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## **GUIDANCE REGARDING K-12 SCHOOLS' OBLIGATIONS TO PROTECT STUDENTS AND THEIR INFORMATION**

The Office of the Attorney General has heard concerns from school administrators and others about how potential changes to federal immigration policies might affect their students, communities, and classrooms. This guidance describes some of the issues that might impact immigrant students in K-12 schools, and describes some of schools' legal obligations as well as steps they can take to support students and families and maintain an environment conducive to learning for all. It includes information about the rights of all children to access a free public education regardless of immigration or citizenship status and the ongoing legal obligations of schools<sup>1</sup> to ensure that appropriate steps are taken when responding to requests for access to students or their information by U.S. Immigration and Customs Enforcement (ICE) agents.

This advisory is not legal advice or a formal legal opinion of the Attorney General. A school district or parent should consult with legal counsel about specific concerns.

### **All Students are Entitled to Equal Access to Free Public Education**

Schools must provide equal access to education to all students regardless of race, color, sex, gender identity, religion, national origin, sexual orientation, disability, or immigration status. Schools must meet this fundamental obligation and avoid policies that discourage or deny access to school on the basis of immigration or citizenship status.

### **Information that Schools Collect and Maintain for Enrollment Purposes**

State and federal law require that school districts enroll all school-aged children who reside in the district without regard to immigration status. Districts should ensure that their enrollment policies do not prevent, discourage, or delay immigrant families from enrolling their children in school, and should work proactively with families to ensure that they promptly enroll their children in school.

School districts may want to consider revising their enrollment policies to collect *only* the information necessary to verify the student's age and residence. Further, school districts may not limit the forms of verification they accept to a narrow list of documents, such as government issued ID. Districts should instead accept a range of documents and methods to verify the child's age and to confirm the child lives in the district. For example, if a family does not have a birth

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<sup>1</sup> This guidance applies to all K-12 public schools in Massachusetts and may also apply to private schools that receive federal or state education funding.

certificate showing a child's age, the district may accept an affidavit from the parent indicating the child's date of birth. As a general matter, schools should not collect for enrollment purposes or maintain documents that contain passport information, visa information, and Social Security numbers. This information is not necessary to confirm age or residency and collecting it creates additional data protection obligations, and risks deterring enrollment on the basis of immigration or citizenship status.

For more information, see:

- [Attorney General's Advisory Regarding Equal Access to Public Education for All Students Irrespective of Immigration Status \(updated April 2022\).](#)
- [Upholding the Rights of Immigrant Students to Enroll in School: Guidance for School Committees and Districts \(December 2024\).](#)

### **ICE Requests to Meet or Interview Students**

If an ICE agent requests access to a student, schools should refer the agent to the district's central office to ensure proper protocol is followed.<sup>2</sup> The school or district should also immediately notify the student's parent or guardian. Superintendents should contact the district's legal counsel to discuss the appropriate response before proceeding.

In the event that an ICE agent asks to question or remove a student from their classroom, schools must obtain the specific, informed written consent of a parent or guardian or be provided with a valid, judicial warrant signed by a federal or state judge. If the agent presents a warrant, the school district should immediately consult school legal counsel and review the warrant to confirm that it is a judicial rather than administrative warrant and to determine the scope of the search or arrest authority the warrant provides.

### **ICE Requests for Students' Information**

Under the Family Educational Rights and Privacy Act of 1974 (FERPA) and the Massachusetts Student Records Regulations, schools are prohibited from giving, either orally or in writing, a student's personally identifiable information (PII)<sup>3</sup> contained in education records to third parties, including ICE agents, without the specific, informed written consent of a parent/guardian (or eligible student), or absent a specific exception as described below.

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<sup>2</sup> For charter schools or districts without a central office, the school leader should immediately contact their legal counsel to discuss the appropriate response before proceeding.

<sup>3</sup> Personally Identifiable Information includes, but is not limited to—(a) The student's name; (b) The name of the student's parent or other family members; (c) The address of the student or student's family; (d) A personal identifier, such as the student's social security number, student number, or biometric record; (e) Other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name; (f) Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or (g) Information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.

Third parties who obtain written parent/guardian consent and receive PII are prohibited from further releasing the information without the specific, informed written consent of a parent/guardian (or eligible student).

### **Exceptions Permitting Disclosure of Student Information Without Consent**

Unless an exception to this general rule applies, schools cannot, either orally or in writing, confirm any information in a student’s educational record when asked. Schools may respond with statements such as “the school can neither confirm nor deny a student’s personally identifiable information.” If a staff member believes an exception may apply in any given situation, they should contact the district superintendent immediately and wait for their instructions before making any disclosure. School superintendents should consult legal counsel to ensure they are adhering to student privacy laws.

