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Knowledge › Skill › Opportunity
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New York State Guidance on Safeguarding the Rights of Immigrant Students

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The Office of the New York State Attorney General (OAG), the Office of New York Governor Kathy Hochul, and the New York State Education Department (SED) share a longstanding commitment to safeguarding the rights of all students, including all noncitizen students. Our offices have previously issued guidance to school districts and state agencies on several topics to ensure that New York's immigrant students have equal access to education and other public services.[1] In light of recent threats of increased federal immigration actions in our communities, we write to reaffirm that schools should remain a safe haven where all students are welcomed and provided a free public education.

This guidance highlights and clarifies relevant resources for school districts regarding their obligations under state and federal law. While the guidance does not address local policies that may afford additional protections, school districts should be aware of all policies governing their operations. To the extent questions arise regarding compliance, we encourage school districts to contact SED and OAG.[2]

I. Enrollment and Registration Requirements

Under New York law, all children ages 5 to 21 who have not received a high school diploma are entitled to a free public education in the district in which they live.[3] School districts may not refuse admission based on national origin, immigration status, race, or language proficiency, among other grounds.[4] The U.S. Supreme Court has likewise long held that students may not be denied a free public education based on their immigration status or that of their parents or guardians.[5] School policies that thwart equal access to education may expose districts to legal liability and undermine school communities.

To ensure all students are welcome in New York schools, we remind school districts that they must not erect discriminatory barriers to enrollment or otherwise discourage immigrant students from registering.[6] Schools must therefore consider various proofs of residency in a district and make publicly available a non-exhaustive list of acceptable forms of documentation.[7] Schools are also prohibited from requesting a Social Security Card or number, or any information that would reveal immigration status at the time of enrollment.[8] And schools must immediately enroll migrant and unhoused students even if they lack proof of residency, immunizations, school records, or other documents typically required for registration.[9] For additional guidance on state and federal obligations with respect to enrollment and registration, school districts are encouraged to consult our 2023 Joint Enrollment Guidance.[10]

Moreover, the federal McKinney-Vento Homeless Assistance Act, as well as New York's Education Law and implementing regulations, create an affirmative obligation for school districts to provide access to education for students who are experiencing homelessness or living in temporary housing, including migrant shelters.[11] Our 2021 Joint McKinney-Vento Guidance elaborates on how school districts should fulfill their legal duties to meet the needs of students experiencing

homelessness.[12] It underscores that such students have a right to immediate enrollment, either at their school of origin or current location, regardless of whether they are in the same district.[13] Schools are responsible for outreach to identify homeless children and youth who need assistance and must also generally provide transportation to and from a student's temporary housing location.[14] For additional resources regarding implementing the McKinney-Vento Act and supporting students experiencing homelessness, school districts are encouraged to contact the New York State Technical and Education Assistance Center for Homeless Students (NYS-TEACHS).[15]

II. Collecting Student Information and Accessing Student Records

Federal and State law, primarily the Family Educational Rights and Privacy Act of 1974 (FERPA), generally prevent the disclosure of personally identifiable information (PII) without parental consent.[16] As applicable here, schools can only release PII to law enforcement officials if it constitutes directory information or is being provided in response to a "judicial order or lawfully issued subpoena."[17] Directory information includes information such as a student's name, address, and telephone number.[18] It does not include immigration status, citizenship, or national origin information or documentation, and schools should not affirmatively seek to collect this information unless required to do so. If such information is necessary for specific program participation or reporting requirements, it should be collected after the enrollment process and anonymized wherever possible. Subject to the above exception for a judicial order or lawfully issued subpoena,[19] schools are not required to provide student information to federal or local law enforcement officials.[20]

FERPA also prohibits schools from disclosing records with information about students' immigration status to School Resource Officers (SRO) without the prior consent of a parent, guardian, or nonminor student, except under certain circumstances where SROs are considered school officials.[21] Even then, SROs may only use PII from education records for the legitimate educational purpose for which the information was sought—that is, to promote school safety and physical security of students. Our offices reiterate that immigration status information does not serve such school safety objectives or legitimate educational purposes. SROs should thus not examine a student's school records for immigration status information.[22] Moreover, SROs' disclosure of such information could also violate FERPA's limitations on disclosure and re-disclosure of PII from education records.[23]

