

Protecting Undocumented and Vulnerable Students



Executive Summary

In the wake of recent policy changes by the federal administration, charter schools in California are experiencing increased student anxiety, increases in student absences, and declines in parent participation in school activities. Many CCSA member schools are seeking guidance on the best ways to address these concerns and ensure that all students continue to receive the highest quality education. This guidance provides member schools with information about their legal obligations in providing education to undocumented students and actions that schools can take to fully protect the right to educa-

tion of both undocumented children and children with undocumented parents. It addresses four areas: policies to facilitate enrollment of undocumented children and children living with caretakers who might be undocumented; practices to ensure proper compliance with federal privacy laws to protect all students' sensitive data; policies for regulating law enforcement access to students at schools; and practices that schools can adopt to help parents and students in the event that a caretaker is arrested, detained, or otherwise unavailable.

This guide was produced by the Stanford Law School Policy Lab and Stanford Law School Youth and Education Law Project on behalf of the California Charter Schools Association.

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This publication does not offer legal advice. When faced with a question regarding the legal rights of undocumented students and families in school, schools should seek the advice of their attorney on an individual basis.

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I. Introduction

In California, at least 750,000 children live with a parent who is undocumented, including 250,000 children who are undocumented themselves.¹ These children constitute twelve percent of all children in the state.² Undocumented students have a clearly established right to education that was recognized by the United States Supreme Court in 1982 in *Plyler v. Doe*.³ In *Plyler*, the Court explained that denying undocumented students the same “free public education that it offers to other children”⁴ would “foreclose any realistic possibility that they will contribute in even the smallest way to the progress of our Nation.”⁵

The California Charter Schools Association (CCSA) is publishing this guide to ensure that all students continue to access high quality public school options. As a result of policies that are being adopted by the current federal administration, there is wide-spread 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*.⁶ Many CCSA member schools, as well as public school districts, are seeking to implement policies and practices that address these concerns. This guide provides member schools with information on actions that schools can take 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.

The recommended policies and procedures are rooted in best educational practices. It is well-recognized that in addition to excellent teaching, the quality of each child’s education is influenced by the overall school climate, the child’s comfort at school, and by the active participation of parents in their children’s schools. To ensure active participation, children and families must see schools as welcoming, safe, and secure.

CALIFORNIA STUDENTS

750,000 KIDS

Number of students in California who live with a parent who is undocumented.



250,000

Number of students in California who are undocumented.

12%

Percentage of California's children who are undocumented or live with an undocumented parent.



1/3RD

Fraction of US children with an undocumented parent that live in California.

I. Introduction

Since the policies and practices set forth in this guide are rooted in best educational practices, adoption of these recommendations will help schools address the needs of all students, not merely those who are undocumented or live with undocumented families. For example, the recommended enrollment policies facilitate enrollment for homeless and foster-involved students, as well as children in immigrant families; the confidentiality policies ensure proper compliance with federal privacy laws to protect all students' sensitive data; the law enforcement access policies minimize disruptions to student learning; and all families should have a plan in place in case a caretaker is arrested, detained, or otherwise unavailable. These policies will help California charter schools ensure that all students' potentials are realized through great education, as well as protect all students' *Plyler* rights.

California is home to nearly a third of all children in the U.S. who live with an undocumented parent.⁷ Consequently, California schools have the power to reach a significantly higher population of these children than do their peers in other states. California charter schools are particularly well-positioned to pioneer these policies because the state has by far the most charter schools (1,254) and charter school students (603,630) in the country.⁸ Charter schools in other states frequently base their policies on California's example. Moreover, California charter schools enjoy more flexibility than their school district counterparts to adopt innovative policies that advance students' learning.⁹ Because the state serves such a significant population of immigrant schoolchildren, it is incumbent upon California's charter schools to address these vulnerable students' unique needs.



Policies to Protect Vulnerable Students

1

ENROLLMENT

Limit the types of information required for enrollment.

2

CONFIDENTIALITY

Protect the confidentiality of all student information.

3

LAW ENFORCEMENT ON CAMPUS

Enhance a sense of safety by limiting access to students at school by ICE and other law enforcement agents.

4

FAMILY PREPAREDNESS

Promote students' well-being and continuity of education by providing a variety of services to students whose parent or caretaker may be detained.

These policies can promote an environment conducive to student learning at charter public schools by encouraging enrollment, supporting parental participation, and creating a safe space for all students.

