

## **Non-Regulatory Guidance on Immigration Enforcement Actions**

January 22, 2025

The Illinois State Board of Education (ISBE) has received numerous requests as it relates to enforcement actions by the U.S. Department of Homeland Security (DHS) or one of its associated agencies (e.g., U.S. Immigrations and Customs Enforcement or Customs and Border Protection) on school property. This document is intended to serve as non-regulatory guidance for public schools that are searching for more information in this area.

### **Educational Opportunities in Illinois**

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/guardians.<sup>1</sup> 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 parent/guardians are not U.S. citizens or are undocumented may be in violation of state and federal law.<sup>2</sup> The Illinois Constitution recognizes that “a fundamental goal of the People of the State is the educational development of all persons to the limits of their capacities.” (Illinois Const., Art. X, § 1) The U.S. Supreme Court in *Plyler v. Doe* held that public schools cannot deny students a basic education, even in instances when a student may be undocumented.<sup>3</sup>

The discussion regarding a student’s citizenship status arises frequently in the context of establishing residency to enroll a child in a school district. School districts must not inquire about the citizenship status of a student or parent in order to establish residency.<sup>4</sup> Additionally, the documents required by a school system as proof of residency for a student, when taken together, shall not result in a requirement for proof of citizenship status.<sup>5</sup> Districts must take care to ensure that their processes to establish residency do not force a student or parent to reveal their immigration status. ISBE publishes [enrollment guidance](#)<sup>6</sup> to aid in these efforts.

### **Enforcement Actions by the Department of Homeland Security on School Property**

Since 2011, the U.S. Department of Homeland Security has provided guidance to limit enforcement actions by U.S. Immigrations and Customs Enforcement (ICE) and/or Customs and Border Protection (CBP) in or near “sensitive locations” or “protected areas,” including schools, playgrounds, child care centers, and school bus stops.<sup>78</sup> Enforcement actions include arrests, civil apprehensions, searches, inspections, seizures, service of charging documents or subpoenas, interviews, and immigration enforcement surveillance.<sup>9</sup> This DHS guidance was rescinded on January 21, 2025, and is no longer in effect.<sup>10</sup>

Immigration enforcement officers will have different documents with them depending on the type of legal authority they are relying on to support their actions. The key types of authority are identified below. Each of these documents may be issued by different authorities and require different levels of compliance from a school district. For example, a school district’s discretion to comply with a judicial warrant may differ

from a school district's discretion to comply with an administrative subpoena issued by ICE or DHS. Below you will find a list of documents that ICE typically uses to carry out different types of enforcement actions:

- **Federal Court Warrant:** Federal Court warrants are issued by a district judge or magistrate judge of a U.S. District Court. There are two types of federal court warrants: a search-and-seizure warrant (Form AO 93)<sup>11</sup> and an arrest warrant (Form AO 442)<sup>12</sup>. Schools should act in accordance with policies and guidelines established by the district, in consultation with the district's legal counsel, when presented with a federal court warrant.
- **Federal Court Order:** If an immigration enforcement officer presents a court order, school staff should immediately provide the order to the district's legal counsel or other designated official for review to determine the appropriate response.
- **Federal Judicial Subpoena:** Federal judicial subpoenas are issued by a district judge or magistrate judge of a U.S. District Court and order the production of documents or other evidence. Federal judicial subpoenas typically provide a date by which the recipient needs to respond, and immediate compliance is not usually required. District legal counsel or other designated official should review a federal judicial subpoena to determine the appropriate legal steps to take to respond or, if appropriate, seek to challenge the subpoena.
- **ICE Administrative Warrants (also called "civil immigration warrants"):** These documents authorize federal immigration officers to arrest or detain an individual as identified within the documentation. ICE civil immigration warrants are not issued by a court. An ICE civil immigration warrant does not grant an immigration enforcement officer any legal authority to compel district personnel to produce documents or assist with efforts to locate or detain an individual. An ICE civil immigration warrant is not the same as a federal criminal warrant. Civil immigration warrants can be presented on a number of different forms, including:
  - Form I-200: Warrant for the Arrest of Alien<sup>13</sup>
  - Form I-203: Order to Detain or Release Alien<sup>14</sup>
  - Form I-205: Warrant of Removal/Deportation<sup>15</sup>
  - Form I-286: Notice of Custody Determination<sup>16</sup>
  - All warrants, hits, or requests contained in the "Immigration Violator File" of the FBI's National Crime Information Center database.
- **Notice to Appear (NTA) (Form I-862)<sup>17</sup>:** An NTA is a charging document issued by ICE, CBP, or U.S. Citizenship and Immigration Services. An NTA notifies an individual that they are expected to appear before an immigration judge on a certain date. An NTA does not authorize an individual's arrest by immigration enforcement authorities nor local law enforcement authorities.
- **Administrative Subpoena (Form I-138)<sup>18</sup>:** An administrative subpoena is a document issued by an immigration enforcement officer, not a court or judicial officer, that requests production of documents or other evidence.

ISBE strongly encourages school districts to work directly with their legal counsel to create board policies and administrative guidelines so school districts can ensure any potential response to a warrant or subpoena described above is legally compliant and aligns with that school district's policies.

