



lisa@stella-law.com
(919) 274-5719
www.stella-law.com
4711 Hope Valley Road,
#4F-429 Durham, NC
27707

ICE/Immigration Legal Alert
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NOT LEGAL ADVICE

This week, the Trump Administration rescinded a 2021 memo by DHS Secretary Alejandro Mayorkas that designated schools, as well as other community services as “protected areas.” This 2021 rule stated that to the extent possible, ICE agents should not carry out any enforcement activities in these locations. On Tuesday, the Acting Homeland Security Secretary Benjamine Huffman announced that, “Going forward, law enforcement officers should continue to use that discretion along with a healthy dose of common sense.” the new memo states. “It is not necessary, however, for the head of the agency to create bright line rules regarding where our immigration laws are permitted to be enforced.” At this time, it is unclear whether this policy change will mean that ICE enforcement activities will take place on school property, but it allows for the possibility. Below is information for education leaders. This is for informational purposes; please consult legal counsel for specific situations.

This is a developing issue and is subject to change so be sure to reach out to legal counsel if confronted with immigration/ICE issues.

What legal protections exist for students and student data?

The landmark *Plyler v. Doe* Supreme Court case established that all children, regardless of immigration status, have the right to a public education. Schools cannot deny a student a public education based on immigration status.

The Family Educational Rights and Privacy Act (FERPA) protects the privacy of student education records and restricts the sharing of personally identifiable information (PII) without parental consent. This includes data that might indirectly reveal a student’s immigration status. FERPA applies to all educational institutions that receive funding under any program administered by the U.S. Department of Education, including K-12 schools and colleges/universities. Importantly, FERPA explicitly supersedes any conflicting state laws that attempt to mandate the release of protected student data. Additionally, FERPA generally prohibits schools from sharing student records with immigration or law enforcement agencies without consent or a judicial order. It is anticipated that ICE agents may request data from schools. Ensure that all of your staff are trained on the protections of students data under FERPA.

If ICE officers arrive at my school, do I have to let them in?

It depends. There are two types of warrants: **administrative and judicial**. School administrators must allow access to the school if ICE officers present a judicial warrant. If ICE presents an administrative warrant, they cannot enter a home, school, or private space without explicit permission but schools may still choose to cooperate with ICE enforcement and grant permission if that aligns with school policies; but the appropriate parental consent should be obtained before allowing any interview with a student. ICE agents do not generally have authority to enter school property that is not otherwise open to the public.

What should I do to prepare for potential ICE enforcement on school grounds?

Develop a protocol or policy for how to deal with ICE enforcement and ensure all staff know what to do under these circumstances. This can look like the following:

1. Welcome the agent(s).
2. Ask them to provide identification.
3. Make a copy of their ID
4. Inform Your Executive Director/Head of School
5. Contact your attorney.
6. Ask the agent(s) if they have any paperwork (*i.e.*, subpoena, warrant, etc.). Ask to make copies of the paperwork for your attorney to review.
7. Ask the agent(s) to sit in the office while Principal / Admin arrive. Alternatively, you can ask them to sit in a more private area such as a conference room.
8. Keep notes of the date/time, names and titles of the agents, who you contacted at the school, the name of the student or staff member they are inquiring about (if known), etc.

It is best to have one point of contact for your school such as your Executive Director/Head of School who are well-versed on the legal requirements of the different types of warrants.. It may also help to have a visual checklist of the difference between an administrative warrant and a judicial warrant.

What if an ICE agent asks to interview a student on school property?

Once again, ICE agents must have the appropriate warrant. If immigration officials request an interview with a student, the Executive Director/Head of School should consult the school's attorney before taking any action. Failure to protect a student's legal rights against action by immigration officials could subject a school to legal liability.

The agent must have a valid warrant. Schools should not give ICE agents access to students on school property without a valid warrant. If ICE agents present a valid warrant, they should be given access to students in a manner that is discreet, private, and away from other students. Because students have a right to attend school regardless of immigration status, a student's mere attendance at school does not violate the law or create an exigent circumstance that would support ICE having access to a student (including a student's school records) without a warrant or court order.

A child also has the right against self-incrimination and may not be required to provide any information that would establish his or her residency status. The child should be advised of the right to remain silent. The Executive Director/Head of School should notify parents that immigration officials have requested an interview with the child.

What is the difference between an administrative warrant and a judicial warrant? How can educators identify what they are looking at?

Administrative warrants are issued by an ICE officer or another official at the Department of Homeland Security (DHS); a judicial warrant is issued by a judge or magistrate in a federal or state court. To be valid, a judicial warrant must: 1) be issued by a judicial court, 2) be signed by a state or federal judge or magistrate, 3) state the address of the premises to be searched — make sure the stated address is your

address or specifically pertains to you, and 4) be executed within the time period specified on the warrant. A judicial warrant will have a court's name (I.e. United States District Court for the Eastern District of California), while an administrative warrant will have another agency/organization listed.

If ICE agents approach a student on school grounds, but outside of school, what should school staff do?

School personnel stand *in loco parentis* to a child whenever the child is on school grounds, even in public areas. School staff should determine whether ICE agents have a warrant to detain or arrest the student. If they do not have a warrant, school staff should escort the child to the school office. If they do have a warrant, school staff should escort the student and the ICE agents to the school office. Contact the Executive Director and legal counsel to ensure legal review of the warrant prior to releasing the student to ICE agents.

Does the school have to release records to ICE agents?

ICE has the right to access the same information about immigrants as any other student, which means they can request Directory Information if the School has a policy designating Directory Information as available to the public. Prior to giving access to Directory Information, school staff should be sure that parents of the student(s) in question have not opted out of Directory Information. For any other records request, ICE must deliver a judicial warrant or court order (either document signed by a judge) to obtain records. Even then your state laws may contain requirements for parental notice of the information to be released pursuant to the order, so check with legal counsel.

Students have a right to attend school regardless of immigration status, and their attendance at school does not violate any state or federal law, nor is it considered an exigent circumstance.

If school district staff knows of the immigration status of a student, can they be required to disclose it?

If ICE agents come to school and informally ask school staff about a student's immigration status, even though the school does not collect that information, staff should not answer their questions without a warrant or court order. If school staff receive a warrant or court order, it should be provided to the Executive Director/Head of School and your attorney prior to disclosure of records or information to ICE agents. The school reserves the right to have staff accompanied by school legal counsel anytime they are subpoenaed for questioning by ICE agents or law enforcement.

In the event school staff becomes aware that a student's parents have been detained, but the student has not, what steps should be taken?

School staff should notify the administration of the parents' detention to determine the student's living situation and whether to make a call to the child welfare agency. If the student has no legal guardian and there is no paperwork filed regarding a delegation of parental responsibility, the child welfare agency must be called. If the student has a legal guardian that is not a resident near your school or in North Carolina, the student should be treated as homeless and allowed to stay enrolled in school for the remainder of the school year.