

Unique Civil Rights Risks for Immigrant K-12 Students on the AI-Powered Campus

January 2025

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Ongoing public discourse has sparked renewed questions about the intersection of immigration and K-12 schools. Recent statements indicate that there will be a focus on immigrant children in schools by the incoming presidential administration, including efforts to block undocumented children from attending public school and take immigration enforcement actions on school grounds.¹ State leaders are taking similar interest in the issue, with some publicly announcing plans to challenge *Plyler v. Doe*'s constitutional right to an education for undocumented students² and notices sent home to parents regarding their plans to “[stop] illegal immigration’s impact” on schools.³

At the same time, other state and local leaders are taking additional steps to protect immigrant students, like enacting additional legal protections to prevent immigration officials from entering school campuses and prohibiting schools from sharing information with enforcement authorities absent a judicial court order.⁴

1 See 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>.

2 See 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>.

3 *Memorandum Regarding the Elimination of the U.S. Department of Education*, Oklahoma State Department of Education (Nov. 7, 2024), <https://perma.cc/2V9S-M4G6>.

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

Schools themselves have long collected individual-level data about immigrant students and have recently expanded their access to students' private information with the adoption of technology systems that monitor students' activity and restrict access to information. These factors culminate in the need for renewed analysis of schools' civil rights obligations to these students as the landscape evolves. Regardless of the changing education technology landscape and heightened immigration enforcement efforts, schools remain legally obligated to protect the privacy and civil rights of all students, regardless of immigration or citizenship status.

Last year CDT released legal analysis finding that common, well-established civil rights laws can and should apply to uses of data and technology in schools to prevent discrimination on the basis of race, sex, and disability.⁵ This brief expands on that analysis by exploring specific civil rights considerations for immigrant students as schools continue to collect information and use technology as attention toward immigration enforcement increases.

I. Introduction

Immigrant students are protected from discrimination on the basis of national origin in school under Title VI of the Civil Rights Act of 1964. National origin discrimination occurs when someone is harassed, bullied, or otherwise treated differently “stemming from prejudice or unfounded fears about their national origin (including the country or part of the world they or their family members were born in or are from, their ethnicity or perceived ethnic background, and/or the language they speak).”⁶ This brief focuses on the unique civil rights considerations for immigrant students and how schools can fulfill these legal obligations when it applies to their use of data and technology. Specifically, it:

- Defines who immigrant students are and how they may be present in the U.S.;
- Analyzes the unique circumstances and risks that immigrant students face in schools;
- Identifies the ways in which data and technology could run afoul of immigrant students' civil rights; and
- Provides recommendations to school leaders to ensure their use of data and technology is consistent with civil rights laws and supports the success of all students.

5 Kristin Woelfel, Ariana Aboulafia, Elizabeth Laird & Sydney Brinker, *Late Applications: Protecting Students' Civil Rights in the Digital Age*, Ctr. for Democracy & Technology (Sept. 20, 2023), <https://perma.cc/4MCM-MDKU>.

6 Dept. of Justice, *Types of National Origin Discrimination in Schools* (last accessed Jun.16, 2024) <https://perma.cc/MWQ8-53LH>.

Although this brief focuses on non-citizen immigrants because of the unique legal risks and vulnerabilities they face, it is important to note that other groups, like immigrants who become U.S. citizens, English Learners, and those who are merely perceived to have been born outside of the U.S., are also protected from national origin discrimination.

II. Who Are Immigrant Students?

A broad group of students face potential discrimination on the basis of national origin, and the civil rights of all of these students can be impacted by technology. “Immigration status” is a term that generally describes the way in which a person is present in the U.S., and “immigrant students,” as used for purposes of this analysis, refers to students who are not U.S. citizens and often belong to one of five categories:

- **Lawful permanent resident:** The student has a permanent visa and is authorized to reside and work in the U.S. for life;⁷
- **Visa holder:** The student has temporary authorization to reside in the country for a specific purpose, for a limited duration;
- **Refugee:** The student was granted entrance to the U.S. with refugee status on account of their membership to a group of special humanitarian interest to the U.S. (among other criteria);⁸
- **Asylum Seeker:** The student meets the same criteria as a refugee, but they are either already in the country or sought entrance at the U.S. border;⁹ or
- **Undocumented:** The student is present in the U.S. without legal immigration status after entering the country without authorization or after the expiration of prior legal status.

Immigration status is not a binary issue of documented versus undocumented. There are levels to immigration status — some temporary, some permanent — but anyone with an immigration status other than U.S. citizenship is subject to removal or exclusion from the country when certain circumstances arise, including minors. Even when immigrant students are lawfully present, they do not have all the same rights and privileges afforded to those with U.S. citizenship.

The latest figures from the National Center for Education Statistics estimate the number of enrolled non-U.S. citizens in public K-12 schools at 1,561,424.¹⁰

7 Another group of students that may be impacted by the issues discussed here, although not immigrants, are the U.S. citizen children of immigrants. The incoming presidential administration has indicated it may deport all members of immigrant families, including U.S. citizens born to non-citizens. Allan Smith, *Trump Aims to End Birthright Citizenship, Says American Citizens with Family Here Illegally May be Deported*, NBC News (Dec. 8, 2024), <https://perma.cc/4HDJ-WL9T>.

8 *Refugees*, U.S. Citizenship and Immigration Services (last updated Oct. 22, 2024), <https://perma.cc/D7GL-5QG9>.

9 *Refugees and Asylum*, U.S. Citizenship and Immigration Services (last updated Nov. 12, 2015), <https://perma.cc/6RRU-59WC>.

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

Lawful Permanent Residents and Visa Holders

Lawful Permanent Residents

A K-12 student might be present in the U.S. as a lawful permanent resident (LPR, colloquially known as having a green card). Lawful permanent residents are foreign nationals who have been granted the right to reside permanently in the United States. A student might also have conditional permanent resident status, a temporary 2-year (nonrenewable) status that is intended to be a bridge to obtaining lawful permanent residence on account of their parent's marriage to a U.S. citizen. For purposes of this discussion, the two are functionally the same.