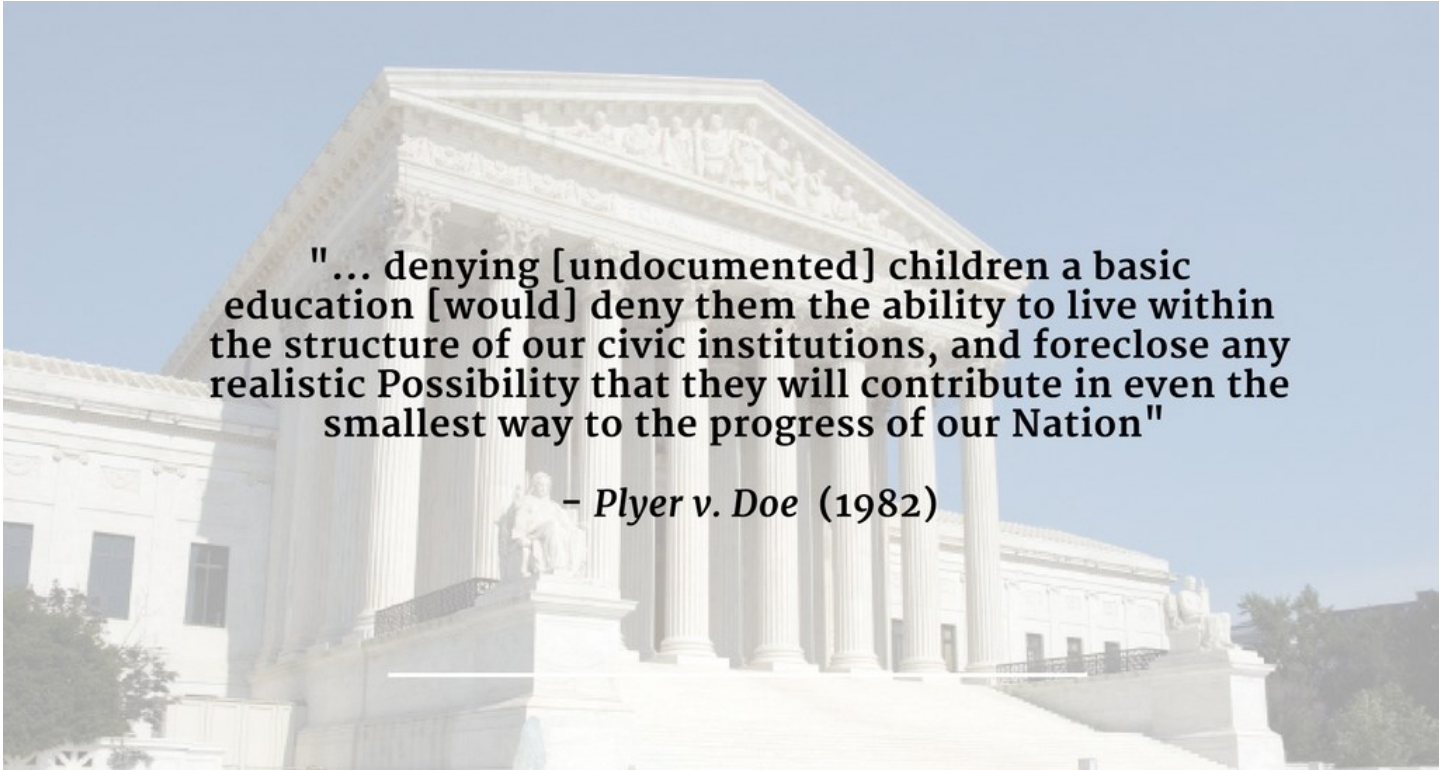
II. Right to Education for Undocumented Children

In 1982, the United States Supreme Court ruled in the case of *Plyler v. Doe* that states must provide all schoolchildren living within their jurisdictions, regardless of the child's actual or perceived immigration status, with "the free public education that [they] offer[] to other children."¹⁰ California law goes further than providing access; it requires that all children between the ages of six and eighteen attend school full time.¹¹

Plyler held that states must provide undocumented schoolchildren the same education they offer citizen children. These services include special education; other supplemental educational programs for impoverished, English-learner, foster care-involved, and migrant students; and free school meals. Congress has deemed all of these programs necessary components of public education. For example, in enacting the Individuals with Disabilities Education Act (IDEA), Congress proclaimed that "[i]mproving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities."¹² Similarly, the purpose of the Every Student Succeeds Act (ESSA)

is to "provide all children significant opportunity to receive a fair, equitable, and high-quality education, and to close educational achievement gaps."¹³ Schools' meals programs were authorized "[i]n recognition of the demonstrated relationship between food and good nutrition and the capacity of children to develop and learn."¹⁴ Finally, under the Equal Education Opportunities Act, schools must take affirmative steps to ensure that students with limited English proficiency can meaningfully participate in appropriate educational programs and services, and that their parents and guardians have meaningful access to district and school-related information.¹⁵

Most, if not all, extracurricular activities are also likely covered under *Plyler*. Academic clubs, such as science and math clubs, which clearly deliver educational content, would almost certainly fall under *Plyler*; non-academic clubs likely would be included, as well. The team building and social skills honed in athletic and social organizations, for example, are exactly the sort of "fundamental values" that *Plyler* identifies as important.¹⁶



"... denying [undocumented] children a basic education [would] deny them the ability to live within the structure of our civic institutions, and foreclose any realistic Possibility that they will contribute in even the smallest way to the progress of our Nation"

- *Plyer v. Doe* (1982)

III. Policies Needed to Protect Legal Rights of Students, Parents, and Schools

In order to address the concerns and protect the rights of the target groups of students, it is necessary to assure parents and students that a) all information collected by a school will be held confidential and not shared with ICE or any immigration authorities, except when necessary to comply with a lawfully-granted court order; and b) that school campuses are seen as safe environments. Schools have full legal authority to protect these interests. This section discusses the legal rights of parents and students, and the rights and obligations of schools with respect to these areas. It provides sample policies to facilitate students' enrollment in the full range of educational activities; protect the confidentiality of student and parent information; and restrict access to students at school by ICE and other law enforcement agents.

a. Enrollment Policies

If the right to education is to be fully realized, all charter schools must adopt procedures and requirements that facilitate, and do not discourage, enrollment. While all charter schools must impose age requirements and some must impose residency requirements to attend their public schools tuition-free,¹⁷ inquiry into immigration status should never be an aspect of enrollment eligibility determination.¹⁸ Such inquiries may prevent parents from enrolling their child and/or drive undocumented parents to pull their child, documented or undocumented, out of school indefinitely, a “chilling effect” likely violative of the child’s *Phyller* right.¹⁹

To facilitate enrollment for all children, the California Education Code requires that school districts accept “reasonable evidence” of residency,²⁰ and “appropriate” proof of a child’s age.²¹ Under California law, schools are prohibited from collecting or soliciting students’ and parents’ Social Security Numbers (SSN) for purposes of enrollment, except where required by

law.²² The U.S. Departments of Justice and Education further advise that schools may not prevent or discourage a child from enrolling because she either lacks a birth certificate or has one from a foreign birth country.²³ Refusal to accept alternative forms of proof on the basis of a child’s or her parent/guardian’s actual or perceived race, color, national origin, citizenship, or immigration status constitutes a violation of federal civil rights law.²⁴

There are limited circumstances in which schools may request sensitive student information, but they may not predicate enrollment on compliance with such requests. For example, schools may request a child’s SSN to complete paperwork for non-educational public benefits, such as county mental health services, or her country of birth for CALPADS,²⁵ California’s data collection system used to meet various federal and state reporting requirements. In such cases, school staff should explain the purposes for which the information will be used and clarify verbally that failure to provide the requested information will not in any way jeopardize the student’s eligibility for a free public education.²⁶

Additionally, given schools’ affirmative duty to find, assess, and provide services to students with disabilities,²⁷ schools must establish non-discriminatory procedures to register students for section 504 and IDEA services.

