

## IMMIGRATION FOR EDUCATORS FAQ

### What Responsibilities Do Educators Have?

Schools, teachers, and educators bear an ethical and legal responsibility to protect children placed in their care and custody. Educating students carries with it the corresponding ethical duty to ensure that students are protected from those harms that would interfere with the goals of public education, including “the pursuit of truth, devotion to excellence, and the nurture of the democratic principles.”<sup>1</sup> As the primary caregiver for students during the day, a school stands in place of students’ parents and has a duty to protect children in their care from foreseeable harms within the school’s control.<sup>2</sup>

School officials are bound by law to respect the rights of students under the Equal Protection Clause of the Fourteenth Amendment the Civil Rights Act of 1964, and the Family Educational Rights & Privacy Act of 1974 (“FERPA”). Collectively, these laws prevent schools from engaging in immigration enforcement. To ensure that students, parents, and teachers can safely and calmly respond when immigration policy is involved, schools should familiarize themselves with federal and state law, be transparent about what schools will and will not do, and be forthcoming about what schools do and do not know so that families can plan accordingly. The recommendations included here are not intended to be relied upon as legal advice—consult an education law specialist attorney for advice about your school or school district’s specific circumstances.

### What Should Teachers Make Sure Their Students Know?

It is vital for both teachers and students to be aware of their Fourth and Fifth Amendment rights. Schools should prominently place information that includes the following:

- Students have the right not to speak with an immigration officer. They must inform the officer that they are exercising their right to remain silent.
- Students have the right to speak to an attorney, though one may not be provided for them in immigration proceedings.
- Students, if they are nationals of a foreign country, have the right to have their country’s consulate notified of their detention.

Parents should also be informed about school policies and the rights of students at school. Parents should be asked to keep their emergency contact information up to date and to develop a plan in case parents are detained.

### Do Students Lose Certain Rights When Attending Schools?

No. “[N]either students [n]or teachers shed their constitutional rights...at the schoolhouse gate (Tinker v. Des Moines Sch. Dist.)”<sup>3</sup> Students retain Fourth Amendment rights at school, and teachers and school officials play a vital role in ensuring those rights are respected by law enforcement officers.

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1. Code of Ethics for Educators, Nat’l Educ. Ass’n (Sept. 14, 2020, adopted by the National Education Association 1975 Representative Assembly), <https://www.nea.org/resource-library/code-ethics-educators>. See also id. Principle I, ¶ 4.

2. See generally Restatement (Second) of Torts § 320 cmt. a (Am. L. Inst. 1965). See also Brewer v. Murray, 292 P.3d 41, 48, 48 n.3 (Okla. Civ. App. 2012).

3. Tinker v. Des Moines Sch. Dist., 393 U.S. 503, 506 (1969).

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### What if Law Enforcement Officers Seek to Enter the School?

As a threshold matter, **school officials should not permit immigration officers on campus without a judicial warrant.** Generally, federal law enforcement officers cannot enter school property without the consent of school officials unless there is an emergency. This is a function of both the Tenth Amendment, which secures state and local authorities from federal commandeering,<sup>4</sup> and the Fourth Amendment, which protects individuals from unreasonable intrusions on their privacy.<sup>5</sup> In order to protect students in school custody, schools should rely on these constitutional principles to deny entry to federal immigration law enforcement officers without a judicial warrant. **A judicial warrant is one signed by a federal or state judge.** An administrative warrant is one signed by an administrative official, like a supervising officer within ICE or CBP. An administrative warrant is not the same thing as a judicial warrant. **Only a judicial warrant can lawfully require a school to permit entry.**<sup>6</sup> This is because the Fourth Amendment requires a judge to issue warrants, not administrative officials.<sup>7</sup> The distinction between judicial and administrative warrants can be outcome-determinative, as immigration officers often use administrative warrants.<sup>8</sup>

### What Steps Should Be Taken if Immigration Officers Arrive at a School?

Upon the officers' arrival, personnel should immediately notify a designated point person—ideally one with decision-making authority and direct access to legal counsel, like the principal or district superintendent—that law enforcement is present.

- Front desk personnel should ask to see both their law enforcement credentials and the warrant authorizing their entry. If possible, front desk personnel should make copies of, photograph, or note both their credentials and warrant. Often immigration enforcement involves not only federal law enforcement officers, but also state and local law enforcement. So, personnel should follow the same established policies and procedures regardless of whether federal law enforcement officers from ICE or CPB are present.
- After verifying law enforcement's credentials and warrant, personnel should immediately notify a designated point person—ideally one with decision-making authority and direct access to legal counsel, like the principal or district superintendent—that law enforcement is present. Personnel should inform officers that they must wait for instructions from the designated point person before they will be permitted to enter.
  - If law enforcement officers do present a judicial warrant, school employees should promptly comply.
  - If law enforcement officers cannot present a judicial warrant authorizing entry, the designated point person should instruct front desk personnel to deny entry, and personnel should promptly do so. If law enforcement officers insist on entering without a judicial warrant and without consent, school employees should not physically obstruct their way.

