

Promoting a Safe and Secure Learning Environment for All:

Guidance and Model Policies to Assist California's K-12 Schools in Responding to Immigration Issues



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Introduction

California’s public schools serve more than six million children and their families. The State’s educators have the incredible opportunity, and responsibility, to create and maintain secure and peaceful learning environments for all students, regardless of nationality or immigration status.¹ In a state in which half of all children have at least one immigrant parent,² the ways in which our schools handle immigration issues are critically important.

According to The Education Trust-West, 250,000 undocumented children between the ages of 3 and 17 years are enrolled in California public schools, and 750,000 K-12 students in California have an undocumented parent. The State and its educators must do everything within their control to make all California schools safe havens for California’s students and families.³

Immigration enforcement threats have led immigrant families to ask whether it is safe to send their children to school. Although California cannot control the actions of federal immigration-enforcement agencies, federal and California laws empower schools to welcome all students and to reassure them of their educational rights and opportunities. Under the U.S. Constitution, all students have a right to receive an education without discrimination based on immigration status. In *Plyler v. Doe*, the U.S. Supreme Court recognized that undocumented immigrants are guaranteed due-process and equal-protection rights under the U.S. Constitution, and that children cannot be denied equal access to a public education on the basis of their immigration status. Therefore, schools must provide free public education to all students regardless of their immigration status and regardless of the citizenship status of the students’ parents or guardians.⁴



California law similarly affirms the equal educational rights of immigrant students. In California, all children between the ages of 6 and 18 years must be enrolled in school.⁵ Under the California Constitution, all students and staff—regardless of immigration status—“have the inalienable right to attend campuses which are safe, secure and peaceful.”⁶ The California Supreme Court has affirmed that an immigrant student’s right to equal educational opportunity is “a vitally important right in our society.”⁷ And the U.S. Supreme Court has ruled that the federal government cannot commandeer state and local governments.⁸ Protections are expressly codified in California law to outlaw discrimination on the basis of a student’s immigration status “in any program or activity conducted by an educational institution that receives, or benefits from, state financial assistance, or enrolls pupils who receive state financial aid.”⁹

Purpose of This Guide

Assembly Bill (AB) No. 699 (O’Donnell and Chiu; 2017-2018 Regular Session) mandates that the Attorney General, by April 1, 2018, publish model policies “. . . limiting assistance with immigration enforcement at public schools, to the fullest extent possible consistent with federal

and state law, and ensuring that public schools remain safe and accessible to all California residents regardless of immigration status.”¹⁰ AB 699 further requires that by July 1, 2018, all local educational agencies in California, including all school districts, county offices of education, and charter schools, adopt these or equivalent policies.¹¹

California Attorney General Xavier Becerra provides this guide to California’s public schools to fulfill this mandate and to equip local educational agencies with the information and resources necessary to provide safe, welcoming environments for all students and to safeguard the rights



and privacy of students and their families.

To that end, this guide discusses procedures for responding to actions and requests for information by any law-enforcement officer for purposes of enforcing immigration laws. The guide also addresses policies for responding to hate crimes and bullying that targets immigrants.

Specifically, the guide (1) outlines relevant state and federal protections for students and families, (2) provides policy recommendations that comply with state and federal laws and that may mitigate disruptions from immigration-

enforcement actions at public schools, and (3) lists model policies that must be adopted (or have equivalent policies adopted) by local educational agencies by July 1, 2018. A quick reference guide on responding to on-campus immigration enforcement and requests for student and family information is also included in Appendix A. The guide is also accompanied by a “Know Your Educational Rights” page (included in Appendix G), a guide for students and families (translations of which are available in Spanish, Chinese, Vietnamese, Arabic, Korean, and Tagalog), and a list of legal resources in the event a student’s family member is detained or deported.

This guide offers local educational agencies governing law and model policies for handling and responding to the following circumstances:

1. Gathering and Handling Student and Family Information.
2. Sharing Student and Family Information.
3. Responding to Requests for Access to School Grounds for Immigration-Enforcement Purposes.
4. Responding to the Detention or Deportation of a Student’s Family Member.
5. Responding to Hate Crimes and Bullying Related to National Origin or Ethnicity.

This guide is intended to help school officials form practical plans to protect the rights of immigrant students and their families. California law-enforcement agencies are prohibited under state law from performing the functions of an immigration officer. But local educational agencies should be aware that although U.S. Immigration and Customs Enforcement (ICE) or U.S. Customs and Border Protection (CBP) are the agencies with primary responsibility for federal

immigration enforcement, there are instances in which other law-enforcement agencies may attempt to enforce federal immigration laws. This guide treats similarly ICE or CBP and other local law-enforcement officers attempting to enforce immigration laws. Likewise, any policy adopted by local educational agencies to address interactions between the local educational agency personnel and immigration agents should encompass all law-enforcement agencies that seek to enforce immigration law and handle requests from all law-enforcement agencies acting with that purpose the same way.

This guide is intended to provide model policies for all local educational agencies. Under AB 699, all local educational agencies shall adopt these model policies—or equivalent policies—by July 1, 2018.¹² Because traditional K-12 schools are the predominant programs operated by local educational agencies, this guidance focuses on that context. The model policies described here can be adapted and applied to other programs (e.g., regional occupational programs, continuation schools, adult education programs, and K-12 education programs offered at community colleges or other nontraditional sites). To the extent that any specific education program presents circumstances that are not addressed in these materials, school officials should consult with their management and attorneys in adapting the model policies described here.

Some local educational agencies have already adopted policies to comply with AB 699. To the extent that local educational agencies have developed policies that are aligned with or provide greater protections for students and families, this guide is not intended to supersede those policies. Rather, this guide offers foundational policies reflecting the requirements that at minimum should be present in the policies of any California local educational agency. Local educational agencies that have already adopted policies should use this guide as a resource to ensure alignment and to distribute the quick reference document to school officials, and know your rights, student/family checklist, and resource pages to students and families, where appropriate.

However, local educational agency policies must substantially reflect the model policies here except where contrasting laws or circumstances require adjustments. If you have reason to believe that a school is not following the model policies identified in this guidance, please e-mail the **Bureau of Children's Justice in the California Department of Justice**, at **BCJ@doj.ca.gov**, or submit a complaint on the Bureau's website at **<https://oag.ca.gov/bcj/complaint>**.

This guide is based on current (2018) law, which may change; the guide is not legal advice. Local educational agency management should consult with its attorneys when formulating its own policies and practices—and in addressing any questions—regarding the issues covered in this guide.

Purpose

Provide school administrators with policies for collecting and retaining information to prevent unnecessary collection of information on the immigration status of students and their families.

Governing Law

1. Social Security Numbers

Every individual has a considerable privacy interest in retaining the confidentiality of his or her Social Security number.¹³ California law bars school districts, county offices of education, and charter schools from collecting or soliciting Social Security numbers, or the last four digits thereof, from students or their parents or guardians, unless otherwise required to do so by state or federal law.¹⁴ While solicitation of a parent's or guardian's last four digits of his or her Social Security number—or a statement that the parent does not possess a Social Security number—is a way to establish eligibility for a free or reduced-price lunch,¹⁵ there is no federal or California law that requires schools to collect Social Security numbers from students or their parents and guardians for enrollment purposes. Therefore, local educational agencies may not collect or solicit a student's or parent's/guardian's Social Security number or Social Security card during the school enrollment process.

2. Enrollment Information

During the student enrollment process, school districts in particular must verify certain information, including a student's residency in the district and age. Education Code section 48204.1 requires school districts to accept "[r]easonable evidence" of residency in the district and list the types of documents that school districts must accept, at a minimum, as proof of residency:

- Property tax payment receipts
- Rental property contract, lease, or payment receipts
- Utility service contract, statements, or payment receipts
- Pay stubs
- Voter registration
- Correspondence from a government agency
- Declaration of residency executed by the parent or legal guardian of the student.

While a district must accept the listed documents, the district may choose to accept other types, as well.¹⁶ Also, parents and guardians are not required to provide each and every document listed.

To prove age, Education Code section 48002 permits school districts to accept the following:

- Certified copy of birth record
- Statement by the local registrar or county recorder certifying the date of birth
- Baptism certificate
- Passport
- When none of the foregoing is obtainable, an affidavit of the parent, guardian, or custodian, or any other appropriate means of proving the child's age.

Local educational agencies may not bar or discourage a child from enrolling in school because he or she lacks a birth certificate or passport, or has one from a foreign country.¹⁷ A local educational agency's refusal to accept alternative proof of residency or age on the basis of a child's or a parent's/guardian's actual or perceived race, color, national origin, citizenship, or immigration status may constitute a violation of federal and California civil rights law.¹⁸

Additionally, the McKinney-Vento Homeless Assistance Act requires schools to immediately enroll a homeless child or youth even if he or she is unable to provide proof of residency or age or other documentation normally required for enrollment.¹⁹

School districts should never ask about the citizenship or immigration status of students or their parents or guardians for the purpose of establishing in-district residency. California law prohibits schools from, at any time, collecting any information or documents regarding citizenship or immigration status of pupils or family members, unless required by state or federal law to administer a state or federally supported education program.²⁰ However, schools are never required under federal or state law to collect citizenship or immigration status information as this information is irrelevant to the enrollment process, so they shall never do so. Such inquiries may substantially interfere with a student's access to a basic public education in violation of the Equal Protection Clause principles articulated by the U.S. Supreme Court in *Plyler v. Doe*.²¹



Federal law and California law also prohibit local educational agencies from engaging in any practices with the purpose or effect of discriminating against students on the basis of race, color, or national origin. Inquiries into a student's or parent's immigration or citizenship status may have such a discriminatory effect.²² California law specifically prohibits discrimination on the basis of an individual's immigration status, for any program or activity conducted by an educational institution that either receives or benefits from state financial assistance, or that enrolls students who receive state financial aid.²³ In addition, state law requires "full and equal accommodations, advantages, facilities, privileges, or services" for students regardless of their citizenship or immigration status.²⁴ Local educational agencies should review their student-enrollment, residency, and data-collection policies and practices, not only to ensure that they comply with these federal and state laws, but also to safeguard against inadvertently discouraging immigrant/undocumented children from enrolling in or attending

school because of the content of the enrollment forms or the mechanics of the enrollment process.

Local educational agencies may ask for (but parents are not required to provide) certain national origin related information—such as a student’s place of birth, U.S. entry date, and the date the student first attended school in the U.S.—to comply with federal or state reporting requirements for special programs (e.g., for reporting on language instruction programs for English learners).²⁵ However, local educational agencies may not use the acquired data to discriminate against immigrant students or prevent children from enrolling in or attending school if their parents or guardians choose not to provide this information.²⁶ To avoid deterring initial school enrollment of immigrants or their children, agencies should collect this information separately from the school enrollment process.

Local educational agencies must also provide information to parents, guardians, and students, where appropriate, informing them of students’ rights related to free public education, regardless of immigration status or religious beliefs.²⁷

If they have not done so already, local educational agencies must develop written policies and procedures for gathering and handling confidential student information, and conduct agency-wide staff training on handling inquiries regarding these policies and practices. Local educational agencies should also review all student-enrollment policies, practices, and forms, to ensure that any information or documents required for establishing residency do not risk negatively affecting student enrollment. Administrators should field test materials and seek community input to gauge whether materials are having such effect.

Policy Recommendations: Gathering and Handling Student and Family Information

1. Policies for Collecting and Retaining Student Information

Written and Publicly Available Policies; Training

Policies and procedures for gathering and handling sensitive student information during enrollment or otherwise should be set out in writing. Staff should receive training on these policies and procedures.



Document/Record Retention

As discussed below, the local educational agency should avoid seeking or collecting information regarding students’ or families’ immigration status. However, if the local educational agency is required to collect national origin information because of federal reporting requirements, such information shall not be used to discriminate or prevent children from enrolling in or attending school; nor should parents’ or guardians’

decision to withhold such information be used to discriminate against students or prevent their enrollment. Moreover, the local educational agency shall not use such information to create a registry based on race, gender, sexual orientation, religion, ethnicity, or national origin.

