot be detained by DHS on the basis of their immigration status. The Trump administration has recently eliminated TPS for several countries, including Honduras and Venezuela.<sup>32</sup>

**Deferred Action for Childhood Arrivals (DACA):** A 2012 program created by President Barack Obama that allows certain people who came to the United States as children to request deferred action for removal from the country for two years, subject to renewal.<sup>33</sup> DACA recipients are eligible to request work authorization but are not provided a pathway to obtain a green card or citizenship.<sup>34</sup> DACA recipients are also referred to as Dreamers. On January 17, 2025, the U.S. Court of Appeals for the Fifth Circuit issued a decision regarding the DACA Final Rule. Under the court’s order, the federal government will continue to accept and process DACA renewal requests and accompanying applications for employment authorization but will not process initial DACA requests.<sup>35</sup>

*ICE raids in January and February of 2025 coincided with a 22 percent increase in daily student absences with particularly large increases among the youngest students.*

## **Immigration Enforcement Is Affecting Students and Schools**

### ***Regular School Attendance Is Critical for Student Success***

Regular school attendance is a critical predictor of student success. A robust body of research confirms the strong connection between consistent attendance and academic achievement. Even a few days of missed instruction can negatively impact a student's test scores and GPA.<sup>36</sup> In the early grade levels, frequent absences are linked not only to lower academic performance but also to delays in social and emotional development by the end of elementary school.<sup>37</sup> Nationally, higher rates of student absenteeism are associated with lower scores on the National Assessment of Educational Progress, underscoring the broader academic impact.<sup>38</sup> Research has also found that chronic student absences in the middle grade levels reduce the probability of four-year high school graduation by 18 percentage points.<sup>39</sup> Due to the overwhelming evidence showing the importance of regular student attendance, most states include a measure of chronic absenteeism in their statewide accountability systems.<sup>40</sup>

Student attendance and exclusionary disciplinary actions are also closely correlated. Students who are frequently absent are more likely to be suspended, and those suspensions often further disrupt their attendance, creating a cycle of disengagement.<sup>41</sup> Research shows that students who are suspended are more likely to drop out of school and later become involved with the criminal justice system.<sup>42</sup> Chronic absenteeism and exclusionary discipline practices also disproportionately affect students of color, deepening existing educational inequities.<sup>43</sup>

### ***Attendance Is Also Important for Schools and Systems***

Student attendance also has direct implications for school funding. Most states allocate K-12 school funding based on enrollment counts.<sup>44</sup> However, five states, including Texas and California, use a measure known as the Average Daily Attendance to determine state education funding.<sup>45</sup> The challenge with using attendance-based measures to count students is that it can disadvantage districts that serve students who tend to experience higher rates of absenteeism.<sup>46</sup> As a result, schools with the greatest need may receive fewer resources precisely because of the challenges their students face.



The consequences of chronic absenteeism extend far beyond the classroom. Longitudinal studies have found that students who are regularly absent in the early grades are less likely to vote and are more likely to experience economic hardship, including difficulty paying bills.<sup>47</sup> Other research attempts to quantify the societal costs of absenteeism more broadly: In California, for instance, each chronically absent student is estimated to cost taxpayers \$1,850 annually due to reduced economic productivity.<sup>48</sup> Regular student absence has a compounding effect: It lowers academic performance, increases the likelihood of dropping out, and contributes to poorer life outcomes.<sup>49</sup> Given the broad and lasting impact of attending school every day, policymakers should ensure that all students, regardless of their background, are able to fully participate by removing — rather than imposing — barriers to their attendance.

## ***There Is Reason to Suspect That Recent Immigration Enforcement Magnifies These Effects***

In many communities, schools can serve as a primary resource for wraparound services for immigrant students and their families, helping ensure students have access to meals and connecting them to other community services such as health care providers, mental health supports, and housing assistance. As high-profile immigration enforcement actions increase in and around schools, it is foreseeable and predictable that families who are concerned about safety — and specifically the risk of contact with immigration agents — might be reluctant to bring their children to school. They may even abruptly withdraw their children from school to ensure their safety. Moreover, some of these families might be reluctant to share their reasons for school absences or disenrollment, due to fear of disclosing their immigration status. All of this makes it difficult to understand the role that increased immigration enforcement may be playing in record-high rates of student absenteeism, widespread youth mental health challenges, and nationwide declining enrollment.

