Preparing the School Employee, Employer, and Student for Immigration Enforcement Actions

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Abstract:
From the perspective of an immigration attorney, a school attorney, and an ICE official learn what employers should do when contacted by a government agent, how to devise a school action plan for raids in the community, and what immigration compliance files should contain.
PREPARING THE SCHOOL EMPLOYEE, EMPLOYER AND STUDENT FOR IMMIGRATION ENFORCEMENT ACTIONS

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INTRODUCTION

We are living in an era of increased immigration enforcement, with news headlines regularly featuring worksite raids and investigations instigated by the Immigration and Customs Enforcement (ICE) Agency. In fiscal year 2008, ICE made approximately 1,101 criminal arrests and more than 5,173 administrative arrests. The headlines rarely discuss the impact of these enforcement activities on the children of arrested and/or detained undocumented parents during the enforcement actions. A study by the National Council of La Raza found that approximately five million U.S. children have at least one undocumented parent. Furthermore, these enforcement activities have placed many of these children at risk of family separation, economic hardship, and psychological trauma. School districts across the U.S. have been thrust into the middle of the immigration crossfire as they find themselves in the role of protector of the children whose parents are picked up during these raids. The study stressed that “proactive responses by schools [during enforcement activities] help ensure children are not left without adult supervision, and can also lead to better attendance and fewer disruptions for children.”

School districts are unique in that the national debate on immigration reform impacts them on two levels: as employers who must be compliant with immigration laws such as the I-9 employment eligibility verification requirements or visa sponsorship requirements for foreign national employees, and as educators whose mandate is to educate children no matter what their immigration status is in the United States. As of the writing of this article, it is not yet clear as to whether President Obama’s Administration will continue the Bush Administration’s focus on immigration raids and enforcement actions. There is optimism that immigration policy under President Obama’s Administration will focus less on immigration.


4 Id.
raids targeting undocumented workers and families and more on unscrupulous employers who are not complying with immigration and labor laws. Regardless of the fact that the new Administration may change ICE’s current policy regarding raids and enforcement, schools must be prepared for them and the consequences of these raids/enforcement actions on their employees and students. This article will discuss immigration compliance issues that schools face, issues that schools face during an immigration investigation or an ICE immigration raid, and how schools can prepare for immigration enforcement actions as employers and as educators.

**IMMIGRANT STUDENTS AND IMMIGRATION RAIDS - THE SCHOOL DISTRICT AS EDUCATOR**

School districts must ensure that all children who otherwise meet enrollment criteria are offered an education in a safe and secure environment. Immigration enforcement activities/raids can be extremely disruptive to this mission of schools. In a series of raids conducted in December 2006, all of the affected school districts reported a marked rise in student absences. In Berkeley and Oakland, California, immigration arrests at homes resulted in widespread rumors of raids at schools and sent a wave of panic and fear among residents. The fear and rumors were so widespread that a state senator issued the following statement: “There should be an immediate freeze on ICE raids directed at schoolchildren while legislation aiming to fix immigration is considered.”

The increase in immigration enforcement activities requires all school districts to review their crisis response plans and has raised questions regarding the role of schools when it comes to educating undocumented children. An issue that has reemerged as a result of the increase in immigration raids and enforcement activities is whether the immigration status of a student should be a factor in whether the school district should educate the student.

Despite the fact that over 20 years ago, the U.S. Supreme Court addressed the issue of whether the public education of children not legally admitted into the United States was required, with the government’s recent immigration enforcement efforts has come a renewed interest in understanding the rights of these students. In *Plyler v. Doe,* the Supreme Court held that public schools could not withhold the right to an education from children who, although otherwise qualifying for enrollment in accordance with state and local requirements, were not legally admitted into the United States.

The 1982 *Plyler* decision involved a Texas statute that required public school districts to withhold state funds from districts for the education of students who were not legally admitted to the United

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7 Id.

States. The statute resulted in students who could not prove that they were legally admitted being charged tuition in exchange for enrollment in Texas public schools. The Plyler Court held that such a statute, which in essence authorized the districts to deny enrollment to these children, was discriminatory and a violation of the Equal Protection Clause of the 14th Amendment of the U.S. Constitution. The importance of education to the productive and successful future of an individual, as well as the fact that the children at issue were not in control of the situation leading to the prevention of their education, were also key elements in the Court's decision making. Plyler v. Doe is still good law, but continues to be discussed and challenged politically, primarily because of the increase in the number of undocumented students in states other than California, New York, Texas, Florida, Illinois, and New Jersey, as well as immigration reform efforts implemented in the U.S. since September 11, 2001.

INCREASING NUMBER OF UNDOCUMENTED STUDENTS LIVING AND ATTENDING SCHOOL IN AN INCREASED NUMBER OF STATES

Prior to 2004, the majority of undocumented immigrants were found in California, New York, Texas, Florida, Illinois, and New Jersey. Recent studies show that undocumented immigration has become much more of a nationwide issue. This increase has resulted in an increase in the number of studies and planning for the impact of the undocumented student on the communities, including their impact in the school system. Students who are born in the U.S., and are therefore U.S. citizens, are eligible for public assistance regardless of the documented status of their parents. However, undocumented students are also eligible for many programs, including local programs, as well as those funded by the government.

Eligibility for Participation in Programs and Activities

Eligibility for participation in campus or extracurricular events is usually determined by whether an individual has established the appropriate residency requirements for enrollment in the particular school.
Additionally, if a student does not reside with his or her parent, but still resides within the boundaries of the school district, then local rules pertaining to such residency and school curricular and co-curricular participation will prevail. Many states consider solely where the student resides in determining eligibility to attend school. However, exceptions allowing students to attend school where either parent resides and other similar exceptions sometimes exist. Nevertheless, residency of the student or other relevant individual usually controls. For students who cannot establish residency due to the lack of a fixed residence, federal laws requiring the education of homeless students would apply, thus requiring the undocumented student to receive an education nonetheless.

Undocumented students are also eligible for many federally funded programs. The U.S. Department of Agriculture specifically addresses immigration status in its documentation for eligibility for the National School Lunch Program, stating that U.S. citizenship or immigration status is not a condition of eligibility for the program. Additionally, students who otherwise qualify for special services, such as special education services, under the Individuals with Disabilities Education Improvement Act of 2004 are not withheld rights to these services because of their undocumented status. The “child find” provisions of this federal law refer to jurisdiction of the school district, which references actually residing within the boundaries of the school district, rather than citizenship or immigration status. Perhaps the most widely-debated right that is being discussed presently is whether undocumented students have the right to pay in-state tuition rates at the state colleges and universities within the state where they reside (and presumably graduated from high school).

