



Guidance on Immigration Issues Impacting Higher Education

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I. Introduction

Since assuming office, President Trump has taken sweeping action against immigrants, stoking fear in immigrant communities, and fanning anti-immigrant prejudices. NEA issued comprehensive [immigration guidance](#) in January 2025 in anticipation of these initiatives, which it has continued to update. The purpose of this guidance is to highlight key concerns regarding the impact of the Trump administration's immigration policies in higher education.

Approximately 98,000 undocumented students graduate from high schools in the United States every year.¹ In 2022, immigrant-origin students accounted for 5.8 million or 32 percent of all students enrolled in U.S. colleges and universities, up from 20 percent in 2000.² Non-citizen first-generation immigrant students account for nearly 50 percent of the 1.9 million first-generation immigrant students in higher education.³ The large numbers and percentages of immigrant students in higher education mean that the Trump administration's immigration initiatives may have significant impacts for higher education students, schools, and universities.

It is critical that educators act to limit the negative impact of these initiatives by making sure that their college or university adopts a Safe Zone resolution (pp. 3-7) or a similar policy that clearly addresses how educators are to respond to U.S. Immigration and Customs Enforcement (ICE) activities. In addition, higher education educators should understand relevant record privacy and visa concerns (pp. 8-12), as well as the protections that are available against discrimination and other employment-related issues (pp. 12-15). The guidance also addresses how educators can safely engage in immigration advocacy (pp. 15-18). The Appendix to this guidance provides a Sample Safe Zone Resolution and Model Policy tailored for colleges and universities. In addition to this higher education specific guidance, remember that the NEA comprehensive guidance from January 2025 (linked above) includes a mass raids FAQ, a Know Your Rights guide around immigration enforcement, and an update on the DACA program, which may all be relevant for educators working at the higher education level.

This guidance and all attachments may be shared widely with educators, member leaders, and activists.

¹ Jie Zong & Jeanne Batalova, HOW MANY UNAUTHORIZED IMMIGRANTS GRADUATE FROM U.S. HIGH SCHOOLS ANNUALLY? (Migration Policy Institute, May 11, 2021), <https://www.migrationpolicy.org/research/unauthorized-immigrants-graduate-us-high-schools>

² Migration Policy Institute (MPI) analysis of the U.S. Census Bureau data commissioned by the Presidents' Alliance on Higher Education and Immigration, <https://www.presidentsalliance.org/immigrant-origin-students-in-higher-education/>

³ *Id.*

II. Immigration and Higher Educational Institutions 101

An estimated 1.9 million first-generation immigrant students are attending higher education institutions in the U.S., and more than 400,000 of them are estimated to be undocumented.⁴ State laws generally govern access to higher education for undocumented students; federal statutes neither protect nor prohibit the right of undocumented students to attend higher education institutions. At the state level, undocumented students can pay in-state tuition (known as tuition equity) in 25 states and receive state-administered financial aid in 19 states.⁵

The Supreme Court has not ruled on the issue of whether undocumented students have a right to access higher education; if the issue were raised, would almost certainly not find the same type of protection it has found to access public K-12 education regardless of immigration status. Denial of access to higher education does raise Equal Protection concerns.⁶ The Equal Protection Clause provides some heightened protection for governmental classifications based on alienage, which have been deemed “inherently suspect and subject to close judicial scrutiny.”⁷ However, restrictions aimed at undocumented immigrants will usually be evaluated under rational basis review, which is extremely lenient. For example, a court upheld a Georgia statute that barred the attendance of undocumented students at certain public universities, finding that the bar served the state’s rational interest in conserving resources, particularly given that access was denied to just three institutions.⁸ Employing similar logic, we can expect that courts generally will not find that policies or practices limiting access for undocumented students violate the Equal Protection Clause.

Searches and seizures raise issues for higher education students, staff, and faculty under the Fourth Amendment to the U.S. Constitution, which protects individuals from unreasonable searches and seizures without a judicial warrant. The extent of this protection depends on individual’s expectation of privacy in the space entered or information seized,⁹ which makes it

⁴ IMMIGRANT AND INTERNATIONAL STUDENTS IN HIGHER EDUCATION, Higher Ed Immigration Portal, <https://www.higheredimmigrationportal.org/national/national-data/>

⁵ See HIGHER EDUCATION FOR IMMIGRANT STUDENTS, National Immigration Law Center, <https://www.nilc.org/resources/toolkit-higher-education-for-immigrant-students/>; www.nilc.org/wp-content/uploads/2024/09/table-access-to-ed-toolkit-092024.pdf; 2022 In-State Tuition Tracker, https://docs.google.com/spreadsheets/d/1RPMRcuB0BaYQCpKBr2M1RG_VIQgDnx_K1zwuc_H_tuc/edit?gid=0#gid=0&range=A3; Higher Ed Immigration Portal, LIMITED ACCESS: THE LANDSCAPE OF IN-STATE TUITION FOR DISPLACED STUDENTS, <https://www.higheredimmigrationportal.org/policy/limited-access-the-landscape-of-in-state-tuition-for-displaced-students/>; Higher Ed Immigration Portal, UNDOCUMENTED STUDENTS AND ACCESS TO INTER-STATE TUITION AGREEMENTS: FACT SHEET, <https://www.higheredimmigrationportal.org/policy/undocumented-students-and-access-to-inter-state-tuition-agreements-itas-fact-sheet/>.

⁶ *Students for Fair Admission, Inc. v. President and Fellows of Harvard College*, 600 U.S. 181 (2023).

⁷ *Graham v. Richardson*, 403 U.S. 365, 372 (1971).

⁸ *Estrada v. Becker*, 917 F.3d 1298 (11th Cir. 2019).

⁹ See *Terry v. Ohio*, 392 U.S. 1, 9 (1968) (Fourth Amendment “protects people, not places,’ ... and wherever an individual may harbor a reasonable ‘expectation of privacy ... he is entitled to be free from unreasonable governmental intrusion”).

very important for institutions to adopt policies regarding access to specific areas of campus and recorded information. Such restrictions can enhance Fourth Amendment protections without limiting the access of school administrators, who can notify both students and employees of access policies in advance.¹⁰ Designating restricted areas and the privacy of records—limiting access to outsiders including ICE—can promote a safe learning environment conducive to the institution’s mission.¹¹ For example, the president of Harvard University wrote a public email to all students on November 28, 2016, which includes the following message:

“[A]s a matter of longstanding policy, law enforcement officials seeking to enter campus are expected to check in first with the HUPD [Harvard University Police Department] and, in cases involving the enforcement of the immigration laws, will be required to obtain a warrant.”¹²

To enhance the available protections, advocates can take certain steps to protect the interests of students, staff, and faculty.

III. Immigration Enforcement on Campus – The Importance of Safe Zone Policies

Safe Zone policies can limit the harm caused by immigration enforcement, including entry onto campuses and requests for records. Since 2011, the Department of Homeland Security (DHS) has listed schools as “sensitive locations” or “protected areas” where Immigration and Customs Enforcement (ICE) arrests, interviews, surveillance, or searches should not take place absent unusual circumstances. In 2021, the Biden administration issued [new guidance](#) expanding the areas protected from enforcement beyond K-12 schools to cover pre-K through post-secondary schools, including both colleges and universities. The guidance directed ICE to avoid any action in or near a protected area that would “restrain people from accessing the protected area to receive essential services or engage in essential activities.”

On January 20, 2025, the Acting DHS Secretary rescinded the 2021 guidance,¹³ stating that ICE agents should just use their “discretion” and “common sense” in deciding whether any immigration enforcement should occur in a sensitive location.¹⁴ DHS issued a statement on January 21, 2025 removing the restrictions on engaging in immigration enforcement in areas

¹⁰ See, e.g., Elizabeth O. Jones, *The Fourth Amendment and Dormitory Searches*, 33 J.C. & U.L. 597, 603 (2007).

¹¹ See National Immigration Law Center (NILC), *WHY IS A SCHOOL SAFE ZONE OR SANCTUARY RESOLUTION IMPORTANT?* (2018), www.nilc.org/wp-content/uploads/2018/08/sanctuary-schools-practice-advisory-2018.pdf.

¹² “Supporting Our Community” (letter from Drew Faust, president of Harvard University, to members of the Harvard community, Nov. 28, 2016), www.harvard.edu/president/news/2016/supporting-ourcommunity.

