Protecting Assets & Child Custody in the Face of Deportation

A Guide for Practitioners Assisting Immigrant Families

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Dear Friends,

Can you imagine being abruptly ejected from the United States — and leaving behind your home, your children, your job, your bank account, and everything else you’ve spent years to build? Can you imagine what your children would feel when they arrived home and you’re gone?

Deportation can be a cataclysm for families and communities, destroying decades of hard-earned assets and rupturing family development. But with advanced planning, immigrant families can prevent an enormous amount of this damage.

That’s why Appleseed is proud to present an updated version of 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 family emergencies. It will help immigrant families deal with child custody and related children’s issues, personal finances, assets and personal property, remittance payments, wages and benefits, business issues, and taxes. And it includes special guidance for family and children’s issues, including professional advice for parents to help their families deal with painful psychological issues, and for immigrant survivors of domestic violence and sexual assault.

Make no mistake: for vulnerable immigrant families, advance planning can make all the difference. Once an immigrant is detained or deported from the United States, navigating a legal proceeding or managing assets is much more difficult, or even impossible, especially since immigration laws bar immigrants from reentering the United States after deportation for several years.

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Immigrants come to the United States to build a better future and to unite with family members. Most have lived in the United States for many years, paying taxes and joining the daily life of their communities. Over time, immigrants buy homes, start businesses and build personal assets. When they build better lives, they make our country stronger.

That’s why this Manual is a labor of love for all who worked on it. We are committed to fairness and compassion for the millions of immigrants living in our country. Our hope is that you can use this resource to help them build better lives.

Sincerely,

Annette LoVoi, Director, Financial Access and Asset Building, Appleseed
Disclaimers

Each Chapter is intended to provide generalized information on a particular topic. In many cases, laws may differ from state to state. Therefore, this information is not intended to replace state-specific legal assistance. Nothing in this manual is intended to create an attorney-client or fiduciary relationship.

Appleseed recognizes and understands the legal term “alien,” used to describe any person born in another country to parents who are not American and who has not become a naturalized citizen, but is living or staying in the United States. However, throughout this Manual, we will primarily use the term “immigrant” in place of the term “alien” based on AP Stylebook guidance and the recommendations of our partners. The exception will be when citing laws, codes, or regulations that specifically use the term “alien.”
3. Enhancing Safety in Public Schools

Following three Executive Orders and one Presidential Proclamation 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. This chapter addresses the following issues:

- 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?

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 and one Presidential Proclamation 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 immigrants violating immigration laws and focuses on prosecuting immigrants who commit crimes along the southern border. The Secure Borders order also authorizes the construction of a wall and facilities to detain immigrants 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 immigrants. The Executive Order seeks to increase deportation of deportable immigrants 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. Although, this contradicts United States Department of Agriculture guidelines on Supplemental Nutrition Assistance Program (SNAP) benefits for non-citizens.

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 reinstituting 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 that person into custody.

*Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats*

On September 24, 2017, President Trump signed a Presidential Proclamation titled “Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats.” This proclamation is the president’s third attempt (following two previous Executive Orders) to expand and define what is commonly referred to as the “Travel Ban.” The proclamation would indefinitely bar the entry into the United States of some or all nationals of Iran, Libya, Somalia, Syria, Yemen, Chad, North Korea, and Venezuela.

The Travel Ban affects foreign nationals from the eight named countries who were outside of the United States on the date of the Travel Ban, did not have a valid visa as of the date of the Travel Ban, and did not have a valid visa at 3:30 p.m. EST on September 24, 2017. The Travel Ban 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) traveling on a passport issued by a non-designated country, any foreign national 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.

*Establishing Visa and Foreign Visitor Processing Goals and the Task Force on Travel and Competitiveness (Amended)*

On June 21, 2017, President Trump signed an Executive Order that amended an earlier 2012 Executive Order by President Obama titled “Establishing Visa and Foreign Visitor Processing Goals and the Task Force on Travel and Competitiveness.” The June 21 Order deletes a subsection of the original order that sought to expedite the processing time for non-immigrant visas, including those needed by students, business travelers, and tourists by “ensur[ing] that 80 percent of non-immigrant visa applicants are interviewed within 3 weeks of receipt of application.”
It is unclear how much longer the process will take, due to the deletion of this provision, for the number of tourist, student, and business visa seekers who apply to travel to the country every year. The Executive Order follows changes to the visa application process rolled out June 1, 2017 that make the questionnaire for all U.S. visa applicants more stringent by requiring disclosure of social media handles for the last five years and biographical information going back 15 years.

Again, while this is unlikely to directly affect students enrolled in U.S. schools, delays in the visa process may impact family members or friends of students. Awareness of the potential delays in obtaining visas and new parameters of the visa application process will empower school administrators and educators to guide and counsel students who may be indirectly affected by these changes.

Note: As of October 2017, both the Enforcement Order and the Travel Ban have been challenged in various courts. Substantial portions of each Order have been stayed. For example, on October 17, 2017, U.S. District Judge Watson in Hawaii ruled that visa applicants who are nationals of Chad, Iran, Libya, Syria, Yemen, and Somalia are not subject to any of the restrictions or limitations under the Presidential Proclamation.

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. Schools should establish communication procedures so that students are not stranded in the event that a parent is detained; parents should identify and authorize other trusted adults or siblings to pick up children from school.

School Districts Could Gather Additional Information

Some school districts initially 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). On September 1, 2017, the Salt Lake City Board of Education adopted a “Safe School Resolution” in line with other school districts that refers any immigration inquiries by law enforcement authorities to the Executive Director of Policy and Legal Services and generally denies access to students absent a valid search warrant. It is unknown how many other school boards are taking this approach, but as school districts continue to gather more information, it appears likely that they 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 (as of October 2017) 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 ("NSLA") 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 NSLA that they may otherwise be entitled to access under FERPA. The NSLA 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 NSLA. 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 NSLA. Unauthorized disclosure and improper use of student school lunch eligibility information in violation of the NSLA 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 unless doing so would violate school policies.

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 changing their meal habits, such as not eating (particularly school lunch), or students who had regularly participated in school breakfast no longer participating;**
- **Students having 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; or**
- **Students experiencing drastic changes in academic performance.**

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 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; or
- 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.