association of california school administrators

Fagen Friedman & Fulfrost LLP

Undocumented Students and Families: The Facts

Student Rights

What rights do undocumented students have?

Undocumented students between the ages of 6-18 not only have a right to attend school in California, but are mandated to attend school pursuant to the compulsory attendance laws. (Educ. Code § 48200.) The U.S. Supreme Court has held that no state may deny access to a basic public education to any child residing within the state, whether residing in the U.S. legally or not. (*Plyler v. Doe*, 457 U.S. 202 (1982).) Further, all students have a right to be in a public school learning environment free from discrimination, harassment, bullying, violence, and intimidation. (Educ. Code §§ 220, 234 *et seq.*)

What student information do schools currently collect, and would it provide insight into immigration status?

School districts are not required to collect information regarding a student's immigration or legal status, aside from the statuses of nonimmigrant, international students enrolled in an educational program under an F-1 or M-1 visa. Schools are only required to collect information to satisfy certain admission requirements, such as proof of residency, none which require the provision of proof of legal immigration status or social security numbers. (Educ. Code § 48204.1.) In addition, CDE collects information from school districts regarding their students' country of birth through CALPADS in order to calculate the number of immigrant and English learner students in the state and to ensure compliance with the Title III provisions of the federal Every Student Succeeds Act. (Educ. Code § 60900.)

What student information do we collect on adult education students?

In particular cases, school districts are required to obtain information on their adult education students. For example, in counties where U.S. District Courts are located, the city or county superintendent of schools is required on a monthly basis to obtain the names of persons who have filed their intention to become citizens of the U.S. or their petitions for naturalization. (Educ. Code section § 52550.) The superintendent is then required to send notices to these individuals of the authorization the governing board has in providing classes in citizenship under particular circumstances. (Educ. Code § 52551 *et seq.*)

If we receive a PRA request for student data, what information are we obligated to share and protect?

FERPA supersedes the PRA and requires that the school district maintain the confidentiality of all personally identifiable information in education records related to students. (20 U.S.C. §1232g; 34 CFR § Part 99.) Any and all records, including emails, student files, and personnel information, are generally exempt from disclosure. All student records, including emails and cumulative student files, are generally exempt from disclosure or subject to redaction to prevent disclosure of personally identifiable information.

Staff Rights

Must we allow ICE and other government authorities on campus?

Depends. School districts have the right to limit the amount of disruption to the learning environment and to ensure the safety of their staff and students, which may include denying an individual from accessing a campus during school hours. (Educ. Code §§ 32212, 35160.) In the unlikely event that ICE or other government authorities decide to pursue immigration-related investigations on school campuses, school staff should follow appropriate district procedures applicable to any visitor on campus, which could include, but are not limited to: (1) requesting that the agent sign in at the front desk; (2) that the agent provide valid identification and statement of purpose; and (3) approval from the site administrator or Superintendent. Immediate access to the student should be given if the agent has a warrant or a court order.

School districts that allow nonimmigrant, international students (who are in the U.S. under an F-1 or M-1 visa) to enroll in their programs through ICE's "Student and Exchange Visitor Program" ("SEVP") are subject to onsite visits from SEVP officials at any time and must provide officials with certain records on such students. (8 CFR § 214.3(g) and (h)(3)(iv).) The SEVP, however, does not have the authorization to review the records of students suspected of being undocumented.

Are we required to allow ICE, police, or other government authorities to have access to student records?

Access to student records should only be allowed if the requesting agency has a valid court order or subpoena in compliance with FERPA or immigration laws or regulations. (8 U.S.C. § 1225; 34 CFR § 99.31(a)(9)(i); Educ. Code §§ 49076; 49077.) The school district, however, must make reasonable efforts to notify the parent or eligible student in advance of disclosing the documents so that the parent or eligible student may seek protective action, unless the court order or subpoena relates to a federal jury investigation or law enforcement purpose, or relating to domestic or international terrorism. (34 CFR § 99.31(a)(9)(ii); Educ. Code § 49077.)

In addition, the USA Patriot Act added an exception to FERPA to mandate the disclosure of educational records to a federal Attorney General or Assistant Attorney General through a judicial order based on an investigation of suspected terrorist activities. (20 U.S.C. § 1232g(j).)

Parent Rights

All parents, irrespective of their legal status, have a right to participate in their children's education and are encouraged to do so. Proof of legal residency is not a prerequisite to the enrollment of their children in school.

Are undocumented parents required to undergo fingerprinting in order to volunteer at school?

School districts may vary in their fingerprinting policies for volunteers. Some require that all volunteers undergo fingerprinting, while others only require the fingerprinting of parent volunteers where the volunteer is not under the direct supervision of a District staff member. Parents should be reassured that the purpose of the fingerprinting requirement is confidential, solely for the use of the District to ensure the safety of students and staff (i.e. that the volunteer has not been convicted of a sex or drug offense with a minor).

If a parent is in custody as the result of an immigration enforcement, are districts required to release the student to ICE or other immigration officials?

No. School districts are not required to release students into the custody of ICE if their parent is in custody as the result of an immigration enforcement action. Parents with such concerns should make advance arrangements with relatives or friends to ensure that their children are released to an authorized caregiver or adult, and should ensure that school districts are aware of this arrangement in the emergency information card submitted to schools.

Sanctuary District

What legal protection does a "sanctuary district" offer students?

While establishing a school district as a "sanctuary" may set forth its policy to protect undocumented students by limiting the enforcement of—or declining to enforce—immigration laws, there is no further legal protection for residents/students as the result of this status. The school district, however, will be able to utilize the extent of its discretion authorized by law by establishing policies and procedures to ensure the security of its students, such as creating appropriate limits to immigration officials' visits to school and disallowing staff to ask questions about a student's or parent's immigration status.

If a district passes a resolution to become a sanctuary district, is it at risk of losing federal funds?

It is unknown at this time whether sanctuary school districts are at risk of losing federal funds at the result of their status. President Trump has stated during his campaign that he would block federal funding to sanctuary cities that refuse to cooperate with federal immigration officials, but it is currently unknown if he will indeed proceed with this policy—or any other similar policies relating to funding of public schools who also declare themselves sanctuary sites—or what priority this policy will be placed.

THIS IS A SUMMARY ONLY AND NOT LEGAL ADVICE. WE ADVISE YOU TO CONSULT WITH LEGAL COUNSEL TO DETERMINE HOW THIS INFORMATION MAY APPLY TO YOUR SPECIFIC FACTS AND CIRCUMSTANCES.

Special thanks from ACSA to Fagen Friedman & Fulfrost, leaders in education law, for assisting our members by helping create this important resource.