

## RIGHTS REGARDING EXECUTIVE ORDERS

Bulletin Number: 2025-02

The new Administration issued several Executive Orders (EOs) covering many topics with more expected in the future. This Bulletin provides guidance in response to two specific topics addressed in some of those EOs that will directly affect public schools.

### I. IMMIGRATION

A slew of immigration-related Executive Orders were issued beginning on January 20, 2025, one in particular was titled, “Protecting The American People Against Invasion.” In short, this EO directs the Attorney General (AG) and the Secretary of the Department of Homeland Security (DHS) to “undertake any lawful actions to ensure that so-called ‘sanctuary’ jurisdictions, which seek to interfere with the lawful exercise of Federal law enforcement operations, do not receive access to Federal funds.” It also directed the AG to conduct a review of federal funding to non-governmental organizations that provide services to undocumented immigrants.

President Trump also rescinded a longstanding policy that protected “sensitive locations” like schools, churches, and hospitals from immigration enforcement activity. While that may be within his authority to do, it is important to note that **in general**, state and local officials are not required to simply comply with requests or commands from federal immigration officials.

All school districts should put out specific guidance about how schools can continue to ensure that schools are safe and welcoming for all. However, if your district has not provided such guidance, all local leaders and educators should advocate for their schools to adopt such Safe Zone policies.

If any educator or school personnel faces any of the following, they **SHOULD** immediately contact the superintendent for guidance:

- A request from immigration enforcement agents for information about students, otherwise protected by the Federal student privacy laws such as the Family Educational Rights and Privacy Act (FERPA);

- A request from immigration enforcement agents to access a nonpublic area of a school (which is basically any area in the building); and
- A request from immigration enforcement agents to access a student.

None of the above requests should be complied with without a valid judicial warrant, but that determination is up to administration to make, not teachers.

More importantly, **teachers should not physically interfere with any attempt to take a student by an ICE agent (with or without a sufficient warrant). Teachers should not harbor or hide students, and should never lie or engage in deceitful behavior with ICE agents which are elements of the various related crimes. However, failure to report a student or family's undocumented status to federal authorities is not "deceptive" behavior because there is no legal duty to disclose that information.**

## II. "RADICAL INDOCTRINATION"

On January 29, 2025, President Trump issued three education-related executive orders, one of which purports to address supposed "radical indoctrination" in K-12 schools. This EO was based on the notion that "parents have witnessed schools indoctrinate their children in radical, anti-American ideologies while deliberately blocking parental oversight." The order calls for the Trump Administration to adopt a strategy to end such so-called indoctrination and "will enforce the law to ensure that recipients of Federal funds providing K-12 education comply with various laws prohibiting discrimination." The Order directs the Secretary of Education, Secretary of Defense, and the Secretary of Health and Human Services, in consultation with the Attorney General, to provide such plan within 90 days to the President which plan includes but is not limited to eliminating Federal funds for K-12 schools who engage in "illegal and discriminatory treatment and indoctrination" based on "gender ideology" and "discriminatory equity ideology."

Another purpose of the Order is to erase gender identity, ban transgender military service, and deny healthcare to transgender youth.

One especially concerning aspect of the Order is that it directs the Attorney General to "coordinate with State attorneys general and local district attorneys in their efforts to enforce the law and file appropriate actions against K-12 teachers and school officials who violate the law by:

- Sexually exploiting minors;

- Unlawfully practicing medicine by offering diagnoses and treatment without the requisite license; or
- Otherwise unlawfully facilitating the social transition of a minor student.”

**Teachers should not fear prosecution because the President cannot direct states and school districts on how they will enforce their laws. Moreover, it is state and local laws and policies, not federal law, that govern how educators instruct and support students. Therefore, any threatened prosecutions would depend on a showing that an educator has violated a state or local law.**

Several attorneys general throughout the country have already issued such clarifying statements and CEA will be advocating that Attorney General Tong do the same here in Connecticut.

### **III. “FIRST AMENDMENT” – TEACHERS’ “RIGHTS” TO RESPOND**

Adjusting to this new Administration is no doubt challenging, and while there is a natural instinct to respond, it is important to remember the law surrounding First Amendment as it relates to public employees. There is a trilogy of United States Supreme Court cases, *Pickering v. Board of Education*, 391 U.S. 56 (1968), *Connick v. Meyers*, 461 U.S. 138 (1983), and *Garcetti v. Ceballos*, 547 U.S. 410 (1983). These cases, taken together, established the balancing test that our courts employ when determining what is and is not protected speech. The elements are:

- 1) Must be speaking as a citizen, not an employee.
- 2) Must be speaking on a matter of public concern.
- 3) Speech cannot be pursuant to official duties.
- 4) Speech cannot be about a personal grievance.

**But even if all the above are met, the right to express oneself can still be outweighed by the district’s interest in the “efficient operation” of their schools.**

Any disruption to that efficient operation will render speech not protected. Because what is or is not a disruption is so subjective you could pass the test and still face consequences. Unfortunately, we’ve seen disciplinary consequences up to and including termination for teachers’ speech on social media even when they were in private social media spaces with “trusted” friends and acquaintances.

Lastly and equally important to know is that speech done in concert with your union on terms and conditions of employment will be considered protected activity.

Please see other resources posted on the CEA Website. <https://cea.org/immigration-and-customs-enforcement-ice/>