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THE RIGHTS OF IMMIGRANT CHILDREN AND ENGLISH LEARNERS IN THE PUBLIC SCHOOLS

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SCHOOL OPENING ALERT

The U.S. Supreme Court has ruled in *Plyler v. Doe* [457 U.S. 202 (1982)] that undocumented children and young adults have the same right to attend public primary and secondary schools as do U.S. citizens and permanent residents. Like other children, undocumented students are obliged under state law to attend school until they reach a mandated age.

As a result of the *Plyler* ruling, public schools may **not**:

- Deny admission to a student during initial enrollment or at any other time on the basis of undocumented status.
- Treat a student disparately to determine residency.
- Engage in any practices to "chill" the right of access to school.
- Require students or parents to disclose or document their immigration status.
- Make inquiries of students or parents that may expose their undocumented status.
- Require social security numbers from all students, as this may expose undocumented status.

Students without social security numbers should be assigned a number generated by the school. Adults without social security numbers who are applying for a free lunch and/or breakfast program on behalf of a student need only indicate on the application that they do not have a social security number.

LLAMADA URGENTE

En 1982, El Tribunal Supremo de los Estados Unidos decidió en el caso titulado *Plyler v. Doe* [457 U.S. 202] que los niños y los jóvenes indocumentados tienen el mismo derecho a las escuelas públicas de primaria y secundaria que el que tienen sus contrapartes de nacionalidad estadounidiense. Al igual que los demás niños, los estudiantes indocumentados están obligados a asistir a la escuela hasta que lleguen a la edad escolar requerida por la ley.

Bajo la decisión *Plyler*, las escuelas públicas **no** pueden:

- negarles admisión a la escuela a estudiantes indocumentados basado en su estado de ser indocumentados, ya sea al momento de la matricula o en cualquier otro momento.
- tratar a un estudiante en forma desigual o discriminatoria para determinar su situación legal y/o de residencia.
- tomar medidas o reglamentos que pudieran atemorizar a la comunidad indocumentada, con el resultado de que ellos no acudan a su derecho de acceso a las escuelas públicas.
- requerir que un estudiante o sus padres revelen o documenten su situación legal y/o inmigratoria.
- investigar la situación legal y/o inmigratoria de un estudiante o de sus padres, aún cuando sólo sea por razones educativas, ya que esto puede poner en evidencia dicha situación.
- exigir que un estudiante obtenga un número de seguro social como pre-requisito de matrícula a un programa escolar.

La escuela debe de asignar un número de identificación a los estudiantes que no tienen tarjeta de seguro social. Los adultos sin tarjeta de seguro social aplicando para el programa de almuerzo y/o desayuno gratis para sus hijos sólo necesitan indicar en la solicitud que no tiene un número de seguro social.

2017-2018 Prototype Household Application for Free and Reduced Price School Meals

Complete one application per household. Please use a pen (not a pencil).

Apply online:

STEP 1 List ALL Household Members who are infants, children, and students up to and including grade 12 (if more spaces are required for additional names, attach another sheet of paper)

Definition of Household Member: "Anyone who is living with you and shares income and expenses, even if not related."

Children in **Foster care** and children who meet the definition of **Homeless, Migrant** or **Runaway** are eligible for free meals. Read **How to Apply for Free and Reduced Price School Meals** for more information.

Child's First Name	MI	Child's Last Name	Grade	Student? Yes	Student? No	Foster Child	Homeless, Migrant, Runaway
				☐	☐	☐	☐
				☐	☐	☐	☐
				☐	☐	☐	☐
				☐	☐	☐	☐
				☐	☐	☐	☐

Check all that apply

STEP 2 Do any Household Members (including you) currently participate in one or more of the following assistance programs: SNAP, TANF, or FDPIR?

☐ NO > Go to STEP 3 ☐ If YES > Write a case number here then go to STEP 4 (Do not complete STEP 3)

Case Number:

Write only one case number in this space.

STEP 3 Report Income for ALL Household Members (Skip this step if you answered 'Yes' to STEP 2)

Are you unsure what income to include here?

Flip the page and review the charts titled "Sources of Income" for more information.

The "Sources of Income for Children" chart will help you with the Child Income section.

The "Sources of Income for Adults" chart will help you with the All Adult Household Members section.

A. Child Income

Sometimes children in the household earn or receive income. Please include the TOTAL income received by all Household Members listed in STEP 1 here.