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18 Tex. Educ. Code § 25.001(b); Mo. Rev. Stat. § 167.020; see also Horton v. Marshall Public Schs., 769 F.2d 1323 (8th Cir. 1985) (holding a statute requiring a parent or legal guardian to reside in the district in order for student residing in the district to qualify for enrollment to be unconstitutional).


21 “States and local school districts are obligated to identify, locate and evaluate all children with disabilities residing within the jurisdiction who either have or are suspected of having disabilities and need special education.” Individuals with Disabilities Education Improvement Act of 2004, § 612(a)(3).

22 Alene Russell, In-State Tuition for Undocumented Immigrants: States’ Rights and Educational Opportunity, American Association of State Colleges and Universities Higher Education Policy Brief (Aug. 2007). In addition, the Development, Relief, and Education for Alien Minors, also known as the “DREAM Act,” is still in limbo, as it has not garnered enough support in Congress. The DREAM Act would provide an opportunity for an undocumented student who graduates from a U.S. high school, is a person of good moral character since arriving in the U.S. as a child, and has lived in the U.S. continuously for five years, to obtain legal status in the U.S. and allow the student an opportunity to obtain a post-secondary education in the U.S. as a conditional lawful permanent resident.
Required Documentation

*Plyler* definitively answered the question of whether school districts must refrain from requiring information regarding immigration status as a prerequisite to enrollment. However, some states have gone further and enacted legislation that specifically addresses the issue of requesting information regarding immigration status to enroll a student in a public school. Pennsylvania law specifically states that a child’s right to be admitted to school may not be conditioned on the child’s immigration status and prohibits a school from inquiring regarding the immigration status of a student as part of the admission process.23 Interestingly enough, the statute goes on to state, “[t]his provision does not relieve a student who has obtained an F-1 visa from the student’s obligation to pay tuition under Federal law.”24 School districts can ask questions about student visa documents and are actually required to not only maintain certain information regarding the immigration status of foreign students, but also to release such information upon request by the appropriate government officials.25 Nevertheless, and ironically, if information is obtained that reveals that a foreign student is undocumented, then student privacy rights regarding the student’s education records would prevail. Unless an exception applies, such information would then be protected by the Family Educational Rights and Privacy Act (FERPA).26 The student’s right to privacy is only one of many issues that school districts must be prepared to address during an ICE investigation or immigration raids in the community.

**PREPARING YOUR SCHOOL FOR IMMIGRATION ENFORCEMENT ACTIVITIES IN YOUR COMMUNITY**

While ICE has rebuked criticisms and allegations that it conducts immigration enforcement activities on school grounds and campuses, the fear in some communities persists. This is understandable, as ICE has not taken an affirmative position that schools are not sanctuaries.27 ICE’s policy regarding schools is as follows: “Arresting fugitives at schools, hospitals, or places of worship is strongly discouraged, unless the alien poses an immediate threat to national security or the community.” In dealing with immigration enforcement activities such as raids, school districts should treat them similarly to any crisis and have a specific response plan in place. A school district’s Immigration Enforcement Response Plan must include clear policies and guidelines regarding the following:

- The school district’s policy and procedures regarding communicating with immigration officials concerning a student’s records, whether or not they are related to the student’s immigration status;

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24 Id.

25 8 U.S.C. § 1372(c)(2); 8 C.F.R. § 214.3(h)(1).

26 34 C.F.R. § 99.

27 The term “sanctuary” was first used in the immigration context in the 1980s to refer to efforts by churches and cities to provide various forms of assistance to asylum applicants and is still used today to refer to public and private safe places for unauthorized immigrants. See Rose Cufson Villazor, *What is a “Sanctuary,”* 61 SMU L. REV. 133 [Winter 2008].
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- The school district’s communication plans with parents and the general community when an immigration raid occurs in the district. For example, does the school district maintain sufficient emergency contact information for its students? What method will it use to communicate to parents?

- What are the procedures for students whose parents are detained by ICE? Has the school district establish contingency plans for the care of these students?

- If the school enrolls F-1 students, is it in compliance with the recordkeeping requirements under the Student and Exchange Visitor Information System (SEVIS)?

Establishing a School Policy Regarding Communications with ICE and Other Law Enforcement Officers

School policy regarding immigration enforcement activities must take into consideration factors which are often in conflict with each other. School districts must balance cooperating with federal enforcement officials, protecting the privacy of their students, and providing a safe educational environment for their students. In an effort to build community trust and a safe environment for students, many school districts have established policies which prohibit any communication to ICE or any immigration official by the school or school personnel regarding the immigration status of a student. Furthermore, some school districts have implemented these policies as a result of lawsuits involving students questioned by immigration officials. For example, as a result of a lawsuit against Albuquerque Public Schools, the district implemented the following policy:

Any communication to an immigration agency or official initiated by a school or school personnel concerning any student in reference to his or her real or perceived immigration status is prohibited.

Any request by immigration officials for consent to enter a school to search for information or to seize students shall initially be denied and immediately conveyed to the school principal and/or the superintendent’s office. 28

School districts should be aware that ICE is not only focusing on worksite raids, but also on home raids. The home raids are usually conducted when ICE has an outstanding deportation/removal order and comes to the home of the undocumented immigrant to arrest him or her. It is often in situations where ICE is already investigating an individual that its investigators have conducted enforcement activities near school grounds. ICE’s arrests of parents in front of their children have resulted in widespread panic and increased school absenteeism. 29 ICE has expressed that the detention of minors is not its priority and its

28 Mary Ann Zehr, With Immigrants, Districts Balance Safety, Legalities, EDUCATION WEEK, Sept. 12, 2007. See also Appendix 1 for the policy of Santa Fe Public Schools regarding immigration-related issues.

enforcement actions are against "criminal document-users, identity-theft people, and employers and frontline supervisors" who are employing undocumented workers. While the focus of its investigations may not be minor children, the possibility of ICE contacting schools to obtain information to further its enforcement actions is very real. School districts must ensure that these policies are consistent with their legal responsibility to protect the privacy of their students.

**Education Records of Undocumented Students are Protected from Unauthorized Disclosure by Federal Law**

Once an undocumented student enrolls in and attends school in a district, another important right is also afforded that student, regardless of his or immigration status. The Family Educational Rights and Privacy Act relates specifically to "education records" and requires certain protections and confidentiality of such records. The law states, "[t]he parent or eligible student shall provide a signed and dated written consent before an educational agency or institution discloses personally identifiable information from the student’s education records, except as provided by Section 99.3 [the section that contains exceptions]." The term "record" is defined in FERPA to mean "any information recorded in any way, including, but not limited to, handwriting, print, computer media, video or audio tape, film, microfilm, and microfiche."