2. Immigration Status, Citizenship Status, National Origin Information

Information on Immigration Status, Citizenship Status, and National Origin Generally

Do not at any time seek information about a student's citizenship or immigration status specifically. Do not at any time seek or require, to the exclusion of other sufficient and permissible information, information regarding or probative of a student's or his/her parent's citizenship (U.S. citizenship or foreign citizenship) or immigration status (e.g., immigration number).

While agencies may be required to collect and provide information related to a student's national origin (i.e., information regarding a student's birthplace, entry date into the United States, date of first enrollment in a U.S. school, or departure from the United States after entry) to satisfy certain federal reporting requirements for special programs, to avoid deterring initial school enrollment of immigrants or their children, agencies should collect this information separately from the school enrollment process.

Proof of Residency in Attendance Zone and Proof of Age

Notify students and families of the full range of documents that will be accepted as proof of residency in the relevant attendance zone and as proof of age.

Under Education Code section 48204.1, the following documents establish proof of residency in an attendance zone:

- ✓ Property tax payment receipts;
- ✓ Rental property contract, lease, or payment receipts;
- ✓ Utility service contract, statement, or payment receipts;
- ✓ Pay stubs;
- ✓ Voter registration;
- ✓ Correspondence from a government agency; or
- ✓ Declaration of residency executed by the parent or legal guardian of the pupil.

Under Education Code section 48002, the following documents establish age:

- ✓ Certified copy of a birth record;
- ✓ Statement by the local registrar or a county recorder certifying the date of birth;
- ✓ Baptism certificate;
- ✓ Passport; or
- ✓ Affidavit of the parent, guardian, or custodian of the minor.

Under both Education Code section 48204.1 and Education Code section 48002, a school district can choose to accept other documents to show residency in a zone and show age. On those matters and other matters where an agency has the discretion to add permissible

alternatives, a local educational agency should ensure that alternatives for documentation include documents that are available regardless of citizenship or immigration status, and that do not reveal information related to citizenship or immigration status. Local educational agencies should review and adjust all student enrollment/application policies, practices, and forms, to ensure that they include and describe to the applicant all acceptable alternatives.

3. Requests for Social Security Numbers or Other Personal Information

Social Security Numbers or Cards

Solicit and collect the last four digits of an adult household member's Social Security number only if required to establish eligibility for federal benefit programs.

When collecting the last four digits of an adult household member's Social Security number to establish eligibility for a federal benefit program, the local educational agency should explain the limited purpose for which this information is collected and clarify that a failure to provide this information will not bar the student from enrolling in or attending the school.

"Free and Reduced-Price Meals" Forms

When a family is completing the "Free and Reduced-Price Meals" form, the local educational agency should notify parents or guardians that:

- ✓ If any household member participates in CalFresh, CalWORKs (California Work Opportunity and Responsibility for Kids), or FDPIR (Food Distribution Program on Indian Reservations), no adult household member needs to provide the last four digits of his or her Social Security number; and
- ✓ If no householder member of a student's family participates in CalFresh, CalWORKs, or FDPIR, and no adult household member has a Social Security number, the student still can qualify for free or reduced price meals, if the family meets the income eligibility requirements. The "No SSN" box on the form must be checked for the application to be considered complete.

Gathering Information from Parent Volunteers

To the extent permissible, the local educational agency should communicate to families the available volunteer positions and whether such positions require completion for live scan or other fingerprinting. The local educational agency should provide this notice to all students and families, regardless of immigration status.

Model Policies: Gathering and Handling Student and Family Information

All local educational agencies shall adopt the following model policies, or equivalent policies, by July 1, 2018:

Model Policies for Collecting and Retaining Student Information

- The [title of appropriate official or name of unit] shall maintain in writing [local educational agency] policies and procedures for gathering and handling sensitive student information, and appropriate personnel shall receive training regarding those policies and procedures.
- If the [local educational agency] possesses information that could indicate immigration status, citizenship status, or national origin information, the [local educational agency] shall not use the acquired information to discriminate against any students or families or bar children from enrolling in or attending school.
- If parents or guardians choose not to provide information that could indicate their or their children's immigration status, citizenship status, or national origin information, the [local educational agency] shall not use such actions as a basis to discriminate against any students or families or bar children from enrolling or attending school.
- The [local educational agency] shall not allow school resources or data to be used to create a registry based on race, gender, sexual orientation, religion, ethnicity, or national origin.

Model Policies for Inquiries Regarding Immigration Status, Citizenship Status, and National Origin Information

- [Local educational agency] personnel shall not inquire specifically about a student's citizenship or immigration status or the citizenship or immigration status of a student's parents or guardians; nor shall personnel seek or require, to the exclusion of other permissible documentation or information, documentation or information that may indicate a student's immigration status, such as a green card, voter registration, a passport, or citizenship papers.
- Where any law contemplates submission of national origin related information to satisfy the requirements of a special program, [local educational agency] personnel shall solicit that documentation or information separately from the school enrollment process.
- Where permitted by law, the [title of officer or unit] of the [local educational agency] shall enumerate alternative means to establish residency, age, or other eligibility criteria for enrollment or programs, and those alternative means shall include among them documentation or information that are available to persons regardless of immigration status, citizenship status, or national origin, and that do not reveal information related to citizenship or immigration status.

Model Policies for Inquiries Regarding Immigration Status, Citizenship Status, and National Origin Information (continued)

- Where residency, age, and other eligibility criteria for purposes of enrollment or any program may be established by alternative documents or information permitted by law or this [resolution/policy], the [local educational agency's] procedures and forms shall describe to the applicant, and accommodate, all alternatives specified in law and all alternatives authorized under this [resolution/policy].

Model Policies for Inquiries About Social Security Numbers or Cards

- The [local educational agency] shall not solicit or collect entire Social Security numbers or cards.
- The [local educational agency] shall solicit and collect the last four digits of an adult household member's Social Security number only if required to establish eligibility for federal benefit programs.
- When collecting the last four digits of an adult household member's Social Security number to establish eligibility for a federal benefit program, the [local educational agency] shall explain the limited purpose for which this information is collected, and clarify that a failure to provide this information will not bar the student from enrolling in or attending the school.
- The [local educational agency] shall treat all students equitably in the receipt of all school services, including, but, not limited to, the gathering of student and family information for the free and reduced lunch program, transportation and educational instruction.

Purpose

Identify categories of student information not subject to release by local educational agencies and provide model policies instructing students and families on ways to protect against the release of student information, to the extent permitted under the law.

Governing Law

Citizenship and Immigration Status Information. Federal law does not impose an affirmative duty on state or local government entities to collect information about an individual's citizenship or immigration status. California law generally prohibits law enforcement, including school police, from "[i]nquiring into an individual's immigration status."²⁸ Similarly, local educational agencies are prohibited from collecting citizenship or immigration status information specifically.²⁹ Thus, an agency's acquisition of information about an individual's immigration status would generally be merely incidental to some other purpose (e.g., parental choice to submit a passport containing visa information as proof of student age).

Therefore, local educational agencies seeking to protect immigrant students' privacy typically choose not to acquire facts surrounding immigration and citizenship status. Accordingly, agencies may have no such information about a given student to share with law enforcement for immigration-enforcement purposes.³⁰ (See Section 1.)

But if a state or local government (in particular) nonetheless possesses information regarding citizenship or immigration status, federal law provides that *state or local* governments may not prohibit or restrict employees from sending or receiving such information to or from federal immigration-enforcement authorities or prohibit or restrict agencies from maintaining information regarding immigration status.³¹ *Federal* law itself restricts local educational agencies from sharing of personal information as described below, and those federal restrictions would apply with equal force to student personal information—such as information regarding a student's citizenship or immigration status—contained in education records.



Personal Information Generally. Federal law requires that, in most cases, a local educational agency must seek a parent's or guardian's consent before releasing *any* student information to an outside entity.³² However, local educational agencies may release information without parental/guardian consent, in limited instances, to certain enumerated individuals for "legitimate educational interests" or the release of "directory information." These instances and other confidentiality protections are discussed in further detail below.³³

1. Restrictions on Release of Personal Information or Educational Records

As a condition of federal funding, federal law restricts local educational agencies from releasing certain private student information without the consent of the student's parents, or the student if the student has reached 18 years of age or is attending an institution of postsecondary education.³⁴ Under the federal Family Educational Rights and Privacy Act (FERPA), federal funding for educational institutions may be withheld from an educational agency or institution (including a local educational agency) that has a policy of releasing educational records or personally identifiable information (other than directory information; see discussion below) of students, without the written consent of the students' parents.³⁵ The California Education Code includes overlapping and additional protections against the disclosure of students' educational records or personally identifiable information contained therein that school districts must also follow.³⁶

Such written consent must be signed and dated by the parent or by the eligible student (student that is 18 years or older, or attending a post-secondary institution) before disclosure of the information, and must specify the records that may be disclosed, the purpose of the disclosure, and the party or class of parties to whom the disclosure may be made.³⁷ If desired by the parents or eligible student, the local educational agency must provide a copy of the records to be released.³⁸ The consent notice shall be permanently kept with the record file.³⁹ Also, the local educational agency must notify the recipient that transmission of the information to others without the written consent of the parent is prohibited.⁴⁰

2. Exceptions Permitting Disclosure of Information Without Consent



An agency may provide access to educational records without consent from the parent or eligible student in limited circumstances. Such circumstances include information relevant to the legitimate educational interests of the requestor—such as for reviewing school attendance issues, providing schools with information on transferring students, evaluating federally funded educational programs, and conducting truancy mediation.⁴¹ An agency may also provide information without consent in

response to a judicial order or lawfully issued and effective subpoena. (See Section 3, below.)⁴²

But none of these exceptions authorize or require disclosing information for immigration enforcement (which is not a legitimate educational interest), nor is there any separate requirement in federal or state law to provide information to the Department of Homeland Security (DHS), ICE, or any other agency within DHS, without a court order or judicial subpoena.⁴³ Also, except in instances in which the matter involves child abuse, neglect, or dependency, or if the local educational agency is served with a subpoena prohibiting disclosure, the parents and the students must be notified of any judicial order or subpoena *before* the school complies with the order.⁴⁴

3. Prohibition of Release of Personal Information Obtained by School Police

In addition to the protections afforded to students in FERPA and the California Education Code, the California Government Code prohibits school police from providing “personal information” about an individual for immigration-enforcement purposes, unless that information is publicly available.⁴⁵ The definition of “personal information” incorporates any information that “identifies or describes an individual” including, but not limited to, an individual’s physical description, home or work address, telephone number, education, financial matters, medical or employment history, and statements made by, or attributed to, the individual.⁴⁶ While the California Government Code does not prohibit school police from exchanging information regarding a person’s citizenship or immigration status with governmental entities,⁴⁷ FERPA’s restrictions on sharing personal information contained in education records as described above applies to police officials employed by a local educational agency in the same way it applies to other local educational agency officials.