¹³ [Statement from a DHS Spokesperson on Directives Expanding Law Enforcement and Ending the Abuse of Humanitarian Parole | Homeland Security](#)

¹⁴ See NILC, <https://www.nilc.org/resources/factsheet-trumps-rescission-of-protected-areas-policies-undermines-safety-for-all/>

that were previously designated as “sensitive areas,” including preschools, K-12 schools, and colleges and universities.¹⁵

Given the rescission of the sensitive areas policy and the uncertainty about whether campuses might be targeted, NEA strongly encourages colleges and universities to adopt a Safe Zones policy that outlines what educators and staff should do if ICE attempts to engage in immigration enforcement at educational institutions.¹⁶ Hundreds of school districts and a number of higher education institutions around the country already have adopted a Safe Zones policy.¹⁷

If your educational institution has not yet adopted such a policy, we encourage you to take action to ensure your educational institutions are safe for all students, staff, and faculty. A Safe Zones Resolution could originate from the faculty senate or student government organization. To be effective, the resolution should be adopted by the institution’s leadership or governing body, such as a Board of Trustees or Governors.

Safe Zones resolutions:

- Make clear that your campus is a welcoming place for all students, prohibits any unnecessary collection of immigration information from students or employees, and establishes procedures for responding to immigration enforcement.
- On campuses, Safe Zone policies clarify areas that are public and areas that are private in order to limit ICE enforcement to public areas and to protect the legitimate expectations of privacy that students and faculty have (e.g., classifying common areas as public, but dorm rooms as private).
- Such resolutions require ICE officers to notify appropriate campus officials before engaging in any immigration enforcement on campus. Such notifications are important so that campus officials can ensure that any enforcement action complies with campus policies and respects the rights of students and faculty.
- You should understand that such resolutions do not provide individual immunity for individuals who decline to obey directives from law enforcement. Rather, the resolution provides steps that you should request that law enforcement follow. If law enforcement refuses to cooperate, that becomes a matter for the institution’s legal counsel and courts to determine. You should not put yourself or those around you at risk to enforce the requirements.

¹⁵ Statement from a DHS Spokesperson on Directives Expanding Law Enforcement and Ending the Abuse of Humanitarian Parole | Homeland Security

¹⁶ See NEA’s revised model policy for higher education in the Appendix of this Guidance.

¹⁷ Sample resolutions adopted by universities include Marquette University, Northern Illinois University, UC Berkeley, Yale, and California State University system (CSU). See Maya Stahl, *What Some Colleges Say They’ll Do if Immigration Authorities Come to Campus*, THE CHRONICLE OF HIGHER EDUCATION (Jan. 27, 2025), What Some Colleges Say They’ll Do if Immigration Authorities Come to Campus; American Council on Education, *Immigration-Related Campus Concerns Issue Brief* (2025), Issue-Brief-Immigration-Related-Campus-Concerns-2025.pdf.

- Faculty and staff should never physically interfere with or obstruct an immigration officer in the performance of his or her duties, as this could escalate the situation and could endanger both the educator and students.

NEA and the National Immigration Law Center have talking points for various audiences to encourage the adoption of a safe zone at your institution.¹⁸ In addition, multiple state Attorneys General and departments of education detailed in the footnote below have issued guidance that addresses how to make educational spaces “safe zones” throughout their state, including at higher education institutions.¹⁹

A. Response to ICE

With the rescission of the previous “sensitive locations” or “protected areas” guidance, ICE could attempt to engage in enforcement actions on college campuses without prior notification to the educational institution. In some areas, local law enforcement may assist ICE with immigration enforcement. ICE provides a map of police departments that have cooperating agreements with them.²⁰

Not every action by ICE or U.S. Citizenship and Immigration Services (USCIS) are considered to be immigration enforcement actions. Some routine ICE or USCIS functions—such as arriving on campus unannounced to inspect I-9 records, conducting an administrative site visit for a compliance review, or requesting certain documents with a subpoena—would generally not be addressed by a Safe Zone policy.

¹⁸NILC, *supra* note 12.

¹⁹ See Rob Bonta, , PROMOTING A SAFE AND SECURE CAMPUS FOR ALL (California Attorney General’s Office, Dec. 2024), [Promoting a Safe and Secure Campus for All - Guidance and Model Policies to Assist California’s Colleges and Universities in Responding to Immigration Issues](#); Maura Healey, ATTORNEY GENERAL GUIDANCE: RIGHTS AND OBLIGATIONS OF SCHOOLS IN RESPONSE TO ICE REQUESTS FOR ACCESS OR INFORMATION (Massachusetts Attorney General’s Office, May 18, 2017), [HYPERLINK "http://www.mass.gov/ago/docs/civilrights/ag-advisory-on-ice-access-to-schools-5-18-17.pdf"](http://www.mass.gov/ago/docs/civilrights/ag-advisory-on-ice-access-to-schools-5-18-17.pdf)<http://www.mass.gov/ago/docs/civilrights/ag-advisory-on-ice-access-to-schools-5-18-17.pdf>; Agustin Arbulu & Brian Whiston, A Letter from Michigan Department of Civil Rights Director Agustin Arbulu and State Superintendent Brian Whiston (Michigan Depts. of Education and Civil Rights, Mar. 31, 2017), www.michigan.gov/documents/mdcr/2017-03-31+MDE+and+MDCR+Joint+Letter_556183_7.pdf; Letter from Eric T. Schneiderman, Attorney General, and MaryEllen Elia, Commissioner of Education, State of New York, regarding U.S. Immigration and Customs enforcement (Feb. 27, 2017), www.nysed.gov/common/nysed/files/oag-sed-letter-ice-2-27-17.pdf; Bob Ferguson, Guidance Concerning Immigration Enforcement (Washington State Office of the Attorney General, Apr. 2017), <http://agportals3bucket.s3.amazonaws.com/uploadedfiles/Another/AGO%20Immigration%20Guidance.pdf>. www.michigan.gov/documents/mdcr/2017-03-31+MDE+and+MDCR+Joint+Letter_556183_7.pdf; Letter from Eric T. Schneiderman, Attorney General, and MaryEllen Elia, Commissioner of Education, State of New York, regarding U.S. Immigration and Customs enforcement (Feb. 27, 2017), www.nysed.gov/common/nysed/files/oag-sed-letter-ice-2-27-17.pdf; Bob Ferguson, Guidance Concerning Immigration Enforcement (Washington State Office of the Attorney General, Apr. 2017), <http://agportals3bucket.s3.amazonaws.com/uploadedfiles/Another/AGO%20Immigration%20Guidance.pdf>.

²⁰ <https://www.ilrc.org/resources/national-map-287g-agreements>

If your college or university has not yet adopted a Safe Zones resolution or other policy for all faculty and staff to follow if immigration officers show up on campus, the following questions are important to answer and resolve to prepare for potential immigration enforcement action on campus:

- The college or university should designate the office or administrator (“representative”) that should be contacted whenever any immigration official attempts to contact a student on campus or requests information or access to records.
- The college or university should designate which areas of campus are open to the public versus non-public spaces.
- If immigration officers attempt to enter a campus, educators or staff should direct ICE/CBP agents to the designated representative. The representative should request to see written legal authorization and verify the identity of the agents. It is important for the representative to review, with legal counsel, what the immigration officer provides as such legal authorization.
- There is a distinction between an ICE administrative warrant and a traditional federal court warrant. The college or university may respond differently depending on the type of warrant.
- An ICE administrative “warrant” is the most typical type of “warrant” used by immigration officers. It authorizes an immigration officer to arrest a person suspected of violating immigration laws. It is not a warrant within the meaning of the Fourth Amendment of the U.S. Constitution because an ICE warrant is not supported by a showing of probable cause of a criminal offense and is not issued by a court judge or magistrate.
 - An ICE warrant does **not** grant an immigration officer any special power to compel an educational institution’s officials to cooperate and is not a “court order” that would, under FERPA, allow the disclosure of educational records without an adult student’s consent.²¹
 - A college or university is not required to comply with an ICE administrative warrant to enter nonpublic areas without the voluntary consent of the institution or property owner.²² Denial of access can be based on policy that specifies what areas of campus are nonpublic and who has the authority to provide such consent.
- A federal or state court warrant is issued by a federal or state court judge. A college or university official should act in accordance with its policy when presented with a federal or state court warrant. Such policies generally provide for compliance in an orderly fashion with such warrants.

²¹ See, e.g., *United States v. Madrid-Quezada*, 403 F. Supp. 3d 1016, 1022 (D.N.M. 2019); *Lunn v. Commonwealth*, 78 N.E.3d 1143, 1151 n.17 (2017) (distinguishing ICE warrants from judicially issued criminal warrants).

²² *Sea v. Seattle*, 387 U.S. 541, 545 (1967).

