

Immigration Law Briefing for Parents



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OVERVIEW

- ✓ The Need to Reaffirm Support of Students in the Face of the New Presidential Administration
- ✓ Right to Public Elementary and Secondary Education Irrespective of Immigration Status, *Plyler v. Doe*, 457 U.S. 202 (1982)
- ✓ Key Privacy Protections, i.e., Family Educational Rights and Privacy Act (“FERPA”)
- ✓ Current Federal Immigration Enforcement Policy at Sensitive Locations

EQUAL ACCESS TO PUBLIC ELEMENTARY AND SECONDARY EDUCATION REGARDLESS OF IMMIGRATION STATUS

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

- Landmark U.S. Supreme Court Case: No state may deny access to a public elementary and secondary education to any child based on immigration status under the Equal Protection Clause of the 14th Amendment of the United States Constitution.
- Guidance on School Enrollment Procedures issued by the Office for Civil Rights (“OCR”) of the U.S. Department of Education and the Civil Rights Division of the U.S. Department of Justice in 2011 and updated in 2014. See updated guidance here:
<https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201405.pdf>

Federal Anti-Discrimination Laws

- No student, moreover, should be subject to discrimination, harassment, and/or bullying under Title VI of the Civil Rights Act of 1964 and other federal anti-discrimination laws. See Guidance on Harassment and Bullying issued by OCR on October 26, 2010 here:
<https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>

EQUAL ACCESS TO PUBLIC ELEMENTARY AND SECONDARY EDUCATION REGARDLESS OF IMMIGRATION STATUS

California Law

- Education is a fundamental right under the California Constitution.
- All students between the ages of 6-18 are mandated to attend school pursuant to compulsory attendance laws. Cal. Educ. Code § 48200.
- All students have a right to be in a public school learning environment free from discrimination, bullying, violence, and intimidation. Cal. Educ. Code §§ 220 and 234 *et seq.*

Bona Fide Residency Requirements

- A student's citizenship or immigration status is not relevant to satisfy bona fide residency requirements. See OCR Guidance on School Enrollment Procedures.
- Reasonable evidence of residency can be established by all students by documentation showing the name and address of parent/guardian within the district. Such documents, among others, include: property tax receipts, rental property lease, pay stubs, declaration of residency. Cal. Educ. Code 48204.1. Caregiver Affidavit also can be used.

EQUAL ACCESS TO PUBLIC ELEMENTARY AND SECONDARY EDUCATION REGARDLESS OF IMMIGRATION STATUS

Establishing Minimum Age

- Districts are permitted to request documentation to show that a student falls within the minimum and maximum age requirements. Cal. Educ. Code § 48002. See *also* Cal. Code. Regs., tit. 5, § 432, subd. (b)(1)(B).
- Acceptable documents for establishing age include, but are not limited to: a certified copy of a birth record, a baptism certificate duly attested, a passport, or, in certain instances, an affidavit of the parent, or previously verified school records.

Remember, Under the Current Law

- A district or its schools should not inquire into the immigration or citizenship status for establishing bona fide residency.
- An affirmative duty does not exist for district/school personnel to assist U.S. Immigration and Customs Enforcement (“ICE”) agents or other law enforcement officials with enforcing immigration laws.
- District/school personnel should not release student records unless there is parental consent, or there is a lawful court order or subpoena.

KEY PRIVACY PROTECTIONS AND RELATED RESTRICTIONS

- What are key student privacy protections and related restrictions on sharing information under federal and state law?
 - Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. § 1232g

FERPA

Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g

What is an Education Record?

- Education records are records that are directly related to a student and that are maintained by an educational agency or institution or a party acting for or on behalf of the agency or institution. They include but are not limited to grades, transcripts, class lists, student course schedules, health records (at the K-12 level), and student discipline files. The information may be recorded in any way, including, but not limited to, handwriting, print, computer media, videotape, audiotape, film, microfilm, microfiche, and e-mail.

Source: <http://familypolicy.ed.gov/faq-page>

FERPA

Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g

What must a consent to disclose education records contain?

- FERPA requires that a consent for disclosure of education records be signed and dated, specify the records that may be disclosed, state the purpose of the disclosure, and identify the party or class of parties to whom the disclosure may be made. 34 CFR § 99.30. As such, oral consent for disclosure of information from education records would not meet FERPA's consent requirements. In addition, districts can designate what constitutes directory information. 99 CFR § 99.37(d).

Source: <http://familypolicy.ed.gov/faq-page>

FERPA

Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g

May schools comply with a subpoena or court order for education records without the consent of the parent or eligible student?

- Yes. FERPA permits disclosure of education records without consent in compliance with a lawfully issued subpoena or judicial order. See 34 C.F.R. § 99.31(a)(9)(i) and (ii).
- **However**, a school must generally make a reasonable effort to notify the parent or eligible student of the subpoena or judicial order before complying with it in order to allow the parent or eligible student the opportunity to seek protective action, unless certain exceptions apply.

