

Memo to: District Staff
From: Cartwright School District
Date: January 22, 2025
Re: **Schools and Immigration FAQ**
(Prepared by Udall Shumway PLC and PD Ortega Law Group PLLC)

This document is being provided to educate staff about the impact of Arizona Prop 314 and to answer questions about how the enforcement of immigration laws and practices interplay with current Board policies and State and federal law.

Q1: What is Proposition 314/House Resolution 2060 and when does it take effect?

A2: Arizona's Proposition 314/House Resolution 2060, approved by voters on November 5, 2024, includes several provisions, some of which are currently in effect, while others are pending implementation.

Provisions in Effect:

- Creates criminal offenses for a person to knowingly present false documents to obtain ***public benefits*** or to evade workplace eligibility detection through the E-Verify program. (A.R.S. 23-215). (“Public benefits,” as explained below, **does not include** enrollment in public schools)(See FAQ 3 below)
- Adds requirement for agencies and political subdivisions of the State to use the Systematic Alien Verification for Entitlement (“SAVE”) programs to verify benefit eligibility and validity of documents for people who are not citizens or nationals of the United States. (A.R.S. 1-503 and A.R.S. 1-504).
- Increases punishments for criminals who sell fentanyl that causes the death of another person. (A.R.S. 13-3424).

Provisions Pending Implementation:

- Article 35 creates two state crimes for foreign nationals who enter Arizona at any location other than a lawful port of entry (A.R.S. 13-4295.01), and who refuse to comply with a legal order to return to a foreign nation (A.R.S. 13-4295.02). It also permits Arizona officers and agents to enforce federal immigration law if an officer or agent witnesses a person entering Arizona from a foreign nation at any location other than a lawful point of entry. The officer may pursue the individual and arrest them. The new law also allows an Arizona judge to order an individual removed from the U.S. (A.R.S. 13-4295, A.R.S. 13-4295.03).

Article 35 cannot take effect until a similar law in Texas has been in effect for 60 days. As of now, the Texas law has been temporarily blocked by federal courts, delaying the implementation of this provision in Arizona.

Q2: Does the Proposition 314/House Resolution 2060 allow state, county, or city law enforcement officers and agents to enforce immigration law in schools?

A2: Proposition 314/House Resolution 2060 does not create a duty or requirement for officers and agents to enforce immigration law in schools. For schools located near Arizona’s southern border, it is possible that an Arizona officer or agent may be permitted to pursue an individual onto a school ground who they witnessed breaking this law. In that case, the officer may be permitted under state law and federal policy (see FAQ #4) to pursue the individual on the school grounds under the “Protected Areas” exception.

Q3. Do school districts have any responsibility to enforce Proposition 314/House Resolution 2060?

A3: No. Proposition 314/House Resolution 2060 requires agencies or political subdivisions to use the Systemic Alien Verification for Entitlements (SAVE) program to verify a person’s citizenship and residency when the person is applying for a public benefit as defined in A.R.S. 1-501 & 502. Public benefits are defined by state and federal law as:

- (1) any grant, contract, loan, professional license, or commercial license provided by an agency [of the federal government or state];
- (2) any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency [of the federal government or state].

8 USC Section 1611 & 1621

Public schools and those providing K-12 education to a student **do not** meet the definition of a “public benefit.” Therefore, schools are not required to utilize the SAVE program under the new law.

Q4. Are federal officers permitted to take enforcement action at or near schools?

A4. In most situations, the Department of Homeland Security (“DHS”) and its subdivisions’ (Immigration and Customs Enforcement (“ICE”) and Customs and Border Patrol (“CBP”) referring herein collectively as “DHS officers and agents”) policy restricts its officers and agents from taking enforcement action in “protected areas.”

Historically, “protected areas” include public, private, charter, vocational, and other types of schools, as well as places where children routinely gather. When determining if a location is a protected area, DHS considers the activities that take place there, the importance of those activities to the well-being of people and the communities of which they are a part, and the impact an enforcement action would have on people’s willingness to be in the protected area and receive or engage in the essential services or activities that occur there. It is a determination that requires the exercise of judgment by law enforcement officials.

Examples of historically protected areas include, but are not limited to:

- Schools;
- Medical or mental healthcare facilities;
- Places of worship or religious studies;
- Places where children gather;
- Social services establishments;
- Places where disaster or emergency response/relief is provided;
- Places where funerals, graveside ceremonies, rosaries, weddings, or other religious or civil ceremonies or observances occur; and
- Places where there are ongoing parades, demonstrations, or rallies.

The exceptions to this policy are situations where immediate enforcement action need to be taken in or near a protected area such as:

- The enforcement action involves a national security threat;
- There is an imminent risk of death, violence, or physical harm to a person;
- The enforcement action involves the hot pursuit of an individual who poses a public safety threat;
- The enforcement action involves the hot pursuit of a personally observed border crosser;
- There is an imminent risk that evidence material to a criminal case will be destroyed; or
- A safe alternative location — a location deemed safe for DHS personnel, the subject of the enforcement action, and the public — does not exist.

