



EDUCATION
LAW CENTER



LEGAL RIGHTS OF IMMIGRANT STUDENTS IN PENNSYLVANIA SCHOOLS

FEBRUARY 6, 2025

AGENDA

1. **Presenters: About ELC, ACLU-PA, HIAS PA**
2. **Context: Immigrant students in PA, and recent Executive Orders**
3. **Right to Enroll & Attend Schools**
4. **Non-Discrimination Protections**
5. **ICE Enforcement at Schools**
 - ❖ **Warrant Required for Non-Public Space**
 - ❖ **Student Records and FERPA Protections**
6. **Protocol Suggestions for Schools**
7. **Resources for Families**

Presenters

The logo for the Education Law Center features a yellow horizontal bar at the top, a blue horizontal bar in the middle containing the text "EDUCATION LAW CENTER" in white, and another yellow horizontal bar at the bottom.

**EDUCATION
LAW CENTER**

Kristina Moon
Senior Attorney

The logo for ACLU Pennsylvania features the word "ACLU" in large, bold, blue capital letters, with the word "Pennsylvania" in a smaller, red, serif font below it.

ACLU
Pennsylvania

Keith Armstrong
Fellowship Attorney – Immigrants' Rights

The logo for HIAS Pennsylvania features a white silhouette of the Statue of Liberty's crown at the top, with the word "HIAS" in a large, white, serif font below it, and the word "PENNSYLVANIA" in a smaller, white, sans-serif font at the bottom.

HIAS
PENNSYLVANIA

Stephanie Lubert
Managing Attorney



1 in 14 Pennsylvania residents is an immigrant.

Estimated 19% of the immigrant population in PA is undocumented.

Unaccompanied Children released to PA:

1,985 in FY 2024 (Oct 2023 - Sept 2024)

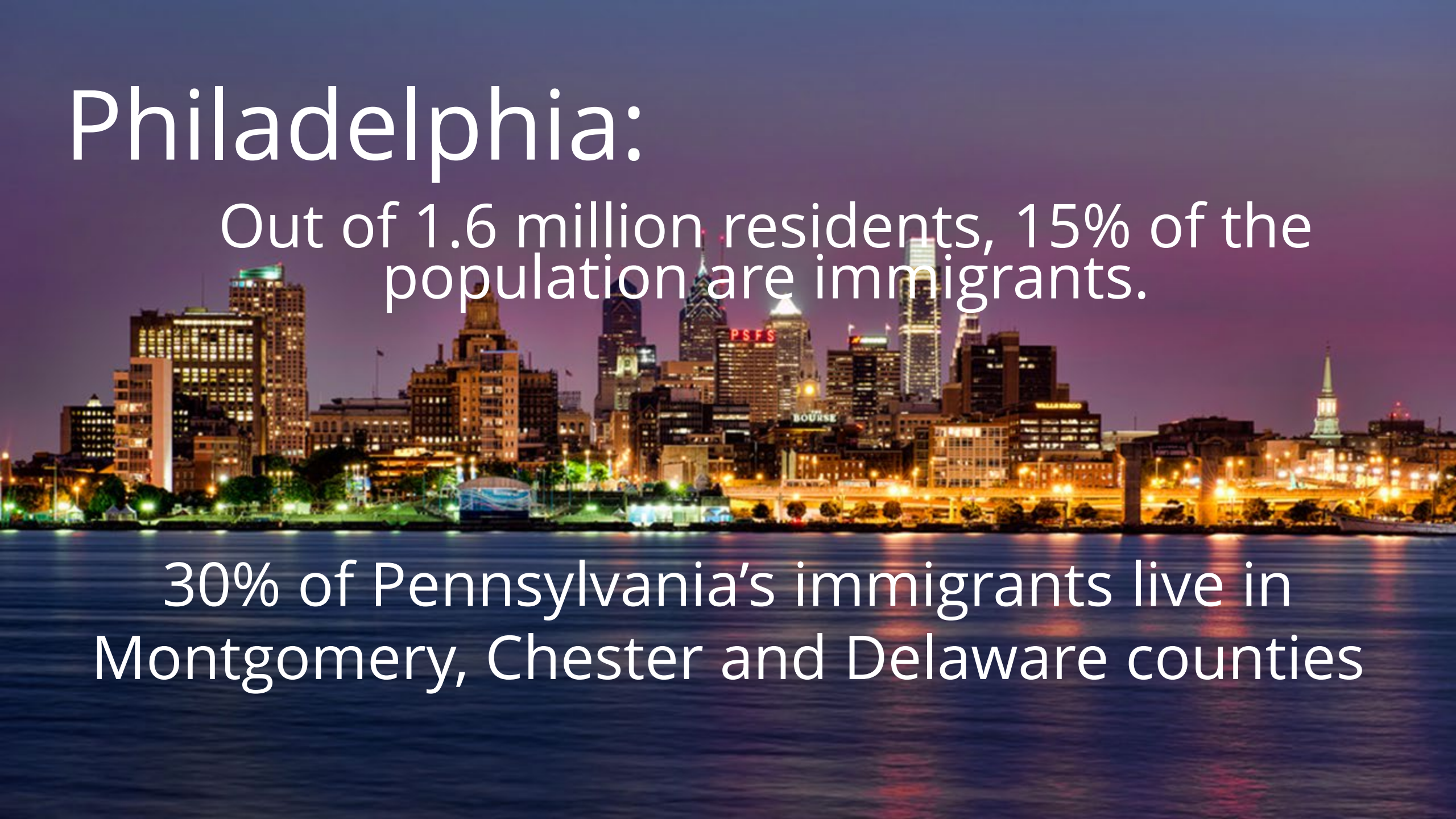
294 in FY 2025 (Oct 2024 - Dec 2024)