4. Annual Notification Requirement Regarding School Privacy Policy

At minimum, local educational agencies must provide students and families with annual notice, at the beginning of each school year, of school policies for student privacy and the abilities of parents to inspect student information. At least once per year, local educational agencies must notify parents or guardians if and when the schools may release student information, and the policies regarding the handling and destruction of such information.⁴⁸ Such notification shall be provided in the parents’ or guardians’ primary languages if at least 15 percent of the students enrolled in the school speak a single primary language other than English.⁴⁹ Also, the local educational agencies must notify the parents of any changes to the privacy policy within a reasonable period after that change.⁵⁰

5. Directory Information

Directory information is the basic student information that can be shared with outside parties, unless a parent or guardian opts out of the release of the information.⁵¹ No law mandates that local educational agencies provide directory information.⁵² However, local educational agencies that have a policy regarding gathering directory information can disclose such information to designated individuals, officials, and organizations without the parent’s or student’s explicit consent (except for students identified as a homeless child or youth).⁵³

Only the types of information specifically identified in Education Code section 49061, subdivision (c), may be provided as directory information. Thus, directory information cannot include national origin, citizenship status, or immigration status, because that information is not identified in section 49061. Nor may directory information include a student’s Social Security number or student identification (SID) number, unless the SID number is needed with other identifying information, such as a password or personal identification number, to gain access to student records.⁵⁴

Local educational agencies must give annual notice of the school's directory information policy, and afford an opportunity to refuse release of directory information, to parents of students in attendance, and "eligible students"—students who are 18 years of age or older or are attending an institution of postsecondary education.⁵⁵ Specifically, notices to parents and eligible students must describe the following:

- The kind of information that the school has identified as directory information;
- The parent's or student's ability to refuse to let the school designate the information as directory information, which could be disclosed to outside entities;
- The period of time in which the parent or student has to notify the school in writing that he or she does not want the information designated as directory information; and
- That opting out by the noted deadline is the parents'/guardians'/students' only way to prevent the release of directory information.⁵⁶

California law also requires local educational agencies to determine "which individuals, officials, or organizations may receive directory information" and prohibits the release of directory information to "any profitmaking entity other than employers, prospective employers, and representatives of the news media."⁵⁷ Local educational agency administrators must also notify parents or guardians of the recipients of the directory information.⁵⁸

Policy Recommendations: Sharing Student and Family Information

1. Policies and Procedures Regarding Information Sharing

As noted below, the model policies must seek to avoid unauthorized disclosure of a student's or family's immigration information. Local educational agencies must develop policies for notification of local educational agency officials and families when receiving inquiries regarding a student's or family's immigration or citizenship status. The local educational agency shall develop focused policies regarding disclosure of information for individuals participating in programs serving immigrant families. And the local educational agency must require written consent from the parent, guardian, or eligible student for release of student information, unless that information is relevant for a legitimate educational interest or includes directory information, both of which are described below:

Examples of information relevant to legitimate educational interests

- ✓ Record of student's attendance;
- ✓ Student transfers;
- ✓ Audit of federally-supported educational programs;
- ✓ Truancy mediation; and
- ✓ Criminal investigation;⁵⁹

Examples of directory information

- ✓ Name
- ✓ Address
- ✓ Telephone number
- ✓ Weight and height of athletic team members
- ✓ Date of birth
- ✓ E-mail address
- ✓ Major field of study
- ✓ Dates of attendance
- ✓ Most recent previous school attended
- ✓ Participation in officially recognized activities and sports
- ✓ Degrees and awards received⁶⁰

Requirements for Written Consent for Release of Student Information

Parents, guardians, and eligible students are not required to provide written consent for the release of information. If they decline to give written consent, and the information is not otherwise subject to release (because it is not relevant to a legitimate educational purpose, directory information, or subject to a judicial order or lawfully issued and effective subpoena), the local educational agency shall not release the information.

The local educational agency's policy for written consent of student information—excluding information relevant for a legitimate educational interest, directory information, or subject to a judicial order or lawfully issued and effective subpoena—must include the following requirements:

- ✓ The parent, guardian, or eligible student must sign and date the consent form before disclosure of the information.
- ✓ The consent form must include the following:
 - Description of the records to be disclosed;
 - Reason for disclosure;
 - Party or class of parties to whom disclosure may be made; and
 - (If desired by the parents, guardian, or eligible student) a copy of the records to be released.
- ✓ The local educational agency must notify the recipient of the information that transmission to others without the written consent of the parent is prohibited.
- ✓ The consent notice must be permanently kept in the record file.

2. Annual Notice to Parents and Guardians Regarding Information Policy

At the start of every school year, all local educational agencies must provide students and families a statement of the school's privacy policies regarding student information, including, but not limited to:

General Information Policies

- ✓ The local educational agency must provide an annual notice to parents and guardians of the school's general information policies that includes:
- ✓ Assurances that the local educational agency will not release information to third parties for immigration-enforcement purposes, except as required by law or court order.
- ✓ A description of the types of student records maintained by the local educational agency.
- ✓ A list of the circumstances or conditions under which the school might release student information to outside people or entities.
- ✓ A statement that, unless the local educational agency is providing information for a legitimate educational purpose under FERPA and the California Education Code or directory information, the local educational agency shall notify parents or guardians and eligible students—and receive their written consent—before it releases a student's personally identifiable information. (See above for contents of the written consent form.)
- ✓ Policies regarding the retention and destruction of personally identifiable information.

Directory Information Policies

The law does not require that local educational agencies release directory information. If the local educational agency decides not to release directory information, its policy need not include any statement on directory information.

If a school within the local educational agency releases directory information, it must notify parents/guardians and adult students in its annual notification of the directory information policy that they can opt out of the release of directory information. The annual notification must clearly note the deadline for parent(s)/guardian(s) and adult students to submit their request to opt out.

Model Policies: Sharing Student and Family Information

All local educational agencies shall adopt the following model policies, or equivalent policies, by July 1, 2018:

Model Policies and Procedures Regarding Information Sharing

- The [local educational agency] shall avoid the disclosure of information that might indicate a student's or family's citizenship or immigration status if the disclosure is not authorized by Family Educational Rights and Privacy Act (FERPA).
- [Local educational agency] personnel shall take the following action steps upon receiving an information request related to a student's or family's immigration or citizenship status:
 - ✓ Notify a designated [local educational agency] official about the information request.
 - ✓ Provide students and families with appropriate notice and a description of the immigration officer's request.
 - ✓ Document any verbal or written request for information by immigration authorities.
 - ✓ Unless prohibited, provide students and parents/guardians with any documents issued by the immigration-enforcement officer.
- Except for investigations of child abuse, child neglect, or child dependency,⁶¹ or when the subpoena served on the local educational agency prohibits disclosure,⁶² the [local educational agency] shall provide parental or guardian notification of any court orders, warrants, or subpoenas before responding to such requests.
- The [local educational agency] shall require written parental or guardian consent for release of student information, unless the information is relevant for a legitimate educational interest or includes directory information only. Neither exception permits disclosing information to immigration authorities for immigration-enforcement purposes; no student information shall be disclosed to immigration authorities for immigration-enforcement purposes without a court order or judicial subpoena.

Model Policies and Procedures Regarding Information Sharing (continued)

- The [local educational agency's] request for written or parental or guardian consent for release of student information must include the following information: (1) the signature and date of the parent, guardian, or eligible student providing consent; (2) a description of the records to be disclosed; (3) the reason for release of information; (4) the parties or class of parties receiving the information; and (5) if requested by the parents, guardians or eligible student, a copy of the records to be released. The [local educational agency] shall permanently keep the consent notice with the record file.
- The parent, guardian, or eligible student is not required to sign the consent form. If the parent, guardian or eligible student refuses to provide written consent for the release of student information that this not otherwise subject to release, the [local educational agency] shall not release the information.

Model Policies for Annual Information Notice to Parents and Guardians

General Information Policy

- The [local educational agency] must provide an annual notice to parents and guardians of the school's general information policies that includes:
 - ✓ Assurances that the [local educational agency] will not release information to third parties for immigration-enforcement purposes, except as required by law or court order.
 - ✓ A description of the types of student records maintained by the [local educational agency].
 - ✓ A list of the circumstances or conditions under which the [local educational agency] might release student information to outside people or entities.
 - ✓ A statement that, unless the [local educational agency] is providing information for a legitimate educational purpose under FERPA and the California Education Code or directory information, the [local educational agency] shall notify parents or guardians and eligible students—and receive their written consent—before it releases a student's personally identifiable information.

Model Policies for Annual Information Notice to Parents and Guardians (continued)

Directory Information Policy

- If the [local educational agency] decides to release directory information, the [local educational agency] shall provide an annual notice to parents and guardians, and “eligible students” in attendance, of the [local educational agency’s] directory information policy that includes:
 - ✓ The categories of information that the [local educational agency] has classified as public directory information that may be disclosed without parental consent and which should only include the information specifically identified in Education Code section 49061, subdivision (c).
 - ✓ A statement that directory information does not include citizenship status, immigration status, place of birth, or any other information indicating national origin (except where the [local educational agency] receives consent as required under state law).
 - ✓ The recipients of the directory information.
 - ✓ A description of the parent’s or guardian’s abilities to refuse release of the student’s directory information, and how to refuse release.
 - ✓ The deadline in which the parent, guardian or student must notify the school in writing that he or she does not want the information designated as directory information.⁶³

Purpose

Inform school administrators on policies and practices for responding to immigration agents requesting access to school facilities, student information, or contact with a student.

Governing Law

1. Immigration and Customs Enforcement/Customs and Border Protection Policies Regarding Access to Sensitive Locations

Schools are “sensitive locations” at which immigration enforcement should not generally occur. ICE and CBP have each issued a memorandum and accompanying frequently asked questions describing policies regarding immigration-enforcement actions at or focused on sensitive locations.⁶⁴ These policies do not preclude enforcement actions at such locations. Rather, the policies provide that enforcement actions at or focused on sensitive locations should generally be avoided. Such actions may take place at sensitive locations only when either: (a) prior approval is obtained from an appropriate supervisory official; or (b) there are exigent circumstances necessitating immediate action without prior approval. According to the ICE memorandum, exigent circumstances exist when there is: (a) an enforcement action involving a national security or terrorism matter; (b) imminent risk of death, violence, or physical harm to a person or property; (c) an enforcement action involving the immediate arrest or pursuit of a dangerous felon, terrorist suspect, or any other individual posing an imminent danger to public safety; or (d) an imminent risk of destruction of evidence material to an ongoing criminal case.⁶⁵ When proceeding with an enforcement action under exigent circumstances, officers and agents must conduct themselves as discretely as possible, consistent with officer and public safety, and make every effort to limit the time at or focused on the sensitive location.⁶⁶



The sensitive-location policies cover any actions taken by ICE or CBP to apprehend, arrest, interview, or search an individual, or to conduct surveillance for immigration-enforcement purposes. These policies do not extend to actions such as obtaining records, documents, and similar materials from officials or employees; providing notice to officials or employees; serving subpoenas; engaging in the Student and Exchange Visitor Program; or participating in official functions or community meetings. CBP’s sensitive-locations policy does not apply to CBP operations conducted at or near the international border, or that bear a nexus to the border.

Although the sensitive-locations policies remain in effect, they may be modified, superseded, or withdrawn at any time with little notice. Because of this, and because exceptions to the memos exist, local educational agencies should have plans in place in the event that a law-enforcement officer requests information or access to a school site or a student for immigration-enforcement purposes.

2. State Law Providing for Policies that Limit Classroom Interruptions

California law authorizes school district boards and county office of education governing boards to “initiate and carry on any program, activity, or . . . otherwise act in any manner which is not in conflict with or inconsistent with, or preempted by, any law and which is not in conflict with the purposes for which school districts are established.”⁶⁷ State law also directs local educational agency governing boards to adopt policies that limit classroom interruptions.⁶⁸ Local educational agencies may, therefore, adopt policies that limit access to school sites and questioning of students for immigration-enforcement purposes, because such activities, and threats of such activities, interfere with classroom learning.

