

# Guidance for Districts and Schools Legal Responsibilities in Regard to Students and Immigration

RIDE is committed to ensuring our schools are safe places for all of our students and building communities of teaching, learning, and love for each of our children in all of our schools. In response to concerns about increased immigration enforcement, RIDE is issuing this guidance to assist districts and schools in developing plans to support students who might be impacted by immigration actions. As of the date of this guidance, RIDE does not know of any instances where Immigrations and Customs Enforcement (“ICE”) has made any requests of Rhode Island schools or districts, and ICE policy is to avoid enforcement actions in places like schools.

This guidance outlines legal requirements for schools responding to ICE requests, but the laws leave some room for interpretation. Districts should consider not just how to comply with laws and promote consistency across the district, but also how to ensure that all students feel welcome in schools. **RIDE, therefore, recommends that districts develop comprehensive policies and plans for their faculty and staff to support students and families who might be impacted by immigration enforcement actions.**

## *Frequently Asked Questions:*

### Must a school or school district allow a child who is undocumented to enroll?

Yes, children in Rhode Island are both entitled to and required to attend school if they are between 6- and 18-years-old,<sup>1</sup> and school districts in Rhode Island must enroll a resident child regardless of that child's immigration status.<sup>2</sup> RIDE does not collect data on students' immigration or visa status and recommends that schools only request information that is necessary to enroll students.

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<sup>1</sup> See *Plyler v. Doe*, 457 U.S. 202 (1981) (holding that a law allowing schools to deny enrollment to undocumented children violated the Equal Protection clause of the U.S. Constitution); “Every child who has completed, or will have completed, six (6) years of life on or before September 1 of any school year, or is enrolled in kindergarten, and has not completed eighteen (18) years of life, shall regularly attend some public day school during all the days and hours that the public schools are in session in the city or town in which the child resides.” R.I. Gen. Laws § 16-19-1.

<sup>2</sup> “Except as provided by law or by agreement, a child shall be enrolled in the school system of the city or town where he or she resides. A child shall be deemed to be a resident of the city or town where his or her parents reside.” R.I. Gen. Laws § 16-64-1.

## What should school-based staff do if Immigrations and Customs Enforcement ("ICE") officials request access to the school?

According to ICE policy, a school is a “sensitive location” and officials should avoid enforcement actions at sensitive locations in the absence of prior approval or exigent circumstances. Enforcement actions include arrests, interviews, searches, and surveillance.<sup>3</sup> Usually, non-local law enforcement can only enter a school building if they have consent, a warrant, or exigent circumstances (such as an immediate threat to health or safety).

In the unlikely event that ICE does request to enter school grounds or school buildings, the district should have a plan or procedure in place for school-based personnel. If ICE officials request to speak with students, schools need to ensure that there is a warrant, court order, exigent circumstances, or consent provided by a parent or proxy consistent with a school district policy. In cases where ICE agents may have a warrant or court order, some districts have developed local policies directing school-based personnel to contact the district superintendent or designated legal counsel if ICE officials request entry to a school building before admitting them, as it may be difficult for a lay person to determine the validity and scope of a warrant or court order.<sup>4</sup> Some districts have developed policies that school-based personnel may not give consent and instead must contact legal counsel or a district superintendent.<sup>5</sup> A district should consider who should review a warrant or court order and who is permitted to give consent to non-local law enforcement in case of a request. If the ICE agent does not have a court order or warrant or has not identified exigent circumstances, school officials could allow them to speak with a student if the parent has provided consent for the interaction.

If district personnel feel that an immigration enforcement action at a school violated the law or policies, they may report violation here: <https://www.ice.gov/webform/ero-contact-form>.

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<sup>3</sup> Enforcement Actions At or Focused at Sensitive Locations, <https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf>; Sensitive Locations FAQs, <https://www.ice.gov/ero/enforcement/sensitive-loc#wcm-survey-target-id>.