Although not the focus of this resource guide, there is preliminary research that suggests that the 2025 ICE raids are having a negative impact on students. For example, a study found that “ICE raids in January and February of 2025 coincided with a 22 percent increase in daily student absences with particularly large increases among the youngest students.”<sup>50</sup> Other studies have confirmed the spillover effects of raids on students, including increases in exclusionary disciplinary actions.<sup>51</sup> Advocates are also concerned about the impact of increased immigration enforcement on the mental health of students.<sup>52</sup> It is also important to note that increased immigration enforcement can impact all students, not just immigrant students or those in mixed-status families, because it can contribute to a negative school climate.<sup>53</sup>



*It is important for district and school-site leaders to focus on facts and operate with accurate information.*

## The Three Domains of Local Policy for District and School Leaders

There is a complex landscape of federal, state, and local policies that may be affected by shifts in the Trump administration's approach to immigration enforcement. As foundational civic institutions within every community in this country, schools and districts are impacted, but they are not bystanders. A school district, for example, is an independent legal entity that can set its own policies and procedures, so long as they remain compliant with superseding state and federal laws. **There are three broad domains of local policy that district leaders should be knowledgeable about because they are impacted by federal immigration policy:**

### 1. Student Services, Including Enrollment

Covers services typically provided by public schools to enrolled students that support their academic and socio-emotional well-being. Examples of these services include free meals, referrals for mental health supports and housing assistance, and access to postsecondary opportunities.

### 2. Educational Records

Concerns information directly related to a student that is maintained by a K-12 educational institution such as a school or district. Examples of educational records include demographic information, grades, and school health records.

### 3. Nonpublic Areas: Entry and Searches

Refers to areas within a school that are not open to the public. Examples of these areas include classrooms, libraries, and gymnasiums.

This section includes the key federal policies that apply to each of these three domains and their relationship to immigration enforcement (Table). Some of these policies are specific to immigrant students, while others may not, at first, appear to be about immigration at all. For some domains, more than one federal policy applies. All of this underscores how complex navigating the immigration system can be.



## *Student Services, Including Enrollment*

### **Constitutional Rights**

*Plyler v. Doe* (1982) is a landmark U.S. Supreme Court decision (explained in detail on Page 10) establishing that all students, regardless of immigration status, are entitled to a free public education. There are also additional constitutional protections for all immigrant students, including those without legal status in the country, specifically the First, Fourth, Fifth, and Fourteenth Amendments.

The First Amendment guarantees everyone the right to free speech and the right to assemble and protest.<sup>54</sup> The Constitution confers these rights to “the people,” making no distinction between citizens and noncitizens.<sup>55</sup> However, the Trump administration is currently trying to establish this distinction. For example, the U.S. State Department’s Catch and Revoke program uses artificial intelligence to monitor foreign nationals including student visa holders, and their social media activity or participation in protests has been used as evidence to revoke student visas.<sup>56</sup>

Another constitutional protection for immigrant students is the Fourth Amendment, which protects “the right of the people to be secure” from unreasonable searches and seizures.<sup>57</sup> This means that a judicial warrant is needed for law enforcement to check an individual’s belongings, search a home, search areas of a school not open to the public, or search private areas of a business.<sup>58</sup> In a later section, there is more information about two types of warrants — judicial and ICE — and the differences between the two. The Fifth Amendment ensures protection against self-incrimination and that all individuals have the right to remain silent. They cannot be forced to provide evidence or testimony that could be used against them in a criminal case.<sup>59</sup>

