

Serving Undocumented Students & Ensuring Access for LEP Parents



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THE LAW: EDUCATING UNDOCUMENTED STUDENTS

- The law is clear: *Plyler v. Doe* (1982) requires all public elementary and secondary schools to enroll and educate students regardless of immigration status.
- Must provide same education as given to citizen schoolchildren.
- Plyler* protections extend through 12th grade; those protections do not depend on status as a minor (under 18 year old).
- This includes extracurricular activities.
- This is still the law today.**
- May 8, 2014 OCR guidance, fact sheet and supporting FAQ's explain *Plyler* protections.

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WHAT DOES THIS MEAN?

- Cannot inquire into a student's or parent's immigration (or citizenship) status or country of birth.
- Cannot prohibit or discourage undocumented students from attending.
- Cannot require SSN's, birth certificates or state-issued identification of students or parents
 - School may ask, but **must explain it is voluntary**, must provide the statutory or other basis upon which it is seeking the information, must explain what it will be used for and **must provide alternatives**.
 - School cannot deny admission if these documents are not produced.
 - School may require proof of residency.
- No chilling effect on enrollment.
- Notably, *Plyler* protections do not extend into public higher education.**

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WHAT HAPPENED TO DAPA?

- DAPA – Deferred Action for Parents of Americans.
- US Supreme Court split 4-4 on June 23, 2016, resulting in the halt of DAPA's implementation pending further judicial review.
- Trump Administration rescinded DAPA on June 15, 2017.
- **No protections afforded undocumented parents.**

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WHAT HAPPENED TO DACA?

- DACA – Deferred Action for Childhood Arrivals
- DACA recipients are between the ages of 15 and 35 (with some limited exceptions).
 - High school students, college students, parents, people in the workplace
 - **EVERYONE**
- On September 5, 2017, Trump Administration rescinded DACA.
- Lawsuits filed across the country – several currently pending before the US Supreme Court.
- For now, **DACA renewals are still being accepted and processed.**
- Congress may pass immigration legislation.
 - Congressional action may override the federal courts' decisions – legislation will determine the fate of DACA recipients (and perhaps undocumented persons without DACA status).
 - **Big questions:** Will DACA recipients receive a safe pathway to citizenship? What timeline will apply? What limitations or restrictions may apply?

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PROACTIVELY PREPARING AND SUPPORTING: STUDENTS, FAMILIES, TEAMMATES

- **GETTING PREPARED: What do we do if –**

- A student tells her teacher that her parent was suddenly detained by ICE.
- ICE comes to school and wants student records and/or wants to speak with a student or staff member.
- A teammate's DACA status and work permit expires and she want advice or to keep working at our school.

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MY PARENT WAS DETAINED! Support Families In ADVANCE

- **FAMILY PREPAREDNESS PLAN: Strongly encourage every family to create a comprehensive plan establishing who is legally responsible for student in parents' absence.**
- Two goals = establish who is responsible for the care/custody of student and establish who has education and medical decision-making power on behalf of student.
 - Create a comprehensive family preparedness plan. See [the Immigrant Legal Resource Center's checklist](#). Please note: the ILRC references CA state law in some places; please disregard these references. Notwithstanding, the checklist is a comprehensive tool and provides a strong framework/foundation from which parents can create a family preparedness plan.
 - Under Idaho Code §15-5-104, "Delegation of Powers by Parent or Guardian," a parent/guardian may appoint another person to make decisions about the care, custody and property of her/his child for a period up to 6 months or 12 months (if in the military), or up to 3 years if the caregiver appointed is a grandparent, a non-minor sibling or a sibling of a parent.
 - In addition, must consider if/when formal transfer of custody should take place and how emergency caregiver will financially support student (transfer of parent's assets, etc.).
- **Because this involves legal considerations, a school should not undertake the creation of these plans.** Instead, refer families to me or qualified immigration and family law attorneys.

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MY PARENT WAS DETAINED!

Support Student In THE MOMENT

• **EMERGENCY CARD: Putting the Family Preparedness Plan into action.**

- School should make sure each student's Emergency Card includes name and contact information of chosen caregiver as set forth in Family Preparedness Plan. **These documents should be streamlined and updated as needed.**
- School staff may provide temporary emergency shelter or transport student to a parentally-appointed caretaker if student's parent is detained (school could potentially be held liable if it releases a student into a potentially hazardous situation).
- School also may contact law enforcement – but this may trigger ICE interest.
- School may need to contact child welfare system to provide care for student if placement with a relative or other caretaker is not possible.