While FERPA does not prohibit school administrators from talking to immigration officials, they should take care not to reveal information derived from a student's education records. The Family Policy Compliance Office (FPCO) is the office within the U.S. Department of Education that investigates, processes, reviews, and adjudicates violations under FERPA. According to the FPCO, "FERPA does not protect the confidentiality of information in general; and therefore, does not apply to the disclosure of information derived from a source other than education records, even if education records exist which contain that knowledge." This general rule, specifically addressing information that is derived from personal observation or knowledge, will ordinarily apply to information that an administrator knows because he or she was personally involved in a situation. Nevertheless, the FPCO has distinguished the situation where the individual making the disclosure has an official role in making a determination that generates an

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30 Id.
32 Id.
33 34 C.F.R. § 99.3.
34 20 U.S.C. § 1232g (f)-(g); 34 C.F.R. § 99.60.
School districts are legally allowed to investigate whether a student is appropriately residing within the district boundaries. In fact, in light of Plyler and the increasing influx of undocumented students into the school systems, some school districts have begun to take creative measures in enforcing such residency rules. In early 2008, the Associated Press reported that the Calexico Unified School District had hired a photographer to take photographs of students crossing the Mexican border on the way to campuses in their district. The intent of the photos was to provide proof that the students did not properly reside within the boundaries of the school district. However, it is important for school administrators to understand that regardless of how information is discovered, if used to make an official determination such as enrollment status, it should be treated as part of the education record and only released with parental consent or if an appropriate exception applies. Therefore, if an administrator investigates a residency situation and concludes that the student is or is not residing within the appropriate district boundaries, but also learns of the student’s or student’s family’s immigration status as a part of that investigation, he or she should not disclose the investigation report to immigration officials without written parental permission unless another exception applies, nor can he or she share personal knowledge that led to the creation of the report.

There are exceptions to the FERPA requirement that written parent permission be acquired. A school district can release personally identifiable information contained in an education record without prior consent in compliance with a judicial order or lawfully issued subpoena. However, FERPA does not mandate the release of personally identifiable information in compliance with a subpoena (although mandatory release of subpoenaed documents is required through other laws), but, rather, this FERPA exception allows the release of the subpoenaed information. This allowance requires that prior to complying with the subpoena, the educational institution makes a “reasonable effort to notify the parent or eligible student of the order or subpoena in advance of compliance, so that the parent or eligible student may seek protective action.” If immigration officials do not want this required notification to occur, they

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36 Id., citing cf. Bartel v. Federal Aviation Administration, 725 F.2d 1403, 1407-11 (D.C. Cir. 1984) (Privacy Act); Kassel v. Veterans Administration, 709 F. Supp. 1194, 1201 (D. N.H. 1989). As an example, the FPCO explained that a teacher should not disclose a student’s grade that he or she issued to the student, despite the fact that he or she had personal knowledge of it, unless he or she had the required consent or unless an exception applied, nor should a principal disclose the fact that he or she had suspended a student in such a manner.


38 Elliot Spagat, California School Hires Photographer to Catch Mexican Students, USA Today (Dec. 31, 2007); Elliot Spagat, Camera Is Focused on Illegal Students, SignOnSanDiego.com (Jan. 1, 2008).


40 34 C.F.R. § 99.31(a)(9).

41 34 C.F.R. § 99.31(9)(ii).

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should ask the issuing court or judge to order that "the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed." 42

School district officials should also be sure that the subpoena is issued to the school. The FPCO has formally stated that school officials cannot rely on a court’s order to a third party, such as an order for a probation officer to prepare a progress report for the court, as authorization to release personally identifiable information from education records without written parent permission. 43 In Letter to Shay, the FPCO explained that a lawfully issued subpoena to an outside party would not be considered “lawfully issued” to the educational institution for purposes of this exception. These exceptions include disclosures to comply with ex parte orders issued under the USA Patriot Act. 44

Information that is “directory information” can also be disclosed without prior written parent permission if certain circumstances are met. 45 Directory information is defined as information from the student’s education records that would not generally be considered harmful. 46 Directory information such as a student’s name, address, and telephone number can be disclosed without parental consent if the educational agency has provided prior notice of the type of information that is considered directory information and the right to refuse to allow the release of directory information, and has provided a specific deadline for this “opt out.” 47 School districts that follow the requirements for the appropriate release of directory information can do so without parental consent, despite whoever requests the information. However, FPCO has recently made amendments to the definition of “directory information” that specifically removes the student’s social security number as directory information. 48

The FPCO has stated that when a record is requested regarding a specific student, then even if the record is redacted, because the requestor already knows the identity of the student to whom the records relate, the release of the information is prohibited without parent consent or unless an exception applies. 49 According to the FPCO, these “targeted requests” should also not be honored even if “personally

42 Id.

43 Letter from the Family Policy Compliance Office to Shay (Jan. 15, 2007).

44 Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act, § 507; FERPA, 34 C.F.R. § 99.31(a)(9)(ii)(C).

45 34 C.F.R. § 99.37.

46 34 C.F.R. § 99.3.

47 34 C.F.R. § 99.37.

48 Family Educational Rights and Privacy, 73 Fed. Reg. 74,806, 74,851 (Dec. 9, 2008) (to be codified at 34 C.F.R. pt. 99) (stating that the term “directory information” in § 99.3 does not include a student’s social security number or student identification number (ID) unless the student ID number cannot be used to gain access to education records except when used in conjunction with one or more factors that authenticate the user’s identity, such as a personal identification number (PIN), password, or other factor known or possessed only by the authorized user).

49 Letter from the Family Policy Compliance Office to the Tennessee Department of Education (Nov. 18, 2004).
identifiable information" is redacted.\textsuperscript{50} A request is considered "targeted" when information is requested by a person who the institution reasonably believes has direct, personal knowledge of the identity of the student to whom the education record directly relates.\textsuperscript{51} The FPCO has also discussed situations that occur in many communities when an incident is so well known that the redaction of an education record does little to make the record not "personally identifiable." As an example, the FPCO discussed a suspension and failure of a student for cheating on a test and her parent's subsequent request for the redacted records of all other students who had been disciplined for cheating on tests that year.\textsuperscript{52} Only one such student existed, and that student's parents had gone to the media, and the incident was highly publicized. In that situation, the FPCO stated that the information, even redacted, would be personally identifiable and should not be released absent parent consent.