Finally, the federal McKinney-Vento Act requires that schools immediately enroll homeless children or youth without any proof of residency or other documentation.²⁸

Box A: Sample School Enrollment Protocol

In accordance with federal law and the protections and rights afforded by the Constitution of the United States of America, [School] accepts an extensive and flexible list of documents to prove both age and residency to enroll in [School] and to register for services, including free and reduced price meals, transportation, and educational services. [School] will accept the following, non-exhaustive list of documentation to prove, through visual inspection:

- Residency*
 - ◊ property tax payment receipts;
 - ◊ rental property contract, lease, or payment receipts;
 - ◊ utility service contract, statement, or payment receipts;
 - ◊ pay stubs;
 - ◊ voter registration;
 - ◊ correspondence from a government agency;
 - ◊ declaration of residency executed by the parent or legal guardian of a pupil;
 - ◊ evidence of caregiver's residency, where caregiving status is evidenced by an affidavit executed pursuant to California Family Code section 6550;

- Age†
 - ◊ certified copy of a birth record;
 - ◊ statement by the local registrar or a county recorder certifying the date of birth;
 - ◊ baptism certificate;
 - ◊ passport;
 - ◊ affidavit of the parent/guardian/custodian.

[School] will enroll homeless students, including students in temporary housing, without any proof of age or residency, pursuant to the McKinney-Vento Homeless Assistance Act.‡

[School] will adhere to the following general policies to protect all students' rights to enroll in and receive free public educations:

- [School] personnel shall 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 shall not require students to present Social Security Numbers to apply, to enroll or to register for services for which students are eligible;
- [School] personnel shall treat all students equitably in the receipt of all school services, including but, not limited to, free and reduced price meals, transportation, and educational instruction.

* CAL. EDUC. CODE § 48204.1.

† CAL. EDUC. CODE § 48002.

‡ 42 U.S.C. § 11432(g)(3)(C); CAL. EDUC. CODE § 48204.1(d)-(e).

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B. Confidentiality of Records

Beyond the information required for enrollment, schools need to gather a great deal of information about students in order to provide effective educational services. In order to obtain such information, it is necessary to assure parents that such information will be kept confidential and used only to enhance the child's education. A strong privacy protection policy is not only good educational management practice, it is mandated by federal law.

The Federal Educational Rights and Privacy Act (FERPA) forbids schools from disclosing most confidential student information to non-school persons, including government agents.²⁹ This federal law applies to all educational institutions and agencies that receive federal funding, which include all charter schools. FERPA seeks to protect all "educational records," which is a broadly defined term that includes any information related to students that is under the control of the school.

FERPA protects virtually all of a student's "personally identifiable information" from being shared without parental permission. There are two categories of information that are exempt. FERPA does not act as a shield from official requests for information that come in the form of court orders (e.g. subpoenas, grand jury requests, judicially-issued warrants). More significantly, it allows schools to share information labelled as "directory" information, which might include information relevant to immigration status, such as address and location of birth.

Schools have broad authority to determine what they do and do not label as directory information and to adopt procedures to limit access to any information that is labelled directory. FERPA merely requires that if a school designates a category of information as directory, then it must provide proper procedures for notifying parents about the fact that this information can be disclosed without consent.³⁰ Schools are not required by FERPA to designate any information as directory information. A school could maximize confidentiality by not calling any information "directory." However, there are types of information that a school might want

to make public and therefore must treat as directory, since the information cannot be disclosed otherwise. See Box B. For example, a school might want to put out a yearbook with information on awards and student activities. The key consideration is whether treating any piece of information might be harmful to the student's interests. Certain categories of information are particularly sensitive for student privacy, and schools should use their discretion to avoid designating them as directory information. Some suggested categories to avoid include place of birth and family address.

Box B: Directory Information

The federal Department of Education has indicated that the following kinds of information can constitute directory information if a school chooses to do so:

- Student's name
- Address
- Telephone Number
- Parents' Names
- Date of Birth
- Place of Birth
- Honors and Awards
- Participation in Activities and Sports
- Weight and Height of Members of Athletic Teams
- Dates of Attendance
- Degrees and Awards Received
- Grade Level
- Enrollment Status

This list is non-exhaustive, as there are many other types of information that a school may designate as directory information.

III. Policies Needed to Protect Legal Rights of Students, Parents, and Schools

Even if a school designates certain information as directory, it has discretion to determine if it will disclose that information. FERPA’s directory information provision is an exception to the general rule against disclosure, which schools can utilize when they want to release information without consent. A school does not have an affirmative obligation to disclose this information. Under FERPA, a school can adopt a policy of not disclosing any student information, including directory information, absent a court-issued warrant. In any case, all schools must inform students and parents that they have the right to opt out of the disclosure of directory information. Schools should provide parents with the specific procedures and the forms necessary to restrict the release of all student information without consent. These opt-out forms and procedures should be published in multiple languages and multiple media and should all be posted online in an accessible location. Schools should ensure this waiver is renewed annually.