Furthermore, students have protections from unreasonable detentions under the Fourth Amendment of the U.S. Constitution. Under the Fourth Amendment, a law-enforcement officer, including a school-district police officer, cannot, for the purpose of investigating non-criminal immigration violations, detain a student by preventing him or her from leaving campus or take the student out of class.⁶⁹

3. State Law Providing for Notification to School’s Governing Body When Law-Enforcement Agencies Seek to Enforce the Immigration Laws

A local educational agency official (e.g., superintendent of a school district or county office of education, or the principal of a charter school), must submit a timely report to the school’s governing board or body when the school receives a request for information or access by a law-enforcement officer, for purposes of enforcing the immigration laws. All such reports should be handled in a manner that ensures the confidentiality and privacy of any potentially identifying information.⁷⁰

4. State Law Providing for Notification to Parents or Guardians When Students Are Contacted by Law Enforcement

Except in cases of suspected child abuse, neglect, or dependency matters, local educational agencies must immediately notify parents or guardians if they release a student to a law-enforcement officer, including an ICE officer, for the purpose of removing the student from the school premises.⁷¹ And except in child abuse, neglect, or dependency matters, California law does not prohibit schools from notifying parents or guardians before law-enforcement officers question a child at school.⁷² Local educational agencies shall devise a policy that requires notification to parents or guardians before a law-enforcement officer questions or removes a student for immigration-enforcement purposes, except when the officer has a judicial warrant or court order.

5. Description of Warrants, Subpoenas, Court Orders Used for Immigration Enforcement

Even under ICE/CBP’s sensitive location guidance, there are several foreseeable scenarios in which immigration officers might attempt to enter a school’s campus. Regardless of the scenario, local educational agency personnel should first ask to see the immigration officer’s

credentials and the written authority for the requests. It is important to review what the immigration officer provides as the authority. Sometimes the immigration officer will provide what he or she proposes to be a “warrant.” If so, it is important to determine whether it is an ICE administrative warrant or a traditional federal court warrant. Local educational agencies may respond differently depending on the type of warrant.

ICE Administrative “Warrant”

An ICE administrative “warrant” is the most typical type of “warrant” used by immigration officers. It authorizes an immigration officer to arrest a person suspected of violating immigration laws. An ICE warrant can be issued by any authorized immigration officer. An ICE administrative warrant is not a warrant within the meaning of the Fourth Amendment, because an ICE warrant is not supported by a showing of probable cause of a criminal offense and also is not issued by a court judge or magistrate.

An ICE warrant does **NOT** grant an immigration officer any special power to compel a school official to cooperate.⁷³ For example, an ICE warrant does not authorize access to non-public areas of school grounds. An ICE warrant does **NOT** allow immigration officers to search school records. See Appendix B for a sample ICE administrative “arrest warrant” (Form I-200) and “removal warrant” (Form I-205).

An ICE administrative warrant, therefore, is not a “court order” that would, under FERPA, allow a school to disclose educational records for a student without consent of a parent or guardian. It follows that disclosure, in response to an ICE administrative warrant, of information that is protected under FERPA could violate FERPA. Furthermore, school police are prohibited from “[m]aking or intentionally participating in arrests based on civil immigration warrants.”⁷⁴

Local educational agency personnel should not physically interfere with or obstruct an immigration officer in the performance of his or her duties. However, a local educational agency employee is not required to assist with the apprehension of a person identified in an ICE administrative warrant, nor is an employee required to consent to immigration officers searching school facilities.

Federal Court Warrant

A federal court warrant is issued by a District Judge or a Magistrate Judge of a U.S. District Court, based on a finding of probable cause authorizing the search or seizure of property, the entry into a non-public place to arrest a person named in an arrest warrant, or the arrest of a named person.

There are two types of federal court warrants, a search-and-seizure warrant and an arrest warrant.

- ✓ A federal search-and-seizure warrant allows an officer to conduct a search authorized by the warrant. See Appendix C for a sample federal search and seizure warrant (Form AO 93).
- ✓ A federal arrest warrant allows an officer to arrest the individual named in the warrant. See Appendix D for a sample federal arrest warrant (Form AO 442).

A school official should act in accordance with guidelines established by the local educational agency, in consultation with the agency's legal counsel, when presented with a federal court warrant.

Administrative Subpoena

An administrative subpoena is a document that requests production of documents or other evidence, and is issued by an immigration officer. The administrative subpoena will contain the following information: file number and subpoena number, mailing address to which to mail the requested information, the regulations that apply, the request for information, and the signature(s) of the agent(s). See Appendix E for a sample administrative subpoena (Form I-138).

Local educational agencies generally do not need to immediately comply with the ICE administrative subpoena. If an immigration officer arrives with an administrative subpoena, the local educational agency may decline to produce the information sought and may choose to challenge the administrative subpoena before a judge. Local educational agency personnel should immediately contact a designated local educational agency official upon receipt of a subpoena.

Furthermore, because an administrative subpoena is issued by an immigration officer, the subpoena is not a court order that would, under FERPA, allow a school to disclose educational records for a student without consent of a parent or guardian. As noted above, disclosure of information that is protected under FERPA in response to an administrative subpoena could violate FERPA. Local educational agency personnel must therefore provide notice to and receive written consent from parents and eligible students before turning over student records. (See Section 2 for model policy regarding written consent requirements.)⁷⁵

Federal Judicial Subpoena

A federal judicial subpoena is a document that asks for the production of documents or other evidence. The federal judicial subpoena will identify a federal court and the name of the judge or judicial magistrate issuing the subpoena, and it may require attendance at a specific time and location and the production of prescribed records. See Appendix F for a sample federal judicial subpoena.

As with issuance of administrative subpoenas, noted above, local educational agencies generally do not need to immediately comply with the federal judicial subpoena, but can challenge it before a federal judge in a U.S. District Court. Local educational agency personnel should therefore immediately contact a designated local educational agency official upon receipt of a subpoena.

Court Orders

If an immigration officer arrives with a court order, the local educational agency administrator should review the order with the agency’s legal counsel or other designated official.

Policy Recommendations: Responding to Requests for Access to School Grounds for Immigration-Enforcement Purposes

1. Establish “Safe Haven” Policies for Students and Families

In December 2016, California’s State Superintendent of Public Instruction Tom Torlakson released a letter encouraging California public schools to become “safe havens” for students and their families.⁷⁶ If a local educational agency decides to adopt a safe haven policy, such a policy should include, but is not limited to, the following provisions:

Safe Haven Policies: Recommended provisions:

- The [local educational agency] shall provide a safe, secure, and peaceful learning environment for all students and staff.
- The [local educational agency] defines sensitive or safe locations to include its schools, official activities of its schools, including those occurring in public places and adjacent areas, and all of the [local educational agency’s] property, including but not limited to, facilities owned, controlled by, or leased by the [local educational agency].
- Where outside contractors or service providers (particularly school resource officers) are regularly present at sensitive or safe locations or have access to student information, the [local educational agency] shall seek commitments from those parties not to facilitate immigration enforcement at any of the [local educational agency’s] sensitive or safe locations unless required by law.

2. Establish Procedure for Monitoring and Receiving Visitors onto Campus

Local educational agencies should have in place policies for receiving visitors to the school campus, and those policies should apply to immigration-enforcement officers. Model policies for receiving and registering outsiders—including immigration-enforcement officers—are included on page 29.

3. Develop Policies for Responding to Immigration Officer's Presence on Campus

When the circumstances allow, local educational agency personnel shall immediately notify the Superintendent or other designated administrator of any request by an immigration-enforcement officer for school or student access, or any requests for review of school documents (including for the services of lawful subpoenas, petitions, complaints, warrants, etc.). Also, local educational agency personnel shall direct the immigration-enforcement officer to the Superintendent or other designated administrator when immigration-enforcement officers request access to a school site or student, including to obtain information about a student or his/her family. The Superintendent or administrator shall, in turn, contact the agency's legal counsel or designated administrator and inform the immigration-enforcement agent to direct requests and questions to the agency's legal office.

In addition, the Superintendent or administrator should e-mail the **Bureau of Children's Justice in the California Department of Justice**, at BCJ@doj.ca.gov, regarding any attempt by a law-enforcement agent to access a school site or a student for immigration-enforcement purposes. The policy language below provides specific action steps local educational agency personnel should follow in responding to an officer present on the school campus specifically for immigration-enforcement purposes (see also Appendix A and the Quick Reference for School Officials).

Please note: An ICE administrative warrant does not allow a law-enforcement officer to enter or to search any area he/she could not otherwise enter as a member of the public. The officer may ask for permission, or "consent," to access non-public areas of the school, even without a judicial warrant giving the officer the power to do so. Absent exigent circumstances or a judicial warrant, local educational agency personnel are not required to give an immigration-enforcement officer permission or consent to enter a non-public area of the school or conduct a search of any kind. Nor is that employee required to provide information or records about a student or his or her family without a judicial warrant or order.

4. Develop Policies Regarding Parental Notification of Immigration-Enforcement Actions

Local educational agency personnel shall require consent from the student's parent or guardian before a student can be interviewed or searched by any officer seeking to enforce the civil immigration laws at the school, unless the officer presents a valid, effective warrant signed by a judge (see, e.g., sample federal search and seizure warrant [Form AO 93], attached as Appendix C; see also sample federal arrest warrant [Form AO 442], attached as Appendix D), or presents a valid, effective court order.

Local educational agency personnel shall immediately notify the student's parents or guardians if a law-enforcement officer requests or gains access to a student for immigration-enforcement purposes, unless such access was in compliance with a judicial warrant or subpoena that restricts the disclosure of the information to the parent or guardian.

5. Develop Training Programs for School Staff

The local educational agency shall establish training regarding immigration issues for teachers, school administrators, and school staff, including information on responding to a request from an officer enforcing immigration law to visit a school site or to have access to a student.

If feasible, the local educational agency should also designate an immigrant affairs liaison, to facilitate training programs for staff, help provide non-legal advice to families, and assist in communications with the local educational agencies and other stakeholders in local and state government.

Model Policies: Responding to Requests for Access to School Grounds for Immigration-Enforcement Purposes

All local educational agencies shall adopt the following model policies, or equivalent policies, by July 1, 2018:

Model Policies for Monitoring and Receiving Visitors onto Campus

- No outsider—which would include immigration-enforcement officers—shall enter or remain on school grounds of the [local educational agency] during school hours without having registered with the principal or designee.⁷⁷ If there are no exigent circumstances necessitating immediate action, and if the immigration officer does not possess a judicial warrant or court order that provides a basis for the visit, the officer must provide the following information to the principal or designee:
 - ✓ Name, address, occupation;
 - ✓ Age, if less than 21;
 - ✓ Purpose in entering school grounds;
 - ✓ Proof of identity; and
 - ✓ Any other information as required by law.⁷⁸
- The [local educational agency] shall adopt measures for responding to outsiders that avoids classroom interruptions, and preserves the peaceful conduct of the school's activities, consistent with local circumstances and practices.⁷⁹
- The [local educational agency] shall post signs at the entrance of its school grounds to notify outsiders of the hours and requirements for registration.⁸⁰
- [Local educational agency] personnel shall report entry by immigration-enforcement officers to any on-site school police or other appropriate administrator as would be required for any unexpected or unscheduled outside visitor coming on campus.

Model Policies for Responding to On-Campus Immigration Enforcement

- As early as possible, [local educational agency] personnel shall notify the [Superintendent or designated administrator] of any request by an immigration-enforcement officer for school or student access, or any requests for review of school documents (including for the services of lawful subpoenas, petitions, complaints, warrants, etc.).
- In addition to notifying the [Superintendent or designated administrator], [local educational agency] personnel shall take the following action steps in response to an officer present on the school campus specifically for immigration-enforcement purposes:
 1. Advise the officer that before proceeding with his or her request, and absent exigent circumstances, school personnel must first receive notification and direction from the [Superintendent or administrator].
 2. Ask to see, and make a copy of or note, the officer's credentials (name and badge number). Also ask for and copy or note the phone number of the officer's supervisor.
 3. Ask the officer for his/her reason for being on school grounds and document it.
 4. Ask the officer to produce any documentation that authorizes school access.
 5. Make a copy of all documents provided by the officer. Retain one copy of the documents for school records.
 6. If the officer declares that exigent circumstances exist and demands immediate access to the campus, [local educational agency] personnel should comply with the officer's orders and immediately contact the [Superintendent or other administrator].
 7. If the officer does not declare that exigent circumstances exist, respond according to the requirements of the officer's documentation. If the immigration-enforcement officer has:
 - ***an ICE (Immigrations and Customs Enforcement) administrative warrant (see Appendix B)***, [local educational agency] personnel shall inform the agent that he or she cannot consent to any request without first consulting with the [local educational agency's counsel or other designated agency official].
 - ***a federal judicial warrant (search-and-seizure warrant or arrest warrant; see Appendix C & D)***, prompt compliance with such a warrant is usually legally required. If feasible, consult with the [local educational agency's legal counsel or designated administrator] before providing the agent access to the person or materials specified in the warrant.
 - ***a subpoena for production of documents or other evidence (see Appendix E & F)***, immediate compliance is not required. Therefore, [local educational agency] personnel shall inform the [local educational agency's] legal counsel or other designated official of the subpoena, and await further instructions on how to proceed.

