

# TAOS MUNICIPAL SCHOOLS

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310 Camino De La Placita, Taos NM 87571  
Phone(s): (575) 758 – 5200 | (575) 758 – 5202 | Fax: (575) 758 – 5250

## BOARD OF EDUCATION

Mark Flores II, President  
Cynthia Spray, Vice President  
Susan K. Trujillo, Secretary  
Naomi Concha, Member  
Keith King, Member



## SUPERINTENDENT

Dr. Antonio Layton Jr.

January 24, 2025

Taos Municipal Schools acknowledges the recent changes to ICE enforcement policies regarding “sensitive areas” and recognizes the potential impact these changes may have on our community. We want to assure our students, families, and staff that the safety, security, and well-being of every student remain our unwavering priorities.

As a district, we are deeply committed to creating and maintaining a safe, inclusive, and welcoming environment where all students and families feel supported, respected, and valued. Our mission is to ensure that every child has access to a high-quality education that not only meets their academic needs but also fosters their growth socially and emotionally, empowering them to succeed in school and beyond.

We understand that these policy changes may raise concerns for some members of our community, and we are here to listen, support, and provide resources to those who may be affected. Below are resources and information released by New Mexico Attorney General Office and New Mexico Public Education Department that is available to our TMSD family and the broader community to address questions and provide assistance during this time.

At Taos Municipal Schools, we stand firm in our commitment to serve every student and family with compassion, dignity, and respect. Together, we will continue to build a strong and inclusive school community where all students have the opportunity to learn, grow, and succeed.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Dr. Antonio Layton Jr.', is written over a horizontal line.

Dr. Antonio Layton Jr.

Superintendent

Taos Municipal Schools

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## SUPERINTENDENT

Dr. Antonio Layton Jr.

24 de enero de 2025

Las Escuelas Municipales de Taos reconocen los cambios recientes en las políticas de aplicación de ICE con respecto a “áreas sensibles” y reconoce el impacto potencial que estos cambios pueden tener en nuestra comunidad. Queremos asegurarles a nuestros estudiantes, familias y personal que la seguridad y el bienestar de cada estudiante siguen siendo nuestras prioridades inquebrantables.

Como distrito, estamos profundamente comprometidos a crear y mantener un ambiente seguro, inclusivo y acogedor donde todos los estudiantes y familias se sientan apoyados, respetados y valorados. Nuestra misión es garantizar que todos los niños tengan acceso a una educación de alta calidad que no solo satisfaga sus necesidades académicas sino que también fomente su crecimiento social y emocional, capacitándolos para tener éxito en la escuela y más allá.

Entendemos que estos cambios de política pueden generar preocupaciones para algunos miembros de nuestra comunidad y estamos aquí para escuchar, apoyar y brindar recursos a quienes puedan verse afectados. A continuación se encuentran recursos e información publicada por la Oficina del Fiscal General de Nuevo México y el Departamento de Educación Pública de Nuevo México que está disponible para nuestra familia de TMSD y la comunidad en general para responder preguntas y brindar asistencia durante este tiempo.

En las Escuelas Municipales de Taos, nos mantenemos firmes en nuestro compromiso de servir a cada estudiante y familia con compasión, dignidad y respeto. Juntos, continuaremos construyendo una comunidad escolar fuerte e inclusiva donde todos los estudiantes tengan la oportunidad de aprender, crecer y tener éxito.

Atentamente,

Dr. Antonio Layton Jr.

Superintendente

Escuelas Municipales de Taos



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MARIANA D. PADILLA  
SECRETARY DESIGNATE OF PUBLIC EDUCATION

MICHELLE LUJAN GRISHAM  
GOVERNOR

## MEMORANDUM

**TO:** School Districts and Charter Leaders

**FROM:** Candice Castillo, Ed.D., Deputy Secretary of Identity, Equity and Transformation  
*CRC*

**DATE:** January 22, 2025

**RE:** FERPA Student Privacy - Migrant and Immigrant Students

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The purpose of this correspondence is to provide you with information regarding FERPA protections to the privacy of students, and to provide information regarding Immigration enforcement efforts, and limitations that should be remembered involving actions taken at schools. You should please review these protections carefully here, and the broader set of laws, and consult with your legal counsel in certain instances. In any event, you should remember the importance of providing an education to students, in a safe and conducive learning environment regardless of race and documented status.

