



# Keeping DC Schools Safe for All Families and Students

## *Immigration and Rights in Schools*

---

May 2, 2017



# Agenda

- **Welcome and introductions**
- Review changing immigration enforcement landscape
- Identify students' rights
- Identify schools' rights
- OSSE's role in collecting and protecting data
- Discuss best practices
- Provide additional resources
- Discuss next steps and additional supports



# Agenda

- Welcome and introductions
- **Review changing immigration enforcement landscape**
- Identify students' rights
- Identify schools' rights
- OSSE's role in collecting and protecting data
- Discuss best practices
- Provide additional resources
- Discuss next steps and additional supports



# Changing immigration enforcement

During the first few months of the new Administration, the federal government has been revising key policies regarding immigration law enforcement and undocumented persons.

Local education agencies (LEAs) have raised questions about how such federal directives might affect their students and families.

To address this changing landscape, it is necessary to ground this conversation around two key areas:

- **Student's rights**
- **School's rights**



# Agenda

- Welcome and introductions
- Review changing immigration enforcement landscape
- **Identify students' rights**
  - Equal access to education
  - Student privacy
- Identify schools' rights
- OSSE's role in collecting and protecting data
- Discuss best practices
- Provide additional resources
- Discuss next steps and additional supports



# Equal Access to Education

**All students have a constitutional right to public education.**

In *Plyler v. Doe*, the U.S. Supreme Court held that under the, “Equal Protection Clause,” undocumented, school-aged children were **entitled to the same free public education** as other residents of the same school district regardless of their immigration status.

Specifically, the Supreme Court said:

*By denying these children a basic education, we deny them the ability to live within the structure of our civic institutions, and foreclose any realistic possibility that they will contribute in even the smallest way to the progress of our Nation.*



# Equal Access to Education

This important Supreme Court decision has policy implications for local education agencies.

Under *Plyler vs. Doe*, **schools cannot take actions that would discourage enrollment and success of students based on immigration status.**

This includes but is not limited to taking the following actions:

- Do not ask about immigration status.
- Do not request or maintain records related to immigration status (i.e. birth certificates being used as proof of citizenship, Social Security Numbers, etc.).



# Student Privacy

The Family Educational Rights and Privacy Act (FERPA) prohibits the release of student education records without prior written consent and **applies to all students**, including students who are immigrants. FERPA has the following policy considerations for LEAs:

- ***Court order or subpoena***
  - No exception clearly applies to U.S. Immigration and Customs Enforcement (ICE) activities. The most relevant exception to schools is a court order or subpoena.
  - Even if ICE produced a court order or subpoena, the school must make a reasonable effort to notify the family of the subpoena prior to complying and disclosing any information.
- ***Directory information***
  - LEAs must designate directory information, which is information that is generally not considered harmful or an invasion of privacy if released.
  - Directory information may be released without consent. However, FERPA does not require disclosure.





# Agenda

- Welcome and introductions
- Review changing immigration enforcement landscape
- Identify students' rights
- **Identify schools' rights**
  - Records requests
  - Subpoenas
  - Requests for Interviews
- OSSE's role in collecting and protecting data
- Discuss best practices
- Provide additional resources
- Discuss next steps and additional supports



# Records Requests

Pursuant to FERPA, a school can require ICE or other law enforcement to obtain **written parental consent or a subpoena** before producing education records.

Schools can have **separate policies for local and federal law enforcement** (e.g. directory information will only be released to local law enforcement).

Schools should decide what practice to follow for **federal agents** and **communicate** this clearly to staff.



# Subpoenas

**Schools must produce education records** in response to a legally issued subpoena.

However, FERPA requires a, “reasonable effort” to **notify parents in advance** of the school’s compliance, to the parent “may seek protective action.” 34 C.F.R. § 99.31(a)(9)(ii).

Schools **should not provide any information** on the spot.

School staff should have a process in place that directs all subpoenas to **a single point of contact** to ensure a consistent response in accordance with school policies and procedures.



# Student Interviews

If an ICE agent comes to school seeking to interview a student, best practice is for school staff to **take the agent's contact information** and tell him/her that someone will be in touch shortly.

Schools are **not required** to release student information or **make students available** on the spot.