- Colleges and universities do not need to immediately comply with an administrative subpoena that requests production of documents or other evidence. If an immigration officer arrives with an administrative subpoena, the institution may decline to produce the information sought and may choose to challenge the administrative subpoena before a judge.
- Campus police need not comply with voluntary detainer requests and voluntary notification requests from federal immigration enforcement officials.²³
- Colleges and universities should inform students, faculty, and staff, and train responsible parties, on the institution's policies and protocol related to immigration enforcement.
- Colleges and universities should create a response team/task force to create and update policy and protocol, and to address consequences of immigration enforcement for faculty, staff or students, including referral to legal representation, impact on academic standing or employment, etc.

Advocates should be aware of whether local law enforcement (including campus safety/police) has an agreement with ICE for local officers to perform immigration law enforcement functions.²⁴ While ICE currently reports agreements with 40 law enforcement agencies in 16 states, that number could increase dramatically.²⁵

DHS has a number of locations where an individual may lodge a complaint about a particular immigration enforcement action that may have taken place in violation of these or other policies.²⁶ For additional resources on immigration enforcement, see National Lawyers Guild,²⁷ [Center for Constitutional Rights](#), [National Immigration Project](#), [National Immigration Law Center](#), and [Immigration Legal Resource Center](#).

It is important to know that notwithstanding recent statements made by the Trump administration, the federal government cannot commandeer state and local governments and officials to carry out federal priorities. This means that the federal government cannot require

²³ IMMIGRATION DETAINERS LEGAL UPDATE (Immigr. Legal Res. Ctr. July 2018), <https://www.ilrc.org/immigration-detainers-legal-update-july-2018>.

²⁴ Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Section 287(g).

²⁵ See the following website for a list of counties that currently have 287(g) agreements: <https://www.ice.gov/factsheets/287g#signedMOA>.

²⁶ You may find information about these locations, and information about how to file a complaint, on the DHS website at <https://www.dhs.gov/>, the CBP website at <https://www.cbp.gov/>, or ICE website at <https://www.ice.gov/>. You may contact ICE Enforcement and Removal Operations (ERO) through the Detention Reporting and Information Line at (888)351-4024 or through the ERO information email address at ERO.INFO@ice.dhs.gov, also available at <https://www.ice.gov/webform/ero-contact-form>. The Civil Liberties Division of the ICE Office of Diversity and Civil Rights may be contacted at (202)732-0092 or ICE.Civil.Liberties@ice.dhs.gov.

²⁷ <https://www.nlg.org/new-kyr-for-immigration-justice-advocates-assessing-risks-in-supporting-immigrants-at-points-of-intervention-understanding-the-harboring-non-u-s-citizens-federal-crime-8-u-s-c/>

colleges and universities to assist federal agents with the enforcement of federal immigration law on campus, nor can it prosecute them for refusing to provide such aid.²⁸

B. Record Privacy

As much as possible, colleges and universities should avoid the collection of information from students, faculty, or staff related to their immigration status. Even if this information is gathered for well-intended reasons, it may cause unintended harm. Institutions should consider what information is being collected and for what purposes, and make decisions as to whether it is actually necessary to retain the data.²⁹

Under the Family Education Rights and Privacy Act (FERPA) and related state laws, colleges and universities generally cannot turn over personally identifiable student records to police, federal agents, or immigration officials without the written consent of an adult student, unless the information is requested through a subpoena or court order such as a judicial warrant. Institutions should create or update campus-wide protocols to ensure that campus personnel are aware of and follow specific processes when responding to inquiries or in response to warrants for access to student records based on immigration status.³⁰

FERPA applies to all students regardless of citizenship or immigration status. FERPA specifically prohibits colleges and universities from releasing educational records or most personally identifiable information (including social security number, disciplinary records, and application materials) without consent unless presented with a “subpoena issued for a law enforcement purpose[.]”³¹ As stated earlier, an ICE administrative warrant does **not** constitute a “court order” that would allow for the disclosure of educational records without an adult student’s consent.³²

FERPA allows colleges and universities to publish directory information for students who do not opt out of that publication. Institutions that publish such information should ensure that it does not include any information related to immigration status, including place of birth. Students can be advised to opt out to avoid publication of any of their personal information.

It should be noted that FERPA includes an exception allowing disclosure of personally identifiable information from education records without consent when the disclosure is in

²⁸ See *New York v. United States* (1992) 505 U.S. 144, 161 (holding that the Tenth Amendment prevents Congress from using legislative or executive actions to compel U.S. states to enforce federal programs); see also *Printz v. United States*, 521 U.S. 898, 925, 935 (1997) (holding that the federal government cannot circumvent the Tenth Amendment by directly conscripting state or local officers to implement federal directives).

²⁹ See HOW CAN YOUR COLLEGE OR UNIVERSITY PROTECT & SUPPORT UNDOCUMENTED STUDENTS? (fwd.us, Feb. 17, 2021), <https://www.fwd.us/news/how-can-your-college-or-university-protect-support-undocumented-students/>.

³⁰ See example policy at https://www.cerritos.edu/board/_includes/docs/AP/Chapter-3/AP-3415.pdf.

³¹ 20 U.S.C. § 1232g(b)(1)(J)(ii).

³² See, e.g., *United States v. Madrid-Quezada*, 403 F. Supp. 3d 1016, 1022 (D.N.M. 2019); *Lunn v. Commonwealth*, 78 N.E.3d 1143, 1151 n.17 (2017) (distinguishing ICE warrants from judicially issued criminal warrants).

connection with financial aid for which the student has applied or which the student has received, if the information is necessary to:

- determine the eligibility for the aid;
- determine the amount of the aid;
- determine the conditions for the aid; and/or
- enforce the terms and conditions of the aid.

For this exception, the term "financial aid" means payment of funds provided to an individual (or payment in kind of tangible or intangible property to the individual) that is conditioned on the individual's attendance at a school.³³

While undocumented students cannot qualify for federal financial aid,³⁴ the Free Application for Federal Student Aid (FAFSA) form may be required for state and school student aid. Individuals can apply online only if they have a social security number (SSN). Individuals can also apply on a hard copy paper form and simply fill in zeros where they are asked for a social security number. Of course, this entry of zeros could alert government officials that the student lacks a SSN and therefore may lack documented status. States that now rely on the FAFSA process to make aid determinations for undocumented students should be encouraged to utilize a state level process that avoids these concerns.

As described below, access to applicant FAFSA information should be limited, but immigrant families may still be concerned that their information will be used for immigration enforcement purposes.³⁵ Information submitted to apply for federal financial aid using the FAFSA application can be shared by Federal Student Aid (FSA), an office within the Department of Education (ED), with contractors who help manage the financial aid process. Information also can be shared with other government agencies, but only for financial aid-related purposes.³⁶ Personally identifiable information is used to verify the applicant's identity and retrieve records (such as IRS tax forms) to process the FAFSA form.³⁷ The student applicant's SSN, name, and other identifying records are also shared with various federal agencies including the Social Security Administration, the Selective Service System, the Department of

³³ See Dept. of Education, THE FAMILY EDUCATIONAL RIGHTS & PRIVACY ACT GUIDANCE FOR ELIGIBLE STUDENTS (Feb. 2011), <https://www.ed.gov/media/document/eligible-studentspdf>

³⁴ Federal Student Aid (FSA), ELIGIBILITY FOR NON-U.S. CITIZENS, <https://studentaid.gov/understand-aid/eligibility/requirements/non-us-citizens>; UNDERSTANDING FAFSA & FINANCIAL AID (Dec. 2024), <https://understandingfafsa.org/wp-content/uploads/2024/11/FAFSA-FinAid-Guide-Class-2025-Eng.pdf>

³⁵ FSA, *supra* note 25. In 2025, parents without a social security number can complete the FAFSA without completing the FSA's identity verification process, but must still provide email and mailing addresses, and potentially answer some background questions regarding previous addresses and phone numbers or verify one's identity via email. In 2026 parents without a social security number will need to provide identification documents to get a FSA ID. Call Federal Student Aid at 800-433-3243 for assistance with this process. <https://understandingfafsa.org/how-to-get-an-fsa-id-without-a-social-security-number/>

³⁶ Kim Nauer, HOW TO GET AN FSA ID WITHOUT A SOCIAL SECURITY NUMBER (Nov. 7, 2024), <https://understandingfafsa.org/how-to-get-an-fsa-id-without-a-social-security-number/>.

³⁷ For more information, see FSA, PRIVACY POLICY FOR STUDENTAID.gov, <https://studentaid.gov/notices/privacy>.