If a federal or local law enforcement official requests student information, a school should not disclose the information and should instead request the subpoena or other documentation upon which the request is based. Upon receipt thereof, the school should contact their attorney before disclosing any student information.[24] Schools should inform SED's Privacy Office of any such request.[25]

In addition, we recommend that school districts:

» Review their directory information policies to ensure that they do not include information that may inadvertently disclose a student's immigration status. This may include place of birth, nationality, or passport information.[26] Moreover, the directory information exception is permissive and may only include information that "would not generally be considered harmful or an invasion of privacy if disclosed."[27] School districts may also wish to implement a limited directory information policy that allows an educational agency "to limit its directory designation to specific parties, for specific purposes, or both."[28] Furthermore, parents and students have the right to opt-out of disclosure of directory information by requesting a directory information opt-out form from their school;[29]

» Reissue the district's annual FERPA notice informing parents and guardians (if any) of their right to opt-out of the district's directory information policy, translated into the predominant home languages of students within the district, if possible;[30]

» Immediately notify parents or guardians (if any) if federal or local law enforcement officials have requested their child's information;[31] and

» Review current information collected to determine whether such information could unnecessarily disclose a student or parent's immigration status and whether collection of the information is required.

Under State law, students and families may file complaints regarding the unauthorized disclosure of PII with SED's Privacy Office.[32]

III. Law Enforcement's Detention, Interrogation, or Removal of Students from School Property

Various federal and state laws, including the New York Education Law, New York Family Court Act, and the U.S. Supreme Court's decision in *Plyler v. Doe*, impose duties on school districts with respect to detention, interrogation, and removal of students from school property. A breach of such duties may expose school districts to liability. Our agencies therefore reiterate and clarify our 2017 and 2019 Joint Immigration Education Guidance to school districts regarding the legal obligations and procedures to follow in the event that law enforcement officers seek access to a student.[33]

As an initial matter, we reaffirm SED's longstanding position that law enforcement officers may not remove a student from school property or interrogate a student without the consent of the student's parent or person in parental relation, except in the limited circumstances explained below.[34] Moreover, New York State Executive Order 170.1 provides that civil arrests by federal immigration authorities may only be executed within state facilities, such as schools, when accompanied by a judicial warrant or order authorizing the custody unless the civil arrest is related to a proceeding within the facility.[35] These protections apply even if law enforcement officers indicate that they are seeking information about a student's welfare. [36]

In addition, these protections also apply in the context of school transportation.[37] School districts that provide transportation to students must offer it "equally to all such children in like circumstances",[38] and districts' duty of care to students in its custody extends to school transportation.[39]

When presented with an oral or written request from a federal or local law enforcement official (including SROs) to detain or interrogate a student, school personnel, including school bus drivers, monitors, and attendants[40]—in service of their role as educators of all—should consider the following, in addition to any district-specific policies:

(1) Do not allow officers inside school property to access a student, except to address an imminent safety situation or where required by law due to a judicial warrant or order;

(2) Remember that there are a variety of forms of documentation that an officer may present, not all of which are legally sufficient to justify turning over records or grant access to a student. You should request documentation from the officer. Such documentation may take various forms, including:

a. Judicial warrant or order: A judicial warrant or order is signed by a United States District Judge or federal Magistrate Judge and demonstrates probable cause to believe an individual has committed a crime or offense.[41]

b. Administrative warrant: An administrative warrant is prepared and issued by federal immigration authorities and directs federal officials to arrest a noncitizen for removal or removal proceedings.[42] It is not a judicial warrant and does not provide probable cause to believe an individual has committed a crime or offense since, as a general rule, it is not a crime for an undocumented individual to remain present in the United States.[43]

c. Immigration "detainer": An immigration detainer is a request, typically issued by federal immigration authorities to local law enforcement agencies, to keep an individual in custody for up to 48 hours beyond when the individual is scheduled for release. It provides federal authorities with additional time to determine whether to take custody of the individual to pursue civil immigration enforcement proceedings.[44]

In addition, school personnel should request to see the officer's badge or other government identification, and should take note of the officer's name and agency for record-keeping purposes.[45]

(3) Before taking any other action, provide the superintendent and school district attorney with the officer's information and documentation, which they will assess in the context of the law enforcement request, and await guidance before proceeding; and

(4) Immediately notify the student's parent or guardian (if any) unless specifically prohibited (for example, by a judicial order).