Visa Holders

As of 2022, there were 53,517 student-visa holders in K-12 schools.¹¹ Student-visas, like the F-1 and others, operate as a temporary license for students to live and study in the U.S. The visa is subject to annual renewal, so students who are present on this type of visa must meet the requirements for eligibility every year.¹² There are also a number of other visas a student might hold, such as a special visa for minors who enter the country without documentation due to having been victims of abandonment or neglect.¹³

Refugees and Asylum Seekers

Refugees

Students and their families may enter the country as refugees if they are of special humanitarian concern to the United States and can demonstrate that they were persecuted or have a well-founded fear of persecution on the basis of defined characteristics.¹⁴ Refugee status is separate from Temporary Protected Status (TPS), which is granted temporarily to individuals who are not safe in their country due to certain conditions, such as armed conflict or environmental disasters — unlike TPS, refugees must apply for their green card one year after entering the U.S. Although exact figures on K-12 refugee students are not widely available, refugee communities tend to cluster across certain states and metropolitan areas, so some states/school districts are more likely to have higher concentrations of refugee students than others.¹⁵

11 *Student and Exchange Visitor Program (SEVP) 2022 SEVIS by the Numbers Report*, U.S. Immigration and Customs Enforcement (last accessed Nov. 8, 2024) <https://perma.cc/9JQ8-K8SA>.

12 *Study in the States—Kindergarten to Grade 12 Students*, Department of Homeland Security (last accessed Nov. 8, 2024), <https://perma.cc/6VJL-SXYZ>.

13 *Special Immigrant Juveniles*, U.S. Citizenship and Immigration Services (last updated Apr. 1, 2024), <https://perma.cc/58YH-U5U8>.

14 *Supra* note 8.

15 *See Refugee Resettlement in U.S. Cities*, American Immigration Council (last accessed Nov. 5, 2024), <https://perma.cc/TM5X-JPKS>; *see also Refugee Resettlement per Capita, Which States Do the Most?*, Immigration Research Initiative (Mar. 7, 2023), <https://perma.cc/PV4X-UF83>.

Asylum Seekers

Asylum seekers, while not undocumented, are the subject of much ongoing debate in the U.S. To seek asylum an individual must arrive at the border and request it or already be present in the U.S. without legal status; there is no pre-arrival application process. Asylum seekers are permitted to remain in the U.S. while their application is pending. The eligibility criteria for seeking asylum is the same as that of refugees, one main difference being that refugees apply for their status while outside the country where asylum seekers cannot. Asylum seekers can be in attendance in K-12 schools if they are minors who arrive at the border with their family or unaccompanied by an adult.

Unfortunately, policy discussions often obscure the distinction between undocumented immigrants, refugees, and asylum seekers.¹⁶

Undocumented Students

Long-standing constitutional principles provide that all children have a right to a free public education regardless of immigration status, including students who are undocumented.¹⁷ Approximately 620,000 K-12 students in the U.S. are undocumented.¹⁸ This is perhaps the most vulnerable subset of the immigrant student population because they do not have the same rights and privileges as others outside of school, and many may also bear significant external burdens such as unstable housing and the obligation to financially support themselves.¹⁹

A common misconception is that English Learners (ELs), or students who have not yet reached English language proficiency, are typically undocumented immigrant students — however, research indicates that most ELs are actually U.S.-born children of immigrant parents.²⁰ This is an important distinction when analyzing issues facing undocumented students: data about ELs is widely collected and reported by education agencies, but should not be regarded as directly representative of the undocumented student population. With that said, many (if not most) undocumented students likely are or have been ELs.

16 See *Migrants, Asylum Seekers, Refugees And Immigrants: What's The Difference?*, International Rescue Committee (Jun. 22, 2018), <https://perma.cc/P3QW-S8DN>.

17 See *Plyler v. Doe*, 457 U.S. 202 (1982). Also see Raul A. Reyes, *A Landmark Case Ensuring Education To Undocumented Children Turns 40*, NBC News (June 13, 2022), <https://perma.cc/SX8M-H3B4>.

18 Phillip Connor, *At Least 600,000 K-12 Undocumented Students Need A Pathway To Citizenship*, Fwd.us (Aug. 19, 2021), <https://perma.cc/972E-BLKX>.

19 See Cindy Carcamo, *Nearly 1 In 4 Students At This L.A. High School Migrated From Central America & Many Without Their Parents*, L.A. Times (Jul. 15, 2016) <https://perma.cc/675W-NF9S>.

20 See Corey Mitchell, *Majority of English-Learner Students Are Born in the United States, Analysis Finds*, EdWeek (Dec. 7, 2016), <https://perma.cc/7422-D2RY>.

III. Unique Circumstances and Risks That Immigrant Students Face in School

Many immigrant students exist at an intersection of multiple marginalization; in addition to being foreign-born, many are also people of color, multilingual/EL, and/or members of a religious minority. Racial minorities are overrepresented among K-12 students disciplined in school, as well as among students placed in alternative schools.²¹ EL students are also at higher risk of school discipline, with a risk of suspension twenty percent higher than that of non-EL students.²² Surveys of Hindu, Sikh, and Muslim students revealed that a large percentage of each of these groups have suffered some form of bullying or harassment at school.²³ CDT research has shown that the use of educational technologies can exacerbate existing inequities, especially with respect to discipline rates and law enforcement contact.²⁴

Though education data and technology is not uniquely deployed among immigrant students, the risk and impact of these technologies, especially when used inaccurately or overzealously, are significantly greater for them than for their peers because of the consequences triggered within the immigration system. These risks primarily include: (i) deportation and inadmissibility, and (ii) denial of visa renewal or other immigration status.

Deportation and Inadmissibility

Enforcement actions, which take place in immigration courts, can result in orders of removal (e.g. deportation) or determinations of inadmissibility (e.g., ineligibility for an individual to re-enter the country if they leave, or to renew their current legal status). Both of these consequences may see immigrant students sent back to a country they do not know and whose language they might not speak. The removal of family members might have similarly devastating impacts for students of immigrant families, as a student may be left in the U.S. without their sole or primary caregiver.²⁵

21 *Supra* note 5 at 7.

22 Kristin Woelfel, *Late Applications: Disproportionate Effects of Generative AI-Detectors on English Learners*, Ctr. for Democracy & Technology (Dec. 18, 2023), <https://perma.cc/T74S-N74C>.

23 See Ameena Jandali and Henry Millstein, *The Bullying of Religious Minorities in Schools: Consequences and Solutions*, *Ing* (Jan./Feb. 2019), <https://perma.cc/8XHZ-DEW9>.

24 See 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>.

25 See *U.S. Citizen Children Impacted by Immigration Enforcement*, American Immigration Council (Jun. 24, 2021), <https://perma.cc/3T46-6RBQ>.

“Immigration detention not only disrupts students’ education and removes them from their family, schools, and other supportive networks, but also imposes serious physical and mental harm related to neglect, abuse, poor conditions of confinement, and economic and social stressors.”

