

IMMIGRANT STUDENTS AND PUBLIC EDUCATION IN NEW JERSEY:

Updated Information for Advocates

New Trump administration policies have created significant concerns for students and their family members who are at risk of detention or deportation because one or more is undocumented or in a protected category facing elimination. This Fact Sheet discusses important rights that remain in effect for such students and parents, as well as steps that the New Jersey Department of Education (NJDOE) has instructed school districts to take to protect immigrant students. This Fact Sheet also identifies issues for which awareness or further action is needed and provides a list of additional resources for immigrant families and their advocates.

All Children Have the Right to a Public Education Regardless of Immigration Status.

In 1982, the United States Supreme Court held that children who enter the United States without legal status may not be denied a public education. This decision, based on the Equal Protection clause of the Fourteenth Amendment, reasons that denying such children a public education “imposes a lifetime hardship on a discrete class of children not accountable for their disabling status,” would “foreclose any realistic possibility that they will contribute in even the smallest way to the progress of our Nation” and fails to advance any substantial state interest.¹

In addition to this federal constitutional protection, the New Jersey Constitution guarantees “the maintenance and support of a thorough and efficient system of free public schools **for the instruction of all the children in the State** between the ages of five and eighteen” [emphasis added] and has done so continuously since 1875.²

New Jersey School Districts May Not Question Immigration Status When Enrolling Students.

The New Jersey statute and regulations governing education implement the constitutional right of all children to a public education, specifically stating no child may be excluded

¹ *Plyler v. Doe*, 457 U.S. 202, 223, 230 (1982). The Fourteenth Amendment bars a State from discriminating against “any person” within the State. *Id.* at 210-215.

² N.J. Const. art. VIII, § 4, ¶ 1. (Virtually identical language appeared in Article IV, § 7, ¶ 6 of the New Jersey Constitution of 1844, as amended in 1875.)

from public school on account of immigration status.³ Under the regulations, school districts may not condition enrollment on the receipt of documentation or information regarding citizenship or immigration/visa status of the student or their parents or guardians and may not directly or indirectly request such documentation or information. A school district cannot require parents to produce a driver's license or social security card, for example, nor can a district insist on any particular form of documentation to prove a prospective student's identity, age, or residence.⁴

Immigration Enforcement May Potentially Occur in Schools, but NJDOE Has Issued Guidance for School Districts to Protect Undocumented Students.

On January 20, 2025, the Trump administration revoked a Department of Homeland Security (DHS) policy under which immigration agents were directed not to conduct enforcement actions at or near "protected areas," including schools, except in certain urgent circumstances. The cancellation of this policy has created justified concerns about the risk of arrests and searches in New Jersey schools. As of the date of this publication, no details are available on the new policy: there is only a statement from DHS that Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) agents would be trusted to use "common sense."⁵ At least two legal challenges have been filed against the policy change.⁶

In response to the Trump administration's action, NJDOE issued guidance for schools⁷ aimed at protecting the right of undocumented students to safely attend school. This guidance (consistent with guidance issued by organizations of school administrators and advocacy organizations) emphasizes that even though protected area status has been eliminated, **immigration agents do not have unlimited access to school premises, students, or student records**. The National Education Association (NEA) has strongly encouraged school districts to adopt Safe Zones policies emphasizing the districts' commitment to protecting immigrant students at school and providing consistent procedures for staff to use in the event of attempted immigration enforcement at school.⁸

Regarding access to schools, NJDOE guidance directs school staff to: (1) contact the Chief School Administrator (the superintendent) if an immigration agent seeks to enter or

³ N.J.S.A. 18A:38-5.1; N.J.A.C. 6A:22-3.3(b). Special rules apply to students applying for F-1 visas.

⁴ N.J.A.C. 6A:22-3.3(b) – 3.4; *Protecting the Rights of Undocumented Students* (Resource 7 below); *Primer – Undocumented Students – NJPSA Legal Department* (Resource 8 below).

⁵ [Statement from a DHS Spokesperson on Directives Expanding Law Enforcement and Ending the Abuse of Humanitarian Parole](#) (Jan. 21, 2025).

