



Christine Althoff
Board President

Holly Dickson
Executive Director

John Williams
Legal Director

February 13, 2025

Re: Legal Rights of Immigrant Students in Arkansas Schools

Dear Superintendent:

Recognizing the sensitivity of schools and certain other locations, U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP) previously maintained a “sensitive locations” policy over several different presidential administrations that limited immigration enforcement at schools and certain other locations.¹ However, this policy was rescinded on January 21, 2025. Accordingly, it is no longer contrary to ICE or CBP policy to engage in enforcement operations at or near schools, school playgrounds, or bus stops.

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

We are writing to provide you with answers to some common questions, and to provide tools that can help you to ensure that all students in your district feel welcome.²

At the outset, it is important to understand that the federal government’s revocation of the “sensitive locations” policy does not affect the constitutional right of immigrant children to an education, does not affect the legal responsibilities of school districts towards their students, and does not affect a school’s own legal rights regarding who enters their property. The end of the sensitive locations policy, however, makes it more likely that immigration enforcement operations will take place at schools. Therefore, it is critically important for schools to understand both children’s rights and schools’ responsibilities.

¹ U.S. Immigration and Custom Enforcement, Guidelines for Enforcement Actions in or Near Protected Areas, https://www.dhs.gov/sites/default/files/publications/21_1027_opa_guidelines-enforcement-actions-in-near-protected-areas.pdf.

² This letter should not be considered legal advice, but rather as a strong recommendation that you seek legal guidance promptly relative to issues in this letter. The law in this area is complex and every situation is different.



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Federal and State Law Protects Students Regardless of Immigration Status

Federal laws prohibit discrimination in public education, including discrimination on the basis of race, color, or national origin.³ Federal law specifically prohibits schools from “utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.”⁴ The Supreme Court, in the case *Plyler v. Doe*,⁵ also held that discrimination on the basis of immigration status in access to basic public education violates the Constitution. As the Court explained, denying access to education “imposes a lifetime hardship on a discrete class of children not accountable for their disabling status.”⁶

In addition, Arkansas law provides that every public school student has the right to receive a public education in a public school educational environment that is reasonably free from bullying on the basis of the student’s race, color, religion, ancestry, national origin, socioeconomic status, disability, gender, gender identity, physical appearance, health condition, or sexual orientation.⁷

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

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

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

³ Title IV of the Civil Rights Act of 1964, 42 U.S.C. § 2000c-6 (public elementary and secondary education); Title VI, 42 U.S.C. § 2000d (recipients of federal funds).

⁴ 28 C.F.R. § 42.104(B)(2); 34 C.F.R. § 100.3(b)(2)

⁵ 457 U.S. 202 (1982).

⁶ *Id.* at 223.

⁷ Ark. Code Ann. § 6-18-514



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- Be issued by a judicial court;⁸
- Be signed by a state or federal judge or magistrate (a warrant signed by an immigration judge or agent within the Department of Homeland Security or ICE is not sufficient);
- State the address of the premises to be searched (check for your school's exact address); and
- Be executed within the limited time period specified on the warrant.

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

If ICE agents present a warrant, it is critical to determine whether it is a judicial warrant or an administrative warrant before taking any further action. A useful fact sheet explaining what is required and how to respond to different types of warrants and subpoenas is available at: www.nilc.org/wp-content/uploads/2020/09/Warrants-Subpoenas-Facts-1.pdf.

Important steps to take include:

- Clearly demarcate the public and non-public areas in your schools. If school playgrounds, sports fields, etc., are not open to the public during certain hours, you can also post signage setting out those limits.
- Establish protocols for exactly what school staff should do if immigration agents come to a school.
- Train all school staff, based on your protocols, that if immigration agents come to a school, staff should immediately inform a designated trained contact person (for example the principal), who should then consult the superintendent's office and school's attorney. School staff should not themselves consent to immigration enforcement officers entering non-public areas and should not allow immigration enforcement officers to interview

⁸ Judicial orders are required by the Fourth Amendment's guarantee to be free from unreasonable searches and seizures of persons or objects. See U.S. CONST. amend. IV. As courts have explained, administrative warrants "lack the independent assurance guaranteed by the Fourth Amendment" and therefore are insufficient to enter a constitutionally protected area. See, e.g., *Kidd v. Mayorkas*, 734 F. Supp. 3d 967, 979–80 (C.D. Cal. 2024) (holding that ICE's "knock and talk" policy violated Fourth Amendment)



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students. Schools may also face legal repercussions if staff provide information to immigration agents about students, which is why legal review of all requests for student information is critical.