– National Immigration Law Center ²⁷

Denial of visa renewal or other immigration status

Immigrant students present on student or other visas must renew these visas, typically on an annual or multi-annual basis. An immigration officer can deny a visa holder’s application for renewal if they believe the individual is no longer eligible, whether due to violating the terms of the visa or some other ground for denial. Determinations of inadmissibility and orders of removal will almost always affect the ability to renew a visa. Similar reasons can also lead to an immigrant student being denied when they seek to obtain an immigration status that allows them to legally remain in the U.S. (e.g., asylum seekers awaiting a determination of their application to stay in the U.S.) or change their status (e.g., student visa holders seeking to obtain a green card, or LPRs seeking to become U.S. citizens).

Denying visa renewals or applications for other types of immigration status can negatively affect an immigrant student’s educational experiences by threatening their ability to remain in the U.S., thereby disrupting the continuity of their education or possibly their ability to obtain an education at all. Each of these consequences can affect any immigrant student regardless of their immigration status.²⁶

26 Traditionally deportation for LPRs occurs for adults who have committed serious crimes— although a 2010 study found that 10% of people deported each year are LPRs, and 68% of them are deported for minor, nonviolent offenses. *The Ones They Leave Behind: Deportation of Lawful Permanent Residents Harm U.S. Citizen Children*, American Immigration Council (Apr. 26, 2010), <https://perma.cc/SQ8S-FU3M>.

27 *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>.

Circumstances that trigger immigration consequences

As previously stated, any immigration status other than U.S. citizenship is conditional. For undocumented students, their unauthorized presence in the U.S. in and of itself triggers removability and likely future inadmissibility. For all immigrant students, regardless of their immigration status, a number of scenarios that could trigger immigration consequences could occur in and/or be identified by schools.²⁸ These include but are not limited to:

- **Self harm**
- **Threat to others**
- **Sexual offenses**
- **Illegal substances**

Self Harm

Immigrant students who exhibit behavior showing a mental health condition that poses a current threat to themselves, including a suicide attempt, are at-risk of being deemed inadmissible to the U.S., creating a barrier to obtaining or renewing immigration status or being able to re-enter if they were to leave (even if their legal status remained current). Visa renewals and other applications for immigration status could be denied on these grounds as well.²⁹

Threat to Others

Similar to posing a threat to themselves, immigrant students who pose a threat to others (including by participating in violent or gang-related activity) are at risk of immigration consequences. Gang-related activities are not automatic grounds for inadmissibility or deportability, but “they are a significant negative factor in any discretionary decision including visa renewals and other applications. The same is true for charges related to . . . violent offenses, or where a weapon is referenced in a charging document or arrest report. Although these may not automatically make a young person inadmissible or deportable, they will be taken into account for discretionary purposes, can negatively impact a child’s chance of getting immigration status, and can draw attention to an otherwise unknown youth, making them a priority for removal.”³⁰

Sexual Offenses

Another claim related to the mental health category of inadmissibility is “conduct suggesting sexual predation,” including sex offenses against younger children.³¹ This could include

28 See *Juvenile Defender’s Guide to Immigration Issues in Juvenile Proceedings*, Nat’l Juvenile Defender Ctr. (last accessed Nov. 8, 2024), <https://perma.cc/7Q5B-VZSL>; see also §N.15 *Immigration Consequences of Juvenile Delinquency*, Immigrant Legal Resource Ctr. (Jan. 2013), <https://perma.cc/58WU-5W9U>.

29 *Id.*

30 *Id.*

31 Rachel Prandini, *What Are The Immigration Consequences Of Delinquency?*, Immigrant Legal Resource Ctr. (Mar. 2020), <https://perma.cc/447S-29ZC>.

“Imagine, if you can, a child — 2 years old, 10 years old or 17 years old — appearing before an immigration judge alone. How does a child, already intimidated and confused by the courtroom setting, understand the nature of the court proceedings and the charges against them? How can a child understand the complexities of immigration law, their burden of proof, and possible defenses against deportation? The short answer is they cannot.”

– Sarah Burr, retired immigration judge ³⁵

possession of child sexual abuse material (CSAM), which by definition could include the student’s own images of themselves or images shared consensually between students.

Illegal Substances

If there is “reason to believe” an immigrant student has participated in the sale, possession, cultivation, manufacture, distribution, or delivery of drugs, they are at risk of being deemed inadmissible to the U.S., impacting their ability to travel out of the country or renew their immigration status. Additionally, immigrant students are at risk of being removed if they have committed any drug abuse since admission to the U.S.

It is critical to note that any accusations of the above offenses could trigger immigration consequences regardless of whether they are founded or not. Unlike the criminal justice system, attorneys are not provided to those who cannot afford them in immigration court, so minors without access to significant resources have to represent themselves in immigration proceedings against a Department of Homeland Security prosecutor.³² The chances of success for children in removal proceedings without legal representation are extremely low. According to a 2021 report: “it is so difficult to prove a case without a lawyer that, regardless of the strength of their immigration claims, more than 90 percent of unrepresented unaccompanied children were ultimately issued an order of removal or voluntary departure.”³³ These consequences are significant in the context of education data and technology in schools because any documentation of such circumstances (including school suspensions or other school records) can and has been relied on as evidence in immigration proceedings against immigrant students.³⁴

32 See Ahilan Arulanantham, *Immigrant Children Do Not Have the Right to an Attorney Unless They Can Pay, Rules Appeals Court*, ACLU (Sept. 20, 2018), <https://perma.cc/4FPG-5L9E>; see also Carlee Goldberg, *Brief: Legal Aid for Unaccompanied Children in the U.S. Illegally*, Nat’l Conference of State Legislatures (Sept. 1, 2020), <https://perma.cc/6T35-J7BK>.

33 Alyssa Snider and Rebecca DiBennardo, *Representation Matters: No Child Should Appear in Immigration Proceedings Alone*, Vera Institute of Justice (Dec. 2021), <https://perma.cc/YL3V-KSEQ>.

34 See supra note 27 at 3; see Emma Tynan, Sarah Kim Pak, Ignacia Rodriguez Kmec, & Mark R. Warren, *The People’s Think Tank: Caught in an Educational Dragnet: How the School-to-Deportation Pipeline Harms Immigrant Youth and Youth of Color*, Nat’l Education Policy Ctr. (May 24, 2022), <https://perma.cc/EXN5-GM62>.

35 Sarah Burr, *Why Are Children Representing Themselves In Immigration Court?*, The Hill (October 24, 2021), perma.cc/E38S-RCQP.

IV. Application of Civil Rights Protections Under Title VI of the Civil Rights Act of 1964 to Education Data and Technology Used in Schools

The Civil Rights Act of 1964 (the Act) generally prohibits segregation and inequality in crucial arenas of public life, including education. Title VI of the Act protects students from discrimination on the basis of race, color, and national origin, and was enacted to prevent and correct historical racial segregation in schools. Immigrant students are protected from discrimination under Title VI on the basis of their race and national origin, and cannot be discriminated against due to their citizenship, spoken languages, or other related characteristics (real or perceived).

