

Education Leaders' Guide to Complying with Existing Student Privacy and Civil Rights Laws Amidst an Evolving Immigration Landscape

January 2025

Authored by

Kristin Woelfel, *Policy Counsel, Equity in Civic Technology*

Elizabeth Laird, *Director, Equity in Civic Technology*

With immigration enforcement likely to intensify this year, it is critical that school administrators comply with existing privacy and civil rights laws with respect to the data they collect and the technology that they use. CDT research suggests that some schools are currently using data and technology to play a role in immigration enforcement. For example, **17 percent** of teachers report that their school has shared student information with immigration enforcement in the past school year.

Further, despite Immigration and Customs Enforcement's (ICE) traditional policy of refraining from enforcement actions on K-12 school campuses, school officials should recognize that this is a norm – not a prohibition – and that schools need to be prepared to address potential enforcement on campus.

This document will provide background on how immigration enforcement may affect K-12 schools, and offers recommendations for how schools can meet long-standing legal obligations that remain unchanged regardless of increased enforcement activity.

I. Background on Immigration Enforcement and K-12 Schools

Questions regarding increased immigration enforcement efforts and K-12 schools are not entirely new.¹ While some answers to these questions remain the same, shifts in the education data and technology landscape (as well as immigration) over the past near-decade require renewed analysis of potential enforcement activities and schools' rights and responsibilities. Recent reporting suggests that the incoming administration will focus on immigrant children in schools, including blocking undocumented children from attending public school and taking enforcement actions on school grounds.² It is important that schools understand the historical context that informs their existing legal obligations as well as recent changes that shape how they fulfill them, including:

- Historical policies and practices for immigration and K-12 education, and
- Recent changes in immigration and K-12 education like:
 - » Heightened focus on immigration in K-12 education by state and local leaders;
 - » An increased number of migrant students in schools; and
 - » Increased adoption of student-facing technology and data collection.

A. Historical Policy and Practice for Immigration and K-12 Education

All K-12 students, regardless of immigration status (described in more detail below), are entitled to a free public education under the Constitution.³ In the 1982 case *Plyler v. Doe*, the U.S. Supreme Court held that under the Equal Protection clause of the Fourteenth Amendment of the Constitution, undocumented, school-aged children are entitled to the same free public education as other students regardless of their immigration status. The Equal Protection Clause is a constitutional requirement that states must treat people in similar circumstances equally.

1 Mark Keierleber, *As Immigrant Students Worry About a New School Year, Districts & Educators Unveil Plans to Protect Their Safety (and Privacy)*, *The 74* (Aug. 21, 2017), <https://perma.cc/WLS6-BLDE>; Ray Sanchez, *US Public Schools Take Steps to Protect Undocumented Students*, *CNN* (Feb. 24, 2017), <https://perma.cc/H7NB-KE8G>; Yesenia Robles, *Colorado School Leaders Worried About Immigration Raids Hear From One Who Experienced It*, *Chalkbeat Colorado* (Dec. 17, 2024), <https://perma.cc/LQU5-97E2>.

2 Julia Ainsley and Didi Martinez, *Trump Plans to Scrap Policy Restricting ICE Arrests at Churches, Schools and Hospitals*, *NBC News* (Dec. 11, 2024), <https://perma.cc/M54H-MNAC>; Kalyn Belsha, *Trump's Deportation Plan Could Separate Millions of Families, Leaving Schools to Pick Up the Pieces*, *Chalkbeat* (Oct. 29, 2024), <https://perma.cc/5FTF-BN3R>; Ileana Najarro, *Can Immigration Agents Make Arrests and Carry Out Raids at Schools?*, *Education Week* (Dec. 11, 2024), <https://perma.cc/2665-2DKH>.

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

By denying these children a basic education, we deny them the ability to live within the structure of our civic institutions, and foreclose any realistic possibility that they will contribute in even the smallest way to the progress of our Nation.

– *Plyler v. Doe*

Defining Immigration Status

“Immigration status” is an important term for school leaders to understand in fulfilling their privacy and civil rights obligations.

- “Immigration status” is a term that generally describes the way in which a person is present in the U.S. This can include being a U.S. citizen (born or naturalized), lawful permanent resident (Green Card holder), visa holder, refugee, asylum seeker, or undocumented person.⁴
- “Immigration status” is distinct from the term “Immigrant Student” as defined under Title III of the Elementary and Secondary Education Act (described in more detail below), which is used in the education context for data reporting and grant purposes.

It is important to understand that the threat of immigration enforcement is not limited to undocumented students, but can impact anyone who is not a U.S. citizen. For purposes of this discussion, we will use the terms “noncitizen students” and “migrant students” to refer to the population of students who may be subject to immigration consequences.