Child income	How often? Weekly	Bi-Weekly	2x Month	Monthly
$	○	○	○	○

B. All Adult Household Members (including yourself)

List all Household Members not listed in STEP 1 (including yourself) even if they do not receive income. For each Household Member listed, if they do receive income, report total gross income (before taxes) for each source in whole dollars (no cents) only. If they do not receive income from any source, write '0'. If you enter '0' or leave any fields blank, you are certifying (promising) that there is no income to report.

Name of Adult Household Members (First and Last)	Earnings from Work	Weekly	Bi-Weekly	2x Month	Monthly	Public Assistance/ Child Support/Alimony	Weekly	Bi-Weekly	2x Month	Monthly	Pensions/Retirement/ All Other Income	Weekly	Bi-Weekly	2x Month	Monthly
	$	○	○	○	○	$	○	○	○	○	$	○	○	○	○
	$	○	○	○	○	$	○	○	○	○	$	○	○	○	○
	$	○	○	○	○	$	○	○	○	○	$	○	○	○	○
	$	○	○	○	○	$	○	○	○	○	$	○	○	○	○
	$	○	○	○	○	$	○	○	○	○	$	○	○	○	○

(How often? applies to each income column.)

Total Household Members (Children and Adults)

Last Four Digits of Social Security Number (SSN) of Primary Wage Earner or Other Adult Household Member X X X X X

Check if no SSN ☐

STEP 4 Contact information and adult signature. MAIL COMPLETED FORM TO YOUR SCHOOL AT:

"I certify (promise) that all information on this application is true and that all income is reported. I understand that this information is given in co false information, my children may lose meal benefits, and I may be prosecuted under applicable State and Federal laws."

Street Address (if available) Apt # City

Printed name of adult signing the form Signature of adult Today's date

The contents of this guidance document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

INSTRUCTIONS Sources of Income

Sources of Income for Children

Sources of Child Income	Example(s)
- Earnings from work	- A child has a regular full or part-time job where they earn a salary or wages
- Social Security - Disability Payments - Survivor's Benefits	- A child is blind or disabled and receives Social Security benefits - A parent is disabled, retired, or deceased, and their child receives Social Security benefits
-Income from person outside the household	- A friend or extended family member regularly gives a child spending money
-Income from any other source	- A child receives regular income from a private pension fund, annuity, or trust

Sources of Income for Adults

Earnings from Work	Public Assistance / Alimony / Child Support	Pensions / Retirement / All Other Income
- Salary, wages, cash bonuses - Net income from self-employment (farm or business) If you are in the U.S. Military: - Basic pay and cash bonuses (do NOT include combat pay, FSSA or privatized housing allowances) - Allowances for off-base housing, food and clothing	- Unemployment benefits - Worker's compensation - Supplemental Security Income (SSI) - Cash assistance from State or local government - Alimony payments - Child support payments - Veteran's benefits - Strike benefits	- Social Security (including railroad retirement and black lung benefits) - Private pensions or disability benefits - Regular income from trusts or estates - Annuities - Investment income - Earned interest - Rental income - Regular cash payments from outside household

OPTIONAL Children's Racial and Ethnic Identities

We are required to ask for information about your children's race and ethnicity. This information is important and helps to make sure we are fully serving our community. Responding to this section is optional and does not affect your children's eligibility for free or reduced price meals.

Ethnicity (check one): ☐ Hispanic or Latino ☐ Not Hispanic or Latino

Race (check one or more): ☐ American Indian or Alaskan Native ☐ Asian ☐ Black or African American ☐ Native Hawaiian or Other Pacific Islander ☐ White

The **Richard B. Russell National School Lunch Act** requires the information on this application. You do not have to give the information, but if you do not, we cannot approve your child for free or reduced price meals. You must include the last four digits of the social security number of the adult household member who signs the application. The last four digits of the social security number is not required when you apply on behalf of a foster child or you list a Supplemental Nutrition Assistance Program (SNAP), Temporary Assistance for Needy Families (TANF) Program or Food Distribution Program on Indian Reservations (FDPIR) case number or other FDPIR identifier for your child or when you indicate that the adult household member signing the application does not have a social security number. We will use your information to determine if your child is eligible for free or reduced price meals, and for administration and enforcement of the lunch and breakfast programs. We MAY share your eligibility information with education, health, and nutrition programs to help them evaluate, fund, or determine benefits for their programs, auditors for program reviews, and law enforcement officials to help them look into violations of program rules.

