



# Ensuring a Safe and Secure Learning Environment for All

Guidance to Assist New Mexico's K-12 Schools in Responding to  
Immigration Issues

# ENSURING A SAFE AND SECURE LEARNING ENVIRONMENT FOR ALL

## Guidance to Assist New Mexico's K-12 Schools in Responding to Immigration Issues

### Introduction

New Mexico prioritizes equality in education and a welcoming, encouraging, and safe educational environment. New Mexico's public schools serve approximately 300,000 children and their families.<sup>1</sup> The State's educators are tasked with maintaining a secure and peaceful learning environment for all students, regardless of nationality or immigration status. The schools' treatment of immigration issues is especially important in New Mexico given the number of school-age children with at least one immigrant parent.

According to the Migration Policy Institute, as many as 4,000 undocumented children between the ages of 3 and 17 years are enrolled in New Mexico public schools, and at least 26,000 undocumented parents reside with children in New Mexico.<sup>2</sup> The State and its educators must do everything within their control to make all New Mexico schools safe for its students and families.

Recent immigration enforcement threats raise the prospect of immigrant families being in fear of sending their children to school. Although New Mexico cannot control the actions of federal immigration enforcement agencies, federal and New Mexico law empowers schools to welcome all students and to reassure them of their educational rights and opportunities.

The New Mexico Constitution secures the right to a free education for "all children of school age in the state."<sup>3</sup> Similarly, the United States Constitution protects public educational access without discrimination based on immigration status. In *Plyler v. Doe*, the United States Supreme Court recognized that undocumented immigrants are guaranteed due process and equal protection rights under the Constitution and that children cannot be denied equal access to a public education based on their immigration status. Therefore, schools must provide free public education to all students regardless of their immigration status and regardless of the citizenship status of a student's parents or guardians.<sup>4</sup>

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<sup>1</sup> New Mexico Public Education Dept., Annual State, Districts and Schools Attendance Report, available at <https://webnew.ped.state.nm.us/bureaus/safe-healthy-schools/attendance-for-success/annual-state-districts-and-schools-attendance-report/> (as of Jan. 2, 2025).

<sup>2</sup> <https://www.migrationpolicy.org/data/unauthorized-immigrant-population/state/NM> (as of Jan. 2, 2025).

<sup>3</sup> N.M. Const. art. XII, § 1.

<sup>4</sup> *Plyler v. Doe*, 457 U.S. 202, 210-214 (1982); see *Matthews v. Diaz*, 426 U.S. 67, 77 (1976) (holding that the Fifth Amendment protects undocumented immigrants from discrimination by the federal government).

New Mexico law affirms the equal educational rights of immigrant students. In New Mexico, all school-aged children have a right to a public education<sup>5</sup> and, absent an exception or waiver, must be enrolled in school until graduation or the student reaches the age of eighteen.<sup>6</sup> An equal educational opportunity, once the state has undertaken to provide it, is a right that must be made available to all on equal terms.<sup>7</sup> New Mexico's state constitution guarantees, without qualification, that

children of Spanish descent in the state of New Mexico shall never be denied the right and privilege of admission and attendance in the public schools or other public educational institutions of the state, and they shall never be classed in separate schools, but shall forever enjoy perfect equality with other children in all public schools and educational institutions of the state.<sup>8</sup>

Further, New Mexico law requires that all students and staff be afforded a safe and secure learning environment pursuant to the Safe Schools for All Students Act.<sup>9</sup> New Mexico requires each district superintendent or charter school administrator to be accountable for student safety, including ensuring “that all buildings, grounds and facilities provide a safe and orderly environment for public use.”<sup>10</sup>

This Guidance is not legal advice. School districts and charter schools should consult with their attorneys when formulating their own policies and practices.

## **RESPONDING TO REQUESTS FOR ACCESS TO SCHOOL GROUNDS FOR IMMIGRATION-ENFORCEMENT PURPOSES**

### **Governing Law**

Police officers and immigration officers may lawfully be present in any place on school grounds that is open and accessible to the public. Immigration officers may ask immigration questions of students and staff in those locations without having any basis to believe the individual is in the United States unlawfully. School administrators wishing to foster a learning environment that limits the fear of immigration enforcement on school grounds can establish policies restricting public access and requiring visitor authorization before entering school grounds.<sup>11</sup> Police officers may access non-public areas of a school if they have the school's prior consent, a judicial warrant authorizing entry, or a genuine public

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<sup>5</sup> NMSA 1978, § 22-12A-3 (2019)

<sup>6</sup> NMSA 1978, § 22-12A-4 (2019); see N.M. Const., art. XII, § 5.

