

NSBA 2025 Immigration Guide

What is the current federal enforcement posture regarding undocumented immigrants, and what are the implications for schools?

In 2011, the Department of Homeland Security (DHS) created a policy that refrained U.S. Immigration and Customs Enforcement (ICE) agents from entering and engaging in immigration arrests in what were deemed protected or sensitive areas. This included schools, places of worship, playgrounds, bus stops, colleges, care centers, hospitals, and other community centers. In 2021, the list of places was expanded to include locations offering disaster or emergency relief and social services.

On January 20, 2025, the Trump Administration rescinded the 2021 memo by DHS that updated the designated sensitive areas and issued a new directive. Since the Trump administration revoked the previous guidance, it no longer designates certain areas as protected from immigration enforcement actions. Under the new DHS directive, schools, along with other previously designated sensitive areas, will no longer be off-limits for immigration enforcement operations. What does this directive mean for school board leaders and the students they serve? Are schools still required to serve undocumented students? What happens if an ICE agent shows up at your school? Below, this guide tackles these questions and more.

Along with reviewing this guide, we recommend consulting with your NSBA Council of School Attorneys (COSA) member to ensure compliance with your district and state laws. And, because so much of this area of law is evolving rapidly, this guide will be updated as significant changes in the field arise.



Can ICE agents now enter schools?

Possibly. ICE agents need a specific type of warrant or express permission to enter areas that are not usually open to the public, like K-12 schools.

For ICE agents to enter schools, they will need a judicial warrant. A judicial warrant is issued by a judge. Both state and federal judges can sign off on judicial warrants. Judicial warrants allow law enforcement officers to carry out arrests, seizures, and searches. If an ICE agent presents an administrative warrant, schools do not have to allow the ICE agents onto school property. If a warrant carries an immigration judge's signature or the signature of an ICE official, that is an administrative warrant.

Upon the arrival of ICE agents, request their names, badge or ID number, telephone number, and business cards. Contact your school attorney immediately.

Do ICE agents need a warrant for immigration enforcement?

Yes. As discussed above, ICE agents need a judicial warrant to enter schools. Issues including warrantless arrests, data collection without consent, and detentions without probable cause could be deemed unconstitutional and may prompt potential legal battles over balancing immigration enforcement with individual rights.

If your school receives a warrant, court order, or subpoena, immediately alert your COSA attorney or school district's legal counsel. School officials can inform ICE agents that all agency inquiries must first be reviewed by the school district's lawyers to make sure they comply with applicable privacy and other laws.

Do public elementary and secondary schools have a constitutional duty to provide undocumented children with a free education?

Yes. The U.S. Supreme Court's landmark decision in *Plyler v. Doe*¹ established the principle that undocumented children have the constitutional right under the Equal Protection Clause of the Fourteenth Amendment to receive a free public education from kindergarten to the 12th grade. The Court emphasized, "education prepares individuals to be self-reliant and self-sufficient participants in society,"² and "perceptions of the public schools as inculcating fundamental values necessary to the maintenance of a democratic political system have been confirmed by the observations of social scientists."³

Should a school district enroll an undocumented minor who is also unaccompanied?

Yes. As of the date of this publication, the law does not permit a school district to deny an undocumented student access to a public education on the basis that he or she is unaccompanied.⁴ According to a memorandum issued jointly by the U.S. Departments of Justice, Education, and Health and Human Services, when such unaccompanied children⁵ come into federal custody, they typically are released

by the Office for Refugee Resettlement to an appropriate sponsor, usually a parent, family member, or family friend.⁶

“While residing with a sponsor, unaccompanied children, like other children, are required to attend school up to a certain age established under State law. Sponsors must help unaccompanied children to enroll in school immediately following family reunification.”⁷

Pursuant to state and local law, school officials may request proof that the adult enrolling the child lives within the boundaries of the school district.⁸ However, a school district is prohibited from asking about citizenship or immigration status of the child or of the adult enrolling the child as a means to establish residency within the district.⁹

How should a district respond to an ICE request for student records?

The Family Education Rights and Privacy Act (FERPA)¹⁰ is the federal law governing the way school districts maintain and handle student education records. Most states also have laws and regulations providing additional requirements regarding student information and records. With a few exceptions, FERPA prohibits the release of such records without the permission of a parent or an eligible student (18 or older).¹¹ No exception applies specifically to ICE enforcement activity, nor do disclosures to ICE fall within the safety and emergency provision of FERPA.¹² Therefore, generally, a school district should not provide student records to ICE agents unless a parent or the eligible student authorizes the release of those records.

FERPA does require school districts to produce education records in response to subpoenas from ICE, or other third parties, without parental consent. School districts are, however, required to make a reasonable effort to notify parents (or eligible students) in advance of complying with the subpoena so that they may seek protective action, if they desire.¹³

FERPA allows, but does not require, school districts to release designated directory information without parental consent.¹⁴ Directory information is defined as “personally identifiable information,” which includes, but is not limited to, student names, addresses, dates of birth, places of birth, and grade level.

