Model Policy to Protect Immigrant Students' Right to Attend School

On January 20, 2025, the first day of the new presidential administration, President Trump rescinded the “sensitive locations” policy that had previously limited Immigration and Customs Enforcement (ICE) operations in sensitive locations like schools, places of worship, and hospitals. This rescission was intended to cause fear among immigrant students and families and has had the intended effect, leaving many school districts confused and educators anxious about protecting their students.

Considering these heightened fears of immigration enforcement action, we recommend that school districts take immediate steps to affirm their commitment to fostering a welcoming and diverse community where all students, families, and school staff feel safe and protected.

Developing policies to protect the sanctity of the school environment in the event non-local law enforcement seeks access either to school facilities or student information is critically important. Such policies protect school staff by providing clear protocols and assure families that the school will shield students to the fullest extent possible under the law.

The model policy below has been developed by the New York Civil Liberties Union (NYCLU) to assist school districts in navigating this new landscape and is intended to limit the ways we know immigration enforcement in schools can harm young people and families. In doing so, we have drawn upon years of experience representing immigrant students in New York. This model complies with New York and federal laws and also includes examples of best practices that districts should consider adopting.

The policy addresses enrollment practices, procedures for responding to requests from non-local law enforcement for access to students or student information, protections for student data, protocols in the event that a parent or guardian is detained or deported, and the provision of “Know Your Rights” resources and other legal support to families and children.

We encourage school districts to use this model to create guidelines for unexpected situations, so educators are not called upon to make policy determinations on the spot.

Enrollment Policies for Immigrant Students

All district residents between the ages of 5 and 21 who have not yet received a diploma have the right to receive a free public education, regardless of their immigration status or that of their parent or guardian.[1]

New York Education Law § 3202 (1) provides that "[a] person over five and under twenty-one years of age who has not received a high school diploma is entitled to attend the public schools maintained in the district in which such person resides without the payment of tuition." New York Executive Law § 296 (4) further provides that "[i]t shall be an unlawful discriminatory practice for an educational institution to deny the use of its facilities to any person otherwise qualified ...by reason of his...citizenship or immigration status"

School staff shall not request a Social Security card or number or any information regarding the immigration status of the child, the child's parent(s), or the person(s) in parental relation as a condition of enrollment.[2]

New York regulations forbid school districts from requiring either a social security card or number or any other information which would tend to reveal the immigration status of the child or their parents as a condition of enrollment (8 NYCRR 100.2 [y][3][i][a]). If school districts must collect information relevant to immigration status because of state or federal requirements, the New York State Education Department ("NYSED") and Attorney General ("AG") have advised districts that they "should do so after the student is enrolled so as to avoid the suggestion that such information will be used in enrollment determinations" (NY St Off of Atty Gen & NY St Dept of Educ, New York Guidance on Safeguarding the Rights of Immigrant Students 1 n 8 [Jan. 2025], available at https://ag.ny.gov/sites/default/files/2025-01/2025.1-oag-go-sed-immigration-students.pdf [last accessed May 14, 2025]).

The district requires that all students who seek to enroll in the district provide proof of age and proof that the student's parent(s) or person(s) in parental relation resides in the district.[3] The district is also required to comply with the immunization requirements of Public Health Law § 2164 (7).

New York regulations establishes clear guidelines for determining student age and residency (see 8 NYCRR 100.2 [y]). These regulations were adopted by NYSED in 2014 in an effort to address barriers to enrollment immigrant students faced to enrollment in school (NY St Educ Dept, New York State Board of Regents Passes Emergency Regulation Concerning School Enrollment Following Joint Review by State Education Department and the Attorney General's Office [Dec. 16, 2014], available at https://www.nysed.gov/news/2015/new-york-state-board-regents-passes-emergency-regulation-concerning-school-enrollment [last accessed May 14, 2025]).

Age: The provision of a certified transcript of a foreign birth certificate or record of baptism is sufficient to establish a child's age, but in the alternative, district staff will accept either a) a foreign passport, or b) documentary or recorded evidence of age in existence at least two years, including a driver's license, state or other government-issued identification, school photo identification with date of birth, consulate identification card, hospital or health records, documents issued by federal, state, or local agencies, or records from non-profit international aid agencies and nonprofits or nongovernmental organizations.[4]

In the event that the district determines that verification of the documentary or recorded evidence of age is necessary, the student shall begin school while the district or its designee attempts to obtain such verification.[5]

Residency: As required by state regulation, district staff will consider a range of documentation as proof of residency, including documents issued by utility companies and federal, state, or local agencies.[6]

Students in temporary living arrangements will be afforded enrollment pursuant to state and federal law.