Homeland Security (DHS), the Department of Justice, the Department of Veteran’s Affairs, and the Department of Defense to determine eligibility for federal student aid. DHS reviews the personal information of FAFSA applicants to determine their eligibility for financial aid, and its agreement with ED limits the usage of that information to that purpose.³⁸ However, in the current climate, that agreement could be changed or disregarded so that DHS could use the information in connection with its immigration enforcement.

Like FERPA, the Privacy Act of 1974 provides that records about an individual maintained in a federal government’s system of records cannot be disclosed, but includes 12 exceptions allowing disclosure without consent.³⁹ Exceptions that possibly could be used by immigration enforcement agencies to access individual FAFSA records include the FOIA exception for serving the public interest in understanding the operations or activities of the government⁴⁰; routine use when compatible with the purpose for which the record was collected (with advance publication of use in Federal Register and notification to supplier of information)⁴¹; a federal, state, or local law enforcement request for “a civil or criminal law enforcement activity if the activity is authorized by law”⁴²; or under a court order of competent jurisdiction.⁴³ As of this writing, a student group has requested a temporary restraining order to stop DOGE access to student records housed with ED, relying in part on the protections of the Privacy Act.⁴⁴

In adopting a policy regarding access to student records, the following are important recommendations for a college or university:

- Limit access to student data to a small, trusted group of staff or administrators who are specifically trained as “data custodians.” Do not share procedures for identifying vulnerable student populations with anyone outside of the designated “data custodians.”⁴⁵
- Remind all student service professionals and faculty to exercise extra precautions in their written and verbal communication, as well as student records, to avoid inadvertently disclosing a student's immigration status.

³⁸ <https://www.ed.gov/media/document/uscis-department-of-education-cma-2024-re-establishmentpdf>

³⁹ 5 U.S.C. § 552a(b). See U.S. DOJ, Office of Privacy and Civil Liberties, OVERVIEW OF THE PRIVACY ACT: 2020 EDITION, <https://www.justice.gov/opcl/overview-privacy-act-1974-2020-edition/disclosures-third-parties#exceptions>.

⁴⁰ 5 U.S.C. § 552(b)(7)(C). See *DOJ v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 762-75 (1989)(requester must show that disclosure of the requested records directly advances the “core purpose” of the FOIA).

⁴¹ See 5 U.S.C. § 552a(e)(3)(C); *Covert v. Harrington*, 876 F.2d 751, 754-56 (9th Cir. 1989).

⁴² 5 U.S.C. § 552a(b)(7).

⁴³ 5 U.S.C. § 552a(b)(11).

⁴⁴ *Univ. of California Student Ass’n v. Carter*, No. 25-354 (D.D.C. Feb. 10, 2025), [9-TRO-Motion-and-MOL.pdf](#).

⁴⁵ 10 PRACTICES TO SAFEGUARD UNDOCUMENTED STUDENT DATA IN HIGHER EDUCATION, www.higheredimmigrationportal.org/wp-content/uploads/2024/12/10-Practices-to-Safeguard-Undocumented-Student-Data-in-Higher-Education.pdf.

- If the educational institution discloses students’ “directory information” without the student’s consent, make sure that directory information does not include place of birth. If it does, advocate to end the practice of collecting place of birth information and advise students to refuse to provide it.
- Inform students of their right to opt out of the directory information.⁴⁶

C. Visa Issues

One of the EO’s recently signed by President Trump, titled “Protecting the US from Foreign Terrorists and Other National Security and Public Safety Threats,” increases screening for individuals seeking visas and other forms of admission into the U.S. to ensure that they “do not bear hostile attitudes toward its citizens, culture, government, institutions, or founding principles,” with particular screening of those aliens “coming from regions or nations with identified security risks.”⁴⁷ This vague and overbroad language is likely to be used in a discriminatory way to deny visas to those seeking to enter the U.S. to study or work, including those seeking to study or work at institutions of higher education. Disturbingly, this EO also applies to those already in the U.S., directing the government to conduct a review of individuals from countries that will be subject to the new ban who have been issued visas over the past four years, and to begin to deport at least some of them under undetermined criteria.⁴⁸

An additional EO signed on January 29, 2025 specifically targets international students in the U.S. on student visas and threatens removal for activities seemingly related to antisemitism.⁴⁹ Such removals would still need to meet the criteria for refusing admission, including espionage or sabotage or **unlawful** terrorist activity.⁵⁰ International students who have been convicted of crimes related to protests could be targeted for removal,⁵¹ but this basis for removal would not apply to lawful protest activities of international students. More concerning could be the loss of valid visa status if the student is disenrolled as the result of campus disciplinary proceedings.⁵²

These visa-related actions may be challenged as overly vague or broad under the Fifth and Fourteenth Amendments. International students generally enjoy the protections of the First Amendment,⁵³ but some courts have upheld immigration consequences based on a

⁴⁶ For additional information, see Ass’n of Cal. School Administrators, *Undocumented Students & <http://www.acsa.org/Advocacy/Federal-Issues/undocumented-students-families-facts> and <http://familypolicy/ed.gov/content/may-schools-comply-subpoena-or-cour-order-education-records-without-consent-parent-or..>*

⁴⁷ *“Protecting the U.S. from Foreign Terrorists and Other National Security and Public Safety Threats”*

⁴⁸ See [Thread by @MsJamshidi on Thread Reader App – Thread Reader App](#) for more explanation.

⁴⁹ *Additional Measures to Combat Anti-Semitism (Jan. 29, 2025), [Additional Measures to Combat Anti-Semitism – The White House](#).*

⁵⁰ 8 U.S.C. § 1182(a)(3).

⁵¹ Sonel Cutler & Alecia Taylor, *Many Students are Facing Campus Discipline for Protesting. What Could that Mean?*, THE CHRONICLE OF HIGHER EDUCATION (Apr. 25, 2024).

⁵² Kate Hidalgo Bellows, *A Punishing Year*, THE CHRONICLE OF HIGHER EDUCATION (Dec. 4, 2024).

⁵³ *Bridges v. Wixon* | 326 U.S. 135 (1945).

student's expression of a particular viewpoint, and immigration officials have targeted foreign nationals for deportation for otherwise-protected speech.⁵⁴ Faculty and staff should advise students to seek legal support if their visa status leads to negative consequences under these EOs. Students and employees may be concerned about the privacy of their records related to their visa status. DHS can request access to the Student and Exchange Visitor Information System (SEVIS) records of students attending an educational institution with an F-1, J-1, or M-1 student visa under the Student and Exchange Visitor Program (SEVP).⁵⁵ For F-1 and M-1 visas, records must be maintained for three (3) years after the student ceases pursuit of a full course of study, and must include the student's name and current address as well as a record of their coursework. DHS can request the records of an individual student or a class of students upon notice. Institutions may require that such DHS requests be written, but are obligated to respond.

I-9 records of employees can be inspected without a warrant, but employers must be provided with three (3) days' notice before the inspection.⁵⁶ ICE can also conduct unannounced site visits to confirm that sponsored foreign nationals are employed as described in the institution's approved immigration application, and these site visits do not require a warrant or subpoena.⁵⁷

For employees seeking to maintain the privacy of their employee records which could include information about their immigration status, disclosure requirements under state freedom of information acts often exempt personnel records.⁵⁸ The comparable federal FOIA exempts from disclosure "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."⁵⁹ Unauthorized release of employee records might also support a tort claim of intrusion upon seclusion under state

⁵⁴ *United States Ex Rel. John Turner V. Williams*, 194 U.S. 279 (1904); *Galvan v. Press*, 347 U.S. 522 (1954).

⁵⁵ 8 C.F.R. § 214.3(g). See U.S. DHS, READ THIS OVERVIEW OF STEM OPT EMPLOYER SITE VISITS (Feb. 13, 2020), <https://studyinthestates.dhs.gov/2020/02/read-overview-stem-opt-employer-site-visits>.

⁵⁶ 8 C.F.R. § 274a.2(b)(2)(ii).

⁵⁷ 8 C.F.R. §§ 214.2, 214.3.