- Because immigration agents sometimes wear clothing intended to suggest they are local police, and because a variety of law enforcement agencies can be involved in immigration investigations and enforcement, the procedures above should be used whenever any law enforcement officials come to a school (other than in emergency situations or when called by the school to come there).
- An attorney should review what immigration enforcement officials are requesting, including any warrant or subpoena presented. The attorney can ensure that schools are acting consistent with their legal responsibilities to students and can provide advice to school decision makers about how to proceed.
- Judicial warrants and subpoenas are often limited to particular places or people. The school's attorney and decision-makers should hold immigration agents to the limits in the warrant or subpoena.
- Warrants and subpoenas create different legal obligations. If ICE comes to a school with a judicial warrant to detain a student, it does not mean that ICE is entitled to any information about the child or access to their records.
- Any actions by immigration agents should be observed and documented. Schools should make copies of officers' identification documents, as well as any warrants or subpoenas.

School Districts Cannot Require Information About Immigration Status and Should Limit the Other Information They Collect

Requiring students, parents or guardians to provide schools with information regarding their immigration status or taking other actions that significantly interfere with the right to a basic public education violates the constitutional principles set out in *Plyler v. Doe*.⁹

Consistent with *Plyler*, schools should identify a range of documents (e.g. birth certificate, baptismal records, parent affidavit, etc.) that may be used to establish a child's age. Schools should inform parents and guardians that they may elect not to provide a child's social security number and can instead ask the school district to assign the child a nine-digit number designated

⁹ See *Hispanic Interest Coal. of Alabama v. Governor of Alabama*, 691 F.3d 1236, 1245 (11th Cir. 2012); *League of United Latin Am. Citizens v. Wilson*, 908 F. Supp. 755, 774 (C.D. Cal. 1995), on reconsideration in part, 997 F. Supp. 1244 (C.D. Cal. 1997).



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by the Arkansas Department of Education Division of Elementary and Second Education. To further remove barriers to enrollment, schools can limit the information required to enroll to proof of residency, proof of age, and immunization records, and request any other information after enrollment. In sum:

- Schools should not ask about or require students to provide proof of immigration status.
- Schools should inform parents or guardians that, in the alternative of providing a social security number, they can ask the school district to assign the child a nine-digit number designated by the Arkansas Department of Education Division of Elementary and Second Education.¹⁰
- Schools should not require documents for determining residency or age that only people with U.S. citizenship or current immigration status can have (e.g. U.S. passport, driver's license, etc.). Instead, schools should provide a variety of means for establishing information necessary for enrollment.¹¹
- School administrators should limit the information collected from students, parents and guardians. If there is no reason to collect it, then do not collect it.

Schools should also review what information is contained in school directories, and remind parents, guardians and adult students that they have a right to opt out of having their information included in the directory.¹²

School Districts Must Protect the Privacy of Student Records

FERPA generally prohibits schools and school districts that receive federal funds from releasing personal information contained in a student's education records without the written consent of the parent/guardian or adult student.¹³ FERPA embodies the principle that schools should act with sensitivity in collecting and retaining information regarding children, and should take precautions to ensure that school records are not disclosed or used in a way that could harm students.¹⁴

FERPA allows a law enforcement officer to obtain student information from a school if they have

¹⁰ Ark. Code Ann. § 6-18-208(a)

¹¹ Ark. Code Ann. §6-18-208(b)

¹² 20 U.S.C. § 1232g(a)(5)(B).

¹³ See 20 U.S.C. § 1232g; 34 C.F.R. § 99.1-99.67.

¹⁴ 20 U.S.C. § 1232g; 34 CFR Part 99. The U.S. Department of Education Privacy Technical Assistance Center provides a Data Security Checklist that schools can consult. Privacy Technical Assistance Center, *Data Security Checklist* (rev. 2015), https://studentprivacy.ed.gov/sites/default/files/resource_document/file/Data%20Security%20Checklist_0.pdf.