Guardianship: If a child is an unaccompanied minor and resides with a sponsor, the sponsor may submit proof of their status as sponsor and shall not be required to submit a judicial custody order or an order of guardianship as a condition of enrollment.

Immunizations: Where a student transfers to the district either from out-of-state or from another country and lacks either a certificate of immunization or other acceptable proof of immunization, the student shall be permitted to attend school for up to 30 days as long as they show a good faith effort to get the necessary certification or other evidence of immunization.

If the student's parent or guardian is unable to pay a private practitioner to administer the vaccines, district staff will refer them to a health officer of the county in which the student resides, who shall administer the vaccines free of charge.

NYSED and the AG have instructed school districts that "enrollment policies that make it difficult or impossible for noncitizens, undocumented students, and people who rent their homes without a formal lease to register for school" are "at odds with the purpose of our state's enrollment regulations" and "may violate constitutional and statutory protections" (NY St Off of Atty Gen & NY St Dept of Educ, Know Your Rights and "Dear Colleague" Letter 3 [Aug. 28, 2023], available at https://ag.ny.gov/sites/default/files/letters/kyr-ed.pdf [last accessed May 14, 2025]).

Students in temporary housing are protected by the McKinney-Vento Act (42 USC § 11431 et seq.) and New York Education Law § 3209.

New York regulation provides that as proof of parental relation, school districts may accept "documentation indicating that the child resides with a sponsor with whom the child has been placed by a federal agency" and "may not require submission of a judicial custody order or an order of guardianship as a condition of enrollment" (8 NYCRR 100.2 [y][2][3][i][c][2]).

New York Public Health Law § 2164 (7) provides that the 14-day grace period normally afforded to students to obtain required vaccines "may be extended to not more than thirty days for an individual student . . . where such student is transferring from out-of-state or from another country and can show a good faith effort to get the necessary certification or other evidence of immunization."

Districts have an obligation under New York Public Health Law § 2164 (6) to inform parents that students "may be immunized without charge by the health officer in the county where the child resides."

Procedures for Responding to Requests from Non-Local Law Enforcement for Access to Students or Student Information at District Facilities

[District] does not consent to non-local law enforcement agents, including Immigration and Customs Enforcement (ICE) agents, entering schools. Non-local law enforcement will only be permitted to access school facilities if they have a judicial warrant or in the unlikely event of exigent circumstances.

To minimize disruption to school communities, the district requires that all requests for entry into school facilities or for student information be directed to the Superintendent (or designee), who will consult with district counsel to determine if compliance with the request is legally required. If non-local law enforcement comes directly to a school facility to request entry or serve a subpoena, the principal shall take the following steps:

1. School Resource Officers (SROs) or other staff who maintain control over building entrances must immediately notify the school principal and ask non-local law enforcement to wait outside the building. SROs or school staff may not provide any information about students, family members, or district employees to non-local law enforcement.
2. The school principal should request:
    a. The officer's name and badge or ID number;
    b. Contact information for the officer and their supervisor; and
    c. Any documentation presented by the officer, including a warrant or subpoena.
3. The school principal will inform the officer that they must consult with district counsel before granting access to the facility or student information and ask them to continue waiting outside the building.

Guidance from NYSED and the AG strongly recommends that school districts "not allow officers inside school property to access a student, except to address an imminent safety situation or where required by law due to a judicial warrant or order" (NY St Off of Atty Gen & NY St Dept of Educ, New York Guidance on Safeguarding the Rights of Immigrant Students 4 [Jan. 2025], available at https://ag.ny.gov/sites/default/files/2025-01/2025.1-oag-go-sed-immigration-students.pdf [last accessed May 14, 2025]).

Whether exigent circumstances apply is a fact-specific inquiry. The Second Circuit has instructed that "[t]he 'core question' in applying the exigent-circumstances doctrine is 'whether the facts, as they appeared at the moment of entry, would lead a reasonable, experienced officer to believe that there was an urgent need to render aid or take action,'" (United States v Caraballo, 831 F3d 95, 102 [2d Cir 2016], quoting States v Klump, 536 F3d 113, 117-18 [2d Cir 2008]), including "the need to prevent the imminent destruction of evidence in individual cases, to pursue a fleeing suspect, and to assist persons who are seriously injured or are threatened with imminent injury" (id., quoting Riley v California, 573 US 373, 402 [2014]).

4. The school principal must immediately notify the district Superintendent and district counsel of the request and share all documentation provided by non-local law enforcement. The school principal shall await further instruction from district counsel before proceeding.