⁵⁸ *What Constitutes Personal Matters Exempt from Disclosure by Invasion of Privacy Exemption*, 26 A.L.R.4th 666 (1983 & Supplement). See ARK. CODE ANN. §§ 25-19-101 to 25-19-107; CAL. CIV. CODE § 1798.3, CAL. GOV'T CODE § 7927.700; COLO. REV. STAT. ANN. § 24-72-204; CONN. GEN. STAT. ANN. § 1-200; DEL. CODE ANN. tit. 29, §§ 10001 to 10005; D.C. CODE § 2-531; FLA. STAT. ANN. §§ 119.01 to 119.15; GA. CODE ANN. § 50-18-72; HAW. REV. STAT. §§ 91-1 to 91-18; 5 ILL. COMP. STAT. ANN. §§ 140/1 to 140/7.5; IND. CODE ANN. § 5-14-3-4; KAN. STAT. ANN. § 45-221; KY. REV. STAT. ANN. §§ 61.870 to 61.884 LA. REV. STAT. ANN. § 44:1; ME. REV. STAT. ANN. TIT. 1, § 402, TIT. 5, § 7070; MD. CODE ANN., STATE GOV'T §§ 10-614 to 10-619; MICH. COMP. LAWS ANN. §§ 15.231 to 15.246; MO. ANN. STAT. §§ 610.010 to 610.032; NEB. REV. STAT. ANN. §§ 84-712 to 84-712.09; N.H. REV. STAT. ANN. §§ 91-A:1 to 91-A:8; N.M. STAT. ANN. § 14-2-1; N.Y. PUB. OFF. LAW §§ 84 to 90; N.C. GEN. STAT. ANN. §§ 126-22, 132-6; OHIO REV. CODE ANN. § 4113.23; OKLA. STAT. ANN. TIT. 51, § 24A.7; OR. REV. STAT. ANN. §§ 192.501, 192.502, 192.505; PA. STAT. ANN. TIT. 65, § 67.101; R.I. GEN. LAWS §§ 38-2-1 to 38-2-14; S.C. CODE ANN. § 30-4-40; S.D. CODIFIED LAWS § 1-27-1; TEX. GOV'T CODE ANN. §§ 552.001 to 552.008; UTAH CODE ANN. § 63G-2-201; VT. STAT. ANN. TIT. 1, §§ 315 to 320; WASH. REV. CODE ANN. § 42.56.210; W.VA. CODE ANN. §§ 29B-1-1 to 29B-1-7; WIS. STAT. ANN. §§ 19.21 to 19.39; WYO. STAT. ANN. § 16-4-203.

⁵⁹ 5 U.S.C. § 552(b)(6).

law.⁶⁰ Such claims typically require a lack of a legitimate business use for releasing the information or that the conduct would be “highly offensive” to a reasonable person.

D. Protection Against Discrimination

Federal, state, and (in many places) local law protect students and employees from discrimination and harassment based on race, religion, or national origin.⁶¹ Title VI of the Civil Rights Act prohibits discrimination by any recipient of federal financial assistance, as enforced by the Office of Civil Rights within the Department of Education.⁶² Title VI requires assurance from the educational institution that all students have equal access to a high-quality education and the opportunity to achieve their full academic potential, regardless of their race or national origin.⁶³ Title VI also protects against discrimination based on shared ancestry, including those who are or perceived to be part of a particular religious group.⁶⁴ Similar to Title VI, Title IV of the Civil Rights Act protects students against discrimination and harassment based on their religion, as enforced by the Department of Justice, Civil Rights Division, Educational Opportunities Section.⁶⁵

Both Title IV and Title VI prohibit harassment of students and employees, as well as other policies or practices that interfere with a student’s equal access to educational offerings.⁶⁶ For example, the Department of Education resolved nine complaints against the University of California alleging that the institutions failed to respond promptly or effectively to harassment of their students based on their actual or perceived national origin, related to protests arising in connection with the Gaza conflict.⁶⁷ The University agreed to review its

⁶⁰ *Cause of Action to Recover Damages for Invasion of Private Sector Employees’ Privacy by Intrusion Upon Seclusion*, CAUSES OF ACTION 2D SERIES (2009).

⁶¹ See Title VI (students), 42 U.S.C. § 2000(d) et seq., and Title VII (employees) of the Civil Rights Act of 1964; Race and National Origin Discrimination Overview of the Law (Office for Civil Rights, U.S. Dept. of Education, Oct. 16, 2015), <https://www.ed.gov/laws-and-policy/civil-rights-laws/race-color-and-national-origin-discrimination/education-and-title-vi>.

⁶² *Id.*

⁶³ See U.S. DOJ, Civil Rights Div. & U.S. Dept. of Educ., Office for Civil Rights, WHAT IF A MIGRATORY CHILD EXPERIENCES DISCRIMINATION BASED ON NATIONAL ORIGIN, IMMIGRATION STATUS, OR ENGLISH LEARNER STATUS IN PUBLIC SCHOOL ENROLLMENT OR PARTICIPATION?, <https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/ocr-factsheet-migratory-children-202306.pdf>.

⁶⁴ U.S. Dept. of Education, [Discrimination Based on Shared Ancestry or Ethnic Characteristics | U.S. Department of Education](#); FACT SHEET: PROTECTING STUDENTS FROM DISCRIMINATION BASED ON SHARED ANCESTRY OR ETHNIC CHARACTERISTICS (Jan. 2023), [FACT SHEET: Protecting Students from Discrimination Based on Shared Ancestry or Ethnic Characteristics](#)

⁶⁵ 42 U.S.C. §§ 2000c-6 et seq. See U.S. DOJ, Civil Rights Div., CONFRONTING DISCRIMINATION BASED ON RELIGION IN SCHOOLS: A RESOURCE FOR STUDENTS AND FAMILIES, https://www.justice.gov/d9/2024-03/factsheet_-_confronting_discrimination_based_on_religion.pdf.

⁶⁶ See, e.g., U.S. DOJ & U.S. Dept. of Ed., CONFRONTING DISCRIMINATION BASED ON NATIONAL ORIGIN AND IMMIGRATION STATUS (Aug. 2021), [Confronting Discrimination Based on National Origin and Immigration Status](#).

⁶⁷ U.S. Dept. of Ed., PROTECTING CIVIL RIGHTS: HIGHLIGHTS OF ACTIVITIES, pp. 17-18 (Jan. 2025), [Protecting Civil Rights Highlights Of Activities Office for Civil Rights 2021-2025](#).

complaint process and training, and to remedy individual instances of discrimination through counseling and academic adjustments.

Title VII protects both public and private sector employees against discrimination and harassment based on race, color, national origin, and religion (as well as sex and genetic information), as enforced by the Equal Employment Opportunity Commission (EEOC).⁶⁸ National origin discrimination includes treating applicants or employees unfavorably because they come from a particular country or part of the world, because of ethnicity or accent, or because they are perceived as having a certain ethnic background. National origin discrimination also can involve treating people unfavorably because they are associated with a person of a certain national origin.⁶⁹

Negative comments about one's membership in a protected class or associated characteristics, such as an accent,⁷⁰ can establish an employer's discriminatory intent under Title VII. For example, a Walmart manager's referral to a Hispanic employee as a "brown t---" raised the inference of discriminatory discharge by that same manager.⁷¹ Intent can also be established by circumstances suggesting discrimination,⁷² such as a public utility manager's hostility toward hiring and subsequent discharge of several employees of the same religion, while not discharging anyone else.⁷³

These protections mean that:

- Students, faculty, and staff cannot be discriminated against because of their birthplace, ancestry, culture, or language.
- Students, faculty, and staff have the right to be free from bullying and harassment based on their race, religion, or national origin, and have the right to learn in an environment free from hateful symbols and derogatory comments.
- College and university officials have a legal duty to address hateful rhetoric and behavior, including racial, ethnic, or ancestral slurs or stereotypes.
- Colleges and universities may not retaliate against anyone—staff or students—who make complaints about racial, religious, or national origin harassment.⁷⁴

⁶⁸ 42 U.S.C. § 2000e-2(a).

⁶⁹ See U.S. EEOC, NATIONAL ORIGIN DISCRIMINATION, [National Origin Discrimination | U.S. Equal Employment Opportunity Commission](#)

⁷⁰ *Albert-Aluya v. Burlington Coat Factory Warehouse Corp.*, 470 Fed. Appx. 847 (11th Cir. 2012).

⁷¹ *Brian v. Wal-Mart Stores, Inc.*, No. 4:14-cv-00139-BLW (D. Idaho Mar. 28, 2016).

⁷² *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802–03 (1973).

⁷³ *Ibarra v. City of Willmar*, No. 0:12-cv-03027-JRT-FLN, 2014 WL 3396048 (D. Minn. July 11, 2014).

⁷⁴ See Catherine E. Lhamon, U.S. Dept. of Educ., Dear Colleague Letter (May 25, 2023), <https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/antisemitism-dcl.pdf> and U.S. Dept. of Educ., Office for Civil Rights, FACT SHEET: PROTECTING STUDENTS FROM DISCRIMINATION BASED ON SHARED ANCESTRY OR ETHNIC CHARACTERISTICS, <https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/ocr-factsheet-shared-ancestry-202301.pdf>.