Under the Family Educational Rights and Privacy Act (FERPA), local school districts and public schools have certain obligations to protect the privacy of their students' educational records. Generally, such records cannot be disclosed without the written consent of the student's parent or guardian, or of the individual student if they have reached the age of 18 (defined by the Act as an "eligible student"). General duties and powers for LEAs under FERPA include:

- 1) Consent for disclosure. Schools and school districts are required to obtain written consent for disclosure of educational records from the student's parent or guardian, or from the student if they have become an "eligible student" by reaching the age of majority at 18.
- 2) Parental or student rights to access the records. FERPA gives parents and eligible students the right to review their educational records, receive copies of the records, or request correction to inaccurate information found within the records.

- 3) Annual notification to parents and eligible students about their rights under FERPA. This notice must include information on accessing those records, and how to file formal complaints if it appears their privacy rights under FERPA have been violated.
- 4) Disclosure of “directory information.” LEAs are permitted to disclose certain information, referred to as “directory information,” without additional consent from either parents or eligible students. Ordinarily, this can include information such as names, addresses, phone numbers, date and place of birth, and participation in officially recognized activities and sports, but LEAs must give parents and eligible students an opportunity to opt out of such disclosures.  
FERPA defines “directory information” as information contained in an educational record that would not normally be considered harmful or invasive of privacy if disclosed. Schools and school districts must give notice of information it has designated as “directory information,” the right of parents and eligible students to restrict this disclosure, and the period of time during which the parent or eligible student must notify schools in writing that they are opting out of such disclosure. After an eligible student or parent notifies a school or district in writing of their intent to opt out of such disclosure, the LEA must honor that option until otherwise notified. “Directory information” does not generally include information related to race, gender, social security numbers, grades, religion, national origin, country of citizenship, and immigration status.
- 5) Data Security. School districts and schools must take reasonable steps to protect confidential information, including the implementation of appropriate security measures for electronically stored data.

Exceptions. Certain exceptions to disclosure limitations exist under FERPA, permitting disclosure of otherwise confidential information to certain parties under certain circumstances, including disclosures for:

- 1) Disclosure of “directory information.” LEAs are permitted to disclose certain information, referred to as “directory information,” without additional consent from either parents or eligible students. Ordinarily, this includes information such as names, addresses, and phone numbers, but LEAs must give parents and eligible students an opportunity to opt out of such disclosures. FERPA defines “directory information” as information contained in an educational record that would not normally be considered harmful or invasive of privacy if disclosed.

Schools and school districts must give notice of information it has designated as “directory information,” the right of parents and eligible students to restrict this disclosure, and the period of time during which the parent or eligible student must notify schools in writing that they are opting out of such disclosure. After an eligible student or parent notifies a school or district in writing of their intent to opt out of such disclosure, the LEA must honor that option until otherwise notified. “Directory information” does not generally include information related to race, gender, social security numbers, grades, religion, national origin, country of citizenship, and immigration status.

- 2) School officials and personnel with a “legitimate educational interest” may access student records without additional consent. “Legitimate educational interest” includes teachers counsellors and administrators who work with students; the performance of tasks related to education or discipline; providing services to students or families; and performing administrative tasks. Schools must

establish written criteria to determine which school officials have such a legitimate educational interest, which must be included in the annual notification to parents and eligible students, noted above.