⁶ See *Mennonite Church USA et al. v. US Dep't of Homeland Security*, D.D.C., Dkt. No. 1:25-cv-00403 (Feb. 11, 2025); *Denver Public Schools v. Noem and Dep't of Homeland Security*, D.C. Colo., Dkt. No. 1:25-cv-00474 (Feb. 12, 2025).

⁷ NJDOE Broadcast Memorandum (Resource 1 below), linking to new webpage related to immigrant students and families.

⁸ See *Guidance on Immigration Issues* (Resource 9 below).

enters school grounds; (2) obtain the agent’s credentials, the purpose of the access request, and any documentation authorizing school access, and inform the agent that absent exigent circumstances, school personnel must receive direction from the superintendent before allowing access; and (3) allow access and immediately contact the superintendent if the immigration agent declares the existence of an exigent circumstance⁹ and demands immediate access. The guidance further advises that: (1) school superintendents are “not required to grant access to school premises absent an official judicial search warrant or arrest warrant signed by a judge or exigent circumstances”; (2) there is a difference between a judicially-issued warrant, which is required for entry, and a warrant issued by ICE itself, which is not sufficient for entry;¹⁰ (3) school superintendents should consult district legal counsel to assess documentation presented by immigration agents and determine appropriate steps; and (4) front office staff should be trained to recognize a judicial search or arrest warrant.

If ICE requests to interview a student, NJDOE guidance states that schools “are not required to provide information about students’ attendance or locations or to make students available on the spot without the opportunity to consult with the Chief School Administrator and/or district legal counsel.” In a blog post for “education leaders,” AASA, The School Superintendents Association (a national organization), advised that parental consent should be obtained before allowing any interview with a student and that district legal counsel should be consulted.¹¹ Importantly, students should be advised of their right

⁹The term “exigent circumstances” is not defined in the NJDOE guidance, but the word “exigent” is generally defined to refer to a situation requiring urgent or immediate attention. Previous Department of Homeland Security policy included the following examples of exigent circumstances under which enforcement actions were allowed in protected areas: (1) the enforcement action involves a national security threat; (2) there is an imminent risk of death, violence, or physical harm to a person; (3) the enforcement action involves the hot pursuit of an individual who poses a public safety threat; (4) the enforcement action involves the hot pursuit of a personally observed border crosser; (5) there is an imminent risk that evidence material to a criminal case will be destroyed; and (6) a safe alternative location does not exist. See [Memorandum from Alejandro N. Mayorkas, Secretary, Guidelines for Enforcement Actions in or Near Protected Areas](#) (Oct. 27, 2021).

¹⁰The difference between an administrative warrant and a judicial warrant is described in a blog post of AASA, The School Superintendents Association, *Trump Administration Reportedly Rescinds Protected Areas Designation for Schools* (Resource 3 below) and in a publication of the New Jersey Principals and Supervisors Association, *Primer – Undocumented Students – NJPSA Legal Department* (Resource 8 below) (stating “It is important [to] note that a judicially issued arrest or search warrant is a document signed by a Judge and will, in most cases, appear on issuing court’s letter head. A judicial warrant will never be signed by a prosecutor or a law enforcement employee; it must bear the signature of a Judge”). See also National Immigration Law Center, [Warrants and Subpoenas: What to Look Out for and How to Respond](#) (Jan. 2025) (Resource 13 below).

¹¹*Trump Administration Reportedly Rescinds Protected Areas Designation for Schools* (Resource 3 below).

to remain silent and cautioned not to run from ICE agents as information provided by students, or the act of running away itself, may provide probable cause for an arrest.¹²

If ICE requests student records, NJDOE guidance states that school staff must consult with the superintendent before providing any “personally identifiable information” (PII) of a student and that any court order or subpoena for student records must be evaluated to ensure compliance with federal and state laws protecting student privacy. The Family Educational Rights and Privacy Act (FERPA) generally prevents schools from disclosing student records to third parties without parental consent, unless a judicial order or lawfully issued subpoena for the release of student records has been issued by a court.¹³ FERPA and its exception for “directory information” are further discussed below.

Other suggestions for school districts noted by NJDOE and other organizations in recent guidance include preparing for the emotional impact of the new federal policy on students and adopting measures to address deportation-related trauma. School districts should focus on maintaining a welcoming environment for all students, including remaining vigilant to prevent any increase in bullying incidents against immigrant students.¹⁴

Parents with Immigration Concerns Should Contact their School Districts Regarding the Privacy of Student Information and May Request Exclusion from “Directory Information.”

