



February 10, 2025

Via email

{SCHOOL DISTRICT}

Re: Legal Rights of Immigrant Students in Georgia Schools

Dear Superintendent:

Schools are obligated to protect students' rights, including their Fourth Amendment rights against unreasonable searches and seizures, their Fifth Amendment right against self-incrimination, and their privacy rights under Family Educational Rights and Privacy Act ("FERPA"), as well as numerous other laws.

Recognizing the sensitivity of schools and their obligations to their students, U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP) previously maintained a "sensitive locations" policy that limited immigration enforcement in schools and other places.¹ The current administration rescinded this policy on January 21, 2025.

The federal government's revocation of the "sensitive locations" policy does not affect the constitutional right of immigrant children to an education, does not affect the legal responsibilities of school districts towards their students, and does not affect a school's own legal rights regarding who enters their property.

In line with those rights and responsibilities, schools:

- Do not have to allow ICE agents to enter school property that is not otherwise open to the public, unless the agents have a valid *judicial* warrant or subpoena. ICE commonly uses *administrative* warrants, and schools do not have to grant entry based on an administrative warrant.

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

- Should not require students or families to provide information about their immigration status.
- Cannot, under FERPA, give any law enforcement officer—including immigration agents—student information unless the officer has a valid court order or judicial subpoena.²

Though the revocation of the “sensitive locations” policy does not negate these rights or responsibilities, the revocation does make it more likely that immigration enforcement operations will take place at schools. Therefore, it is critically important for schools to understand both children’s rights and schools’ responsibilities. Further explanation and guidance regarding these and other obligations are below.³

Students Have a Legal Right to Public Education Without Discrimination, Regardless of Immigration Status

Federal laws prohibit discrimination in public education, including discrimination on the basis of race, color, or national origin.⁴ Federal law specifically prohibits schools from “utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.”⁵ The Supreme Court, in the case *Plyler v. Doe*,⁶ also held that discrimination on the basis of immigration status in access to basic public education violates the Constitution. As the Court explained, denying access to education based on immigration status would “impose a lifetime hardship on a discrete class of children not accountable for their disabling status.”⁷

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

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

³ This letter should not be construed as legal advice, but rather as a strong recommendation that you seek legal guidance promptly relative to issues in this letter. The law in this area is complex and every situation is different.

⁴ Title IV of the Civil Rights Act of 1964, 42 U.S.C. § 2000c-6 (public elementary and secondary education); Title VI, 42 U.S.C. § 2000d (recipients of federal funds).

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

⁶ 457 U.S. 202 (1982).

⁷ *Id.* at 223.

Schools' principal responsibility is to their students, and they are not required to cooperate with immigration agents where the law does not mandate it.

Most importantly—schools can lawfully deny ICE agents entry to school property that is not otherwise open to the public, unless those agents have a valid *judicial* warrant or subpoena. ICE more commonly uses administrative warrants, which do not give ICE agents authority to enter school property that is not otherwise open to the public. **If ICE agents only have an administrative warrant, they cannot enter school property that isn't otherwise open to the public without the school's permission. Schools have the full authority to deny that permission.** (A fact sheet further explaining different types of warrants and subpoenas and how to respond to them is available at: www.nilc.org/wp-content/uploads/2020/09/Warrants-Subpoenas-Facts-1.pdf . A sample *judicial* warrant is on page 11 of the PDF, and a sample *administrative* warrant is on page 13. [Here](#) is another fact sheet explaining the differences between judicial warrants and ICE administrative documents.)

In order to protect students and prevent your schools from being immigration enforcement sites, these are important steps to take:

- Train all school staff, based on your protocols, that if immigration agents come to a school, staff should immediately inform a designated trained contact person (for example, the principal), who should then consult the school's attorney. School staff should be instructed not to consent to immigration enforcement officers entering non-public areas and should not allow immigration enforcement officers to interview students.
- Clearly demarcate the public and non-public areas in your schools. If school playgrounds, sports fields, etc., are not open to the public during certain hours, you can also post signage setting out those limits. Train staff that ICE is not permitted to enter any non-public areas without a judicial warrant.
- Establish protocols for exactly what school staff should do if immigration agents come to a school. Sample protocols are located [here](#) and [here](#).
- Because immigration agents sometimes wear clothing intended to suggest they are local police, and because a variety of law enforcement agencies can be involved in immigration investigations and enforcement, the procedures above should be used whenever any law enforcement officials come to a school (other than in emergency situations or when called by the school to come there).

- An attorney should review what immigration enforcement officials are requesting, including any warrant or subpoena presented. The attorney can ensure that schools are acting consistent with their legal responsibilities to students and can provide advice to school decision makers about how to proceed. Schools may face legal repercussions under FERPA if staff provide student information to immigration agents, which is why legal review of all requests for student information is critical.
- Judicial warrants and subpoenas are often limited to particular places within an address or certain identified people. The school's attorney and decision-makers should hold immigration agents to the limits in the judicial warrant or subpoena.
- Observe and document any actions by immigration agents on school property. Schools should make copies of officers' identification documents, as well as any warrants or subpoenas.

