



Legal Guidance

Immigration Issues Affecting California LEAs

This legal guidance is intended to give governing boards clarity regarding their responsibilities under federal and state immigration law. This guidance provides information about current law and policy as of December 2024. Boards should be aware that this guidance is subject to change when the new presidential administration takes office Jan. 20, 2025, and potentially begins implementing immigration policy, including in the form of Executive Orders. In addition, the United States Congress and the California Legislature may pass bills either in anticipation of or in response to such policy changes that affect CSBA members. CSBA will provide timely updates as the legal landscape changes.

As presidential administrations transition one to another after elections, it is common for government policy priorities and stances to change along with them. This pattern could be expected to repeat as the incoming Trump administration publicizes its national policy agenda, including in the area of immigration. Understandably, individuals and organizations that would be impacted by potential policy developments, including schools, must anticipate and prepare to manage and address the expected changes in ways that are legal and appropriate.¹

All students have equal access to an education under the laws of the United States. Under current law, the immigration status of a student does not impact the ability of the student to access education in their place of residency. However, families that fear an increase in immigration enforcement by the federal government may act on these concerns by keeping their children home from school. In response to these concerns from students and parents, school boards should create protocols that direct staff on how to uniformly respond to potential requests related to immigration enforcement. School boards should also utilize their lawful discretion to establish policies and procedures to ensure the district or county office of education is providing equal access to public education for all students. Under current law, in large part, information requested about students is protected from disclosure absent parental consent, a court order or judicial warrant and under current federal policy, schools are

generally insulated from immigration enforcement activities. Nevertheless, the safety and sanctity of school sites and activities may be challenged by the actions of federal immigration officers and agents responding to urgent or “exigent” circumstances or after requesting information about the students and their parents, and school boards need to be prepared to address those eventualities appropriately.

This legal guidance is being published by CSBA to inform board members about the obligations of schools, the rights of students and their parents and guardians under state and federal law, and the exclusive authority of the federal government to interpret and enforce the immigration laws, regulations and policies. CSBA, in acknowledging a potential conflict among these various interests, is distributing this guidance to its members to share with their superintendent and legal counsel and to use at their discretion. This guidance is intended to set forth the current legal landscape as of its publication. As several state laws passed during the first Trump administration are still in effect, questions remain as to the effectiveness of those laws in addressing the yet unknown policy implementation of the new administration and whether they will continue to be legal in the face of new federal legislation or policy. CSBA will provide updates to changes to guidance by federal agencies as they become available.

School districts and county offices of education must provide all children equal access to school, regardless of their immigration status

In 1982, the U.S. Supreme Court ruled in *Plyler v. Doe*, 457 U.S. 202 (1982) that under the Fourteenth Amendment of the U.S. Constitution, if a state provides a free public education to U.S. citizens, it cannot deny such an education to undocumented children.² The Court found that denying students a basic education because of their immigration status was denying them “the ability to live within the structure of our civic institutions, and foreclose any realistic possibility that they will contribute in even the smallest way to the progress of our Nation.” This remains the current legal precedent.

The U.S. Department of Justice and U.S. Department of Education echo the basic tenet of *Plyler v. Doe* in their jointly published fact sheet: “All children in the United States are entitled to equal access to a basic public elementary and secondary education regardless of their actual or perceived race, color, national origin, citizenship, immigration status, or the status of their parents or guardians. School districts that either prohibit or discourage, or maintain policies that have the effect of prohibiting or discouraging, children from enrolling in schools because they or their parents or guardians are not U.S. citizens or are undocumented may be in violation of Federal law.”³ Further, under California law, students have “the inalienable right to attend campuses which are safe, secure and peaceful.”⁴

All children residing in California between the ages of 6 and 18 years old are required under California law to attend school.⁵ This compulsory education requirement applies to all children in California, including those that are undocumented. In addition, every student in California has the right to attend public school in the state free from discrimination, harassment, violence, intimidation and bullying on the basis of race, national origin, immigration status, or any other protected characteristic.⁶

Schools may not share student records with U.S. Immigration and Customs Enforcement (ICE) without parental consent