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA.

Persons with disabilities who require alternative means of communication for program information (e.g. Braille, large print, audiotape, American Sign Language, etc.), should contact the Agency (State or local) where they applied for benefits. Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, (AD-3027) found online at: http://www.ascr.usda.gov/complaint_filing_cust.html, and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by:

mail: U.S. Department of Agriculture
Office of the Assistant Secretary for Civil Rights
1400 Independence Avenue, SW
Washington, D.C. 20250-9410

***Only use this address if you are filing a complaint of discrimination**

fax: (202) 690-7442; or

email: program.intake@usda.gov.

This institution is an equal opportunity provider.

Do not fill out For School Use Only

Annual Income Conversion: Weekly x 52, Every 2 Weeks x 26, Twice a Month x 24 Monthly x 12

Total Income

How often?

Weekly	Bi-Weekly	2x Month	Monthly
○	○	○	○

Household Size

Categorical Eligibility ☐

Eligibility:

Free	Reduced	Denied
○	○	○

Determining Official's Signature **Date**

Confirming Official's Signature **Date**

Verifying Official's Signature **Date**

USDA United States Department of Agriculture
Food and Nutrition Service

School Meals

Translated Applications

This page features foreign language translations of the Prototype Application for Free and Reduced Price School Meals for SY2016-2017. They are provided by USDA as a template to assist State and local agencies in serving households where English is not spoken as a primary language. Households may also download these resources directly to be filled out and submitted to their local school district.

In addition to the application form, each translated packet also includes application instructions, a parent letter/FAQ. We also provide a packet of communications documents to be used by State and local agencies for information sharing requests, income verification, and benefit issuance notices to households. State and local agencies responsible for administering the school meal programs may use these materials in their current form, or may adapt them as needed.

Additionally, an "I Speak" resource document is available to help identify the primary language of non-English speakers. It uses a short phrase in each of the 49 languages that an applicant can check to indicate the language they speak. "I Speak" can help Local Educational Agencies select the appropriate translation as well as ensure consistent and effective interaction with applicants who have limited English proficiency.

Albanian	Farsi	Italian	Nepali	Spanish
Amharic	French	Iu Mien	Polish	Tagalog
Arabic	French Creole	Jamaican Creole	Portuguese	Thai
Armenian	Greek	Japanese	Punjabi	Tigrinya
Bengali	Gujarati	Karen	Romanian	Ukranian
Bosnian	Haitian Creole	Khmer	Russian	Urdu
Burmese	Hindi	Korean	Samoan	Vietnamese
Chinese (Simplified)	Hmong	Kru	Serbian	Yiddish
Chinese (Traditional)	Igbo	Kurdish	Somali	Yoruba
Croatian	Ilokano	Laotian	Sudanese	

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Language Rights Issues

Lau v. Nichols, 414 U.S. 563 (1974)

The U.S. Supreme Court held (1) that discrimination on the basis of language proficiency is discrimination on the basis of national origin under Title VI of the Civil Rights Act of 1964 and (2) that treating people with different needs in the same way is not equal treatment.

Title VI of the Civil Rights Act of 1964 states, "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

In Lau, the U.S. Supreme Court stated, in part, "Basic English skills are at the very core of what these public schools teach. Imposition of a requirement that, before a child can effectively participate in the educational program, he must already have acquired these basic skills, is to make a mockery of public education. We know that those who do not understand English are certain to find their classroom experiences wholly incomprehensible and in no way meaningful."

Castaneda v. Pickard, 648 F.2d 989 (5th Cir. 1981)

The Court of Appeals articulated a three-part test for assessing a school system's treatment of limited English proficient students. The standard requires (1) a sound approach to the education of these students, (2) reasonable implementation of the approach, and (3) outcomes reflecting that the approach is working.

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The Legal Requirement for School Districts to Translate/Interpret for Parents Who Do Not Speak English

All school districts to which Title VI of the Civil Rights Act of 1964 applies are required by federal law to translate or interpret all documents and communications with parents who are not fluent in English into a language they can understand.