Sources: ORR
Administration for
Children & Families
& 2020 Census

Philadelphia:

Out of 1.6 million residents, 15% of the population are immigrants.

30% of Pennsylvania's immigrants live in Montgomery, Chester and Delaware counties



Executive Actions since January 20, 2025

- Attempting to end Birthright Citizenship
- Ending the Refugee Admissions Program
- Ordering the expansion of "expedited removal" (deporting a person without a court hearing)
- Requiring all noncitizens to register and present fingerprints to the U.S. government, and declaring that all who do not do so will be subject to criminal penalties
- Ending humanitarian parole programs for Cuban, Haitian, Nicaraguan, and Venezuelan nationals
- Threatening funding cuts to any state or local government that attempts to disentangle itself from collaboration with ICE

For a more thorough account of immigration-related executive orders from the first week of the new Trump administration, see: https://www.americanimmigrationcouncil.org/sites/default/files/research/after_day_one_a_high-level_analysis_of_trumps_first_executive_actions_12425.pdf

RIGHT TO ENROLL & ATTEND SCHOOLS

Pennsylvania law entitles all students, including immigrant students, to “a meaningful opportunity to succeed academically, socially, and civically” Their success “requires” that they have “access to a comprehensive, effective, and contemporary system of public education.”

William Penn Sch. Dist. v. Pennsylvania Dep’t of Educ., 294 A.3d 537, 892 (Pa. Commw. Ct. 2023).



IMMIGRATION STATUS: DON'T ASK



Schools cannot require information about students' or families' immigration status.

- Federal case law, *Plyler v. Doe* (U.S. Supreme Ct, 1982)
- Pennsylvania law, 22 Pa. Code 11.11(d)



Under Pennsylvania law, the information required to enroll is limited to:

- Proof of residency
- Proof of age
- Immunization records
- Parent statement about the student's prior discipline history

SCHOOLS CANNOT REQUIRE:



Proof of citizenship or immigration status



Social security numbers or place of birth that may indicate a student's immigration status



Documents for determining residency or age that only people with U.S. citizenship or current immigration status can have (e.g. U.S. passport, driver's license, etc.)