Allegations of Title VI violations can trigger an investigation by the U.S. Department of Education's Office for Civil Rights (OCR) in addition to legal action by affected students and their families or by interest groups on behalf of protected classes of students. If OCR finds a violation, the matter can be referred to the U.S. Department of Justice for additional enforcement action with penalties as severe as a complete withdrawal of federal funding from the education agency. If liability is found by the court, monetary penalties and associated attorney's fees may be assessed against the agency. Even in cases where liability is not found, defending or settling an alleged violation via OCR complaint or lawsuit can be costly to the education agency in terms of legal representation and settlement payments.

A long history of enforcement and litigation under the Act has created a body of antidiscrimination law specific to the education sector. From this body of law, several core concepts emerge to form the basis for three main causes of action that are available to students and families when alleging discrimination involving the use of data and technology in education. These claims are:

- Disparate treatment,
- Disparate impact, and
- Hostile learning environment.

These claims are also often intersectional — for example, instances of intentional discrimination may constitute the existence of a hostile learning environment in addition to the standalone claim of disparate treatment. In addition to the detailed examples provided for each of these claims, additional examples of how the use of data and technology could violate the civil rights of immigrant students are provided in Appendix A.

Disparate treatment criteria	Education data and technology examples
Neutral policy that is disproportionately enforced	Unequal application of disciplinary policies to students in a protected class for conduct or commentary flagged by surveillance technologies (e.g., when an immigrant student is suspended but a white nonimmigrant student is not for the same type of alleged misconduct).
Explicit targeting	Targeted surveillance or algorithmic focus on protected classes or on words directly implicating protected classes (e.g., when programs are set to flag activity and terms related to immigrants or nationalities; or immigrant students are explicitly targeted for increased surveillance as compared to non-immigrant students).



Table 1. Two types of disparate treatment and related examples.

This table has been recreated here from CDT’s 2023 report, *Late Applications: Protecting Students’ Civil Rights in the Digital Age*.

Late Applications: Protecting Students’ Civil Rights in the Digital Age (pg. 11) <https://cdt.org/insights/report-late-applications-protecting-students-civil-rights-in-the-digital-age/>; <https://perma.cc/4MCM-MDKU>

Disparate Treatment

Disparate treatment, often described as intentional discrimination, requires a finding of intent to treat a student differently (at least in part) because of their protected characteristics and can occur either where a neutral policy is selectively enforced against students belonging to a protected class or where the policy explicitly targets that protected group.

For example, an education agency that has specifically set its content filtering and blocking software to flag or block content associated with immigrants, or is aware that its software does so, but nonetheless chooses to continue deploying the technology might meet the threshold for a disparate treatment claim. This could constitute a violation of immigrant students’ civil rights because the education agency knows this protected demographic is being treated differently but is taking no steps to rectify it. Similarly, where alerts generated by student activity monitoring technology are coming in from a wide range of students, but the agency only engages immigrant students from Central America for questioning and potential discipline about the alerts, the

agency is selectively interrogating and enforcing its policy against a protected demographic of foreign-born students, specifically because of their place of birth.

While **97 percent** of teachers report that their school uses this technology, CDT research also found that **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.³⁶ 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 potentially revealing new information.³⁷

Unfortunately, these examples are not purely hypothetical –

EXAMPLE: Albuquerque Public Schools Filters and Blocks Websites Associated with Immigrants

Content filtering and blocking uses 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.”³⁸ Filtering or blocking can occur on school-issued devices or on a personal device while connected to a school network, and it takes place in nearly all public K-12 schools.³⁹ School district administrators are responsible for deciding which categories to block, often choosing from a list of categories provided by the vendor without a full understanding of the universe of websites under each label – information which some technology providers consider proprietary, often resulting in overblocking of content.⁴⁰ Some companies that provide schools with this technology will also generate alerts to school officials and/or other adults if a student attempts to access blocked content.

Documents disclosed pursuant to a FOIA request to Albuquerque Public Schools revealed that websites associated with immigrant content are heavily blocked and filtered.⁴¹

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

37 *Id.*, *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>.

38 *See Children's Internet Protection Act (CIPA)*, Fed. Communications Comm. (last updated/reviewed Dec. 30, 2019), <https://perma.cc/J6UH-QS4S>; *see also* Laird, Dwyer, and Grant-Chapman, *supra* note 24.

39 *Supra* note 24 at 16.

40 Tara García Mathewson, *Schools Were Just Supposed To Block Porn. Instead They Sabotaged Homework and Censored Suicide Prevention Sites*, The Markup (April 13, 2024), <https://perma.cc/YB5C-N3EL>.

41 Albuquerque Public Schools, *Letter Re: IPRA 23 08 07 Feathers re Web*, MuckRock (Sep. 7, 2023), <https://perma.cc/XH5N-7UT6>.

The U.S. Citizenship and Immigration Services (USCIS) website, uscis.gov, was blocked, along with several others:

- immigrantsrising.org
- immigrationdirect.com
- nmimmigrantjustice.org
- lawfirm4immigrants.com
- us-immigration.com
- engagedimmigranyouth.wordpress.com
- immigrantconnect.medill.northwestern.edu
- rjimmigrationlaw.com

Treating content associated with a protected demographic like immigrant students as inappropriate, and thus filtering and blocking that content, can constitute disparate treatment and result in disproportionate harm to immigrant students if they are punished for attempting to access restricted content or prevented from accessing information about their own identity while those outside the protected group are able to access information about theirs.

Student Privacy Obligations and the Collection of Data About Immigrant Students by Schools

Discussed in more detail in CDT's *Education Leaders' Guide to Complying with Existing Student Privacy and Civil Rights Laws Amidst an Evolving Immigration Landscape*, federal enforcement of *Plyler v. Doe* requires that schools do not take any actions that could discourage enrollment, which includes asking or requiring documentation about students or their family's immigration status during the enrollment process. However, local and state education agencies may collect limited information about whether a student has recently arrived in the U.S. to fulfill federal reporting, funding, and statewide assessment needs. These data points could include their place of birth, family demographics, and how many years they have attended school in the U.S., though parent responses are voluntary.⁴²

This information is aggregated to get a count of enrolled immigrant students in each state (defined in the Title III context 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)⁴³ to meet federal reporting requirements as well as to receive federal funding to support the education of English Learner (EL) and immigrant students. Additionally individual-level information that identifies immigrant students is used to provide a one-year exemption from taking the statewide standardized English/ Language Arts assessment required by the Every Student Succeeds Act.

Similar to civil rights obligations, heightened immigration enforcement efforts do not alleviate schools from fulfilling their legal student privacy obligations, namely through the federal Family Educational Rights and Privacy Act and myriad state student privacy laws.