FERPA is a federal law protecting the privacy of student records and granting parents (and adult students) the right to inspect, review and request an amendment of those records. Under FERPA’s general rule, a school may not disclose PII from a student’s education records to third parties without the signed and dated consent of the parent. The existence of a judicial order or lawfully issued subpoena requiring such release is an exception to this privacy rule.¹⁵ Another relevant exception applies to so-called “directory information,” which is defined broadly as “information contained in an education record of a student

¹² *Factsheet: Trump’s Rescission of Protected Areas Policies Undermines Safety for All* (Resource 2 below).

¹³ 20 U.S.C.A. § 1232g (b); 34 C.F.R. §§ 99.30 – 99.31; N.J.A.C. 6A:32-7.5 –7.6.

¹⁴ New Jersey’s Anti-Bullying Bill of Rights Act addresses bullying motivated by ancestry and national origin, in addition to other distinguishing characteristics. See N.J.S.A. 18A:37-14, discussed in ELC’s publication, [Litigating Under the New Jersey Anti-Bullying Bill of Rights Act](#) (2024).

¹⁵ The FERPA regulations generally require school districts to make a reasonable effort to notify the parent in advance of disclosing student information pursuant to a judicial order or lawfully issued subpoena so that the parent may seek “protective action.” 34 C.F.R. § 99.31(a)(9)(i-ii). New Jersey regulations require a notice period of at least three days prior to disclosure. N.J.A.C. 6A:32–7.6(a)(4). In addition to the exception allowing disclosure pursuant to judicial orders or subpoenas, federal and state rules also specify certain parties and organizations that may receive student records without parental consent. 20 U.S.C.A. § 1232g (b); 34 C.F.R. §§ 99.30 – 99.31; N.J.A.C. 6A:32–7.5 -7.6. For purposes of this discussion, the term “parent” includes adult students.

that would not generally be considered harmful or an invasion of privacy if disclosed.”¹⁶ Directory information includes student names, addresses, telephone numbers, and other information typically appearing in school publications such as yearbooks and graduation programs; this information is often shared with outside vendors such as school photographers. School districts must annually give “public notice” (as opposed to personal notice to each parent) of the categories of information it classifies as directory information.¹⁷

Given the Trump administration’s focus on deportation, a concern arises because FERPA allows the release of directory information to immigration officials without parental consent. If school districts include a student’s place of birth in directory information, as they are allowed to do by FERPA,¹⁸ immigration agents can identify which students were born outside of the United States and will have access to the home address of those students. Fortunately, FERPA and the New Jersey regulations allow parents the right to “opt out” of including their child’s information as “directory information.”

Parents with immigration concerns are advised to check which information has been designated by their school district as “directory information”: not all school districts include place of birth in such information. School district websites include a list of “directory information” in the school board policies section of the website - the list may be found by using the keyword “directory.” These websites may also allow parents to opt out of directory information electronically through a parent portal. Parents with concerns, however, are advised to speak directly to school district staff given the risk of unwanted disclosure of information and the fact that opting out is generally allowed only for a limited time period at the beginning of a school year. While it may be technically too late to opt out for the 2024-2025 school year, in light of the significant federal policy change, school districts may be willing to accommodate such requests.¹⁹

¹⁶ 34 C.F.R. § 99.3.

¹⁷ 20 U.S.C.A. § 1232g (a)(5)(B); N.J.A.C. 6A:32-7.1(d).

¹⁸ 20 U.S.C.A. § 1232g (a)(5)(A); 34 C.F.R. § 99.3.