On May 25, 1970, the U.S. Department of Health, Education, and Welfare—the predecessor to the U.S. Department of Education— Office for Civil Rights (OCR) issued formal guidance establishing the policy that "[s]chool districts have the responsibility to adequately notify national origin-minority group parents of school activities which are called to the attention of other parents. Such notice in order to be adequate may have to be provided in a language other than English." In the 1974 U.S. Supreme Court case, *Lau v. Nichols*, 414 U.S. 563, the Court affirmed the validity of these guidelines. Then in 2000, OCR further reinforced these requirements by issuing a document which stated that "Title VI is violated if . . . parents whose English is limited do not receive school notices and other information in a language they can understand."

Recent OCR Cases of School Districts Failing to Meet the Requirement

OCR has resolved three recent cases where school districts failed to provide adequate translation and interpretation services to parents who speak a language other than English. In Cleveland, Ohio, a complaint was filed directly to OCR and in Tulsa, Oklahoma and Dearborn, Michigan the school districts were found to violate the law as a result of OCR compliance reviews.

Cleveland Metropolitan School District

The complaint alleged that the school district failed to provide limited English proficient (LEP) parents with information concerning activities and other school-related matters in a language that they could understand. The complaint also alleged the district failed to provide information to LEP parents regarding the proposed expulsion of their son in a language that they could understand.

The resolution reached with OCR requires the district to implement a written plan to provide language assistance to LEP parents. The plan requires notifying parents, in a language they can understand, of the availability of language assistance; identifying which parents need language assistance; ensuring that a list is maintained in each building and on the district level of the parents needing assistance; advising staff of parents' need for assistance; ensuring that staff obtain adequate translators in a timely manner; and ensuring

that vital documents are translated into each language spoken by parents likely to be affected by the district's programs and activities.

Tulsa Public Schools

The information obtained during OCR's investigation indicated that the school district did not have written policies or procedures for responding to parent requests for documents in languages other than English or for a foreign language interpreter. The district failed to consistently track or keep records relating to which parents in the district are LEP, the requests for translation or interpretation services, and the services provided to LEP parents. The investigation also found that the district did not have a set process in place for notifying LEP parents that it has interpreters and translators available for school-related communications. The district failed to ensure that the interpreters and translators it did have were adequately trained. OCR also noted that the district failed to provide translation and interpretation services for parents who speak languages other than Spanish.

The resolution reached with the district requires it to submit a detailed plan for providing meaningful access to information about its programs and activities for LEP parents. The district must provide language assistance services to all LEP parents and guardians of district students needing such assistance. Also, the district must provide training for administrators and staff regarding the provision of language assistance services as well as ensure that all its interpreters and translators are appropriately trained and proficient in the language for which they provide assistance.

Dearborn Public Schools

The OCR investigation found that the school district did not have an effective process for determining which students have LEP parents and for identifying the language needs of those parents. In addition, the district did not notify any of the LEP parents of the availability of translation and interpretation services, which were not available to all LEP parents, nor did it ensure that the interpreters and translators it was using were competent. While an interpreter for Arabic-speaking LEP parents was typically available, there was no system in place to facilitate communication with a parent who spoke neither English nor Arabic. Also, the district did not have a system in place for notifying district teachers and staff about the needs of LEP parents, and did not provide appropriate guidance to staff about communicating with LEP parents in a language other than English.

The resolution reached with the district requires it to implement a written plan to provide language assistance services to LEP parents that ensures that they have meaningful access to the district's programs and activities. The plan must include the use of various services, such as onsite translators/interpreters, telephonic translators/interpreters, and effective translation programs. Also, the district must revise its home language survey to ensure that it accurately identifies LEP parents in the district needing language assistance.

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Special Education and English Learners

Providing a Special Education Program for English Learner (EL) students may present certain challenges to educators, but the mandates and protections concerning provision of these educational services, found in federal law, are clear.

There are two key fundamental principles which must be observed by a school district in this area.

Both Title VI / EEOA and IDEA Apply

An English Learner student who needs, or could potentially need, Special Education services must be accorded the right to receive both a language acquisition program (such as English as a Second Language or similar services) and Special Education services, not one or the other. Both must be made available to the student.