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

Requiring students, parents, or guardians to provide schools with information regarding their immigration status, or taking other actions that significantly interfere with the right to a basic public education, violates the constitutional principles set out in *Plyler v. Doe*.⁸

Schools should not require students to provide a social security number and, consistent with *Plyler*, should identify a range of documents (e.g., birth certificate, parent affidavit, etc.) that may be used to establish a child's age. To further remove barriers to enrollment, schools can limit the information required to enroll to proof of residency, proof of age, and immunization records, and request any other information after enrollment.

In sum:

- Schools should not ask about or require students to provide proof of immigration status.⁹

⁸ See *Hispanic Interest Coal. of Alabama v. Governor of Alabama*, 691 F.3d 1236, 1245 (11th Cir. 2012); *League of United Latin Am. Citizens v. Wilson*, 908 F. Supp. 755, 774 (C.D. Cal. 1995), *on reconsideration in part*, 997 F. Supp. 1244 (C.D. Cal. 1997).

⁹ U.S. Dep't of Educ., Office for Civil Rights & Office of the General Counsel, U.S. Dep't of Just., Civil Rights Div., *Dear Colleague Letter: School Enrollment Procedures 1* (May 8, 2014), https://www.aclumich.org/sites/default/files/doj_doe_dear_colleague_letter.pdf; U.S. Dep't of Educ., Office for Civil Rights & Office of the General Counsel, U.S. Dep't of Just., Civil Rights Div.,

- Schools should not ask students for information such as social security numbers or place of birth that may indicate a student’s immigration status.¹⁰
- Schools should not require documents for determining residency or age that only people with U.S. citizenship or current immigration status can have (e.g., U.S. passport, driver’s license, etc.). Instead, schools should provide a variety of means for establishing information necessary for enrollment.¹¹
- School administrators should limit the information collected from students, parents, and guardians. If there is no reason to collect it, then do not collect it.

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

School Districts Must Protect the Privacy of Student Records

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

Absent one of the narrow emergency exceptions (e.g., natural disaster, terrorist

Information on the Rights of All Children to Enroll in School: Questions and Answer for States, School Districts and Parents 1 (May 8, 2014),

https://www.aclumich.org/sites/default/files/doj_doe_letter_on_imm_records.pdf.

¹⁰ *See id.*

¹¹ *See* Michigan Dept. of Educ., Pupil Accounting Manual 2024-2025, at 1-6, www.michigan.gov/mde/-/media/Project/Websites/mde/OFM/State-Aid/Pupil-Accounting/Manual/Final-PAM-24-25.pdf?rev=854110f8006949cf810cac84dbec99c9&hash=E475383D5A22C0AC5602EA91C06669CE;

U.S. Dep’t of Educ., Office for Civil Rights & Office of the General Counsel, U.S. Dep’t of Just., Civil Rights Div., *Information on the Rights of All Children to Enroll in School: Questions and Answer for States, School Districts and Parents* 2-3 (May 8, 2014), https://www.aclumich.org/sites/default/files/doj_doe_letter_on_imm_records.pdf.

¹² 20 USC 1232g(a)(5)(B).

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

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

attack, campus shooting),¹⁵ schools may not disclose information to a law enforcement officer unless they have a valid court order or subpoena.¹⁶ Schools must make a reasonable effort to alert parents or adult students to a subpoena before providing information.¹⁷ ICE administrative subpoenas are **not** judicial subpoenas and are not enforceable on their own, absent a separate judicial order or legal proceeding to enforce the subpoena.¹⁸ Any subpoena presented by immigration agents should be reviewed by legal counsel before any information is produced.

Releasing directory information for immigration enforcement purposes could likewise violate the law.¹⁹ Therefore, requests for directory information by immigration agents should also be reviewed by legal counsel.

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

¹⁵ See 34 C.F.R. §§ 99.31(a)(10) 99.36; Student Priv. Pol'y Off., U.S. Dep't Educ., FERPA and the Coronavirus Disease 2019 (COVID-19): Frequently Asked Questions, 3-4 (2020), https://studentprivacy.ed.gov/sites/default/files/resource_document/file/FERPA%20and%20Coronavirus%20Frequently%20Asked%20Questions.pdf (requiring that “there [be] a specific emergency is not based on a generalized or distant threat of a possible or eventual emergency for which the likelihood of occurrence is unknown, such as would be addressed in general emergency preparedness activities”); U.S. Dep't of Educ., Family Educational Rights and Privacy Act (FERPA) and H1N1, 3 (2009), https://studentprivacy.ed.gov/sites/default/files/resource_document/file/ferpa-h1n1.pdf (requiring that school officials determine that the emergency exists “in the particular school or school district”).

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

¹⁷ See 34 C.F.R. § 99.31(a)(9)(ii).

¹⁸ See National Immigration Law Center, *Warrants and Subpoenas: What to Look Out For and How to Respond*, 4-6 (Sept. 2020), www.nilc.org/wp-content/uploads/2020/09/Warrants-Subpoenas-Facts-1.pdf.

¹⁹ See, e.g., *Hispanic Interest Coalition of Alabama v. Governor of Alabama*, 691 F.3d 1236 (11th Cir. 2012).