Lastly, the Fourteenth Amendment provides citizenship, due process, and equal protection guarantees. First, it grants birthright citizenship, where every person born in the U.S. is deemed a citizen at birth. The amendment reads in part, “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.”<sup>60</sup> This provision of birthright citizenship faced an early legal test with *United States v. Wong Kim Ark* (1898). In that case, Wong Kim Ark, who was born in the United States to two Chinese citizen parents, was denied entry into the country after he returned from a trip to China.<sup>61</sup> His denial was based on the Chinese Exclusion Acts, which prohibited citizenship for Chinese immigrants. In deciding the case in favor of Wong Kim Ark, the U.S. Supreme Court established the *jus soli* principle, which explicitly confirmed the citizenship of children born in the United States to noncitizens.<sup>62</sup> The issue of birthright citizenship, however, is facing new legal challenges. In January 2025, President Trump signed an executive order purporting to end birthright citizenship.<sup>63</sup> Several states are challenging this executive order, and the U.S. Supreme Court heard arguments in its most recent term, avoiding a direct decision on the issue for now and ruling instead on nationwide injunctions.<sup>64</sup> The Fourteenth Amendment also includes other constitutional rights guaranteed to “any person within its jurisdiction” — immigrants and citizens alike — including due process and equal protection under the law.<sup>65</sup>

### ***Plyler v. Doe***

*Plyler* is a U.S. Supreme Court decision about a Texas statute that withheld state funds from local school districts for the education of children who were not “legally admitted” into the United States.<sup>66</sup> The statute also authorized districts to deny enrollment to this group of children. Students from Mexico and their families filed a lawsuit alleging that their equal protection rights, guaranteed under the Fourteenth Amendment, were violated. In a 5-4 decision, the Court ruled that states cannot deny children a free public education because of their immigration status. This means that while schools are not expressly prohibited from collecting immigration status data, the U.S. Department of Education has issued guidance to school districts that this type of data collection could violate the law if it is done with the goal of denying public school access based on race, color, or national origin.<sup>67</sup>

In its majority opinion, the Court also made a distinction between the actions of adults and children, writing that “legislation directing the onus of a parent’s misconduct against his children does not comport with fundamental conceptions of justice.”<sup>68</sup> The majority opinion also wrote about the role of public schools in instructing students about civic values and preparing students to lead economically productive lives.<sup>69</sup> Since President Trump’s reelection, some states have attempted to challenge *Plyler* directly, but there is no pending case in front of the U.S. Supreme Court.

### **Establishment of Temporary Care**

Parents at risk of detention or deportation may choose from their state’s options for establishing temporary care for their children, regardless of their child’s citizenship status. States set forth different ways in which a parent could establish temporary care, including designating a caretaker through a power of attorney or a guardianship agreement.<sup>70</sup> The types of guardianship vary by state but usually include long-term, short-term, or limited/narrow-scope guardianships.<sup>71</sup>

Some states have a “standby” guardianship provision specifically for undocumented parents facing immigration action. For example, in Maryland, an undocumented parent who could be detained or deported can privately designate another trusted adult to care for minor children and act as a standby guardian.<sup>72</sup> Once the guardianship begins, the designated individual can serve as a standby guardian for up to six months.<sup>73</sup>

### **Child Protective Services and Foster Care**

Child Protective Services (CPS) are government agencies that oversee the welfare of children and investigate claims of abuse or neglect by caregivers.<sup>74</sup> CPS will typically get involved when a parent is detained or deported to ensure the child’s well-being. If the child has legal status but there is no guardianship or power of attorney plan, then the child will likely be placed in foster care. If the child does not have legal status, then the child will be transferred to the care and custody of ORR.<sup>75</sup> Federal law requires that ORR “feed, shelter, and provide medical care” for unaccompanied children until the children can be released to a sponsor (usually a family member), while they await immigration proceedings.<sup>76</sup> ORR usually retains custody until a child is released into the “care of a sponsor, [is] transferred to foster care, or turns 18 years old.”<sup>77</sup> The 2022 ICE Detained Parent Directive outlines the standards and policies used by the agency when a parent is arrested or detained for a civil immigration proceeding, leaving their child without proper care and supervision.<sup>78</sup>