Federal law

Federal law, specifically the Family Educational Rights and Privacy Act (FERPA), prevents schools from sharing student information, including their citizenship status, if they know it, with ICE without parental consent. All student records, including student files, are generally exempt from disclosure or subject to redaction to prevent disclosure of personally identifiable information. This protects against the sharing of personally identifiable student information except for certain narrow exceptions including in response to a court order or subpoena, or a request for “directory information.”⁷

FERPA broadly defines student education records as materials that contain information directly related to the student and are maintained by an educational agency or institution.⁸ If a district has collected and stored information related to a student’s immigration status, this information is likely to fall within the protections of FERPA as well and cannot be shared without parental consent or a court order or warrant. FERPA also requires prior notice to parents before responding to a subpoena or court order.⁹ In addition, Education Code section 49076 mandates that school districts shall not permit access to student records without written parental consent or under court order, with very limited exceptions, and does not include ICE and immigration authorities in those limited exceptions.

State law

Assembly Bill 699, passed in 2017, prohibits school officials and employees of LEAs from collecting information or documents regarding citizenship or immigration status of pupils or their family members.¹⁰ Further, superintendents of school districts or county offices must report to the governing board of the LEA in a timely manner any request for information by an officer or employee of a law enforcement agency for

purposes of enforcing immigration, and must do so in a manner that ensures confidentiality.

Resources and data collected by an LEA may not be used, directly or by others, to compile a list, registry, or database of individuals based on national origin, immigration status, religion, or other category of individual characteristics protected against unlawful discrimination.¹¹

In addition, Senate Bill 48 (D-Gonzalez) has been introduced in December 2024 in the Legislature and would prohibit an LEA and its personnel from disclosing or providing, in writing, verbally, or in any other manner, the education records of or any information about a pupil, pupil's family and household, school employee, or teacher to an ICE officer, or any other federal official engaging in immigration related investigation or enforcement, without a judicial warrant, and regarding a pupil's educational records or personal information, without the written consent of the pupil's parent or legal guardian. CSBA is tracking the bill and will provide updates as they become available.

Handling record requests

Upon receiving a record request from an immigration enforcement officer, LEAs should:

- » Ensure the request is immediately forwarded to the Superintendent or designee for handling and consultation with legal counsel.
- » Provide students and families with appropriate notice and a description of the immigration officer's request.
- » Document any request for information by immigration authorities.
- » Provide students and parents or guardians with any documents provided by the immigration enforcement officer, unless such disclosure is prohibited by a subpoena served on the district or in cases involving investigations of child abuse, neglect, or dependency.

Schools should ensure appropriate policies are in place regarding their response to immigration enforcement

AB 699 required LEAs to adopt model policies on immigration, either those developed by the California Attorney General as required by the bill, or equivalent policies.¹² CSBA issued model Administrative Regulation 5145.13 in light of this requirement, and it provides significant guidance to schools regarding rights and obligations related to immigration issues.¹³

School personnel, whenever encountering ICE or Customs and Border Patrol (CBP) officers on school sites, should refer them to the school administration, who should contact the superintendent and district legal counsel. Officers should be asked for any documentation that authorizes school access. Superintendents of school districts and county offices must notify their respective governing boards of requests by law enforcement officers or employees to access school sites for the purpose of enforcing immigration laws.¹⁴

According to guidance issued by the Attorney General in December 2024, LEAs should update such policies no later than May 2025.¹⁵ CSBA's GAMUT policy update for immigration issues will be issued in March and will cover the areas necessary to meet the requirements of the bill. According to AB 699 and the Attorney General's December 2024 guidance, LEAs may enact policies that are more protective than is required by law.¹⁶ However, LEAs should be aware that federal law supersedes state law on issues of immigration enforcement.

Under current policy, immigration enforcement actions are generally avoided at schools, but schools should be prepared for visits from immigration enforcement agencies

Current federal enforcement policy

ICE and CBP currently have policies in place to “generally avoid” enforcement actions at “protected areas” including schools, school bus stops, health care facilities, places of worship, weddings, funerals, places where children gather, places where disaster or emergency response/relief is provided, and during public demonstrations such as a parade.¹⁷ This does not prohibit enforcement in these areas, but requires that they be avoided to the fullest extent possible.