- 3) Other schools, school districts, or to postsecondary institutions where the student is enrolled or planning to enroll.
- 4) The Comptroller or Attorney General of the United States, or to the Secretary of the United States Department of Education, or to other state or local authorities for purposes of audit or evaluation.
- 5) Purposes of evaluation for financial aid for which the student has applied, so long as such disclosures are to make determinations of eligibility, amounts, or conditions of aid, or enforcement of the terms of financial aid.
- 6) State or local officials within the juvenile justice system, so long as such disclosures are made pursuant to state law.
- 7) Purposes of conducting studies for educational institutions or agencies related to the development of educational policies or programs intended to improve educational instruction.
- 8) Disclosure related to accreditation procedures.
- 9) Disclosure to parents of dependent students as defined by the Internal Revenue Service.
- 10) Emergencies involving health or safety.
- 11) Compliance with court orders or subpoenas, so long as a reasonable effort is made to provide notice to parents and eligible students.
- 12) Disclosure to law enforcement if such request falls under one of the enumerated FERPA exceptions. Before complying with such requests, school officials should consult with legal counsel to ensure the request is valid, and appropriately narrowly tailored to the request. Certain information that might be considered “directory information” might not be disclosed, as it is linked to protected non-directory information. For example, schools and school districts would typically need consent to disclose names and addresses of undocumented students because that information may implicitly reveal protected information, such as immigration status and national origin.
- 13) Disclosure to School Resource Officers (SRO) is permitted only under ordinary FERPA constraints, such as the school official exception. Thus, the SRO would only be permitted to access the information if they have a “legitimate educational interest.” Otherwise, SROs must be treated the same as other law enforcement officers.
- 14) FERPA requires notification to parents and eligible students *before the disclosure occurs*, unless a court rules otherwise.
- 15) Service providers and contractors are generally included as agents of the school and must operate under the same strictures as other school officials. They should insist upon proper warrants before

disclosure of potentially confidential information and should consult their legal counsel regarding the propriety of such requests, warrants, and subpoenas.

For more information on the allowable exceptions, please see 34 CFR 99.31 and other relevant sections of 34 Part 99.

### **Immigrant and Migrant Students.**

Immigrant and migrant students continue to face significant barriers that do not affect their more secure peers. There are special considerations pertaining to such students and protection of their privacy under FERPA. The Supreme Court of the United States (SCOTUS) decision in *Plyler v. Doe*, 457 U.S. 202 (1982) established the rights of all students to a public education, regardless of their immigration status (please note that while FERPA also applies to higher education, the *Plyler* decision applies only to public education, Kindergarten through 12<sup>th</sup> Grade).

The *Plyler* Court, recognizing the fundamental importance of access to public education, noted, “[w]e cannot ignore the significant social costs borne by our Nation when select groups are denied the means to absorb the values and skills upon which our social order rests.”

The *Plyler* case originated in Texas, where state law would withhold funds from school districts that were designated for the education of any students who were not lawfully admitted to the United States, and further allowed school districts to charge tuition for undocumented students.

SCOTUS found that, because the Texas law denied a public education to a “discrete group of innocent children” and did not further a “substantial state interest,” the law violated the Equal Protection Clause

Efforts to chill the participation of immigrant and undocumented students in public education have nevertheless continued since the *Plyler* decision. Onerous school registration demands for documentation that is difficult for immigrant families to obtain likely violate *Plyler*. Procedural measures to make matriculation and education of English learner students would likely violate the *Plyler* decision.

### **Conclusion**

In summary, you should always remember that federal laws for protections for students’ privacy under FERPA. While there may be an increase in immigration enforcement action nationwide according to declared policy priorities in the next administration, it is that much more important to already review again the FERPA protections and other applicable FERPA laws, to ensure you remain in compliance with federal laws. You should consult with your legal counsel as well broadly and for specific instances. You should always remember the importance of educating your students in a safe and conducive learning environment.

cc: Secretary Designate MDP  
Office of General Counsel



# Ensuring a Safe and Secure Learning Environment for All

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

# ENSURING A SAFE AND SECURE LEARNING ENVIRONMENT FOR ALL

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

### Introduction

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Governing Law**

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

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

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

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

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

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

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

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

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

#### ***Fourth Amendment Principles***

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

#### ***Protected Area Policies***

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

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

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

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

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

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

<sup>17</sup> 8 C.F.R. § 287.8(c).

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

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

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

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

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

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

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

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

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

### ***Federal Court Warrant***

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

### ***Administrative Subpoena***

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

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

### ***Notice to Appear***

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

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

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

## GATHERING AND HANDLING STUDENT AND FAMILY INFORMATION

### Governing Law

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



# Promoting a Safe and Secure Campus for All

Guidance to Assist New Mexico's Colleges and Universities in  
Responding to Immigration Issues

## PROMOTING A SAFE AND SECURE CAMPUS FOR ALL

### Guidance to Assist New Mexico's Colleges and Universities in Responding to Immigration Issues

#### Introduction

New Mexico's higher education system includes five public segments: (1) the research institutions—The University of New Mexico (UNM), New Mexico State University (NMSU), and the New Mexico Institute of Mining and Technology (Tech); (2) the comprehensive institutions—Eastern New Mexico University (ENMU), New Mexico Highlands University (NMHU), Northern New Mexico College (NMMC), and Western New Mexico University (WNMU); (3) the branch and independent community colleges; (4) the tribal colleges; and (5) the New Mexico Military Institute.<sup>1</sup> Higher education in New Mexico also includes private nonprofit colleges and for-profit institutions.