Schools never need to know or collect documentation of the student or family’s specific immigration status.

For a more detailed discussion of the types of immigration consequences migrant students might face because of school data and technology practices, see CDT’s companion civil rights analysis, *Unique Risks for Immigrant K-12 Students on the AI-Powered Campus*.⁵

4 *What is Immigration Status?*, Esperanza United (last accessed Dec. 20, 2024), <https://perma.cc/LPX6-MTGP>.

5 Kristin Woelfel, *Unique Risks for Immigrant K-12 Students on the AI-Powered Campus*, Ctr. for Democracy & Technology (Jan. 15, 2025), <https://perma.cc/5KXJ-ZZ84>.

Federal enforcement of *Plyler v. Doe* states that schools cannot take actions that would discourage enrollment and success of students based on immigration status, including but not limited to:

- Asking about their immigration status, including whether they are undocumented, during the enrollment process; or
- Mandating the collection of records related to immigration status (e.g., birth certificates being used as proof of citizenship, social security numbers, etc.).⁶

In some instances, schools may ask questions to determine whether the student meets certain criteria for federal reporting, funding, or standardized testing purposes (discussed in further detail below), but collecting or determining a student's specific immigration status is never necessary for this purpose. Additionally, schools should notify parents that answering such questions is completely voluntary.⁷

For decades, ICE has maintained a voluntary policy of not taking enforcement actions at "sensitive locations," including schools, so as not to deter students from going to school.⁸ This approach was formalized in a 2011 memo from the U.S. Department of Homeland Security (DHS), citing the need to exercise caution if, "a planned enforcement action could reasonably be viewed as causing disruption to the normal operations."⁹ This policy is not a legislative requirement, nor is it a legal prohibition, meaning the policy may be subject to change at any time. A bill that would codify this norm, the Protecting Sensitive Locations Act, has been introduced in multiple Congressional sessions to ensure that immigration enforcement actions do not, according to DHS, "restrain people's access to essential services or engagement in essential activities."¹⁰

Regardless of whether this policy is rescinded, it is important to continue to center its goals — not discouraging or preventing students from attending school, consistent with the *Plyler v. Doe* ruling. The importance of this policy is emphasized by research showing that the threat of immigration enforcement can severely impact performance and attendance rates for noncitizen students, and students of immigrant families. A 2018 survey of educators regarding the perceived impact of immigration enforcement on their students found that 90 percent reported behavioral or emotional problems among noncitizen students, 68 percent reported an uptick in absenteeism, and 70 percent reported academic decline in noncitizen students.¹¹

6 U.S. Dep't of Justice Civil Rights Division & U.S. Dep't of Education Office for Civil Rights, *Confronting Discrimination Based on National Origin and Immigration Status; A Resource for Families and Educators*, U.S. Dep't of Justice (Aug. 2021), <https://perma.cc/XD9W-Q25M>.

7 *Fact Sheet II: Additional Questions & Answers on Enrolling New Immigrant Students*, U.S. Department of Education (last accessed Dec. 12, 2024), <https://perma.cc/VZ3A-FTHG>.

8 Kalyn Belsha, *Potential for Immigration Arrests at Schools Under Trump Spurs Push to Shield Families*, Chalkbeat (Dec. 18, 2024), <https://perma.cc/H7MV-2PD5>.

9 *Memorandum re: Enforcement Actions at or Focused on Sensitive Locations*, U.S. Immigration and Customs Enforcement (Oct 24, 2011), <https://perma.cc/EB4Y-UJP6>.

10 Protecting Sensitive Locations Act, H.R. 529, 117th Cong. (2021); *Memorandum re: Guidelines for Enforcement Actions in or Near Protected Areas*; U.S. Dep't of Homeland Security (Oct. 27, 2021), <https://perma.cc/4E6F-CFB3>.

11 *Comments on: U.S. Department of Education, Request for Information Regarding the Nondiscriminatory Administration of School Discipline*, Docket ID ED-2021-OCR-0068, Nat'l Immigration Law Ctr. (2021), <https://perma.cc/6N3U-QBGY> (citing Patricia Gándara & Jongyeon Ee, U.S. Immigration Enforcement Policy and its Impact on Teaching and Learning in the Nation's Schools, UCLA Civil Rights Project (Feb. 2018), <https://perma.cc/2ZKP-V4KW>).

