

Guidance for Early Education and Care (EEC) Programs on their Obligations to Protect Child, Family, and Employee Information



Office of the Attorney General
Children's Justice Unit
Civil Rights Division
Fair Labor Division

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EEC Child Care Programs must protect the personally identifiable information (PII) of children under their care.¹

- EEC Programs **cannot** disclose to third parties, including U.S. Immigration and Customs Enforcement (ICE) agents, either orally or in writing, the personally identifiable information (PII) of a child in their care unless:
 - the program has the parent or guardian's specific, informed consent;
 - it is pursuant to a **judicial warrant**, court order or subpoena; or
 - there is a health and safety emergency.
- PII includes, for example, a child's name, the name of a child's parents/guardians or family members, a home address, a social security number, a date of birth, or a place of birth.

1. Child care programs that receive federal funding from the U.S. Department of Education must protect the PII of children under their care per (FERPA) 20 U.S.C. § 1232g. Programs which receive funding from the Administration for Children and Families (ACF), including Head Start and Child Care Financial Assistance (CCFA) under the Child Care Development Fund (CCDF), are required to protect the PII of the children under their care as well. 42 U.S.C. § 9801; 45 C.F.R. § 1303.22. State regulations further require EEC licensed and funded programs to keep records of students' personal information confidential. See 606 CMR 7.04(12) for Family Child Care and Center-Based Child Care. See 606 CMR 3.10(5) for Residential Programs.

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EEC Child Care Programs are also required to ensure the safety and security of their employees' PII records.

- Programs **cannot** disclose to law enforcement, including ICE agents, either orally or in writing, the PII of their staff unless:
 - the staff member gives specific, informed consent;
 - there is a **judicial warrant**, court order or subpoena;
 - or there is a health and safety emergency.
- **BUT**: ICE may conduct an I-9 audit to review employer I-9 forms. If requested, you must provide these forms.
- Under Massachusetts law, employers must take adequate steps to protect PII.²

2. 201 CMR 17.

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Law enforcement, including ICE officials, may only enter EEC Child Care Program sites or conduct searches if:

- Law enforcement or ICE presents a valid **judicial warrant** (signed by a federal or state judge or magistrate).
 - Administrative warrants (issued by ICE or DHS), do not authorize entry into non-public spaces.
 - If presented with a judicial warrant, court order, or subpoena, consult legal counsel to determine the scope of the search or arrest authority that the judicial warrant or order provides.
- **OR**: The facility gives consent to search the premises.
 - If approached by law enforcement, you **are not required** to speak with them. You retain your **constitutional right to remain silent**.
- Facilities are **not** required to provide ICE or other law enforcement access to non-public spaces without a judicial warrant.
 - **However**: a judicial warrant is not required for law enforcement, including ICE, to access areas open to the public (i.e., lobbies, entrances), even on private property.

Find More Support from the Office of the Attorney General.

Learn more about other resources available to immigrant communities at: <https://www.mass.gov/info-details/resources-for-immigrants-in-massachusetts>. Contact the Civil Rights Division at (617) 963-2917.