42 *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>.

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

Disparate Impact

Disparate impact occurs where a neutral policy is applied to everyone, but members of a protected class disproportionately experience an adverse effect. A claim for disparate impact does not require intent. Here, an education agency may be using the same data and technologies for every student equally, but the impact is drastically different for immigrant students than it is for U.S. citizens, in ways that can cause irreparable harm.

For example, student activity monitoring software 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.⁴⁴ In theory, this technology is implemented equally across student populations and is not necessarily intended to produce different, and potentially negative, consequences for certain groups of students. CDT research found that **88 percent** of teachers report that their school uses student activity monitoring software.⁴⁵

However, new CDT research shows that 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) based on an alert from the school's student activity monitoring software in the *last* school year alone. Additionally, the activities that student activity monitoring intentionally flags potentially carry disproportionately negative consequences for immigrant students.

EXAMPLE: Minneapolis Public Schools Student Activity Monitoring Creates False Flags for Conduct That Triggers Immigration Consequences

Notably, the conduct most often flagged by student activity monitoring software has significant overlap with the circumstances that carry serious immigration consequences (described above). CDT research indicates that students who were contacted by law enforcement due to student activity monitoring alerts report that contact was made due to suspicion that they could be:

- A threat to others: 45%
- In possession of an illegal substance: 43%
- In possession of a gun: 36%
- At risk of self-harm: 32%⁴⁶

A detailed analysis of alerts generated by a student activity monitoring company hired by the Minneapolis Public School District showed that many of the 1,300 alerts generated over a six-month period could trigger immigration consequences.⁴⁷

44 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>.

45 *Supra* note 36.

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

47 Mark Keierleber, *Exclusive Data: An Inside Look at the Spy Tech That Followed Kids Home for Remote Learning — and Now Won't Leave*, *The 74* (Sep. 14, 2021), <https://perma.cc/GEB2-VLDM>.

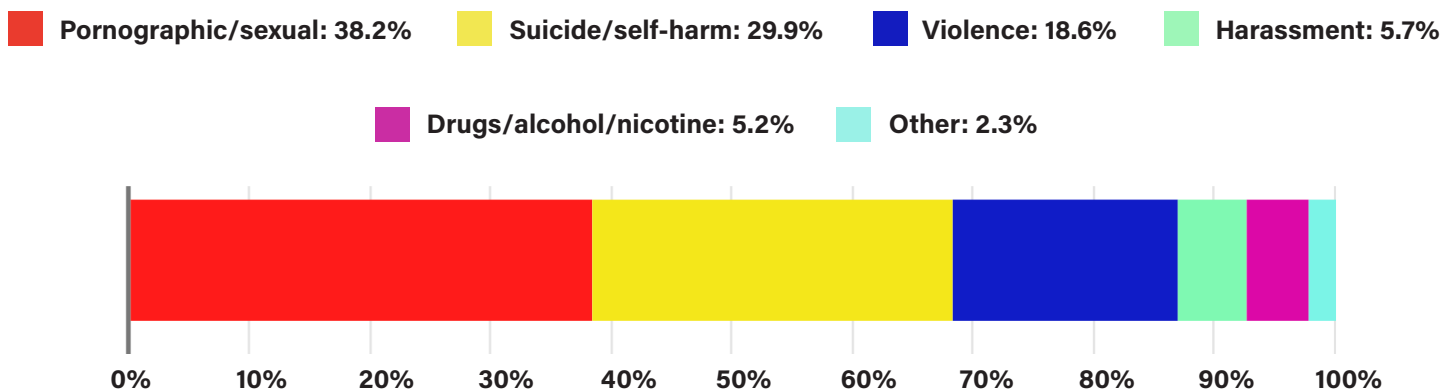


Figure 1. Content that was found to have been flagged on student devices (The 74)

This chart was recreated from a September 14, 2021 article in *The 74* by Mark Keierleber.

Exclusive Data: An Inside Look at the Spy Tech That Followed Kids Home for Remote Learning — and Now Won't Leave, The 74
<https://www.the74million.org/article/gaggle-spy-tech-minneapolis-students-remote-learning/>

The use of this technology could potentially lead to a disparate impact claim by immigrant students, because student activity monitoring software is known to be inaccurate and may have irreversible consequences for immigrant students if a flag is misinterpreted or automatically referred to law enforcement. Though the technology seems to be applied neutrally to all students, the potential negative impact of its use due to known accuracy issues could lead to disproportionately negative consequences for immigrant students.

These tools often rely on a predetermined library of words or phrases that could indicate problematic conduct.⁴⁸ However, many words associated with harm (such as “bomb” or “shoot”) are extremely common and have meanings that are entirely context-dependent. These types of tools produce many false positives and often overwhelm schools with information.⁴⁹ Indeed, school officials themselves have acknowledged the

48 See CDT and Brennan Center, *Social Media Monitoring in K-12 Schools: Civil and Human Rights Concerns*, Ctr. for Democracy & Technology (October 17, 2019), <https://perma.cc/ZEY3-6CWD>.

49 See Aaron Leibowitz, *Could Monitoring Students on Social Media Stop the Next School Shooting?*, *New York Times* (Sep. 6, 2018), <https://www.nytimes.com/2018/09/06/us/social-media-monitoring-school-shootings.html>; see also Hannah Quay-de la Vallee and Natasha Duarte, *Algorithmic Systems in Education: Incorporating Equity and Fairness When Using Student Data*, Ctr. for Democracy and Technology (August 12, 2019), <https://perma.cc/NA8U-HT2B>.

accuracy issues inherent in this technology.⁵⁰ School administrators have reported receiving numerous false flags for mental health concerns, getting red flag alerts for things like “students tell[ing] each other sarcastically to ‘kill yourself,’ talk[ing] about the band Suicide Boys, or [having] to write a school assignment on the classic American novel *To Kill a Mockingbird*.”⁵¹

For immigrant students, even if contextual analysis of the alert is conducted after the fact, the alert in and of itself may still trigger immigration proceedings where clarifying and disproving the allegations will be significantly harder than it would be in a school disciplinary setting or even in the criminal court system.

In addition to the general accuracy issues that student monitoring tools suffer from, they also tend to have lower accuracy rates for non-native English speakers, including those who post in languages other than English and those who use vernacular associated with a subgroup.⁵² Even when posts are reviewed by humans, a majority of reviewers are more likely to misunderstand the meaning of posts by non-native English speakers, meaning immigrant students are likely to be disproportionately flagged.⁵³

Finally, even where the monitoring alert is not necessarily wrong about the content being flagged, the risk of unnecessary escalation persists. There are a number of reasons immigrant students might feel difficult emotions like stress and sadness more often than others, such as social difficulties with peers and concerns about their status. Indeed, immigrant students (especially those who came to the U.S. alone) are already at high risk for mental health issues like anxiety, depression, and post-traumatic stress disorder.⁵⁴ These factors might make immigrant students more likely to seek out mental health resources online for support, discuss their feelings online with friends and/or write in a private digital journal, all which could be flagged by student activity monitoring even if the student is not at acute risk of suicide or self-harm.