5. District counsel will review the documentation presented by non-local law enforcement and determine if compliance with the request is required.

6. In the case of a request that names a specific student, the school principal must immediately notify the student's parent or guardian unless a judicial warrant or court-issued subpoena explicitly prohibits.

7. If district counsel determines that non-local law enforcement seeks access to student information, the school principal shall notify the officer that records will be sent to them if legal counsel approves the request and ask them to leave.[7] District counsel must consult the policy on protecting student privacy in determining whether to comply with a judicial warrant or lawfully-issued subpoena.

8. In the event that district counsel advises against complying with a request for entry, the school principal will immediately inform non-local law enforcement and ask them to leave the area.

9. In the event that district counsel advises that compliance is required, the school principal must consult with district counsel on how to do so while minimizing disruption to the school community.

10. If the officer or agent cites an "exigent circumstance" or "safety emergency," the school principal shall immediately contact district counsel to verify whether exigent circumstances exist which warrant either admission of officers or agents to the school building or disclosure of student records without parental consent. District counsel shall advise the principal whether to permit access.[8]

NYSED and the AG strongly recommend that the superintendent and district attorney review the documentation presented by agents and provide guidance to school staff to determine if it is legally sufficient before admitting them to district facilities (NY St Off of Atty Gen & NY St Dept of Educ, New York Guidance on Safeguarding the Rights of Immigrant Students 4 [Jan. 2025], available at https://ag.ny.gov/sites/default/files/2025-01/2025.1-oag-go-sed-immigration-students.pdf [last accessed May 14, 2025]).

The NYSED and AG guidance also recommends that district staff "immediately notify the student's parent or guardian (if any) unless specifically prohibited (for example, by a judicial order)" (NY St Off of Atty Gen & NY St Dept of Educ, New York Guidance on Safeguarding the Rights of Immigrant Students 4 [Jan. 2025], available at https://ag.ny.gov/sites/default/files/2025-01/2025.1-oag-go-sed-immigration-students.pdf [last accessed May 14, 2025]).

11. While district personnel shall not consent to access by non-local law enforcement in the absence of exigent circumstances, they should not attempt to physically impede the officer or agent, even if the officer or agent appears to be exceeding the authorization conferred by a warrant or other document. If non-local law enforcement enters the premises without consent, district personnel shall document their actions on campus.
12. The school principal shall document and file an incident report for each instance when non-local law enforcement requests access to a district facility, student records, or an individual student, including whether the student is interrogated or detained.
13. Employees will be defended and indemnified by the district for individual legal consequences that occur as a result of implementing this policy within the course and scope of their job responsibilities.[9]

Guidelines for School Bus Personnel

1. School bus drivers or other personnel may not consent to non-local law enforcement entering a bus to interrogate or detain students.
2. In the unlikely event that non-local law enforcement attempts to enter a school bus, school bus drivers and other personnel shall inform officers that they are not authorized to permit entry and ask them to wait outside the bus. The bus driver must immediately contact the school principal or their designee.
3. If the school principal or his or her designee is unable to immediately arrive, they may ask that the school bus driver request the officer's name and badge or ID number and copies of documentation and transmit them via phone to the principal.
4. The school principal shall then follow the procedure for responding to requests from immigration enforcement for access to students.

NYSED has long held the position that law enforcement may not remove a student from school property or interrogate a student without parental consent except in a few limited circumstances (NY St Off of Atty Gen & NY St Dept of Educ, New York Guidance on Safeguarding the Rights of Immigrant Students 3 [Jan. 2025], available at https://ag.ny.gov/sites/default/files/2025-01/2025.1-oag-go-sed-immigration-students.pdf [last accessed May 14, 2025]). It follows that law enforcement may not detain or interrogate a student without parental consent whenever a student is in the custody of the district, including on school buses.

Training on Procedure for Responding to Requests from Non-Local Law Enforcement for Access to Students or Student Information at District Facilities

Schools will provide training to all faculty and staff including administrators, teachers, SROs, front office staff, bus drivers, dispatchers, and attendants to follow the above procedures. School staff will immediately notify the principal if non-local law enforcement asks to enter any school facilities and will not comply unless specifically directed to do so after the principal has consulted with district counsel.

The training will reiterate the critical priority that all school staff, including SROs and school bus staff, will protect and support all students' rights to attend school without fear of immigration consequences, pursuant to the New York Constitution and New York Human Rights Law.

Furthermore, school staff, including SROs, shall not detain or interrogate students to determine their immigration status.