According to the current policy issued by the Department of Homeland Security (DHS) on Oct. 27, 2021, immigration enforcement actions may occur at protected areas in very limited circumstances, but should generally be avoided. DHS officers and agents from ICE may conduct an enforcement action at a protected area only with prior approval from an appropriate supervisory DHS official, or where the enforcement action involves urgent or “exigent” circumstances that involve national security or public safety, or where there is imminent risk of destruction of evidence material to an ongoing criminal case.¹⁸ These policies may change under the new administration, and CSBA will monitor and advise members of any change to the policy.

It is possible that the current policy could change with the transition to the new presidential administration. In response to that possibility, two bills have been introduced in the California Legislature. SB 48 (Gonzalez), as previously described, would prohibit LEAs and their personnel from granting an ICE officer, or other federal official engaging in immigration related investigation or enforcement, permission to access a school campus without a judicial warrant and would require a local educational agency and its personnel, to the extent possible, to have the denial

of permission for access witnessed and documented. Additionally, the bill would prohibit California law enforcement agencies from collaborating with immigration authorities regarding proposed or currently underway immigration enforcement actions when the actions could be or are taking place within a radius of one mile of any school site.¹⁹ AB 49 (Maratsuchi) would prohibit officials and employees of an LEA from allowing ICE officers to enter a school site or for any purpose without providing valid identification, a written statement of purpose, a valid judicial warrant, and approval from the school district superintendent or the county superintendent. The bill also would require that if an ICE official meets the requirements to enter a school site, their access would be restricted to school or facilities where students or children are not present. CSBA will provide updates on these bills as they move through the Legislature.

Guidance to address visits by immigration enforcement officers to schools or other district facilities

While ICE and CBP have a policy of not conducting enforcement at schools except in certain circumstances, school staff should be prepared for such visits. Schools should follow their normal processes for handling visitors on campus, including requiring sign-in, for visits from immigration officers. Staff should report the presence of immigration enforcement officers to administration and any on-site campus police or school resource officer.

If an immigration enforcement officer seeks to interview or search a student in order to enforce immigration laws, school staff must obtain consent from a parent, unless the officer presents a valid, effective warrant signed by a judge or other valid, effective court order.²⁰ The school should notify the parent or guardian of the request, unless the warrant or court order prohibits notification to the parent. The superintendent or designee should also be notified in this circumstance or if an immigration officer seeks to gain access to a school site or other district or county office facility.

If an immigration enforcement officer seeks access to a school site or other district or county facility, staff should obtain identification information from the officer and any documentation that authorizes the officer's access to a school site. If the officer does not have a warrant but states that exigent circumstances require access to a school site or other facility, staff should comply with the officer's orders and contact the superintendent or designee.

If the officer does not state that exigent circumstances exist, staff should respond based on the documents provided:

- » If the officer has an ICE administrative warrant, district staff shall inform the agent that they cannot consent to any request without first consulting with the district's legal counsel or other designated district official.
- » If the officer has a federal judicial warrant, such as a search and seizure warrant or an arrest warrant signed by a federal judge or magistrate, district staff shall promptly comply with the warrant. If feasible, district staff shall consult with the district's legal counsel or designated administrator before providing the officer with access to the person or materials specified in the warrant.
- » If the officer has a subpoena for production of documents or other evidence, district staff shall inform the district's legal counsel or other designated official of the subpoena and await further instructions as to how to proceed.

Administration and staff should not attempt to physically impede any immigration enforcement officer, even if the officer appears to be exceeding authorization of the officer's office or the documents presented. Staff should document the officer's actions while on campus.