### **Flores Settlement Agreement (1997)**

The *Flores* legal agreement outlines protections for immigrant children who are in the custody of ICE or ORR. It requires the government to place unaccompanied children in nonsecure facilities that are licensed by the state to care for dependent children.<sup>79</sup> It also requires that children be released from detention to a sponsor “without unnecessary delay.”<sup>80</sup> In May 2025, the Trump administration filed a motion to rescind the *Flores* Settlement Agreement, and at the time of this publication, the case is ongoing.<sup>81</sup>

## ***Educational Records***

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

FERPA is the federal law that gives parents certain rights over their children’s educational records. An educational record refers to documents directly related to a student and maintained by an educational agency or institution such as a school or district.<sup>82</sup> Under FERPA, a school cannot disclose personally identifiable information within a student’s educational record to a third party without a parent’s or guardian’s prior written consent.<sup>83</sup> There are a few exceptions in the law that would allow schools to share information in specific contexts, but they are not required to do so. For example, the law allows certain school officials, such as teachers, to obtain access to educational records without consent if there is a “legitimate educational interest.”<sup>84</sup> Another exception is that districts can share “directory information” such as name, address, and birth date with a third party.<sup>85</sup> One scenario in which districts must comply is if a request for student information is accompanied by a judicial order or a lawfully issued subpoena.<sup>86</sup> To comply with the Fourth Amendment, these documents must be signed by a state or federal judge. These judicial warrants, discussed on Page 12, are different from administrative warrants, which are issued by immigration judges or DHS.

### **McKinney-Vento Homeless Assistance Act of 1987**

The McKinney-Vento Homeless Assistance Act of 1987 (McKinney-Vento) is the federal law that confers educational rights and services to pre-K through Grade 12 children and youth experiencing homelessness.<sup>87</sup> The law also provides funding to states to support the cost of these services. To be eligible for services, the law identifies two groups of students: “homeless children and youth” and “unaccompanied youth.” The law defines the latter as homeless children and youth who are not in the physical custody of a parent or guardian.<sup>88</sup> Living with multiple families in the same home qualifies students for McKinney-Vento services. This doubling up of families under one roof is the case for many immigrant families when they first arrive in the U.S. McKinney-Vento eligible students, including unaccompanied immigrant youth, “are entitled to enroll in school immediately, even if they lack documentation that would otherwise be required for enrollment or have missed enrollment deadlines.”<sup>89</sup> Additionally, so long as students meet the eligibility criteria for McKinney-Vento services, they cannot be denied these services because of their or their parents’ immigration status.<sup>90</sup> Students who qualify for McKinney-Vento services are also guaranteed transportation to and from school. A student’s McKinney-Vento status is part of their educational record and is protected by FERPA.<sup>91</sup>

*Under FERPA, a school cannot disclose personally identifiable information within a student's educational record to a third party without a parent's or guardian's prior written consent.*

## ***Nonpublic Areas: Entry and Searches***

### **Wellness Checks**

Child protective agencies may conduct wellness or welfare checks to investigate the well-being of a child they believe might be in danger. This is a common practice for state agencies, and they are usually conducted by local law enforcement authorities or the staff of child protective agencies.

Since the inauguration of President Trump, there have been reports that the U.S. Department of Homeland Security, in collaboration with other federal entities, has been conducting what they describe as “wellness checks” for unaccompanied minors, sometimes targeting those children while they are at school.<sup>92</sup> The administration claims that these wellness checks are necessary to ensure the safety of minors, many of whom are unaccompanied and placed with sponsors.<sup>93</sup>