This raises significant concerns about schools violating existing civil rights protections when it comes to the disparate impact student activity monitoring has on immigrant students. For immigrant students whose current or future status could be jeopardized by inaccurate, technology-driven allegations of concerning behavior that result in automatic and unnecessary referrals to emergency services, this is uniquely dangerous. In addition to the immigration consequences, this practice is likely to discourage immigrant students from seeking resources, support, or speaking freely and honestly about their emotional wellbeing.

50 Lois Beckett, *Under Digital Surveillance: How American Schools Spy On Millions Of Kids*, *The Guardian* (Oct. 22, 2019), <https://perma.cc/4UX3-T49Q>.

51 *Id.*

52 *Supra* note 48.

53 *Id.*

54 *Supra* note 27.

“School referrals to and collaborations with police and federal immigration enforcement exacerbate these traumas and behavioral effects and serve as a frequent reminder of the pervasive threat of deportation... The resulting school climate of fear and instability greatly affects the health and well-being of immigrant students, with increased instances of bullying and racial animus, student mental and physical unwellness, absenteeism as well as declines in student performance.”

– National Immigration Law Center ⁵⁹

Hostile Learning Environment

A hostile learning environment occurs when a student — or group of students — experiences severe, pervasive, or persistent mistreatment that interferes with the student’s ability to participate in or benefit from services or activities provided by the school. Education agencies are tasked with the general obligation of ensuring a nondiscriminatory learning environment for all students.

As previously stated, immigrant students are at high risk for mental health issues like anxiety, depression, and post-traumatic stress disorder.⁵⁵

Increased immigration enforcement in schools resulting from the use of data and technology can contribute to a hostile learning environment. In a survey of 730 schools regarding the impact of immigration enforcement on education, 90 percent of school administrators reported behavioral or emotional problems among immigrant students, and 70 percent reported academic decline in immigrant students.⁵⁶ A school district in New Mexico saw a 60 percent spike in absenteeism after an immigration raid shook the community. A similar occurrence in Tennessee was correlated to a 20 percent absentee rate among the county’s Hispanic students.⁵⁷ A 2018 letter by the NYCLU described “hear[ing] from children who are afraid to go to school or go outside their homes because they’re scared they will be picked up by ICE and separated from their loved ones.”⁵⁸

Additionally, evidence suggests that some schools are sharing student information directly with immigration authorities. New CDT research shows that **one in five**

⁵⁵ *Id.*

⁵⁶ *Supra* note 27 (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>).

⁵⁷ Nicole Acevedo, *Immigration Policies, Deportation Threats Keep Kids Out Of School, Report States*, NBC News (Nov, 20, 2018, 2:46 PM EST), <https://perma.cc/P49K-SJ3E>.

⁵⁸ Alice Speri, *From School Suspension To Immigration Detention*, The Intercept (Feb. 11, 2018, 12:10PM), <https://perma.cc/R357-NXR5>.

⁵⁹ *Supra* note 27.

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.⁶⁰ CDT research also indicates that parents across the board express concern about student data being shared with immigration enforcement.⁶¹ **Six-in-ten** parents are very or somewhat concerned by this potential practice, with the concern shared by parents across race, ethnicity, and income.

State leaders have begun attempts to deputize state police to handle immigration matters under state law, which could include school resource officers who are “sworn law enforcement officers” employed by local police departments or sherriff agencies within the state.⁶² One such bill, which passed in Louisiana, cites overcrowding of K-12 schools due to undocumented and EL students (which, as previously stated, are not directly interchangeable demographics) as a catalyst for increased immigration enforcement efforts.

Combining expanded state immigration efforts with current data and technology initiatives in schools could create a hostile learning environment because the individuals and organizations that are being asked to target immigrant students are also receiving student activity monitoring alerts, which are often inaccurate (as described above) and could incorrectly trigger significant immigration consequences.

Positioning school police and other school officials as mandatory reporters of potential undocumented students or families to state or federal law enforcement can be more easily executed given the data sharing that is already occurring between schools and law enforcement.

Education data and technology initiatives that further chill immigrant students’ performance and attendance in school, like 24/7 digital surveillance, increased law enforcement engagement, and difficulty accessing mental health resources, further impinge on these students’ ability to fully participate in and enjoy the benefits of their public education, constituting a potential hostile learning environment claim.

60 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>.

61 *Supra* note 36.

62 *Supporting Safe Schools - What is a School Resource Officer?*, U.S. Dept. of Justice (last accessed Nov. 8, 2024), <https://cops.usdoj.gov/supportingsafeschools>; see S.B. 388, 2024 Leg., Reg. Sess. (La. 2024), <https://perma.cc/3V78-35WM>; Chloe Mayer, *Texas Immigration Bill Heading Back to Court*, Newsweek (Apr. 1, 2024), <https://perma.cc/3C5D-Z8W2>.

Recommendations

Compliance with civil rights protections is the floor, not the ceiling, to ensure that all students receive a quality education that will position them for success. Because these protections have been in existence for decades, education agencies have existing infrastructure, including policies and people, that can be used to apply civil rights laws to emerging data and technology uses. The following recommendations are adapted from CDT's original report *Late Applications: Protecting Students' Civil Rights in the Digital Age* to specifically address the needs of immigrant students, and are intended to assist education leaders in assessing their current policies and practices with respect to nondiscrimination obligations and the use of data and technology — with the ultimate goal of supporting the success of all students, including immigrant students.

Audit existing nondiscrimination policies, practices, and notices. Education agencies are already required to have nondiscrimination policies under Title VI. Agencies should review these existing policies to assess their adequacy regarding race and national origin, including whether and how they address current and planned uses of technology and data. Specific actions would include:

- Examining policies for any explicit or implicit mentions of data and/or technology as applicable to discrimination policy.
- Identifying existing data or technology practices that might implicate Title VI, paying special attention to:
 - » Algorithms/analysis that include a demographic variable that is directly related to immigrant students.
 - » Data collection/tracking/surveillance that is likely to occur more often among immigrant students (e.g., generating alerts for attempting to access content related to immigrants).
 - » Technology for which there are well-documented disparities in performance among immigrant students (e.g., higher error rates when scanning/analyzing the writing of non-native English speakers).
 - » Neutral technology practices that could lead to disproportionate harm because of the immigration system (e.g., false flags by student activity monitoring systems that could trigger immigration consequences).
 - » Information-sharing with immigration or other law enforcement.
- Understanding if/what measurable outcomes are in use to identify discrimination, including but not limited to monitoring discipline statistics and law enforcement referrals for immigrant students under these frameworks.