In total, the State's colleges and universities enroll more than 100,000 students from a wide range of backgrounds.<sup>2</sup> As reported by the Migration Policy Institute, there are currently 4,500 Deferred Action for Childhood Arrivals (DACA) recipients in New Mexico.<sup>3</sup> The State's postsecondary schools effectively provide a safe and encouraging learning environment for all students, regardless of nationality or immigration status.

Threats of immigration enforcement on postsecondary campuses result in a disruption to the learning environment, a chilling effect on seeking postsecondary education, and a concern about the disclosure of student information held by state colleges and universities. New Mexico's colleges and universities can implement policies to support the educational rights and opportunities of all students and protect student information in accordance with state and federal law.

Although federal law does not protect undocumented immigrants from discrimination in admission to postsecondary education,<sup>4</sup> New Mexico law expressly provides that “[a] postsecondary educational institution shall not deny admission to a student on account of the student's immigration status.”<sup>5</sup> New Mexico also grants resident tuition rates regardless of immigration status as long as the student attended a New Mexico secondary school for at

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<sup>1</sup> <https://hed.nm.gov/data-reports/data-reports-1/student-enrollment> (last accessed Jan. 7, 2025).

<sup>2</sup> *Id.*

<sup>3</sup> <https://www.migrationpolicy.org/programs/data-hub/deferred-action-childhood-arrivals-daca-profiles> (last accessed Jan. 7, 2025).

<sup>4</sup> See *Estrada v. Becker*, 917 F.3d 1298, 1308-09 (11<sup>th</sup> Cir. 2019) (addressing a university policy to verify the lawful presence of admitted students such that DACA recipients were not eligible to attend); *Regents of Univ. of Cal. v. Superior Court*, 276 Cal. Rptr. 197, 202 (Cal. Ct. App. 1990) (distinguishing *Plyler v. Doe*, 457 U.S. 202 (1982) based on the “significant difference between an elementary education and a university education”).

<sup>5</sup> NMSA 1978, § 21-1-4.6(A) (2015).

least one year and either graduated from a New Mexico high school or received a New Mexico high school equivalency certificate.<sup>6</sup> These provisions show New Mexico’s commitment to equal educational access and confidentiality of student records and information, regardless of a student’s immigration status. Indeed, “[u]ndocumented students enrich the diversity of higher education institutions through their varied national origins, languages, and religious backgrounds.”<sup>7</sup>

This Guidance is intended to assist higher education institutions in developing policies to provide equal educational opportunities in the context of increased federal immigration enforcement activities. This Guidance is not legal advice. College and university administrators should consult with their attorneys when formulating their policies and practices—and in addressing any questions—regarding the issues covered in this guide.

## **RESPONDING TO LAW ENFORCEMENT REQUESTS FOR ACCESS TO CAMPUSES AND RESIDENTIAL UNITS FOR IMMIGRATION ENFORCEMENT PURPOSES**

### **Governing Law**

#### ***Fourth Amendment Principles***

Immigration agents, like law enforcement officers, must comply with the Fourth Amendment. In a public place, the Fourth Amendment allows law enforcement officers to approach an individual and ask questions without any level of suspicion as long as the officer does not act in a manner that would cause a reasonable person to believe they are not free to leave.<sup>8</sup> This includes immigration officers asking questions about a person’s citizenship or immigration status.<sup>9</sup> Officers may not detain an individual in the absence of reasonable suspicion.<sup>10</sup> Law enforcement officers may make a warrantless arrest in a public place based on probable cause without violating the Fourth Amendment even in the absence of exigent circumstances.<sup>11</sup> Immigration officers are permitted to make a warrantless arrest if they witness a person entering or trying to enter the United States

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<sup>6</sup> Section 21-1-4.6(B).