Anyone with information about discrimination occurring on campus, including discrimination on the basis of race, color, or national origin (which may include citizenship or immigration status), may file a complaint by contacting their state Department of Education’s Office of Civil Rights.⁷⁵ Employees may file a complaint about employment discrimination by contacting their state civil rights enforcement office or the U.S Equal Employment Opportunity Commission. For more information about the protection of employees from harassment and discrimination, please see the [NEA Harassment and Discrimination Toolkit](#).

Some additional policy protections for students include the following:

- Ensure that the college or university provides supportive services to students who are potentially affected by immigration enforcement, including mental health services to address likely stress and anxiety, career-related advice, and provision of or referrals to legal representation.⁷⁶
- If a student is detained or deported, or is unable to attend to their academic requirements because of an immigration order, the college or university should make all reasonable efforts to assist the student in retaining any eligibility for financial aid, fellowship stipends, exemption from nonresident tuition fees, funding for research or other educational projects, housing stipends or services, or other benefits the student has been awarded or received subject to and in compliance with its policy.⁷⁷

A student who is subject to an immigration order should be permitted to re-enroll if and when the student is able to return to the United States, subject to and in compliance with its policy, and the college or university should make reasonable and good-faith efforts to provide for a seamless transition in the student’s re-enrollment and reacquisition of campus services and support.

Staff should be available to assist any student, faculty, and staff who may be subject to an immigration order or inquiry, or who may face similar issues, and whose education or employment is at risk because of immigration enforcement actions.

E. Employment-Related Rights and Policies

To date, no EOs have been issued regarding employment visas beyond the restrictions detailed above on applicants from certain countries. Even so, two policy changes are expected under the current Trump administration. First, guidance issued in June 2024 regarding D-3 waivers is expected to be rescinded. This guidance clarified the circumstances under which employers can sponsor immigrants who have earned a higher education degree in the U.S. The waiver allows for exceptions to the potential for visa denial based on “inadmissibilities”

⁷⁵ For state offices see <https://www.ed.gov/contact-us/state-contacts>

⁷⁶ Fwd.us, *supra* note 21.

⁷⁷ See Cerritos Community College District Procedure No. 3415, Immigration Enforcement Activities, www.cerritos.edu/board/_includes/docs/AP/Chapter-3/AP-3415.pdf.

described in immigration law, including living in the U.S. without documented status.⁷⁸ The 2024 guidance states that such waivers are in the public interest, and that these requests should be prioritized for expedited processing in specified situations.⁷⁹

Secondly, the H1-B visa may become less available. In general, most employers are “cap-subject,” meaning they must enter a lottery for the ability to sponsor an employee for their first H-1B petition.⁸⁰ Availability may decrease because of a reduction in these caps or due to additional restrictions in place, such as requiring that an applicant’s degree be “in a *directly related* specific specialty or its equivalent” for entering the occupation.”⁸¹ The new administration may limit the approval period or end employment authorization for spouses (H-4).⁸² The administration may also end opportunities for employers to be considered cap-exempt and avoid going through the H-1B lottery.⁸³

IV. How Educators Can Safely Engage in Immigration Advocacy

This section reviews the basic protections for educator advocacy. A more in-depth discussion around educator advocacy rights at work and off duty can be found in NEA’s [Educator Rights Guidance](#).

A. Your Protections for Speech on Matters of Public Concern

The First Amendment protects faculty and staff when they are speaking as “citizens” — *i.e.*, outside of their role as employees. Educators can engage in off-the-clock political and community action to advocate for immigrants and immigrant communities. Educators can, among other things, march, sign petitions, write letters, post statements of support on social media, and call and lobby their federal, state, and local legislators. This protection extends to working with NEA and our affiliates, as well as other advocacy groups, to advocate for change such as encouraging their educational institution to pass [Safe Zone](#) resolutions.

⁷⁸ 8 U.S.C. § 1182(d)(3).

⁷⁹ See fwd.us, LEGALLY HIRING AND RETAINING DACA RECIPIENTS & DREAMERS WITH A D-3 WAIVER (Aug. 13, 2024), <https://www.fwd.us/news/d3-employer-guide/>

⁸⁰ U.S. Citizenship and Immigration Services, H-1B ELECTRONIC REGISTRATION PROCESS, <https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-1b-specialty-occupations/h-1b-electronic-registration-process>

⁸¹ Stuart Anderson, Past H-1B Visa Policies Predict Donald Trump’s Immigration Policy, FORBES (Nov. 10, 2024), <https://www.forbes.com/sites/stuartanderson/2024/11/10/past-h-1b-visa-policies-predict-donald-trumps-immigration-policy/>.

⁸² See for more information on HB1 Visas, see Higher Ed Immigration Portal, H-1B CAP EXEMPTIONS: NON-PROFIT AFFILIATIONS, https://www.higheredimmigrationportal.org/effective_practice/h-1b-cap-exemptions-non-profit-affiliations/ and UNDERSTANDING CONCURRENT H-1BS, https://www.higheredimmigrationportal.org/effective_practice/understanding-concurrent-h-1bs/.

⁸³ Camiel Becker, et al., THE H-1B LOTTERY: A BRIEF OVERVIEW OF CAP-SUBJECT AND CAP-EXEMPT EMPLOYERS (Path2Papers, Cornell Law School, Jan. 16, 2025), https://docs.google.com/document/d/1VvD-NHUMdphf10BHtDsvNRJtrPY1Rp4_P1_UFnaFuH8/edit?tab=t.0. For more information about visa requirements, see Higher Ed Immigration Portal, RESOURCES FOR EMPLOYERS, <https://www.higheredimmigrationportal.org/resources-for-employers/>.

Faculty and staff are most protected when they engage in political discussions or activism outside of work, provided it does not cause disruption at their institution. Speech on a matter of public concern, such as racism or protection of immigrant rights, should be protected unless it creates a disruption to the educational environment.⁸⁴ In contrast, speech regarding an individual faculty member’s interests, such as a teaching assignment, typically would not be considered to be on a matter of public concern and would not be protected.

B. Protections That Apply to Your Speech at Work are More Limited

For higher education faculty and staff, academic freedom may provide protection for speech in the classroom and connected to one’s research and academic writing. The American Association of University Professors (AAUP) has described such academic freedom as “the freedom to teach, to conduct research and publish one’s findings, to engage in extramural activities, and ‘to address any mater of institutional policy or action whether or not as a member of an agency of institutional governance.’”⁸⁵ Recognizing this academic freedom, courts have protected the speech of faculty related to the use of students’ preferred pronouns,⁸⁶ publications on conservative, Christian topics outside the classroom,⁸⁷ and a professor’s reporting of gender discrimination.⁸⁸

If a faculty member’s speech falls under the typical administrative duties of their position, such as responding to student concerns or complaints,⁸⁹ then it is less likely to be protected. For example, faculty members’ speech has been found to be unprotected when raising concerns about grant funds or budgets, at least when their job duties included oversight of grant funds or reviewing grant applications for accuracy.⁹⁰ Thus, a faculty member speaking about university policies on attendance, accommodations, or other university mandates would be engaged in employment-related duties, and that speech likely would not be protected.

C. Institutional Interests

Even if the speech is protected, the college or university may be able to show that its interest in controlling the speech outweighs the educator’s interest in speaking. For example, one court held that a university’s interests in controlling a faculty member’s public criticism of the ideas of another faculty member may outweigh the speaker’s First Amendment rights, if the university seeks to enforce its policies so as to avoid disruptions in its core mission of educating students, protecting all students’ freedom of speech and a “marketplace of ideas,” and

⁸⁴ *Pickering v. Bd. of Educ.*, 391 U.S. 563 (1968); *Connick v. Myers*, 461 U.S. 138 (1983).

⁸⁵ American Association of University Professors (AAUP), FAQ: Campus Free Speech/Academic Freedom in Politically Charged Times, [Free Speech FAQ.pdf](#)

⁸⁶ *Meriwether v. Hartop*, 992 F.3d 492, 498 (6th Cir. 2021).

⁸⁷ *Adams v. Trustees of Univ. of N. Carolina-Wilmington*, 640 F.3d 550, 563 (4th Cir. 2011).

⁸⁸ *Sagers v. Ariz. State Univ.*, No. 21-00294-PHX-DWL, 2023 WL 5206141 (D. Ariz. Aug. 14, 2023).

⁸⁹ *Casper v. Tex. Woman's Univ.*, No. 02-22-00345-CV, 2023 Tex. App. LEXIS 6955 (Tex. Ct. App. Aug. 31, 2023).