Model Policies for Responding to On-Campus Immigration Enforcement (continued)

8. While [local educational agency] personnel should not consent to access by an immigration-enforcement officer, except as described above, he/she should not attempt to physically impede the officer, even if the officer appears to be exceeding the authorization given under a warrant or other document. If an officer enters the premises without consent, [local educational agency] personnel shall document his or her actions while on campus.
9. After the encounter with the officer, [local educational agency] personnel shall promptly take written notes of all interactions with the officer. The notes shall include the following items:
 - ✓ List or copy of the officer's credentials and contact information;
 - ✓ Identity of all school personnel who communicated with the officer;
 - ✓ Details of the officer's request;
 - ✓ Whether the officer presented a warrant or subpoena to accompany his/her request, what was requested in the warrant/subpoena, and whether the warrant/subpoena was signed by a judge;
 - ✓ [Local educational agency] personnel's response to the officer's request;
 - ✓ Any further action taken by the agent; and
 - ✓ Photo or copy of any documents presented by the agent.
10. [Local educational agency] personnel shall provide a copy of those notes, and associated documents collected from the officer, to the [local educational agency's legal counsel or other designated agency official].
11. In turn, the [local educational agency's legal counsel or other designated official] shall submit a timely report to the [local educational agency's] governing board regarding the officer's requests and actions and the [local educational agency's] response(s).
12. E-mail the **Bureau of Children's Justice** in the **California Department of Justice**, at **BCJ@doj.ca.gov**, regarding any attempt by a law-enforcement officer to access a school site or a student for immigration-enforcement purposes.

Model Policies for Parental Notification of Immigration-Enforcement Actions

- [Local educational agency] personnel must receive consent from the student's parent or guardian before a student can be interviewed or searched by any officer seeking to enforce the civil immigration laws at the school, unless the officer presents a valid, effective warrant signed by a judge, or presents a valid, effective court order.
- [Local educational agency] personnel shall immediately notify the student's parents or guardians if a law-enforcement officer requests or gains access to a student for immigration-enforcement purposes, unless such access was in compliance with a judicial warrant or subpoena that restricts the disclosure of the information to the parent or guardian.

Purpose

Provide school administrators with policies for responding to the detention or possible deportation of a member of a student's family.

Governing Law

If local educational agency personnel become aware that a student's parent or guardian is not available to provide care for the student, California law requires that the school first follow the parental instructions relating to the student's care detailed in the emergency contact information provided by the parent or guardian. Therefore, schools should work with parents and guardians to keep the emergency contact information updated. Schools should not contact Child Protective Services unless the school is unsuccessful in arranging for the care of the child through the emergency contact information that the school has, or other information or instructions conveyed by the parent or guardian.⁸¹

Families need to be prepared for situations where one parent or both parents are detained or deported. Schools can help by adopting the policies outlined below.

Policy Recommendations: Responding to the Detention or Deportation of a Student's Family Member

1. Developing Family Safety Plan and Completing Emergency Contact Information

Development of a Family Safety Plan and Caregiver's Authorization Affidavit

To the extent possible, the local educational agency should facilitate a family's development of a *Family Safety Plan* to be stored at a location known by the student. Such a plan may identify a trusted adult who can care for the student if no parent or guardian can do so. Students should know that the trusted adult is the person who the student should contact if his or her parents and/or guardians are detained or deported, and how to reach the trusted adult.

- ✓ For example of a Family Safety Plan, see: https://www.lirs.org/assets/2474/bna_beinformed_safetyplanningtoolkit.pdf.
- ✓ While families should maintain customary emergency contact information at the school, they should consider carefully before storing a Family Safety Plan at the school, as some plans may include confidential information.

The local educational agency should also educate students and families about completing a Caregiver's Authorization Affidavit or a Petition for Appointment of Temporary Guardian of the Person, which would give the above-described trusted adult the authority to make educational and medical decisions for the student.

- ✓ **A Caregiver's Authorization Affidavit** (<http://www.courts.ca.gov/documents/caregiver.pdf>) permits certain people who have familial relationships with the student to authorize school enrollment and medical care for the student, but does not provide for legal custody. Schools, doctors, and dentists are required to accept this form. More information about this affidavit is available from the state courts at www.courts.ca.gov/partners/documents/GAPcaregiveraff.doc.

- ✓ **A Petition for Appointment of Temporary Guardian of the Person** (<http://www.courts.ca.gov/documents/gc110p.pdf>), along with other forms, are required if the trusted adult does not have a qualifying familial relationship with the student, or if legal custody is required. More information about this petition is available from the state courts at <http://www.courts.ca.gov/1212.htm>.

Completion of Students' Emergency Contact Information

In addition to the above steps, local educational agencies must implement policies that ensure that a student's emergency contact information (including the listing of secondary contacts) is complete. This enables the agency to exhaust all available contacts if it needs to arrange for the care of a child in the event that a parent or guardian is detained or deported. Model policy language articulating these requirements is provided below.

2. Additional Resources

In the event that a student's family member is detained, the local educational agency should refer the student and his or her family members to other resources for assistance, including, but not limited to the following.

ICE Detainee Locator

The ICE detainee locator (<https://locator.ice.gov/odls/homePage.do>) can help people determine if their family member has been detained and where the family member is being held. In using the ICE detainee locator, it is helpful to know the family member's date of birth and 'A-Number' (Alien Registration Number), if there is one. [**Please Note:** the ICE detainee locator is intended only for locating individuals who are already detained. If students, parents, or guardians have general questions about their immigration status, local educational agency personnel shall never refer them to ICE or other immigration enforcement.]



Legal Assistance

Immigration lawyers in private practice, accredited representatives (who assist immigrants in immigration proceedings), or legal-aid organizations may be able to provide legal assistance to secure the release of a student's detained parent, or to help arrange for the student to visit the parent.

- ✓ Make sure that the lawyers are licensed by and in good standing with the State Bar of California, by checking online at <http://www.calbar.ca.gov/Attorneys>.
- ✓ A list of California organizations accredited by Board of Immigration Appeals (BIA) to represent immigrants before the Department of Homeland Security (DHS) and Executive Office of Immigration Review (EOIR) can be found here: <https://www.justice.gov/eoir/page/file/942306/download#CALIFORNIA>.

- ✓ California courts operate Self-Help Centers that may also be able to provide family-law assistance to a student or his or her proposed guardian. A list of these centers across the state is available at <http://www.courts.ca.gov/selfhelp-selfhelpcenters.htm>.
- ✓ A student or his or her family member may be able to find legal assistance from legal-aid offices and lawyer-referral services here: <http://www.courts.ca.gov/1001.htm>.

Consulate or Embassy

The consulate or embassy of the parent’s or guardian’s country of origin may be able to offer additional information and assistance.

Model Policies: Responding to the Detention or Deportation of a Student’s Family Member

All local educational agencies shall adopt the following model policies, or equivalent policies, by July 1, 2018:

Model Policies for Responding to the Detention or Deportation of a Student’s Family Member

- The [local educational agency] shall encourage that families and students have and know their emergency phone numbers and know where to find important documentation, including birth certificates, passports, Social Security cards, doctors’ contact information, medication lists, lists of allergies, etc., which will allow them to be prepared in the event that a family member is detained or deported.
- The [local educational agency] shall permit students and families to update students’ emergency contact information as needed throughout the school year, and provide alternative contacts if no parent or guardian is available.
 - ✓ The [local educational agency] shall ensure that families may include the information of an identified trusted adult guardian as a secondary emergency contact in case a student’s parent or guardian is detained.
 - ✓ The [local educational agency] shall communicate to families that information provided within the emergency cards will only be used in response to specified emergency situations, and not for any other purpose.
- In the event a student’s parent/guardian has been detained or deported by federal immigration authorities, the [local educational agency] shall use the student’s emergency card contact information and release the student to the person(s) designated as emergency contacts. Alternatively, the [local educational agency] shall release the student into the custody of any individual who presents a Caregiver’s Authorization Affidavit on behalf of the student. The [local educational agency] shall only contact Child Protective Services if the [local educational agency] personnel are unsuccessful in arranging for the timely care of the child through the emergency contact information that the school has, a Caregiver’s Authorization Affidavit, or other information or instructions conveyed by the parent or guardian.

Purpose

Provide local educational agency administrators with policies to prevent and respond to incidents of hate crimes and bullying related to victims' immigration status.

Governing Law

California law requires each local educational agency to have a policy that prohibits discrimination, harassment, intimidation, and bullying based on a student's actual or perceived characteristics, including nationality, ethnicity, or immigration status.⁸² Such crimes would include defacing or damaging property belonging to the student.⁸³ Moreover, the use or threat of force to intimidate or injure a student, in whole or in part, because of the student's actual or perceived nationality or ethnicity, is a hate crime under state law.⁸⁴

There are significant penalties for committing violence or threatening violence against a student because of his or her actual or perceived national origin or immigration status.⁸⁵ Students may report a hate crime. And victims of hate crimes may sue for damages and other relief.⁸⁶ It is unlawful to dissuade or otherwise prevent a student from reporting a hate crime to law enforcement.⁸⁷

Students who are victims of or witnesses to hate crimes are protected from being detained because of the students' actual or perceived immigration status, and if not charged with or convicted of committing any crime under state law, are protected from being reported to federal immigration authorities.⁸⁸

Under AB 699, local educational agencies must put in place policies that prohibit discrimination, harassment, intimidation, and bullying on the basis of a student's actual or perceived nationality,



ethnicity, or immigration status.⁸⁹ The local educational agency governing board must also notify parents and guardians of their children's right to a free public education, regardless of immigration status or religious beliefs.⁹⁰ This information must include the information related to "know your rights" immigration enforcement established by the Attorney General (see Appendix G), and may be provided in the annual notification to parents and guardians pursuant to Education Code section 48980, or any other cost-effective means determined by

the local educational agency.⁹¹ The agency must publicize anti-discrimination, anti-harassment, anti-intimidation, and anti-bullying policies—including information on filing a complaint—to students, parents, employees, agents of the local educational agency governing board, and the general public.⁹² This information must be translated into the families' primary language if 15 percent of the students enrolled in the school speak a single primary language other than English.⁹³

The local educational agency must also adopt a process for receiving and investigating complaints of discrimination, harassment, intimidation, and bullying based on any of the following actual or perceived characteristics:

- disability
- gender
- gender identity
- gender expression
- nationality
- race or ethnicity
- religion
- sexual orientation
- association with a person or group with one or more of the aforementioned characteristics
- immigration status⁹⁴

The complaint process must, at minimum, include the following steps:

- A requirement that, if school personnel witness an act of discrimination, harassment, intimidation, or bullying, they shall take immediate steps to intervene when safe to do so.
- A timeline to investigate and resolve complaints of discrimination, harassment, intimidation, or bullying that shall be followed by all schools under the jurisdiction of the local educational agency.
- An appeal process afforded to the complainant should he or she disagree with the resolution of a complaint.⁹⁵

All forms related to the complaint must be provided in the parents' or guardians' primary languages if at least 15 percent of the students enrolled in the school speak a single primary language other than English.⁹⁶

Additional resources on preventing bullying and hate-motivated behavior is available on the California Department of Education's website at <http://www.cde.ca.gov/ls/ss/se/bullyingprev.asp>.