#### **1. Judicial Order or Subpoena**

Where a lawfully issued judicial order or subpoena is presented, schools must make a reasonable effort to notify the parent (or student, if 18 years or older) of the judicial order before complying with it to allow the parent an opportunity to seek a protective order or other relief in court. Prior notification to a parent of a judicial order is not required in the following circumstances:

1. The court has explicitly prohibited disclosure in its order, or the order was obtained by the United States Attorney General (or designee) concerning investigations or prosecutions of an act of terrorism or other specified offenses.
2. The parent is a party to a court proceeding involving child abuse and/or neglect, dependency matters, or legal actions against the school.

#### **2. Education officials**

Schools must provide education department officials access to student records that are necessary for an audit, evaluation, or enforcement of federal and state education laws or programs or otherwise required by law. If a school district believes information has been requested by education officials for some other, impermissible purpose, it should seek legal counsel. Also, data collected by education officials must be protected so that third parties cannot personally identify the students and their parents/guardians. Before releasing the student data, schools should seek assurance that the requester will maintain the data in a manner that protects PII from third parties. Furthermore, schools should confirm that PII will be destroyed when no longer needed for the intended audit, evaluation, or enforcement purposes, as required by law.

### **3. Police, Prosecutors, Department of Children and Families (DCF) investigators, or health department staff in case of Health or Safety Emergency**

In connection with a health or safety emergency, schools may (or, in certain situations must)<sup>4</sup> release student record information without the specific, written consent of eligible student or parent/guardian to police, prosecutors, DCF investigators, or health department staff upon proof that knowledge of this information is necessary to protect the health or safety of the student or other individuals. Before release, however, schools must require agreement from the requester to not further disclose the requested information to any third party.

### **4. Directory Information**

Directory information means information contained in an education record of a student that would generally not be considered harmful or an invasion of privacy if disclosed. Examples of directory information:

- A student's name
- A student's phone number
- A student's grade level
- A student's dates of attendance
- A student's participation in officially recognized activities and sports
- Honors and awards received by a student

Schools may release information designated as directory information to third parties, however, schools should carefully consider what information, if any, should be officially designated as directory information. For example, schools may wish to consider limiting the information contained in the directory to the examples bullet-listed above. Schools may also limit disclosure of directory information to specific parties, for specific purposes, or both. For example, schools may decide to limit disclosure of directory information to members of the school community. Moreover, schools must notify parents or guardians of policies on the disclosure of directory information and provide a meaningful opportunity to opt out. If a parent or guardian opts out of including their child's information in the directory, the school is not permitted to share the information.

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<sup>4</sup> Examples of situations where the schools must release certain, narrow categories of student information without the specific, written consent of eligible student or parent/guardian are listed below:

- a. Schools must disclose to local law enforcement information regarding serious incidents of bullying or retaliation or other criminal incidents or activity if the principal has a reasonable basis to believe that criminal charges may be pursued against the aggressor.
- b. Schools must file a dangerous weapon report with the local chief of police, DCF, the office of student services or its equivalent in any school district, and the local school committee.
- c. Schools must file a 51A report with DCF if staff has reasonable cause to believe that a child is suffering physical or emotional injury.
- d. Where a student or former student has been reported missing, schools must report any request concerning the records of such child to the appropriate law enforcement authority.
- e. Schools must provide student's health records such as immunization records to school health staff and local and state health department staff upon showing that access is required in the performance of official duties.

### **a. Review and Limit Directory Information**

Schools must exclude any sensitive personal information that could generally be considered harmful or an invasion of privacy if disclosed as directory information. While a student's address and place of birth is allowed, schools may want to consider reviewing and excluding this information from the directory.

### **b. Annual Notice to Parents and Allow Opt-out**

Schools are required to give public notice to students and their families of what information is included in the directory at least once a year. Schools must allow parents to opt-out at any time of having students' information disclosed in the directory. If the student's parent or guardian has limited English proficiency, the district must utilize translation or interpretation services to communicate this information.

### **Share *Plan Ahead* Resources with Students and their Families**

Our office understands concerns that changes in federal immigration policy could result in increased arrest and detention activity that will impact school communities. As part of a school district's broader planning efforts related to circumstances that might make it unsafe for a child to return home, they should prepare for the event in which a parent is arrested or detained by ICE. Schools may consider taking the following proactive steps:

- Provide parents/guardians regular opportunities to update emergency contact information, alternative caretaker contacts, and authorized pick-up contacts.
- Share *plan ahead* resources with students and their families. For more on planning ahead in case of emergency situations, see: [Emergency Planning Guide for Parents with Uncertain Immigration Status](#).
- Review your school's policy or guidance to make sure it includes steps to take if a student cannot safely return home.
- Take steps to support the needs of students who are facing increased anxiety as well as those whose families have been directly affected by changes to federal immigration policy.

### **Contact the Attorney General's Office**

Taking these steps will help protect students and their information and help to ensure classrooms are safe for learning. Doing so is also consistent with schools' legal obligation to provide all students with equal access to education and will help to create environments in which all students are welcome and safe, regardless of immigration status.

If you have other questions or need further assistance, contact the Civil Rights Division of the Office of the Attorney General at (617) 963-2917.

Dated: January 24, 2025