Our 2019 Joint Immigration Education Guidance also clarified the duty of school districts to ensure that SROs uphold undocumented students' right to attend school without fear of adverse immigration consequences.[46] We remind school districts that SROs shall not detain or interrogate students to determine their immigration status. The Fourth Amendment prohibits SROs from detaining or questioning a student unless the SRO has reasonable suspicion that the student has violated school policy or committed an illegal act that threatened the "special needs of school safety."[47] Such actions only should be undertaken under the direction of a school official, and only to investigate the suspected policy violation or illegal act.[48] A student's immigration status does not implicate school safety or school policy, and will never justify a detention or interrogation on school grounds.[49]

Indeed, such unlawful practices, when predicated on a student's perceived race, ethnicity, national origin, citizenship, or immigration status, may also violate the state Constitution and various state and federal civil rights laws.[50] School districts that allow SROs to violate these legal protections risk liability for failing to adequately train and supervise the SROs in their schools.[51]

Under New York Education Law, school districts that employ SROs must formally define their roles and areas of responsibility through a written contract or memorandum of understanding (MOU) developed with stakeholder input.[52] Our offices advise school districts to incorporate policies and procedures to safeguard the rights of undocumented students into their contracts or memoranda of understanding with SROs,[53] including:

(1) Clearly defined restrictions on SROs' ability to access and redisclose student records containing information that might reveal a student's immigration status. This includes whether SROs are "school officials" entitled to access student records;

(2) Policies prohibiting SROs from questioning students and students' family members about their immigration status;

(3) A commitment from SROs and school personnel not to share information about the actual or perceived immigration status of students or their family members with immigration authorities, unless required to do so by law;[54]

(4) Policies prohibiting SROs from detaining students at the request of immigration authorities, making arrests based on civil immigration warrants, responding to notification or transfer requests from immigration authorities, or otherwise using campus facilities for any immigration enforcement purposes, unless required to do so by law; and

(5) A requirement that all SROs consult with the superintendent or other designated school officer before deviating from the preceding safeguards.

IV. Bullying and Harassment

New York and federal law prohibit harassment and bullying by students or employees based on actual or perceived race, color, national origin, ethnic group, and citizenship or immigration status, among other grounds.[55] School districts are encouraged to consult our agencies' prior guidance and resources on the Dignity for All Students Act to understand their legal duty to create a school environment free from harassment and bullying.[56] These obligations include: developing policies for responding to such behavior; training staff on the district's policies and incorporating them into the district's code of conduct; providing students with instruction that discourages bullying, harassment, and discrimination; and reporting incidents to SED.[57]

In addition, New York law prohibits targeting a person or their property for violence, threats, or harassment because of a person's race, color, national origin, ancestry, gender, religion, age, disability, or sexual orientation.[58] The OAG Hate Crimes and Bias Prevention Unit can launch non-criminal investigations of violations of that law and can provide related resources to school districts.[59]

V. Detention or Deportation of Student Family Members

Students—regardless of immigration status—may have parents, guardians, or other family members who have been detained or deported. School districts are encouraged to ensure that all students and their families provide updated emergency contact information, including secondary emergency contacts. This can be particularly important in the event that immigration enforcement affects a parent or guardian's ability to provide care. We also recommend that school districts develop a plan for how school personnel can access emergency contact information and facilitate students' safe transportation into the care of emergency contacts if necessary. School districts may share information about relevant legal and community resources with students and their families, including those provided in the Appendix.

Some students will inform school staff if they have been contacted by immigration authorities outside of school. If a student receives a letter, phone call, or any other communication from immigration authorities, school personnel should encourage the student to immediately contact their immigration counsel. If the student does not have an immigration attorney, schools may refer students to the New York State Office for New Americans at 1-800-566-7636.