The district's legal counsel or other designated official must submit a timely report to the Governing Board regarding the officer's requests and actions and the district's responses.²¹

Governing boards must provide information to parents and guardians regarding their children's rights to a free public education

AB 699 requires governing boards to make certain notifications to parents about their children's rights with respect to their rights to a free public education. Specifically, boards are required to:

- » Provide information to parents and guardians regarding their children's right to a free public education, regardless of immigration status or religious beliefs. This information must include information relating to "know your rights" immigration enforcement established by the Attorney General and may be provided in the annual notification to parents and guardians pursuant to Section 48980 or any other cost-effective means determined by the LEA; and
- » Educate pupils about the negative impact of bullying other pupils based on their actual and perceived immigration status or their religious beliefs and customs.²²

LEAs should obtain updated emergency contact information for parents or guardians in the event a parent or guardian is detained or deported

Administration should encourage students and families to update their emergency contact information as needed throughout the school year and provide alternative contacts, such as a trusted adult who can care for the child should the parent or guardian be detained or otherwise unavailable. Administration should notify students' families that information provided on the emergency cards will only be used in response to specific emergency situations and not for any other purpose. Families should be notified that, in the event that a student's parent or guardian is detained or deported by federal immigration authorities, administration release the student to the person(s) designated in the student's emergency

contact information or to any individual who presents a caregiver’s authorization affidavit on behalf of the student. The superintendent or designee shall only contact Child Protective Services if district personnel are unable to arrange for the timely care of the student by the person(s) designated in the emergency contact information maintained by the school or identified on a caregiver’s authorization affidavit.²³

LEAs may refer a student or the student’s family members to other resources for assistance, including, but not limited to, an ICE detainee locator, legal assistance, or the consulate or embassy of the parent or guardian’s country of origin. Governing boards may take action to notify parents, students, and the public of the current policy of limitation of federal enforcement activities on school sites.

Under current legal authorities, schools should not ask about a student’s immigration status

Schools should not inquire about a student’s immigration status for the purpose of establishing residency in the district.²⁴ Residency can be established through other means such as utility bills, leases, pay stubs, correspondence from a government agency, or a declaration of residency by the parent or legal guardian, and it is therefore unnecessary to collect immigration status information from students. Any such inquiry may also violate federal law and may put the school in a position of being challenged by federal agents to release such information if collected.²⁵

To comply with federal civil rights laws and state anti-discrimination laws, and the holding of the Supreme Court in *Plyler v. Doe*, school districts must ensure that they do not discriminate on the basis of race, color, immigration status, or national origin, and that students not be barred from enrolling in schools on the basis of their immigration status or that of their parents. Critically, districts may not request information regarding the immigration status of pupils or their family members, unless required by state or federal law.²⁶

Under current legal authorities, schools should not require a social security number, or other documentation that discourages undocumented students from enrolling in school

A district may not deny enrollment to a student if the student (or the student’s family) chooses not to provide a social security number for anyone in the family.²⁷ Further, requiring social security numbers may discourage undocumented students from enrolling in school. Although it is best practice not to ask, if a district chooses to request a social security number, it must inform the enrolling student/family that the disclosure is voluntary, provide the statutory or other basis upon which it is seeking the number, and explain what uses will be made of it. A school cannot prevent a child from enrolling in or attending school if the student or parent declines to provide a social security number. Districts may require students or their parents to provide proof of residency within the district, including copies of phone or utility bills, lease agreements, etc. However, inquiring into students’ citizenship or immigration status, or that of their parents by requesting copies of passports or visas, would not be relevant to establishing residency within the district. Districts should review their practices around establishing residency and ensure that any documents or information required for residency would not unlawfully bar or discourage a student who is undocumented or whose parents are undocumented from enrolling them in or attending school.

For additional guidance,
contact CSBA’s Legal Department
at 800-266-3382
or legal@csba.org.

