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# GUIDANCE ON IMMIGRATION ISSUES



**This is summarized version of NEA's original *Guidance on Immigration Issues January 2025.***

Material contained in this document was taken directly from the NEA [Guidance on Immigration Issues](#).



The following guidance lays out information regarding immigration and schools, including information around enrollment issues, *Plyler v. Doe*, and Safe Zones resolutions, how educators can safely engage in immigration advocacy, and a FAQ around mass raids.

NEA strongly encourages schools and school districts to adopt a Safe Zones policy that outlines what educators and staff should do if ICE attempts to engage in immigration enforcement at schools. Hundreds of school districts around the country already have adopted a Safe Zones policy.

# Immigration & Schools 101

All students have a right to enroll in public school, **regardless of their immigration status.**

- Under the U.S. Constitution, public schools must teach all students free of charge, regardless of whether they are undocumented.
- States cannot withhold state funding for K-12 education because undocumented students are enrolled, and school districts cannot deny enrollment based on immigration status.
- Sometimes called a “*Plyler* right,” the understanding that undocumented students may not be denied access to public education was first recognized by the U.S. Supreme Court in its decision in *Plyler v. Doe* (1982).

Students have the right to attend school without having to present a green card, visa, social security number, or any other proof of citizenship.

- Schools should not inquire about students’ or their parents’ immigration status.
- Schools cannot deny enrollment to students because they provide a birth certificate from another country.
- Inquiring about immigration status or citizenship could violate *Plyler* rights by chilling undocumented students from attending schools.

Schools can require proof of residency in the appropriate school or district boundary.

- A state or district may establish bona fide residency requirements and thus might require that all prospective students show some proof of residency.
- Districts must permit parents to establish residency by providing a variety of documents as proof of residency and cannot require documents that would bar or chill undocumented students from attending.
- Such documents include: a telephone or utility bill, mortgage or lease document, parent affidavit, rent payment receipts, a copy of a money order made for payment of rent, or a letter from one of the parent’s employers. Schools cannot apply different residency requirements to immigrant students than they do to others.
- Homeless students, as defined by the Federal McKinney-Vento Homeless Assistance Act, 42 U.S.C. §§ 11301 et seq., must not be required to furnish proof of residency within the district under any circumstance. Homeless children and youth have a federal legal right to enroll in school, even if their families cannot produce the documents establishing residency.

Schools can require proof of age for enrollment.

- Schools can use birth certificates to establish a student's age but cannot do so in a way that unlawfully bars or prevents an undocumented student, a student whose parents are undocumented, or a homeless student from enrolling in and attending school.
- Schools should inform parents that alternatives to birth certificates are allowed, and allow alternative documentation of age such as a religious, hospital, or physician's certificate showing date of birth; an entry in a family bible; an adoption record; an affidavit from a parent; a foreign birth certificate; previously verified school records; or any other documents permitted by law. Foreign-born students must not be barred from attending school.

## **IMMIGRATION ENFORCEMENT AT SCHOOLS—THE IMPORTANCE OF SAFE ZONE POLICIES**

Since 2011, the Department of Homeland Security (DHS) has listed schools as “sensitive locations” where Immigration and Customs Enforcement (ICE) arrests, interviews, or searches should not take place absent unusual circumstances. In 2021, the Biden administration issued a [new policy](#) expanding the areas protected from enforcement beyond K-12 schools to pre-K through post-secondary schools, and places where children gather such as playgrounds, recreation centers, bus stops, childcare centers, and group homes for children.

[On January 20, 2025, the Trump Administration rescinded the policy.] It is important to put protections in place at the local level that limit immigration enforcement at schools. Countless school districts around the country have already passed Safe Zones resolutions to do so. Such resolutions:

- Make clear that your school district is a welcoming place for all students, prohibit the collection of student immigration information and establish procedures for responding to immigration enforcement.
- You need to understand that a Safe Zone resolution does not provide immunity should you decline to obey directives from law enforcement. Rather, it provides steps that you should request that law enforcement follow. If law enforcement refuses to cooperate, that becomes a matter for district legal counsel and courts to determine. You should not put yourself or those around you at risk to enforce the requirements.
- Educators should never physically interfere with or obstruct an immigration officer in the performance of his or her duties as this could escalate the situation and could endanger both the educator and students.
- If your school district has not yet adopted a Safe Zones resolution or other policy for all school staff to follow if immigration officers show up at school, the following information describes what educators should do.
- If immigration officers attempt to enter a school's campus, educators should direct ICE/CBP agents to the school district Superintendent. The Superintendent should request to see written legal authorization and verify the identity of the agents. It is important for the Superintendent to review, with legal counsel, what the immigration officer provides as such legal authorization. There is a distinction between an ICE administrative warrant and a traditional federal court warrant. School districts may respond differently depending on the type of warrant.

