

*Appleseed is pleased to present an update to our 2012*

## **“PROTECTING ASSETS AND CHILD CUSTODY IN THE FACE OF DEPORTATION.”**



March 2017

As millions of immigrant families face fear and uncertainty, Appleseed is updating its 2012 manual, “Protecting Assets and Child Custody in the Face of Deportation.”

This one-of-a-kind resource is designed for immigrants and those who work with them: the host of attorneys, nurses, social workers, religious workers who are stepping up in challenging times. Appleseed’s Manual will help families develop plans *in advance* to deal with critical financial and family issues in the event of deportation, arrest and other emergencies.

Because the times are so uncertain, and the demand for these updates is growing, we are publishing each chapter as we draft it.

We are grateful for your interest, and for everything you can do to help immigrants and refugees. Please let us know of other topics you’d like to see covered.

To explore new chapters, further updates and additional resources, please visit us at [www.appleseednetwork.org/deportationmanual](http://www.appleseednetwork.org/deportationmanual).

Bert Brandenburg  
President, Appleseed



**APPLESEED**

*Appleseed wishes to express our gratitude to Ballard Spahr and its individual attorneys for their expertise: pro bono counsel, Mary Gay Scanlon, and attorneys Jessica M. Anthony, Heather Horrocks and Katie Leesman.*

## CHAPTER 3

### ENHANCING SAFETY IN PUBLIC SCHOOLS

---

*Following three Executive Orders concerning immigration laws and enforcement, immigrants and school administrators and officials are increasingly concerned about immigration enforcement at public schools. Most pressing, immigrant parents and children are worried that public schools may reveal their legal status or share their records with Immigration and Customs Enforcement (“ICE”) agents. Immigrant parents are also seeking guidance on how they and their children can best interact with schools and school officials, and how to prevent bullying or harassment of children by other members of the community. Finally, school administrators and educators may need guidance on how to recognize problems and address concerns.*

☉☉ **Understanding Safety in Public Schools – Basic Definitions** ☉☉ **What Do the President’s New Executive Orders Say?** ☉☉ **Are There School Policies to Help Protect the Legal Status of Parents and Children?** ☉☉ **How Can Schools Recognize a Problem Without Danger to a Parent’s or Child’s Privacy?** ☉☉ **What Can Schools Do When They Notice a Problem, and How Have Other Schools Addressed These Problems?** ☉☉

The information in this chapter should be used only as a starting reference and cannot take the place of legal representation. Because the specific details and processes for enhancing safety in public schools vary from state to state, always refer to state-specific resources.

### **Understanding Safety in Public Schools - Basic Definitions**

**“Alien”** is any person not a citizen or a national of the United States.

**“Deportable Alien”** is an alien in and admitted to the United States subject to any grounds of removal specified in the Immigration and Nationality Act. These grounds for removal include any alien illegally in the United States, regardless of whether the alien initially entered the country illegally or whether they entered legally but then later lost legal status.

**“Deportation”** is the formal removal of an alien from the United States. This is done when the alien has been found removable for violating immigration laws. Deportation is ordered by a judge.

**“Immigrant”** is an alien who is in the United States.

**“Permanent Resident Alien”** is an alien admitted to the United States as a lawful permanent resident. Lawful permanent residents and permanent resident aliens are legally accorded the privilege of residing permanently in the United States.

**“Temporary Worker”** is an alien coming to the United States to work for a temporary period of time.

**“Voluntary Departure”** is the departure of an alien from the United States without an order of removal. An alien allowed to voluntarily depart concedes removability but is not barred from seeking admission at any time.

## **What Do the President’s New Executive Orders Say?**

The President has issued three Executive Orders that may impact students.

### *Border Security and Immigration Enforcement Improvements (“Secure Borders”)*

On January 25, 2017, President Trump signed an Executive Order titled “Border Security and Immigration Enforcement Improvements.” The stated purpose of this order, referred to as “Secure Borders,” is to improve security along the borders of the United States, specifically the southern border.

Most pertinent to schools, students, and parents, the Secure Borders order authorizes state and local law enforcement agencies to perform the functions of an immigration officer. This is typically accomplished through a Section 287(g) Agreement, which refers to the section of the Immigration and Nationality Act that allows state and local law enforcement to enter into a partnership with ICE. The Secure Borders order also prioritizes the detention of aliens violating immigration laws and focuses on prosecuting aliens who commit crimes along the southern border. The Secure Borders order also authorizes the construction of a wall and facilities to detain aliens at or near the border.

### *Enhancing Public Safety in the Interior of the United States*

On January 25, 2017, President Trump signed an Executive Order titled “Enhancing Public Safety in the Interior of the United States.” The stated purpose of this order, referred to as the “Enforcement Order,” is to identify and deport removable aliens. The Executive Order seeks to increase deportation of removable aliens by increasing enforcement of immigration laws, punishing those jurisdictions referred to as “sanctuary” jurisdictions, and speeding up removal proceedings.