In joint guidance issued in the form of a Dear Colleague letter, the U. S. Department of Education, Office for Civil Rights, and the U.S. Department of Justice stated:

> The Departments are aware that some school districts have a formal or informal policy of 'no dual services,' i.e., a policy of allowing students to receive either EL services or special education services, but not both. Other districts have a policy of delaying disability evaluations of EL students for special education and related services for a specified period of time based on their EL status. These policies are impermissible under the IDEA [Individuals with Disabilities Education Act] and Federal civil rights laws, and the Departments expect SEAs to address these policies in monitoring districts' compliance with Federal law. [1]

Language of SPED Testing and Evaluation

When evaluating an English Learner for possible Special Education services, it is important to conduct that evaluation in a manner and language that is comprehensible to the student. If the evaluation is conducted in English and the student does not easily understand English, the evaluation results are likely to be unreliable and lead to a misidentification of the student for Special Education services.

Regarding this issue, the Education and Justice Departments stated in the joint guidance:

> When conducting [Special Education] evaluations, school districts must consider the English language proficiency of EL students in determining the appropriate assessments and other

[1] U.S. Department of Education, Office of Civil Rights/U.S. Department of Justice, Civil Rights Division, *School's Civil Rights Obligations to English Learner Students and Limited English Proficient Parents*, 25 (Jan 7, 2015), http://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf

evaluation materials to be used. School districts must not identify or determine that EL students are students with disabilities because of their limited English language proficiency.[2]

* * *

Recent DOJ Enforcement Agreement

The Department of Justice (DOJ) has entered into a number of consent agreements with school districts under the Equal Educational Opportunities Act of 1974 (EEOA)[3] regarding these issues. The most instructive is an agreement entered into in 2014 with the Crestwood School District in Michigan. A 2011 complaint filed with DOJ included a wide range of allegations that, among other things, the Crestwood School District was not providing sufficient language acquisition services or sufficient translation and interpretation services to special education students. The ensuing investigation led to a consent agreement, the elements of which demonstrate what the Government has determined must be provided in situations relating to Special Education and English Learner students:

Crestwood School District Consent Agreement[4]

- Pursuant to the consent agreement, all special education assessments must be conducted in the student's native language or "in the form most likely to yield accurate information" pertaining to an assessment of the student's potential disabilities. Furthermore, the interpretation of these assessments must include consultation with an ESL instructor to ensure that the student's language barrier does not result in a misdiagnosis of special education needs.

- The parents of students with both English language acquisition and special education needs must be informed in writing, in a language they can understand, that their child is entitled to both language acquisition and special education services.

- All "Individualized Education Program (IEP) Teams" that assess the educational needs of special education students and propose appropriate courses of action must include an ESL instructor whenever a plan for a student who is entitled to both special education and language acquisition services is being considered. These teams must document, on at least an annual basis: (1) the student's progress in acquiring English language skills; (2) the extent to which the student's disability is affecting such progress; (3) any decisions regarding the impact of the student's disability on the language acquisition delivery plan, and the rationale for those decisions; and (4) the language acquisition program models and the instructors assigned to the student.

[2] Id., at 24

[3] The EEOA "requires states and school districts to provide English Language Learner (ELL) students with appropriate services to overcome language barriers…." U.S. Department of Justice, Civil Rights Division, https://www.justice.gov/crt/educational-opportunities-section

[4] U.S. Department of Justice, Civil Rights Division, *Settlement Agreement Between The United States of America and The Crestwood School District*, (October 13, 2014), https://www.justice.gov/sites/default/files/crt/legacy/2014/08/27/crestwoodagree.pdf

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ACCESS TO POST-SECONDARY EDUCATION FOR IMMIGRANT STUDENTS

There is often confusion between the issue of (1) gaining admission or access to post-secondary education and (2) paying for that education.

Access: Of all the states and the District of Columbia, only three states currently restrict access to publicly funded colleges by undocumented students: South Carolina, Alabama, and Georgia. (Georgia denies admission to undocumented students to any schools that do not admit all academically qualified students.) All other states allow undocumented students to be admitted to public two year and four year colleges with the same admissions criteria that other students must have to matriculate. Private institutions can do what the institution chooses to do.

In-state/Out-of–state tuition:

The following states allow in-state tuition for undocumented students who graduate from high schools in the state:

California	Minnesota
Colorado	Nebraska
Connecticut	New Jersey
District of Columbia	New Mexico
Florida	New York
Hawaii (University of Hawaii campuses)	Oklahoma
Illinois	Oregon
Kansas	Rhode Island
Kentucky	Texas
Maryland	Utah
Michigan (University of Michigan campuses)	Virginia
Washington	

Access to federal assistance: Undocumented students, including those who have been granted DACA protection, do not have a right to federal loans or grants.