ATTENDANCE: FEAR AND SCHOOL AVOIDANCE

Law requires SAIC to identify & address root causes of absences
24 P.S. 13-1333

Describe school's commitment, protocol; add supports: staff outside school, counseling check-ins

Talk with students & families

School can recognize absences as excused "for other urgent reasons" on temp. basis (3 months) 11 Pa Code 25

Extended period, consider alternative program (virtual)

NONDISCRIMINATION PROTECTIONS

NONDISCRIMINATION PROTECTIONS

Title VI

- "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance."
- Title VI applies to programs or activities receiving federal financial assistance from HUD

Pennsylvania Human Relations Act

- Prohibits discrimination in public schools based on race, color, sex, religion, disability, ancestry, and national origin.

ICE ENFORCEMENT AT SCHOOLS

RESCINDED: SENSITIVE LOCATIONS /PROTECTED AREAS POLICY

Previously

Since 2011, the Department of Homeland Security (DHS) had maintained standing guidance requiring Immigration and Customs Enforcement (ICE) to refrain from immigration enforcement actions in certain areas

JANUARY 2025: policy rescinded

4th Amendment remains:
warrant required for areas where people have a “reasonable expectation of privacy”

PUBLIC & NONPUBLIC SPACES

PUBLIC

- ICE has the authority to approach and question people in public spaces without a warrant.
- People still have the right to remain silent and to contact an attorney.

NONPUBLIC

- For immigration enforcement to search or enter a private area within a school, the 4th Amendment requires a valid judicial warrant signed by a federal or state judge, unless staff consent to the search.
- If ICE agents enter a public area or gain access to a private area through a warrant or consent—they can arrest people if they have a valid administrative warrant for that person or if they have probable cause to believe that the person is “removable” from the United States

CONSENT SEARCHES

Requirements:

- 1) Consent granted voluntarily;
- 2) Obtained from someone with real or apparent authority;
- 3) Scope of search can't exceed the consent granted.

Even if the above conditions are satisfied, permission to conduct a search does not grant law enforcement authority to do so if another person, with common authority over the property, is physically present and expressly refuses consent.

WARRANT DISTINCTIONS

While longstanding law requires schools to comply with valid *judicial* warrants and subpoenas, immigration agents often serve what are known as *administrative* warrants, which do not have the same legal force.

ADMINISTRATIVE WARRANT

- Commonly relied upon by ICE
- Signed by an immigration officer or immigration judge
- However, these warrants **do not**:
 - Authorize ICE agents to enter areas of school property that are not otherwise open to the public
 - To enter these places (absent of a judicial warrant), ICE would need the school's consent, **which school officials have no legal obligation to give**

JUDICIAL WARRANT

- To be valid:
 - Issued by a judicial court;
 - Signed by a state or federal judge or magistrate (**not** merely authorized by an immigration judge or agent within the Department of Homeland Security or ICE);
 - State the address of the premises to be searched (check for your school's exact address); and
 - Executed within the limited time period specified on the warrant

EXAMPLE OF A VALID WARRANT

A valid warrant requires:

- The judge's name and signature
- The person's name and address
- The date (not expired)
- The name of the agency conducting the search or arrest

A search warrant also requires:

- A description of any items being searched

Administrative subpoenas are not valid. (e.g. "ICE warrant").

UNITED STATES DISTRICT COURT
for the _____

In the Matter of the Search of _____)
(Briefly describe the property to be searched)
or identify the person by name and address) _____)
_____)
_____)
_____)

Case No. _____

SEARCH AND SEIZURE WARRANT

To: Any authorized law enforcement officer

An application by a federal law enforcement officer or an attorney for the government requests the search of the following person or property located in the _____ District of _____
(identify the person or describe the property to be searched and give its location):

I find that the affidavit(s), or any recorded testimony, establish probable cause to search and seize the person or property described above, and that such search will reveal (identify the person or describe the property to be seized):

YOU ARE COMMANDED to execute this warrant on or before _____ (not to exceed 14 days)
 in the daytime 6:00 a.m. to 10:00 p.m. at any time in the day or night because good cause has been established.

Unless delayed notice is authorized below, you must give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken, or leave the copy and receipt at the place where the property was taken.