B. A Changed Landscape

Although policies and practices regarding immigration and K-12 schools remain more or less unchanged in the past decade, there have been three significant developments that are important to note as schools navigate their legal obligations moving forward:

Heightened focus on immigration in K-12 education policy by state and local leaders

While not necessarily new, the intersection of immigration and public education has been particularly prominent in public discourse during the past year. In states where anti-immigration sentiment is heightened, this has culminated in a number of legal and policy efforts by state leaders (while some states are enacting additional protections of migrant students as described below), such as the following:

- **State legislatures:** A number of state legislatures have moved to criminalize undocumented immigrants' presence in the state, thereby deputizing state law enforcement with immigration enforcement power under state law. In Louisiana, one such bill was introduced with language citing overcrowding in K-12 schools due to undocumented and English Learner students as an impetus for the bill.¹²
- **State governors:** Several state governors have publicly shared their desire and plans to eliminate the constitutional right to education for undocumented students, including Governor Abbott of Texas, who previously announced plans to challenge *Plyler v. Doe* (i.e., to initiate state lawsuits to challenge the rule and appeal to the Supreme Court to reconsider and reverse the landmark *Plyler* decision).¹³
- **State and local education officials:** The state superintendent of public instruction in Oklahoma sent home a statewide parent notice outlining his priorities under an incoming administration and in the event of the U.S. Department of Education's abolition. One enumerated priority was titled "Stopping Illegal Immigration's Impact on Schools," and described schools as being "flooded" due to border policies, unable to "prioritize their communities," and stretching resources "meant for American kids." Similar ideas were shared by school board officials in Katy, Texas, where a school board member inquired (publicly, at an official school board meeting) about how many "illegal immigrant children" the district was educating and whether the Texas legislature might assist in allowing for school boards across the state to gain access to the immigration status of children.¹⁴

12 S.B. 388, 2024 Leg., Reg. Sess. (La. 2024), <https://perma.cc/3V78-35WM>.

13 Bill Chappell, *Texas Governor Says the State May Contest a Supreme Court Ruling on Migrant Education*, NPR (May 6, 2022), <https://perma.cc/TX4K-4Y82>.

14 *Memorandum Regarding the Elimination of the U.S. Department of Education*, Oklahoma State Department of Education (Nov. 7, 2024), <https://perma.cc/2V9S-M4G6>; Kush Vijapure, *My Katy ISD Board Member Thinks Undocumented Students Are a Burden. Here's Why She's Wrong.*, Shift Press (Jun. 21, 2024), <https://perma.cc/3SM4-L5Y8>.

Increased number of K-12 migrant students in schools

Using the Census Bureau's 2017-2021 American Community Survey (ACS) dataset, the National Center for Education Statistics estimates the number of enrolled non-U.S. citizens in public K-12 schools is approximately 1,561,424.¹⁵ School districts in areas with high migration rates separately reported high numbers of migrant student enrollment in the past few years.¹⁶ For example, Miami-Dade County Public Schools reported that the district had grown for the first time in two decades, taking in 20,000 new migrant students during the 2022-2023 school year.¹⁷

Increased adoption of student-facing technology and data collection

As background to emerging technologies that could intersect with immigration enforcement, it is important to understand current data collection and sharing practices in schools:

- **Data collection about immigrant students:** As previously mentioned, schools may collect limited information about whether a student has recently arrived in the U.S. to fulfill federal reporting, funding, and statewide assessment needs. While schools cannot expressly require the collection of information about a student or family's immigration status (including whether they are undocumented) to facilitate enrollment, schools do collect data about students that may speak to their immigration status — for example, their place of birth, family demographics, and how many years they have attended school in the U.S., though parent responses are voluntary (discussed further below).
- **Data sharing with immigration enforcement:** Evidence suggests that some schools are sharing student information directly with immigration authorities. New CDT research shows that nearly **one in five** middle and high-school teachers (**17 percent**) report that their school or school district shared student data such as grades, attendance, and discipline information with immigration enforcement (e.g., ICE) during the 2023-24 school year. Teachers in urban school districts were more likely to report this, an important finding because the majority of immigrants live in major metropolitan areas.¹⁸ CDT research also indicates that parents across the board express concern about student data being shared with immigration enforcement.¹⁹ **Six-in-ten** parents are very or somewhat concerned by this potential practice, with the concern shared by parents across race, ethnicity, and income.

15 *Education Demographics and Geographic Estimates, School Year 2017-21*, Nat'l Ctr. for Education Statistics, <https://perma.cc/ZVE5-HTGD>.

16 Libby Stanford, *A More Complete Picture of Immigration's Impact on U.S. Public Schools*, Education Week (Jun. 6, 2024), <https://perma.cc/C22X-WQG4>.

17 Kate Payne, *'I See Myself in These Students': 20,000 Immigrant Children Join Miami-Dade Schools*, WLRN Public Media (May 24, 2023), <https://perma.cc/LX8A-TDQ3>.