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FEA Number: 306-112-002b

Office of the Director

U.S. Department of Homeland Security
500 12th Street, SW
Washington, D.C. 20536

U.S. Immigration and Customs Enforcement

OCT 24 2011

MEMORANDUM FOR: Field Office Directors
Special Agents in Charge
Chief Counsel

FROM: John Morton
Director

SUBJECT: Enforcement Actions at or Focused on Sensitive Locations

Purpose

This memorandum sets forth Immigration and Customs Enforcement (ICE) policy regarding certain enforcement actions by ICE officers and agents at or focused on sensitive locations. This policy is designed to ensure that these enforcement actions do not occur at nor are focused on sensitive locations such as schools and churches unless (a) exigent circumstances exist, (b) other law enforcement actions have led officers to a sensitive location as described in the "*Exceptions to the General Rule*" section of this policy memorandum, or (c) prior approval is obtained. This policy supersedes all prior agency policy on this subject.[1]

Definitions

The enforcement actions covered by this policy are (1) arrests; (2) interviews; (3) searches; and (4) for purposes of immigration enforcement only, surveillance. Actions not covered by this policy include actions such as obtaining records, documents and similar materials from officials or employees, providing notice to officials or employees, serving subpoenas, engaging in Student and Exchange Visitor Program (SEVP) compliance and certification visits, or participating in official functions or community meetings.

The sensitive locations covered by this policy include, but are not limited to, the following:

[1] Memorandum from Julie L. Myers, Assistant Secretary, U.S. Immigration and Customs Enforcement, "Field Guidance on Enforcement Actions or Investigative Activities At or Near Sensitive Community Locations" 10029.1 (July 3, 2008); Memorandum from Marcy M. Forman, Director, Office of Investigations, "Enforcement Actions at Schools" (December 26, 2007); Memorandum from James A. Puleo, Immigration and Naturalization Service (INS) Acting Associate Commissioner, "Enforcement Activities at Schools, Places of Worship, or at funerals or other religious ceremonies" HQ 807-P (May 17, 1993). This policy does not supersede the requirements regarding arrests at sensitive locations put forth in the Violence Against Women Act, see Memorandum from John P. Torres, Director Office of Detention and Removal Operations and Marcy M. Forman, Director, Office of Investigations, "Interim Guidance Relating to Officer Procedure Following Enactment of VAWA 2005 (January 22, 2007).

- schools (including pre-schools, primary schools, secondary schools, post-secondary schools up to and including colleges and universities, and other institutions of learning such as vocational or trade schools);
- hospitals;
- churches, synagogues, mosques or other institutions of worship, such as buildings rented for the purpose of religious services;
- the site of a funeral, wedding, or other public religious ceremony; and
- a site during the occurrence of a public demonstration, such as a march, rally or parade.

This is not an exclusive list, and ICE officers and agents shall consult with their supervisors if the location of a planned enforcement operation could reasonably be viewed as being at or near a sensitive location. Supervisors should take extra care when assessing whether a planned enforcement action could reasonably be viewed as causing significant disruption to the normal operations of the sensitive location. ICE employees should also exercise caution. For example, particular care should be exercised with any organization assisting children, pregnant women, victims of crime or abuse, or individuals with significant mental or physical disabilities.

Agency Policy

General Rule

Any planned enforcement action at or focused on a sensitive location covered by this policy must have prior approval of one of the following officials: the Assistant Director of Operations, Homeland Security Investigations (HSI); the Executive Associate Director (EAD) of HSI; the Assistant Director for Field Operations, Enforcement and Removal Operations (ERO); or the EAD of ERO. This includes planned enforcement actions at or focused on a sensitive location which is part of a joint case led by another law enforcement agency. ICE will give special consideration to requests for enforcement actions at or near sensitive locations if the only known address of a target is at or near a sensitive location (e.g., a target's only known address is next to a church or across the street from a school).

Exceptions to the General Rule

This policy is meant to ensure that ICE officers and agents exercise sound judgment when enforcing federal law at or focused on sensitive locations and make substantial efforts to avoid unnecessarily alarming local communities. The policy is not intended to categorically prohibit lawful enforcement operations when there is an immediate need for enforcement action as outlined below. ICE officers and agents may carry out an enforcement action covered by this policy without prior approval from headquarters when one of the following exigent circumstances exists:

- the enforcement action involves a national security or terrorism matter;
- there is an imminent risk of death, violence, or physical harm to any person or property;

- the enforcement action involves the immediate arrest or pursuit of a dangerous felon, terrorist suspect, or any other individual(s) that present an imminent danger to public safety; or
- there is an imminent risk of destruction of evidence material to an ongoing criminal case.