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4. Cf. *Printz v. United States*, 521 U.S. 898, 935 (1997) (“The Federal Government may neither issue directives requiring the States to address particular problems, nor command the States’ officers, or those of their political subdivisions, to administer or enforce a federal regulatory program.”). See also *Galarza v. Szalczyk*, 745 F.3d 634, 644 (3d Cir. 2014).

5. *New Jersey v. T.L.O.*, 469 U.S. 325 (1985).

6. Immigration judges are also authorized by law to issue warrants, but these warrants are not judicial warrants, since immigration judges are not constitutionally independent judges. Pay close attention to the seal and signature of the warrant and compare it to examples available online. See *infra* note 8.

7. *Kidd v. Mayorkas*, 734 F.Supp.3d 967, 979 (C.D. Cal. 2024).

8. For more information on how to spot the difference between administrative and judicial warrants, see *Warrants and Subpoenas: What to Look Out For and How to Respond*, Nat’l Imm. L. Ctr. (Jan. 2025), <https://www.nilc.org/wp-content/uploads/2020/09/2025-Subpoenas-Warrants.pdf>.

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- School employees should document all interactions with law enforcement officers with written notes, voice memos, or the like.

### What if the Officer Has a Judicial Warrant and Requests to See a Student?

If a law enforcement officer has entered school premises and is seeking to interview, search, or arrest a student, school employees should ask the officer:

- Whether it would be possible for a school employee, rather than the officer, to fetch the student from class, to mitigate unnecessary embarrassment or fear.
  - If the officer permits this, fetch the student from class and when possible, explain what is happening, reassure the student of your support, and explain their rights:
    - To remain silent. They do not have to speak to the officer if they do not want to, but they must say that they wish to remain silent.
    - To speak with an attorney. Although, in immigration proceedings, the government will not pay for a lawyer, people detained have a right to speak with an attorney if they are able to find one.<sup>9</sup>
    - To have their consulate notified of their detention. If they are not a U.S. citizen, they can insist on the consulate of their home country being notified of their detention.
- If the officer wishes to interview or search a student, whether, a school employee can supervise the interview or search in a private environment, like an empty office or classroom.
  - Interviews or searches of students must be conducted reasonably, in light of the students' age and sex.<sup>10</sup> School employees should intervene and end the interview or search when it becomes unreasonable, including when it becomes unreasonably long or if the student asks to be searched by an officer of the same sex but none is available.
- Whether the school is free to contact the student's parents. **Unless the officer's judicial warrant forbids disclosure, schools can and should contact the student's parents as soon as the student interacts with the officer.**

### What if a Student is Detained?

If a student is detained by immigration officers, school employees should do their level-best to obtain the student's alien registration number ("A number"), as this may be the only way for parents and family to track down the student while in detention.

### How To Educate Your Students And Their Parents About Their Rights

It is vital for both teachers and students to be aware of their Fourth and Fifth Amendment rights. Schools should prominently place information that includes the following:

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9. Latitude Legal Alliance provides low-to-no-cost immigration legal services for people unable to afford an attorney.

<https://www.latitude.legal>.

10. Safford Unified Sch. Dist. 1 v. Redding, 557 U.S. 364, 375 (2009).

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### What Can Schools Do to Maintain Equal Education?

“[I]t is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.”<sup>11</sup> School officials are bound by law to respect the rights of students under the Equal Protection Clause of the Fourteenth Amendment the Civil Rights Act of 1964, and the Family Educational Rights & Privacy Act of 1974 (“FERPA”). Collectively, these laws prevent schools from engaging in immigration enforcement.<sup>12</sup>

All children in the United States have a right to equal educational opportunity. Under the U.S. Constitution, racial discrimination is unlawful in public schools,<sup>13</sup> and states cannot deny public education to students who are undocumented on the basis of their immigration status.<sup>14</sup> Discrimination on the basis of undocumented status must “further some substantial goal of the State,”<sup>15</sup> and assertions of financial or economic burden to the state are insufficient to sustain discriminatory action.<sup>16</sup>

The right to equal educational opportunity cannot be denied for the purposes of collecting immigration data. “[B]ecause we want to know” is not “substantial enough to justify the significant interference with the children’s right to education under” the Constitution.<sup>17</sup> Efforts to collect immigration data have been uniformly struck down as unconstitutional.<sup>18</sup>

To comply with this constitutional requirement, schools should:

- **Not ask about immigration status.**
- **Accept a variety of documents to prove residency in the district.**
- Limit data collection generally to information that is actually necessary.