The other major exception to FERPA that would run contrary to a general policy of non-disclosure of student records is the allowance of disclosures in compliance with court orders.³¹ Judicially-issued warrants and subpoenas bypass FERPA protections; schools must comply with these court orders. It is important to note that ICE often issues administrative “warrants,” when they are seeking information.³² These documents are not judicially-ordered documents and therefore do not fall under the exception to FERPA.³³ Schools should train all staff on this student privacy policy and create a chain of command whereby all information requests are immediately forwarded to a central office or officer, ideally legal counsel capable of determining whether the information request is supported by a valid warrant or subpoena limited to individual students and specific information.

Finally, the California State Superintendent of Public

Instruction recommends that schools not maintain existing documents related to immigration status.³⁴ Schools can avoid maintaining official records of information sensitive to students’ or parents’ immigration statuses. This would include limiting the intake process to the bare minimum information necessary for program qualification, as well as never recording any inadvertently acquired knowledge of a student’s immigration status. School personnel can visually inspect documents parents provide to establish age, residency, or eligibility for specific programs, unless retention of the document is required. In general, less information on file leads to a lower risk of disclosure. This requires an information maintenance policy that adequately manages student records.



Box C: Sample Privacy Protocol

In order to maintain compliance with the Federal Educational Rights and Privacy Act (FERPA, *see* 20 U.S.C. § 1232g; 34 C.F.R. Part 99):

- [School administrators, enrollment staff, etc.] should only collect information about students that is necessary for educational purposes.
- [School administrators] should ensure that student records are only accessible by school officials for legitimate educational reasons.
 - ◊ If a non-school official asks for access to a student record, [school personnel] must receive clear consent from the parent of the student.
- [Site director, school administrators] should decide what information will be considered “directory information.” This designation should be applied to as limited a set of information as possible.
- If the school has decided to label any category of information as directory information, [site director, teachers, staff] should publish a bulletin to inform students and parents of these designations and the individuals and groups eligible for receipt of this information. This bulletin should be published in multiple languages and in multiple media.
- [School administrators, teachers] should publish a form that explains the process for families to opt-out of directory information designations (*see* 34 C.F.R. 99.37(a)(2)). This form should be published in multiple languages and in multiple media. This form should be distributed directly by teachers to each student.
- Even if a parent has not designated her desire to opt out of directory information disclosure, [school personnel] should never disclose student records to non-school officials without parental consent first.

If a law enforcement agent comes to ask for student information or sends a request for information, the following procedure should be followed before complying:

- [School personnel] should notify the [site administrator] and [legal counsel] immediately of this request.
- Ask for the officer’s name, badge number, and contact information. If the request is in person, the [front office personnel] should scan the officer’s ID and keep this on file.
- [School personnel] should state that it is [school]’s policy to not disclose student records to non-school officials unless there is parental consent or a valid court order for the records. [School personnel] should ask the officer or agent to see the warrant or subpoena that authorizes access to school records and forward this to counsel.
- [School personnel] should notify the officer that records will be sent to them if legal counsel approves the request. [School personnel] should ask the officer to leave, as the records request will be reviewed within the next day.
- [Legal counsel] should verify that the warrant or subpoena is an official court ordered document before allowing access to records [*see* 34 C.F.R. 99.31(a)(9)].
- If access to the records is granted, immediately contact the student’s parents to notify them. This is not allowed if the request for information was a grand jury subpoena.
- NOTE: If an officer cites an “exigent circumstance” in which safety is at risk, [school personnel] may let them proceed to access the information. Document everything.

III. Policies Needed to Protect Legal Rights of Students, Parents, and Schools

c. Responding to Law Enforcement Activities on School Grounds

This section discusses policies and procedures schools can use in deciding when and how law enforcement and government agents, including ICE, may enter school grounds and have contact with students. Law enforcement officers and ICE might seek to contact a student at school for purposes of arresting the student, questioning the student about a crime that the student may have committed or have knowledge about, or investigating the immigration status of students or their family members.³⁵

All schools have a significant educational interest in maintaining peaceful and disturbance-free learning environments. Allowing law enforcement agents onto campuses to remove students from classes significantly disrupts the tranquility of the classroom. The presence of immigration officials has a particularly severe negative effect on many students, especially those that are undocumented or have undocumented parents. Because of this rationale, schools have traditionally been given broad authority to limit campus access. Under California law, schools may limit the amount of disruption to classrooms and protect the safety of their staff and students by denying individuals access to campus during school hours.³⁶

Beyond the statutory authority given to schools to limit campus access, the Fourth Amendment—which protects persons from unreasonable government searches and seizures—provides students with additional protections that schools must recognize. A number of courts have ruled that, absent exigent circumstances, law en-

forcement officers and other government agents may not remove a student from class to interview the student *about a non-school-related* matter unless they have either a valid warrant or probable cause to believe that the student has committed or has knowledge about a crime.³⁷

Schools have several options in applying these requirements and for protecting their student populations from the possible disruption and harm of law enforcement officers coming to campus to investigate a non-school-related criminal matter, including investigations related to immigration status. The most protective policy would require that 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 a number of public school districts have adopted the policy.

Other districts, however, have not adopted 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 documented, 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.

III. Policies Needed to Protect Legal Rights of Students, Parents, and Schools

Alternatively, schools may specifically require that ICE agents present a valid warrant before accessing campus. A policy that limits the warrant requirement only to ICE agents is justified for several reasons. Unlike local law enforcement agencies, ICE does not typically have exigent circumstances to question a student nor do they ever investigate a school-related matter (e.g. discipline, campus safety, bullying, etc.) or situations involving community safety. The presence of ICE agents on school grounds would likely cause significant disruption and might even have massive chilling effects on school attendance by undocumented students, thus undermining *Phyller*.