<sup>7</sup> *Natonabah v. Bd. of Ed. of Gallup-McKinley Cnty. Sch. Dist.*, 355 F. Supp. 716, 724 (D.N.M. 1973).

<sup>8</sup> NM Const., art. XII, § 10.

<sup>9</sup> NMSA 1978, § 22-35-1 through -5 (2019).

<sup>10</sup> 6.29.1.9 NMAC; see also 6.12.6.8(D)(8) NMAC and 6.19.3 NMAC.

<sup>11</sup> See *Lovern v. Edwards*, 190 F.3d 648, 655-56 (4<sup>th</sup> Cir. 1999) (observing that there is no right of public access at a school).

safety emergency. In contrast, immigration authorities may only enter non-public areas of a school after obtaining the school’s consent or a court order. Moreover, school administrators and staff should be aware that the federal government cannot commandeer state and local governments, that is, the federal government cannot require school employees to assist in the enforcement of federal immigration law.<sup>12</sup>

#### **Fourth Amendment Principles**

Immigration agents, like law enforcement officers, must comply with the Fourth Amendment. In a public place, the Fourth Amendment permits police officers to approach an individual and ask questions without any level of suspicion as long as the officer does not act in a manner that would cause a reasonable person to believe they are not free to leave.<sup>13</sup> Immigration officers, while in a public place, may ask questions about a person’s citizenship or immigration status.<sup>14</sup> Officers may not detain an individual in the absence of reasonable suspicion.<sup>15</sup> Law enforcement officers may make a warrantless arrest in a public place based on probable cause without violating the Fourth Amendment even in the absence of exigent circumstances.<sup>16</sup> Immigration officers are permitted to make a warrantless arrest if they witness a person entering or trying to enter the United States unlawfully or if they have reason to believe the individual has committed a federal felony. Otherwise, they may only arrest someone without court order if they have reason to believe a person entered the country unlawfully and “is likely to escape before a warrant can be obtained.”<sup>17</sup>

#### **Protected Area Policies**

Under previous presidential administrations, both Republican and Democrat, schools were considered “protected areas” warranting caution before any immigration actions were taken

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<sup>12</sup> See *New York v. United States* (1992) 505 U.S. 144, 161 (holding that the Tenth Amendment prevents Congress from using legislative or executive actions to compel U.S. states to enforce federal programs); see also *Printz v. United States*, 521 U.S. 898, 925, 935 (1997) (holding that the federal government cannot circumvent the Tenth Amendment by directly conscripting state or local officers to implement federal directives).

<sup>13</sup> *State v. Williams*, 2006-NMCA-062, ¶ 11, 139 N.M. 578.

<sup>14</sup> *INS v. Delgado*, 466 U.S. 210, 220-21 (1984).

<sup>15</sup> *Terry v. Ohio*, 392 U.S. 1 (1968).

<sup>16</sup> See *Payton v. New York*, 445 U.S. 573, 590-91 (1980). The New Mexico Constitution provides greater protection and requires probable cause and either exigent circumstances or a warrant to make a public arrest, *Campos v. State*, 1994-NMSC-012, ¶ 14, 117 N.M. 155, and the New Mexico Constitution applies to the actions of federal officers for purposes of determining whether evidence is admissible in a state court proceeding. See *State v. Cardenas-Alvarez*, 2001-NMSC-017, ¶ 18, 130 N.M. 386. These heightened constitutional protections, however, do not restrict the ability of federal agents to follow and enforce federal law. *Id.* ¶ 19.

<sup>17</sup> 8 C.F.R. § 287.8(c).

on school grounds.<sup>18</sup> This policy did not prohibit enforcement actions at schools but sought to avoid such activity on or near schools unless prior approval was obtained from an appropriate supervisory official or exigent circumstances existed. This policy reflects concerns about disrupting the educational environment, risking student safety, and undermining public confidence in immigration authorities if they were permitted to enforce immigration law on school grounds.

Because federal policies are subject to change and the current administration has announced a focus on immigration enforcement and mass deportation, school districts and charter schools may decide to implement policies that would ensure a safe and effective learning environment for all students.