Section 287(g) of the Immigration and Nationality Act authorizes the DHS to deputize state and local law enforcement officers to enforce federal immigration law. Schools should be aware that the Keep Illinois Families Together Act, effective June 21, 2019, provides that no law enforcement agency or official may

enter into or remain in an agreement with U.S. Immigration and Customs Enforcement under a federal 287(g) program.<sup>19</sup> Additionally, the Illinois TRUST Act contains restrictions regarding the participation of law enforcement agencies and officials in federal civil immigration matters. These pieces of legislation would apply to local law enforcement agencies that might otherwise have a relationship or presence on a school's property.<sup>20</sup>

### **Records Requests by the Department of Homeland Security**

All public schools and school districts within the State of Illinois, to the extent they receive state and federal funding, are required to comply with the Family Educational Rights and Privacy Act (FERPA)<sup>21</sup> and the Illinois School Student Records Act (ISSRA).<sup>22</sup> Both statutes restrict the sharing of a student's education record (as defined under FERPA)<sup>23</sup> and/or a student's "school student record" (as defined under ISSRA)<sup>24</sup> with third parties. There are limited exceptions as to when a student's education record and/or school student record may be shared with a third-party requestor, including DHS, ICE, CBP, and other law enforcement personnel.<sup>25</sup> Schools should take care to know that subpoenas requesting records coming from DHS, ICE, or CBP might not fall into one of the delineated exceptions under FERPA or ISSRA. Additionally, schools should ensure that contractors or any other person or entity that may be authorized to receive all or portions of a student's education record or school student record is aware of the school's student data-sharing policy.

Schools that are authorized to enroll F-1 and M-1 nonimmigrant students engage in certain reporting and auditing requirements through DHS as part of the Student and Exchange Visitor Program.<sup>26</sup> Schools that enroll F-1 and M-1 students should ensure that any data-sharing policy encompasses these reporting requirements and appropriately limits data sharing in accordance with program requirements.

### **Next Steps for Schools**

ISBE believes that schools should be a safe haven for all students where students should be able to learn without fear. When adopting policies on the level of cooperation – or non-cooperation – with ICE, school boards and superintendents should consider the following course of action:

- Adopt policies and set forth administrative guidance that clearly explains the steps their schools should take in the event immigration enforcement personnel seek to carry out an enforcement action or otherwise request information from schools.
- Establish a point person or department where ICE personnel can be directed should they arrive on campus. This might include a legal office, superintendent, or chief executive officer.
- Establish a point person or department to review records requests or subpoenas arriving from ICE or other related authorities as well as keep track of ICE requests in case this information is needed for future reference.
- A school's policy should be made available to and discussed with instructional staff, administrative staff, and other staff and faculty members who might otherwise be on campus.
- Schools should ensure that their student data-sharing policies are up to date and that such policies are readily available to all faculty and staff as well as all third-party contractors who might have access to student data.
- Instructional staff, administrative staff, and other staff and faculty members should receive appropriate training to ensure proper implementation of school policies.
- Schools should encourage parents to keep their child's emergency contacts updated and accurate.

- Schools are encouraged, to the extent possible, to have policies and procedures in place in the event a student's parent is detained or deported.

---

<sup>1</sup> See [U.S. Department of Justice/US Department of Education Fact Sheet: Information on the Rights of All Children to Enroll in School.](#)

<sup>2</sup> *Id.*

<sup>3</sup> *Plyler v. Doe*, 457 US 202 (1982)

<sup>4</sup> See 23 Ill. Adm. Code 1.240(b)

<sup>5</sup> *Id.*

<sup>6</sup> See [Non-Regulatory Guidance on Registration: Residency & Enrollment, Immigrant Pupils, Homeless Pupils and School Fees & Waivers](#)

<sup>7</sup> See [Department of Homeland Security Memorandum re Guidelines for Enforcement Actions in or Near Protected Areas dated October 27, 2021](#)

<sup>8</sup> *Id.* at 2-3, Sec. II, ¶3 and ¶6.

<sup>9</sup> See Department of Homeland Security Memorandum re Guidelines for Enforcement Actions in or Near Protected Areas dated October 27, 2021<sup>10</sup> See [DHS Press Release](#): Statement from a DHS Spokesperson on Directives Expanding Law Enforcement and Ending the Abuse of Humanitarian Parole

<sup>11</sup> See [Form AO 93](#): Search and Seizure Warrant

<sup>12</sup> See [Form AO 442](#): Arrest Warrant

<sup>13</sup> See [Form I-200: Warrant for the Arrest of Alien](#)

<sup>14</sup> See Form I-203: Warrant to Detail or Release Alien

<sup>15</sup> See [Form I-205: Warrant of Removal/Deportation](#)

<sup>16</sup> See Form I-286: Notice of Custody Determination

<sup>17</sup> See [Form I-862: Notice to Appear](#)

<sup>18</sup> See Form I-138: Administrative Subpoena

<sup>19</sup> 5 ILCS 835/ et. seq. See also [Delegation of Immigration Authority Section 287\(g\) Immigration and Nationality Act.](#)

<sup>20</sup> See 5 ILCS 835/5

<sup>21</sup> See 20 U.S.C. §1232g

<sup>22</sup> See 105 ILCS 10/ et. seq.

<sup>23</sup> See 20 U.S.C. §1232g(a)(4)

<sup>24</sup> See 105 ILCS 10/2

<sup>25</sup> See 20 U.S.C. §1232g(b); 105 ILCS 10/6

<sup>26</sup> See [Student and Visitor Exchange Program](#)