School districts also should be aware that FERPA requires them to offer parents the opportunity to opt out of having their student’s information included as a part of school district directory information. Therefore, through the opt-out process, parents can keep their students’ personal information from being released to third parties even if the school district chooses to release certain information as directory information.

All school districts should have policies that address collection, maintenance, use, release, and destruction of student information and records, and the process to be used in handling them. A well-drafted policy will, among other things, indicate if the school district maintains directory information and, if so, what kind of information constitutes directory information. It also will define what constitutes a reasonable effort in notifying parents that student records have been subpoenaed. It is imperative that school districts contact their state school boards association or a COSA attorney for assistance in drafting a student records policy that is consistent with its state’s laws and meets the specific needs of the school district.

What authority permits ICE to request/subpoena records?

Federal statute states that “any immigration officer shall have power to require by subpoena the attendance and testimony of witnesses before immigration officers and the production of books, papers, and documents relating to the privilege of any person to enter, reenter, reside in, or pass through the United States or concerning any matter which is material and relevant to the enforcement of this chapter and the administration of the Service, and to that end may invoke the aid of any court of the United States.”¹⁵

ICE currently issues an I-138 form to subpoena records. Implementing regulations list a broad range of supervisory ICE officials as having authority to issue such subpoenas. Any person aged 18 or older can be designated to serve an ICE subpoena. In case of non-compliance, U.S. district courts may issue compliance orders, punishable as contempt of court if non-compliance continues. Regulations require ICE officials to seek such court orders if subpoenas are not obeyed.¹⁶

What is a sanctuary school district?

Although one court has defined a sanctuary jurisdiction (which includes counties, cities, school districts, and other local political subdivisions) as a jurisdiction that “fails to adhere to ICE requests,” there is no definitive legal definition for a sanctuary school district.¹⁷ The term, modeled after the term “sanctuary cities,” is an amorphous political designation that generally describes school districts that have adopted policies or practices intended to help protect undocumented students in their communities.¹⁸

The term means something different in every jurisdiction, but generally, districts that have adopted sanctuary status—by either a public statement or a more formal designation by their boards of education—have agreed to take certain steps to shield their undocumented students from immigration authorities and enforcement actions. Such steps may include refusing to share a student’s immigration status with immigration authorities and establishing procedural protocols for immigration agents to engage with students at school.

Should my school district declare itself a sanctuary school district? Why or why not?

Whether a school district formally should declare itself a sanctuary district is a choice that should be guided by the values of the school board and the community. The term “sanctuary” is a largely undefined political designation. School districts considering becoming sanctuary districts may want to determine what value or benefit the designation will bring to the district and its undocumented families. The potential loss of federal funding may be something the district will want to consider as it decides whether to declare itself a sanctuary district.

School districts may want to express support for undocumented students by adopting a sanctuary policy. Districts should be mindful, however, that schools cannot completely “protect” undocumented students

from immigration enforcement actions. A “sanctuary” designation may overstate the level of protection or support that schools can offer. For example, even if a school district declares itself a sanctuary district, it may still be required to provide federal authorities access to students, especially when exigent circumstances exist. (See question above) If a school district does declare itself a sanctuary district, it should be careful to explain what actions the district will and will not take with respect to immigration enforcement so that students and families have clear expectations.

Regardless of whether a district declares itself a sanctuary district, it is important to remember that under *Plyler*, all undocumented children have the constitutional right of access to public schools. This is a constitutional mandate that must be adhered to by all schools regardless of community sentiment or political positions. Because of the protections that school districts are required to provide under *Plyler*, school districts may determine that they can support undocumented students to the extent of the law without declaring themselves sanctuary districts. School districts may also want to consider the extent to which declaring themselves sanctuary jurisdictions could detract from other efforts to protect undocumented students by potentially inviting unwanted attention from federal and other authorities.



What are some best practices for school districts to be prepared to respond to issues around undocumented students?

School districts may wish to take the following steps in preparing to respond to issues regarding undocumented students:

Know State Law, State Policies, State Rules and Regulations, and Local Ordinances Concerning Undocumented Children.

Plyler clearly requires school districts to educate undocumented resident children. It does not, however, give much specific guidance. For example, what kind of documentation does the state allow a student to provide to enroll in school? Is the district a sanctuary district, and if so, what are the district's obligations regarding undocumented students and their families? Some questions may be addressed in federal guidance, but state laws and regulations play a major role in helping a district determine how to address issues that arise in relation to educating undocumented students. For assistance in determining what the governing laws are, contact a COSA attorney and the state school boards association.

Review/Draft Policies. After determining what is required by relevant federal law, federal department of education regulations or guidance, applicable executive orders, state law, and state department of education regulations, districts should review their existing policies and regulations and, if necessary, change them or draft new ones to comply with the law. For example, make certain that any policies regarding student enrollment provide alternative ways to obtain the information the district requires without implicating students' immigration status. Districts may also wish to review policies addressing:

- Enrollment,
- Attendance,
- Student records,
- Law enforcement contact with students while in school,
- Student discipline,
- Harassment and bullying,
- Homeless youth under the federal McKinney-Vento Act, and
- Transportation to and from school.

Many state school boards associations have policy services that can help develop policies consistent with state law and customized to the district's needs.