Endnotes

- 1 Article I, Section 8, clause 4 of the U.S. Constitution entrusts the federal legislative branch with the power to “establish a uniform Rule of Naturalization.” This language has been interpreted to give Congress sole responsibility for crafting the laws that determine how and when noncitizens can become naturalized citizens. Immigration and Customs Enforcement (ICE) and the US Customs and Border Protection (Border Patrol), as managed and directed by the executive branch, are responsible for enforcing federal immigration laws.
- 2 There may be legal challenges to *Plyler v. Doe* based on the current makeup of the U.S. Supreme Court. CSBA will provide information to members on any such challenges.
- 3 See “Fact Sheet: Information on the Rights of All Children to Enroll in School,” which is available at <https://www.ed.gov/media/document/dcl-factsheet-201405.pdf>; see also Education Code section 234.7.
- 4 Cal. Const., art. I, § 28, subd. (f)(1).
- 5 Ed. Code § 48200 et seq.
- 6 Ed. Code §§ 220, 234 et seq.
- 7 Under FERPA and state law, a district may disclose appropriately designated “directory information” without written consent, unless a parent has opted out and filed a written objection not to disclose directory information. “Directory information” means the following items: student’s name, address, telephone number, date of birth, email address, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous public or private school attended by the student. (Ed. Code § 49061 and 34 CFR 99.37(d).) See also U.S. Department of Education Laws and Guidance, FERPA, at https://studentprivacy.ed.gov/sites/default/files/resource_document/file/A%20parent%20guide%20to%20ferpa_508.pdf.
- 8 See 20 U.S.C. § 1232g(a)(4)(A).
- 9 See 20 U.S.C. § 1232g(b)(2)(B); 34 C.F.R. § 99.31(a)(9).
- 10 Ed. Code, § 234.7(a).
- 11 Gov. Code § 8310.3.
- 12 Ed. Code, § 234.7(g).
- 13 The Attorney General has also issued a document entitled Guidance and Model Policies to Assist California’s K-12 Schools in Responding to Immigration Issues that provides additional information about the types of actions that can be carried out by immigration enforcement agencies. The guidance can be found at Promoting a Safe and Secure Learning Environment for All: Guidance and Model Policies to Assist California’s K-12 Schools in Responding to Immigration Issues: <https://oag.ca.gov/sites/all/files/agweb/pdfs/bcj/school-guidance-model-k12.pdf>.
- 14 Ed. Code, § 234.7(b).
- 15 Promoting a Safe and Secure Learning Environment for All: Guidance and Model Policies to Assist California’s K-12 Schools in Responding to Immigration Issues: <https://oag.ca.gov/sites/all/files/agweb/pdfs/bcj/school-guidance-model-k12.pdf>.
- 16 Ed. Code, § 234.7(e).
- 17 See October 24, 2011 Enforcement Actions at or Focused on Sensitive Locations Memo available at <https://www.ice.gov/doclib/ero-out-reach/pdf/10029.2-policy.pdf>. ICE’s “Sensitive Locations FAQ,” updated May 17, 2024 is available at <https://www.ice.gov/ero/enforcement/sensitive-loc>.
- 18 https://www.dhs.gov/sites/default/files/publications/21_1027_opa_guidelines-enforcement-actions-in-near-protected-areas.pdf
- 19 The bill would also prohibit California law enforcement agencies from providing any information about a pupil, pupil’s family and household, school employee, or teacher in writing, verbally, or in any other manner, to ICE officials or other federal officials engaging in immigration enforcement.
- 20 See also Promoting a Safe and Secure Learning Environment for All: Guidance and Model Policies to Assist California’s K-12 Schools in Responding to Immigration Issues: <https://oag.ca.gov/sites/all/files/agweb/pdfs/bcj/school-guidance-model-k12.pdf>.
- 21 Ed. Code, § 234.7
- 22 Ed. Code, § 234.7(d)(1) and (2).
- 23 Ed. Code, § 234.7(c).
- 24 School districts are not required to collect immigration information related to a student’s immigration status except for nonimmigrant, international students in an education program under an F-1 or M-1 visa.
- 25 For a discussion of the ways to establish residency, see U.S. Department of Justice and U.S. Department of Education “Dear Colleague” letter, available at <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/08/plylerletter.pdf>, and U.S. Department of Justice and U.S. Department of Education fact sheet, available at <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/08/plylerfact.pdf> and <https://www.ed.gov/media/document/dcl-factsheet-201405pdf>.
- 26 Ed. Code, § 234.7(a).
- 27 https://www.ssa.gov/OP_Home/comp2/F093-579.html#:~:text=Privacy%20Act%20of%201974&text=Sec.,his%20social%20security%20account%20number.

