

CLIENT NEWS BRIEF

Schools and Immigration Enforcement

In the wake of the recent presidential election, changes in immigration law and enforcement may be on the horizon.

Some California K-12 school district and community college district officials have voiced concerns over the potential for increased enforcement of existing immigration laws, due in part to the president-elect's campaign statements that he would triple the number of enforcement agents at Immigration and Customs Enforcement (ICE) and deport 2 million undocumented immigrants. These proposals appear to have created apprehension in local immigrant communities over potential enforcement visits to school campuses, and requests from ICE agents for student- and parent-related records and information. The rising fears prompted State Superintendent of Public Instruction Tom Torlakson to issue a [statement](#) on December 21, 2016 declaring California's public schools safe havens for students and their families.

With these developments in mind, many school and community college districts are considering adoption of guidelines for interacting with ICE agents, as well as related alternatives such as "sanctuary school" resolutions and policies.

The federal Family Educational Rights and Privacy Act (FERPA) and California's Education Code generally limit the disclosure of student records and information without parent consent to specifically delineated exceptions. How ICE agents' requests for records or information interact with those laws and exceptions may depend on the specific facts of each request, and the form in which ICE makes the request. For example, both FERPA and the Education Code generally require compliance with a lawfully issued subpoena for student records, assuming that is the method through which ICE were to seek such information.

Federal law does not require school districts to report undocumented students to immigration authorities. Moreover, there may be an argument that the United States Supreme Court's opinion in *Plyler v. Doe* (1992) 457 U.S. 202, prohibits school districts from reporting undocumented students to law enforcement agencies in the absence of a court order or subpoena requesting such information, as such voluntary reporting could result in denying undocumented students the right to access a free public school education. This said, there are other federal laws that prohibit the intentional concealing or shielding of an illegal alien from detection. Due to the evolving and somewhat unsettled nature of the law in this area, school districts are encouraged to consult with legal counsel regarding these issues.

The potential for increased ICE enforcement and its impact on undocumented students is likely to grow in importance in 2017. As a result, districts may wish to consider their role in relation to this issue, as well as policies, practices or procedures that can provide guidance and structure.

Lozano Smith is working on guidance on these and other immigration-related

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As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.

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issues and on model sanctuary campus policies for our school and community college district clients. If you are interested in receiving our guidance or copies of our model policies or have any questions regarding immigration enforcement on school campuses, please contact the authors of this Client News Brief or an attorney at one of our [nine offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#) or download our [Client News Brief App](#).

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