Absent a situation requiring immediate action, DHS officers and agents must seek prior approval from their agency’s headquarters or an authorized delegate before taking an enforcement action in or near a protected area.

Q5. What kind of documentation is required to enroll in school? How does immigration status factor into this documentation.

A5. Immigration status does not factor into school enrollment. Any student who is “school age” can enroll in school. A.R.S. 15-821(A) indicates that “[u]less otherwise provided by article 1.1 of this chapter or by any other law, all schools shall admit children who are between the ages of six and twenty-one years, who reside in the school district and who meet the requirements for enrollment in one of the grades or programs offered in the school.”

In accordance with A.R.S. 15-828, in order to show proof of identity, school registrars must collect one of the following within 30 days of registration:

1. A certified copy of the pupil's birth certificate
2. Other reliable proof of the pupil's identity and age, including the pupil's baptismal certificate, an application for a social security number or original school registration records and an affidavit explaining the inability to provide a copy of the birth certificate.

3. A letter from the authorized representative of an agency having custody of the pupil pursuant to title 8, chapter 2 certifying that the pupil has been placed in the custody of the agency as prescribed by law.

There is no requirement that the birth certificate be a United States birth certificate, just that the document shows reliable proof of identity and age.

Q6. We collect information about “residency.” How does that apply to immigration laws.

A6. “Residency,” for purposes of school enrollment has nothing to do with a student’s immigration status and only refers to where a student resides. Schools collect information about “residency” to determine whether a student must pay tuition. Students who live in Arizona do not have to pay tuition to attend school.

Q7. Should schools collect or maintain information about a student’s immigration status?

A7. No, there is no reason to inquire or collect information or records about a student’s immigration status or that of their family members. As described above, schools are only required to collect information about a student’s identity and age for purposes of enrollment and verification that a student lives in Arizona for purposes of not paying tuition.

Q8. What should we do if immigration or law enforcement request information about students, their parents, or family members?

A8: As you know, the Family Educational Rights and Privacy Act (FERPA) requires school districts must maintain the confidentiality of all personally identifiable information in education records related to students. 20 U.S.C. §1232g; 34 CFR § Part 99.

Any and all records, including emails, student files, and personnel information, are generally exempt from disclosure, absent parental consent or consent from an eligible student (age 18 years or older). Under FERPA schools may disclose “directory information” without consent, but they are required to allow parents and eligible students a reasonable amount of time to request that the school not disclose directory information about them.

FERPA does permit school districts to disclose student information –

- (i) in compliance with a “judicial order or lawfully issued subpoena” (subject to the need to notify the parent in order for the parent to obtain a protective order);
- (ii) in connection with a health or safety emergency, and
- (iii) in connection with a student engaged in a crime of violence or a sex offense; 34 C.F.R. §99.31.

These are limited exceptions, however, and would generally not be implicated by an undocumented student who has not engaged in any dangerous activity.

There are some other exceptions to FERPA that pertain to foreign exchange students or foreign students who are studying in the United States. NOTE: This does not pertain to an undocumented student who resides in the United States.

For foreign students, DHS is permitted access to student records to monitor the status of foreign exchange students and international students pursuant to the Student Exchange and Visitor Information System (“SEVIS”) program. The SEVIS program is utilized for students in the U.S. pursuant to “F,” “J” or “M” visas. 8 CFR 214.3(g); however, there is no general exemption to FERPA that grants DHS officers and agents complete access to student information.

Absent visa related issues regarding foreign exchange students and foreign students, DHS officers and agents would not be able to make inquiry of, or seek access to, a student’s educational records.

Q9: What obligation does the District have if DHS requests or demands access to a student and/or the student’s educational records?

A9: Please see the answer to Q8 above for how to handle a request for educational records.

If DHS officers and agents appear at the school office and seek access to the student themselves, the school administration should ask the DHS officers and agents to see a judicial warrant. If presented with a judicial warrant, we recommend you have the District’s legal counsel review the warrant prior to granting access.

Q10: What should staff do if they learn that a student’s parents have been arrested or deported and the parents are no longer in the home?

A10: In general, we suggest staff contact the student’s emergency contact as set forth on the student’s emergency contact card. If there is no emergency contact or the emergency contact is not responding, staff would likely need to contact the Department of Child Safety (“DCS”). To reduce the likelihood of needing to call DCS, we recommend that school staff ensure that parents provide emergency contact information and keep that information updated.

For more information regarding this topic, please see the linked document published by the Florence Immigration Project. <https://firrp.org/wp-content/uploads/2022/09/English-Manual-2017.pdf>.

Q11: How should staff respond if a student or staff member reports discrimination or harassment based on race, color, or national origin?

A11: District Policy JB, Equal Educational Opportunities, indicates that the “right of a student to participate fully in classroom instruction shall not be abridged or impaired because of race, color, religion, sex, age, national origin, and disability, or any other reason not related to the student’s individual capabilities.”

Any reports of discrimination or harassment based on race, color, or national origin should be immediately reported to the Superintendent, the compliance officer for the District. The Superintendent shall investigate or delegate an investigation to another administrator.