### ***Warrants and Subpoenas for Immigration Enforcement***

#### ***ICE Administrative Warrant***

Immigration officers frequently rely on ICE administrative warrants. These documents authorize an immigration enforcement officer to arrest a person suspected of violating immigration laws when that person is in a public location, and these documents are issued by a specifically authorized immigration official. An ICE administrative warrant is not a warrant within the meaning of the Fourth Amendment, like a traditional arrest warrant, because it is not issued by a neutral magistrate and is not based on a finding that probable cause exists to believe that someone committed a criminal offense.

ICE warrants do not authorize immigration officials to access nonpublic, restricted areas of a school or to search school records. An ICE administrative warrant also is not a “court order” that would allow a school to disclose a student’s educational records without the consent of a parent or guardian. The Family and Education Rights and Privacy Act of 1974 (FERPA) generally requires that schools withhold information that could identify students to third parties, including federal immigration officials.<sup>19</sup> Although school personnel should not interfere with an immigration officer’s enforcement duties, school personnel are not required to assist with the apprehension of a person identified in an ICE administrative warrant and cannot be required to help enforce federal immigration law.<sup>20</sup>

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<sup>18</sup> See Alejandro N. Mayorkas, *Memorandum, Guidelines for Enforcement Actions in or Near Protected Areas* (Oct. 27, 2021) [https://www.dhs.gov/sites/default/files/publications/21\\_1027\\_opa\\_guidelinesenforcement-actions-in-near-protected-areas.pdf](https://www.dhs.gov/sites/default/files/publications/21_1027_opa_guidelinesenforcement-actions-in-near-protected-areas.pdf) (last accessed Jan. 7, 2024); see also U.S. Customs and Border Protection, *DHS Protected Areas FAQs* (April 11, 2024) <https://www.cbp.gov/border-security/dhsprotected-areas-faqs> (last accessed Jan. 7, 2025).

<sup>19</sup> 20 U.S.C. § 1232g; 34 C.F.R. part 99.

<sup>20</sup> See *Printz v. United States*, 521 U.S. 898 (1997).

### **Federal Court Warrant**

A judicial warrant issued by a federal district or magistrate judge based on a finding of probable cause satisfies the Fourth Amendment for purposes of authorizing the search or seizure of property, entry into a nonpublic place to arrest a person named in an arrest warrant known to be in that place, and the arrest of a named person. School personnel should promptly comply with a federal court warrant, and school policies may instruct school personnel to alert administrators when such a warrant is executed.

### **Administrative Subpoena**

An administrative subpoena is a document that requests production of documents or other evidence and is typically issued by an immigration officer.

As with most subpoenas, including those issued by a federal court or federal grand jury, immediate compliance with an administrative subpoena is not typically required because subpoenas can be challenged in court. It would be advisable to instruct school personnel to alert administrators about the service of an administrative subpoena to allow for consultation with counsel before compliance. Because an administrative subpoena is issued by an immigration officer, the subpoena is not a court order that would, under FERPA, allow a school to disclose educational records for a student without the consent of a parent or guardian.

### **Notice to Appear**

A Notice to Appear (NTA) is a charging document issued by ICE, Customs and Border Patrol (CBP), or the United States Customs and Immigration Service (USCIS) seeking to commence formal removal proceedings against an individual before an immigration court. An NTA contains allegations about a particular person's immigration status. An NTA notifies an individual that he or she is expected to appear before an immigration judge on a certain date. An NTA does not authorize an individual's arrest by immigration enforcement authorities or local law enforcement authorities.<sup>21</sup>

An NTA does not require school employees to take any action or grant an officer engaged in immigration enforcement any special power to induce cooperation. An NTA does not authorize access to nonpublic areas of a school. An NTA also does not legally require a school to allow authorities to search student or other school records.

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<sup>21</sup> *Arizona v. United States*, 567 U.S. 387, 407 (2012).

## GATHERING AND HANDLING STUDENT AND FAMILY INFORMATION

### Governing Law

During the student enrollment process, school districts and charter schools are expected to verify certain information, including a student’s residency in the district and age. However, schools cannot ask about a student’s or their parents’/guardians’ citizenship or immigration status as part of this verification.<sup>22</sup> Schools may not bar or discourage a child from enrolling in school because he or she lacks a birth certificate or passport or has one from a foreign country.<sup>23</sup> A school’s refusal to accept alternative proof of residency or age based on a child’s or a parent’s/guardian’s actual or perceived race, color, national origin, citizenship, or immigration status may constitute a violation of federal or New Mexico civil rights law.<sup>24</sup>

Federal law and New Mexico law prohibit schools from engaging in any practices with the purpose or effect of discriminating against students on the basis of race, color, or national origin. Inquiries into a student’s or parent’s immigration or citizenship status may have such a discriminatory effect.<sup>25</sup> School districts and charters schools should review their student enrollment, residency, and data-collection policies and practices, not only to ensure that they comply with these federal and state laws, but also to safeguard against inadvertently discouraging immigrant children from enrolling in or attending school because of the content of the enrollment forms or the mechanics of the enrollment process.