At present, it is extremely unlikely that ICE would conduct immigration enforcement at schools. Longstanding ICE internal policy considers schools “sensitive

locations” at which enforcement actions should not take place.³⁸ This policy has not been rescinded to date, and the Administration has indicated that it intends to continue this policy.

Box D provides a protocol that denies access to all law enforcement officials unless they either are called in by a school administrator, or have a valid, court-issued warrant.



Box D: Sample Campus Access Protocol

In the event that a law enforcement officer or government agent comes to a school site and asks to detain or interview a student about a *non-school-related* offense or matter, the following procedure should be followed:

- [School front office staff] should alert the [director/principal] of the school immediately. The [site director] should then notify the school's counsel that there is a law enforcement agent on campus.
- [School front office staff] should ask the officer/agent what the purpose of the visit is and whether the officer has a warrant to arrest or question a specific student.
- If the officer is not visiting for school safety or school discipline purposes and does not have a warrant, [site director] should request that the officer/agent leave because the officer's presence might be a disruption of the peaceful activities of the school environment. They should ask if the investigation could be completed at another time in another place outside of the school environment.
- [Site director, front office staff] should ask to see the agent's credentials. They should then take down the name, contact information, and badge number of the agent.
- [Site director, front office staff] should ask to see the officer/agent's warrant and scan and forward to counsel to verify that it is a judicially-issued warrant, not just an administrative warrant.
- NOTE: If the agent cites an "exigent circumstance" or an "emergency" and demands immediate access to the campus, the school official should obey. Document everything that happens in detail. Exigent circumstances may include threats to national security, to the physical safety of an individual, imminent risk of destruction of property or evidence in a criminal investigation.

If an officer/agent does present a valid warrant or if the school official chooses to allow a student to be questioned, the following procedure should be followed:

- [Site director] should retrieve the student. Try to keep the student calm. Remind the student that she has the right to remain silent and to request a lawyer. Tell the student that she does not have to answer any questions and that anything she says can be used against them. Tell the student to affirmatively invoke her right to remain silent and to request a lawyer. This can be done by saying "I plead the Fifth Amendment" or "I plead my right to remain silent" or "I do not want to talk until I have seen a lawyer."
- [Site director] shall immediately inform the parents that the student has been detained.
- [Site director, legal counsel] should call an immigration or criminal defense attorney on behalf of the student. Community legal resources are provided in the "Schools as Resource Centers" section of this memorandum.

IV. Actions to Help Parents and Caretakers Prepare in Case They Are Detained

Children of undocumented parents are at special risk as their 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.

Charter schools can take a number of actions to address this problem. 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 hosting trainings by immigration experts on Know Your Rights and Family Preparedness. Schools can also take a number of additional actions to protect children whose caretakers are detained.

A. Family Preparedness Plans

Schools should encourage all families to develop a plan for the care and custody of a child in case parents become unavailable due to arrest, detention, or some other reason. Sample multilingual plans are available through the [Immigrant Legal Resource Center](#). At a minimum these plans must identify an emergency caretaker. School staff should ensure that they have the name and contact information for each student's emergency caregiver. Schools should also familiarize themselves with forms they may be receiving from alternate caregivers, such as the Caregiver's Authorization Affidavit.

Creation of a full family preparedness requires families to:

- **Create a Childcare Plan:** Identify a child's emergency caregivers and provide them with important information such as: the child's allergies, medications, doctors, insurance and bene-

fit information. Families should discuss this plan in detail with the child(ren). Families should also plan how a caregiver will financially support their child. Legally appointing a caregiver is complicated and for the reasons listed below families should consult immigration organizations individually for advice.

- **Gather Important Documents:** Gather key documents for children's caretaker. These include: passports, birth certificates, court orders, driver's licenses, health insurance and medical information and anything else a caretaker may need to find quickly.
- **Tell Caretaker How to Locate Detained Parents:** Family members can use the [ICE detainee locator](#) to find parents who are detained. They will need to input parents' A-numbers. A-numbers can be found on any ICE immigration documents.
- **Give Caretaker a Copy of the Completed Plan.**

A full plan requires various authorization forms that grant caregivers the right to make decisions on behalf of the child. Choices of how to appoint a caregiver are complicated and have significant legal consequences. For example, a non-parent caregiver in California can make certain medical and educational decisions through a Caregiver's Authorization Affidavit.³⁹ It is also possible for a court to transfer custody of a child to a non-parent through a guardianship. Each of these choices has certain advantages and disadvantages, and these decisions should be made on a case-by-case basis. Schools are not equipped to advise families on these issues and should instead refer families to local immigration attorneys, family law specialists, or community based organizations.

B. Schools as Resource Centers

Though schools should not provide legal advice to families, they can help them prepare for ICE actions by hosting trainings run by immigration experts. Schools are well-positioned to host these trainings for two reasons. First, undocumented families interact with

IV. Actions to Help Parents and Caretakers Prepare in Case They Are Detained

schools on a daily basis. This means that families are both more comfortable with schools and more likely to learn about school events. Second, schools are “sensitive locations” under current ICE policy. Consequently, absent exigent circumstances, ICE cannot target schools for enforcement actions.

It is both helpful and comforting to parents when schools host trainings on Know Your Rights (KYR) 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 alternative caregiver. They also often provide contact information for local immigration organizations that can meet with families for more personalized advice. In order to reach the families who may be reluctant to attend public events, schools can also send home handouts on the information covered during these trainings, as well as contact information for local legal aid and community based organizations that specialize in immigration.

Schools might also collaborate to host “Train the Trainers” meetings to teach school staff and community members how to conduct KYR trainings. These trainings enable staff attendees to run school-wide KYR professional development seminars,⁴⁰ and they allow community members to relay KYR information informally to undocumented peers who would avoid traditional immigration information sessions for fear of identifying themselves as undocumented.