The new FERPA regulations went into effect on January 8, 2009, and specifically amended the definition of "personally identifiable information" to ensure the prohibition against disclosure in targeted request situations.\textsuperscript{53} The new definition of "personally identifiable information" includes, among other changes, "[i]nformation requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates."\textsuperscript{54} Therefore, information contained within education records that have been redacted and would ordinarily not be considered to contain "personally identifiable information" should not be released if they are the subject of a targeted request.\textsuperscript{55} That said, school districts must be careful when determining the type of student information that can be properly released in the event that an ICE raid occurs in the community, leaving undocumented students parentless at school.

Federal guidance also clarifies that despite the prohibition against providing directory information in response to targeted requests, schools are not required to ascertain or guess a requestor's motives for seeking information from education records or what a requestor intends to do with the information.\textsuperscript{56} Therefore, we recommend that in working together regarding the release of education records to ICE, campus administration take care not to make or comply with targeted requests and to acquire access to those-particular documents through other methods acceptable to FERPA. However, compliance with this new provision in the regulations could become complicated in the event that the targeted request is in

\textsuperscript{50} Id.
\textsuperscript{51} Id.
\textsuperscript{52} Id.
\textsuperscript{53} Id.
\textsuperscript{54} Id.
\textsuperscript{55} Id.
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response to a local government’s response to an ICE raid and being made in an effort to assist students left without parents.

FERPA also has a health and safety emergency exception to its prohibition against the disclosure of personally identifiable information from an education record without parental consent. If knowledge of the information is necessary to protect the health or safety of the student or other individuals, then it can be disclosed without the required consent. The regulation related to the health and safety emergency exception was also amended in December 2008. The former strict construction language was removed and replaced with language stating that, in making a determination regarding whether the health or safety emergency exception should apply, the educational agency “may take into account the totality of the circumstances pertaining to a threat.” The language also states that if the educational agency determines that an articulable and significant threat exists, the information can be released, and the Department of Education will not substitute its own judgment for the judgment of the agency if “based on the information available at the time of the determination, there is a rational basis for the determination ...” With this advice, we strongly recommend that if information is provided to outside organizations or individuals in the aftermath of an ICE raid, the significance of the situation and the reasons behind the release of the student information be documented.

Although ICE raids contain steps to identify individuals involved in the raid who are the parents of young children, often these parents refuse to identify themselves as parents for fear that their children will suffer repercussion. The resulting aftermath can result in something akin to what could be considered a “health or safety emergency” with children potentially left at school with both parents arrested. In Texas, Nebraska, Iowa, Minnesota, Utah, and Colorado, such a raid did occur in December 2006. Because the new FERPA regulations could prevent the type of information sharing that might be required in the event that such an occurrence would repeat itself, administrators should be sure to document their reasons for releasing information in what might later be deemed a “targeted request.”


60 Id.

61 Scott LaFee, Fighting for Immigrant Children’s Rights, SCHOOL ADMINISTRATOR (Nov. 2007).
SCHOOL AS EMPLOYER: HOW TO ESTABLISH AN IMMIGRATION COMPLIANCE PROGRAM AND PREPARE YOUR SCHOOLS FOR IMMIGRATION ENFORCEMENT ACTIVITIES

It is clear that employers, including school districts, are on the front line of the ICE assault on undocumented workers. As a result of this current atmosphere of heightened enforcement scrutiny, school districts are well advised to establish an effective I-9 compliance/audit policy and immigration worksite enforcement response plan to avoid becoming the subject of the next ICE enforcement headline.

School districts, and in particular those in areas with large immigrant populations, should prepare in advance for ICE enforcement actions, whether they merely involve I-9 audits or all out, no-holds-barred immigration worksite raids. ICE has made it very clear that all employers, regardless of size, industry, or location, are vulnerable to enforcement actions, particularly when there are compliance issues. 62

Districts can take proactive steps to at least ensure that they are in compliance with the hiring requirements under the Immigration Reform and Control Act of 1986. 63 They can also take steps to guard against the possibility that their employees are engaged in activities which make employers vulnerable in an ICE enforcement action. Establishing comprehensive immigration compliance programs and otherwise preparing for an ICE worksite investigation or raid requires some basic proactive steps.

IMMIGRATION COMPLIANCE PLAN

School districts have different cultures, resources, and needs, so it is important to take these into consideration when establishing a comprehensive district immigration compliance plan. For example, the I-9 policy for a district with fewer than 100 employees will be substantially different than that of a district with thousands of employees. While there is no “one size fits all” approach, you should address the following questions with your legal counsel when drafting an immigration compliance program:

- Does the district have an effective I-9 policy?
- Does the district have a Social Security Administration “no-match” policy?
- Is the district registered with E-Verify and should it be?
- Is the district registered in IMAGE and should it be?

62 See U.S. Immigration and Custom Enforcement, Fact Sheets: Worksite Enforcement, http://www.ice.gov/pl/news/factsheets/worksite_cases.htm (last modified Aug. 26, 2008) (Julie L. Myers, Assistant Secretary for Homeland Security, CIS, stated that, “[W]orksite enforcement actions target a key component of the illicit support structure that enables illegal immigration to flourish. No employer, regardless of industry or location is immune from complying with the nation’s laws. ICE and our law enforcement partners will continue to bring all deportations.”).

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* Does the district sponsor foreign national workers? If yes, does the district maintain compliance files when they are required?

**Does the District Have an Effective I-9 Policy?**

As worksite investigations have increased within the last year, so have I-9 audits, because ICE has used the I-9 audit as an investigative tool for more egregious immigration violations. A district can be subject to an I-9 audit without being the subject of a worksite investigation. But an I-9 audit can easily turn into a worksite investigation if the district’s I-9 files are not in compliance, so being in I-9 compliance is the first line of defense for employers. As a worksite investigation can easily result from findings in an I-9 audit, it is more important than ever to have an effective I-9 policy in place.

In order to determine what is needed in the I-9 policy, it is imperative to first examine existing I-9 procedures and to audit sample I-9s for substance and consistency. An essential rule in regard to I-9 compliance is uniformity with every employee. Establishing a comprehensive and standard written policy is key because it helps to establish good faith compliance with the Immigration Reform and Control Act (IRCA). In assessing fines or determining whether it will proceed with further investigation in the event of errors, ICE will consider the existence of an I-9 policy as a mitigating factor.