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a valid court order or judicial subpoena.¹⁵ Schools must make a reasonable effort to alert parents or adult students to a subpoena before providing information.¹⁶ ICE administrative subpoenas are not judicial subpoenas and are not enforceable on their own, absent a separate judicial order or legal proceeding to enforce the subpoena.¹⁷ Any subpoena presented by immigration agents should be reviewed by legal counsel before any information is produced.

Releasing directory information for immigration enforcement purposes could likewise violate the law.¹⁸ Therefore, requests for directory information by immigration agents should also be reviewed by legal counsel.

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

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

Ensuring that students' privacy rights are respected is particularly important if a district has school security officers, school resource officers or other police officers assigned to schools. Districts must ensure that such security officers do not have general access to FERPA-protected records.

Under FERPA, school security officers may use FERPA-protected information if they are acting as a "school official" in order to fulfill a "legitimate educational interest." School security officers may not redisclose that information to other law enforcement officers who are not acting as "school officials" for the same task.¹⁹ Immigration enforcement is not a "legitimate educational interest." Note that school administrators can be held responsible for the actions of school security officers who violate FERPA because security officers are acting as "school officials" when accessing FERPA-protected information.

¹⁵ 20 U.S.C. § 1232g(b)(2)(B), (b)(1)(J).

¹⁶ See 34 C.F.R. § 99.31(a)(9)(ii).

¹⁷ See National Immigration Law Center, *Warrants and Subpoenas: What to Look Out For and How to Respond*, 4-6 (Sept. 2020), www.nilc.org/wp-content/uploads/2020/09/Warrants-Subpoenas-Facts-1.pdf.

¹⁸ See e.g. *Hispanic Interest Coalition of Alabama v. Governor of Alabama*, 691 F.3d 1236 (11th Cir. 2012).

¹⁹ See 34 C.F.R. § 99.31(a)(1)(i)(B), § 99.31(a)(1)(ii) and § 99.33(a)(2).



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We recommend that:

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

Districts must also ensure that such school security officers are properly following Fourth and Fifth Amendment standards for detention, interrogation, search, and seizure, and are not arresting students for incidents that can be handled as matters of school discipline. These concerns carry extra weight for immigrant students, for whom school policing has the potential to undermine the education rights outlined in *Plyler*. Police in schools commonly arrest students for misdemeanor offenses like disorderly conduct when behaviors could easily be addressed through school discipline.²⁰ Police in schools sometimes also collect intelligence on students, for example to enter them into a database of alleged gang associates. In addition to numerous detrimental impacts these forms of policing have on any student,²¹ immigrant students risk having their application for citizenship or other immigration benefits placed in jeopardy or being prioritized for deportation. We recommend that:

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

²⁰ See, e.g., Chongmin Na & Denise Gottfredson, *Police Officers in Schools: Effects on School Crime and the Processing of Offending Behaviors*, 30 JUST. Q. 619, 620 (2013); Steven C. Teske, *A Study of Zero Tolerance Policies in Schools: A Multi-integrate System Approach to Improve Outcomes for Adolescents*, J. OF CHILD AND ADOLESCENT PSYCH. NURSING; Matthew T. Theriot, *School Resource Officers and the Criminalization of Student Behavior*, 37 J. OF CRIM. JUST. (2009).

²¹ See, e.g., Sarah E. Redfield & Jason P. Nance, American Bar Association, Preliminary Report: School-to-Prison Pipeline (Feb. 2016), [chrome-extension://efaidnbmnnnibpcjpcglclefindmkaj/https://www.americanbar.org/content/dam/aba/publications/criminaljustice/school_to_prison_pipeline_report.pdf](https://www.americanbar.org/content/dam/aba/publications/criminaljustice/school_to_prison_pipeline_report.pdf); American Psychological Association Zero Tolerance Taskforce, *Are Zero Tolerance Policies Effective in the Schools?: An Evidentiary Review and Recommendations*, AM. PSYCHOLOGIST (Dec. 2008), <https://www.apa.org/pubs/info/reports/zero-tolerance.pdf>; Gary Sweeten, *Who Will Graduate? Disruption of High School Education by Arrest and Court Involvement*, 23 JUST. Q. 4 (2006)(a first time arrest during high school almost doubles the odds of drop out); Paul Hirschfield, *Another Way Out: The Impact of Juvenile Arrests on High School Dropout*, 82 SOC. OF EDUC. 4 (2009).