Schools may ask for (but parents are not required to provide) certain national-origin-related information, such as a student’s place of birth, U.S. entry date, and the date the student first attended school in the United States, to comply with federal or state reporting requirements for special programs (for example, for reporting on language instruction programs for English

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<sup>22</sup> See U.S. Dept. of Justice & U.S. Dept. of Education, Dear Colleague Letter: School Enrollment Procedures, *supra*, at 1-2; see also U.S. Dept. of Justice & U.S. Dept. of Education, Fact Sheet: Information on the Rights of All Children to Enroll in School, *supra*, at 1.

<sup>23</sup> See U.S. Dept. of Justice & U.S. Dept. of Education, Dear Colleague Letter (Regarding School Enrollment Procedures) (May 8, 2014) at 2, available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201405.pdf> (as of Jan. 2, 2025); see also U.S. Dept. of Justice & U.S. Dept. of Education, Fact Sheet: Information on the Rights of All Children to Enroll in School (May 8, 2014), available at <https://www.ed.gov/media/document/dcl-factsheet-201405.pdf> (as of Dec. 2, 2025); U.S. Dept. of Justice & U.S. Dept. of Education, Information on the Rights of All Children to Enroll in School: Questions and Answers for States, School Districts and Parents (“Questions and Answers”) (May 8, 2014), available at <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/08/plylerqa.pdf> (as of Dec. 2, 2024).

<sup>24</sup> See 42 U.S.C. § 2000d; U.S. Dept. of Justice & U.S. Dept. of Education, Questions and Answers, *supra*, at 2, 4.

<sup>25</sup> See 42 U.S.C. § 2000d; 28 C.F.R. § 42.104(b)(2); see also *Committee for Immigrant Rights of Sonoma County v. County of Sonoma*, 644 F.Supp.2d 1177, 1206-1207 (N.D. Cal. 2009) (holding that Plaintiffs stated a claim under § 2000d on the grounds that sheriffs’ deputies relied on race to detain and question them on their immigration status).

learners).<sup>26</sup> However, schools may not use the acquired data to discriminate against immigrant students or prevent children from enrolling in or attending school if their parents or guardians choose not to provide this information.<sup>27</sup> To avoid deterring initial school enrollment of immigrants or their children, agencies should collect this information separately from the school enrollment process. No law requires schools to collect social security numbers for enrollment purposes, and they are therefore encouraged to refrain from doing so.

Schools should have written policies and procedures for gathering and handling confidential student information. It would be advisable for school districts and charter schools to review student enrollment policies, practices, and forms to ensure that any information or documents required for establishing residency do not risk negatively affecting student enrollment.

If a state or local government possesses information about citizenship or immigration status, federal law provides that they may not prohibit or restrict employees from sending or receiving such information to or from federal immigration enforcement authorities, if such information is requested.<sup>28</sup> Federal law, however, restricts schools from sharing personal information, and those federal restrictions would apply with equal force to student personal information, such as information about a student's citizenship or immigration status, contained in education records.<sup>29</sup> Under FERPA, federal funding for educational institutions may be withheld based on an institution having a policy of releasing educational records or students' personally identifying information (other than directory information) without the written consent of the student's parents.<sup>30</sup> The New Mexico Public School Code and its accompanying regulations also include overlapping and additional protections against the disclosure of students' educational records or personally identifying information.<sup>31</sup>

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<sup>26</sup> See 20 U.S.C. §§ 7011(5), 7013, 7014.

<sup>27</sup> See 28 C.F.R. § 42.104(b)(2).

<sup>28</sup> 8 U.S.C. § 1373(a), (b). This federal law applies only to government entities, such as local education agencies. The law does not prohibit private schools from restricting employee communication with federal immigration officials regarding an individual's immigration status.

<sup>29</sup> 20 U.S.C. § 1232h(c)(2).

<sup>30</sup> 20 U.S.C. § 1232g(b)(1), (b)(2).

<sup>31</sup> See, e.g., NMSA 1978, § 22-1-11(E)(3)(f), (5)(c), (H) (2010, as amended through 2015) (ensuring the privacy of any person whose personally identifiable information is contained in New Mexico's education accountability data system).