



## THE RECENT PRESIDENTIAL EXECUTIVE ORDERS WHAT IS THE IMPACT FOR NEW JERSEY PUBLIC SCHOOLS?

A newly elected president usually brings change to the Federal government, and our new administration is no exception. Three of the Executive Orders signed by President Trump since his inauguration impact our public schools.<sup>1</sup> This alert will update you on these Executive Orders and clarify their effect on the day-to-day functioning of your school district.

### “PROTECTING THE AMERICAN PEOPLE FROM INVASION”

This January 20, 2025, Executive Order addresses the Trump administration’s commitment to removing undocumented non-citizens from the United States. It directs the Attorney General’s office and the Secretary of Homeland Security to take the measures needed to effectuate the Executive Order’s goals. On January 21, 2025, the Department of Justice issued a memorandum discussing implementation of the President’s directives at the local level, to include the requirement that state and local officials cooperate with immigration officials. The local media has reported that Immigration and Customs Enforcement (ICE) officers have begun to sweep locations in an effort to begin the process of reducing the influx of illegal immigrants. In New Jersey, which is home to a diverse population, concerns about the impact of this Order in the school setting are well placed. This alert offers some direction moving forward.

The Executive Order comes against the backdrop of well-established law that protects the rights of undocumented non-citizens to attend our public schools. The United States Supreme Court decision in Plyler v. Doe, 457 U.S. 202 (1982), held that discrimination on the basis of immigration status is unconstitutional. Public schools may not deny admission to a student on the basis of their undocumented status or require that students or their parents disclose their immigration status. The right of all children domiciled within a school district to attend its public schools is moreover confirmed at N.J.A.C. 6A:22-3.3 which expressly prohibits barring any student from public school on the basis of immigration status. And the right of all New Jersey children to attend public schools is guaranteed by our State Constitution. N.J. Constitution, Art. VIII, Sec. 4, Para. 1. Accordingly, to the extent that undocumented students are enrolled in your schools, their presence there is supported by existing law.

It would thus violate law to affirmatively act to exclude any undocumented students. Many districts are rightly concerned, however, regarding the proper course of action if federal agents seek to remove a student from one of your buildings. The New Jersey Department of Education has offered helpful guidance on its website. See:

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<sup>1</sup> The complete text of “Protecting the American People from Invasion,” “Ending Radical Indoctrination in K-12 Schooling” and “Keeping Men out of Women’s Sports” is available on-line.

#### REPLY TO

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[nj.gov/education/security/studentrights/index.shtml](https://nj.gov/education/security/studentrights/index.shtml). Based on that guidance, we are recommending the following protocols be followed:

**Front Office Staff:**

1. Do not buzz the agents into the building but instruct them to wait while you alert the Principal or administrator in charge of the building.
2. Do not disclose any information regarding students or parents, including but not limited to whether a student is enrolled in your school or present that day.

**Building Principals:**

1. Immediately alert the Superintendent and Board Attorney that ICE agents are on the premises.
2. Ask for information that verifies the identity of the agents.
3. Ask if the agents have a court order or a warrant signed by a Judge authorizing them to enter. (An administrative warrant not signed by a Judge is insufficient.)
4. If the agents have a court order or warrant signed by a Judge, ask them to present a physical copy, if it is possible to do so without having them enter the building. Alternatively have them email it to you. Request the name and cellphone number of the agent in charge of the raid. Forward the court order or warrant to the Superintendent and Board Attorney for review and stand by for further instructions.
5. If the agents do not have a court order or a warrant signed by a Judge but explicitly claim there are “exigent circumstances,” alert the Superintendent and Board Attorney to that effect, and be prepared to allow them entry if so instructed by the Superintendent.
6. Disclosure of information regarding students or their families is strictly limited by FERPA and State Board of Education student records regulations. Do not share any information with federal immigration agents unless instructed to do so by the Superintendent after consultation with the Board attorney.