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Steps That Schools Can Take to Ensure that They Are Welcoming for All Students

There are many steps districts can take to support their immigrant students.

- The attached self-assessment tool provides a checklist that both the district and each school in the district can use to review your policies and procedures.

In addition, we encourage you to communicate with district families that all students are welcome in your schools.²² Districts should adopt policies for how staff should handle interactions with law enforcement, including ICE, that are consistent with federal and state law. Districts should clearly communicate these policies to the school community to help assuage fears and minimize misinformation. Districts should also share with the school community that you are committed to ensuring an emotionally and physically safe learning environment for all students.

Schools should develop and train staff on protocols to prepare for a situation in which a student's parents or guardians are detained by ICE while the child is in school custody. If parents have filled out a delegation of parental authority or made other legal arrangements, school officials will be able to send a child to the appropriate caregiver if the parents are suddenly taken away. In addition, districts should remind parents and guardians to update their children's emergency contact information. For immigrant families, this is critical to prevent children from unnecessarily being turned over to protective services in the event of a raid.

We also encourage you to share other Know Your Rights materials about immigration enforcement, such as those available on the ACLU of Arkansas' website (<https://www.acluarkansas.org/en/know-your-rights/know-your-rights-immigrants-arkansas>).

If a family member or child is arrested by immigration enforcement agents, schools should advise the family to immediately seek legal advice from an immigration attorney.

How Can Schools Learn More and Stay Up to Date?

Many organizations are working to provide up-to-date information for educators even as there has been a daily barrage of new executive orders and policies. In addition to the resources on the ACLU of Arkansas' website, the following resources may be helpful:

²² For a sample letter, see Pulaski County Special School District Letter, *available at* <https://www.pcssd.org/article/1990977>.



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- The National Immigration Law Center (<https://www.nilc.org/resources>) is an excellent source for current information about changing immigration policies.
- The National Education Association's *Guidance on Immigration Issues* (<https://www.nea.org/resource-library/guidance-immigration-issues>) has information specifically for educators.
- Arkansas Immigration Defense (<https://aidarkansas.com/resources/>) has resources to help schools prepare for ICE raids, among other resources.

Thank you for your important work to ensure that all Arkansas children receive the education they need in order to thrive.

Sincerely,

A handwritten signature in black ink that reads "Holly Dickson". The signature is written in a cursive, flowing style.

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District and School Self-Assessment

Enrollment and Information Collection Practices	
Eliminate requests for documentation at enrollment other than proof of residency, proof of age, and immunization history. In particular, requiring a driver's license or state ID for enrollment excludes many immigrant parents and should be discontinued.	
Establish process for collecting additional documentation after enrollment (e.g. demographic data; home language surveys; school history).	
Include a notification on all documents requesting a student's social security number that a parent or guardian may, in the alternative of providing a social security number, request that the school district assign the child a nine-digit number designated by the Arkansas Department of Education Division of Elementary and Secondary Education.	
Offer multiple means of establishing residency, such as a mortgage, lease, or rental agreement; utility bill; tax bill; pay stub, voter documents, or other proof acceptable to the school.	
Review policies and procedures for enrollment of children without records. ²³	
Ensure that staff accept multiple forms of establishing identity. Under Arkansas law, a parent or guardian may present one of the following documents to establish a child's identity: a birth certificate, a statement by a local registrar or county recorder, an attested baptismal certificate, a passport, an affidavit of the date and place of birth by the child's parent or guardian, previous school records, or a United States military identification. ²⁴	
Remove any requests from home language surveys for information regarding place of birth, immigration status or length of attendance in U.S. schools. Make	

²³ See National Center for Homeless Education, *Prompt and Proper Placement, Enrolling Students without Records* (2006), https://nche.ed.gov/wp-content/uploads/2018/11/tool_app10.pdf.

