

## A Continuing Obligation to Protect Student Privacy

By: Kelly Perkovich, Esq.



According to federal guidance issued on January 21, 2025, by the Acting Department of Homeland Security (“DHS”) Secretary, previous guidelines issued regarding Immigration and Customs Enforcement (“ICE”) that thwart law enforcement in or near so called “sensitive areas” have been rescinded. Sensitive areas include, but are not limited to, schools, hospitals and places of worship. Despite this newly issued directive, federal laws protecting the right of undocumented children to a free public education and protecting students’ privacy currently remain intact.

In the landmark case regarding undocumented students’ right to a free public education, Plyer v. Doe, the United States Supreme Court held that a state may not deny access to public education to any child residing in the state, regardless of the child is in the country legally. The implication of this is that while a school district may require that a parent or guardian provide proof of residency when enrolling in a district (e.g. copies of utility bills, or a lease), it may not inquire into the student’s citizenship or immigration status (e.g. social security number or birth certificate). Similarly, if a school district learns or knows of a student’s citizenship or immigration status, it has no reason to make that information a part of the students’ record.

School districts are also required by federal law to protect the privacy of student records.

Pursuant to the Family Educational Rights and Privacy Act (“FERPA”), schools must maintain the confidentiality of personally identifiable information in education records related to students and require written consent before disclosing any information to third parties with certain exceptions. Generally, a student’s education records include those directly related to a student that are maintained by an educational agency or institution and those records shall not be disclosed without the prior written consent of a parent or eligible student. However, FERPA allows the disclosure of “directory information” (which may include home address and similar information but does not include immigration status or social security cards) without consent, but schools are required to allow parents and eligible students the option of opting out of the disclosure of directory information.

Notably missing from the exceptions to FERPA is one which grants ICE unfettered access to student information. There are relevant

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## Recent Court Activity and Executive Orders

By: Jocelyn Kramer, Esq.



On January 9, 2025, the U.S. District Court for the Eastern District of Kentucky issued a ruling in Tennessee v. Cardona, vacating the U.S. Department of Education’s (DOE) 2024 Title IX regulations nationwide. This decision reverts Title IX enforcement to the 2020 regulations and requires school districts to review their nondiscrimination policies and grievance procedures. Schools should work with their legal counsel to ensure compliance with the applicable regulations, constitutional requirements, and state and local laws.

Following the Court mandated Title IX changes, President Trump was sworn in and began issuing executive orders that directly impact our schools, including nondiscrimination policies. President Trump issued more than thirty executive orders in his first two weeks in office that include directives relating to transgender student policies, curriculum content, immigration enforcement within schools and school choice. Also impacting Title IX implementation, one executive order redefines “sex” under federal law as meaning only male or female, as assigned at birth. This directive mandates federal agencies to remove materials promoting gender ideology and eliminates funding for such initiatives. Addressing concerns over perceived ideological indoctrination, another executive order prohibits federal funding to K-12 public schools that teach critical race theory (CRT) or “radical gender ideology.” The order aims to prevent the promotion of specific perspectives on race and gender in educational curricula. Additionally, in a broader effort to enhance immigration enforcement, the administration has intensified deportations, including individuals with criminal records. While not directly targeting schools, these actions have significant implications for immigrant students and their families, potentially affecting student attendance and community relations within educational institutions. President Trump is also continuing to support school choice initiatives with another executive order directing the DOE secretary to provide guidance regarding federal funding formulas to support K-12 school choice initiatives.

**WBK is constantly reviewing the evolving state of the laws, regulations, and new orders impacting our schools. Please contact our office for specific advice relating to Title IX and the recent executive orders. ♦**

## Title VI Updates

By: Lynne Sherry, Esq.

On January 10, 2025, the Department of Education's Office for Civil Rights (OCR) published a resource entitled "Resolving A Hostile Environment Under Title VI:

Discrimination based on Race, Color, or National Origin (including Shared Ancestry or Ethnic Characteristics)" [Resolving a Hostile Environment Under Title VI \(PDF\)](#). The guidance, which remains on OCR's website, reviewed a number of Resolution Agreements with school districts related to discrimination based on these factors; OCR received the highest number of complaints in 2024 under the Title VI category of racial harassment. The same week, the Fourth Circuit Court of Appeals reversed dismissal of a student's racial harassment claim, initiated by a student who sufficiently alleged she suffered severe and pervasive racial



## Title VI, continued

harassment by her peers. The Fourth Circuit joined the Third Circuit (which includes PA) in recognizing the existence of Title VI claims for student-on-student racial harassment. While Districts may anticipate potential changes in the scope of OCR investigations, it is important to continue to monitor for illegal discrimination and investigate where appropriate, as a cause of action remains intact in federal court. Attorneys at WBK are available to consult with school districts on issues surrounding claims of harassment and harassment investigations, as well as questions regarding OCR complaints and Executive Orders impacting the work of the Department of Education and OCR. ♦

## Protect Student Privacy, continued

exceptions to FERPA that would allow for disclosure: if a student overstayed their visa pursuant to the Student Exchange and Visitor Information system, or, in compliance with a "judicial order or lawfully issued subpoena." If a school is presented with a judicial order or lawfully issued subpoena, it is still not required to provide immediate access to records. The parents or guardians have the right to be notified and seek a protective order, and the district solicitor should be notified in order to review the judicial order or lawfully issued subpoena. Disclosures are also permissible in connection with a health or safety emergency if the emergency is ongoing, and finally, in connection with a student engaged in a crime of violence or a sex offense. These limited exceptions, however, would generally not be implicated by an undocumented student who has not engaged in any dangerous activity.

In the event ICE requests access to a student or student records at one of your schools, please contact our office and the Superintendent. ICE officials have no inherent right to school buildings absent appropriate legal documentation. Information regarding students should not be disclosed unless instructed to do so by your solicitor or our office. To reiterate, a school district cannot inquire into a student or family's citizenship or immigration status under the law, and any information learned regarding a student or family's citizenship, or immigration status, should not be documented as part of a student's education record. Sharing information absent a valid subpoena, warrant or judicial court order is a violation of federal law.

**Should you have any further questions or concerns, please contact your solicitor or our office. ♦**

## WBK Happenings

- Attorney Annemarie Harr Eagle has been named a shareholder at Weiss Burkardt Kramer.
- Attorney Lynne Sherry has been named the chair of WBK's special education department.
- On April 5, 2025, Attorney Megan Turnbull will be sitting on solicitor's panel the at the Allegheny League of Municipalities' Annual Spring Educational Conference. Attorney Turnbull will be handling the topic of social media and the First Amendment.

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