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

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

Under FERPA, school security officers may use FERPA-protected information only if they are acting as a "school official" in order to fulfill a "legitimate educational interest." A security officer is considered a "school official" only if a school has direct control over the officer's maintenance and use of education records.²⁰ School security officers may not disclose that information to other law enforcement officers who are not acting as "school officials" for the same task.²¹ Immigration enforcement is not a "legitimate educational interest."

Note that school administrators can be held responsible for the actions of security officers who violate FERPA because security officers are acting as "school officials" when accessing FERPA-protected information.

We recommend that:

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

Districts must also ensure that school security officers are properly following Fourth and Fifth Amendment standards for detention, interrogation, search, and seizure, and are not arresting students for incidents that can be handled as matters of school discipline. These concerns carry extra weight for immigrant students, for whom school policing has the potential to undermine the education rights outlined in *Plyler*. Police in schools commonly arrest students for misdemeanor offenses like disorderly

²⁰ 34 C.F.R. § 99.31(a)(1)(i)(B)(2).

²¹ See 34 C.F.R. § 99.31(a)(1)(i)(B), § 99.31(a)(1)(ii) and § 99.33(a)(2).

conduct when behaviors could instead be addressed through school discipline.²² Police in schools sometimes also collect intelligence on students—for example, to enter them into a database of alleged gang associates. In addition to numerous detrimental impacts these forms of policing have on any student,²³ immigrant students risk having their application for citizenship or other immigration benefits placed in jeopardy or being prioritized for deportation.

We recommend that:

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

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

There are many steps districts can take to support their immigrant students. To help districts on this journey, we have attached a model *Welcoming Schools* resolution and protocol to this message, along with a list of best practices for school districts to follow when developing their own policies.

In addition, we encourage you to communicate with district families that all students are welcome in your schools.²⁴ Districts should adopt policies for how staff should

²² See, e.g., Chongmin Na & Denise Gottfredson, *Police Officers in Schools: Effects on School Crime and the Processing of Offending Behaviors*, 30 JUST. Q. 619, 620 (2013); Steven C. Teske, *A Study of Zero Tolerance Policies in Schools: A Multi-integrate System Approach to Improve Outcomes for Adolescents*, J. OF CHILD AND ADOLESCENT PSYCH. NURSING; Matthew T. Theriot, *School Resource Officers and the Criminalization of Student Behavior*, 37 J. OF CRIM. JUST. (2009).

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

²⁴ For sample letters, see Grand Rapid Public Schools Letter, available at https://www.aclumich.org/sites/default/files/grand_rapids_immigration_info_jan_23_2025.pdf; Detroit Public Schools Letter, available at www.detroitk12.org/cms/lib/MI50000060/Centricity/Domain/4/Parent%20Letter%20-%20Sanctuary%20District%20Policy%20-%20English.pdf; Christopher T. Dormer, Federal Procedure Change, NORRISTOWN AREA SCH. DIST. (Jan. 25, 2025), <https://www.nasd.k12.pa.us/page/federal-procedure-change>; Tony B. Watlington Sr., School District

handle interactions with law enforcement, including ICE, that are consistent with federal and state law. Districts should clearly communicate these policies to the school community to help assuage fears and minimize misinformation. Districts should also share with the school community that you are committed to ensuring an emotionally and physically safe learning environment for all students.

Schools should remind parents and guardians to update their emergency contact information and permissions for non-parent individuals to pick up their child from school. These forms should be circulated by schools for updates at regular intervals for all students, including now.

We also encourage you to share other Know Your Rights materials about immigration enforcement, such as those available on the websites of the ACLU and the ACLU of Pennsylvania (www.aclu.org/know-your-rights/immigrants-rights and <https://www.aclupa.org/en/know-yourrights/know-your-rights-police-and-immigration-agents>). Additional resources regarding the rights of immigrant students are available on Education Law Center's website (<https://www.elc-pa.org/wp-content/uploads/2024/09/Rights-of-Multilingual-Culturally-Diverse-Students-Families-2024.pdf>).

If immigration enforcement agents arrest a family member or child, schools should advise the family to immediately seek legal advice from an immigration attorney. Schools should familiarize themselves with local resources for immigrant families. Some Georgia resources can be found [here](#).

If there is immigration enforcement action at school, all school community members should be connected with counseling and mental health support as needed.

How Can Schools Learn More and Stay Up to Date?

Many organizations are working to provide up-to-date information for educators even as there has been a daily barrage of new executive orders and policies. The following resources may be helpful:

- The National Immigration Law Center (<https://www.nilc.org/resources>) is an excellent source for current information about changing immigration policies.

of Philadelphia Reaffirms Commitment to Safe and Welcoming Schools for All, SCH. DIST. OF PHILA. (Jan. 27, 2025), <https://www.philasd.org/blog/2025/01/27/welcomingschoolsstatement25/>.

- The National Education Association's *Guidance on Immigration Issues* (<https://www.nea.org/resource-library/guidance-immigration-issues>) has information specifically for educators.

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

Sincerely,

American Civil Liberties Union of Georgia
Asian Americans Advancing Justice - Atlanta