Train Staff. Policies form the "law" of the district and serve to ensure consistency in the way matters are handled by district staff. But even the best policies will be of little help if staff members do not know them or fail to follow them. Once appropriate policies are in place, staff must be trained. Every registrar in the district should know exactly what documents the policies require them to request when students show up to enroll. Every school principal should know exactly what to do when ICE requests student records or wants to interview a student at school. Finally, staff members who have completed the recommended training on the policies should be asked to sign a document acknowledging that they have received training. This helps staff members understand how important it is for them to comply with the policies, and it can be useful as evidence of staff training if someone files a complaint against the school district.

Communicate with Parents. Many undocumented parents and their children are confused, frightened, and uncertain about what to expect when dealing with governmental entities, including school districts. School districts may alleviate those fears by contacting parents and explaining district policies and regulations regarding undocumented students. Communication and meetings with parents in their native languages, if possible, is one way to explain the policies and answer their questions. If the school has a PTA or other parent group, it should enlist the group's assistance in making sure that its message gets to parents. Even when people dislike certain policies, it is easier to enforce them if all stakeholders at least know what to expect.

Prepare a Media Plan. The media will always have questions about issues that are “hot.” In developing a media plan, it is advisable to appoint one district staff member as the spokesperson for the issue. That person should be trained on the law and the district's policies on the issue of undocumented students. By appointing one well-trained person to respond to media requests about undocumented students or an issue that has arisen regarding an individual undocumented student, the district increases the chances that the information provided will be consistent and decreases the risk of providing information that violates FERPA or some other law. All senior officials, principals, and the principals' direct supervisors should be briefed on the district's media plan and should know how to refer media inquiries quickly to the designated staff person.

Collaborate with Law Enforcement. Many school districts contract with local police departments for security services. A school district that has such a relationship should reach out to its point of contact within the police department and discuss how the two entities might work together to handle issues related to undocumented children and their families. Those who do not have such relationships should still attempt to contact their local police departments and find out how they intend to handle issues related to undocumented families and what they expect from the school district. Some districts draft an agreement or memorandum of understanding with local police departments that outlines each party's responsibilities in a variety of school safety and other law enforcement matters that could include provisions related to serving undocumented students.

School districts and police departments have different missions and different obligations under the law. A school district's obligation regarding undocumented students is to educate them. The police enforce laws. It is important for school districts to engage in advance conversations about the rights and responsibilities of law enforcement and the district under its own policies and federal and state laws that govern public schools. Clarifying each entity's roles and responsibilities in memoranda of understanding helps set mutual expectations before situations arise.

Work with Social Service Agencies to Help Affected Children. The district should be prepared to assist a student whose parents have been detained by ICE, leaving the student without parental guidance or a place to go. School districts should contact the local department of human services and other appropriate social service agencies within the community in advance of such situations to develop a protocol for handling them. If possible, that protocol should be made a part of district policy or regulations.

Review Enrollment Forms. School districts should review all enrollment-related forms to make sure they do not contain questions that would reveal a child’s immigration status and that the forms do not ask for social security numbers unless it is required by law for other reasons. Districts may include alternative questions to gather relevant information.

Assign a Point Person. School districts should train one person (or small team) to respond to all ICE requests, law enforcement requests, and all subpoenas requesting records related to an undocumented student or the student’s parents. Generally, it is prudent to train school district staff members not to confirm the attendance of a student before consulting with the staff person who is designated to handle ICE requests.

Update Student Records. Make certain that all student records are updated and contain accurate emergency contact information in the event a student’s parents are suddenly unable to care for their child.



Endnotes

1. 457 U.S. 202 (1982).
2. *Id.* at 222.
3. *Id.* at 221.
4. 42 U.S.C. § 11432(g)(1)(H)(iv), (g)(3)(C).
5. Under federal law, an unaccompanied minor, referred to in the McKinney-Vento Homeless Assistance Act as an unaccompanied youth, is “a youth not in the physical custody of a parent or guardian.” 42 U.S.C. § 11434a(6).
6. Information on the Rights of Unaccompanied Children to Enroll in School and Participate Meaningfully and Equally in Educational Programs (DOJ, DOE, HHS) <https://www.ed.gov/sites/ed/files/about/overview/focus/rights-unaccompanied-children-enroll-school.pdf>.
7. *Id.*
8. *Id.*
9. *Id.*
10. 20 U.S.C. § 1232g.
11. 34 C.F.R. § 99.1 et seq.
12. 34 C.F.R. § 99.36.
13. 34 C.F.R. § 99.31(a)(9)(II).
14. 34 C.F.R. § 99.31.
15. 8 U.S.C. § 1225(d).
16. 8 C.F.R. § 287.4.
17. *County of Santa Clara v. Donald J. Trump*, 17-cv-00574 (N.D. Cal. 2017); *County of San Francisco v. Donald J. Trump*, 17-cv-00485 (N.D. Cal. 2017), 2017 WL 1459081 (N.D. Cal. 2017).
18. Global Refugee Staff, What Are Sanctuary Cities and Why do they Exist? (Global Refugee 2021), <https://www.globalrefuge.org/news/sanctuary-cities-explained/>.