VI. Appendix: Resources

Governor's Office Resources for Students and Families:

- The New York State Office for New Americans assists immigrants in accessing and navigating free services and supports through its statewide network of community-based providers. For more information, visit https://dos.ny.gov/office-new-americans.
- For resources for students experiencing homelessness, visit New York State Office of Children and Family Services, Runaway and Homeless Youth, https://ocfs.ny.gov/programs/youth/rhy.
- For resources for students and adults who experience discrimination based upon race, color, national origin, gender, religion, age, disability, sexual orientation, or other protected classifications, visit the New York State Division of Human Rights at https://dhr.ny.gov/complaint.

New York State Education Department Resources:

- Contact the State Education Department's Privacy Office at:
  - **Address**: 89 Washington Avenue, EB 152, Albany, NY, 12234
  - **Phone**: 518-474-0937
  - **Email**: Privacy@nysed.gov
- To file a privacy complaint alleging that students' personally identifiable information has been disclosed to or accessed by an unauthorized person, visit New York State Education Department, Parents and Students File a Privacy Complaint, https://www.nysed.gov/data-privacy-security/parents-and-students-file-privacy-complaint.
- For questions regarding this guidance, contact the NYSED Office of Counsel at:
  - **Phone**: 518-474-6400
  - **Email**: legal@nysed.gov

Office of the New York State Attorney General Resources:

- To file a civil rights complaint with the Office of the New York State Attorney General, visit: https://ag.ny.gov/file-complaint/civil-rights
- To file a hate crime complaint with the Office of the New York State Attorney General, visit: https://ag.ny.gov/publications/hate-crimes
- For information on attorneys or accredited representatives for immigration related proceedings and resources on avoiding immigration services fraud, visit Office of the New York State Attorney General, Know Your Rights: Immigration Services Fraud, https://ag.ny.gov/publications/immigration-services-fraud.
- To help make a plan for the possibility that a family member is detained or deported, visit Office of the New York State Attorney General, Advanced family planning resources, https://ag.ny.gov/advanced-family-planning-resources
- For questions regarding this guidance, contact Office of the New York State Attorney General Civil Rights Bureau at:
  - **Email**: civil.rights@ag.ny.gov

1. Relevant immigration education guidance issued by OAG and SED includes: OAG and SED, *"Dear Colleague" Letter* (Feb. 27, 2017), *available at* https://www.nysed.gov/sites/default/files/oag-sed-letter-ice-2-27-17.pdf ("2017 Joint Immigration Education Guidance"); \OAG and SED, *"Dear Colleague" Letter* (Aug. 29, 2019), *available at* https://ag.ny.gov/sites/default/files/joint_oag-sed_-_ice_sros_in_schools_w_ag_signature.pdf ("2019 Joint Immigration Education Guidance"); OAG and SED, *"Dear Colleague" Letter* (Feb. 16, 2021), *available at* https://www.nysed.gov/sites/default/files/programs/coronavirus/mckinney-vento-guidance.pdf ("2021 Joint McKinney-Vento Guidance"); OAG and SED, Know Your Rights and *"Dear Colleague" Letter* (Aug. 28, 2023), *available at* https://ag.ny.gov/sites/default/files/letters/kyr-ed.pdf ("2023 Joint Enrollment Guidance"); Memorandum, Jhone M. Ebert to District Superintendents et al. re: Available Guidance and Resources to Combat Harassment, Bullying and Discrimination in Schools in Light of Recent Immigration-Related Actions, SED, Feb. 27, 2017, *available at* https://www.p12.nysed.gov/dignityact/documents/dasa-guidance ("2017 DASA Memo"). *See also* SED Office of Counsel, Statement on Rights of Newly Arrived Immigrants (Aug. 15, 2023), *available at* https://www.nysed.gov/sites/default/files/programs/bilingual-ed/8-14-23-oc-ltr-re-new-arrivals-a.pdf. Executive Order No. 6, Oct. 8, 2021, continuing Executive Order 170 (E.O. 170), originally issued Sept. 15, 2017, *available at* https://www.governor.ny.gov/executive-order/no-6-continuation-and-expiration-prior-executive-orders and N.Y. Comp. Codes R. & Regs. (N.Y.C.R.R.), Tit. 9, § 8.170, respectively. E.O. 170 prohibits State officers and employees, including law enforcement officers, from inquiring about an individual's immigration status unless necessary to determine eligibility for public benefits or required by law. E.O. 170 also prohibits State officers and employees, including law enforcement officers, from disclosing information to federal immigration authorities unless required by law.