The Enforcement Order specifically targets a number of groups for removal:

- Any alien who has been convicted of a crime;
- Any alien who has been charged with (but not yet convicted of) a crime;
- Any alien who commits an act that could constitute a crime;

- Any alien who has engaged in fraud or willful misrepresentation in an application or other business with a governmental agency;
- Any alien who has abused any program related to receiving public benefits;
- Any alien who has been ordered removed, but has not yet departed the United States; or
- Any alien who poses a risk to public safety or national security as determined by an immigration officer.

The impact on schools, which previously were considered “sensitive locations,” thereby limiting enforcement of immigration laws, remains unclear. For example, the Enforcement Order could be read to apply to “abuse” of free and reduced school lunch programs, which would have an obvious effect on students and schools.

The Enforcement Order also seeks to punish so-called “sanctuary” jurisdictions. Although there is no precise definition, generally a sanctuary jurisdiction is an area, such as a district, city, county, or state that does not use municipal funds to enforce national immigration laws. In some cases, sanctuary jurisdictions forbid their police and other employees from inquiring about immigration status of people in their area or from people receiving services. Specifically, the Enforcement Order states that jurisdictions that fail to comply with the Immigration and Nationality Act are not eligible to receive Federal grants. Whether an area or jurisdiction is labeled a sanctuary jurisdiction is left to the sole discretion of the Secretary of Homeland Security.

The Enforcement Order re-emphasizes that the Secretary of Homeland Security should empower and authorize local and state law enforcement officials to act as immigration officers through the use of Section 287(g) Agreement, as described above, and by terminating the Priority Enforcement Program (“PEP”), which primarily focused on detention and deportation of national security threats and violent criminal offenders, and reinstating the “Secure Communities” program, which requires local law enforcement to share with ICE information about individuals in custody and allows ICE to issue immigration detainers that would require holding that person until ICE can take custody.

### *Protecting the Nation from Foreign Terrorist Entry into the United States*

On March 6, 2017, President Trump signed an Executive Order titled “Protecting the Nation From Foreign Terrorist Entry Into the United States.” This order is commonly referred to as the “Travel Ban.” The March 6 order replaces a previous order that had been challenged and blocked by the courts. The Travel Ban suspends any entry into the United States by foreign nationals from Iran, Libya, Somalia, Sudan, Syria, and Yemen for ninety (90) days.

The Travel Ban affects only those foreign nationals from the six named countries who were outside of the United States on the date of the Travel Ban, did not have a valid visa at 5:00 p.m.

EST on January 27, 2017, and did not have a valid visa as of the date of the Travel Ban. The Travel Ban also does not apply to any lawful permanent resident of the United States; any foreign national who is admitted to the United States after the Travel Ban was issued; any dual national (dual citizen); any foreign nationals traveling on a diplomatic visa; or any foreign national or refugee who has been granted asylum or has already been admitted to the United States.

While it is fairly unlikely that those individuals covered by the Travel Ban would be enrolled as students in the U.S., the ban may impact family members or friends of students. Therefore, understanding the contours of the Travel Ban will assist administrators and educators in interacting effectively with students and identifying issues that might be affecting students indirectly.

## **Are there School Policies to Help Protect the Legal Status of Parents and Children?**

School officials should check with their school districts, superintendents, and local and state school boards to determine if there is a specific policy in place for their school.

Although specific policies will vary, as a general matter, there are three approaches schools have taken with regard to creating policies relating to immigration. The majority of school districts that have addressed this question have pledged not to cooperate with federal immigration authorities. Some school districts, however, have elected not to adopt an official policy, but instead have opted to gather information before issuing a policy. Finally, schools have the option of adopting a policy to cooperate with immigration authorities, but to date there is no record of any school district officially taking this position.

### *School Districts Could Pledge to Not Cooperate with Federal Immigration Authorities*

The vast majority of school districts have adopted policies that demonstrate an unwillingness to cooperate with federal immigration authorities. These policies include barring staff from asking parents and children about their immigration status, barring staff from providing information to federal immigration authorities, referring any immigration inquiries by federal authorities to the superintendent, and prohibiting federal immigration authorities from entering school property without a lawfully issued judicial order or warrant. Significantly, the Los Angeles Unified School District has also approved a measure to have school district attorneys provide legal help to students facing deportation. School officials should consult with their local school districts and school boards to determine which policies, if any, have been implemented for their school.

Schools that pledge not to cooperate with federal immigration authorities should be aware that federal authorities may identify deportable or removable people and arrest them after dropping off or picking up their children from school.

### *School Districts Could Gather Additional Information*

Some school districts have postponed issuing a policy related to the executive orders to allow them to gather more information and draft a more targeted policy to govern interacting with federal immigration officials. One example of this approach is the Salt Lake City Board of Education. The Salt Lake City Board of Education wanted to ensure that it received more input from both the district employees and the community before addressing this issue, which is politically charged. The Salt Lake City Board of Education expressed a desire to draft a resolution that had some legitimate legal backing and would address the Board's concern in one resolution (rather than multiple piecemeal policies). It is unknown how many other school boards are taking this approach. However, if the Salt Lake City Board of Education is any example, it appears likely that these school boards and districts will join the majority of others in not cooperating with federal immigration authorities.