NYSED and the AG have repeatedly counseled school districts that SROs may not detain or interrogate students to determine their immigration status (NY St Off of Atty Gen & NY St Dept of Educ, New York Guidance on Safeguarding the Rights of Immigrant Students 4 [Jan. 2025], available at https://ag.ny.gov/sites/default/files/2025-01/2025.1-oag-go-sed-immigration-students.pdf [last accessed May 14, 2025]).

Multi-lingual Signage at School Entrance and Other School Common Areas

The district shall develop multi-lingual signs to be posted at entrances and in common areas, such as outside of bathrooms and the cafeteria, summarizing that non-local law enforcement cannot enter school grounds without explicit permission from district counsel, and emphasizing the rights of students regardless of immigration status.

Protecting Student Data

The district protects and limits the number of staff who can access sensitive student information that could be used for immigration enforcement purposes.

School staff do not collect, retain, or have access to students' and families' immigration information, and staff shall not initiate communication with any law enforcement agency, including any federal immigration enforcement agency, regarding a student's or their family member's immigration status.[10]

The District and its SROs shall not enter into agreements to share student information with local law enforcement or federal immigration authorities except as required by law.

The district shall provide annual notice to parents and guardians of the school's information privacy policies. This notice shall include assurances that the district will not release personally identifiable information ("PII") to third parties for immigration enforcement purposes without a judicial warrant or lawfully-issued subpoena and provide information on how to opt-out of disclosure of directory information.[11]

Certain categories of information about a student or their family members are deemed to be PII, and shall not be shared with any non-school officials for any non-educational purpose absent parental consent or a valid court order. Such information includes but is not limited to:

a. Actual or perceived national origin;
b. Actual or perceived immigration or citizenship status, including a student's social security number or information contained in a student's passport, birth certificate, or residency or citizenship-related documents;
c. Actual or perceived religion;
d. Actual or perceived gender or gender identity or expression;
e. Actual or perceived sexual orientation;

Under New York and federal law, school districts are prohibited from the unauthorized release of students' personally identifiable information (see 20 USC § 1232g et seq.; 34 CFR § 99.1 et seq.; NY Educ Law § 2-d).

NYSED and the AG recommend that districts review current information collected to determine whether it could unnecessarily disclose a student or family member's immigration status and whether collection of the information is required (NY St Off of Atty Gen & NY St Dept of Educ, New York Guidance on Safeguarding the Rights of Immigrant Students 3 [Jan. 2025], available at https://ag.ny.gov/sites/default/files/2025-01/2025.1-oag-go-sed-immigration-students.pdf [last accessed May 14, 2025]).

NYSED and the AG have advised school districts to reissue the district's annual FERPA notice explaining parents' right to opt-out of the district's directory information policy (NY St Off of Atty Gen & NY St Dept of Edu, NY Guidance on Safeguarding the Rights of Immigrant Students 3 [Jan.2025], available at https://ag.ny.gov/sites/default/files/2025-01/2025.1-oag-go-sed-immigration-students.pdf [last accessed May 14, 2025]).

f. Records of criminal allegations, arrests, convictions, or adjudications;
g. School discipline records;
h. Health or medical information;
i. Status as a recipient of public assistance; and
j. All information included in a student's household income tax records.

In addition, disclosure of directory information is restricted to [x parties for x purposes.] Compliance with all student privacy policies must be incorporated as a condition in all contracts with third-party contractors who have access to students or student data.

Federal regulation permits school districts to develop a policy that the disclosure of directory information will be limited to specific parties, for specific purposes, or both (34 CFR § 99.37 [d]).

"Third party contractor" is defined in New York Education Law § 2-d (1)(k).

Consistent with federal student privacy laws, the district shall require written parental or guardian consent for release of PII, unless the information is relevant for a legitimate educational interest or includes directory information only.[12] The parent, guardian, or eligible student[13] is not required to consent to the release of such information, and if they refuse to do so the district shall not release the information.[14]

Information that would tend to reveal the immigration status of students and families, including but not limited to place of birth, nationality, home language, or status as an English Language Learner or Student with Interrupted Formal Education, will not be shared with either immigration enforcement or local law enforcement unless so ordered by a judicial warrant or lawfully-issued subpoena. Unless otherwise required by law, the district must make a reasonable effort to notify the parent, guardian, or eligible student of the warrant or subpoena in advance of compliance and their right to oppose the disclosure. District counsel should inform New York State Education Department's (NYSED) Privacy Office of any request for student information.[15]

Federal regulation provides that an educational agency may disclose PII to comply with a judicial order or lawfully issued subpoena, but it may only do so if it has made a "reasonable effort to notify the parent or eligible student of the order or subpoena in advance of compliance" (34 CFR §§ 99.31 [a][9][i]-[ii]). There are limited exceptions to this rule but none are likely to apply to immigration enforcement (see id.).

