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Recent immigration-related actions by federal officials have created fear and confusion across the country. New York State residents, whom both of our agencies and the New York State Board of Regents have pledged to serve, have communicated directly with our agencies about the anxiety and questions these actions raised. The New York State Office of the Attorney General (“OAG”) and the New York State Education Department (“SED”) write today to reaffirm to students, schools, families, and communities across the State of New York that our schools will remain safe havens where all students can learn.

Pursuant to the New York State Education Law, children over five and under twenty-one years of age who have not received a high school diploma are entitled to attend the public schools in the school district in which they reside without paying tuition. Moreover, school districts must ensure that all students within the compulsory school age attend upon full-time instruction.<sup>1</sup> **Undocumented children, like U.S. citizen children, have the right to attend school full time as long as they meet the age and residency requirements established by state law.** Indeed, the U.S. Supreme Court held decades ago, in *Plyler v. Doe*, that school districts may not deny students a free public education on the basis of their undocumented or non-citizen status, or that of their parents or guardians.<sup>2</sup>

Accordingly, the OAG/SED have underscored this important right of undocumented students in guidance to school districts that, at the time of registration, schools should not ask questions related to immigration status that may reveal a child’s immigration status, such as requesting a Social Security number.<sup>3</sup> We also have advised that, while school districts may need to collect certain data pursuant to state and/or federal laws, they should do so after a student has

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<sup>1</sup> See Educ. Law §§ 3202(1), 3205.

<sup>2</sup> *Plyler v. Doe*, 457 U.S. 202 (1982); see also *Appeal of Plata*, 40 Ed. Dep’t Rep. 552, Decision No. 14,555.

<sup>3</sup> See, e.g., Cosimo Tangorra, Jr., “Dear Colleague” Letter, New York State Education Department (Sept. 10, 2014), <http://www.p12.nysed.gov/sss/documents/EducationalServicesforRecentlyArrivedUnaccompaniedChildren.pdf>.

enrolled in school so as not to inadvertently give the impression that information related to immigration status will be used in making enrollment determinations.<sup>4</sup>

Recently, our agencies have received questions specifically concerning school districts' obligations with respect to possible inquiries from representatives of U.S. Immigration and Customs Enforcement ("ICE"), including requests to meet with or interview students, or to obtain access to student records. As you know, various laws impose legal duties on school districts with respect to law enforcement questioning students at school and the confidentiality of student records, including the New York Family Court Act ("NYFCA") and the federal Family Educational Rights and Privacy Act ("FERPA"). A breach of such duties, even to fulfill a request from federal immigration authorities, could expose school districts to liability. For this reason, our agencies encourage all school district employees to consult with their superintendents and school attorneys immediately upon receipt of any request made by a federal immigration official. Prior to responding to any such request, school district employees should work with their superintendents and attorneys to determine whether honoring such a request could cause the school district to violate a law of general applicability.

*Requests to meet with or interview students.* **It has long been SED's position that law enforcement officers may not remove a student from school property or interrogate a student without the consent of the student's parent or person in parental relation**, except in very limited situations (*e.g.*, when law enforcement officers have a valid warrant or when a crime has been committed on school property).<sup>5</sup> School officials are encouraged to cooperate with law enforcement within the bounds of the law and local school policy. We strongly recommend that, should ICE or other federal immigration officials appear at a school seeking access to students (for interviews and/or questioning), a school district should advise all staff to immediately contact the superintendent and the school district's attorney for guidance, particularly with respect to its duties under the Education Law, *Plyler*, and NYFCA before allowing access to a student.

*Requests to access student education records.* Similarly, our agencies advise that, upon receipt of a request from immigration officials to access student education records, school districts should immediately consult with their attorneys, as compliance with such request through

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<sup>4</sup> With specific reference to Social Security identification, SED does not require districts to collect students' Social Security cards or numbers for any purpose or at any time, either prior to or following student enrollment.

<sup>5</sup> *See, e.g.*, N.Y.S.E.D. Counsel's Opinion 91 (June 17, 1959) ("officers of any kind may not remove a child from a school building while a child is properly in attendance without permission of the child's parents for questioning"); *see also* N.Y.S.E.D. Counsel's Opinion 148 (Feb. 23, 1965) ("The school particularly does not have custody of pupils for the purpose of authorizing law enforcement officers or other third parties to interrogate pupils or to remove them from the premises for any purpose whatever.") This position is based on various laws including, *inter alia*, NYFCA, which requires that a police officer must make every reasonable effort to immediately contact a child's parent or anyone responsible for the child's care when a child under the age of 16 is taken into the custody of law enforcement, and further holds that such a child cannot be interrogated, unless and until his or her parent or guardian, if present, is advised of the child's rights and afforded an opportunity to attend the interrogation. *See* N.Y. Family Court Act § 305.2; Matter of Jimmy D., 15 N.Y.3d 417 (2010).

disclosure may violate FERPA.<sup>6</sup> FERPA generally prohibits school districts that receive federal funds from releasing personally identifiable information (“PII”) contained in a student’s education records without the consent of the parent or eligible student. FERPA permits such disclosure without consent only if the disclosure meets certain limited conditions set forth in the law’s implementing regulations. These limited conditions include requests made by specifically enumerated individuals of the federal government<sup>7</sup>. **However, a request from ICE or other federal immigration officials to access student PII from education records does not appear to satisfy any of the FERPA exceptions to the general rule that a parent or eligible student must consent to disclosures to third parties.**<sup>8</sup>

SED’s Office of P-12 Education Policy is also issuing guidance today to schools and districts regarding the Dignity for All Students Act (“DASA”) in light of reports involving incidents of harassment in schools across the country in recent weeks. That guidance will be available here: <http://www.p12.nysed.gov/dignityact/documents/dasa-guidance.pdf>.

At a time when so many questions are being raised on what immigrant-related actions will be taken by the federal government, it is vital that we, as educators and government officials, remind our school communities about the importance of inclusiveness and the right of all students to receive an education without fear of reprisal simply by being in school. Our classrooms must remain safe havens for all children. We again thank you for all the work you do to support our students, families, and communities.

Sincerely,



MaryEllen Elia  
Commissioner of Education



Eric T. Schneiderman  
Attorney General

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<sup>6</sup> See 20 U.S.C. § 1232g.

<sup>7</sup> Pursuant to 34 C.F.R. §99.31(a)(3), disclosure may be made, subject to the requirements of 34 C.F.R. §99.35, to authorized representatives of the U.S. Comptroller General, the U.S. Attorney General, the Secretary of the U.S. Department of Education, or State and local educational authorities.

<sup>8</sup> See 34 C.F.R. § 99.31.