18 In 2022, more than 29 million immigrants – 63% of the nation's foreign-born population – lived in just 20 major metropolitan areas. Mohamad Moslimani and Jeffrey S. Passel, *What the Data Says About Immigrants in the U.S.*, Pew Research Center (Sep. 27, 2024), <https://perma.cc/N32D-CRKZ>.

19 Elizabeth Laird, Maddy Dwyer, & Kristin Woelfel, *Out of Step*, Ctr. for Democracy & Technology (Jan. 15, 2025), <https://perma.cc/484H-7BNR>.

It is against this data collection and sharing backdrop that schools have adopted technology systems that monitor students' activity and restrict access to information, which could intersect with immigration enforcement efforts.²⁰ Two specifically implicated technologies are student activity monitoring and content filtering and blocking software.

Student Activity Monitoring Software

Student activity monitoring allows school employees to monitor students' search engine queries and browsing history; view students' email, messaging, and social media content; view the contents of their screens in real time; and more.²¹ **Eighty-eight percent** of teachers report that their school uses this technology.²² In some schools, students flagged by activity monitoring software are being contacted by immigration enforcement: small percentages of both high school students (**5 percent**) and teachers (**7 percent**) report that a student was contacted by immigration enforcement (e.g., ICE) due to an alert from the school's student activity monitoring software in the last school year alone.

Content Filtering and Blocking Software

Schools use content filtering and blocking software to screen or restrict access to online content, including websites and mobile apps, in part to fulfill a legal requirement to prevent students from accessing "harmful or obscene content."²³ **Ninety-seven percent** of teachers report that their school uses this technology.²⁴ **Nearly one-third** of students, teachers, and parents believe that content associated with immigrant students and students of color is more likely to be blocked at school, and Black and Hispanic students are more likely to report that this content is filtered or blocked.²⁵ Because previous research has shown that students attempting to visit blocked content is the most common reason for which alerts are generated (and students get in trouble), filtering and blocking software, in connection with student activity monitoring, creates new potentially revealing information about migrant students.²⁶

For a more detailed discussion regarding the type of information generated by migrant students and these technologies, please see CDT's companion resource titled *Unique Risks for Immigrant K-12 Students on the AI-Powered Campus*.²⁷

20 Kristin Woelfel, *Unique Risks for Immigrant K-12 Students on the AI-Powered Campus*, Ctr. for Democracy & Technology (Jan. 15, 2025), <https://perma.cc/5KXJ-ZZ84>.

21 Hugh Grant-Chapman, Elizabeth Laird, & Cody Venzke, *Student Activity Monitoring Software: Research Insights and Recommendations*, Ctr. for Democracy & Technology (Sept. 21, 2021), <https://perma.cc/ZT9B-4LY2>.

22 *Supra* note 19.

23 See *Children's Internet Protection Act (CIPA)*, Fed. Communications Comm. (last updated/reviewed Dec. 30, 2019), <https://perma.cc/J6UH-QS4S>; see also Elizabeth Laird, Madeleine Dwyer, & Hugh Grant-Chapman, *Off Task: EdTech Threats to Student Privacy and Equity in the Age of AI*, Ctr. for Democracy & Technology (Sep. 20, 2023), <https://perma.cc/XEX4-FH8U>.

24 *Supra* note 19.

25 *Id.*

26 *EdTech Threats to Student Privacy and Equity in the Age of AI: Survey Research on Parent, Student, and Teacher Experiences*, Ctr. for Democracy & Technology 27 (Sep. 2023), <https://perma.cc/SG2N-EM56>.

27 *Supra* note 5.

II. Schools' Long-Standing Student Privacy Obligations

Schools have been legally required to fulfill student privacy obligations for decades under authorities like the 1974 Family Educational Rights and Privacy Act (FERPA). Since then, Congress and state legislatures have enacted additional student privacy protections schools must also comply with. These protections apply to the data schools collect and share along with technologies they use. Absent new legislation, schools are required to fulfill existing legal obligations to protect student privacy and civil rights, regardless of heightened immigration enforcement efforts.