A school might also designate an Immigrants’ Rights point person. Teachers and staff can contact this person when they hear of a local raid or of a student without a guardian. This individual could:

- Ensure that each family has designated an emergency caregiver;
- Identify the local [Raid Rapid Response Network](#);
- Identify [local legal](#) and community based immigration organizations;
- Distribute hard copies of [KYR Red Cards](#) and

guides and [Family Preparedness materials](#) to the front office and classrooms;

- Upload soft copies of KYR and Family Preparedness materials to parent portals;
- Attend all school-hosted training events and introduce himself or herself to families;
- Attend a “Train the Trainers” event to learn how to relay KYR training to staff; and
- Host an annual professional development seminar on raids, KYR, Family Preparedness, and the welfare system for school staff and teachers.

Organizations like [E4FC](#), the [U.S. Department of Education](#) and the [American Federation of Teachers](#) have laid out a series of additional actions schools can take to ease the anxiety of undocumented students and families.

C. Protecting Children if a Parent/Caretaker Is Detained

California public schools stand *in loco parentis* while students are at school and are responsible for the safety and welfare of their students. Consequently, schools can take a number of actions to protect children whose parents have been arrested, detained, or are otherwise unavailable.

Provide Temporary Care

Given schools’ responsibility for the safety of a child, school staff may keep temporary custody of students or transport them to a parentally-appointed caretaker in the case that a parent is detained. In fact, courts have held that a school district may be liable if it releases a student into a potentially hazardous situation.⁴¹ This is a general obligation that goes beyond situations involving children living with undocumented caretakers.

Because the parents of many students may be arrested if a raid occurs, schools should take measures to ensure the safety of every child affected by an ICE enforce-

IV. Actions to Help Parents and Caretakers Prepare in Case They Are Detained

ment action. If a school learns that a raid has occurred in an area where its students live, it can try to contact parents to determine whether the family has been affected and whether the child needs care. Staff members might also accompany children home. Schools should only release a child to a known caretaker in a safe environment. In situations where a caretaker cannot be found, schools should take actions to ensure the safety of the child including providing emergency shelter. Some districts in other states have designated schools as emergency shelters when an ICE raid affected the safety of a number of children.⁴²

Provide Counseling

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, the fear of deportation and family separation alone affects students' mental health. Thus, it is important to offer counseling more generally, in addition to conducting the types of school-wide activities previously discussed.

Work with Child Welfare Services

While the best outcome if parents are detained is placement of the child with a relative or other caretaker selected by the parent, there may be situations where no such person is available. In such cases, school personnel may need to contact the child welfare system to provide care for the child. If this is necessary, the key goals are to help the parents stay involved in the child's life and to facilitate reunification as quickly as possible. To accomplish this, it is highly desirable that the child be placed near where the parent is detained, and that

parents be involved with the child to the greatest extent possible. School staff can help ensure that the child protection system takes these actions.

Under California juvenile court law, child protection agencies and courts are required to pursue the goals listed above. There also are two federal directives currently in place that outline how ICE and child welfare agencies should act in order to protect parents' interests. The ICE directive instructs ICE personnel to ensure that immigration enforcement activities do not unnecessarily disrupt the parental rights of immigrant parents or legal guardians of minors.⁴³ It suggests placing parents as close as practicable to their children and/or the location of the family court; arranging for parents'/guardians' transportation to family court; and facilitating parent-child visitation where required by a family or dependency court or a child welfare authority. Finally, if a final order of deportation is inevitable, the guidance provides that parents are allowed to make provisions for their minor children to remain in the United States or accompany them to their country of removal. The HHS memo encourages child welfare agencies to work with ICE to provide families with tailored and individualized services.⁴⁴

To protect the interests of children and parents, and assure continuity of the child's educational plans, a school could have at least one staff member involved in child welfare cases. That person would be knowledgeable on the structure of that county's respective child welfare system and trained to work with child welfare staff. For example, in the Los Angeles County Department of Children and Family Services, there exists a specially trained group of social workers—known as the Multi-Agency Response Team (MART)—who works alongside ICE to protect children who may be present and vulnerable during raids.⁴⁵

V. Meeting the Needs of Unaccompanied Alien Children (UAC)

A small number of students may be Unaccompanied Alien Children (UAC). UACs are children under 18 who attempted to enter or entered the U.S. on their own and were apprehended and detained at the border or within the U.S. Many of these children ultimately may be allowed to remain in the U.S. because they may have been victims of a severe form of trafficking in persons; there is credible evidence that they would be at risk of harm if returned to their country of nationality or of last habitual residence; or they have possible claims to asylum. Once allowed to remain in the United States, the great majority of the children end up living with parents or relatives already living in the U.S, many of whom also lack documentation.

All of these children are known to the government; in fact, all are involved in removal proceedings, at various stages of completion, wherein it is being determined whether the child may remain in the country. Removal proceedings continue even when UACs are living with parents or other relatives. Since these children are known to the government, the confidentiality concerns about their presence at school, relevant for other undocumented children, are not an issue with UACs. It also is unlikely that they will be subject to investigation and apprehension by ICE while the proceedings are

pending, unless they become involved in the criminal justice system.

Many of these children require special services to meet their needs, including special education. While UACs are entitled to an education, there may be difficulty with respect to enrollment, since these children usually lack any official documents or records. If the student is living with a relative or other sponsor, establishing guardianship should be explored. A number of UACs have suffered significant trauma in their home country and in the process of getting to the U.S. They are likely to need counseling. Some counties fund health care for children not eligible for other programs. Older youth with limited schooling may not be able to get enough credits to graduate; they are likely to need additional time in school beyond their 18th birthday. In other cases, access to vocational education programs may be appropriate. Additionally, these children need to be connected with attorneys if they are not presently represented in the removal proceedings. Their removal proceedings will be at various stages of progress, and the children and their caretakers will benefit greatly from legal advice; only an attorney familiar with immigration law can advise them adequately, and representation significantly increases the likelihood a UAC will be allowed to stay.