Nothing in this policy prohibits any local agency from sending to or receiving from any local, state, or federal agency (i) information regarding an individual's country of citizenship or (ii) a statement of the individual's immigration status.

Procedure in the Event of the Detention or Deportation of a Student's Family Member

On a quarterly basis, district staff shall request students and families to update emergency contact information and provide alternative contacts. The district shall permit families to include the name and contact information of an additional trusted adult as a secondary emergency contact in case a student's parent or guardian is detained. Families may add multiple emergency contacts if desired. Emergency contact information shall only be used in emergency situations, and not for any other purpose.[16]

NYSED and the AG have encouraged school districts "to ensure that all students and their families provide updated emergency contact information, including secondary emergency contacts" (NY St Off of Atty Gen & NY St Dept of Educ, New York Guidance on Safeguarding the Rights of Immigrant Students 5 [Jan. 2025], available at https://ag.ny.gov/sites/default/files/2025-01/2025.1-oag-go-sed-immigration-students.pdf [last accessed May 14, 2025]).

In the event a student's parent or guardian is detained or deported, the district shall release the student to the person(s) designated as secondary emergency contacts. Alternatively, the district shall release the student into the custody of any individual who presents a signed and notarized Designation of Person in Parental Relation form or a Designation of Standby Guardian form.

State law allows for the designation of either a person in parental relation or a standby guardian which would only become effective in the event that a parent is detained or deported (see General Obligations Law § 5-1551; Surrogate's Court Procedure Act § 1726).

The district shall only notify Child Protective Services (CPS) if the district cannot arrange for the timely care of the child through the emergency contact information in the school's possession, a Designation of Person in Parental Relation or a Designation of Standby Guardian form, or other information or instructions conveyed by the parent or guardian.[17]

Resources for Students and Families

The district will work with local legal services and advocacy organizations to establish partnerships to provide immigration legal services and "Know Your Rights" workshops for students and families, including legal support to develop an emergency plan in the event one or both parents or guardians is detained. The sharing of "Know Your Rights" information, particularly information on immigrants' rights if stopped by ICE agents, is protected by the New York and United States Constitutions and is actively encouraged by the district.

Endnotes

1 NY Educ Law §§ 3201-3202; NY Exec Law § 296 (4); *see also Plyler v Doe*, 457 US 202 (1982).

2 8 NYCRR 100.2 (y)(3)(i)(a).

3 *See generally* 8 NYCRR 100.2 (y).

4 *Id.* 100.2 (y)(3)(ii).

5 *Id.* 100.2 (y)(3)(ii)(d).

6 *Id.* 100.2 (y)(3)(i)(d).

7 ACLU of Maine, *Campus Safety Policy* 2-3, available at https://aclunational-my.sharepoint.com/:w:/g/personal/scaldera_aclu_org/EXG4RK48_DxHvD5PPB7Ei5cBvNjtOdCcd9qfqBzbTEIRkQ?e=iutLeJ (last accessed May 14, 2025).

8 *Id.* at 3.

9 San Francisco Unified School Dist & County Off of Educ, *Board Policy 5145.10: Protection of the Rights of Undocumented Students* (April 16, 2024), available at https://go.boarddocs.com/ca/sfusd/Board.nsf/goto?open&id=D2NW4T83765C (last accessed May 14, 2025).

10 ACLU of California, *Model Sanctuary School Board Policy 5* (Feb. 2018), available at https://www.aclusocal.org/sites/default/files/february_2018_aclu_model_sanctuary_school_board_policy.pdf (last accessed May 14, 2025).

11 Off of Ca Atty Gen, *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* 20-21 (Dec. 2024), available at https://oag.ca.gov/sites/all/files/agweb/pdfs/bcj/school-guidance-model-k12.pdf (last accessed May 24, 2025).

12 See 20 USC § 1232g (b)(1).

13 "Eligible student means a student who has reached 18 years of age or is attending an institution of postsecondary education" (34 CFR § 99.3).

14 Off of Ca Atty Gen, *supra* n 11, at 21.

15 Off. Of NY Atty Gen & NY St Dept of Educ, New York State Guidance on Safeguarding the Rights of Immigrant Students 2 (Jan. 2025), available at https://www.nysed.gov/sites/default/files/oag-go-sed-immigration-students.pdf (last accessed May 14, 2025).

16 Off of Ca Atty Gen, *supra* n 11, at 34.

17 *Id.*