Build on existing Title VI enforcement/compliance capacity within the agency. There should already be individuals within the agency tasked with overseeing Title VI compliance, as well as privacy and data security. These individuals should work together to ensure the intersection of their focus areas is sufficiently addressed in nondiscrimination and privacy policies and procedures accounting for the specific risks to immigrant students. This might entail:

- Appointing a Title VI coordinator (or a staff member focused on preventing race, language, and nationality based discrimination) and explicitly empowering them to address discrimination on the basis of national origin in addition to race. While a designated coordinator is not statutorily required, identifying an individual to whom concerns can be brought regarding the treatment of immigrant students ensures ongoing awareness of activity inconsistent with Title VI compliance.
- Updating materials and guidance for school officials, students, and parents to reflect data and tech considerations for immigrant students in non-discrimination policies and procedures.
- Designating a point person or governance committee to be responsible for integrating data and technology into nondiscrimination policies and practices and ensuring this includes expertise in the needs of immigrant students. Regardless of the form, the needed expertise should be multidisciplinary and include subject matter experts in civil rights, privacy, technology, community engagement, legal skills, and other existing subject-matter experts including immigrant students. Student civil rights compliance should be an inter-departmental mission with identified designees for both internal and external coordination.
- Training a designated privacy officer (or another staff member charged with privacy compliance and strategy) on the education agency's nondiscrimination policies including how they address national origin (and any data and technology practices that could be implicated) as well as federal student privacy obligations related to data-sharing with immigration enforcement.
- Implement policies and procedures for responding to visits or requests from immigration enforcement officials (including proper escalation within the school or district before responding or granting any requests) and train all staff on these policies.

Audit current data and tech practices that could implicate immigration information, including information collected during enrollment and over the course of the student's tenure, disclosure practices, and directory information policies. Specifically:

- Updating and regularly providing notice about data collection and disclosure policies related to sensitive information like whether and what information is collected about immigrant students. Consider an annual notice, to be provided both to school employees and student guardians. These policies should:
 - » Ensure that school employees know never to collect documentation or citizenship status.
 - » Engage community members representing the full diversity of students, including immigrant students, to determine whether certain technologies, like student activity monitoring, should be used in the first place. If student activity monitoring is in use, impose appropriate limits including: when it operates, the terms it searches for, who has access to it, and how long the information is retained.
 - » Adopt a limited directory information policy that excludes place of birth from directory information, as well as appropriate limits on disclosure of directory information to immigration and law enforcement agencies.
 - » Establish deletion/retention schedules for information collected from the student or family pertaining to a student's immigrant status, as well as information collected/logged during the course of student monitoring such that the information is only retained for as long as necessary to fulfill the school's legal and policy obligations.
- Having physical copies of this policy clearly visible in all areas where school employees who are charged with record-keeping and handling disclosure requests have their primary workstations. For example, the front office where clerical workers, who might be the first point of contact for requests for information about immigrant students, can readily see if confronted by a request from law or immigration enforcement.

Revise or implement a procurement policy for education technologies. A specific procurement policy should be crafted to place obligations on vendors that would minimize potential harms and Title VI implications for immigrant students and the education agency. This policy should include:

- Clear expectations that student activity or content associated with being an immigrant student should not be collected, stored, flagged, or filtered.
- Due diligence regarding the product's or service's potential for discriminatory processes or outcomes for immigrant students prior to purchase (e.g., accuracy rate for student activity monitoring technology).

- Ongoing review and assessment of existing contracts for changes in service that might implicate the agency's nondiscrimination policy and how it protects immigrant students.
- Contractual provisions that set forth:
 - » Clearly defined terms regarding the coverage of the nondiscrimination policy including immigrant students;
 - » Vendor obligations in connection with the nondiscrimination policy, tailored to the service or product being provided; and
 - » Vendor obligations of transparency as it relates to processes that might implicate the nondiscrimination policy.

Conduct analysis and publicly report information on nondiscrimination policies and practices for data and technology on an ongoing basis. This analysis is to understand whether current uses of data and technology could have a disproportionate effect on immigrant students and to track progress toward mitigating discrimination through data and technology. This could include:

- Establishing metrics, in consultation with communities, to measure whether technologies are disproportionately affecting immigrant students and monitor those metrics on a regular basis.
- Taking mitigating steps (including stopping use of the technology) as needed.
- Establishing a recurring timeline on which analysis will be conducted.
- Posting publicly, in easily understood manner, information regarding the agency's use of data and tech and its proactive efforts to protect student privacy and prevent discrimination, which can be useful in preempting allegations of inappropriate data and technology use.

Conclusion

Widespread and inaccurate online tools that misidentify students as participating in concerning or prohibited activities are a risk to all students. However, they pose heightened risks to immigrant students by leading to increased law enforcement involvement and improperly triggering referrals to immigration courts. These harms do not fall solely on undocumented students, but on all immigrant students without U.S. citizenship.

The education civil rights landscape has been crafted over decades and continues to evolve through the expansion of protected conduct and categories deemed necessary to ensure all students' equal access and participation. These important concepts that currently govern education practices must continue to evolve to account for the growing use of data and technology in schools. While legal compliance is an important priority, centering the spirit and intent of these laws by ensuring that all students have the opportunity to be successful, regardless of race, nationality, or citizenship status, is even more important.

Appendix of Examples

The following appendix provides additional examples of the unique needs of immigrant students and schools' obligation to do more to protect their civil rights, including through their use of education data and technology. While these examples are not tech-related, they are intended to draw parallels between current challenges facing immigrant students and the issues raised by emerging technologies, including:

- School disciplinary actions
- Mental health
- Suspected possession of illegal substances

Example 1 – School disciplinary actions

In Houston, after being called a racial slur and having a gatorade bottle thrown at him by a fellow student, an immigrant student responded with a shove. He was charged with assault and taken into immigration detention where he was held for two months before being released on bond; however, he still faces the possibility of deportation today.⁶³

In Boston, an immigrant student with no criminal history was deported after he came into contact with immigration enforcement due to a school referral about an alleged plan to fight.⁶⁴ The student was present on a special immigrant juvenile visa and had a green card application pending when he was taken into immigration detention. The incident report of the students' interaction was shared by a school district employee with a unit inside the Boston Police Department that shares information with federal law enforcement agencies, including Immigration and Customs Enforcement (ICE). The report labeled the student as having gang affiliations based on a comment made by another student, which formed the basis for his detention and denial of bond. He remained in immigration detention for over a year before he signed off on his own deportation to end his indefinite detention.⁶⁵

School employees have actively shared information about school discipline with immigration enforcement, as was widely reported in 2018.⁶⁶ In Long Island, a list of things for which students had been suspended from school (and subsequently detained by ICE) included: writing their home area code and high school mascot on a desk; wearing a Lady Gaga

63 Coshandra Dillard, *The School-to-Deportation Pipeline*, Learning for Justice (Fall 2018), <https://perma.cc/NST7-MGW5>.