Without clear legal authority, ICE has issued internal guidance for officers to locate these unaccompanied minors, collect information about them, and potentially engage in immigration enforcement actions, including actions against the sponsors who are caring for them.<sup>94</sup> Notably, this expanded role of DHS challenges the explicit statutory authority of ORR, which is the agency tasked with protecting the well-being of unaccompanied minors. Additionally, advocates are concerned that sponsors without legal status may be targeted as a result of information gathered during these ostensible “wellness checks,” including their possible detention and deportation.<sup>95</sup>

### **Judicial Warrants**

A judicial warrant is a written court order authorizing a law enforcement officer to make an arrest, seizure, or search of a private area, such as a home or areas of a school not open to the public.<sup>96</sup> A judicial warrant is issued by a court and signed by a state or federal judge. An individual cannot refuse or ignore a judicial warrant; it can lead to arrest and potential jail time.

An immigration warrant (sometimes called an ICE warrant) authorizes an officer or agent from a federal agency (usually DHS or ICE) to make an arrest or a seizure.<sup>97</sup> It is issued by a federal agency and may be signed by an “immigration judge” or an ICE agent. Unlike a judicial warrant, an immigration warrant does not reduce the rights protected by the Fourth Amendment, in that it is limited and does not authorize a search, entry into any parts of a school not open to the public, or intrusion into a home.<sup>98</sup>

Some of these policies are specific to immigrant students, while others may not, at first, appear to be about immigration at all. For some domains, more than one federal policy applies.

TABLE: KEY FEDERAL POLICIES AND THEIR APPLICATION TO DOMAINS

Federal Policies	Student Services, Including Enrollment	Educational Records	Nonpublic Areas: Entry and Searches
Constitutional Rights	X		X
<i>Plyler v. Doe</i>	X		
Establishment of Temporary Care	X		
Child Protective Services and Foster Care	X		
<i>Flores</i> Settlement Agreement	X		
Family Educational Rights and Privacy Act (FERPA)	X	X	
McKinney-Vento Homeless Assistance Act	X	X	
Welfare Checks			X
Judicial Warrants			X

# Interaction Between Federal and Local Policies and Procedures

Now that schools are no longer considered sensitive locations that might be less likely places for immigration enforcement actions, school and system leaders should be knowledgeable about the three domains of education or school-based policies and procedures described in the previous section: 1) Student Services, Including Enrollment; 2) Educational Records; and 3) Nonpublic Areas: Entry and Searches. Below is a discussion of these domains via fictionalized scenarios provided here only as illustrations.



## *Student Services, Including Enrollment*

***A family arrives to enroll a middle school student, and the school registrar suspects that the student is undocumented because the student does not speak English, so the registrar asks for a Social Security card.*** Under Plyler v. Doe, all school-aged children must be allowed to attend public school free of charge, regardless of their citizenship status. Additionally, the school should not request and cannot require any documentation related to citizenship status if that is done to deny access based on race, color, or national origin. School registrars should also not engage in activities that would have the effect of discouraging families from enrolling their children. Examples of documents that are not required to enroll in a school include a Social Security number or a passport.

***An elementary school social worker provides families with nonschool resources, including information about food banks, referrals to health care providers, legal services, and “know-your-rights” (KYR) pamphlets or cards.*** Absent a contrary state or district policy, school staff may share information and resources about community-based programs, including how to contact service providers, and they are able to share KYR information.

***An enrolled high school senior is detained by ICE when attending a scheduled immigration hearing.*** Absent a contrary state or district policy, the district can identify a point of contact (such as a guidance counselor or a family engagement staff member) who can help families connect with legal resources and case management support.

***The school is informed that a kindergarten student’s parent will not come to pick them up that day because they have been detained by ICE.*** As a first step, school officials should check whether the family has made prior arrangements by listing emergency contacts in the district’s student information system. If the family has not listed an emergency contact, the school should follow the district’s guidance on whom to contact for additional assistance. Typically, this would be an assistant superintendent or another employee working in a district’s central office. Absent a contrary state or district policy, the school may offer the student and their supportive adults a referral to appropriate legal services just as they would offer a referral to another community-based service.