²⁴ Ark. Code Ann. § 6-18-208



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clear to families that the home language survey is not used to identify immigration status.	
Staff responsible for enrollment have received training within the past year and on any revised policies.	
Procedures for collecting, transferring, and storing enrollment information are secure. ²⁵	
Parent Information	
Eliminate any requests for information regarding parent citizenship or immigration status.	
Review measures for parent and visitor screening to ensure these do not undermine parent engagement with the school. In particular, requiring a driver's license or state ID can prevent immigrant parents from participating.	
Records Maintenance and Usage	
Review policy on directory information and revise as necessary to:	
(i) Limit the extent of information characterized as directory information.	
(ii) Remove any categories of information that could be used to identify or presume immigration status, such as place of birth.	
Review policies and provide notice to students and families:	
(iii) Ensure that no student information will be used or disclosed for purposes of immigration enforcement except as required under a valid court order or subpoena. Information on what to look out for and how to respond to warrants and subpoenas is available at:	

²⁵ See Privacy Technical Assistance Center, *Data Security Checklist* (rev. 2015), https://studentprivacy.ed.gov/sites/default/files/resource_document/file/Data%20Security%20Checklist_0.pdf.



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	www.nilc.org/wp-content/uploads/2020/09/2025-Subpoenas-Warrants.pdf	
(iv)	Ensure that information collected related to English Language Learner status, including through home language surveys, is disclosed only to the extent necessary and or the purpose of providing language acquisition services.	
(v)	Define “legitimate educational interests” in school policies to expressly exclude immigration enforcement and all forms of law enforcement. Records may be made available for law enforcement purposes under FERPA emergency or subpoena exceptions.	
(vi)	Expressly define security camera footage inside of school buildings as educational records.	
(vii)	Remind families that they can opt out of disclosing directory information.	
	Review security of student information systems and practices for access, disclosure, and use of student records.	
	Confirm that any consultant or third party to which the district discloses information agrees to abide by district policies.	
	Document all requests for disclosure of student records, actual disclosures, and the legitimate educational interest justifying disclosure.	
	Responding to Immigration Enforcement Actions	
	Develop protocols to handle immigration enforcement by ICE, CBP, or other law enforcement agencies, and ensure all staff are trained on these procedures. Such protocols can also be used for all law enforcement investigations at schools.	



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Train all school staff, based on your protocols, that if immigration agents or other law enforcement come to a school seeking student information, seeking to interview students, or seeking to enter school property, staff should immediately inform a designated trained contact person (for example the principal), who should then consult the school’s attorney. Train staff that they should not themselves consent to immigration enforcement officers entering non-public areas and should not allow immigration enforcement officers to interview students. Train staff to ask officials to wait off school premises while any warrant or order is verified by an attorney. Train staff that schools may face legal repercussions if staff provide information to immigration agents about students, which is why legal review of all requests for student information is critical.	
Ensure that school entry areas clearly show the point at which visitors may not pass. Many schools already have signage to ensure that unauthorized individuals do not enter beyond the school office. Post signage at school playgrounds, sports fields, etc., regarding the hours when this property is not open to the public.	
Observe and document all contacts by immigration officials. Request proper identification from agents. Make copies of identification and any warrants or subpoenas.	
School Security Officers	
If a district uses school security officers, require officers to be trained on the education system’s <i>Plyler</i> obligations and other governing civil rights laws.	
Require law enforcement officers working in schools to affirmatively commit:	
(i) That officers will not inquire about the immigration status of any student or the family or friends of any student.	
(ii) That officers will not take immigration enforcement actions or detain any student for ICE.	
(iii) That for any parent or family member on school grounds or participating in an educational activity, officers will not inquire about a family member’s immigration status or detain a family member.	



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(iv)	That officers will not arrest students for any misdemeanor offense and will endeavor to avoid arresting or citing a student whenever practicable.	
(v)	That officers will not enter information on students into a gang database and will not collect and retain other intelligence records on students.	
Educating Families		
Share Know Your Rights materials. ²⁶		
Send letter to families about school policies and that the district is a welcoming place.		
Remind all parents regularly in many languages that they should have updated emergency contact information so that the school is able to reach the person to whom they would like their child released in the event that they are not able to pick them up. For immigrant families, this is critical to prevent children from unnecessarily being turned over to protective services in the event of a raid.		
School Climate		
Ensure policies effectively cover discrimination, including harassment.		
Designate one employee at each school as the person to whom students can report incidents of potential harassment or other discrimination. Ensure that students know about the designated employee.		
Engage in a school-wide positive climate program.		
Provide teachers with resources and support to instill a positive climate and address classroom incidents.		

²⁶ <https://www.acluarkansas.org/en/know-your-rights/know-your-rights-immigrants-arkansas>