The California Department of Education also provides procedures for filing complaints that are compliant with state laws and regulations:

- <http://www.cde.ca.gov/re/di/eo/complaint.asp>
- <http://www.cde.ca.gov/re/cp/uc/documents/ucp1plcprcdx1617.doc>
- <http://www.cde.ca.gov/re/cp/uc/documents/ucp2anIntc1617.doc>

Model Policies: Responding to Hate Crimes and Bullying

All local educational agencies shall adopt the following model policies, or equivalent policies, by July 1, 2018:

Model Policies for Responding to Hate Crimes and Bullying

Adopting and Publicizing Anti-Bullying and Anti-Harassment Policy

- The [local educational agency] shall adopt and publicize policies that prohibit discrimination, harassment, intimidation, and bullying on the basis of a student’s actual or perceived nationality, ethnicity, or immigration status.⁹⁷ Those policies must be translated in the student’s primary language if at least 15 percent of the students enrolled in the school speak a single primary language other than English.⁹⁸
- The [local educational agency] shall notify parents and guardians of their children’s right to a free public education, regardless of immigration status or religious beliefs.
 - ✓ This information shall include information related to the “Know Your Rights” immigration enforcement established by the Attorney General (see Appendix G).⁹⁹
 - ✓ The [local educational agency] shall inform students who are victims of hate crimes of their right to report such crimes.

Processing Complaints of Harassment and Bullying

- The [local educational agency] shall adopt a process for receiving complaints of and investigating complaints of discrimination, harassment, intimidation, and bullying based on any of the following actual or perceived characteristics:
 - disability
 - gender
 - gender identity
 - gender expression
 - nationality
 - race or ethnicity
 - religion
 - sexual orientation
 - association with a person or group with one or more of the aforementioned characteristics
 - immigration status¹⁰⁰
- The complaint process must include, but is not limited to, the following steps:
 - ✓ A requirement that, if school personnel witness an act of discrimination, harassment, intimidation, or bullying, they shall take immediate steps to intervene when safe to do so;
 - ✓ A timeline to investigate and resolve complaints of discrimination, harassment, intimidation, or bullying that shall be followed by all schools under the jurisdiction of the local educational agency; and
 - ✓ An appeal process afforded to the complainant should he or she disagree with the resolution of a complaint.¹⁰¹
 - ✓ The [local educational agency] shall ensure that complaint procedures contain confidentiality safeguards for immigration status information.
 - ✓ The [local educational agency] shall prohibit retaliation against a person who submits a complaint of discrimination, harassment, intimidation, or bullying.

Model Policies for Responding to Hate Crimes and Bullying (continued)

Training Students, Teachers, and Staff on Anti-Bullying and Anti-Harassment Policy

- The [local educational agency] shall educate students about the negative impact of bullying other students based on their actual or perceived immigration status or their religious beliefs or customs.¹⁰²
- The [local educational agency] shall also train teachers, staff, and personnel to ensure that they are aware of their legal duty to take reasonable steps to eliminate a hostile environment and respond to any incidents of harassment based on the actual or perceived characteristics noted above.¹⁰³ Such training should, at minimum, provide agency personnel with the skills to do the following:
 - ✓ Discuss the varying immigration experiences among members of the student body and school community;
 - ✓ Discuss bullying-prevention strategies with students, and teach students to recognize the behavior and characteristics of bullying perpetrators and victims;
 - ✓ Identify the signs of bullying or harassing behavior;
 - ✓ Take immediate corrective action when bullying is observed; and
 - ✓ Report incidents to the appropriate authorities, including law enforcement in instances of criminal behavior.

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The analysis, recommendations, and policies expressed in this guide are based on research and input from the staff of the Attorney General’s Special Project Team and office, and should not be considered as representing the views of any agency or organization that contributed to the report.

Endnotes

¹ Cal. Dept. of Education, Fingertip Facts on Education in California -- CalEdFacts (Sept. 29, 2016), available at

<http://www.cde.ca.gov/ds/sd/cb/ceffingertipfacts.asp> (as of Jan. 11, 2018).

² Kidsdata.org, Data Point – The kidsdata.org blog, “Half of CA Children Have Immigrant Parents” (Feb. 10, 2017), available at <http://www.kidsdata.org/blog/?p=7804> (as of Jan. 11, 2018).

³ The Education Trust—West, Undocumented Students in California: What You Should Know (Apr. 21, 2017), available at https://29v0kg31gs803wndhe1sj1hd-wpengine.netdna-ssl.com/wp-content/uploads/sites/3/2015/11/ETW_CA-Undocumented-Students-What-You-Need-to-Know-FINAL-April-2017.pdf (as of Jan. 11, 2018).

⁴ *Plyler v. Doe* (1982) 457 U.S. 202, 210-214; see also *Matthews v. Diaz* (1976) 426 U.S. 67, 77 (Fifth Amendment protects undocumented immigrants from discrimination by the federal government).

⁵ Ed. Code, § 48200.

⁶ Cal. Const., art. I, § 28, subd. (f)(1).

⁷ *Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1293.

⁸ See *New York v. United States* (1992) 505 U.S. 144, 161 (Tenth Amendment prevents Congress from using legislative or executive actions to compel U.S. states to enforce federal programs); see also *Printz v. United States* (1997) 521 U.S. 898, 925, 935 (Federal government cannot circumvent the Tenth Amendment by directly conscripting state or local officers to implement federal directives).

⁹ Ed. Code, § 220; see also Ed. Code, § 200 (“It is the policy of the State of California to afford all persons in public schools, regardless of their ... immigration status, equal rights, and opportunities in the educational institutions of the state.”).

¹⁰ Ed. Code, § 234.7, subd. (f)(1).

¹¹ Ed. Code, § 234.7, subd. (g).

¹² Ed. Code, § 234.7, subd. (g).

¹³ See *In re Crawford* (9th Cir. 1999) 194 F.3d 954, 958 (“[I]ndiscriminate public disclosure of SSNs, especially when accompanied by names and addresses, may implicate the constitutional right of informational privacy”).

¹⁴ Ed. Code, § 49076.7, subd. (b).

¹⁵ See 7 C.F.R. § 245.6(a)(6).

¹⁶ If a school district employee reasonably believes that the parent or legal guardian of a pupil has provided false or unreliable evidence of residency, the school district may make reasonable efforts to determine that the pupil actually meets residency requirements. (Ed. Code, § 48204.1, subd. (c).) In this situation, school districts should attempt to resolve their concerns by first seeking other confirming documents of the type listed in Education Code section 48204.1.

¹⁷ See U.S. Dept. of Justice & U.S. Dept. of Education, Dear Colleague Letter (Regarding School Enrollment Procedures) (May 8, 2014) at 2, available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201405.pdf> (as of Feb. 23, 2018); see also U.S. Dept. of Justice & U.S. Dept. of Education, Fact Sheet: Information on the Rights of All Children to Enroll in School (May 8, 2014) available at <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-201405.pdf> (as of Jan. 11, 2018); U.S. Dept. of Justice & U.S. Dept. of Education, Information on the Rights of All Children to Enroll in School: Questions and Answers for States, School Districts and Parents (“Questions and Answers”) (May 8, 2014) available at <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/08/plylerqa.pdf> (as of Jan. 11, 2018).

¹⁸ See 42 U.S.C. § 2000d; U.S. Dept. of Justice & U.S. Dept. of Education, Questions and Answers,

supra, at 2, 4; Civ. Code § 51, subd. (b) (requiring “full and equal accommodations, advantages, facilities, privileges, or services” for students irrespective of their immigration status); Gov. Code, § 11135 (prohibiting discrimination on the basis of race, color, or national origin for any program that is administered or funded by the state); Ed. Code, § 220 (“No person shall be subject to discrimination on the basis of ... nationality, race or ethnicity ... or any other characteristic that is contained in the definition of hate crimes set forth in Section 422.55 of the Penal Code, including immigration status....”).

¹⁹ 42 U.S.C. § 11432(g)(3)(C); Ed. Code, § 48204.1, subd. (d)-(e). “Homeless children and youths” is defined as individuals who lack a fixed, regular, and adequate nighttime residence; and includes children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; or are abandoned in hospitals; have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings; and are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and migratory children. (42 U.S.C. § 11434a(2).)

²⁰ Ed. Code, § 234.7, subd. (a).

²¹ See U.S. Dept. of Justice & U.S. Dept. of Education, Dear Colleague Letter: School Enrollment Procedures, supra, at 1-2; see also U.S. Dept. of Justice & U.S. Dept. of Education, Fact Sheet: Information on the Rights of All Children to Enroll in School, supra, at 1.

²² See 42 U.S.C. § 2000d; 28 C.F.R. § 42.104(b)(2); Ed. Code, § 220 (eff. Jan. 1, 2018); Gov. Code, § 11135; Cal. Code Regs., tit. 2, § 11154, subd. (i); see also *Committee for Immigrant Rights of Sonoma County v. County of Sonoma* (N.D. Cal. 2009) 644 F.Supp.2d 1177, 1206-1207 (Plaintiffs stated a claim under 42 U.S.C. 2000d on the grounds that Sheriffs’ Deputies relied on race to detain and question them on their immigration status).

²³ Ed. Code, § 220.

²⁴ Civ. Code, § 51, subd. (b).

²⁵ See 20 U.S.C. §§ 7011(5), 7013, 7014.

²⁶ See, e.g., Cal. Code Regs., tit. 2, § 11154, subd. (i); see also 28 C.F.R. § 42.104(b)(2).

²⁷ Ed. Code, § 234.7, subd. (d)(1).

²⁸ Gov. Code, § 7284.6, subd. (a)(1)(A).

²⁹ Ed. Code, § 234.7, subd. (a).

³⁰ In *Steinle v. City and County of San Francisco* (N.D. Cal. 2017) 230 F.Supp.3d 994, 1015-17, the federal court construed 8 United States Code, section 1373 narrowly, stating that the law applies to a governmental entity’s sharing with another governmental entity of “only” information regarding a person’s citizenship or immigration status; the law does not prevent barring the sharing of other information, such as an inmate’s release date.

³¹ 8 U.S.C. § 1373(a), (b). This federal law applies to only government entities, such as local education agencies. The law does not prohibit private schools from restricting employee communication with federal immigration officials regarding an individual person’s immigration status. This guide does not call for any agency policy restricting agency employees in violation of 8 U.S.C. § 1373.

³² 20 U.S.C. § 1232h(c)(2).

³³ Ed. Code, §§ 49073, subd. (b), 49076, subds. (a)(1)(A)-(J); see also 20 U.S.C. § 1232g(b)(1)(A)-(J), (b)(3), (b)(5); 34 C.F.R. § 99.35. Please note, federal law applies the parental notification requirements to “local educational agencies” (see 20 U.S.C. § 1232h(c)(2)), while state law uses the term “school

districts.” (See, e.g., Ed. Code, § 49073.) State law, however, defines “school district” broadly, to include the following:

. . . any school district maintaining any kindergarten or any of grades 1 to 12, inclusive, any public school providing instruction in any kindergarten or any of grades 1 to 12, inclusive, the office of the county superintendent of schools, or any special school operated by the department.

(Ed. Code, § 49061, subd. (d).) This definition encompasses all of the entities identified as “local educational agencies” under Education Code section 234.7, subdivision (h)—school districts, county offices of education, and charter schools. Therefore, this guide interprets the state law’s reference to “school districts” as applying to all local educational agencies.

³⁴ 34 C.F.R. § 99.3 (defining “eligible student” as “a student who has reached 18 years of age or is attending an institution of postsecondary education”).

³⁵ 20 U.S.C. § 1232g(b)(1), (b)(2).

³⁶ See, e.g., Ed. Code, § 49076, subd. (a).

