

How Independent Schools Can Prepare For An ICE Encounter

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The executive orders enacted by President Trump in the early days of his second administration have raised significant concerns among independent schools nationwide. Schools are increasingly worried about potential U.S. Immigration and Customs Enforcement (ICE) encounters and are seeking guidance to protect both students and staff. This guidance is intended to address these concerns and suggests measures to ensure the safety and wellbeing of school communities.

Advance Preparation

1. Develop a Plan

Preemptively plan how school personnel should respond in the event of an encounter from ICE. The plan may include:

- Identify which areas of the school are designated as “public areas” and which areas are designated as “non-public areas.” ICE agents cannot enter a “non-public area” without consent or a judicial warrant. For further information on the differences between various warrants and subpoenas, please see “Verifying documents presented by ICE” section further below.
- Designate a point person who is trained to manage encounters with ICE. The individual should be well versed in the school’s protocols for handling ICE encounters and serve as the primary contact for school personnel. Additionally, the point-person should promptly notify the school’s legal counsel upon ICE’s arrival.
- Designate any other individuals who should be contacted (point-person in leadership, legal counsel, or parents/guardians).
- Determine how school personnel should react and manage interactions with ICE agents.
- Establish steps school personnel should take to ensure student safety.

2. Train School Personnel

Once a plan is developed and a designated point-person is identified, all school personnel should be trained in what to do during an ICE encounter. Training should include: recognizing ICE agents, communications with ICE agents, handling student information, and school protocols. Schools may consider more in-depth training for front office personnel, leadership, and other school personnel that participate in school drop-off and dismissal.

3. Have a Written Policy

Establish a written policy detailing the response plan in the event of ICE agents’ arrival. The policy should encompass the points outlined above, including a clear designation of “public areas” within school grounds and the identification of all other areas as “non-public areas.”

4. Evaluate Forms I-9

To prepare for an I-9 audit by ICE, it’s essential to maintain continuous compliance with Form I-9 requirements. Take a proactive approach by conducting an internal audit of Form I-9 records and E-Verify cases (if applicable) to ensure that all procedures are accurate and consistently followed.

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Woburn

300 TradeCenter
Woburn, MA 01801
(781) 904-2700

Concord

11 S. Main Street
Concord, NH 03301
(603) 226-0400

Portsmouth

100 Arboretum Drive
Newington, NH 03801
(603) 436-2818

Boston

45 School Street
Boston, MA 02108
(617) 523-7935

During an ICE encounter

- Remain calm and secure entry - Despite planning, being approached by ICE agents can be frightening and intimidating. Staying calm and interacting with ICE respectfully, yet firmly, is the best practice. School personnel should do their best to secure the entry point and ensure ICE agents remain in a designated public area of school grounds as outlined by school policy.
- Communication - Do not provide any information to an ICE agent unless it is required by law. Alert school personnel as identified in the school plan/policy. The designated point-person will communicate with ICE agents. Also call the school's legal counsel. Call the school's local ICE field office to verify the ICE agents badge number(s).
- Verify documentation - If a warrant and/or subpoena is presented, the designated point-person or their backup along with legal counsel should verify the warrant and/or subpoena. For further information on the differences between various warrants and subpoenas, please see "Verifying documents presented by ICE" section further below.
- Family notification - Contact a parent or guardian immediately if the warrant is valid and verified, or if there is no valid warrant or subpoena, following an encounter with ICE.
- Document the encounter - Record and document the interaction. Make a copy of any warrant or subpoena, record what you can, and take note of any interactions.

Verifying Documents Presented by ICE

1. Verify the Warrant

An ICE agent must present a **judicial** warrant **signed by a judge** to enter any non-public area of the school, or question or remove any student from their classroom. **It is important to be familiar with the difference between an administrative warrant and a judicial warrant.**

- An administrative warrant is an official written document that grants a law enforcement officer from a federal agency, such as an ICE agent with the Department of Homeland Security (DHS), the authority to make an arrest or seize property. This type of warrant is issued by a federal agency such as DHS and may be signed by an immigration judge or an immigration officer. Unlike a judicial warrant, an administrative warrant does not authorize a search. If an ICE agent presents an administrative warrant, a school official has the right to deny the agent entry to the school or access to records.
- A judicial warrant is an official written order that grants law enforcement officers to make an arrest, seize property, or conduct a search. It is issued by a judicial court, including state and federal courts, and is signed by a judge or magistrate judge. Compliance with a judicial warrant is mandatory. A valid judicial warrant must clearly identify the individuals ICE is targeting, along with relevant details such as addresses or locations connected to those individuals. ICE is restricted to pursuing only those named in the warrant and cannot engage in broad questioning or detain others. It is important to note that a warrant signed by an immigration judge is NOT a judicial warrant.

2. Verify a Subpoena

An ICE agent must show a judicial subpoena signed by a judge to immediately share any information or provide any documentation to an ICE agent. It is important to be familiar with the difference between an administrative subpoena and a judicial subpoena.

- An administrative subpoena is an official written request for documents or testimony in an investigation. It is typically issued by a federal agency such as DHS and may be signed by an immigration judge or an immigration officer. Unlike a judicial subpoena, there is no immediate obligation to comply with an administrative subpoena, even if it is signed an immigration judge. If an ICE agent presents an administrative subpoena, a school official has the right to refuse access to school records or personal information and can challenge the subpoena in court.
- A judicial subpoena is an official written order that requires the production of documents or testimony in court or deposition. It is issued by a judicial court, including state and federal courts. Compliance with a judicial subpoena is mandatory. However, not all school personnel may be authorized to accept a judicial subpoena issued to the school. ***It is important to note that a subpoena signed by an immigration judge or issued by an immigration court is not a judicial subpoena.***

By taking these steps, schools can better safeguard their students and personnel from potential ICE encounters. It is essential to stay informed and be prepared to create a supportive and secure environment for all. If you have questions or need further information about these ongoing developments, please contact any of our experienced immigration attorneys in McLane Middleton's Education Law and Immigration Law Practice Groups.

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