

KROKIDAS & BLUESTEIN

ATTORNEYS

FALL SCHOOL REMINDER

WHAT TO DO IF ICE COMES KNOCKING

With the start of the new academic year, schools should review their policies and practices to ensure that they meet their obligation to provide all students with equal access to public education, regardless of the students' immigration status.

The Massachusetts Attorney General's Office interprets this obligation as one that requires schools "to avoid policies or practices that may adversely affect the ability of undocumented students to obtain a public education," including those policies and procedures "that may chill or dissuade students from enrolling or fully participating in public education." Attorney General Guidance: Rights and Obligations of Schools in Response to ICE Requests for Access or Information, 2 (May 18, 2017).

In light of this obligation, recent events, and the current political climate, it is important that schools have policies and procedures in place to address requests for access to students or student information by agents of Immigration and Customs Enforcement ("ICE"). These policies and procedures must carefully balance the school's obligation to not "chill or dissuade students" from coming to school with its obligations to comply with any lawfully-issued subpoenas and court orders that ICE might present to school authorities, and to protect student information under laws such as the Family Educational Rights and Privacy Act ("FERPA") and the Massachusetts Student Record Regulations ("MA Student Record Regulations").

While we believe ICE is currently operating under an Obama-era policy designating schools as "sensitive locations" at which ICE cannot engage in enforcement activity, such policy may be rescinded at any time without notice.

Schools should consider taking the following steps to anticipate possible ICE activity on school grounds, steps which also represent best practices generally:

- Maintain a visitor sign-in sheet and ask *all* visitors to produce identification, including law enforcement officials

- Request updated emergency contact sheets from all students, including persons to contact in the event a student's parents or guardians are unavailable
- Ensure there is no collection by the school of unnecessary information, including immigration or citizenship status of the students and their parents or guardians, passport or visa information, and social security numbers
- Refrain from designating place of birth and primary language as "directory information," as the MA Student Record Regulations, which are more limited than FERPA, do not permit such designation. 603 CMR 23.07(4)(a).

If a school receives a request from law enforcement, including ICE, for access to students and/or student information, the school should immediately contact legal counsel, first and foremost, to evaluate the validity of the ICE request and the school's legal obligation to abide by the requirements of the FERPA and the MA Student Record Regulations. Schools must keep in mind that they are obligated to comply in a timely manner with lawfully issued subpoenas and court orders, and must seek extensions or other legal protections if more time is necessary to respond.

Schools are also encouraged to carefully review the Massachusetts Attorney General's guidance on the topic, which is available [here](#). If you have any questions about ICE activity in schools or your school's obligations under FERPA and the MA Student Record Regulations, please contact Attorneys Elka Sachs, esachs@kb-law.com, Janet Lundberg, jlundberg@kb-law.com, or Allison Belanger, abelanger@kb-law.com.