- An ICE administrative “warrant” is the most typical type of “warrant” used by immigration officers. It authorizes an immigration officer to arrest a person suspected of violating immigration laws. It is not a warrant within the meaning of the Fourth Amendment of the U.S. Constitution because an ICE warrant is not supported by a showing of probable cause of a criminal offense and is not issued by a court judge or magistrate.
- An ICE warrant does not grant an immigration officer any special power to compel school officials to cooperate and is not a “court order” that would, under FERPA, allow a school to disclose educational records without parent or guardian consent.
- A federal or state court warrant is issued by a federal or state court judge. A school official should act in accordance with district policy when presented with a federal or state court warrant.
- An administrative subpoena is a document that requests production of documents or other evidence and is issued by an immigration officer. School districts do not need to immediately comply with the ICE administrative subpoena. If an immigration officer arrives with an administrative subpoena, the school district may decline to produce the information sought and may choose to challenge the administrative subpoena before a judge.

Under federal law, schools cannot turn over personally identifiable student records to police, federal agents, or immigration officials without the written consent of a parent or guardian, unless the information is requested through a subpoena or court order such as a judicial warrant.

- Schools can disclose students’ “directory information” without the family’s consent unless the school district is notified that the family has “opted out” from such sharing.

Remember that both federal and state and in many places local law protects students from discrimination based on race, religion, or national origin. This means that:

- Students cannot be discriminated against because of their birthplace, ancestry, culture or language.
- Students have the right to be free from bullying and harassment based on their race, religion, or national origin, and have the right to learn in an environment free from hateful symbols and derogatory comments.
- School officials have a legal duty to address hateful rhetoric and behavior.
- Schools may not retaliate against anyone—staff or students—who make complaints about racial, religious, or national origin harassment.

# How Educators Can Safely Engage in Immigration Advocacy

Here are some legal parameters for educators to consider in safely and effectively advocating for immigrant students' rights. A more in-depth discussion around educator advocacy rights at school and outside of school can be found in NEA's [Educator Rights Guidance](#).

## 1. Your Protections Are Strongest When You Engage in Activism Outside of Work.

The First Amendment provides legal protection to educators when they are speaking as “citizens” — i.e., outside of their role as district employees. Educators can engage in off-the-clock political and community action to advocate for immigrants and immigrant communities. Educators can, among other things, march, sign petitions, write letters, post statements of support on social media, and call and lobby their federal, state, and local legislators. They can work with NEA and our affiliates, as well as other advocacy groups, to advocate for change such as encouraging their school districts to pass [Safe Zone](#) resolutions.

Educators are most protected when they engage in political discussions or activism outside of work, provided it does not cause disruption at the school. If the activity creates a disruption to the educational environment, an educator may be disciplined.<sup>1</sup> Even speech on social media and private blogs may be unprotected if it concerns the educator's official duties.<sup>2</sup> For that reason, educators should focus such activity on advocacy for immigrant students and not disparage or insult students, parents, or co-workers.<sup>3</sup>

## 2. Protections That Apply to Your Speech at Work are More Limited.

Generally speaking, the First Amendment will not protect you from discipline based on statements made in class,<sup>4</sup> or to students during your usual work hours but outside of class.<sup>5</sup> Tenured teachers are provided due process and should be protected when engaged in classroom discussions about immigration that are both age-appropriate and relevant to the coursework. In addition, some collective bargaining agreements may contain explicit protections for academic freedom, which may protect educators who discuss these issues in a manner that is both age-appropriate and relevant to the curriculum.<sup>6</sup>

Still, tenure protections and academic freedom are not absolute, and teachers risk discipline for classroom discussions that administrators consider too controversial, not age appropriate, or too great a departure from established curricula.<sup>7</sup> School districts may also have policies restricting educators' in-school activism and use of handouts. Educators should seek the school administration's approval of advocacy materials that they plan to distribute to students and their families. y

<sup>1</sup>*Pickering v. Bd. Of Educ.*, 391 U.S. 563 (1968); *Connick v. Myers*, 461 U.S. 138 (1983).