An effective I-9 policy should include at minimum the following:

a. An overall I-9 compliance administrator

In order to ensure consistency, the district should designate an individual who is the overall I-9 compliance administrator. For most school districts, this position can be served by the human resources department or be delegated to a human resources representative. This person is charged with centralized oversight, management, and training regarding the district’s compliance program. The practice of combining I-9 compliance with human resources makes sense inasmuch as the I-9 process is part of the hiring process.

b. Integration with the overall personnel policy, materials, and applications

It is important to review current hiring policies to ensure conformity and make certain these policies do not violate anti-discrimination laws. The I-9 policy should be in writing, published, and communicated not only to those individuals who have a role in the I-9 process, but to the entire workforce. The I-9 policy should be included in all hiring and/or human resource literature or communications. This will send out a clear message to employees and potential employees that the district has zero tolerance for the knowing hire of undocumented workers.

c. Overall guidance on I-9 procedures

The policy should explicitly state that the district:

(1) Requires the proper and timely completion and retention of Form I-9 for all employees hired after November 6, 1986;
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(2) Will not hire individuals who do not provide the requisite and timely identity and employment eligibility documents;

(3) Conducts I-9 reverification; and

(4) Holds regular I-9 trainings for all district representatives who are part of the recruitment, orientation, and hiring processes for the district.

d. Clarification to all district employees who have hiring authority or are part of the hiring process as to:

(1) Who must complete Form I-9;

(2) When verification must be completed;

(3) What may permissibly be asked prior to the actual hiring;

(4) What limits may be placed on the hiring of certain individuals; and

(5) Whom to refer employees to for I-9 verification procedures.

e. Guidance on I-9 verification for employees charged with direct procedures:

(1) How an I-9 must be properly completed, including the appropriate use of List A, B, and C documents;

(2) When further inquiry is appropriate;

(3) What, how, and for how long I-9 records should be maintained;

(4) Whether it is district policy for the I-9 support documents to be copied;64

(5) Whether to maintain paper files or electronic signature and storage;

(6) Where the I-9 files should be maintained;

(7) When I-9s need to be reverified and docketing procedures for reverification;

(8) When the I-9 compliance administrator or legal counsel should be consulted; and

(9) When and how to process the I-9 through E-Verify if the district is required to register with E-Verify.

64 Although there are arguments both for and against the copying of documents, under E-Verify, where an employee presents a DHS Form I-551 (Permanent Resident Card) or Form I-766 (Employment Authorization Document) to complete the Form I-9, the employer must make a photocopy of the document and retain the photocopy with the employee's Form I-9. DEPARTMENT OF HOMELAND SECURITY & SOCIAL SECURITY ADMINISTRATION, THE E-VERIFY PROGRAM FOR EMPLOYMENT VERIFICATION MEMORANDUM OF UNDERSTANDING (Oct. 29, 2006), available at http://www.uscis.gov/files/nativedocuments/MOU.pdf.
f. Clear instructions for internal I-9 audits

To ensure compliance and mitigate damages, the employer should conduct regularly scheduled internal I-9 audits. Periodic I-9 audits can also serve as training opportunities for district personnel.

Districts who have not been complying adequately with the I-9 verification procedures should take immediate steps to ensure full compliance. In 1996, the Bono Amendment was passed as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). This amendment allows employers a 10-day period to correct technical or procedural paperwork violations to avoid potential fines. In addition, it gives employers a “good-faith compliance” defense even where there are technical or procedural violations, unless the employer fails to make corrections to them within the allotted period or when the employer has engaged in a pattern of “knowing hire” or “continuing to employ” violations.

Failure to put verification procedures in place can be viewed by ICE as an egregious violation, subjecting an employer to the maximum penalties even when no undocumented workers have ever been hired.

Internal self-audits can help ensure that I-9s are stored, prepared, and completed accurately, and that errors are corrected in a timely fashion. Below are some internal I-9 audit guidelines:

(1) The I-9 audit should include not only the I-9s of current employees, but also the I-9s of terminated employees for which I-9s must be maintained. Employers are required to keep the I-9s of terminated employees for three years from the date of hire or one year after termination, whichever is longer;

(2) Any correction or amendment to the I-9 made during an I-9 audit must include a notation that the corrections are being made pursuant to an I-9 audit, the date of the audit, and the initial of the auditor;

(3) Employers must not make any corrections/amendments to Section 1 of Form I-9, as it must be completed by only the employee;

(4) I-9s cannot be backdated; and

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66 INA § 274A(b)(6); 8 U.S.C. § 1324a(b)(6).

Preparing the School Employee, Employer, and Student for Immigration Enforcement Actions

Where there are deficiencies in the identity and employment eligibility document(s) in Section 2, employees cannot be told what must be presented to complete Section 2, as that can be considered document abuse.

Districts face the same fines and penalties that all employers face when they are not in compliance with I-9 requirements.

DOES THE DISTRICT HAVE AN SSA NO-MATCH POLICY?

For the past year, there has been a moratorium on the issuance of Social Security Administration (SSA) "no-match" letters to employers as a result of a court injunction against ICE’s implementation of its August 2007 “safe-harbor” regulations, directing employers to take specific action against impacted employees when they receive an SSA “no-match letter.” Nonetheless, it is recommended that school district employers include in their compliance program a statement regarding their policy on SSA “no-match” letters.

Until there is final resolution regarding the “no-match” letters, it is difficult to know exactly what obligations the district has in responding to “no-match” letters. What is clear is that ICE has requested copies of employers’ “no-match” letters in its recent worksite investigations and has used that information along with companies’ lack of response to those “no-match” letters to allege unauthorized hiring practices and prosecute employers. As a result, districts should at minimum include in their compliance policies uniform and consistent procedures for handling “no-match” letters.

The Department of Homeland Security (DHS) “no-match” regulation expands the definition of constructive knowledge of unlawful hires to include failure to take reasonable steps at ensuring compliance. It gives employers 93 days to reconcile any discrepancy indicated in an SSA or DHS “no-match" letter.


match:" letter and promises immunity from charges of constructive knowledge if employers follow the stated procedures. 71 The rule acknowledges that other actions taken by employers may also constitute "reasonable steps" in the context of a "total facts and circumstances test," but employers who fail to follow the specific procedures described in the regulations are not guaranteed protection from civil or criminal charges.

