

**FOCUS:
IMMIGRATION**


Dennis O'Brien and Daniel Levin

On September 3, 2025, officers from U.S. Immigration and Customs Enforcement (“ICE”) arrested a 42-year old man in Brentwood who was allegedly associated with the MS-13 gang and was not a U.S. citizen.¹ The arrest took place near Brentwood High School on the first day of classes of the 2025-2026 school year, creating panic in the surrounding Brentwood and Hempstead communities. The next day, attendance in the Hempstead school district dropped by 18%.

This was not the first time ICE agents made headlines for enforcement in or near a high school. A similar report about ICE officers visiting a school in Chicago in February 2025 spread fear throughout the city. The report ultimately turned out to be wrong, as

Preparing for a Chilly Reception: When ICE Officers Come to School

the officers were from the U.S. Secret Service rather than ICE, yet the fear felt by the immigrant community was real.²

Federal Immigration Enforcement at Local Schools

The increased presence of ICE near schools has stemmed from new executive orders and policy guidance issued to increase enforcement actions against undocumented immigrants, and make their detention easier. On January 20, 2025, President Trump signed an executive order, *Protecting the American People Against Invasion*.³ The executive order requires federal agencies to take all lawful means to ensure the faithful execution of U.S. immigration laws “against all inadmissible and removable aliens.”

That same day and in accordance with President Trump’s executive order, then Acting Secretary Benjamin Huffman of the Department of Homeland Security rescinded prior immigration executive orders and guidance issued under President Biden’s administration.⁴ That action also rescinded prior guidance from the October 2021, *Guidelines for Enforcement Actions in or Near Protected*



Areas, which stated that ICE officers should not take enforcement actions near protected areas where people obtain essential services.⁵ Those areas included: schools; medical or mental health facilities; buildings of religious worship; social service establishments; places where children gather including daycare, playgrounds, and school bus stops; funerals, cemeteries, and weddings; and parades, rallies, or other demonstrations.⁶ Secretary Huffman noted that such bright-line rules should not be issued by the Department regarding enforcement actions; instead, ICE officers should use their discretion when carrying out such actions.⁷

In addition, on January 21, 2025, Acting Deputy Attorney General Emil Bove issued guidance alerting state and local officials that they were required to cooperate with ICE officers.⁸ The U.S. Department of Justice further warned that it would prosecute anyone who obstructs ICE officers while carrying out their lawful duties.⁹

New York’s Response

In response, the Offices of New York Governor Kathy Hochul, New York Attorney General Letitia James, and New York State Education Department (“NYSED”) Commissioner Betty Rosa in January 2025 disseminated a joint guidance document for school districts and the public.¹⁰ In their New York State *Guidance on Safeguarding the Rights of Immigrant Students*, they reaffirmed their position that schools should remain a safe haven where all students are welcomed, and provided with a free public education.¹¹

The Joint Guidance advised school districts that ICE officers should not be allowed inside school buildings to access a student, except to address an imminent safety situation or where required by law due to a judicial warrant or order.¹² When district staff are approached by ICE officers in a school setting, they should immediately inform their supervisor. Further, district staff should also consult the Superintendent of Schools and school attorney before taking any action. The

superintendent, in consultation with the school’s attorney, can then advise staff on next steps.

The Joint Guidance notes that staff should require ICE officers to provide identification before admitting them onto school grounds or granting access to a student in school.¹³ A copy of that documentation should be provided to the superintendent and school attorney. District staff should also immediately notify the child’s parents, unless expressly prohibited by law.¹⁴

The Joint Guidance also states that if federal enforcement officials request student records or information, district staff should require a copy of the subpoena or legal order upon which the request is based.¹⁵ Upon receipt of the subpoena or court order, it should be immediately sent to the superintendent and school attorney. The Joint Guidance further advises that the school district inform NYSED’s Privacy Office of any request for such information.¹⁶

The Joint Guidance points out that Executive Order 170.1, issued by Governor Cuomo in 2018, remains in effect.¹⁷ That order states that, unless the arrest is related to a proceeding in the state facility, civil arrests by federal immigration authorities may only be executed in state facilities when accompanied by a judicial warrant or judicial order authorizing the proposed arrest. The Joint Guidance states that EO 170.1 also applies to schools. However, school board attorneys and immigration attorneys should proceed cautiously. A plain reading of EO 170.1 defines a “state facility” as any building owned or leased by an “Affected State Entity,” which includes only the entities which the governor controls or whose members she appoints. Those entities, as defined by the EO, include state agencies, authorities, departments, commissions, and boards. School districts are on shaky ground following the Joint Guidance because they do not normally fall into any of these categories.

Finally, the Joint Guidance implies that school districts that fail to follow such guidance may be subject to liability from violating the federal

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Family Educational Rights and Privacy Act (“FERPA”)¹⁸ and section 2-d of New York’s Education Law. Under these statutes, school districts are prohibited from disclosing a student’s personal identifiable information unless an exception applies, such as the information being general directory information.¹⁹ A FERPA exception also applies for school districts to comply with a judicial order or lawfully issued subpoena in response to a demand for student records.