### *School Districts Could Cooperate with Federal Immigration Authorities*

A review of literature has found no record of any school district or school board that has elected to adopt a policy to cooperate with federal immigration authorities. Schools or school boards seeking to do so would likely face significant legal hurdles.

For example, the Federal Education Rights and Privacy Act ("FERPA") provides protections to students that would impede a school district's or school board's ability to adopt a blanket policy to cooperate with federal immigration authorities. FERPA applies to elementary, middle or junior high, and high schools. In general, FERPA gives parents access to their children's education records and provides some control of disclosure of personally identifiable information in those records. Furthermore, FERPA limits the circumstances under which education records and personally identifiable information can be disclosed to law enforcement officers. Typically, disclosure is permitted to identify, evaluate, and address threats to school and student security or to comply with a lawfully issued subpoena or judicial order. It is important to note that an immigration detainer is *not* considered a judicial order for purposes of disclosure under FERPA.

The National School Lunch Act ("NLSA") restricts who may access records of students who qualify for free or reduced-price meals. Individuals may be denied access to student information under the NLSA that they may otherwise be entitled to access under FERPA. The NLSA details which entities or individuals have authorization to access student eligibility information, but those entities or individuals must also have a legitimate "need to know" the

information for the purpose of carrying out delineated authorized activities. The authorized entities include Medicaid and State Children’s Health Insurance Programs (“SCHIPs”) and federal and state education programs. Federal, state, or local law enforcement officials may only access information for the specific purpose of investigating violations of the NLSA. Ultimately, the agency responsible for making free and reduced-price meal determinations (generally, individual school districts) makes the determination on whether or not to disclose student information under the NLSA. Unauthorized disclosure and improper use of student school lunch eligibility information in violation of the NLSA can result in both civil and criminal penalties.

The Privacy Act of 1974 governs the use of social security numbers by federal, state, and local governments. The Privacy Act makes it unlawful to deny a right or benefit to any person based on that person’s refusal to provide a social security number. Any collection of social security numbers must be undertaken for the specific reasons outlined in the Privacy Act. If social security numbers are requested for reasons other than those outlined in the Privacy Act, the requesting agency must give the specific reason for the collection and the limits on the use of the social security numbers.

Even if a school district does not adopt a blanket policy to cooperate with immigration authorities, it may elect to do so in more limited circumstances. For example, school districts may allow federal immigration authorities on school property if they present a detainer for an individual, even though a detainer is not considered a lawful court order.

## **How Can Schools Recognize a Problem Without Danger to a Parent’s or Child’s Privacy?**

Schools should understand that the executive orders can be a substantial source of fear for students and family members. The most effective way for schools to recognize a potential problem is to be vigilant in their observations of students. Changes in student behavior or other abnormal student behavior could signal problems or fears related to the immigration status of students, their family members, or friends. Such behaviors may include:

- Students missing school for extended periods of time.
- Students who change their meal habits, such as not eating (particularly school lunch), or students who had regularly participated in school breakfast no longer participating.
- Students who have difficulty paying attention in class. This could be a sign of problems at home – for example, families may be foregoing public assistance for food (food stamps) to avoid being caught in the Enforcement Order.
- Students who have had their academic performance change drastically.

In addition, school staff should be mindful to look for any signs of bullying by other students that might stem from the heightened attention to immigration status caused by recent executive orders.

## **What Can Schools Do When They Notice a Problem, and How Have Other Schools Addressed These Problems?**

Schools are in a unique situation to provide a safe environment for students and parents. When school staff notices a potential problem, a counselor or other appropriately trained staff may meet with the student to ascertain their individual family circumstances and explain school policies. School staff may also meet with parents and students to explain what the school is doing to protect the children and the children's information from disclosure to federal immigration officials. Prior to undertaking any action, school staff should speak with an administrator or member of the school board to determine any policies or procedures in place governing the appropriate steps to be taken.

It may also be appropriate for schools or school districts to reach out to students and families. A number of schools and school districts have utilized a variety of means to communicate school policies to parents and students. These measures have included:

- Placing signs and banners in multiple languages in school buildings announcing and explaining school policies.
- Distributing cards explaining the school policies.
- Distributing cards related to a "Know Your Rights" campaign to parents, student, and school staff.
- Sending automated phone messages to students and families explaining the school policies.
- Working with trusted community partners to reach out to families and students.
- Coordinating with families in which parents may be detained to prepare power of attorney and guardianship forms. This may require more intricate partnerships with local community groups.
- Holding school or community events meant to explain the school policies.

Schools should determine which method or methods of communication work best for their population. Schools should also be mindful that any community or school event may be met with distrust; particularly, parents and students may not attend for fear that the meeting may be a trap.