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ICE COMES TO CAMPUS ... AND WANTS TO TALK TO A STUDENT: WHAT DO WE DO?

Train Faculty

• **TRAINING FACULTY: If ICE attempts to interview or detain a student about a non-school-related offense, school should follow the protocol below:**

- Front office staff alerts school principal immediately.
- Principal notifies school's attorney immediately.
- Front office asks for officer's credentials; writes down name, badge number and contact information.
- Front office asks officer for purpose of visit and whether officer has a warrant.
- If no warrant, ask officer to leave because officer's presence might disrupt peaceful activities of school environment. Suggest investigation be completed at another time/place outside school environment. If no warrant, ICE agent should not be given access to non-public spaces.
- If officer has warrant, should copy/scan and share with counsel to **confirm it is a judicial warrant.**
- If officer claims "exigent circumstances," should allow officer to interview and/or detain student.

Train faculty to **DOCUMENT EVERYTHING.**

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ICE COMES TO CAMPUS ... AND WANTS TO TALK TO A STUDENT: WHAT DO WE DO?

Train Faculty

• **TRAINING FACULTY:** If officer has warrant or claims exigent circumstances, or if school chooses to allow student to be questioned, school should:

- Remind student s/he has the right to remain silent and request a lawyer.
- Explain that anything student says may be used against her/him.
- Inform parent or guardian immediately.
- May contact immigration or criminal defense attorney immediately on behalf of student, may refer to regional partners (immigration and family advocates/attorneys) or may refer to me for an introduction to immigration/family advocates and attorneys.

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ICE COMES TO CAMPUS ... AND WANTS STUDENT RECORDS: WHAT DO WE DO?

Directory Information or Judicial Warrant?

• **FERPA:** Two exceptions to FERPA protections: (a) directory information; (b) judicial warrant.

- ICE (pursuant to its own policy) treats schools as “sensitive locations” – but may still use schools as a way to find names and addresses of undocumented students and, thereby, families.
- Under FERPA, school can decline to share student data unless the information is “directory information” or the ICE agent has a judicial warrant. Every LEA defines for itself what constitutes “directory information”; the more narrowly defined, the better.
 - Additionally, make sure parent/guardian (or student, if over 18) has not opted out of having his/her directory information disclosed before sharing directory information.
 - Make sure parents/guardians (and students over 18) are notified annually of what is included in directory information and make sure opt-out opportunity is provided.
- Directory information is public information; cannot decline to share but can inform parents about ICE request.
- ICE often issues “administrative warrants” when seeking information. **Administrative warrants are not judicial warrants and do not overcome FERPA protections.**
- If ICE appears with a warrant, subpoena or other court order, school should:
 - (a) ask for officer’s name, badge and contact information; (b) acknowledge need to respond; (c) abide established process and timeline by which a response will be given (typically 24 hours); (d) notify school’s attorney immediately; (e) provide information to law enforcement if school’s attorney confirms an appropriate judicial warrant/court order was provided; and (f) if request for information is granted, immediately notify parents.

• **DOCUMENT EVERYTHING.**

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ICE COMES TO CAMPUS ... AND WANTS TO TALK TO A TEAMMATE: WHAT DO WE DO? Train Faculty

• **TRAINING FACULTY: If ICE agent tries to interview or detain a teammate, school should:**

- Only allow ICE agent to remain in “public areas” (e.g., front office); may only enter “private” area of business if judicial warrant produced.
 - Take officer’s name, badge number, contact information.
 - Call school’s attorney.
 - Scan/send warrant, subpoena or court order to school’s attorney to confirm a judicial warrant was produced.
 - If agent produces appropriate judicial warrant, agent may approach teammate.
 - **DOCUMENT EVERYTHING.**
- **Teammate does not have to answer any questions or hand over any ID’s/papers to ICE.**
- Teammate has the right to remain silent and ask for an attorney.
 - Teammate should not lie about immigration status or produce false documents.