⁹⁰ *Weihua Huang v. Rector and Visitors of Univ. of Va.*, 896 F. Supp. 2d 524 (W.D. Va. 2012); *Klassen Univ. of Kansas Sch. of Medicine*, 84 F. Supp. 3d 1228, 1252 (D. Kan. 2015); *Goydos v. Rutgers Univ.*, 2023 WL 2263897 (D.N.J. Feb. 28, 2023).

preventing harassment of the criticized faculty member.⁹¹ Even speech on social media and private blogs may be unprotected if it interferes with the educator’s performance of their official duties.⁹² For that reason, educators should focus such advocacy on advancing the interests of immigrant students and not disparage or insult students, administrators, or co-workers.⁹³

Discipline based on speech could also be allowed under the First Amendment if prohibited by a legitimate university policy (based on protecting the university’s mission), if the speech either demonstrates the speaker’s unfitness for their position or otherwise interferes with their performance of their job duties. For example, if a faculty member spoke on matters of public concern during class time so much that they did not cover required course materials, then they could face consequences for that speech.

Tenured faculty are provided due process and should be protected when engaged in classroom discussions about immigration that are relevant to the coursework. In addition, some collective bargaining agreements or policies may contain just cause protections and/or explicit protections for academic freedom, which may protect educators who discuss these issues in a manner that is relevant to the curriculum.⁹⁴

Educators should keep in mind that tenure protections and academic freedom are not absolute, and faculty risk discipline for classroom discussions that administrators consider too controversial or too great a departure from established curricula.⁹⁵ Moreover, some universities are challenging DEI-related research as beyond the scope of established research.⁹⁶ Institutions may also have policies restricting educators’ on campus activism and use of handouts. Faculty may face litigation by individuals seeking to silence their speech, known as a SLAPP, or “Strategic Lawsuit Against Public Participation.” Fortunately, [34 states and the District of Columbia](#) have “anti-SLAPP” laws specifically designed to protect people whose speech is targeted by such meritless lawsuits.

⁹¹ *Gruber v. Tenn. Tech. Bd. of Trs.*, 643 F. Supp. 3d 824; 2022 WL 17352455 (M.D. Tenn. Dec. 1, 2022), *aff’d* 2024 WL 3051196 (6th Cir. May 16, 2024) *See also Reges v. Cauce*, No. 2:22-cv-00964-JHC 2024 WL 2140888 at *25 (W.D. Wa. May 8, 2024)(faculty member’s alternative acknowledgment statement in syllabus interfered with the performance of Plaintiff’s duties as an instructor); *Riley’s American Heritage Farms v. Elsasser*, 32 F. 4th 707 (9th Cir. 2022)(genuine issue of material fact as to whether school district’s asserted interests in preventing disruption were so substantial that they outweighed vendor’s and shareholder’s free speech interests precluded summary judgment).

⁹² *Rubino v. City of New York*, 950 N.Y.S. 2d 494 (N.Y. Sup. Ct. 2012), *aff’d*, 106 A.D. 439, 965 N.Y.S. 2d 47 (2013).

⁹³ *Richerson v. Beckon*, 337 Fed. Appx. 637 (9th Cir. 2009).

⁹⁴ *See Nalichowski v. Capshaw*, No. CIV. 95-5577, 1996 WL 548143, at *2 3 (E.D. Pa. Sept. 20, 1996) (violations of a collective-bargaining agreement containing academic freedom provision were grievable);

Charlotte Garden, *Teaching for America: Unions and Academic Freedom*, 43 U. TOL. L. REV. 563, 580-82 (2012).

⁹⁵ *Hollis v. Fayetteville Sch. Dist. No. 1*, 473 S.W.3d 45 (Ark. App. 2015); *Freshwater v. Mt. Vernon City Sch. Dist.*, 1 N.E.3d 335 (Ohio 2013).

⁹⁶ *See, e.g., Megan Zahneis, A Texas University Tells Professor their Teaching and Research will be under “Intense Scrutiny”* (THE CHRONICLE OF HIGHER EDUCATION Nov. 13, 2024), [A Texas University Tells Professors Their Teaching and Research Will Be Under ‘Intense Scrutiny’](#).

Because constitutional protections do not apply at private colleges and universities, protections for speech and association will be limited to institutional policies that allow for such activities. Educators at both public and private universities and colleges can advocate for more extensive protections for academic freedom and speech of faculty and staff in a CBA or policy. The University of California’s general policy on academic freedom provides a potential model.⁹⁷ The policy emphasizes the importance of academic freedom, and the important role of faculty in applying professional standards. The policy is to be read in conjunction with the Faculty Code of Conduct, which affirmatively states that faculty are “as free as other citizens to express their views and to participate in the political processes of the community.”⁹⁸

For additional information on resistance to immigration policies, see [Educator Rights and Political Participation | NEA](#) and [Educator Protections for Union Activity & Speech | NEA](#). NEA is providing separate guidance on the impact of DEI-related EOs on the First Amendment rights of faculty and staff.

D. University or College Neutrality

You may face resistance to the adoption of the policy we propose if your college or university has adopted an institutional neutrality policy that limits or prohibits public statements as to the institution’s position on a particular issue. Such a neutrality policy should not be used as an excuse to not adopt a safe zone policy or otherwise speak out against the recent immigration enforcement actions and executive actions. Many neutrality policies of colleges and universities include an exception for issues that directly affect their institution’s educational mission. Given the significant impact of enforcement and policy changes on students, faculty, and staff, taking a position on these immigration issues should fit within that exception. Moreover, the desire of the institution to issue such a statement would likely fall within the institution’s First Amendment protections outlined above, as a matter of public concern.

E. Student Speech and Association Rights

Students’ speech and association is protected against government interference by way of a balancing of interests, similar to that which applies to advocacy by public sector faculty and staff. In balancing the interests of the speaker versus those of the institution, a public institution can protect its interests by placing reasonable time, place, and manner restrictions on speech, association, and protests in general.

The institution would need to show how its interests in limiting or controlling the speech or association outweigh the student’s interests in engaging in the otherwise protected activity. Such interests include preventing disruption of the educational activities of the institution and

⁹⁷ <https://www.ucop.edu/academic-personnel-programs/files/apm/apm-010.pdf>. See also University of Michigan’s 2010 [Senate Assembly Statement on Academic Freedom](#).

⁹⁸ <https://ucop.edu/academic-personnel-programs/files/apm/apm-015.pdf>.

enforcing content-neutral policies.⁹⁹ Speech that incites or threatens violence can also be curtailed or punished. For example, the Supreme Court held that the government can punish inflammatory speech that intentionally and effectively provokes a crowd to immediately carry out violent and unlawful action.¹⁰⁰

Interestingly, at least 20 states have adopted “free speech zone” legislation¹⁰¹ that requires designating certain areas of campus as a public forum, which allows for more latitude for speech and association in those areas. This legislation creates “free speech zones” in outdoor areas of campus, but asserts no specific protection for student or faculty speech elsewhere, including the classroom. Instead, some of the legislation only provides protection for faculty speech if it is within their “area of competence”¹⁰² or “reasonably germane to the subject matter of the class.”¹⁰³

V. Conclusion

This higher education-specific guidance will be updated periodically to reflect new noteworthy developments. As always, if you have specific legal questions or concerns, consult your state or local affiliate for assistance.

⁹⁹ *Tinker v. Des Moines Ind. Community Sch. Dist.*, 393 U.S. 503 (1969). See also ACLU, STUDENTS’ RIGHTS: SPEECH, WALKOUTS, AND OTHER PROTESTS, [Students’ Rights: Speech, Walkouts, and Other Protests | ACLU](#)

¹⁰⁰ *Brandenburg v. Ohio*, 395 U.S. 444 (1969).

¹⁰¹ Free Speech Zones on public campuses are required in Alabama, Arkansas, Florida, Georgia, Indiana, Iowa, Kentucky, Louisiana, Montana, North Carolina, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Utah, Virginia and West Virginia.

¹⁰² OH STAT. § 3345.0215 (2022).

¹⁰³ TN ST § 49-7-2405, 2408 (2018).

VI. Appendix A

When federal immigration authorities aggressively pursue enforcement activities on or around educational institution property and transportation routes — whether by surveillance, interviews, demands for information, arrest, detention, or any other means — it harmfully disrupts the learning environment and significantly interferes with the ability of all students, including U.S. citizen students and immigrant students legally in the country, to access an education.

NEA has developed a sample resolution and policy that can be used as a template or guidance for higher education institutions to create their own Safe Zones resolutions. The model resolution contains reassurances for students, procedures for law enforcement, and information and support for families and staff.