VI. Safe Haven Declarations

Once schools have established policies with respect to the issues discussed in this guidance, the specific policies should be conveyed to all parents, students, and staff. Beyond this, the State Superintendent of Public Instruction has urged all California schools to adopt “safe haven” resolutions declaring that the school is a place of safety and support for all students.⁴⁶ As he notes, 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. A number of California districts and charter schools have passed resolutions that can serve as models or examples to use in drafting guidelines. A collection of these resources is available [here](#).



References

- 1 EDUCATION TRUST-WEST, UNDOCUMENTED STUDENTS IN CALIFORNIA: WHAT YOU SHOULD KNOW (2016), https://west.edtrust.org/wp-content/uploads/sites/3/2015/11/ETW_CA-Undocumented-Students-What-You-Need-to-Know-FINAL-April-2017.pdf.
- 2 Calculation based on California Department of Education estimate of 6,226,737 total primary and secondary school enrollment. See *Fingertip Facts on Education in California*, CALIFORNIA DEPARTMENT OF EDUCATION (last updated Sept. 29, 2016), <http://www.cde.ca.gov/ds/sd/cb/ceffingertipfacts.asp>.
- 3 *Plyler v. Doe*, 457 U.S. 202 (1982).
- 4 *Id.* at 230.
- 5 *Id.* at 223.
- 6 This anxiety may also lead students to withdraw from school. In 2011, for example, thirteen percent of Alabama’s Latino students withdrew from school within five months of the passage of a state law requiring schools to determine a student’s immigration status as a prerequisite to enrollment. See AM. IMMIGRATION COUNCIL, PUBLIC EDUCATION FOR IMMIGRANT STUDENTS: UNDERSTANDING PLYLER V. DOE 1, 3 (2016), https://www.americanimmigrationcouncil.org/sites/default/files/research/public_education_for_immigrant_students_understanding_plyler_v_doe.pdf.
- 7 RANDY CAPPS ET AL., MIGRATION POL’Y INST., A PROFILE OF U.S. CHILDREN WITH UNAUTHORIZED IMMIGRANT PARENTS 1, 8 (2016), <http://www.migrationpolicy.org/research/profile-us-children-unauthorized-immigrant-parents>.
- 8 *Growth and Enrollment*, CALIFORNIA CHARTER SCHOOLS ASSOCIATION (last visited May 31, 2017), <http://www.ccsa.org/understanding/numbers/>.
- 9 A 2013 study by NYU, Harvard, and UCLA suggests that children with undocumented parents face heightened risks to learning, school success, and attainment. Yoshikawa et al., *The Role of Public Policies and Community-Based Organizations in the Developmental Consequences of Parent Undocumented Status*, 27 SOC. POL’Y REP., no. 3, 2013, at 3–4, http://www.srcd.org/sites/default/files/documents/E-News/spr_273.pdf. The study found that community-based organizations can help mitigate some of these risks by adopting law enforcement and enrollment policies similar to those laid out in this guide. By extension, schools’ adoption of these policies may mitigate these risks and improve student learning.
- 10 *Plyler*, 457 U.S. at 230.
- 11 CAL. EDUC. CODE § 48200.
- 12 20 U.S.C. § 1400(c)(1); see also 20 U.S.C. § 1400(c)(6) (“[I]t is in the national interest that the Federal Government have a supporting role in assisting State and local efforts to educate children with disabilities in order to improve results for such children and to ensure equal protection of the law.”)
- 13 20 U.S.C. § 6301.
- 14 See Child Nutrition Act, 42 U.S.C. § 1771.
- 15 20 U.S.C. § 1703(f) (“No State may deny equal educational opportunity to an individual on account of his or her race, color, sex, or national origin, by . . . the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its education programs.”); see also *Lau v. Nichols*, 414 U.S. 563, 568 (1974); Letter from Catherine E. Lhamon, Assistant Sec’y for Civil Rights, U.S. Dep’t of Educ., & Vanita Gupta, Acting Assistant Att’y Gen. for Civil Rights, U.S. Dep’t of Justice, to Dear Colleague 5–8 (Jan. 7, 2015), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf>.
- 16 See *Plyler*, 457 U.S. at 221 (citing *Ambach v. Norwick*, 441 U.S. 68, 77 (1979)).
- 17 See, e.g., *Martinez v. Bynum*, 461 U.S. 321, 328 (1983).
- 18 Letter from Catherine E. Lhamon, Assistant Sec’y for Civil Rights, U.S. Dep’t of Educ., et al. to Dear Colleague 1 (May 8, 2014), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201405.pdf>.
- 19 See JOHN W. BORKOWSKI, NAT’L SCH. BD. ASS’N & NAT’L EDUC. ASS’N, LEGAL ISSUES FOR SCHOOL DISTRICTS RELATED TO THE EDUCATION OF UNDOCUMENTED CHILDREN 7–8 (Lisa E. Soronen ed., 2009).
- 20 CAL. EDUC. CODE § 48204.1.
- 21 CAL. EDUC. CODE § 48002.
- 22 See CAL. EDUC. CODE § 49076.7 (“A school district, county office of education, or charter school shall not collect or solicit social security numbers or the last four digits of social security numbers from pupils or their parents or guardians unless otherwise required to do so by state or federal law.”); see also 5 U.S.C. § 552a (note) (“It shall be unlawful for any Federal, State or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual’s refusal to disclose his social security account number . . . [except where] disclosure [] is required by Federal statute.”); see also Letter from Catherine E. Lhamon to Dear Colleague, *supra* note 18, at 3 (advising that districts not request Social Security numbers, but that “[i]f a district chooses to request a social security number, it shall inform the individual that the disclosure is voluntary, provide the statutory or other basis upon which it is seeking the number, and explain what uses will be made of it”).
- 23 See Letter from Catherine E. Lhamon to Dear Colleague, *supra* note 18, at 2; Fact Sheet, U.S. Dep’t of Justice, Civil Rights Division & U.S. Dep’t of Educ., Office for Civil Rights, Information on the Rights of All Children to Enroll in School 1 (May 8, 2014), <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/08/plylerfact.pdf>; Questions and Answers, U.S. Dep’t of Justice, Civil Rights Division & U.S. Dep’t of Educ., Office for Civil Rights, Information on the Rights of All

