

Preparing for Potential ICE at School & Updates on Act 10

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The U.S. Constitution's 14th Amendment, along with the landmark Supreme Court decision in *Plyler v. Doe*, establishes that children have a right to a public education — regardless of immigration status. This right provides a strong legal foundation for how Wisconsin schools should prepare for potential immigration enforcement activities at school by Immigration and Customs Enforcement (ICE).

In the past, "sensitive locations" guidelines limited ICE enforcement actions in schools. However, in January 2025, these protections were removed. Going forward, ICE will use law enforcement "common sense" when considering ICE enforcement actions in schools. This shift means schools must prepare for the increased potential of ICE enforcement actions at school.

ICE ACCESS TO SCHOOL PROPERTY

Schools hold broad legal authority to control access to their campuses, which are private property. During school hours, school officials have both the right and duty to deny entry to anyone who lacks either board policy authorization or a valid judicial warrant. For a judicial warrant to be legally valid, it must satisfy two essential requirements: first, it must bear the signature of a federal or state judge (administrative or immigration judge signatures are not sufficient), and second, it must explicitly identify the specific school location and the precise individuals or records being sought. While school officials may voluntarily choose to cooperate with administrative warrants or other immigration documents, when permitted by board policy, these documents do not compel officials to provide access to campus. Such documents only grant entry if an authorized school official explicitly

consents to ICE's request. School officials should review applicable policies regarding law enforcement access to schools and visitor policies to determine current protocols and determine whether to recommend that the school board make any changes to those policies. Finally, school officials should review board policies and applicable protocols to determine when/if parents should be contacted if ICE is asking to speak to students at school.

ICE AND PUPIL RECORDS LAW

Schools cannot freely share information with ICE that is protected by state and federal pupil records law, unless an exception applies. Even when presented with a subpoena, schools should consult legal counsel before releasing records that might contain information protected by these laws. Information classified as directory data by district policy and applicable law is potentially disclosable without parental consent. However, schools should be sure not to disclose the directory data of students whose families have opted out of disclosure of directory data to third parties. Schools should prepare for the potential that more families might opt out of disclosure of directory data in the current landscape.

KEY PLANNING STEPS FOR SCHOOLS

Schools must balance multiple responsibilities when planning for potential ICE enforcement actions. Key considerations include:

- Establish clear protocols for staff, consistent with board policy, regarding who can authorize ICE to have school access, accept warrants and subpoenas, and release records.
- Train front-line employees on appropriate responses when ICE arrives at school, such as "I am not authorized to give consent to your request. The authorized person has been notified and is on their way."
- Train authorized school officials to collect names, badge numbers, and any paperwork from ICE. Contact legal counsel immediately if there is any question as to how the district should respond to the request.
- Update emergency contact information for students and employees in case families are separated due to ICE enforcement actions. ICE enforcement actions might separate families, leaving students without a parent or guardian. These students might move in with friends or family and might qualify as homeless under the McKinney-Vento Act.

- Protect students and employees from discrimination or harassment related to race or perceived immigration status.

CONCLUSION

The intersection of immigration enforcement and education creates complex challenges for school districts as they try to minimize disruption to the educational environment while complying with the law. Success requires planning well in advance, carefully developing policies and communication protocols, and ongoing consultation with legal counsel.

Schools should continue monitoring this evolving situation and work with legal counsel to develop appropriate protocols that fit their specific circumstances. Contact the authors of this article or any member of [Boardman Clark's School Law Practice Group](#) if you need assistance navigating this challenging development.

Supreme Court Denies Petition to Bypass Court Of Appeals In Act 10 Case

This is an update on the Act 10 litigation. For a previous recap, please see [Judge Orders Stay On Act 10 Decision](#).

On January 17, 2025, the plaintiffs filed a Petition to Bypass with the Wisconsin Supreme Court. This means the plaintiffs were asking the Wisconsin Supreme Court to directly hear the appeal and skip the Court of Appeals. On February 12, 2025, the Supreme Court denied the Petition to Bypass. The Order does not explain the Supreme Court's decision (which is not uncommon). This means the case will now proceed through the regular appellate process. It is not known exactly when the Court of Appeals will issue its decision, but it will likely be a number of months. Once issued, the losing party can again ask the Supreme Court to hear an appeal. The Supreme Court is not required to hear any appeal, but most observers believe it is likely the Supreme Court will hear the case at some point.

Two justices of the Wisconsin Supreme Court also indicated whether they would recuse themselves from hearing the Act 10 litigation. Justice Hagedorn, on his own, recused himself from participation in any matters related to this case. That means, if the case eventually makes it to the Supreme Court, he will not participate. Conversely, Justice Protasiewicz denied a motion filed by the

legislature that she recuse herself from the case. That means, as of right now, she intends to participate in any further proceedings related to this case.

Until all appeals are exhausted, school districts should continue to operate as usual with respect to bargaining. Act 10 continues to cover any open negotiations with certified unions.

[Boardman Clark's School Law Practice Group](#) will continue to monitor this case and will provide any updates as they become available.

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