Legal Orders and Warrants

Practitioners should keep in mind that ICE officers may present different documents to school officials to justify their search or seizure. These documents vary in legal effect. The following are some examples of documents a school official may come across:

- **A judicial warrant or judicial order** is signed by a federal district court judge or federal magistrate judge. The judge’s authorization means that the federal government has demonstrated probable cause to believe that an individual has committed a crime or offense.²⁰
- **An administrative warrant** is prepared by federal immigration authorities and signed by an authorized immigration officer

directing the arrest of a non-citizen for removal from the United States or for removal proceedings.²¹

- **An immigration detainer** is a request by federal immigration authorities to local law enforcement to detain an individual for up to 48 hours beyond when the person is scheduled for release, to determine whether immigration authorities should take custody of the person.²² The detainer requires immigration authorities to make a determination that the non-citizen has: engaged in or is suspected of terrorism or poses a danger to national security; has been convicted of active participation in a criminal street gang; has been convicted of a felony, aggravated felony, or significant misdemeanor; or has been convicted of at least three misdemeanors, and that probable cause exists that the person is a removable alien.

Final Thoughts

The conflict between the state and federal government puts school officials in a difficult situation. They must determine in real time which directives to comply with when ICE officers come to school. It seems prudent for school officials to review and become familiar with the applicable federal and state

executive orders and guidance in this area.

It is always a good idea to consult with the school attorney in any particular situation, and determine what protocols and procedures the school district should follow in the event that ICE officers come to school seeking information or access to a person. School officials should have copies of the documentation provided by ICE officers, and they should also know whether ICE is seeking access to records or a student, the name of the student at issue, and what questions ICE have asked school officials when they contact their school district attorneys. ⚖️

1. Bart Jones, *Alleged MS-13 associate arrested by ICE last week*, *Newsday*, Sept. 10, 2025, available at <https://www.newsday.com/long-island/crime/ice-ms-13-arrest-brentwood-miru3dgn>.
2. Vi Nguyen and JC Navarrete, *Secret Service Responded to Chicago school, agency says amid reports of ICE encounter*, *NBC Chicago*, Jan. 24, 2025, available at <https://www.nbcchicago.com>.
3. White House, *Protecting the American People Against Invasion*, Jan. 20, 2025.
4. U.S. Dep’t of Homeland Security, *Statement from a DHS Spokesperson on Directives Expanding Law Enforcement and Ending the Abuse of Humanitarian Parole*, Jan. 21, 2025.
5. U.S. Dep’t of Homeland Security, *Guidelines for Enforcement Actions in or Near Protected Areas*, Oct. 27, 2021.
6. *Id.* at 2-3.
7. U.S. Dep’t of Homeland Security, *Enforcement Actions in or Near Protected Areas*, Jan. 20, 2025.
8. U.S. Dep’t of Justice, Acting Deputy Attorney General, *Memorandum for all Department Employees, Interim Policy Changes Regarding Charging, Sentencing, and Immigration Enforcement*, Jan. 21, 2025.

9. Glenn Thrush, *Justice Dept. to Investigate Local Officials Who Obstruct Immigration Enforcement*, *N.Y. Times*, Jan. 22, 2025.
10. Office of the New York State Attorney General, Office of the Governor of New York, New York State Education Department, *New York State Guidance on Safeguarding the Rights of Immigrant Students* (Jan. 2025) (“Joint Guidance”).
11. Joint Guidance at p. 1.
12. Joint Guidance at p. 4.
13. *Id.*
14. *Id.*
15. Joint Guidance at p. 2.
16. *Id.*
17. State of New York, Executive Chamber, Executive Order No. 170.1, *Amendment to Executive Order 170- State Policy Concerning Immigrant Access to State Services and Buildings*, Apr. 25, 2018.
18. 20 USC 1232g
19. Educ. Law §2-d
20. *People ex. Rel. Wells v. DeMarco*, 168 A.D.3d 31 (2d Dep’t 2018).
21. U.S. Dep’t of Homeland Security, *Warrant for Arrest of Alien*, Form I-200.
22. U.S. Dep’t of Homeland Security, *Immigration Detainer- Request for Voluntary Action*, DHS Form I-247D.



Dennis O'Brien is a Partner with Frazer & Feldman, LLP, a Westbury law firm that serves as general counsel to public school districts. He can be reached at dobrien@ffedlaw.com.



Daniel Levin is an Associate with Frazer & Feldman, LLP. The focus of his practice is on special education law. He can be reached at dlevin@ffedlaw.com.

Six Tips to Survive the Holidays and Have Fun!

Live One Day at a Time
Mindfulness is key.

- * Connect with nature or meditate indoors.
- * Use techniques proven to decrease stress and increase emotional stability.

Spread Holiday Cheer

- * Line up charitable activities for the holiday season, such as helping at soup kitchens, or visiting nursing homes.

Find Festive Ways to Socialize

- * Find out about special holiday events or other celebrations and attend alone (or invite a friend or two).

Protect Yourself
There is often no bigger trigger than family.

- * Skip any events you are particularly nervous about.
- * Come and go as you please. You are not obliged to be the first to arrive or last to leave.

Re-write the “Rules” to Suit Yourself

- * If you are home on a holiday, treat yourself to a special meal, or give a gift to yourself.
- * Observe religious or cultural holidays in your own unique way –or not.

It’s the Thought that Counts

- * Share the true beauty of holiday love and joy.
- * Give love, time or thoughtful memories rather than expensive material gifts.

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