***A 10-year-old child who lacks stable housing is deemed eligible for protections and services under McKinney-Vento.*** Eligibility for McKinney-Vento programs is not contingent on U.S. citizenship status, and all children may receive these services if they qualify. Under McKinney-Vento, information about the living situation of a child or youth experiencing homelessness is treated as a student educational record.<sup>99</sup> In addition, housing assistance that is secured under McKinney-Vento is not considered part of the public charge test (a test used by immigration officers to assess immigration applications and whether an applicant seems likely to become dependent on the government for support).<sup>100</sup>



## ***Educational Records***

***A DHS investigator contacts an elementary school to inquire about a specific student.***

FERPA prohibits the disclosure of educational records without parent or guardian consent. FERPA contains a limited set of specific exceptions, each of which enables, but does not require, the education agency to share information for the purpose described. In addition, schools and districts must share educational records only if they are ordered to do so via a valid judicial warrant or subpoena. Note that there are two types of subpoenas: a judicial subpoena issued by a court such as a state or federal court, and an administrative subpoena issued by an agency such as DHS.<sup>101</sup> The education agency must comply with a judicial subpoena, while it may not be required to comply with an administrative subpoena. Educational records include, but are not limited to, enrollment, attendance, course credits, grades, special education identification, information on the home language survey, and eligibility for school-based services (e.g., free and reduced-price meals or McKinney-Vento programs).

***A school district receives a public records request asking for information about students.*** FERPA prohibits any education institution from publicly disclosing students' educational records without proper consent.

***A middle school employee uploads a student's deportation order to the district's student information system.*** Schools should work with their district and legal counsel before updating a student's educational record with any immigration- or citizenship-related documents upon enrollment or disenrollment. Typically, schools should not collect any student's Social Security number, proof of citizenship, or deportation orders. If, however, any of these documents are uploaded, they would be protected as educational records under FERPA.



## ***Nonpublic Areas: Entry and Searches***

***A DHS investigator comes to a middle school campus and asks to speak with a named student.*** DHS investigators without a judicial warrant do not have legal authority to enter nonpublic areas of a school or to question students without the consent of their parent or guardian.

***ICE agents present an administrative warrant at the closed gates of a high school to detain a student.*** There are two types of warrants: a judicial warrant, which allows entry into and searches of a private area (that is any area not open to the public in which a person would have a reasonable expectation of privacy), and an administrative warrant, which does not grant entry into nonpublic areas — regardless of whether it grants the authority to detain a person.<sup>102</sup> Agents may be authorized to detain a student, but they may not enter a nonpublic area to do so (without consent).

***ICE agents attempt to use the parking lot of an elementary school as a staging area for an enforcement action in the nearby neighborhood.*** Schools have the authority to create policies for nonpublic areas, including parking lots. In many cases, schools post trespassing notices for individuals present on property without permission.

***ICE agents enter a school campus during the school's graduation ceremony and detain parents or other members of the public attending the ceremony.*** If areas of a school are open to the public, they are no longer protected from entry or search.

## **Conclusion**

While many presidential administrations have enacted policies affecting immigrant students and their families, the Trump administration's actions are particularly pronounced in their scope, scale, and intensity. Ensuring that all children — regardless of their immigration status or background — have access to education is, and always will be, sound public policy. While it is difficult to know the full impact that increased immigration enforcement action will have on student attendance and achievement over time, many federal policies remain in place, and district and school leaders are in a position to ensure that they are enforced. These include constitutional rights to attend school, freedom from searches and seizure, privacy protections, protection of educational records, and more. Now, more than ever, school and district leaders are responsible for upholding these protections to maintain safe and welcoming environments for every student. ✦

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## About Bellwether

Bellwether is a national nonprofit that exists to transform education to ensure systemically marginalized young people achieve outcomes that lead to fulfilling lives and flourishing communities. Founded in 2010, we work hand in hand with education leaders and organizations to accelerate their impact, inform and influence policy and program design, and share what we learn along the way. For more, visit [bellwether.org](https://bellwether.org).

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