



ADVICE ON KEEPING IMMIGRANT STUDENTS SAFE AT SCHOOL



The law is clear, set forth in the 1981 U.S. Supreme Court decision in *Plyler v. Doe*: Children living in the United States have the right to attend K-12 public schools, regardless of the documentation or immigration status of the child (or their parents). In *Plyler*, the Court explained that denying undocumented students the same “free public education that [the state] offers to other children” would “foreclose any realistic possibility that they will contribute in even the smallest way to the progress of our Nation.”

The Court added, “Even if the State found it expedient to control the conduct of adults by acting against their children, legislation directing the onus of a parent’s misconduct against his children does not comport with fundamental conceptions of justice.”

Yet as [rhetoric around immigration](#) has heated up under President Trump, there is growing evidence that immigrants and children who are undocumented are worried that school attendance could lead to detention and deportation. More than 80 percent of the 3,500 educators who responded to a [2018 survey](#) said they had students who were worried about immigration enforcement. NEPC Fellow and UCLA Professor [Patricia Gándara](#) and her co-author Jongyeon Ee conducted the survey of more than 700 Title I schools serving high percentages of low-income students in 12 states with large shares of English language learners.

The majority of survey respondents also noticed [increases in absenteeism](#) that they attributed to concerns about immigration enforcement.

What can schools do to increase the odds that families or children without documents are not too frightened to exercise their legal right to a public education?

In the Q&A below, NEPC Fellow and Stanford Law School professor [Bill Koski](#) offers practical advice on measures that educators can take to create a safe, legal, and welcoming environment for students and families without documents. Koski directs the Youth and Education Law Project, an in-house legal clinic devoted to ensuring that disadvantaged children and communities have access to equal educational opportunities. He has represented hundreds of youth and families in race discrimination, student discipline, and disability rights matters and has served as co-counsel in four recent complex school reform lawsuits. He is the co-author of *Protecting Undocumented and Vulnerable Students*, along with Michael Wald, Jonathan Berry-Smith, Sarah Brim, Carolyn Hite, & Ray Li.

Q: I wonder if you could start off by briefly describing this issue facing undocumented immigrants and your work on the issue.

A: In California alone, at least 750,000 children live with a parent who is undocumented, including 250,000 children who are undocumented themselves. As a result of policies that have been adopted by the current federal administration, there is widespread anxiety among immigrant communities about Immigrant and Customs Enforcement (ICE) actions. This anxiety has led to increases in student absences and declines in parent participation in school events, threatening students' rights as established by Plyler.

Our work at the [Stanford Law School's Youth & Education Law Project](#) has given us a front row seat to the fear and anxiety that children and parents are feeling, as many of our clients have asked us how they can protect their children, while confidently sending them to school and participating in school activities. Similarly, school administrators—with whom we don't always see eye-to-eye—had been reaching out to us in solidarity with immigrant communities and asking how they can create a safe and productive learning environment for all families and children. That was where we aimed to step in and provide guidance to the many teachers, administrators, and other school leaders who wanted to establish policies to protect the right to education of both undocumented children and children with undocumented parents, including their access to a full range of educational activities.

Q: In your experience, what are some common misconceptions or misunderstandings that school officials have about laws governing their interactions with students who are undocumented or their families?

A: The biggest misconceptions surround data/information-collection from families seeking to enroll their children in school and the handling of sensitive information.

Some schools are also unclear about their obligation under federal law to protect confidential information about students. Specifically, schools have the discretion under federal law to allow the disclosure of some information as "directory" information, but need not include sensitive information such as students' addresses and names of parents. More significantly, some schools are under the misapprehension that they must provide confidential information of students to law enforcement in the absence of a court order to do so. While schools must provide such information pursuant to a judicially-ordered warrant, it is important to note that ICE often issues administrative "warrants" when they are seeking information. These documents are not judicially-ordered documents and therefore do not

require disclosure of information protected by federal law.

Similarly, some schools may feel that they must provide unfettered access to students on their campus pursuant to any request by law enforcement, whether such requests come from ICE officials or local law enforcement. Indeed, many schools do not have protocols in place for how to handle requests from law enforcement to detain and question students in school.

Finally, some schools may be unaware that they can take affirmative steps to help families plan and prepare for the unfortunate possibility that a child's primary caregiver may be detained or removed due to immigration violations, sometimes leaving them without a caretaker. The arrest or detention of a parent is traumatic for children, and this trauma can be exacerbated when a child lives in a community that frequently experiences raids or when that child witnesses a raid or arrest firsthand.

Q: Your brief, *Protecting Undocumented and Vulnerable Students*, recommends limiting the type of information collected when students enroll in school. What kind of information should schools avoid collecting and why?