The officer executing this warrant, or an officer present during the execution of the warrant, must prepare an inventory as required by law and promptly return this warrant and inventory to _____
(United States Magistrate Judge)

Pursuant to 18 U.S.C. § 3103a(b), I find that immediate notification may have an adverse result listed in 18 U.S.C. § 2705 (except for delay of trial) and authorize the officer executing this warrant to delay notice to the person who, or whose property, will be searched or seized (check the appropriate box)
 for _____ days (not to exceed _____) until, the facts justifying, the later specific _____

Date and time issued: _____
_____ Judge's signature

City and state: _____
_____ Printed name and title

JUDICIAL WARRANTS v. IMMIGRATION WARRANTS

AO 93 (Rev. 12/99) Search and Seizure Warrant

UNITED STATES DISTRICT COURT
for the
Eastern District of California

In the Matter of the Search of _____)
(Briefly describe the property to be searched)
or identify the person by name and address)) Case No. _____
_____))
Davis, California 95616)

SEARCH AND SEIZURE WARRANT

To: Any authorized law enforcement officer **2:11-SW-0161 EFB**

An application by a federal law enforcement officer or an attorney for the government requests the search of the following person or property located in the EASTERN District of CALIFORNIA.
(Identify the person or describe the property to be searched and give its location):
SEE ATTACHMENT A, ATTACHED HERETO AND INCORPORATED BY REFERENCE

The person or property to be searched, described above, is believed to conceal (Identify the person or describe the property to be seized):
SEE ATTACHMENT B, ATTACHED HERETO AND INCORPORATED BY REFERENCE

I find that the affidavit(s), or any recorded testimony, establish probable cause to search and seize the person or property.

YOU ARE COMMANDED to execute this warrant on or before 5-9-2011
(not to exceed 14 days)

in the daytime 6:00 a.m. to 10 p.m. at any time in the day or night as I find reasonable cause has been established.

Unless delayed notice is authorized below, you must give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken, or leave the copy and receipt at the place where the property was taken.

The officer executing this warrant, or an officer present during the execution of the warrant, must prepare an inventory as required by law and promptly return this warrant and inventory to United States Magistrate Judge _____
(name)

I find that immediate notification may have an adverse result listed in 18 U.S.C. § 2705 (except for delay of trial), and authorize the officer executing this warrant to delay notice to the person who, or whose property, will be searched or seized (check the appropriate box) for _____ days (not to exceed 30).
 Until, the facts justifying, the later specific date of _____

Date and time issued: 4-25-2011
9:10:00 AM

City and state: SACRAMENTO, CALIFORNIA

Edmund F. Brennan
EDMUND F. BRENNAN, U.S. MAGISTRATE JUDGE
Printed name and title

Is this the right address?

Is it still current?

Note: only the person, property, & areas specified may be searched

Is it actually signed by a judge?

IF THE ANSWER TO ALL OF THESE IS YES, THEN IT IS LIKELY A VALID JUDICIAL WARRANT

DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement
WARRANT OF REMOVAL/DEPORTATION

File No: _____
Date: _____

To any immigration officer of the United States Department of Homeland Security:

_____ (Full name of alien)
who entered the United States at _____ on _____ (Place of entry) (Date of entry)

is subject to removal/deportation from the United States based upon a final order by:

an immigration judge in exclusion, deportation, or removal proceedings
 a designated official
 the Board of Immigration Appeals
 a United States District or Magistrate Court Judge

and pursuant to the following provisions of the Immigration and Nationality Act:

I, the undersigned officer of the United States, by virtue of the power and authority vested in the Secretary of Homeland Security under the laws of the United States and by his or her direction, command you to take into custody and remove from the United States the above-named alien, pursuant to law, at the expense of:

(Signature of immigration officer)

(Title of immigration officer)

THESE ARE VISUAL CUES THAT THIS IS AN IMMIGRATION WARRANT

IF A JUDICIAL WARRANT IS VALID

To be valid:

- Issued by a judicial court;
- Signed by a state or federal judge or magistrate (not merely authorized by an immigration judge or agent within the Department of Homeland Security or ICE);
- State the address of the premises to be searched (check for your school's exact address); and
- Executed within the limited time period specified on the warrant