Source: <http://familypolicy.ed.gov/faq-page>

FERPA

Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g

- **Exceptions to the requirement of prior notification apply to:**
 - (1) a federal grand jury subpoena or other subpoena issued for a law enforcement purpose if the court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed;
 - (2) an ex parte order obtained by the United States Attorney General (or designee not lower than Assistant Attorney General) concerning investigations or prosecutions of an act of terrorism or other specified offenses. See 34. C.F.R. § 99.31(a)(9)(ii).

Source: <http://familypolicy.ed.gov/faq-page>

IMMIGRATION ENFORCEMENT AT SENSITIVE LOCATIONS, I.E., SCHOOL DISTRICTS

- Immigration enforcement at “Sensitive Locations” is guided by the *Memorandum on Enforcement Actions at or Focused on Sensitive Locations* issued on October 24, 2011 by U.S. Immigration and Customs Enforcement (“ICE”) and *Memorandum on Enforcement Actions at or Near Certain Community Locations* issued on January 18, 2013 by U.S. Customs and Border Protection (“CBP”).
- The Sensitive Location Memoranda of ICE and CBP remain in effect and provide that enforcement actions at locations such as schools “should generally be avoided,” and “require either prior approval from an appropriate supervisory official or exigent circumstances necessitating immediate action.”

Sources: *Memorandum on Enforcement Actions at or Focused on Sensitive Locations*, dated October 24, 2011, U.S. Immigration and Customs Enforcement, <https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf>, and *Memorandum on Enforcement Actions at or Near Certain Community Locations*, January 13, 2013, U.S. Customs and Border Protection, <https://www.ice.gov/ero/enforcement/sensitive-loc>. See also Sensitive Locations FAQ, <https://www.cbp.gov/border-security/sensitive-locations-faqs>.

IMMIGRATION ENFORCEMENT AT SENSITIVE LOCATIONS

- Enforcement actions covered include: “(1) arrest; (2) interviews; (3) searches; and (4) for purposes of immigration enforcement only, surveillance.”
- **However**, ICE may carry out enforcement actions under the Sensitive Locations Memorandum “when one of the following **exigent circumstances** exists:
 - the enforcement action involves a national security or terrorism matter;
 - there is an imminent risk of death, violence, or physical harm to any person or property;
 - the enforcement action involves the immediate arrest or pursuit of a dangerous felon, terrorist suspect, or any other individual(s) that present an imminent danger to public safety; or
 - there is an imminent risk of destruction of evidence material to an ongoing criminal case.”

IMMIGRATION ENFORCEMENT AT SENSITIVE LOCATIONS

- It is important to highlight once again that, like DACA itself, the Sensitive Locations Memoranda are not governing law.
- However, the principles set forth in the Sensitive Locations Memoranda have been followed by past Democratic and Republican administrations.
- Recent statements made by the Trump administration have indicated that the Sensitive Locations Memoranda remain in effect.
- However, note that the Sensitive Locations Memoranda can be rescinded or amended at any time by the Trump administration.

WHAT IS A SENSITIVE LOCATION?

Locations covered by these policies would include, but not be limited to:

- Schools, such as known and licensed daycares, pre-schools and other early learning programs; primary schools; secondary schools; post-secondary schools up to and including colleges and universities; as well as scholastic or education-related activities or events, and school bus stops that are marked and/or known to the officer during periods when school children are present at the stop.
- Source: Sensitive Locations FAQs, <https://www.ice.gov/ero/enforcement/sensitive-loc>

WHAT DOES “SANCTUARY CAMPUS” OR “SAFE HAVEN” MEAN?

- What does “Sanctuary Campus” or “Safe Haven” mean?
 - The term “Sanctuary Campus” or “Safe Haven” has been used increasingly to describe efforts that have been undertaken by elementary, secondary, post-secondary and other educational institutions to support students, particularly those who are undocumented and fear being removed (deported) from this country, or otherwise discriminated against based on religion, i.e., members of the Muslim community.

WHAT DOES “SANCTUARY CAMPUS” OR “SAFE HAVEN” MEAN?

- Note that the term “Sanctuary Campus” or “Safe Haven” does not have a single meaning. Some educational institutions have decided to avoid the term when describing their affirmative efforts to support their undocumented students, including DACA beneficiaries, because the term is subject to multiple interpretations. The focal point is the affirmative efforts made on behalf of undocumented students—not the title assigned to a given board resolution or policy.
- Accordingly, to understand what is meant by the term “Sanctuary Campus” or “Safe Haven,” one needs to review, for example, a specific board resolution and/or policy adopted by a district board or other educational institution to determine the scope and breadth of actions that the educational institution has decided to undertake to support its undocumented students, including DACA recipients, and other students.

Question & Answer
Session

Thank You

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