<sup>7</sup> Jennifer Safstrom, Note, *An Analysis of Sanctuary Campuses: Assessing the Legality and Effectiveness of Policies Protective of Undocumented Students and of Potential Government Responses*, 106 Geo. L.J. 1523, 1530 (June 2018).

<sup>8</sup> *State v. Williams*, 2006-NMCA-062, ¶ 11, 139 N.M. 578.

<sup>9</sup> *INS v. Delgado*, 466 U.S. 210, 220-21 (1984).

<sup>10</sup> *Terry v. Ohio*, 392 U.S. 1 (1968).

<sup>11</sup> See *Payton v. New York*, 445 U.S. 573, 590-91 (1980). The New Mexico Constitution provides greater protection and requires probable cause and either exigent circumstances or a warrant to make a public arrest, *Campos v. State*, 1994-NMSC-012, ¶ 14, 117 N.M. 155, and the New Mexico Constitution applies to the actions of federal officers for purposes of determining whether evidence is admissible in a state court proceeding. See *State v. Cardenas-Alvarez*, 2001-NMSC-017, ¶ 18, 130 N.M. 386. These heightened constitutional protections, however, do not restrict the ability of federal agents to follow and enforce federal law. *Id.* ¶ 19.

unlawfully or if they have reason to believe the individual has committed a federal felony. Otherwise, they may only arrest someone without court order if they have reason to believe a person entered the country unlawfully and “is likely to escape before a warrant can be obtained.”<sup>12</sup>

The Fourth Amendment applies to law enforcement activities on the grounds of colleges and universities, but its application depends on the level of privacy associated with different locations on a campus. Student dormitories receive the same heightened Fourth Amendment protection reserved for homes.<sup>13</sup> Entry into a home requires consent, a warrant, or probable cause together with exigent circumstances or another exception to the warrant requirement.<sup>14</sup>

Law enforcement officers do not need any particularized suspicion under the Fourth Amendment to be present on the parts of a university or college campus that are open to the public. Colleges and universities can, for educational, operational, or other purposes, use policies, restricted access signs, security key cards, and the like to limit certain areas to school personnel or to school personnel and registered students. Such restrictions would be applicable to law enforcement officers and immigration agents. Regardless of access restrictions, however, law enforcement officers are entitled to be on campus grounds to execute a warrant or to make a warrantless arrest if exigent circumstances exist.<sup>15</sup>

### **Protected Area Policies**

Under previous presidential administrations, both Republican and Democrat, postsecondary schools, colleges, universities, and vocational or trade schools were considered “protected areas” warranting caution before any immigration actions were taken on such grounds.<sup>16</sup> Healthcare facilities, including those on a college or university campus, were similarly designated protected areas.<sup>17</sup> This policy did not prohibit enforcement actions at such locations but sought to avoid such activity on or near protected areas unless prior

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<sup>12</sup> 8 C.F.R. § 287.8(c).

<sup>13</sup> See *State v. Rodriguez*, 521 S.W.3d 1, 9 (Tex. Crim. App. 2017) (stating that a dorm room is analogous to an apartment or hotel room).

<sup>14</sup> See *State v. Yazzie*, 2019-NMSC-008, ¶¶ 17-18.

<sup>15</sup> See *State v. Veith*, 2022-NMCA-039, ¶ 20.

<sup>16</sup> See Alejandro N. Mayorkas, *Memorandum, Guidelines for Enforcement Actions in or Near Protected Areas* (Oct. 27, 2021)

[https://www.dhs.gov/sites/default/files/publications/21\\_1027\\_opa\\_guidelinesenforcement-actions-in-near-protected-areas.pdf](https://www.dhs.gov/sites/default/files/publications/21_1027_opa_guidelinesenforcement-actions-in-near-protected-areas.pdf) (last accessed Jan. 7, 2024); see also U.S. Customs and Border Protection, DHS Protected Areas FAQs (April 11, 2024) <https://www.cbp.gov/border-security/dhsprotected-areas-faqs> (last accessed Jan. 7, 2025).