Below is a summary of ICE's safe-harbor procedures:

<table>
<thead>
<tr>
<th>Summary of Action Required Under the Safe-Harbor Rule</th>
<th>From Receipt Date of Letter</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employer receives letter from SSA or DHS indicating mismatch of employee's name and social security number (SSN) or other documentation.</td>
<td>Day 1</td>
</tr>
<tr>
<td>Employer checks own records to determine whether discrepancy was due to a clerical error. If so, it must make any necessary corrections and verify with SSA or DHS that corrections now match. The employer should retain a record of the manner, date, and time of such verification. The employer may update the I-9 form relating to the employee or complete a new I-9 (retaining the original), but should not perform a new I-9 verification.</td>
<td>1-30 Days</td>
</tr>
<tr>
<td>If the employee confirms that the employer’s records are correct, the employer must promptly (ICE does not provide a specific timeframe except notice should not be “unreasonably delayed”) advise the employee of the date it received the “no-match&quot; letter and advise the employee to resolve the discrepancy with the SSA no later than 90 days after the receipt date. The employer is under no legal obligation to advise the employee regarding the means or manner of resolving the discrepancy with the agency, but should share any guidance the SSA notice may provide on how the discrepancy might be resolved. If the employee provides corrected information, the employer should correct its own records and verify the correction with the SSA or DHS.</td>
<td>30-90 Days</td>
</tr>
<tr>
<td>If the employee is not able to provide the employer information to resolve the discrepancy, the employer performs special I-9 procedures.</td>
<td>91-93 Days</td>
</tr>
</tbody>
</table>

71 Id.
The regulation further provides that where the employer must perform special I-9 procedures as part of the safe-harbor procedures, it must adhere to the following special restrictions when completing the new I-9.\footnote{Id. at 45,611.}

- The employee must complete Section 1, and the employer must complete Section 2 of the new I-9 form within 93 days of receipt of the notice from either SSA or DHS;
- The employer cannot accept any document (or receipt for such a document) referenced in either the DHS notification or the SSA “no-match” letter to establish employment authorization or identity;
- The employee must present a document that contains a photograph in order to establish identity or both identity and employment authorization; and
- The new I-9 form should be retained with the original I-9 form(s).

School districts should take into consideration the following factors when drafting an SSA “no-match” policy:

a. Do not jump to conclusions

The employer should not terminate any employee solely on the basis of a “no-match” letter. An employer may terminate an employee for employment eligibility violations only if the employer has actual or constructive knowledge that an employee is unauthorized to work in the United States. A “no-match” letter alone does not constitute actual or constructive knowledge.

b. Investigate

An employer should not ignore a “no-match” letter. If an employer were to simply ignore a “no-match” letter, ICE has clearly stated that it will certainly use this against an employer if ICE were to later learn that the employer employed an unauthorized worker. Until the safe-harbor rules are implemented, an employer should consider the following procedures:

(1) Check its records to ensure it did not make a typographical error in reporting the employee’s SSN to the SSA.

(2) If there is no error, the employer should share the “no-match” letter with each employee listed on the letter and advise the employee to check to be sure that the correct name and SSN are shown.

(3) An employee should not be required to produce his or her social security card or any other specific documentation, as this could be considered document abuse under employment eligibility verification laws.
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(4) The employee should be given a reasonable amount of time to investigate and/or correct any errors.

(5) If the employee reports an error, in addition to submitting the correct information to the SSA, the employer should also correct the employee’s Form I-9.

(6) If the employee admits that he or she is unauthorized to work in the U.S., the employer must immediately terminate the employee’s employment.

(7) If the employee verifies that the employer has the correct name and SSN, the employer should advise the employee to resolve the discrepancy with the SSA. The employer may report back to the SSA that the district has re-verified that the information submitted to the SSA is correct.

(8) If during the investigation the employer receives additional information constituting actual or constructive knowledge that the employee is unauthorized to work in the U.S., the employer must terminate the employee’s employment. Additional information may come in the form of credible tips from co-workers, an employee admission, job abandonment, etc. Absent other evidence, a co-worker tip in and of itself is an insufficient basis for termination, or even re-verification of an I-9. The determination of actual or constructive knowledge is highly fact-specific and, accordingly, employers should be advised to contact legal counsel before taking adverse action against an employee.

If and until the injunction against the Safe Harbor rules is lifted, the employer is not required to report back to the SSA after receiving a “no-match” letter. An employer may, at its option, do so and state one or more of the following with regard to each employee: (1) he or she is no longer employed by the district as a result of job abandonment, voluntary resignation, or involuntary termination unrelated to the “no-match” letter; (2) there was an error in the district’s reporting and the correct name and SSN; or (3) the district has verified that it reported the correct name and SSN to the SSA, and the employee and the district are unable to explain the discrepancy. Despite the injunction against the safe-harbor rule, ICE has reiterated that an employer must respond to SSA “no-match” letters. School districts are well advised to establish a clear policy in regard to SSA “no-match” letters.

Is The District Registered With E-Verify And Should It Be?

E-Verify is the web-based program that allows employers to electronically verify information provided on the Form I-9, including Social Security Numbers, with databases of the SSA and DHS. It is currently a voluntary program at the federal level and in most states. As of May 2008, more than 70,000

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employers, including school districts, have registered for E-Verify; with an average of 1,000 employers signing up per week.\footnote{Employers can register for E-Verify online at https://www.vis-dhs.com/EmployerRegistration. As part of the registration process, an employer must sign a Memorandum of Understanding (MOU) which outlines the responsibilities and obligations of the employer, DHS, and the SSA under E-Verify. An employer's main responsibilities under E-Verify are to:

1. Post a notice supplied by DHS that the employer participates in E-Verify;
2. Provide the identification of the designated E-Verify employer representative;
3. When completing Form I-9, accept only List B documents that contain a photograph;
4. Photocopy and retain Form I-551 (Permanent Resident Card) or Form I-766 (Employment Authorization Document) with I-9 records if they are presented by an employee;
5. Notify DHS if the employer continues to employ following a non-confirmation by the system (with civil penalties of $500 - $1,000 for failure to notify);
6. Initiate E-Verify process within three business days after hire;
7. Follow required procedures, including notifying an employee in writing of any tentative non-confirmations;
8. Record the case verification number on the employee's I-9;
9. Allow DHS and SSA representatives to make periodic visits to review an employer's E-Verify procedures and to make E-Verify records available along with any materials related to the I-9 process;\footnote{See U.S. CITIZENSHIP AND IMMIGRATION SERVICES, E-VERIFY USER MANUAL (Apr. 2008); see also DEPARTMENT OF HOMELAND SECURITY & SOCIAL SECURITY ADMINISTRATION, THE E-VERIFY PROGRAM FOR EMPLOYMENT VERIFICATION MEMORANDUM OF UNDERSTANDING (Oct. 29, 2008).} and
10. The employer also agrees not to use E-Verify for pre-employment screening, for re-
verification purposes, or for screening of any employees hired before the date that the MOU is signed.  

b. The E-Verify process

Under E-Verify, an employer must initiate an electronic inquiry for all new hires no later than three days after the start of employment or whenever the I-9 employment verification process has been completed, whichever is earlier. In order to submit an inquiry, the employer must have a Social Security Number for the employee. This requires that employees of E-Verify users provide their Social Security Numbers under Section 1 of the Form I-9.