A. Required Data Collection

As previously described, schools are prohibited from requiring the disclosure of information that would discourage enrollment in schools, including immigration status. However, there are limited scenarios for which simply understanding whether a student is a *recent* immigrant (e.g. arrived in the U.S. within the past three years) is needed, typically for three purposes:

1. **EDFacts Reporting.** The U.S. Department of Education's (ED) EDFacts Initiative collects aggregate data from state education agencies to help policy development, planning, and management.²⁸ The data includes district and school demographics, program participation, and performance data, which, in turn, includes an aggregate count of enrolled Title III immigrant students (defined in Title III as a student between the age of 3 to 21 who was not born in the U.S. and has attended school in the U.S. for less than three full academic years).²⁹ State education agencies collect this information from individual schools, and, while schools are required to ask these questions, parents' answers are voluntary. Education agencies' failure to provide this information to ED constitutes a legal violation and can result in the loss of federal funding.³⁰
2. **Immigrant Children and Youth Enrollment Grant.** Schools can receive additional federal funding to improve the education of English Learner (EL) and immigrant students. Grants under the Immigrant Children and Youth Enrollment Grant (administered under Title III) are calculated using a formula that takes into account the number of immigrant and EL students, which necessitates that schools know which students are immigrant students (under Title III) or ELs.³¹ The information required for this purpose is the same as above, and parents' answers are voluntary.

28 *The EDFacts Initiative*, U.S. Dep't of Education (last accessed Dec. 19, 2024), <https://perma.cc/U5LY-G97W>

29 *EDFacts Workbook and Frequently Asked Questions (FAQs)*, U.S. Dep't of Education (July 2024), <https://perma.cc/C33N-5MAV>.

30 *Id.*

31 20 U.S.C. 7011, §3201(5); English Language Acquisition State Grants; Title III, Part A, U.S. Dep't of Education (last accessed Dec. 12, 2024), <https://perma.cc/6Z76-STTY>.

3. **State-Specific Assessment Requirements.** The Every Student Succeeds Act (ESSA) requires all students sit for annual standardized tests in grades 3-8 and once in high school, including immigrant students who have recently arrived to the U.S. The results of these tests are often used in school accountability systems as well as reported publicly in online parent report cards. Migrant students who have recently arrived in the country (specifically, those who have attended school in the U.S. for less than one full academic year) may be granted a one-year exemption from taking the English/Language Arts assessment, which can only be provided if schools know who these students are.³²

With any of the above required data collections, schools are mandated to fulfill federal student privacy requirements to destroy sensitive student data after the education agency determines it is no longer needed, although FERPA grants schools discretion to determine when this is the case.³³ Schools should consult with their legal counsel to identify any legally required retention periods and put in place a schedule for retention and deletion of student data.

B. Privacy and Disclosure of Information

A number of federal and state laws protect student privacy, such as by limiting the circumstances in which schools can disclose student data to third parties, including immigration authorities and others who may seek the data for immigration enforcement. The following analysis focuses on the primary federal law that protects student privacy, but the vast majority of states have their own student privacy laws that may have additional restrictions.³⁴ FERPA prohibits the release of education records of all students who are in attendance at public K-12 schools, including migrant students, unless the disclosure meets one of FERPA's limited exceptions.

The following FERPA requirements and exceptions could be relevant to how schools appropriately respond to requests to access student information for immigration enforcement:

- **Court order or judicial subpoena:** Schools generally must provide personally identifiable information about students in response to a court order or judicial subpoena. The school must make a reasonable effort to notify the family prior to complying and disclosing any information to provide them with an opportunity to challenge the subpoena or court order. Although FERPA does not require such

32 Elementary and Secondary Education Act of 1965, S. 1177, 114th Cong. §1111(b)(3)(A) (2015).

33 Elizabeth Laird and Hannah Quay-de la Vallee, *Balancing the Scale of Student Data Deletion and Retention in Education*, Ctr. for Democracy & Technology (Mar. 14, 2019), <https://perma.cc/73DT-XP45>; 20 U.S.C. §1232g (b) (3).

34 *State Student Privacy Laws*, Student Privacy Compass (last accessed Dec. 12, 2024), <https://perma.cc/93UT-CJHS>.

notice where the subpoena or order is for a law enforcement purpose, federal immigration enforcement is a civil matter and is therefore generally not subject to this exception.³⁵

- **Directory information:** FERPA requires that certain information about students is designated as directory information, which is information that is generally not considered harmful or an invasion of privacy if released and can therefore be shared without parental consent (although parents must be notified annually and given the opportunity to opt out of their child's information being shared).³⁶ No information related to a student's immigration status, including whether they recently arrived in the U.S., where they were born, or whether they are considered to be an immigrant student under Title III, should be designated as directory information.
- **Parental consent:** A school may also legally share student education records under FERPA with parental consent (though this presumably would be an uncommon occurrence in the case of sharing with ICE).

In the context of immigration enforcement efforts, schools are likely to face attempts to obtain access to students or student information either through individual student record requests or requests to detain or interview students.