<sup>2</sup>*Rubino v. City of New York*, 950 N.Y.S. 2d 494 (N.Y. Sup. Ct. 2012), *aff's*, 106 A.D. 439, 965 N.Y.S. 2d 47 (2013).

<sup>3</sup>*Richerson v. Beckon*, 337 Fed. Appx. 637 (9th Cir. 2009).

<sup>4</sup>*Garcetti v. Ceballos*, 547 U.S. 410 (2006); *Mayer v. Monroe Cty. Cmty. Sch. Corp.*, 474 F.3d 477 (7th Cir 2007); *Brown v. Chicago Bd. of Educ.*, 824 F.3d 713 (7th Cir. 2016).

<sup>5</sup>*See Johnson v. Poway Unified Sch. Dist.*, 658 F.3d 954 (9th Cir. 2011).

<sup>6</sup>*See Nalichowski v. Capshaw*, No. CIV. 95-5577, 1996 WL 548143, at \*2 3 (E.D. Pa. Sept. 20, 1996) (holding that violations of a collective-bargaining agreement containing an academic freedom provision were grievable); Charlotte Garden, *Teaching for America: Unions and Academic Freedom*, 43 U. TOL. L. REV. 563, 580-82 (2012).

<sup>7</sup>*Hollis v. Fayetteville Sch. Dist. No. 1*, 473 S.W.3d 45 (Ark. App. 2015); *Freshwater v. Mt. Vernon City Sch. Dist.*, 1 N.E.3d 335 (Ohio 2013).

### 3. Engaging in Protests at School Can Be Prohibited.

Educators have even more limited protection against discipline for activism at school including by way of encouraging students to engage in protests that involve civil disobedience or school disruption. Because educators are acting within the scope of their job duties while at school, the First Amendment may not apply when educators wear political buttons or other activist symbols, or urge students to participate in protests.<sup>8</sup> Likewise, because many school districts have policies that explicitly prohibit employees from engaging in political activity during work time, violations of such a policy could qualify as insubordination that justifies discipline, even of a tenured educator.<sup>9</sup> Similarly, students have a right to voice their opinions and engage in certain forms of school protest, but they can be disciplined if such activities become disruptive or disorderly.<sup>10</sup>

### 4. What can faculty teaching in public higher education institutions do to advocate for immigrants?

Like public K-12 educators, faculty members at public colleges and universities can engage in off-the-clock political and community action. In addition, principles of academic freedom under the First Amendment give higher education faculty speech protections while engaged in core academic functions such as teaching and scholarship. Combined with widespread policies on academic freedom in faculty handbooks, collective bargaining agreements, and faculty contracts, faculty speech in the higher education workplace receives more protection than in the K-12 setting. However, faculty are not immune from discipline based upon their speech, and speech may lose First Amendment or institutional policy protection if it is not related to the academic subject or is unduly disruptive.

### 5. Congress Has Criminalized the Harboring of Undocumented Immigrants.

If you provide shelter to students or their families knowing that they are undocumented, you may face criminal consequences. Federal law prohibits a person from concealing, harboring, or shielding from detection someone who that person knows—or should know—to be undocumented.<sup>11</sup> This crime is referred to as “harboring” undocumented immigrants. A conviction can result in up to five years in prison for each immigrant sheltered.<sup>12</sup>

Harboring requires that the person charged must have intended both (a) to substantially help an undocumented person remain in the United States (such as by providing shelter, transportation, money, or other material assistance) and (b) to help the individual avoid detection by immigration authorities.<sup>13</sup> When the act of sheltering an undocumented person is done publicly—*i.e.*, a church offering sanctuary to immigrants in danger of deportation—such actions are grounds to infer an intent to evade immigration authorities and would thus support a charge of criminal harboring.<sup>14</sup> Merely providing a place to stay for an undocumented person, however, should not constitute a criminal offense so long as the person providing shelter does not intend to help the undocumented individual evade immigration authorities.<sup>15</sup>

<sup>8</sup>*Weingarten v. Bd. of Educ.*, 680 F. Supp.2d 595 (S.D.N.Y. 2010); *Birdwell v. Hazelwood Sch. Dist.*, 491 F.2d 490 (8th Cir. 1974).