2. *See* Appendix for OAG and SED contact information.

3. N.Y. Educ. Law §§ 3201-02, 3209; N.Y. Exec. Law § 296(4).

4. N.Y. Exec. Law § 296(4); 2023 Joint Enrollment Guidance, *supra* note 1; *see also* 8 N.Y.C.R.R. 154-2.1(a) ("Each school district shall provide English language learners equal access to all school programs and services offered by the school district[.]").

5. *Plyler v. Doe*, 457 U.S. 202 (1982); *see also Hisp. Int. Coal. v. Governor of Ala.*, 691 F.3d 1236, 1247 (11th Cir. 2012) (holding unconstitutional a facially neutral policy that "significantly deters undocumented children from enrolling in and attending school") (citing *Plyler*, 462 U.S.).

6. 2023 Joint Enrollment Guidance, *supra* note 1.

7. *Id*.; 8 N.Y.C.R.R. § 100.2(y).

8. 8 N.Y.C.R.R. § 100.2(y)(3)(i)(a). To the extent school districts must collect information relevant to immigration status pursuant to state or federal requirements, they should do so after the student is enrolled so as to avoid the suggestion that such information will be used in enrollment determinations. 2023 Joint Enrollment Guidance, *supra* note 1, at 1-2.

9. 2023 Joint Enrollment Guidance, *supra* note 1; 42 U.S.C. § 11432(g)(3)(C)(i); N.Y. Educ. Law § 3209(2)(f)(2). To remain enrolled, all students must receive at least the first dose of all required vaccines within 14 days of registration. New York State Department of Health, *School Vaccination Requirements* (revised Aug. 2023), *available at* https://www.health.ny.gov/prevention/immunization/schools/school_vaccines. If a child experiencing homelessness or housing instability "needs to obtain immunizations . . . the enrolling school shall immediately refer the parent or guardian of the child or youth, or (in the case of an unaccompanied youth) the youth, to the local educational agency liaison . . . who shall assist in obtaining necessary immunizations or screenings . . .[.]" 42 U.S.C. § 11432(g)(3)(C)(iii).

10. 2023 Joint Enrollment Guidance, *supra* note 1.

11. 42 U.S.C. § 11431 *et seq*.; N.Y. Educ. Law § 3209 *et seq*.

12. 2021 Joint McKinney-Vento Guidance, *supra* note 1.

13. *Id*.

14. 42 U.S.C. § 11432(e)(3)(E)(i)(III), (g)(6)(A)(i); N.Y. Educ. Law § 3209(4)(c); 8 N.Y.C.R.R. § 100.2(x)(7)(iii)(a)(2).

15. New York State Technical and Educational Assistance Center for Homeless Students (NYS-TEACHS), *available at* www.nysteachs.org; NYS-TEACHS helpline: 1-800-388-2014.

16. 20 U.S.C. § 1232g; 34 C.F.R. § 99; N.Y. Educ. Law § 2-d; 8 N.Y.C.R.R. Part 121, § 200.5(e)(2); N.Y. Gen. Mun. Law § 805-a (prohibiting municipal officers and employees from "disclos[ing] confidential information acquired . . . in the course of [their] official duties[.]"). Revealing confidential information could also be grounds for removal, *see, e.g., Appeal of Nelson*, 49 Ed. Dept. Rep., Decision No. 15,964 (Aug. 14, 2009), *available at* https://www.counsel.nysed.gov/Decisions/volume49/d15964; *Appeals of Ziegelbauer*, 62 Ed. Dept. Rep., Decision No. 18,143 (Jul. 7, 2022), *available at* https://www.counsel.nysed.gov/Decisions/volume62/d18143. Cf. 8 U.S.C. § 1373 (officials may not prohibit or restrict government entities sharing, maintaining, or exchanging information on citizenship or immigration status, but does not create obligation to affirmatively collect or disclose such information).