When proceeding with an enforcement action under these extraordinary circumstances, officers and agents must conduct themselves as discretely as possible, consistent with officer and public safety, and make every effort to limit the time at or focused on the sensitive location.

If, in the course of a planned or unplanned enforcement action that is not initiated at or focused on a sensitive location, ICE officers or agents are subsequently led to or near a sensitive location, barring an exigent need for an enforcement action, as provided above, such officers or agents must conduct themselves in a discrete manner, maintain surveillance if no threat to officer safety exists and immediately consult their supervisor prior to taking other enforcement action(s).

Dissemination

Each Field Office Director, Special Agent in Charge, and Chief Counsel shall ensure that the employees under his or her supervision receive a copy of this policy and adhere to its provisions.

Training

Each Field Office Director, Special Agent in Charge, and Chief Counsel shall ensure that the employees under his or her supervision are trained (both online and in-person/classroom) annually on enforcement actions at or focused on sensitive locations.

No Private Right of Action

Nothing in this memorandum is intended to and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.

This memorandum provides management guidance to ICE officers exercising discretionary law enforcement functions, and does not affect the statutory authority of ICE officers and agents, nor is it intended to condone violations of federal law at sensitive locations.

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Public Charge

Many immigrants choose not to participate in a wide variety of public benefit programs for which they are eligible, because they think this participation will impede their ability to get a green card/permanent residency in the U.S. They fear by taking these benefits they will be deemed a "public charge" by immigration authorities considering an application for a green card.

Adoption of new public charge regulations during the Trump Administration, regulations which took effect on February 24, 2020, heightened the fears in the immigrant community about participation in benefit programs.

After the Biden Administration took office in January 2021, these Trump rules were withdrawn and the Public Charge policy reverted to that adopted by the Clinton Administration in 1999.

Regardless of which policy applied, many of the individuals who have avoided using certain benefits are mistaken in their understanding that this policy applies to them. Here are key facts:

What is Public Charge? Public charge is a concept in immigration law that has been around for more than 100 years. The policy, as applied to those who wish to live in the U.S. on a permanent basis, is intended to exclude those who would be a burden on society, who could not really live on their own, who are primarily dependent on the government for subsistence.

Immigration authorities look at the "totality of circumstances" to make this determination. The decision is not based solely on use of public benefits

Who Does Public Charge apply to? The policy applies to those who wish to get a green card for permanent residency in the U.S. either by changing their status from within the U.S. or by entering the U.S. from abroad. It does not apply to refugees or asylees. *It does not apply if you already have a green card or are a naturalized citizen.*

Why Does Public Charge Not Apply to Many Immigrants?

There are two basic reasons why Public Charge is not a current problem for many immigrants. (1) Undocumented individuals are not eligible to apply for and cannot participate in any of the programs which could be considered as a potential problem if you are being considered for a green card. (2) If you are undocumented and entered the country without permission, there is currently almost no possibility that you can change your status to legal resident and get a green card, even if you are married to a U.S. citizen or have citizen children. There is no legalization program that applies to you. Therefore, public charge will not be relevant for you.

What benefit programs might be relevant to a Public Charge determination?

In 1999, the Clinton Administration stated the following could create a possible Public Charge problem (and they are essentially cash assistance programs):

- Temporary Assistance for Needy Families (TANF) cash assistance programs;
- State and local cash assistance programs that provide income maintenance (often called "General Assistance");
- Supplemental Security Income (SSI);
- Medicaid or other programs providing long-term care*

Please note that this list does not include any federally funded program found in a public school.

Note: The government will not consider relevant non-cash programs funded *entirely* by states, localities or tribes in the determination of public charge.

Materials that might be helpful in explaining these issues to the community can be found at https://protectingimmigrantfamilies.org/know-your-rights/

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* The Trump Administration policy change added the following programs which could have created a possible Public Charge problem, but these are no longer applicable:

- Supplemental Nutrition Assistance Program (also known as SNAP, food stamps, or sometimes EBT)
- Public Housing or Section 8 housing assistance
- Federally funded Medicaid (except for emergency services, children under 21, pregnant women, and new mothers (for 60 days))