



COMMONWEALTH of VIRGINIA
Department of Education

March 1, 2017

TO: Division Superintendents

FROM: Steven R. Staples, Superintendent of Public Instruction

SUBJECT: Guidance Regarding School Division Responsibilities and Actions Under the Law in Reference to Students and Immigration

In response to inquiries from several school divisions, this memo provides information concerning the responsibilities of school divisions in reference to students with immigration status. The following questions and answers were compiled from guidance provided by the Office of the Attorney General and also a 2001 Superintendent's Memo – number 159 – that addresses enrollment of undocumented students from other countries. http://www.doe.virginia.gov/administrators/superintendents_memos/2001/inf159.html

1. What legal responsibilities do division superintendents have in reference to federal executive actions concerning immigration that may impact students enrolled in local school divisions?

Local school divisions have a constitutional^[1] and statutory obligation to provide education to K-12 students regardless of their immigration status, and to take active steps to guard the public education rights of students. In 1982, the United States Supreme Court ruled in *Plyler v. Doe*, 457 U.S. 202 (1982), that students who are illegal aliens may not be presumptively excluded from free public schooling. In 1999, the Office of the Attorney General, in response to an inquiry from Senator William C. Mims, stated that:

***School divisions are not permitted to inquire into a prospective student's citizenship or visa status in order to enroll that student in school.**

***School divisions shall accept students who meet the residency requirements under Section 22.1-3 of the Code of Virginia and may not deny a free public education to undocumented school-age children who reside within their jurisdictions because they do not hold valid United States citizenship or a student visa.**

Schools also have a legal responsibility to protect the privacy of student education records pursuant to the Family Educational Rights and Privacy Act (FERPA). The recent executive orders and Department of Homeland Security (DHS) guidance memorandums relating to immigration and deportation do not alter these legal obligations in any way. The recent executive actions on immigration do not include any provisions that require local school divisions to develop new policies or procedures, alter existing policies or procedures, or enter into any type of agreements with Immigration and Customs Enforcement (ICE) officials.

When a student provides information to a school division for the purpose of enrollment, that information becomes part of the student's educational record and is, therefore, protected by the Family Educational Rights and Privacy Act. School divisions may not disclose information regarding the student's citizenship or visa status to the Immigration and Naturalization Service without parental consent except in accordance with 34 Code of Federal Regulations §99.31.

It is important to recognize that there is federal law that prohibits local school divisions from engaging in harboring persons who are undocumented. That means that local school divisions may not engage in conduct that substantially facilitates the person to remain in the United States without authorization.

The following actions by local school divisions **do not** constitute a violation of the immigration law or executive actions:

- Providing educational opportunities to students regardless of immigration status;
- Providing general information to families about their legal rights, and referrals to seek legal assistance if they need it;
- Ensuring that student emergency contact forms are up-to-date and include backup contacts that schools could turn to if a child's parents were not available or detained; and
- Planning in advance the actions to be taken to protect a child and provide a safe place for that child to go if his or her parent(s) or guardian(s) were the subjects of an ICE raid or otherwise detained by immigration officials.

2. What legal responsibility do local school divisions have towards Immigration and Customs Enforcement (ICE) officials on this issue?

Historically immigration officials have not come to school seeking information about students and their parents who may be undocumented. Should ICE deviate from this long-standing policy, current school policies remain applicable when local school division employees interact with immigration officials. It is also important to recognize that schools are obligated to maintain a safe learning environment; thus any action that could deter families from sending their children to school may be a constitutional violation.

The following additional guidance may assist local school division employees:

- Immigration officials must present a subpoena or court order before a local school division may release any student education records. It is recommended that school officials consult with their respective school division counsel, or immigration advisors, to review the subpoena or court order before releasing any student records.
- An immigration official must present a warrant before entering school grounds. Ensure that ICE officials understand school division policies if they are on school grounds.
- If school officials suspect a violation by immigration officials, or observe persons on school grounds behaving in a way that is inappropriate, a report should be made to the local school division counsel, local law enforcement, or the Office of Civil Rights and Civil Liberties of the Department of Homeland Security.
- School administrators are encouraged to develop a working relationship with an immigration advisor, either through school division counsel, or services by a third party immigration attorney. In consultation with school division counsel and an immigration advisor, develop a plan ahead of time to respond to requests made by immigration officials. Ensure that the plan is consistent with school board policies, FERPA obligations and other federal laws.
- FERPA prohibits local school divisions from disclosing personally identifiable information to outside agencies, including ICE officials, without written parental consent, a subpoena or a court order.
- Review school policies about information that constitutes directory information. Directory information is information that would not generally be considered harmful or an invasion of privacy and may include a student's place of birth. Local school divisions must inform all parents which categories of information the district has designated directory information and allow them a reasonable amount of time to request that their district not disclose any or all directory information about their children. Schools and school divisions are prohibited from disclosing directory information relating to a student who has opted out of such disclosure.

3. What are the legal obligations of local school divisions towards students in the case that their parents are taken into custody or deportation proceedings and their children are left alone or homeless?

It is the legal duty of school divisions to protect the safety of their students. School divisions should develop or review their policies and procedures for students who cannot go home to their parents or legal guardians, in case the parent or guardian is detained by immigration officials. Policies and procedures should include the development of a plan ahead of time that ensures there is a safe place for a student to go after school in case such a situation develops.

4. Do local school divisions have the authority to take action in support of students and their families whose fears of deportation are heightened?

Yes. Since schools have the obligation to ensure that their students feel safe and protected while in school, school administrators and boards may take steps to convey that their school is a safe, welcoming and inclusive environment for all students, regardless of immigration status.

SRS/CAC/bj

[1] Equal Protection Clause of the Fourteenth Amendment of the United States Constitution; *Plyler v. Doe*