A: *While all public schools must adhere to age requirements and some must impose residency requirements [e.g., local catchment areas] to attend their public schools tuition-free, some school officials have asked about a student's immigration status or required a birth certificate to enroll the child.*

School officials should be aware of and comply with the laws of their jurisdictions, as a general matter. But they should not inquire about a student's or parent's immigration status, including requiring documentation of a student's or parent's legal status, such as asking for a green card or citizenship papers, at initial registration or at any other time. School personnel should also not require students to present Social Security Numbers to apply, to enroll or to register for services for which students are eligible. The reason to avoid collecting this information from families is simple: The mere inquiry will have a chilling effect on enrollment and participation in school. There is other documentation that personnel can use to verify age and residence such as baptism certificates, declarations of parents/guardians, and rental agreements or property tax payments.

Q: How common is it for ICE representatives to come to K-12 campuses to seek undocumented immigrants? How should schools prepare for the possibility that this might happen. How should they react if it does occur?

A: *Fortunately, it would be extremely unlikely that ICE officials would come on to public K-12 campuses seeking to question or detain children or even employees of the school. Longstanding ICE internal policy considers schools "sensitive locations" at which enforcement actions should not take place. To my knowledge, this policy has not been rescinded to date, and the administration had indicated that it intends to continue this policy.*

That said, the possibility always exists and school officials should have in place protocols for dealing with ICE inquiries.

The most protective policy would require that in these situations, all law enforcement or government agents present a judicially-issued warrant to detain, arrest, or question the student. This policy does the most to protect student privacy rights and maintain peaceful learning environments, and several public school districts have adopted the policy.

Many districts, however, may not want to adopt the policy of requiring a warrant because they do not feel comfortable denying law enforcement access in situations where the law enforcement official asserts probable cause and compelling circumstances to question a student. Accordingly, a public school, instead of requiring a warrant, may allow officers and agents to question a student, so long as the officer or agent provides evidence of probable cause to believe that the student has committed or has knowledge about a crime. This statement of probable cause should be recorded, and school personnel may ask that it be verified by legal counsel prior to allowing the student to be questioned. The school may also choose to notify the student's parents of the questioning and ensure that any questioning be conducted in a non-disruptive manner, that is, at a time and place that would ensure privacy and minimize disruption to the student's school day.

Schools may also choose to require warrants from certain government agents who seek to detain or question students. Many schools have good working relationships with local law enforcement officers and have developed parameters for effectively dealing with sensitive matters that might require an on-campus questioning of students. Other government agents often do not have these same relationships or exigent needs to access campus. Specifically, schools may deny ICE agents access to campus unless they present a valid warrant because ICE agents would not typically have exigent circumstances to question a student nor would they ever be investigating a school-related matter (e.g., discipline, campus safety, or bullying). A policy that would freely allow for ICE to access students on a school campus would likely cause disruption and might even have massive chilling effects on school attendance by undocumented students.

Q: How can schools, without running afoul of the law, help children feel safe and prepare families for the reality or possibility of detention? Is there a way that schools can help these families get access to legal advice that the school officials themselves are not equipped or even allowed to offer?

A: *Schools can take a number of actions to help children feel safe and prepare families for the possibility or reality of detention. Most importantly, school staff should ensure that parents create family preparedness plans. These plans identify an emergency caretaker for children whose parents are detained, arrested or otherwise unavailable. They also provide the emergency caretaker with important information and authorization to make decisions on behalf of the child.*

In addition, a school can act as a resource center for families, providing parents with relevant fliers and host trainings by immigration experts on Know Your Rights and Family Preparedness. At these events, local organizations typically inform families of what their rights are during a raid and explain the importance of designating an al-

ternative caregiver. They also often provide contact information for local immigration organizations that can meet with families for more personalized advice.

Finally, arrest or detention of a parent or caretaker is a traumatic event for most children. Schools should provide appropriate counseling for students if these events occur. Moreover, just the fear of deportation and family separation affects students' mental health. Thus, it is important to offer counselling more generally, in addition to conducting the types of schoolwide activities previously discussed.

Q: What is a safe haven resolution?

A: Some schools have adopted “safe haven” resolutions declaring that the school is a place of safety and support for all students. A statement deeming a school a safe haven can help make parents feel more comfortable and at ease when sending their children to school. It helps students feel welcome, safe, and supported, thereby promoting the academic success of all students.

The content of the Safe Haven declaration will depend on the precise policies a district chooses to adopt. The declaration may include, for instance, resolutions regarding tolerance and inclusiveness, staff training and development, protection of sensitive information, and the handling of sensitive information. A number of California districts and charter schools have passed resolutions that can serve as models or examples to use in drafting guidelines.

NEPC Resources on Equity and Social Justice

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