There are three possible results from E-Verify once an inquiry is submitted: confirmation; tentative non-confirmation; and final non-confirmation.

(1) Confirmation: When an employer receives notification of a confirmation, this creates a rebuttable presumption of I-9 compliance. The case verification number needs to be attached to Form I-9. This ends the process, with the exception of time-limited authorizations, when re-verification is necessary.

(2) Tentative Non-Confirmation: This is by itself not grounds for termination and requires follow-up steps: double-checking for errors, recording the case verification number, and informing the employee of the right to contest non-confirmation with SSA or DHS. If the employee does not contest the tentative non-confirmation, then employment must be terminated. If the employee does contest the result, the employee has eight federal working days to resolve the discrepancy, unless SSA or DHS extends the time period. After 10 days, the employer must query the system again. While the tentative non-confirmation is pending, the employer can continue to employ the employee until final non-confirmation.

(c) Final Non-Confirmation: The employer must record the case verification number on Form I-9. If the employer does not terminate employment, there is a rebuttable presumption of an unlawful hire.

According to DHS, about 92% of the cases receive confirmations within seconds of an inquiry. An estimated seven percent cannot be confirmed as work authorized with the SSA. According to DHS, a

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77 Id. at 7.


79 Id.
majority of these SSA non-confirmations are due to changes in citizenship or names not being updated in the SSA. About one percent of these cases are non-confirmations regarding work eligibility by the U.S. Citizenship and Immigration Services (USCIS) because the information does not match SSA and DHS databases.

State executive orders and legislation regarding E-Verify vary from requiring only public employers to register to requiring both public and private employers to register. States which have some form of E-Verify requirement include Arizona, Colorado, Georgia, Oklahoma, Minnesota, North Carolina, Pennsylvania, Missouri, and Idaho. By contrast, Illinois passed a law prohibiting Illinois employers from enrolling in E-Verify or any other employment eligibility verification system until SSA and ICE are able to make a final determination on 99% of the tentative non-confirmation issues within three days.

As an increasing number of states enact legislation requiring E-Verify participation, and the federal government increases pressure to register, many employers are facing the fact that the only choice they have is to register with E-Verify.

Districts who can still choose voluntarily should consider the following factors when determining whether or not they should participate in E-Verify:

1. Does the district have the resources to participate in E-Verify?
2. What will be the impact on the district's workforce if it implements E-Verify?
3. Is the district prepared to allow DHS and SSA access to its records and other documentation as required under the E-verify process?

While E-Verify will not protect employers from ICE investigations as we saw in the recent Swift raids, ICE does take into consideration the usage of E-Verify when determining the breadth of its worksite investigation activities with an employer.

Is The District Registered In IMAGE And Should It Be?

In 2007, ICE opened up another voluntary compliance program for employer participation called the ICE Mutual Agreement between Government and Employers (IMAGE). According to ICE, the goal of

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80 Id.
81 Id.
82 States which have some form of E-Verify requirement include Arizona, Colorado, Georgia, Oklahoma, Minnesota, North Carolina, Pennsylvania, Missouri, and Idaho.
83 Public Act 95-0138, adding Section 12(a) to the Illinois Right to Privacy in the Workplace Act.
Preparing the School Employee, Employer, and Student for Immigration Enforcement Actions

IMAGE is to “assist employers in targeted sectors to develop a more secure and stable workforce and to enhance fraudulent document awareness through education and training.” As of September 26, 2008, there were fewer than 40 employer members of IMAGE. In order to become an IMAGE certified member, employers must undertake the following:

- Complete a self-assessment questionnaire;
- Enroll in E-Verify;
- Enroll in the Social Security Number Verification Service;
- Adhere to IMAGE Best Employment Practices;
- Undergo an I-9 audit conducted by ICE; and
- Review and sign an official IMAGE partnership agreement with ICE.

Presumably the benefit of enrolling in IMAGE is that, as an ICE partner, an employer will avoid workplace raids and investigations. In light of IMAGE’s strenuous requirements, however, it is difficult to say that the benefits outweigh the disadvantages.

Does The District Sponsor Foreign National Workers For Non-Immigrant Or Immigrant Visas? If Yes, Does The District Maintain Required Compliance Files?

A worksite investigation can easily result in an investigation or audit of the district’s compliance with anything related to immigration. School districts that file work visas such as the H-1B visa for foreign national employees should be sure that every H-1B sponsored employee has a corresponding H-1B Labor Condition Application (LCA) Public Access file. It is critical to document the wage rate, the prevailing wage, and the actual wage paid by the district for this position. In addition, any changes to H-1B employment should be carefully reviewed to determine whether an amended H-1B petition or a new LCA is required.

Districts should include in their compliance program at least an annual audit of all immigration-related applications and petitions which, at minimum, should consist of a review of all PERM Labor Certification Audit Files and H-1B filings, along with the LCA Public Access Folders. Just as a worksite

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85 Id.


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Preparing the School Employee, Employer, and Student for Immigration Enforcement Actions

Investigation can turn into a DOL audit, a DOL audit or USCIS investigation can easily turn into a criminal worksite investigation.87

ICE WORKSITE INVESTIGATION RESPONSE PLAN

An effective compliance program may help an employer avoid a worksite investigation, but it does not guarantee it. To be proactive and not caught off-guard, vulnerable school districts should be armed with a worksite investigation response plan. The response plan should include what to do in the case of an I-9 audit, the execution of an outstanding warrant of removal for a particular employee, and a full-blown worksite investigation.

A worksite investigation response plan should include the following:

- The designation of one central point of contact for ICE or any other government agency. The name of the district's appointed representative for the investigation and any related matters should be given as soon as contact is made with the district;
- The name and contact information of legal counsel. If the district's legal counsel is not in-house, there should be written instructions for personnel to contact outside legal counsel immediately;
- The name of district officials who should be made immediately aware of the ICE investigation or audit;
- Key management employees should be informed of any government investigation;
- Instructions should be given to employees not to provide any documentation or information to ICE unless there is a warrant issued, and to do so only under the supervision of legal counsel or designated contact;
- Public relations employees should be prepared to respond to press requests and coverage of the investigation.