<sup>17</sup> See Mayorkas, *Memorandum, Guidelines for Enforcement Actions in or Near Protected Areas* (Oct. 27, 2021), [https://www.dhs.gov/sites/default/files/publications/21\\_1027\\_opa\\_guidelines-enforcementactions-in-near-protected-areas.pdf](https://www.dhs.gov/sites/default/files/publications/21_1027_opa_guidelines-enforcementactions-in-near-protected-areas.pdf) (last accessed Jan. 7, 2025).

approval was obtained from an appropriate supervisory official or exigent circumstances necessitated immediate action.

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

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

A college campus may have areas that are open to the public, areas that have restricted access, and areas, such as residences, that cannot be accessed by law enforcement or immigration officers absent valid consent or a judicial warrant.

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

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

ICE warrants do not authorize immigration officials to access nonpublic, restricted areas of a university or college campus or to search school records. An ICE administrative warrant also is not a “court order” that would allow a school to disclose a student’s educational records without the consent of a parent or guardian. The Family and Education Rights and Privacy Act of 1974 (FERPA) generally requires that schools withhold information that could identify students to third parties, including federal immigration officials.<sup>18</sup> Although school personnel should not interfere with an immigration officer’s enforcement duties, school personnel are not required to assist with the apprehension of a person identified in an ICE administrative warrant and cannot be required to help enforce federal immigration law.<sup>19</sup>

#### ***Federal Court Warrant***

A judicial warrant issued by a federal district or magistrate judge based on a finding of probable cause satisfies the Fourth Amendment for purposes of authorizing the search or seizure of property, entry into a nonpublic place to arrest a person named in an arrest warrant known to be in that place, and the arrest of a named person. School personnel should

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<sup>18</sup> 20 U.S.C. § 1232g; 34 C.F.R. part 99.

<sup>19</sup> See *Printz v. United States*, 521 U.S. 898 (1997).

promptly comply with a federal court warrant, and school policies may instruct school personnel to alert administrators when such a warrant is executed.

### ***Administrative Subpoena***

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

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

### ***Notice to Appear***

A Notice to Appear (NTA) is a charging document issued by ICE, Customs and Border Patrol (CBP), or the United States Customs and Immigration Service (USCIS) seeking to commence formal removal proceedings against an individual before an immigration court. An NTA contains allegations about a particular person's immigration status. An NTA notifies an individual that he or she is expected to appear before an immigration judge on a certain date. An NTA does not authorize an individual's arrest by immigration enforcement authorities or local law enforcement authorities.<sup>20</sup>

An NTA does not require college or university staff to take any action or grant an officer engaged in immigration enforcement any special power to compel the college or university to cooperate. An NTA does not authorize access to nonpublic areas of the campus. An NTA does not legally require college or university staff to allow authorities to search student or other school records.

## **GATHERING AND HANDLING STUDENT INFORMATION**

### **Governing Law**

Federal law does not impose a duty on colleges and universities to collect, hold, or process information establishing a student's citizenship or immigration status. Given New Mexico's policy against discrimination based on immigration status for admission to postsecondary education,<sup>21</sup> colleges and universities do not need to request citizenship or immigration information in the admission process.

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<sup>20</sup> *Arizona v. United States*, 567 U.S. 387, 407 (2012).

<sup>21</sup> Section 21-1-4.6(A).

Federal law provides that state and local government entities and officials cannot prohibit or restrict any government entity or official from sharing immigration information with the Immigration and Naturalization Service.<sup>22</sup> However, federal law also protects the privacy of student information, including immigration status. FERPA protects the privacy of students by prohibiting all colleges and universities that receive federal funds from disclosing personally identifiable information contained in education records to any third party without the student's permission.<sup>23</sup>

### **Financial Aid**

Financial aid offices collect, manage, and have access to a large amount of confidential data about students and their parents. This information is often obtained through the Free Application for Federal Student Aid (FAFSA) or by the submission of family tax returns or other documentation necessary to help establish financial aid eligibility. It can include a student's information about citizenship or immigration status.