Individual student education record requests

External organizations regularly request information about individual students that is housed in their education records. As it relates to third party organizations requesting this information in service of immigration enforcement, school administrators should know that schools are only required to comply with individual student education records requests if they receive a **judicial court order** or **lawfully issued judicial subpoena**. In civil matters, including federal immigration enforcement, FERPA generally requires the school to make a "reasonable effort" to notify parents in advance of the school's compliance so the parent may "seek protective action."³⁷ Therefore, schools should not provide any information on the spot – districts should have a process in place that directs all subpoenas to a single point of contact to ensure a consistent response in accordance with school policies and procedures.

- There is a significant distinction between a *judicial* subpoena and an *administrative* subpoena. Immigration subpoenas, which are formal written requests for information or witness testimony, are administrative subpoenas because they are issued by a government agency (like ICE or USCIS) or immigration judge, and *not* by a federal or state court judge.

35 See *Fact Sheet: Immigration Courts*, Immigration Forum (Aug. 7, 2018), <https://perma.cc/GXB5-VAKE>; The exception may apply if related to the enforcement of a state criminal law.

36 *Directory Information*, U.S. Dep't of Education (last accessed Dec. 12, 2024), <https://perma.cc/RR6C-YJAU>.

37 34 CFR §99.31(a)(9)(ii).

	Judicial Subpoena	Administrative Subpoena
Issuing entity?	A judicial court; federal court judge or magistrate; state court judge or magistrate	Administrative agencies such as DHS, USCIS, ICE or CBP; immigration judge or immigration court
Compliance required?	Yes — always, if it is a valid judicial warrant	Depends. An administrative warrant does not authorize a search, but, in some circumstances, it may authorize a civil arrest or seizure.



Table 1. What kind of subpoena a school has received and what action is required (NILC)

This graphic is originally from the National Immigration Law Center, adapted here.

Warrants and Subpoenas; What to Look Out For and How to Respond (pg. 3) <https://www.nilc.org/wp-content/uploads/2020/09/Warrants-Subpoenas-Facts.pdf>; <https://perma.cc/SM3V-YAFL>

- Subpoenas issued by immigration agencies or signed by immigration judges are *not* judicial subpoenas, so there are no immediate requirements or consequences for noncompliance until the administrative entity obtains a judicial court order to enforce the subpoena.
- Subpoenas issued by immigration enforcement bodies are also subject to restrictions under the Fourth Amendment of the Constitution, which provides protection against unreasonable searches and seizures. This means that immigration subpoenas must be tailored in scope, relevant, and clear in describing what specific information is being sought, why the request is being made, and for what purpose.³⁸

³⁸ *Warrants and Subpoenas; What to Look Out For and How to Respond*, Nat'l Immigration Law Ctr. 3 (Sep. 2020), <https://perma.cc/SM3V-YAFL>.

Judicial Warrant

Immigration Warrant

To be valid, a judicial warrant must:

- Be issued by a judicial court
- Be signed by a state or federal judge or magistrate
- State the address of the premises to be searched — make sure the stated address is *your address* or specifically pertains to *you*
- Be executed within the time period specified on the warrant

If the warrant includes all the above, then it is a valid judicial warrant and you must comply. However, if the judicial warrant is missing any of the above, lists a different address, or is being executed after the date specified on the warrant, then it likely is not valid, and you may (a) refuse to comply and (b) ask the agents to leave.

In contrast, an immigration warrant:

- Is issued by a DHS agency (look for a DHS seal, label, and/or the actual form number, i.e., DHS Form I-200, "Warrant for Arrest"; or Form I-205, "Warrant of Removal/ Deportation")
- Is signed by an immigration officer or immigration judge
- Bears a title that will contain the word "Alien"
- States that the authority to issue the warrant comes from immigration law, such as the Immigration and Nationality Act — and does not state that the issuing authority is a court

If the warrant has any of the above characteristics, it likely is an immigration warrant and thus does not authorize the agent(s) to enter the premises. You may (a) refuse to comply with the warrant and (b) ask the agents to leave.



Table 2. Required characteristics of a valid warrant, how to tell the difference between a judicial warrant and an immigration warrant, and potential courses of action in response (NILC)

This graphic is originally from the National Immigration Law Center, adapted here.

Warrants and Subpoenas; What to Look Out For and How to Respond (pg. 5) <https://www.nilc.org/wp-content/uploads/2020/09/Warrants-Subpoenas-Facts.pdf>;
<https://perma.cc/SM3V-YAFL>

Student Interviews or Detention

If an immigration official appears at a school seeking to interview a student, they are acting in an administrative capacity, similar to an administrative subpoena described above. This means that, absent a judicial court order or parental consent, schools are not required to release student information or confirm whether that student is in attendance, nor are they required to make students available on the spot.