<sup>4</sup> <http://schools.nyc.gov/NR/rdonlyres/F0A43102-00C5-40D3-81FD-C85818C8BD07/0/NonlocalawenforcementprincipalsshortsummaryEnglish51517.pdf>; [https://www.scribd.com/document/339960443/CPS-tells-principals-not-to-admit-ICE-without-a-warrant#download&from\\_embed](https://www.scribd.com/document/339960443/CPS-tells-principals-not-to-admit-ICE-without-a-warrant#download&from_embed).

<sup>5</sup> <http://schools.nyc.gov/NR/rdonlyres/F0A43102-00C5-40D3-81FD-C85818C8BD07/0/NonlocalawenforcementprincipalsshortsummaryEnglish51517.pdf>; [https://www.scribd.com/document/339960443/CPS-tells-principals-not-to-admit-ICE-without-a-warrant#download&from\\_embed](https://www.scribd.com/document/339960443/CPS-tells-principals-not-to-admit-ICE-without-a-warrant#download&from_embed).

**RIDE encourages districts to develop local policies about who should review a warrant and whether school-based personnel can give consent for ICE agents to enter a school building. Districts might consider designating a contact person to direct school-based personnel if ICE officials request entry.**

### How should school-based staff respond if ICE officials request student records?

A student’s educational record is protected by a federal law, the Family Educational Rights and Privacy Act (“FERPA”).<sup>6</sup> That educational record includes information disclosed by parents/guardians to enroll the student in school. Generally, a school cannot release educational records without written parent/guardian or eligible student (students 18 or older) consent.

FERPA, however, has an exception for “directory information” – information on the student that is generally not harmful or invasive if released to the public. Schools or districts may designate some information as “directory information” and may release this information to outside organizations unless parents/guardians and eligible students request in writing that the school not disclose this information. A district is not required to designate any information as directory information or may restrict who can access directory information.

Directory information may include, but is not limited to:

- Student's name,
- Address,
- Telephone number,
- Date and place of birth,
- Honors and awards, and
- Dates of attendance.

Schools may release this information to ICE upon request if the parents or eligible students have not opted-out.

There are a few exceptions to the requirement that parents/guardians or eligible students must consent to have records covered by FERPA released to outside organizations; two such exceptions are complying with a judicial order or lawfully issued subpoena or releasing information to appropriate officials in the case of a health or safety emergency.<sup>7</sup> If ICE agents

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<sup>6</sup> 20 U.S.C. § 1232g.

<sup>7</sup> 34 CFR § 99.31.

present school personnel with a subpoena or court order, the school or district must turn over the requested information if the order is valid. However, because it may be difficult for a lay person to determine the validity or scope of a subpoena or court order, a district may instruct personnel to contact the legal department or other designated contact before releasing any files.

**RIDE recommends that districts review the information designated as directory information and develop a local policy regarding who is permitted to release this information upon request.<sup>8</sup>**

**RIDE recommends that districts develop local policies regarding whether school-based personnel are permitted to release records requested by a subpoena or where such requests should be made.**

**RIDE also recommends designating a contact person to direct school-based personnel if ICE officials request student records.**

### What should school-based staff do if parents or guardians of students are detained, taken into custody, or deported?

Schools are responsible for the safety of their students. Districts and/or schools likely already have policies and procedures in place for students who are unable to go home (e.g. if guardian has been detained or school staff reported unsafe conditions to DCYF).

**RIDE recommends that districts and schools review (or develop) such policies to ensure that school-based staff have a plan to follow and that students have a safe place to go if this situation occurs. Schools should ensure that emergency contact information for all students is up-to-date.**

### What could schools do for parents, guardians or students that are facing being detained, taken into custody, or deported?

Schools could advise parents, guardians or students to develop a “family preparedness plan”. This comprehensive plan would allow parents and guardians to plan for all eventualities and have all necessary information in one place.

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<sup>8</sup> In accordance with the provisions in **34 C.F.R. § 99.37**