17. *See generally* 34 C.F.R. § 99.31.

18. Memorandum, Louise DeCandia to School District Superintendents et al. re: Directory Information, SED, Jun. 7, 2023, *available at* https://www.nysed.gov/sites/default/files/programs/data-privacy-security/directory-guidance-final-june-2023.pdf ("DeCandia Memorandum").

19. As explained in the 2017 Joint Immigration Education Guidance, *supra* note 1, limited exceptions to the FERPA nondisclosure rule exist as set forth in the law's implementing regulations. These exceptions include requests made by specifically enumerated individuals of the federal government, but only "in connection with an audit or evaluation of Federal or State supported education programs, or for the enforcement of or compliance with Federal legal requirements that relate to those programs," and all PII must be protected "from further disclosures or other uses," 34 C.F.R. § 99.35(a). Further, a request from ICE or other federal immigration officials to access student PII from education records would not appear to satisfy any of the FERPA exceptions to the general rule that a parent or eligible student must consent to disclosures to third parties.

20. As explained in Section III, school officials should not allow federal and local law enforcement officials to remove students from the school environment for questioning. Additionally, SROs should not assist federal law enforcement officials in immigration enforcement except in the narrow and rare circumstance where there is a formal agreement between the county employing the SRO and ICE lawfully providing the authority to do so.

21. 2019 Joint Immigration Education Guidance, *supra* note 1; 20 U.S.C. §§ 1232g(b)(2)(A), 1232g(d); 34 C.F.R. §§ 99.30, 99.31(a)(1)(i); U.S. Dep't of Educ., Privacy Technical Assistance Center, *School Resources Officers, School Law Enforcement Units, and the Family Education Rights and Privacy Act (FERPA)*, Question 15 at 11-12, *available at* https://studentprivacy.ed.gov/sites/default/files/resource_document/file/SRO_FAQs.pdf ("SROs and FERPA").

22. *Id*.

23. 34 C.F.R. §§ 99.31(a)(1)(i); 99.33; 2019 Joint Immigration Education Guidance, *supra* note 1; SROs and FERPA, *supra* note 21.

24. *See* 2017 and 2019 Joint Immigration Education Guidance, *supra* note 1.

25. *See* Appendix for SED Privacy Office contact information.

26. *See* 34 C.F.R. § 99.3 "Directory information."

27. *See id*.

28. DeCandia Memorandum, *supra* note 18; 34 C.F.R. § 99.37(d).

29. DeCandia Memorandum, *supra* note 18.

30. Districts must provide annual notification of FERPA rights to parents. This notice, which should be conspicuously posted on school districts' websites, must identify the district's directory information policy and inform parents of their right to opt-out of providing such information. 2019 Joint Immigration Education Guidance, *supra* note 1; DeCandia Memorandum, *supra* note 18; 34 C.F.R. §§ 99.37(a), 99.7(a)(3)(iii). It must also disclose which categories of individuals operating on school campuses are generally considered school officials with legitimate educational interests in education records. *See* 34 C.F.R. § 99.7(a)(3)(iii).

31. *E.g.* Office of the Massachusetts Attorney General, "Information for schools on ICE requests for access or information," *available at* https://www.mass.gov/info-details/information-for-schools-on-ice-requests-for-access-or-information (last accessed Dec. 22, 2024).

32. *See* Appendix for information on filing a privacy complaint with SED.

33. 2017 and 2019 Joint Immigration Education Guidance, *supra* note 1. As used in our guidance, the terms "federal immigration authorities" and "federal immigration officials" include, but are not limited to, officers from U.S. Immigration and Customs Enforcement ("ICE"), Customs and Border Protection ("CBP"), United States Citizenship and Immigration Services, and their subagencies (including ICE's Enforcement and Removal Operations, ICE's Homeland Security Investigations, and the U.S. Border Patrol within CBP). These terms also include law enforcement officers from other agencies such as the FBI, ATF, or DEA. The term "law enforcement officer" refers generally to any federal, state, or local law enforcement officer, regardless of whether the officer is engaged in immigration enforcement.