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11. *Brown v. Bd. of Educ. of Topeka*, 347 U.S. 483, 493 (1954).

12. State laws, rules, or orders to the contrary should be carefully reviewed by a school’s legal counsel and if unlawful, should be ignored. If a school intends not to enforce a law, rule, or order, that intent should be promptly communicated to parents and school employees.

13. *Brown v. Board of Education*, 347 U.S. 483, 493 (1954).

14. *Plyler v. Doe*, 457 U.S. 202 (1982).

15. *Id.* at 224.

16. *Id.* at 227–29.

17. *Hispanic Interest Coalition of Alabama (“HICA”) v. Governor of Alabama*, 691 F.3d 1236, 1249 (11th Cir. 2012).

18. *Id.*

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### What can schools do to maintain equal treatment in educational settings?

In addition to equal access to public schools, students have a right to be free from discrimination while at school. The Civil Rights Act squarely prohibits discrimination on the basis of race, color, or national origin in public education that receives federal funds.<sup>19</sup> Because a person’s national origin is an essential part of their immigration status, **discrimination on the basis of immigration status is discrimination on the basis of national origin.**<sup>20</sup> The Department of Justice has promulgated long-standing regulations to enforce federal law.<sup>21</sup> The Department of Justice and Department of Education have together issued guidance warning that, under federal civil rights law, “districts may not request information [such as citizenship or immigration status] with the purpose or result of denying access to public schools on the basis of race, color, or national origin.”<sup>22</sup>

In addition to the above recommendations, schools should be sensitive to language-learning needs. Simultaneously, however, language is not a reasonable basis from which to infer citizenship or immigration status, much less unlawful immigration status, and **schools should ensure that teachers and employees are aware that profiling students on the basis of race, color, national origin, or language spoken is impermissible.**

### How can schools maintain informational & data privacy?

Students have a right to have data collected by education officials, including immigration status, kept confidential. FERPA broadly regulates the data collected from families by schools, and generally prohibits schools from sharing that data without families’ consent.<sup>23</sup> **Schools cannot share data collected from families with law enforcement officers without their consent unless the officer has a valid court order or judicial subpoena.** As with warrants, administrative subpoenas are not the same thing as judicial subpoenas, and schools should carefully review subpoenas—with the assistance of legal counsel—to ensure compliance with their duties under FERPA.

To comply with FERPA and applicable regulations, schools should:

- Ensure that staff, including school resource officers, are aware that they are bound by FERPA and cannot share covered information with law enforcement officers unless a FERPA exception applies
- Review the procedures for collecting and disclosing directory information to mitigate harm to students

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19. 42 U.S.C. § 2000d (“No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”).

20. Cf. *Bostock v. Clayton Cnty.*, 590 U.S. 644 (2020).

21. 42 U.S.C. § 2000d-1 (authorizing prophylactic regulation by federal agencies). Those regulations prohibit the use of “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.” 28 C.F.R. § 42.104(b)(2).

22. Letter from U.S. Dep’t of Justice: Civil Rts. Div. & U.S. Dep’t of Educ.: Off. for Civil Rts., Dear Colleague Letter: School Enrollment Procedures 2 (May 8, 2014), <https://www.ed.gov/sites/ed/files/about/offices/list/ocr/letters/colleague-201405.pdf>. See also Fact Sheet from U.S.

Dep’t of Justice: Civil Rts. Div. & U.S. Dep’t of Educ.: Off. for Civil Rts., Fact Sheet: Information on the Rights of All Children to Enroll in School, <https://www.ed.gov/media/document/dcl-factsheet-201405pdf>.

23. 20 U.S.C. § 1232g; 34 C.F.R. § 99.1-99.67

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### **Next steps in policies and procedures for schools:**

Regardless of whether schools adopt these or other policies, it is important that schools adopt *some* policy on immigration data and enforcement. A relatively consistent and uniform practice will ensure that students are treated equally and protect them from arbitrary decision-making. Additionally, 8 U.S.C. 1324(a)(1)(A)(iv) makes it a federal crime to recklessly or knowingly “harbor” an undocumented person. “Safe rooms” may violate this law, and the less generally applicable a school’s immigration policies are, the closer their actions may come to crossing this line.

Whatever policy is adopted should be communicated to teachers, parents, and students. This will ensure the policy is efficiently implemented and it will instill calm in members of the school community worried about immigration enforcement by reassuring people that a plan is in place, support is available, and professionals are prepared to respond.