To qualify for federal financial aid, a student must be a U.S. citizen, permanent resident, or eligible noncitizen.<sup>24</sup> Undocumented immigrants, including DACA beneficiaries, are not eligible for federal aid.<sup>25</sup> Eligibility is not affected if a student's parents are undocumented.<sup>26</sup> However, the FAFSA form requests parents' social security numbers. Students whose parents do not have SSNs are advised by the U.S. Department of Education to select the box that indicates they do not have an SSN.<sup>27</sup> Federal laws such as the Higher Education Act, FERPA, and the Privacy Act control and protect the use and release of student data, including information provided for financial aid.<sup>28</sup>

State and federal law also generally prohibit colleges and universities from releasing personally identifiable information in education records to third parties, absent informed consent.<sup>29</sup> However, a college or university must comply with valid judicial warrants and subpoenas.<sup>30</sup>

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<sup>22</sup> 8 U.S.C. § 1373(a), (b). Some courts have ruled that this provision violates the Tenth Amendment. *E.g.*, *City of Ocean v. Grewal*, 475 F. Supp. 3d 355, 377-78 (D.N.J. 2020).

<sup>23</sup> 20 U.S.C. § 1232g(b)(1); 34 C.F.R. § 99.3 (defining "educational records" as records that directly relate to a student maintained by an educational institution or by a party acting for the agency or institution).

<sup>24</sup> 20 U.S.C. § 1091(a)(5).

<sup>25</sup> U.S. Department of Education, *Undocumented Students and Financial Aid* <https://studentaid.gov/applyfor-aid/fafsa/filling-out/undocumented-students> (last accessed Jan. 6, 2025).

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*

<sup>28</sup> 20 U.S.C. § 1090(a)(3)(E).

<sup>29</sup> 20 U.S.C. § 1232g.

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

### ***Campus Housing***

University housing options vary from campus to campus, and therefore, housing offices may have cause to collect different information from students. This information may include students' pre-college home address, phone number, e-mail address, and emergency contact information. Further, applications for themed housing programs may include essay questions, in response to which some students may choose to disclose their immigration status. This information is protected under FERPA. Colleges and universities should store this information securely and inform students that this information is confidential.

### ***Campus Police***

Importantly, investigative reports and other files, documents, or records created and maintained by campus police for a law enforcement purpose are not considered education records under FERPA.<sup>31</sup>

### ***University Disciplinary Records***

While disciplinary records maintained by a college or university are protected as “education records” under FERPA,<sup>32</sup> there are certain narrow circumstances in which disciplinary records may be disclosed without the student’s consent. A college or university may disclose to an alleged victim of any crime of violence or a nonforcible sex offense the final results of a disciplinary proceeding against the alleged perpetrator of that crime, regardless of the results.<sup>33</sup> A college or university may disclose to anyone—not just the victim—the final results of a disciplinary proceeding conducted against a student who is an alleged perpetrator of a crime of violence or a nonforcible sex offense, if the institution determines that the student has committed a violation of the institution’s rules or policies with respect to the offense.<sup>34</sup> Final results are limited to name, violation and sanction and would not include immigration status.

### ***Campus Healthcare Facilities***

Colleges and universities may provide health or medical services to students. While the records in most medical facilities in the United States are governed by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the HIPAA privacy rules do not extend to student medical treatment records and other records protected by FERPA.<sup>35</sup> In a health and safety emergency, FERPA permits school officials to disclose without student consent education records, including personally identifiable information from those records, if

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<sup>31</sup> 34 C.F.R. § 99.8.

<sup>32</sup> 20 U.S.C. § 1232g(h)(1).

<sup>33</sup> 20 U.S.C. § 1232g(b)(6)(A).

<sup>34</sup> 20 U.S.C. § 1232g(b)(6)(B); 34 C.F.R. §§ 99.31(a)(13)-(14).

<sup>35</sup> 45 C.F.R. § 160.103; 20 U.S.C. § 1232g(a)(4)(B)(iv).

disclosure is necessary to protect the health or safety of students or other individuals.<sup>36</sup> However, release of information for purposes of immigration enforcement is not among the enumerated exceptions to the consent requirements within FERPA.

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<sup>36</sup> U.S. Department of Education, *Balancing Student Privacy and School Safety: A Guide to the Family Educational Rights and Privacy Act for Colleges and Universities* (Oct. 2007) <https://www.govinfo.gov/content/pkg/GOVPUB-ED-PURL-gpo14871/pdf/GOVPUB-ED-PURLgpo14871.pdf> (last accessed Jan. 7, 2025); see also 34 C.F.R. §§ 99.31(a)(10), 99.36.