

KDE Guidance on Responding to Immigration Issues in Schools

The Kentucky Department of Education (KDE) has received numerous requests related to information requests and enforcement actions by the U.S. Department of Homeland Security (DHS) or one of its associated agencies (e.g., U.S. Immigration and Customs Enforcement) 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.

First and foremost, KDE values a safe and welcoming learning environment for all students and hopes DHS agencies take efforts that minimize any disruption of learning or the school day.

The U.S. Supreme Court in *Plyler v. Doe*, found that all children, regardless of actual or perceived immigration status, have an equal right to a free public education (457 U.S. 202 (1982)). This has been interpreted as meaning school districts may not require or collect proof of immigration status. However, schools can require proof of residency within the district and proof of age for enrollment.

Title VI, 42 U.S.C. § 2000d et seq. prohibits any entity that receives federal funds from discriminating on the basis of race, color or national origin. Under Title VI, no person shall be excluded from participation in or be denied the benefits of any program or activity receiving federal funds based on race, color or national origin; this includes access to schools receiving federal funding. Title VI protections are for students, parents and guardians. Title VI also requires districts to take reasonable steps to provide meaningful access to individuals with limited English proficiency. This may include providing oral or written translations of important documents into a parent or student’s native language.

Family Educational Rights and Privacy Act

The Family Educational Rights and Privacy Act (FERPA) is a federal law that protects the privacy of student education records. The law applies to all educational agencies and institutions that receive federal funds. FERPA prohibits disclosure of personally identifiable information (PII) from educational records. This includes a student’s status as an immigrant or migrant.

FERPA has certain exemptions that allow for disclosure. One such exemption allows schools to disclose what is called directory information. Directory information is information contained in a student’s education record that is not generally considered harmful or an invasion of privacy if disclosed. Each district must provide notice of what information is considered directory information and only the information included in the notice may be shared. See district policy 9.14. The notice must inform parents of their right to opt out of directory information sharing. If a parent has opted out, no directory information from a student’s education record may be

disclosed. Under Title VI, a district may have an obligation to translate these policies and opt out forms into the parent’s native language if English is not the parent’s native language.

FERPA also allows information to be shared with school officials. Any school official with access to student records must have a legitimate educational interest in the information and should only be given access to those educational records connected to the legitimate educational interest (34 CFR 99.31(a)(1)(i)(A)). The school official exception does consider certain contractors and volunteers school officials – such as school resource officers – under the exception.

Any individual acting under the school official exception must follow all redisclosure rules. Information disclosed under this exception can only be used for the stated purpose for which the disclosure was made, and the information cannot be redisclosed without prior consent of the parent or student over 18 (34 CFR 99.33(a)). Schools should ensure that school officials have access to only that student information needed for the individual to perform his/her job.

FERPA does contain an exception that allows a school to share information in the event of an imminent health or safety emergency. It is the school, not law enforcement, that determines if there is an imminent threat to health or safety. “[A]n educational agency or institution may take into account the totality of the circumstances pertaining to a threat to the health or safety of a student or other individuals. If the educational agency or institution determines that there is an articulable and significant threat to the health or safety of a student or other individuals, it may disclose information from education records to any person whose knowledge of the information is necessary to protect the health or safety of the student or other individuals,” (34 CFR 99.36). Simply being an immigrant or migrant, standing alone, is not an imminent threat to health or safety that would allow use of this exception.

Action by the Department of Homeland Security

If an Immigration enforcement officer arrives at a school, it is recommended that school districts develop and implement procedures to verify the identity and legal authorization of the officer(s).

Immigration enforcement officers will have different documents with them depending on the type of legal authority they are relying on to support their actions. 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. School districts should develop and implement procedures so front desk clerks know whom to immediately contact at central office. The superintendent or her designee should work closely with legal counsel to determine what is required of the school and the district to comply.

Schools also may disclose PII from education records in response to a judicial order or lawfully issued subpoena. However, prior to the release of records under these exceptions, the school must notify the parent and give them an opportunity to object to the disclosure of PII, unless the judicial order or subpoena specifically provides the parents not be notified of the disclosure. See 34 CFR 99.31(9). School districts should consult with legal counsel if presented with court orders or subpoenas for student records. Consistent with FERPA, school districts must ensure that any individual requesting student or parent information has the proper legal authority to obtain that information.

It is recommended each district develop a procedure of what steps their schools and staff should take in the event immigration enforcement personnel seek to carry out an enforcement action or otherwise request information from schools.

The general process sample shown below could be used if a non-local law enforcement official, including an immigration enforcement officer, comes to your school:

1. Meet the officer at the front desk. It is best to have an administrator selected to act as the point of contact.
2. At the front desk, request to view the name, badge and credentials of the officer and the purpose of the visit. Make copies of the ID and/or credentials of the officer.
3. Obtain any documentation from the officer (e.g., subpoena; search warrant; arrest warrant).
4. Advise the officer that prior to responding to his/her request, you must notify and obtain guidance from central office and counsel.
5. Advise the officer that he/she may wait in the front office or outside the school building while you obtain guidance from central office and counsel.
6. Notify the identified central office point of contact and provide all the details and documentation obtained from the officer. Do not take action until you obtain instructions from the identified central office point of contact. Do not provide any student information until authorized by identified central office point of contact.
7. Except in situations involving child abuse or neglect, or unless specifically directed by the officer not to do so, contact the parents of the student in question to notify them that the officer came to school and what actions the school has or will take in regard to the officer's request.
8. If, after obtaining guidance, it is determined that the student will be removed from school, advise the officer to remain in the front office. The student should be brought to the front office by school staff. Do not announce the student's departure over the

intercom. It is recommended that the officer remain in the front office at all times and should not enter the hallways, classrooms, etc.