¹⁹ The FERPA statute provides that, after a school district provides notice of the categories of information it designates as “directory information,” the district must “allow a reasonable period of time ... for a parent to inform the [district] that any or all of the information designated should not be released without the parent's prior consent.” 20 U.S.C.A. § 1232g (a)(5)(B). New Jersey regulations refer to a ten-day period for parents to request the exclusion of information from a school directory. N.J.A.C. 6A:32-7.1(g)(7). A New York publication issued jointly by the state’s attorney general, governor, and education department recommends that all school districts review their directory information policies to ensure that they do not include information that may inadvertently disclose a student’s immigration status (for example, place of birth, nationality, or passport information); reissue the district’s annual FERPA notice informing parents and guardians of their right to opt-out of having their student’s information included as directory information (translated into the predominant home languages of students within the district, if possible); and immediately notify parents or guardians if federal or local law enforcement officials have requested their child’s information. See [New York State Guidance on Safeguarding the Rights of Immigrant](#)

Neither School Resource Officers nor Local Law Enforcement in New Jersey are Authorized to Play a Role in Federal Deportation Efforts.

Questions have been raised about the potential role of school resource officers, who are law enforcement officers working in schools, in reporting or removing undocumented students. In New Jersey, school resource officers, and local law enforcement officers generally, are not expected to be involved in immigration enforcement for the following three reasons: (1) ICE has not entered into agreements with New Jersey state or local law enforcement agencies²⁰; (2) New Jersey has in place a statewide policy generally prohibiting local and state law enforcement officers from assisting in the enforcement of federal civil immigration law²¹; and New Jersey's [Memorandum of Agreement Between Education and Law Enforcement Officials](#) does not include immigration matters. School resource officers, moreover, should not be in possession of or entitled to share information about a student's immigration status.²²

Applying for College Financial Aid Raises Concerns About Information Sharing.

Applying for federal financial aid for college requires the submission of detailed information about both students and "contributors" (parents and family members with financial responsibility for the student) and possession of a Social Security or A-Number (formerly Alien Registration Number). For citizen or permanent resident students with one or more undocumented parents, concerns have arisen as to whether information submitted in connection with the Free Application for Federal Student Aid (FAFSA) may in the future be shared with immigration authorities given the Trump administration's focus on undocumented individuals and the fact that the Office of Federal Student Aid is part of the United States Department of Education.²³ Concerns have also arisen with regard to New Jersey's Alternative Financial Aid Application, which is identified online as available to "NJ Dreamers."²⁴

New Jersey law currently requires students in the graduating classes of 2025, 2026 and 2027 to complete either the FAFSA or the New Jersey Alternative Financial Aid Application

[Students](#) (Jan. 2025) (page 3). See also [Know Your Rights: Immigration and Schools](#) (issued prior to the current Trump administration; recommending advocacy to end the practice of collecting place of birth information in school districts that include place of birth in directory information).

²⁰ [Immigration and Customs Enforcement in Schools](#) (Resource 4 below), citing [Delegation of Immigration Authority Section 287\(g\) Immigration and Nationality Act](#) (list of participating entities).

²¹ See [Protecting the Rights of Undocumented Students](#) (Resource 7 below); [Primer – Undocumented Students – NJPSA Legal Department](#) (Resource 8 below); [Directive Strengthening Trust Between Law Enforcement and Immigrant Communities](#).

²² [New York State Guidance on Safeguarding the Rights of Immigrant Students](#) (Jan. 2025) (page 2).

²³ See [Students from mixed-status families face FAFSA fears](#) (Jan. 13, 2025); [NCAN Shares FAFSA Guidance for Mixed-Status Families](#) (Nov. 25, 2024); [Data Protections for FAFSA Information](#) (updated Nov. 26, 2024).

²⁴ See New Jersey's Higher Education Student Assistance Authority [website](#).

as a requirement for graduation unless a waiver is obtained.²⁵ The law, enacted before federal policy changes regarding deportation and protected locations for immigration enforcement, provides that the submission of a waiver will not create adverse consequences for the graduating student.²⁶ However, families should be aware that the waiver will now be part of the student record for each student who completes one. While completion of a waiver could suggest undocumented status, not all students who complete waivers will be undocumented. Moreover, like other student records, waiver forms can only legally be released in accordance with FERPA, as discussed above.

Model waiver forms issued by NJDOE for parents and students require only the names, ages, email addresses, and phone numbers of students, plus the names, email addresses and phone numbers of parents (optional for students 18 and older).²⁷ Under the New Jersey law, school guidance counselors are authorized to complete the waivers for students under 18 when a form signed by the parent or guardian cannot be reasonably obtained, and some may do so in order to ensure that students meet graduation requirements. Parents with immigration concerns should attempt to stay informed of new developments in this area and may contact ELC with questions.