1

School staff must comply

2

School should contact parent of child identified

3

Provide support for students & school climate

STUDENT RECORDS & FERPA PROTECTIONS

STUDENT RECORDS AND FERPA PROTECTIONS

General Rule:

- Schools are prohibited from releasing personal information in student's education records without written consent of parent/guardian or eligible/adult student

Exceptions include:

- Schools may disclose to LEO only IF they have a **valid court order or subpoena**
 - Attorney review for valid judicial order
 - Right to challenge - Inform parent/guardian or eligible student before release of info
- **Health or safety emergency**
 - Extremely limited: actual imminent, specific to particular school

DIRECTORY INFORMATION

Defined: information contained in the education records of a student that would **not generally be considered harmful or an invasion of privacy if disclosed.**

School decides, but often includes: name, address, telephone listing, date and place of birth, participation in activities and sports, dates of attendance. Consider narrowing.

Families can opt out. Schools must provide notice annually; can and should reissue now.

School may disclose to 3d parties without consent IF proper notice given. Lawyer should review requests.

SCHOOL SECURITY OFFICERS (SRO) MUST FOLLOW FERPA

SRO access education records/ info only if:

- designated as “school official” to fulfill “legitimate educational interest”

Security officer is only considered a "school official" if:

- school has direct control over the officer’s maintenance and use of education records

Legitimate educational interest

- Review of educ record is required to fulfill the individual’s professional responsibility

Schools need advance notice to parents:

- informs parents of the criteria for the terms "school official" and "legitimate educational interest" in annual FERPA notification letter

Recommended:

Districts educate school security officers about legal protections for immigrant students

Inform the security officers that if they engage in immigration enforcement activities, they run risk of violating federal and state law

Districts require school security staff to commit - through a signed agreement or official policy - not to:

- Inquire about immigrations status
- Engage in immigration enforcement activities
- To detain students and family members for purposed of immigration enforcement

FERPA VIOLATIONS

- ❖ Complaint process to US Dept of Ed
- ❖ Loss of federal funds to school
- ❖ Disciplinary action for staff
- ❖ 5 Year Ban for CBO violation

- ❖ No private right of action under FERPA
- ❖ Other damages may be subject to private suit on other claims

Remember:
FERPA exception for disclosing without consent based on court order / subpoena requires **VALID COURT ORDER** or **SUBPOENA** - not admin immigration request

RECOMMENDED PROTOCOL FOR SCHOOLS

SUGGESTED SCHOOL PROTOCOLS FOR ICE CONTACT

school prep and process

Consult with legal counsel to prepare for immigration enforcement

Create Welcoming policy & protocol; Train all staff

Clearly mark public and non-public areas

If ICE agents come to school,

- take/copy papers,
- tell agent to wait outside,
- immediately inform [Principal] who consults with [Superintendent] and Attorney

attorney

Attorney reviews any requests from ICE, and holds agents to limits in warrant/subpoena

Observe and document any actions by agents on school property. Make copies of officer ID and warrants/subpoenas

SUGGESTED SCHOOL PROTOCOLS FOR ICE CONTACT

supports for parent and student

Communicate with all families in multiple languages: policy, protocol, commitment

Provide all families with forms to update Emergency Contact & Permissions to Pick Up Children

Reconsider data maintained; Provide all families Directory Opt Out forms

Share community resources & rights information

Ask & provide more staff in areas of concern (e.g. school perimeter at open/release times)

Support those with attendance concerns to identify solutions

RESOURCES FOR FAMILIES

Additional resource links provided

Form to update
emergency
contacts, permission
to pick up

Non-parent
caregiver enrollment
(1302)

Family
preparedness,
temporary custodian
considerations

Individual's rights
when engaging with
ICE

If family member is
detained, seek legal
advice from
reputable
immigration attorney

MORE QUESTIONS?

EDUCATION LAW CENTER PA

215-238-6970 (Philadelphia) 412-258-2120 (Pittsburgh)
intake@elc-pa.org

HIAS PENNSYLVANIA

215-832-0900
www.hiaspa.org

ACLU OF PENNSYLVANIA

Intakes/Referrals (statewide): <https://complaints.aclupa.org/>