One of the most dangerous aspects of any worksite investigation is the lack of control that an employer has over its employees and the chaos that can ensue if ICE enters the worksite. It is therefore important for districts to take precautions in preparation for any government investigation, whether it be by ICE or another agency. In addition to establishing the audit/investigation response plan, employers

87 In 2006, school officials from Socorro Independent School District and Ysleta Independent School District faced criminal charges and were sentenced to probation for various allegations of sponsoring foreign national teachers from the Philippines on work visas where teaching opportunities were really not available. See GMANews.TV, Pinays on Trial in Texas for “Smuggling” Teachers, Mar. 10, 2007, available at http://www.gmanews.tv/story/33777/Pinays-on-trial-in-Texas-for-smuggling-teachers-from-RP. See also Two Plead Guilty to Using Fake Documents to Get H-1B Visas for Teacher Guestworkers, WORKPLACE IMMIGRATION REPORT, Jan. 2, 2008.
should make sure the following information is communicated to their employees in advance of any government investigation targeting undocumented workers:

(1) The investigator (agent) has the right to contact the employee and request to speak with the employee;

(2) Employees contacted by an agent should inform their supervisor or legal counsel immediately;

(3) Employees contacted by an agent should inform the agent that they have legal counsel, if applicable. The agent should be provided with any legal counsel's information and asked to contact counsel directly;

(4) The employee has the right to choose whether or not to speak with any investigator. In all situations, the employee has the right to consult with legal counsel before deciding whether or not to talk to the agent;

(5) The government agent does not have the right to insist upon an interview, and it is improper to pressure an employee in an attempt to obtain an interview;

(6) An employee who decides to refuse an interview should politely, but firmly, decline the agent’s request. If threatened with a subpoena, employees should ask the agent to allow them to contact legal counsel;

(7) An employee does not have to grant access to his or her files or his or her employer's files unless a subpoena or search warrant is issued. If a subpoena or search warrant is issued, the parties should contact legal counsel immediately;

(8) An employee has every legal right to tell an employer about a government contact by an investigator. The agent may request or suggest that they keep the contact confidential, but there is nothing preventing employers from disclosing any detail of their discussion with the agent;

(9) Under all circumstances, employees need to remember that if they decide to speak, they must **tell the truth** to government agents. Failure to do so may, in and of itself, subject them to legal penalties; and

(10) An employee should never destroy any documents or attempt to hide evidence.

Ideally, the employer should integrate the above information in its employee orientation materials.

**CONCLUSION**

As the national immigration debate continues and ICE’s response to the flow of undocumented immigrants continues to be home raids and worksite raids, school districts must be prepared for the
consequences of immigration enforcement activities. Whether it is children who are left without parents to pick them up or go home; rumors of ICE on school grounds; or requests by ICE for student information, school districts must provide their schools and personnel with clear guidelines as to what actions are required or permissible in any of these scenarios. A key component of ICE’s strategy to combat the flow of undocumented immigration into the U.S. is to focus its enforcement on employers that have hired undocumented workers. ICE is clearly putting increased pressure on all employers to be in compliance with IRCA, as can be seen by the soaring number of worksite investigations and arrests. School districts must also remember that they are often one of the largest employers in some communities, and take proactive measures to establish good faith efforts to be in compliance with IRCA and other related immigration compliance requirements. It is never too soon to review and implement sound immigration compliance policies, so that everyone knows exactly what actions must be taken in the event of a worksite investigation or enforcement action.

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APPENDIX I: IMMIGRATION-RELATED EXCERPTS FROM BOARD OF EDUCATION POLICY MANUAL OF SANTA FE PUBLIC SCHOOLS

Safe Schools 601

The Board of Education of Santa Fe Public Schools is committed to providing an education to all children who live in the district regardless of their citizenship status. The safety and welfare of students is a priority of the Board. Protecting the safety and welfare of students requires the close monitoring of all visitors to campus, including law enforcement, social services, and immigration officials. The Board directs the Superintendent of Schools to implement procedures to protect all students while they are on campus.

State of New Mexico Constitution, Article XII, Section I
NMSA 1978 § 22-1-4
Board Policy J.02, J.03
NSBA/NEPN Classification: JE

Procedural Directive J on Undocumented Students

Amended: Santa Fe Public Schools

Adopted: July 12, 2007 Board of Education Policy Manual

Safe Schools AR601-1

The Santa Fe Public Schools (SFPS) provides admission and equal educational opportunities to all students that meet SFPS enrollment requirements, regardless of their immigration status or national origin. In accordance with federal law and the protections and rights afforded by the Constitution of the United States of America, immigrant (newcomer) or foreign-born students at SFPS will not be deterred or discouraged in any manner from attending school or from seeking the benefits of the educational opportunities afforded to non-immigrant students. SFPS acts as in loco parentis while students are on school campus and is responsible for the safety and welfare of its students. Protecting the welfare and safety of students requires the close monitoring of all visitors to campus, including law enforcement and immigration officials. The Board directs the Superintendent to implement procedures to protect all students and their rights while they are on campus.
A. **SFPS DIRECTIVES**

1. SFPS may not deny admission to a school-age child on the basis of known or suspected undocumented status.

2. SFPS and its individual employees may not engage in any practice to deter, discourage, or threaten the right of a student to attend public school on the basis of immigration status.

3. SFPS may not require students or parents to disclose or document their immigration status or make inquiries that would expose their undocumented status.

4. SFPS may not require social security numbers.

B. **HANDLING ISSUES RELATED TO IMMIGRANT STUDENTS**

1. Any communication to an immigration agency or official initiated by a school or school personnel concerning any student in reference to his or her real or perceived immigration status is prohibited.

2. Any order or directive by immigration officials or local law enforcement officials to any school personnel to bring forth a student for interrogation on their immigration status or to provide any information about a student that may reveal the student's citizenship or immigration status should be denied and relayed immediately to the school principal and the Superintendent of Schools. The Superintendent of Schools will then determine, after consulting with SFPS attorneys whether such a request should be granted.

3. Any request by immigration officials for consent to enter a school to search for information or to seize students shall be initially denied and immediately conveyed to the school principal and the Superintendent of Schools. The Superintendent of Schools will then determine, after consulting with SFPS attorneys whether such a request should be granted.

4. Should a newcomer parent or student, for whatever reason, voluntarily offer a document generated by the Department of Homeland Security or the Department of Justice—such as a passport, resident alien card, or I-94—for identification purposes, the school should take special care to refrain from recording:

   1. Any personal information from the document;

   2. Information concerning the type of document submitted;

   3. That a document generated by the Department of Homeland Security or Department of Justice was submitted. The school should only record that personal identification was presented.

5. Should a school or school personnel, for whatever reason, come across information regarding the immigration status of newcomer student or his/her parents, such information is not to be provided.
to any outside agency, including any federal immigration agency. The disclosure of such information could potentially jeopardize the rights of newcomer students to attend public school and, absent permission from a student’s parents to disclose such information, could result in a violation of the Family Educational Rights and Privacy Act (FERPA). Schools and school personnel should take immediate action to remove any information regarding the immigration status of a student or a student’s parents from any and all school records.