64 Shannon Dooling, *What a Boston Student's Deportation Reveals About School Police and Gang Intelligence*, WBUR (Dec. 13, 2018), perma.cc/KD4Z-5NUJ.

65 *Id.*

66 *Supra* note 58.

graphic t-shirt; wearing a Chicago Bulls jersey; posting the Salvadoran flag on Facebook; and flashing the middle finger. These instances, while seemingly innocuous, were documented by school staff as having connections to gang activity.⁶⁷ These students were all immigrants from Central America.

These examples are troubling because, assuming a white non-immigrant student exhibited the same exact conduct, it is highly unlikely that these incidents would result in suspensions or referrals to law enforcement at all. Administrators are no less susceptible to bias when contemplating next steps to a monitoring alert, and given the volume of alerts generated by around the clock monitoring, the surface area for this type of response only increases.

The students in the above examples faced significant immigration consequences. One was lawfully present as an asylum seeker when he was suspended from school, subsequently detained by ICE, and ordered deported in an asylum hearing that lasted less than an hour, based solely on his school suspension. After over a year in detention with no indication of when he would be released, like the student in Boston, he signed off on his own deportation.⁶⁸ Another was also lawfully present with no criminal history, and had just been approved for a green card (which had not yet arrived at the time of the incident). Immediately after his suspension his green card approval was revoked, he was arrested by ICE days later, then sent to a detention center almost 2,000 miles away from home.⁶⁹

These examples illustrate how immigrant students are treated differently, and often more harshly, by schools and law enforcement when they have potentially broken a rule. Deploying technology in schools that can lead to disciplinary actions or law enforcement referrals threaten to expand the outsized responses to which immigrant students are already subjected.

67 Emma Tynan, Sarah Kim Pak, Ignacia Rodriguez Kmec, and Mark R. Warren, *The People's Think Tank: Caught in an Educational Dragnet: How the School-to-Deportation Pipeline Harms Immigrant Youth and Youth of Color*, Nat'l. Education Policy Ctr. (May 24, 2022), perma.cc/J5V2-KK25; see *infra* note 6.

68 Hannah Dreier, *He Drew His School Mascot — and ICE Labeled Him a Gang Member*, ProPublica and the New York Times (Dec. 27, 2018), <https://perma.cc/49XF-N3SB>.

69 *Supra* note 63.

Example 2 – Mental health concerns

For immigrant students whose status could be jeopardized by alleged manifestations of mental health issues, automatic and/or unnecessary referrals to emergency services are particularly dangerous. Florida, with the fourth largest immigrant population in the country, is home to the Florida Mental Health Act (more commonly known as the Baker Act).⁷⁰ The Baker Act was enacted in 1971 and provides emergency mental health services and temporary detention for people, including children, who are impaired because of their mental illness, and who are unable to determine their needs for treatment.

In 2018, it was reported that in Miami-Dade County alone the Baker Act was used on students in the county's public, private, and charter schools more than three times every school day.⁷¹ One result of students being subjected to the Baker Act is the creation of an official record indicating that an individual posed such a danger to themselves that they required emergency and involuntary intervention, even if this was not actually the case. While the experience of being wrongfully subjected to the Baker Act would be traumatic for any student, the harm is compounded for immigrants in that it might also impact their ability to remain in the country, retain their status, or eventually become a U.S. citizen.⁷²

With the added consideration of 24/7 student activity monitoring, the surface area for these unwarranted emergency interventions increases dramatically. In addition to the immigration consequences of inaccurate student activity monitoring alerts, this practice would likely discourage immigrant students from seeking resources, support, or speaking freely and honestly about their emotional wellbeing — further exacerbating the challenges a student may be facing.

70 Florida's Baker Act law is a means of providing individuals with emergency services and temporary detention for up to 72 hours for mental health examination pursuant to Florida Statute Chapter 394. *Baker Act*, The 15th Judicial Circuit of Florida (last accessed Jun. 20. 12:36PM), perma.cc/T5Z4-QRH6. Elliott Davis Jr., *States With the Highest Shares of Foreign-Born Residents*, U.S. News & World Report (Oct. 26, 2023), <https://perma.cc/BVQ2-XBHV>. See Yasamin Sharifi et. al., *Costly And Cruel: How Misuse Of The Baker Act Harms 37,000 Florida Children Each Year*, Southern Poverty Law Ctr. (Mar. 26, 2021), <https://perma.cc/WD7X-BPM4>.

71 Kyra Gurney, *Handcuffs and a Psych Exam for a 7-Year-Old? Schools Do That Too Often, Parents Say*, Miami Herald (Feb. 2, 2018), <https://perma.cc/T3V6-YY73>.

72 USCIS Policy Manual, Vol. 9, Part D, Ch. 4, *Waiver of Physical or Mental Disorder Accompanied by Harmful Behavior*, U.S. Citizenship and Immigration Services (current as of Oct. 30, 2024), perma.cc/3EKL-ZN5U.

Example 3 – Suspected possession of illegal substances

In California, a lawfully present immigrant student was arrested and given a citation by his school resource officer after he was found with a small amount of marijuana. He remains at risk of having his green card application denied and losing his special immigrant juvenile status.⁷³ In this instance, the student was caught with the marijuana physically on his person at school; however, given the known accuracy issues with student activity monitoring technology, a student would not need to have made such a mistake to be at risk for a similar or worse outcome — a monitoring platform might detect images of marijuana that a student has come across online, or perhaps references to the controlled substance in written content the student is accessing, generating an alert that a student may be in possession of illegal substances when this is not actually the case.

To illustrate how literary content on a school device might generate one such alert: for decades, a popular book called “Go Ask Alice,” which is regarded by many as a cautionary tale about drug abuse, has been assigned or distributed in some schools as an anti-drug teaching tool.⁷⁴ The book contains detailed accounts of substance abuse that are narrated in the first-person, which, if read on the student’s device, could very easily be flagged and reported as suspected drug abuse by the student.

73 *Supra* note 57.

74 *Go Ask Alice*, Wikipedia (last accessed Nov. 8, 2024), perma.cc/8WWM-VL9U.

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