In some cases schools might be presented with an immigration *warrant*, which is a document that authorizes law enforcement or other authorities to make an arrest or conduct a search. Like subpoenas, these must be lawfully issued and are not enforceable as judicial warrants are. In the event an immigration enforcement officer presents an immigration warrant to search the campus or detain a student (unaccompanied by a valid judicial warrant or court order), the compliance obligations and response process should be similar to that of an administrative subpoena.

State and Local Actions to Protect Migrant Students

In addition to long-standing federal student privacy and civil rights protections, many states, local agencies, and schools are exploring additional actions to ensure that all students, regardless of immigration status, receive a free public education. These actions primarily may take two forms:

- **Enacting additional legal protections:** Although states cannot lower existing federal student privacy and civil rights protections, they can strengthen them. Currently, some states are taking actions to do just that in the face of threats to migrant students:
 - » While California already prohibits schools from collecting information or documents regarding immigration or citizenship status, lawmakers have also introduced a bill that would augment this prohibition to ban immigration enforcement from entering schools or child care facilities without certain documentation, and even then, only when children are not present.³⁹
 - » Some states have enacted general restrictions on local involvement or compliance with immigration enforcement efforts, including schools. For example, Oregon passed a law prohibiting state and local agencies, including schools, from transferring people or sharing information with immigration enforcement absent a judicial court order.⁴⁰
 - » In the healthcare context, certain states have recently enacted “shield laws” (which have their origin in protecting reporters from being required to testify and reveal their confidential sources) that have been adapted to also protect physicians administering reproductive and gender-affirming healthcare.⁴¹ This model could potentially be used to create a new form of privilege afforded to schools and education agencies. As previously discussed, there are no consequences for noncompliance with immigration subpoenas except where a judicial court order requires compliance. State shield laws are predominantly applicable in state courts, and could provide schools with the right to refuse to testify or furnish information in response to judicial subpoenas supporting federal immigration enforcement efforts or efforts to enforce state civil or criminal laws regarding immigration.

39 Daisy Nguyen, *California Bill Would Protect Schools, Child Care Centers From Immigration Raids*, KQED (Dec. 4, 2024), <https://perma.cc/FXX2-MFQH>.

40 *State Map on Immigration Enforcement*, Immigrant Legal Resource Ctr. (updated Nov. 8, 2024), <https://perma.cc/L43F-9LUS>; *Appendix: Breaking Down the Policy Categories*, Immigrant Legal Resource Ctr. (last accessed Dec. 17, 2024), <https://perma.cc/8SQ3-RQAS>.

41 *Shield Laws in the United States*, Wikipedia (last accessed Dec. 19, 2024), <https://perma.cc/95VA-3XAD>.

- **Best practices and training:** Additionally, states are providing best practice guides and training resources to frontline workers who may be involved in immigration enforcement efforts.
 - » The Attorney General of California issued updated model policies and recommendations for schools and other sensitive locations in the state. Public schools in the state are required to adopt the model policies.⁴² These model policies are designed to help schools respond to circumstances like gathering, handling, and sharing student and family information, and responding to immigration enforcement requests to access school grounds.
 - » New York City Public Schools instituted a district-wide policy to centralize legal assessment of any immigration enforcement documentation, which remains in effect since 2017.⁴³ This resource provides step-by-step protocols for responding to inquiries or appearances by immigration enforcement at the school, including guidance regarding what documentation to ask for, who to contact, when to notify families, and where within the district to send the documents for review.⁴⁴ These policies were formed in collaboration with educators and community and legal advocates, along with school district leadership and the mayor's office.

III. Schools' Long-Standing Civil Rights Obligations

Schools have an obligation under Title VI of the Civil Rights Act to provide a non-discriminatory learning environment free from harassment on the basis of protected characteristics like immigration status, national origin, race, or language.⁴⁵ This includes the manner in which they deploy long-standing and emerging technologies like content filtering and blocking and student activity monitoring software, as well as with whom they share this information.

42 *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*, California Atty. Gen. (Dec. 2024), <https://perma.cc/K577-3YSA>.

43 Alejandra Vázquez Buar, *How School Districts Can Take Action to Protect Their Immigrant Students*, The Century Foundation (Dec. 4, 2024), <https://perma.cc/K77V-FSK5>.

44 *Protocols for Non-Local Law Enforcement Actions and Inquiries*, NYC Dep't of Education and NYC Mayor's Office of Immigrant Affairs (last accessed Dec. 19, 2024), <https://perma.cc/3AQP-GFQK>.

45 Kristin Woelfel, *Unique Risks for Immigrant K-12 Students on the AI-Powered Campus*, Ctr. for Democracy & Technology (Jan. 15, 2025), <https://perma.cc/5KXJ-ZZ84>.