**Superintendents:**

1. If you are alerted to the presence of ICE agents at one of your schools, confirm whether or not they have a court order or warrant signed by a Judge, and immediately contact the Board attorney by cellphone.

2. If the Board attorney you typically work with is unavailable, call the main number of The Busch Law Group, LLC, (732-243-9588), and you will be directed to an attorney who can assist you.
3. If there is a court order or warrant signed by a Judge, secure a copy from the Principal and forward it to the Board attorney for review, along with the cellphone number of the ICE agent in charge if available, and be guided by counsel's advice.
4. If there is no court order or warrant signed by a Judge but the ICE agents explicitly claim "exigent circumstances," in all likelihood the attorney will advise you to allow them entry. Our office is attempting to secure further clarification from the New Jersey Attorney General's Office on available options when there is a claim of "emergent circumstances," but absent instructions from them to the contrary we believe the law obligates us to comply.
5. We urge you to update emergency contact information in case students are separated from one or more of their parents.

Please note that this protocol ensures that you do not allow entry into your buildings without your consent, except in accordance with law. Note that arguably, your administration could consent to having ICE enter your facilities. This argument has some legal pitfalls, however, and if this is the direction in which you wish to proceed, this is best discussed directly with our attorneys.

### **"ENDING RADICAL INDOCTRINATION IN K-12 SCHOOLING"**

This January 29, 2025, Executive Order expressly addresses school climate and curriculum issues and as such, would appear to directly implicate some of the ways in which New Jersey Schools function. The Order specifically targets what it terms indoctrination in our schools. It states that instruction currently compels "innocent children ... to adopt identities as either victims or oppressors based on their skin color and other immutable characteristics," via instruction regarding implicit bias and historical discrimination. Relative to accommodating the needs of transgender students in our schools, the Order likewise states that currently, schools encourage students to question "whether they were born in the wrong body." It notes that such encouragement can come in the form of accommodating a name change, or use of preferred pronouns, or preferred bathrooms.

As will be more fully addressed below, our New Jersey statutes appear to be at odds with the dictates of the Executive order. But it is important to stress at the outset that the Order does not specifically compel local districts to take any action at this time. Rather, the Executive Order simply gives the appropriate federal agencies, to include Education, Defense and Health and Human Services, ninety (90) days to advise the President on a strategy that will meet his goals.

While the Executive Order does offer insight into curricular changes sought by the current administration, it is impossible to predict, for now, what recommendations will be made to the President moving forward, and which will be adopted by the Federal agencies.

Indeed, several New Jersey statutes require instruction in topics found objectionable by the Executive Order. For example, N.J.S.A. 18A:35-4.43, requires that schools offer instruction that allows students to “know and understand the nation’s heritage of slavery and freedom,” and to learn about the contributions that African-Americans have made to our society. N.J.S.A. 18:35-4.36a requires that districts incorporate instruction on diversity and inclusion, and that such instruction, in part, “examine the impact that unconscious bias and economic disparities have at an individual level and on society as a whole...” Per the statute, this instruction should teach encourage a safe, welcoming and inclusive environment for all students, regardless of “race or ethnicity, sexual and gender identities, mental and physical disabilities, and religious beliefs”. And relative to the rights of transgender students, N.J.S.A. 18A:36-41 directs the Commissioner of Education to establish guidelines for accommodating their needs. Such guidance is available on the Department website and speaks directly to accommodating gender identity, and resultant requests for name changes, pronoun usage changes, and bathroom preferences. In so doing, the Department of Education is echoing the requirements of our New Jersey Law against Discrimination. N.J.S.A. 10:5-12.

Importantly, while the Presidential Executive Order discusses a rescission of Federal funds to states and their local districts that are noncompliant with its dictates, the Order itself recognizes that doing so may be limited by law. The Order pushes the boundaries of Executive Branch authority. It likewise pushes the boundaries of the Federal government’s authority to dictate educational services and curricula at the State level. Accordingly, it is safe to say that it will likely be subject to legal challenges.