³⁷ 20 U.S.C. § 1232g(b)(2)(A); 34 CFR §§ 99.3, 99.30; Ed. Code, § 49075, subd. (a).

³⁸ 20 U.S.C. § 1232g(b)(2)(A).

³⁹ Ed. Code, § 49075, subd. (a).

⁴⁰ Ed. Code, § 49075, subd. (a).

⁴¹ Ed. Code, § 49076, subds. (a)(1)(A)-(J); see also 20 U.S.C. § 1232g(b)(1)(A)-(J), (b)(3), (b)(5); 34 C.F.R. § 99.35.

⁴² Ed. Code, § 49076, subd. (a); see also 20 U.S.C. § 1232g(b)(2)(B); 34 C.F.R. § 99.31.

⁴³ See 20 U.S.C. § 1232g, subds. (b)(1)(C); Ed. Code, § 49076, subd. (a)(1)(C).

⁴⁴ 20 U.S.C. § 1232g(b)(1)(J)(i),(ii), (b)(2)(B); Pen. Code, § 11174.3.

⁴⁵ Gov. Code, § 7284.6, subd. (a)(1)(D). Under Education Code section 49076, subdivision (a)(1)(I) student records may be provided to “[a] probation officer . . . for purposes of conducting a criminal investigation or an investigation in regards to declaring a person a ward of the court or involving a violation of a condition of probation.” However, student records should not be provided to probation officers for immigration-enforcement purposes.

⁴⁶ Civ. Code, § 1798.3, subd. (a).

⁴⁷ Gov. Code, § 7284.6, subd. (e).

⁴⁸ 20 U.S.C. § 1232h(c)(2); Ed. Code, § 49063; Cal. Code Regs., tit. 5, § 431, subd. (e).

⁴⁹ Ed. Code, § 48985, subd. (a).

⁵⁰ 20 U.S.C. § 1232h(c)(2); Ed. Code, § 49063; Cal. Code Regs., tit. 5, § 431, subd. (e); see also Ed. Code, § 49073, subd. (a) (prohibiting release of information to a private profit-making entity other than employers, prospective employers, and representatives of the news media).

⁵¹ Ed. Code, §§ 49061, subd. (c), 49073, subd. (b).

⁵² See Ed. Code, § 49073, subd. (b) (“Directory information may be released according to local policy as to any pupil or former pupil,” emphasis added).

⁵³ Ed. Code, § 49073, subd. (a); see also Ed. Code, § 49073, subd. (c) (prohibiting sharing of “directory information” of a student identified as a homeless child or youth).

⁵⁴ Ed. Code, § 40961, subd. (c); see also 34 C.F.R. § 99.3, subds. (b), (c) (federal regulation excluding Social Security number, and in most cases, the SID, from directory information). Please note that,

because federal laws and regulations provide a broader allowance of what can be included as directory information (see 20 U.S.C. § 1232g, subd. (a)(5)(A); 34 C.F.R. § 99.3), school administrators should follow the narrower state law (Ed. Code, §§ 49061, 49073) for identifying the scope of directory information subject to release.

⁵⁵ Ed. Code, § 49073, subd. (b).

⁵⁶ 34 C.F.R. § 99.37, subd. (a); Ed. Code, § 49073.

⁵⁷ Ed. Code, § 49073, subd. (a).

⁵⁸ Ed. Code, § 49073, subd. (b).

⁵⁹ Ed. Code, § 49076, subd. (a)(1).

⁶⁰ Ed. Code, § 49061, subd. (c).

⁶¹ Pen. Code, § 11174.3, subd. (a).

⁶² 20 U.S.C. § 1232g(b)(1)(J)(i),(ii).

⁶³ 34 C.F.R. § 99.37, subd. (a); Ed. Code, § 49073.

⁶⁴ See John Morton, Memorandum, “Enforcement Actions at or Focused on Sensitive Locations” (Oct. 24, 2011), available at <https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf> (as of Feb. 22, 2018); see also David V. Aguilar, Memorandum, “U.S. Customs and Border Protection Enforcement Actions at or Near Certain Community Locations” (Jan. 18, 2013), available at <https://foiarr.cbp.gov/streamingWord.asp?i=1251> (as of Jan. 11, 2018); ICE, FAQs on Sensitive Locations and Courthouse Arrests, available at <https://www.ice.gov/ero/enforcement/sensitive-loc> (as of Feb. 23, 2018); United States Customs and Border Protection, Sensitive Locations FAQs, available at <https://www.cbp.gov/border-security/sensitive-locations-faqs> (as of Jan. 11, 2018).

⁶⁵ John Morton, Memorandum, “Enforcement Actions at or Focused on Sensitive Locations” (Oct. 24, 2011), available at <https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf> (as of Feb. 22, 2018).

⁶⁶ “Schools” are defined in the ICE memorandum and frequently asked questions as known and licensed daycares, pre-schools, and other early learning programs; primary schools; secondary schools; post-secondary schools up to and including colleges and universities; vocational or trade schools; scholastic or education-related activities or events; and school bus stops that are marked and/or known to the officer, during periods when school children are present at the stop. (See ICE, FAQs on Sensitive Locations and Courthouse Arrests, available at <https://www.ice.gov/ero/enforcement/sensitive-loc> (as of Feb. 23, 2018).)

⁶⁷ Ed. Code, § 35160. The Education Code defines “school district” in this context as including “county superintendents of schools and county boards of education.” (Ed. Code, § 35160.2.)

⁶⁸ Ed. Code, § 32212.

⁶⁹ See *Stoot v. City of Everett* (9th Cir. 2009) 582 F.3d 910, 918-921 (taking a student out of class for “detention and interrogation” constituted a seizure under the Fourth Amendment).

⁷⁰ Ed. Code, § 234.7, subd. (b).

⁷¹ Ed. Code, § 48906; Welf. & Inst. Code, § 305.

⁷² Pen. Code, § 11174.3, subd. (a); see also Ed. Code, § 48906 (stating parental or guardian notification procedure that school officials and peace officers must follow in cases of suspected child abuse or neglect); Welf. & Inst. Code, § 307.4 (stating notification procedure for parents when a peace officer, probation officer, or social worker takes a minor into temporary custody on child dependency matters).

⁷³ See the transcript of an interview with John Seaman, senior legal instructor with the Legal Division at the Federal Law Enforcement Training Center, available at <https://www.fletc.gov/audio/ice-administrative-removal-warrants-mp3> (as of Jan. 11, 2018) (stating that “unlike a criminal warrant issued by the federal

court, a[n ICE] removal warrant does not authorize the ICE officer to enter into an REP [reasonable expectation of privacy] area to execute the warrant”).

⁷⁴ Gov. Code, § 7284.6, subd. (a)(1)(E).

⁷⁵ 34 CFR §§ 99.3, 99.30; Ed. Code, § 49075, subd. (a).

⁷⁶ See letter from Tom Torlakson, State Superintendent of Public Instruction (Dec. 21, 2016), available at <http://www.cde.ca.gov/nr/el/le/yr16ltr1221.asp> (as of Feb. 22, 2018).

⁷⁷ Ed. Code, §§ 627.1, subd. (a), 627.2.

⁷⁸ Ed. Code, § 627.3.

⁷⁹ Ed. Code, § 627.4; see also Ed. Code, § 32210 (“[a]ny person who willfully disturbs any public school or any public school meeting is guilty of a misdemeanor, and shall be punished by a fine of not more than five hundred dollars (\$500)”); see also Ed. Code, § 32212 (“The Legislature finds and declares that interruption of class time seriously impairs the educational process. It is the intent of the Legislature that each governing board of a school district formally address the problem of classroom interruptions and adopt a policy to control those interruptions, consistent with local circumstances and practices”).

⁸⁰ Ed. Code, § 627.6.

⁸¹ Ed. Code, § 234.7, subd. (c).

⁸² Ed. Code, § 234.1, subd. (a).

⁸³ Pen. Code, § 422.6.

⁸⁴ Pen. Code, §§ 422.55, 422.6.

⁸⁵ Civ. Code, § 51.7.

⁸⁶ Civ. Code, § 52.1, subd. (b).

⁸⁷ Pen. Code, § 136.1.

⁸⁸ Pen. Code, § 422.93.

⁸⁹ Ed. Code, § 234.1.

⁹⁰ Ed. Code, § 234.7, subd. (d)(1).

⁹¹ Ed. Code, § 234.7, subd. (d)(2).

⁹² Ed. Code, § 234.1, subd. (c).

⁹³ Ed. Code, §§ 234.1, subd. (c), 48985, subd. (a).

⁹⁴ Ed. Code, §§ 220, 234.1; Pen. Code, § 422.55.

⁹⁵ Ed. Code, § 234.1, subd. (b).

⁹⁶ Ed. Code, §§ 234.1, subd. (b)(4), 48985, subd. (a).

⁹⁷ Ed. Code, § 234.1.

⁹⁸ Ed. Code, §§ 234.1, subd. (c); 48985, subd. (a).

⁹⁹ Ed. Code, § 234.7, subd. (d)(1).

¹⁰⁰ Ed. Code, §§ 220, 234.1; Pen. Code, § 422.55.

¹⁰¹ Ed. Code, § 234.1, subd. (b).

¹⁰² Ed. Code, § 234.7, subd. (d)(2).

¹⁰³ *Flores v. Morgan Hill Unified Sch. Dist.* (9th Cir. 2003) 324 F.3d 1130, 1135; *Monteiro v. Tempe Union High Sch. Dist.* (9th Cir. 1998) 158 F.3d 1022, 1034.

Appendix A

Quick Reference for School Officials

- *What to do if an immigration-enforcement officer comes to your school?*
- *What to do if an immigration-enforcement officer requests personal information about a student or his/her family members?*

What to do if an immigration-enforcement officer comes to your school?

1. Notify the designated local educational agency administrator of the request.
2. Advise the immigration officer that, before proceeding with the request, and absent exigent circumstances, you must first receive direction from the local educational agency administrator.
3. Ask to see, and make a copy of or note, the officer's credentials (name and badge number), and the phone number of his/her supervisor.
4. Ask the officer for his/her reason for being on school grounds and document it.
5. Ask the officer to produce any documentation that authorizes school access.
6. Make a copy of all documents provided by the officer.
7. If the officer declares that exigent circumstances exist and demands immediate access to the school, comply with his/her orders and immediately alert the local educational agency administrator.
8. If the officer does not declare that exigent circumstances exist, respond according to the requirements of the officer's documentation. If the immigration-enforcement officer has:
 - ***an ICE (Immigrations and Customs Enforcement) administrative warrant or a subpoena for production of documents or other evidence***, inform the officer that you cannot consent to any request without first consulting with the local educational agency's legal counsel or other designated administrator.
 - ***a federal judicial warrant*** (search-and-seizure warrant or arrest warrant), prompt compliance with such a warrant is usually legally required. If feasible, consult with your legal counsel or designated local educational agency administrator before providing the officer access to the person or materials specified in the warrant.
9. While you should not consent to access by an immigration-enforcement officer unless he/she declares exigent circumstances or has a federal judicial warrant, do not attempt to physically impede an officer, even if he/she appears to lack authorization to enter. If an officer enters the premises without consent, document his/her actions while on campus.

10. After the encounter with the officer, promptly take written notes, including the following:
 - ✓ List or copy of the officer's credentials and contact information;
 - ✓ Identity of all school personnel who communicated with the officer;
 - ✓ Details of the officer's request;
 - ✓ Whether the officer presented a warrant or subpoena to accompany his/her request, what was requested in the warrant/subpoena, and whether the warrant/subpoena was signed by a judge;
 - ✓ Your response to the officer's request;
 - ✓ Any further action taken by the officer; and
 - ✓ Photo or copy of any documents presented by the officer.
11. Notify parents or guardians as soon as possible (unless prevented by a judicial warrant or subpoena), and do so before an officer questions or removes a student for immigration-enforcement purposes (unless a judicial warrant has been presented).
12. Provide a copy of those notes, and associated documents collected from the officer, to the local educational agency's legal counsel, Superintendent, or other designated administrator.
13. E-mail the **Bureau of Children's Justice** in the **California Department of Justice**, at **BCJ@doj.ca.gov**, regarding any attempt by a law-enforcement officer to access a school site or a student for immigration-enforcement purposes.