Long-standing theories of discrimination that apply to school edtech include disparate treatment, disparate impact, and hostile learning environment. These claims are not mutually exclusive, meaning there are times a student might have more than one claim for the same discriminatory conduct. Because of the multitude of factors involved in immigration enforcement at schools and the wide breadth of students impacted, this discussion will focus primarily on the creation of a hostile learning environment.

A hostile learning environment involves severe, pervasive, or persistent treatment that interferes with a student or group of students' ability to participate in or benefit from the services or activities provided by the school. Schools have a general obligation to provide a nondiscriminatory learning environment for all students. Increased immigration enforcement can contribute to a hostile learning environment, but a school's actions will determine whether a violation has occurred. For example, it is not within a school's control if ICE approaches school grounds uninvited. However, if a school actively engages with ICE (whether through voluntary information sharing or initiating their presence on school grounds), this is an intentional action on the school's part which it knows or should know will predominantly impact its migrant student population through enforcement contact or intimidation. Especially where engagement with immigration authorities is a regular practice, this arguably constitutes a hostile learning environment because the school is routinely engaging in voluntary conduct that will deter students and families— who belong to specific protected demographics— from attending school, participating in extracurricular activities/ events, or otherwise accessing educational resources.

For a more detailed discussion and analysis of the discrimination claims and immigration consequences migrant students might face because of school data and technology practices, see CDT's companion civil rights analysis, *Unique Risks for Immigrant K-12 Students on the AI-Powered Campus*.⁴⁶

IV. Best Practices

In addition to fulfilling the legal obligations described here, schools can also implement best practices to create a learning environment in which all students, regardless of immigration status, are provided equal access and enjoyment to a quality education as required by the Constitution:

- 1. Establish and communicate commitment to support all students:**
 - Affirm the importance of a safe and supportive environment for all students.
 - Review enrollment and related forms to ensure that no questions or required documentation discourage enrollment.
 - Prohibit the collection or maintenance of records related to students' or their families' immigration status, including whether they are undocumented.

46 Kristin Woelfel, *Unique Risks for Immigrant K-12 Students on the AI-Powered Campus*, Ctr. for Democracy & Technology (Jan. 15, 2025), <https://perma.cc/5KXJ-ZZ84>.

2. Update policies and underlying infrastructure:

- Update emergency contact information for all students to enable timely outreach if required.
- Review, and update as necessary, policies and procedures regarding directory information and proper release of such information:
 - » Consider adopting a limited directory information policy (which specifies and limits the types of information to be considered “directory information” and the parties with whom that information can be shared) to specifically exclude date and place of birth.⁴⁷
 - » Make clear that information related to categorization as an “immigrant student” for Title III purposes is not directory information.
- Review, and update as necessary, policies and practices on cooperation with local and federal law enforcement, and the difference between judicial and administrative requests.
- Establish official communications processes and plans for responding to immigration enforcement efforts like student records or interview requests.

3. Train front-line staff and educators who might experience this issue first-hand:

- Inform staff, students, and others of school policies regarding meeting existing student privacy and civil rights obligations:
 - » School staff should not provide student information, confirm attendance of students on the spot, or otherwise provide information; and
 - » School staff should take immigration and/or law enforcement agent information and review with the central office before further action is taken.

4. Ensure uses of long-standing and emerging technologies do not violate existing civil rights protections:

- Exercise caution in responding to monitoring alerts or notices of blocked content.
- Escalating to law enforcement without proper contextual analysis can lead to immigration consequences, even if further review by the education agency later reveals the alert to be innocuous.

⁴⁷ *Family Educational Rights and Privacy Act (FERPA) Model Notice for Directory Information*, U.S. Dep't of Education (last accessed Dec. 12, 2024), <https://perma.cc/VQ3F-2MPN>.

V. Conclusion

As the education sector navigates old problems and new, schools must comply with constitutional, statutory, and administrative mandates to ensure that all students are afforded the safe and fair opportunity to learn. Norms, not prohibitions, have long permitted schools to be neutral territories regarding the immigration system. As culture, policy, and governance in the United States shift, norms are likely to change. However, no matter how much norms change, schools still must abide by their existing legal obligations to protect students' privacy and their civil rights.

**Find more from
CDT's Equity in Civic
Technology team at
cdt.org/CivicTech.**



The Center for Democracy & Technology (CDT) is the leading nonpartisan, nonprofit organization fighting to advance civil rights and civil liberties in the digital age. We shape technology policy, governance, and design with a focus on equity and democratic values. Established in 1994, CDT has been a trusted advocate for digital rights since the earliest days of the internet.