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- Children to Enroll in School 2 (May 8, 2014), <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/08/plylerqa.pdf>.
- 24 See Title IV of the Civil Rights Act of 1964, 42 U.S.C. § 2000(c)(6); Questions and Answers, U.S. Dep’t of Justice & U.S. Dep’t of Educ., *supra* note 23, at 2, 4.
- 25 CAL. EDUC. CODE §§ 60900–01 (authorizing creation of California Longitudinal Pupil Achievement Data System); *see also Data Privacy*, CALIFORNIA DEPARTMENT OF EDUCATION (last updated Feb. 13, 2017), <http://www.cde.ca.gov/ds/dp/index.asp> (explaining privacy protections afforded student records maintained through CALPADS).
- 26 Fact Sheet, U.S. Dep’t of Justice & U.S. Dep’t of Educ., *supra* note 23, at 2.
- 27 See 20 U.S.C. § 1412.
- 28 See 42 U.S.C. § 11432(g)(3)(C); CAL. EDUC. CODE § 48204.1(d)-(e). Homeless is defined as:
children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; or are abandoned in hospitals; children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human; children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings.
42 U.S.C. § 11434a(2).
- 29 See 20 U.S.C. § 1232g; 34 C.F.R. Part 99.
- 30 See 34 C.F.R. § 99.37.
- 31 See 34 C.F.R. § 99.31(a)(9).
- 32 See Letter from Karyn V. Lang, Dir., Immigration & Customs Enft, to the Honorable Zoe Lofgren, Congresswoman, U.S. House of Representatives 2 (Mar. 14, 2007), <https://www.publiccounsel.net/iiu/wp-content/uploads/sites/15/2014/07/ICE-Warrants-Practice-Advisory.pdf>.
- 33 See 34 C.F.R. § 99.31(a)(9) (excepting only judicially-ordered warrants from FERPA protections and finding that ICE’s warrants are administrative warrants not brought under this specific exception).
- 34 See Letter from Tom Torlakson, State Superintendent of Pub. Instruction, Cal. Dep’t of Educ., to Dear County and District Superintendents, Charter School Administrators, and Principals, Public Schools Remain Safe Havens for California’s Students (Dec. 21, 2016), <http://www.cde.ca.gov/nr/el/le/yr16ltr1221.asp>.
- 35 This discussion does not address police investigations related specifically to alleged child abuse or neglect.
- 36 CAL. EDUC. CODE §§ 32212, 35160.
- 37 See *Stoot v. City of Everett*, 582 F.3d 910, 918 (9th Cir. 2009); *Shuman ex rel. Shertzler v. Penn Manor Sch. Dist.*, 422 F.3d 141, 146–47 (3d Cir. 2005); *Wofford v. Evans*, 390 F.3d 318, 325 (4th Cir. 2004); *Doe v. Heck*, 327 F.3d 492, 514 (7th Cir. 2003).
- 38 See Memorandum from John Morton, Dir., Immigrations and Customs Enft, to Field Directors, Special Agents in Charge, and Chief Counsel, Enforcement Actions at or Focused on Sensitive Locations 1–2 (Oct. 24, 2011), <https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf>.
- 39 CAL. FAM. CODE §§ 6550, 6552.
- 40 The American Federation of Teachers recently issued an educator-oriented guide that would be a useful resource for anyone hoping to put on such a professional development seminar on immigration. See AM. FED’N OF TEACHERS, IMMIGRANT AND REFUGEE CHILDREN: A GUIDE FOR EDUCATORS AND SCHOOL SUPPORT STAFF (2016), <https://www.nilc.org/wp-content/uploads/2016/06/ICE-Raids-Educators-Guide-2016-06.pdf>.
- 41 The joint publication by the NEA, Hogan and Hartson, and the NSBA discusses several cases that indicate that schools may be liable for negligent supervision if they do not take adequate steps to ensure the safety of children whose parents are detained. See BORKOWSKI, *supra* note 19, at 21.
- 42 See *id.* (discussing various protective actions that districts have taken).
- 43 See Memorandum from John Sandweg, Dir., Immigrations and Customs Enft, Facilitating Parental Interests in the Course of Civil Immigration Enforcement Activities (Aug. 23, 2013), https://www.ice.gov/doclib/detention-reform/pdf/parental_interest_directive_signed.pdf.
- 44 See Memorandum from Mark Greenberg, Acting Comm’r, Admin. for Children & Families, to State, Tribal and Territorial Agencies Administering or Supervising the Administration of Title IV-B and IV-E of the Social Security Act, Indian Tribes & Indian Tribal Orgs., Case Planning and Service Delivery for Families with Parents and Legal Guardians who are Detained or Deported by Immigration Enforcement (Feb. 20, 2015), <https://www.acf.hhs.gov/sites/default/files/cb/im1502.pdf>.
- 45 *Multi-Agency Response Team (MART) Referrals*, LOS ANGELES COUNTY DEPARTMENT OF CHILD AND FAMILY SERVICES (last updated Jan. 07, 2014), http://policy.dcfslacounty.gov/content/Multi_Agency_Response_Te.html.
- 46 See Torlakson Letter, *supra* note 34.