34. *See id*.; SED Counsel's Opinion 67 (Mar. 7, 1952) ("[P]olice authorities have no power to interview children in the school building or to use the school facilities in connection with police department work, and the board [of education] has no right to make children available for such purpose. The police authorities must take the matter up directly with the parents."); SED Counsel's Opinion 91 (Jun. 17, 1959) ("[L]aw enforcement officers of any kind may not remove a child from a school building while a child is properly in attendance without permission of the child's parents for questioning" and "law enforcement officers do not have the legal right to interrogate a pupil in the school without permission of the parents."); *see also* SED Counsel's Opinion 148 (Feb. 23, 1965) ("The school particularly does not have custody of pupils for the purpose of authorizing law enforcement officers or other third parties to interrogate pupils or to remove them from the premises for any purpose whatever.") This position is based on various laws including, *inter alia*, the New York Family Court Act (NYFCA), which requires that a police officer must make every reasonable effort to immediately contact a child's parent or anyone responsible for the child's care when a child is taken into the custody of law enforcement, and further holds that such a child cannot be interrogated, unless and until his or her parent or guardian, if present, is advised of the child's rights and afforded an opportunity to attend the interrogation. N.Y. Fam. Ct. Act § 305.2; *see* Matter of Jimmy D., 15 N.Y.3d 417 (2010).

35. Executive Order 170.1, Amendment to E.O. 170, *supra* note 1, originally issued Apr. 25, 2018, at 9 N.Y.C.R.R. § 8.170.1.

36. SED has issued separate guidance on school district procedures for supporting abuse and maltreatment investigations by child welfares agencies. SED, Access to Students by Child Protective Services Workers in a Child Abuse Investigation (Apr. 22, 2016), *available at* https://www.nysed.gov/sites/default/files/programs/student-support-services/memo-cps-access-to-students.pdf; SED, Regulatory Changes Pertaining to Child Protective Services Workers Conducting Interviews of Children in Schools (Nov. 29, 2016), *available at* https://www.nysed.gov/sites/default/files/programs/student-support-services/regulation-change-cps-interview-of-children-in-schools.pdf; *see also* N.Y. Soc. Serv. Law §§ 424 and 425(1); 18 N.Y.C.R.R. 432.3(i)(2)(ii). We note, however, that those procedures are specific to investigations undertaken by state and local child welfare agencies, such as county-level Child Protective Services (CPS) agencies or the Administration for Children's Services (ACS), and do not extend to investigations run by state or federal law enforcement agencies.

37. N.Y. Veh. & Traf. Law § 142 (defining school bus as vehicles used for transportation "to or from school or school activities").

38. N.Y. Educ. Law § 3635(c).

39. *See Pratt v. Robinson*, 39 N.Y.2d 554, 560 (1976) (a school's custodial duty to students who are threatened by third party negligence extends to busing); *see also Williams v. Weatherstone*, 23 N.Y.3d 384, 403 (2014) ("[t]he concept of in loco parentis is the fountainhead of the duty of care owed by a school to its students[.]").

40. *See* 8 N.Y.C.R.R. § 156.3(a)(1), (3)-(4).

41. In some circumstances, a judicial warrant may be signed by a clerk in a federal district court. Fed. R. Crim. P. 9(b).

42. Requesting an officer's name and identification serves an important public safety interest by ensuring that an individual seeking to access a student is, in fact, a law enforcement officer. Whether an officer is legally required to provide their name and identification in addition to a judicial warrant before detaining or interrogating a student may vary depending on the jurisdiction and circumstances. For example, in New York City, a police officer conducting a law enforcement activity generally must identify themselves to the subject of such activity by providing their name, rank and command. N.Y.C. Code § 14-174(b)(1). ICE's website states that "[a]ll ICE law enforcement officers carry badges and credentials and will identify themselves when required for public safety or legal necessity." ICE, Immigration Enforcement Frequently Asked Questions, *available at* https://www.ice.gov/immigration-enforcement-frequently-asked-questions (accessed 10/1/25).