Schools are **not required** to confirm whether that **student is in attendance**.



# Agenda

- Welcome and introductions
- Review changing immigration enforcement landscape
- Identify students' rights
- Identify schools' rights
- **OSSE's role in collecting and protecting data**
  - Required collections
  - Protection policies and practices
- Discuss best practices
- Provide additional resources
- Discuss next steps and additional supports



# Required Collections

OSSE collects student-level data about students born outside and their native language for three purposes:

- **EdFacts reporting:** OSSE uses this information to fulfill a required EdFacts report, [C045-Immigrant](#).
- **Immigrant Children and Youth Enrollment Grant:** OSSE uses the number of students born outside the U.S. to determine which LEAs qualify for [Immigrant Children and Youth Enrollment Grant](#) that is part of Title III, which is provided to LEAs with a significant increase of students who meet these criteria.
- **Assessment rosters:** OSSE uses whether a student is new to the U.S. to determine whether individual students must take PARCC ELA.



# Protection Policies and Practices

OSSE has taken the following actions to strengthen its data protection policies and practices:

- **Eliminate unnecessary collections:** OSSE no longer collects a student's country of origin and will consolidate redundant collections.
- **Limit data access:** Only OSSE staff with a legitimate educational need have access to which students were born outside of the U.S.
- **Data privacy training:** All staff and contractors are required to participate in data privacy training as well as sign non-disclosure agreements that ensure that any sensitive information remains confidential.
- **Data retention policies:** OSSE is creating and updating data retention policies to ensure that it is only retaining information for as long as necessary.



# Agenda

- Welcome and introductions
- Review changing immigration enforcement landscape
- Identify students' rights
- Identify schools' rights
- OSSE's role in collecting and protecting data
- **Discuss best practices**
  - Align leadership
  - Set LEA and school policies
  - Train front-line staff and educators
- Provide additional resources
- Discuss next steps and additional supports





# Best Practices

National organizations and other states have identified the following best practices to prepare LEA staff to support student and school's rights:

- **Align leadership**
- **Set LEA and school policies**
- **Train front-line staff and educators**



# Best Practices: Align Leadership

LEA leadership should ensure alignment in terms of goals, priorities, and any related actions. This could include but is not limited to:

- Affirm importance of **safe and supportive environment** for all students
- Prepare in advance for **media coverage**
- Do not collect or maintain **records related to immigration status**
- Review **enrollment and related forms** to ensure that questions about immigration status are not present
- Update **emergency contact information** for all students
- Establish **official communications** processes and plans



# Best Practices: Set LEA Policy

LEA leadership should ensure that its policies and procedures align with its goals and priorities, which could include:

- Review policies and procedures regarding **directory information** and proper release of such information
- Review policies and practices on cooperation with **local and federal law enforcement**
- Review policies and procedures on **bullying and harassment incidents**



# Best Practices: Provide Training

LEA leaders should ensure that anyone who might experience this issue first-hand have received proper training that could include but is not limited to:

- Inform staff, students, and school community of **school policies**
- School staff should not confirm **attendance of students** without communication with central office
- School staff should take **ICE and/or law enforcement agent information** and review with central office before further action is taken



# Agenda

- Welcome and introductions
- Review changing immigration enforcement landscape
- Identify students' rights
- Identify schools' rights
- OSSE's role in collecting and protecting data
- Discuss best practices
- **Provide additional resources**
- Discuss next steps and additional supports



# Additional Resources

- [Letter from Mayor Bowser](#)
- [Letter from Deputy Mayor of Education Jennie Niles](#)
- [DC Public Charter School Board Guidance: Sanctuary Schools for Undocumented Students](#)
- [Family Preparedness Plan for Immigration Enforcement \(CT\)](#)
- [Undocumented Students and Families: The Facts \(Association of California School Administrators\)](#)

Please contact OSSE's Office of General Counsel with any questions related to this issue: 202-724-7756.



# Agenda

- Welcome and introductions
- Review changing immigration enforcement landscape
- Identify students' rights
- Identify schools' rights
- OSSE's role in collecting and protecting data
- Discuss best practices
- Provide additional resources
- **Discuss next steps and additional supports**