What to do if an immigration-enforcement officer requests personal information about a student or his/her family members?

- ***Avoiding unauthorized information disclosure:*** Do not disclose information that might indicate a student's or family's citizenship or immigration status without consent of the parents, guardians, or students (if the student is 18 years of age or over), unless the information is for a legitimate educational purpose or is in response to a court order or subpoena. Providing information about a student's or family's citizenship or immigration status to immigration authorities for immigration-enforcement purposes is not for a legitimate educational purpose under federal or state law.
- ***Procedure for responding to all information requests:*** Take the following action steps if you receive any information request related to a student's or family's immigration or citizenship status that is not supported by a judicial warrant or court order:
 - ✓ Notify a designated local educational agency administrator about the information request.
 - ✓ Provide students and families with appropriate notice and a description of the immigration officer's request.
 - ✓ Document any verbal or written request for information by immigration authorities.
 - ✓ Provide students and parents/guardians with any documents issued by the immigration-enforcement officer.

- **Responding to court documents requesting student or family information:** Notify the parents or guardians if you receive a court order, subpoena, or warrant requesting information regarding a student or family member, unless: (1) the warrant or subpoena concerns an investigation of child abuse, child neglect, or child dependency, or (2) the subpoena prohibits disclosure.
- **Secure written consent from the parent/guardian/adult student before releasing information:** You must get written parental or guardian consent for release of student information, unless the information is relevant for a legitimate educational interest or includes directory information only. Because neither exception permits disclosing information to immigration authorities for immigration-enforcement purposes, no student information shall be disclosed to immigration authorities for immigration-enforcement purposes without written consent from a parent, guardian, or student (if over 18 years of age or in a postsecondary institution), or a court order or judicial subpoena.

The written consent for release of student information must include the following:

1. A description of the information to be released;
2. The reason for release of information;
3. The parties or type of parties receiving the information;
4. If requested by the parents, guardians or student (if the student is 18 years of age or older or in a postsecondary institution), a copy of the records to be released; and
5. Date and signature of the parent, guardian, or student (if 18 years of age or older or in a postsecondary institution) consenting to the release of information.

Please Note: The parent, guardian, or student (if over 18 years of age or in a postsecondary institution) is not required to sign the consent form. Therefore, you cannot release the information if the parent, guardian, or student (if over 18 years of age or in a postsecondary institution) refuses to provide written consent for its release.

Once the parent, guardian, or adult student signs and dates the consent form, keep the consent notice with the record file. Also, notify the recipient of the student/family information that further transmission of the information to other individuals is prohibited, without the written consent of the parent/guardian/student (if 18 years of age or older).

Appendix B
ICE (Immigrations and Customs Enforcement) “Arrest Warrant”
(Form I-200) and “Removal Warrant” (Form I-205)

U.S. DEPARTMENT OF HOMELAND SECURITY Warrant for Arrest of Alien

File No. _____

Date: _____

To: Any immigration officer authorized pursuant to sections 236 and 287 of the Immigration and Nationality Act and part 287 of title 8, Code of Federal Regulations, to serve warrants of arrest for immigration violations

I have determined that there is probable cause to believe that _____ is removable from the United States. This determination is based upon:

- the execution of a charging document to initiate removal proceedings against the subject;
- the pendency of ongoing removal proceedings against the subject;
- the failure to establish admissibility subsequent to deferred inspection;
- biometric confirmation of the subject’s identity and a records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law; and/or
- statements made voluntarily by the subject to an immigration officer and/or other reliable evidence that affirmatively indicate the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law.

YOU ARE COMMANDED to arrest and take into custody for removal proceedings under the Immigration and Nationality Act, the above-named alien.

(Signature of Authorized Immigration Officer)

(Printed Name and Title of Authorized Immigration Officer)

Certificate of Service

I hereby certify that the Warrant for Arrest of Alien was served by me at _____
(Location)

on _____ on _____, and the contents of this
(Name of Alien) (Date of Service)

notice were read to him or her in the _____ language.
(Language)

Name and Signature of Officer

Name or Number of Interpreter (if applicable)

Form I-200 (Rev. 09/16)

Appendix B
ICE (Immigrations and Customs Enforcement) “Arrest Warrant”
(Form I-200) and “Removal Warrant” (Form I-205)

DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement
WARRANT OF REMOVAL/DEPORTATION

File No: _____
Date: _____

To any immigration officer of the United States Department of Homeland Security:

_____ (Full name of alien)

who entered the United States at _____ on _____
(Place of entry) (Date of entry)

is subject to removal/deportation from the United States, based upon a final order by:

- an immigration judge in exclusion, deportation, or removal proceedings
- a designated official
- the Board of Immigration Appeals
- a United States District or Magistrate Court Judge

and pursuant to the following provisions of the Immigration and Nationality Act:

I, the undersigned officer of the United States, by virtue of the power and authority vested in the Secretary of Homeland Security under the laws of the United States and by his or her direction, command you to take into custody and remove from the United States the above-named alien, pursuant to law, at the expense of:

(Signature of immigration officer)

(Title of immigration officer)

(Date and office location)

Appendix C

Federal Search and Seizure Warrant (Form AO 93)

AO 93 (Rev. 11/13) Search and Seizure Warrant

UNITED STATES DISTRICT COURT

for the

In the Matter of the Search of _____)
 (Briefly describe the property to be searched)
 or identify the person by name and address) Case No. _____
)
)
)

SEARCH AND SEIZURE WARRANT

To: Any authorized law enforcement officer

An application by a federal law enforcement officer or an attorney for the government requests the search of the following person or property located in the _____ District of _____
 (identify the person or describe the property to be searched and give its location):

I find that the affidavit(s), or any recorded testimony, establish probable cause to search and seize the person or property described above, and that such search will reveal (identify the person, describe the property to be seized):

YOU ARE COMMANDED to execute this warrant on or before _____ (not to exceed 14 days)
 in the daytime 6:00 a.m. to 10:00 p.m. at any time in the day or night because good cause has been established.

Unless delayed notice is authorized below, you must give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken, or leave the copy and receipt at the place where the property was taken.

The officer executing this warrant, or an officer present during the execution of the warrant, must prepare an inventory as required by law and promptly return this warrant and inventory to _____
 (United States Magistrate Judge)

Pursuant to 18 U.S.C. § 3103a(b), I find that immediate notification may have an adverse result listed in 18 U.S.C. § 2705 (except for delay of trial), and authorize the officer executing this warrant to delay notice to the person who, or whose property, will be searched or seized (check the appropriate box)
 for _____ days (not to exceed 30) until, the facts justifying, the later specific date of _____.

Date and time issued: _____

 Judge's signature

City and state: _____

 Printed name and title

Appendix D
Federal Arrest Warrant (Form AO 442)

AO 442 (Rev. 11/11) Arrest Warrant

UNITED STATES DISTRICT COURT

for the

United States of America

v.

Case No.

Defendant

ARREST WARRANT

To: Any authorized law enforcement officer

YOU ARE COMMANDED to arrest and bring before a United States magistrate judge without unnecessary delay
(name of person to be arrested) _____,
who is accused of an offense or violation based on the following document filed with the court:

- Indictment Superseding Indictment Information Superseding Information Complaint
 Probation Violation Petition Supervised Release Violation Petition Violation Notice Order of the Court

This offense is briefly described as follows:

Date: _____

Issuing officer's signature

City and state: _____

Printed name and title

Return

This warrant was received on (date) _____, and the person was arrested on (date) _____
at (city and state) _____.

Date: _____


Arresting officer's signature

Printed name and title

Appendix E

DHS Immigration Enforcement Subpoena (Form I-138)

1. To (Name, Address, City, State, Zip Code)	DEPARTMENT OF HOMELAND SECURITY IMMIGRATION ENFORCEMENT SUBPOENA to Appear and/or Produce Records 8 U.S.C. § 1225(d), 8 C.F.R. § 287.4
Subpoena Number	
2. In Reference To	
(Title of Proceeding)	(File Number, if Applicable)
By the service of this subpoena upon you, YOU ARE HEREBY SUMMONED AND REQUIRED TO:	
(A) <input type="checkbox"/> APPEAR before the U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), or U.S. Citizenship and Immigration Services (USCIS) Official named in Block 3 at the place, date, and time specified, to testify and give information relating to the matter indicated in Block 2.	
(B) <input checked="" type="checkbox"/> PRODUCE the records (books, papers, or other documents) indicated in Block 4, to the CBP, ICE, or USCIS Official named in Block 3 at the place, date, and time specified.	
Your testimony and/or production of the indicated records is required in connection with an investigation or inquiry relating to the enforcement of U.S. immigration laws. Failure to comply with this subpoena may subject you to an order of contempt by a federal District Court, as provided by 8 U.S.C. § 1225(d)(4)(B).	
3. (A) CBP, ICE or USCIS Official before whom you are required to appear	(B) Date
Name	
Title	
Address	(C) Time <input checked="" type="checkbox"/> a.m. <input type="checkbox"/> p.m.
Telephone Number	
4. Records required to be produced for inspection	
5. Authorized Official	
(Signature)	
(Printed Name)	
(Title)	
(Date)	



If you have any questions regarding this subpoena, contact the CBP, ICE, or USCIS Official identified in Block 3.

DHS Form I-138 (6/09)

Appendix F Federal Judicial Subpoena

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

Plaintiff)
v.) Civil Action No.

Defendant)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To:

(Name of person to whom this subpoena is directed)

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:

Place:	Date and Time:
--------	----------------

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
--------	----------------

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: _____

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) _____, who issues or requests this subpoena, are:

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Appendix G

Know Your Educational Rights

Your Child has the Right to a Free Public Education

- All children in the United States have a Constitutional right to equal access to free public education, regardless of immigration status and regardless of the immigration status of the students' parents or guardians.
- In California:
 - All children have the right to a free public education.
 - All children ages 6 to 18 years must be enrolled in school.
 - All students and staff have the right to attend safe, secure, and peaceful schools.
 - All students have a right to be in a public school learning environment free from discrimination, harassment, bullying, violence, and intimidation.
 - All students have equal opportunity to participate in any program or activity offered by the school, and cannot be discriminated against based on their race, nationality, gender, religion, or immigration status, among other characteristics.

Information Required for School Enrollment

- When enrolling a child, schools must accept a variety of documents from the student's parent or guardian to demonstrate proof of child's age or residency.
- You never have to provide information about citizenship/immigration status to have your child enrolled in school. Also, you never have to provide a Social Security number to have your child enrolled in school.

Confidentiality of Personal Information

- Federal and state laws protect student education records and personal information. These laws generally require that schools get written consent from parents or guardians before releasing student information, unless the release of information is for educational purposes, is already public, or is in response to a court order or subpoena.
- Some schools collect and provide publicly basic student "directory information." If they do, then each year, your child's school district must provide parents/guardians with written notice of the school's directory information policy, and let you know of your option to refuse release of your child's information in the directory.

Family Safety Plans if You Are Detained or Deported

- You have the option to provide your child's school with emergency contact information, including the information of secondary contacts, to identify a trusted adult guardian who can care for your child in the event you are detained or deported.
- You have the option to complete a Caregiver's Authorization Affidavit or a Petition for Appointment of Temporary Guardian of the Person, which may enable a trusted adult the authority to make educational and medical decisions for your child.

Right to File a Complaint

- Your child has the right to report a hate crime or file a complaint to the school district if he or she is discriminated against, harassed, intimidated, or bullied on the basis of his or her actual or perceived nationality, ethnicity, or immigration status.