43. *See* U.S. Dep't of Homeland Sec. (DHS), Sample Form I-200, Warrant for Arrest of Alien, *available at* https://www.ice.gov/sites/default/files/documents/Document/2017/I-200_SAMPLE.PDF, or DHS, Sample ICE Form I-205, Warrant of Removal/ Deportation, *available at* https://www.ice.gov/sites/default/files/documents/Document/2017/I-205_SAMPLE.PDF.

44. *See Arizona v. United States*, 567 U.S. 387, 407 (2012) (citation omitted); *see also People ex rel. Wells v. DeMarco*, 88 N.Y.S.3d 518, 530-31 (2d Dep't 2018).

45. *See, e.g.,* DHS, Form I-247D, Immigration Detainer—Request for Voluntary Action, *available at* https://www.ice.gov/sites/default/files/documents/Document/2016/I-247D.PDF. Despite including a check-box for ICE to designate that "Probable Cause Exists that The Subject is a Removable Alien," this does not constitute probable cause to believe that an individual has committed a crime.

46. 2019 Joint Immigration Education Guidance, *supra* note 1.

47. *See id.;* U.S. Const. amend. IV; *In re Gregory M.,* 82 N.Y.2d 588, 594 (1993) (holding that the lower "reasonable suspicion" standard for searching and questioning students only applies where the search is "conducted by school officials for the special needs of school security and not for a criminal investigative purpose"); *see also* SED Counsel's Opinion 148 (Feb. 23, 1965) ("The school particularly does not have custody of pupils for the purpose of authorizing law enforcement officers or other third parties to interrogate pupils or to remove them from the premises for any purposes whatever."); *see also G.M. ex rel. B.M. v. Casalduc*, 982 F. Supp. 2d 1235, 1249-50 (D.N.M. 2013) (collecting Tenth Circuit cases holding that SROs act as school officials when acting to protect school security or enforce school property under the direction of a school official).

48. *See* 2019 Joint Immigration Education Guidance.

49. *See id*.

50. *See, e.g.,* N.Y. Const. Art. 1, § 11; N.Y. Exec. Law § 296(4); N.Y. Civ. Rights Law § 40-c; Title VI, Civil Rights Act of 1964, Pub. L. No. 88-3520, 78 Stat. 252 (1964) (codified as amended at 42 U.S.C. § 2000d) ("Civil Rights Act").

51. *See, e.g., Gonzalez ex rel. Doe v. Albuquerque Pub. Schs.,* No. CIV 05-580 JB/WPL, 2006 WL 1305032, at *3 (D.N.M. Jan. 17, 2006) (denying defendants' motion to dismiss equal protection claim after SROs questioned undocumented students about their immigration status on school grounds); *Benacquista v. Spratt*, 217 F. Supp. 3d 588, 601-02 (N.D.N.Y. 2016) (denying motion to dismiss student's claim that the school district failed to act or supervise an SRO).

52. N.Y. Educ. Law § 2801-a(10).

53. Schools are encouraged to consult New York Civil Liberties Union, *Recommendations for a Memorandum of Understanding Between Schools and Police* (Dec. 13, 2019), *available at* https://www.nyclu.org/uploads/2019/12/mou_recommendations_for_schools_and_police_0.pdf.

54. We recommend school districts' policies include language to the effect of: Nothing in this policy prohibits any local agency from sending to or receiving from any local, state, or federal agency—as per 8 U.S.C. § 1373—(i) information regarding an individual's country of citizenship or (ii) a statement of the individual's immigration status.

55. Dignity for All Students Act ("DASA"), N.Y. Educ. Law §§ 10-18, 801-a, 2801; 8 N.Y.C.R.R. § 100.2; N.Y. Exec. Law § 296(4); Title VI, Civil Rights Act, *supra* note 43. These protections cover students not just on school property but also at school functions and online cyberbullying. N.Y. Educ. Law §§ 11-12.

56. SED, The Dignity Act Resources, *available at* https://www.nysed.gov/student-support-services/dignity-act-resources; *see also* 2017 DASA Memo, *supra* note 1.

57. *Id.*; N.Y. Educ. Law §§ 10-18.

58. N.Y. Civ. Rights Law § 79-n.

59. *See* Appendix for information on filing a complaint with the OAG Hate Crimes and Bias Prevention Unit.