We will keep you informed of any developments related to this Executive Order. In the interim, to reiterate, the Order does not direct that any action be presently taken at the state or local levels. You are advised to continue to implement the curricular and other requirements currently contained in our New Jersey laws.

One additional item of note - the Executive Order cites a little known provision in Federal Law that conditions Federal funding to local schools on holding an educational program each year on September 17 (Constitution Day) regarding the U.S. Constitution. (P.L. 108-447). To the extent that you are not doing so already, you would be advised to present instruction to your students on the Constitution on September 17 each year. The Executive Order is non-specific regarding the content of such programming, and you would appear to have the discretion to choose the programming that you feel is best considering the age and grade level of your students.

## **“KEEPING MEN OUT OF WOMEN’S SPORTS”**

This February 5, 2025, Executive Order addresses the participation of transgender athletes in competitive sports. As such, it directly implicates programming taking place in our public schools. The Order states that it shall “be the policy of the United States to oppose male competitive participation in women’s sports...as a matter of safety, dignity and truth.” The Order cites concerns about women’s safety both on the playing field and in the locker room.

This Order again is at odds both with existing New Jersey law, and with formal guidance from the Department of Education and the New Jersey Interscholastic Athletic Association (N.J.S.I.A.A.). Again, and importantly, the Order does not direct local or state authorities to take any action at this time. Rather, akin to the “Radical Indoctrination” Order discussed above, this Executive Order directs the Federal Department of Education to take the action needed to effectuate its goals. Citing Title IX of the Education Amendment Acts of 1972, the Executive Order directs the federal agency to promulgate regulations and guidance that clearly specify “that women’s sports are reserved for women.”

As required to do so by N.J.S.A. 18A:36-41(b), our New Jersey Department of Education has provided the following guidance: “[w]ith respect to gender-segregated classes or athletic activities, including intramural and interscholastic sports, all students must be allowed to participate in a manner consistent with their gender identity.” Likewise, that guidance provides that transgender students should not be required to use locker rooms that conflict with their gender identity; and directs that districts offer alternatives, including use of a private changing area for both transgender students and non-transgender students who so request. The N.J.S.I.A.A. Handbook provides as follows, relative to transgender athletes:

### **TRANSGENDER POLICY**

1. A transgender student, defined as a student whose gender identity differs from the student’s sex assigned at birth, shall be eligible to participate in accordance with either their birth sex or in accordance with their gender identity, but not both. Exceptions to this policy shall be subject to appeal to the Eligibility Appeals Committee.
2. In the event of a positive test result under the NJSIAA’s “General Prohibition Against Performance Enhancing Drugs”, a transgender student’s use of a banned substance for the purposes of hormone therapy may be considered by the NJSIAA medical review officer as a medical reason for the positive result.
3. Any member school may appeal the eligibility of a transgender student on the grounds that the student’s participation in interscholastic athletics would

adversely affect competition or safety. Any appeal under this paragraph will be heard by the Eligibility Appeals Committee and shall be confidential. The Eligibility Appeals Committee will not consider whether the school has properly determined the student's sex-assignment.

4. If a transgender student has not yet declared their transgender status, this policy shall not apply. If a transgender student, at some point during their high school career, no longer identifies as a transgender student, this policy shall not apply.

Thus, while the N.J.S.I.A.A. allows a member school to appeal the eligibility of a transgender student where competition or safety might be affected by his or her participation on an athletic team, the overarching theme of its approach to transgender athletes is one that accommodates the athlete's gender preference.

This Presidential Executive Order also discusses a rescission of Federal funds to states and their local districts that are noncompliant with its dictates. Once again, however, the Order pushes the boundaries of Executive Branch authority. Accordingly, it is safe to say that it will likely be subject to legal challenges. Until there is further direction from either the Federal or State Department of Education, you are advised to continue to implement the requirements currently contained in our New Jersey laws.

Should you have any questions or concerns regarding these Executive Orders, the attorneys at The Busch Law Group are available to counsel you.

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