<sup>9</sup>*Ca. Teachers Ass'n v. Governing Bd. of San Diego Unif. Sch. Dist.*, 53 Cal. Rptr. 2d 474 (Cal. Ct. App. 1996).

<sup>10</sup>*Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969).

<sup>11</sup>8 U.S.C. § 1324(a)(1)(A)(iii) (2005).

<sup>12</sup>8 U.S.C. § 1324(a)(1)(B)(ii) (2005).

<sup>13</sup>*United States v. Vargas-Cordon*, 733 F.3d 366, 382 (2d Cir. 2013); *United States v. Costello*, 666 F.3d 1040, 1047 (7th Cir. 2012); *United States v. You*, 382 F.3d 958, 966 (9th Cir. 2004).

<sup>14</sup>*Costello*, 666 F.3d at 1047; *United States v. McClellan*, 794 F.3d 743, 749 (7th Cir. 2015).

<sup>15</sup>*See, e.g., Costello*, 666 F.3d at 1046 (declining to extend the prohibitions of § 1324 to prosecute a woman whose undocumented boyfriend lived in her house).

# Mass Raids FAQ

Below are some frequently asked questions about what mass deportations and raids could mean and what educators can do to prepare for the possibility of mass raids.

- **Where might “mass raids” take place, geographically?**

- In the past, ICE has conducted raids all over the country – not just in places close to the border. Some of the largest raids have been in interior states like Tennessee.
- We can anticipate that more raids may take place in states and localities where law enforcement has agreed to cooperate with ICE. A list of locations with 287(g) agreements (for cooperation) is available here: <https://www.ice.gov/identify-and-arrest/287g>

- **Who is most likely to be targeted for deportation?**

- The Department of Homeland Security (DHS) has historically questioned a wide range of workers during an audit or raid, regardless of the initial scope of their investigation. We expect similar tactics to continue and even expand.

- **Is someone's family or home at risk during an ICE workplace operation or raid?**

- During a workplace raid or operation, ICE also may visit workers' homes, particularly of workers whose records are found at the company.
- If ICE agents visit a worker's home, families are under no obligation to answer questions or even open the door unless the agents have a warrant signed by a federal or state court judge.
- ICE is known to routinely question people who are present during operations—even if they have no relation to the investigation. If ICE can identify family members or other household members whom they deem a priority for deportation, those individuals also could be detained and taken into immigration custody, sometimes referred to as “collateral arrests.”

- **What might occur during a mass raid?**

- Immigration raids can happen at any given time, but they rely heavily on an element of surprise.
- Historically, raids most frequently have taken place at the individual's workplace or in or near their home.
- Raids often take place during predawn or early morning hours.
- ICE officers often appear in large numbers, may be visibly armed and may not be easily identifiable as ICE agents.

**NOTE: This section was written prior to the rescinding of the “protected areas” policy.**

• **Could raids take place at schools?**

- Under current DHS policy, schools (including colleges, universities, and other institutions of learning) and other locations where children gather (such as daycares and playgrounds) are “protected areas,” (previously referred to as “sensitive locations”) generally protected from immigration enforcement.
- There have been calls to withdraw the “protected areas” policy.
- Even if the “protected areas” policy is withdrawn, it is unlikely there would be mass raids at schools due to the level of disruption that it would cause to all students and educators. But if the policy is withdrawn, we can expect increased immigration enforcement at or near schools.

**If you want more information on the following topics, you can view the entire *Guidance on Immigration Issues* at <https://www.nea.org/resource-library/guidance-immigration-issues>**

- **How can schools help families prepare for the possibility of mass raids?**
- **What plans can schools have in place to prepare for raids that affect families?**
- **How can families find a loved one that is detained?**
- **What can citizen bystanders do during an immigration raid?**
- **What are an employer’s rights and responsibilities during a raid?**
- **What are some other immigration and refugee hotlines that may be of use?**
- **Know Your Rights: Immigration Enforcement**
- **DACA Update**