• **School does not have to share employment paperwork with ICE agent unless judicial warrant produced (or ICE audit underway).**

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OUR TEAMMATE IS LOSING DACA STATUS ... AND WE KNOW: NOW WHAT? Assist DACA Faculty PLAN AHEAD

• **DACA FACULTY: What do we do after work permits expire?**

- Many schools wonder if they can continue to employ DACA faculty after the expiration of their Employee Authorization Documents (EAD’s), also known as the Form I-765.
- The law requires every employer ensure all its employees have valid work authorizations during their terms of employment.
- Every employer should:
 - Have an “employment eligibility verification” policy and protocol.
 - Ensure an I-9 is completed and proper documentation is provided for every employee at start of employment.
 - Keep I-9’s and attendant documentation for a certain period of time (calculated based on length of employment after employment ends).
- **No employee, regardless of immigration status, has an affirmative duty to inform her/his employer about the expiration of EAD’s.**
- Instead, the employer carries the obligation to ask to see a new work permit after the existing one expires. An employer must check its own files to determine when an employee’s work permit will expire. Cannot ask employee.
 - Only when an employee’s work permit is about to expire may an employer ask whether the employee has new work authorization.

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CAN WE DO MORE – SCHOOL BASED?

Host Community Trainings

• **OUR COMMUNITIES: What more can we do, as individual schools?**

- Because current ICE policy treats schools as “sensitive locations,” it does not engage in enforcement actions on school grounds. (Note: this protection does not extend to areas, such as roads surrounding school grounds – and some ICE detentions have happened when parents are driving away from schools after dropping off their children.)
- Schools have a unique opportunity to serve as a community resource; consider:
 - Hosting “Know Your Rights” and/or “Family Preparedness” workshops led by local immigration organizations;
 - Inviting local immigration and family law experts to provide resources to parents and the broader community; and/or,
 - Appointing an “Immigration Rights” point person to collect and disseminate information about immigration enforcement activity as well as resources and expertise for the broader community.

• **SCHOOLS SHOULD NOT PROVIDE LEGAL ADVICE TO PARENTS OR COMMUNITY MEMBERS.**

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KEY TAKE-AWAYS: WHAT SHOULD WE DO

- **Strongly encourage** all families to develop a comprehensive **FAMILY PREPAREDNESS PLAN** in advance.
- **Ensure** every student has an **UPDATED EMERGENCY CARD**.
- **Train** faculty on **HOW TO RESPOND TO ICE** requests.
- **Consider hosting COMMUNITY TRAININGS** by local immigration/legal advocacy organizations.
- Identify and **connect with IMMIGRATION AND LEGAL ADVOCACY ORGANIZATIONS** in your local area.

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Language Access for LEP Parents

- Parents who are not proficient in English must receive the same information provided to other parents, in a manner and form they understand.
- Language access policy:
 - Written translation and/or oral interpretation of essential information into both Major Languages and Lower Incidence Languages.
 - Policies to ensure LEP parents are aware of their right to free language assistance services.
 - Practices to ensure LEP parents are notified of “essential information” (e.g., special education issues, academic performance, discipline, activities requiring parental consent, health and safety, enrollment, graduation).
 - Annually update list of persons in each school building and/or vendors qualified to offer interpretation and/or translation services (except in emergency and with consent of LEP parent, cannot rely on another student, sibling, friend, parent or untrained staff to translate or interpret).
 - Train school-level staff on using interpretation and translation services (e.g., other school-level qualified staff, third-party service providers, telephone interpretation services).
 - Collect, update and maintain language preferences of all parents of ELL and LEP students and of all parents whose students are given a Home Language Survey; communicate with these parents based on their preferences/needs.

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Language Access for LEP Parents

- The 15 most common non-English languages spoken in Idaho, according to data collected pursuant to Affordable Care Act regulations; data based on 2014 Census data.

• Source:
<https://www.hhs.gov/sites/default/files/resources-for-covered-entities-top-15-languages-list.pdf>.

1	ID	Spanish	47,041
2	ID	Chinese	1,798
3	ID	Serbo-Croatian*	815
4	ID	Korean	767
5	ID	Nepali*	715
6	ID	Vietnamese	630
7	ID	Arabic	628
8	ID	German	588
9	ID	Tagalog	562
10	ID	Russian	481
11	ID	French	449
12	ID	Japanese	395
13	ID	Romanian*	315
14	ID	Bantu*	305
15	ID	Persian (Farsi)	296

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Language Access for LEP Parents

- Be sure to plan for common scenarios and big events.
- For example, make sure you have protocols in place that make ELL families feel welcome for the following common school situations:
 - Registration and enrollment;
 - Calls from non-English speakers to the main office;
 - Calls from the nurse to a family when a student gets sick;
 - Major orientation activities or teacher conferences.

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Questions? Please contact us.

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