Discrimination Based on Immigration Status is Prohibited in New Jersey Schools.

The New Jersey Law Against Discrimination prohibits discrimination and bias-based harassment in places of public accommodation, including schools.²⁸ This prohibition encompasses discrimination based on immigration status or perceived immigration status.²⁹ Persons experiencing discrimination may file a complaint with the New Jersey Office of the Attorney General, Division on Civil Rights.³⁰

²⁵ See [New Graduation Requirement Reminder: Completing Financial Aid Applications](#) (NJDOE Broadcast Memorandum June 26, 2024).

Note that the New Jersey Alternative Financial Aid Application may be used by undocumented students meeting certain requirements to obtain state aid. See [NJ Dreamers/Information and How to Apply](#).

²⁶ [P.L.2023, c.295](#) (subsection 1(e)).

²⁷ See [New Jersey Financial Aid Application Graduation Requirement Waiver](#).

²⁸ N.J.S.A. 10:5-1 to 50; see [5 Things You Should Know About Protections Against Discrimination and Harassment in School Under the Law Against Discrimination](#) (New Jersey Office of the Attorney General, Division on Civil Rights, Nov. 14, 2019).

²⁹ See [Statement on Civil Rights Protections for Immigrant Communities](#) (Jan. 2025); [We stand with immigrant and refugee communities](#) (stating that the New Jersey Division on Civil Rights “will not share any information from an investigation with any federal immigration agency, unless legally required to do so”).

³⁰ For information on filing a complaint, see [File a Civil Rights Complaint with DCR](#).

Planning Ahead is Recommended to Ensure Student Safety.

An area of great concern is the potential separation of parents from their children under current policies; this is particularly relevant to so-called “mixed status” families in which children are U.S. citizens and parents face deportation risks. Under these circumstances, parents are advised to plan ahead to ensure the safety of their children outside the school setting. It may be helpful for parents to refer to Family Preparedness Plans issued by various advocacy organizations³¹ as a means of organizing the steps their own families need to take. One important step is to designate a trusted individual who is willing and able to assume responsibility for the child in the event that the parent becomes separated from the child. Parents should consider formalizing such an arrangement by granting power of attorney to the individual who will assume responsibility so that organizations such as the school district, doctors’ offices and hospitals, insurance companies, and government agencies, will accept the decision-making authority of that individual. New Jersey law includes a specific provision allowing parents to delegate decision-making authority with respect to their child’s care, education, health, travel, financial interests, and other matters to another person in the event of certain “activating events,” including any immigration proceeding that separates the parent from the child. The granting of power of attorney under this provision lasts for one year, can be renewed (or extended under exigent circumstances), and does not deprive the parent of any parental rights.³²

Other steps that parents are advised to take include: (1) updating contact and emergency contact information with the child’s school, including designating alternate contacts if no parent or guardian is available; (2) leaving instructions and information for individuals responsible for the child including important phone numbers, medication information, and insurance information; (3) keeping an organized file of all important documents (birth certificates, social security cards, insurance cards, etc.) in a safe place and telling the responsible person where to find this; and (4) applying in appropriate circumstances for passports for children who are U.S. citizens.

Additional Information and Assistance

The Resources section below lists sources of additional information for parents and advocates. Free legal services may be available for low-income individuals through the New Jersey Office of New Americans in partnership with community-based legal services

³¹ NJDOE guidance refers to the *Step-by-Step Family Preparedness Plan* issued by the Immigrant Legal Resource Center (Resource 11 below) (note that some information is specific to California). Advocates for Children of New Jersey has also issued a preparation-related document entitled *Emergency Planning in Case of the Detention or Deportation of Parents* in both English and Spanish. *See Guidance for Child Care Providers: Navigating Immigration Policy Changes & Ensuring Family Safety* (Resource 10 below).

³² *See* N.J.S.A. 3B:12-39. The statute, along with a model power attorney form contained in section (h) of the statute, can be found [here](#).

providers (Resource 12 below). The Resources section of this Fact Sheet will be updated periodically and should not be regarded as comprehensive.

For questions about this fact sheet or to refer low-income New Jersey families for free legal assistance, please call ELC at 973-624-1815. Enter extension “300” or press “3” to reach our intake system.

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RESOURCES

1. NJDOE Broadcast Memorandum, <https://www.nj.gov/education/broadcasts/2025/jan/22Special/GuidanceonSchoolRelatedStateandFederalRequirementsPertainingtoImmigrantStudentsandFamilies.pdf> (Jan. 22, 2025), linking new webpage related to immigrant students and families.
2. *Factsheet: Trump’s Rescission of Protected Areas Policies Undermines Safety for All*, <https://www.nilc.org/resources/factsheet-trumps-rescission-of-protected-areas-policies-undermines-safety-for-all/> (National Immigration Law Center, Jan. 21, 2025).
3. *Trump Administration Reportedly Rescinds Protected Areas Designation for Schools*, <https://www.aasa.org/resources/blog/trump-administration-reportedly-rescinds-protected-areas-designation-for-schools> (AASA, The School Superintendents Association, Jan. 21, 2025).
4. *Immigration and Customs Enforcement in Schools*, https://www.copaa.org/page/ICE_in_School (Council of Parent Attorneys and Advocates, Jan. 2025).
5. *Dear Colleague Letter: Resources for Ensuring Equal Access to Education for Immigrant Students*, <https://www.ed.gov/laws-and-policy/key-policy-letters/dear-colleague-letter-resources-ensuring-equal-access-education-immigrant-students> (U.S. Dept. of Educ., Jan. 8, 2025).
6. *What To Do If You’re Approached By Immigration Officials In New Jersey*, <https://www.aclu-nj.org/en/know-your-rights/what-do-if-youre-approached-immigration-officials-new-jersey> (ACLU of New Jersey, 2025).
7. *Protecting the Rights of Undocumented Students*, <https://njpsa.org/protecting-the-rights-of-undocumented-students/> (New Jersey Principals and Supervisors Association, Nov. 27, 2024).
8. *Primer – Undocumented Students – NJPSA Legal Department*, <https://njpsa.org/primer-undocumented-students-njpsa-legal-department/> (New Jersey Principals and Supervisors Association, Jan. 23, 2025).
9. *Guidance on Immigration Issues*, <https://www.nea.org/resource-library/guidance-immigration-issues#safezone> (NEA Office of General Counsel, Jan. 2025). NEA’s

Sample Safe Zone Resolution and Model Policy for use by school boards is found at <https://www.nea.org/sites/default/files/2025-01/sample-safe-zone-resolution-and-model-policy-web.pdf>.

10. *Guidance for Child Care Providers: Navigating Immigration Policy Changes & Ensuring Family Safety*, <https://acnj.org/guidance-for-child-care-providers-navigating-immigration-policy-changes-ensuring-family-safety/#helpful-resources> (Advocates for Children of New Jersey, Jan. 28, 2025).
Note: Under *Helpful Links*, the ACNJ guidance includes a document entitled *Emergency Planning in Case of Detention or Deportation of Parents*, which includes both an emergency planning list (family preparedness plan) and a model power of attorney form. This power of attorney form does not specifically list immigration action as an event activating the power of attorney but includes a space designated “other” in which parents may do so.
11. *Step-by-Step Family Preparedness Plan*, https://www.ilrc.org/sites/default/files/2024-11/Step-by-Step%20Family%20Preparedness%20Plan_ENG_FULL_Nov%202024.pdf (Immigrant Legal Resource Center, Nov. 2024). This resource includes useful, fillable pages suitable for recording important information as well as a checklist of important documents to file. *Note, however, that because the Immigrant Legal Resource Center is headquartered in California, some of the information in its Preparedness Plan is specific to California (as noted therein).*
12. New Jersey Office of New Americans (part of New Jersey Dept. of Human Services) Website: <https://www.nj.gov/humanservices/njnewamericans/> Free Legal Services and Refugee Resettlement Program Information (English and Spanish):https://www.nj.gov/humanservices/njnewamericans/programs/docs/ONA%20Programs%20OnePager_ENG_SP.pdf.
13. *Warrants and Subpoenas: What to Look Out for and How to Respond* (National Immigration Law Center, Jan. 2025) https://www.nilc.org/wp-content/uploads/2025/01/2025-Subpoenas-Warrants_.pdf.