A. FAQ: Safe Zone Higher Educational Institution Resolutions

1. What can we do to address student fear about immigration enforcement under the new Administration?

Join with your local NEA association to lobby your higher educational institution leadership for a SAFE ZONE resolution. It contains reassurances for students, faculty and staff, procedures for responding to immigration enforcement, and information and support for students and staff. Countless K-12 school districts and some higher education institutions across the country have already passed SAFE ZONE resolutions.¹⁰⁴

2. What needs to take place in order for our campus to become a SAFE ZONE?

Your educational institution's administration can take up a proposed resolution like the one attached here at its next regularly scheduled meeting. Supply your educational institution's leadership with sample language and be sure to comply with any meeting notice requirements. Through the institution's normal governance procedure, it can approve and sign a SAFE ZONE resolution, including a policy that would then take effect immediately. The resolution could be raised through faculty governance or student leadership, but typically would require approval of the institution's Board of Trustees or Governors to have full effect.

3. Does a SAFE ZONE resolution require additional expenditures, staff responsibilities, school hours, or other resources?

No, unless you wish to add support beyond NEA's template, such as adding a counselor for extra support for immigrant students who are in crisis. The institution will need to take steps to ensure the resolution's requirements are being fulfilled as outlined in the

¹⁰⁴ Zachary Schermele & Madeleine Parrish, *Schools are Trying to Get Ahead of Trump and Protect Undocumented Students* (USA Today Jan. 14, 2025), <https://www.usatoday.com/story/news/education/2025/01/14/schools-undocumented-students-trump/77576888007/>.

policy attached to the NEA template SAFE ZONE resolution, but it does not add new or different job duties or hours for educators.

4. Can I discuss immigration enforcement and student fears in my classroom?

Yes, faculty in higher education have some academic freedom to discuss matters of public concern in the classroom. Even so, faculty speech outside of their academic subject matter or expertise may carry less protection. Speech that is unduly disruptive or interferes with the teaching duties of the faculty member can also lose protection. This balance suggests that faculty should continue to follow their institution’s policies on classroom teaching.

5. Can I refuse directives from law enforcement?

No, a SAFE ZONE resolution does not provide immunity should you decline to obey directives from law enforcement. The resolution does provide steps you must request that law enforcement follow. If law enforcement refuses to cooperate, that becomes a matter for the institution’s legal counsel and courts to determine. You are not expected to put yourself or those around you at risk to assert these rights.

6. Does the model SAFE ZONE resolution protect non-citizen students from the school-to-prison-to-deportation pipeline?

No, SAFE ZONE policies like the one attached here are aimed at protecting students’ rights at school but do not address disciplinary practices that criminalize misbehavior through the involvement of law enforcement. In the case of non-citizen students, law enforcement actions can result in barriers to obtaining or maintaining legal immigration status as well as possible detention and deportation. For information regarding the harmful immigration consequences for non-citizen youth of the school-to-prison pipeline, [click here](#).

B. Sample Safe Zone Resolution – Higher Education

[NAME OF COLLEGE OR UNIVERSITY GOVERNING BOARD]

RESOLUTION NO. _____

WHEREAS, [Name of college or university] (“College”) welcomes, supports and respects all students; holds student equality as one of its core values, essential to its educational mission; and is committed to and here re-affirms its policies of non-discrimination and equal opportunity;

WHEREAS, federal immigration law enforcement activities, on or around College property, whether by surveillance, interview, demand for information, arrest, detention, or any other

means, significantly interfere with the ability of all students, including U.S. citizen students and students who hold other legal grounds for presence in the U.S., to pursue an education;

WHEREAS [except in AL/GA/SC], federal, state, and College law and policy do not restrict access to public post-secondary institutions based on a student's immigration status;

WHEREAS, federal law protects student privacy rights, and state statutes and case law typically provide broad privacy protections to all students, faculty, staff, and other employees of the College;

WHEREAS, through its policies and practices, the College has made a commitment to a quality education for all students, which includes a safe campus and learning environment, free from threat and harassment;

WHEREAS, the [name of college or university governing board] ("Board"), the College academic community, and numerous post-secondary institutions around the country are concerned about the recent increase in anti-immigrant activity that has taken criminal, discriminatory, and/or intimidating form and harmed students and education;

WHEREAS, members of the College community have expressed to the College fear and confusion about the continued physical and emotional safety of all students and the ability to access education through the College and its programs;

WHEREAS, immigration enforcement activities around the College's campus(es) create hardships that affect health and present barriers to educational attainment, as well as a pervasive climate of fear, conflict and stress that affects all students at the College, regardless of their background or status, such that students whose family members, friends, or classmates may be at risk of deportation, as well as students who could face deportation themselves, are all at risk;

WHEREAS, threats of immigration enforcement actions, and particularly of separation and deportation, against students, faculty and staff create severe emotional, psychological and physical barriers to learning and education that can and should be allayed or reduced through College support systems;

WHEREAS, educational personnel are often the primary sources of support, resources, and information to assist students and student learning, which includes student emotional health;

WHEREAS, primary jurisdiction over enforcement of federal immigration laws rests with the federal government and not with [name of College Police Department] ("CPD") or any other state or local law enforcement agency;

WHEREAS, the College is devoted to providing professional policing services that strive to ensure a safe and secure environment in which members of the College's diverse community can pursue the College's research, education and public service missions;

AND WHEREAS, community trust and cooperation are essential to effective law enforcement on campus; the limited resources of the College should not be diverted from this mission to enforcement of federal immigration laws.

NOW, THEREFORE, BE IT RESOLVED that the U.S. Immigrations Enforcement Office (“ICE”), state or local law enforcement agencies acting on behalf of ICE, or agents or officers for any federal, state, or local agency attempting to enforce federal immigration laws, are to follow the attached College Policy, which is incorporated in this Resolution, to ensure the College meets its commitment to provide student education in a safe and stable learning environment;

BE IT FURTHER RESOLVED, that the Board declares the College to be a Safe Zone for its students, meaning that the College is a place for students to learn and thrive, free from threat or intrusion, and to seek assistance, information, and support related to any immigration law enforcement that interferes with their learning experience; the attached Policy is intended to protect the safety and security of our students, faculty, staff, and broader College community;

BE IT FURTHER RESOLVED, given the likelihood of substantial disruption to the educational setting posed by the presence of ICE or state or local law enforcement agencies acting for ICE, any request by ICE or other immigration enforcement agents to visit campus should be presented to the [Chancellor/President]’s Office for review as to whether access is permitted by law, a judicial warrant is required, or any other legal considerations apply; this review should be made expeditiously, but before any immigration law enforcement agent or officer appears on campus;

BE IT FURTHER RESOLVED it continues to be the policy of the College to not to allow any individual or organization to enter any non-public site on campus if the educational setting would be disrupted by that visit, and the College will designate such non-public areas to further advance its educational mission and will review any request to intrude on such non-public areas by ICE or state or local law enforcement to determine whether a judicial warrant requires such access;

BE IT FURTHER RESOLVED, in its continued commitment to the protection of student privacy, the College shall review its record-keeping policies and practices to ensure that no data is being collected with respect to students’ immigration status or place of birth unless required by law;

BE IT FURTHER RESOLVED, the [Chancellor/President] shall, within 30 days of the date of this Resolution, create a Rapid Response Team to prepare in the event a student, faculty, or staff of the educational institution faces federal law enforcement action, such as detention by ICE or a cooperating law enforcement agency;

BE IT FURTHER RESOLVED, should ICE or other immigration law enforcement agents request any student information, the request should be referred to the [Chancellor/President]’s Office to ensure compliance with the Family Educational Rights and Privacy Act (“FERPA”), student constitutional privacy, standards for a judicial warrant, and any other limitation on disclosure;

this review should be conducted expeditiously, but before any production of information is made;

BE IT FURTHER RESOLVED, CPD shall not contact, detain, question, or arrest an individual solely on the basis of suspected undocumented immigration status or to discover the immigration status of an individual, nor request information about immigration status from crime victims, witnesses, or suspects of crime;

BE IT FURTHER RESOLVED, CPD shall not detain an individual in response to an immigration hold request from ICE, or any other law enforcement agency enforcing federal immigration law; shall not respond to ICE notification or transfer requests, shall not make arrests based on civil immigration warrants, and shall not allow ICE to use campus facilities for immigration enforcement purposes;

BE IT FURTHER RESOLVED, CPD shall not join any state and/or local law enforcement agencies that have entered into an agreement with ICE or other immigration enforcement agency, nor undertake any other joint efforts with federal, state, or local law enforcement agencies, to investigate, detain, or arrest individuals for violations of federal immigration law;

BE IT FURTHER RESOLVED, the College shall post this Resolution on its website and in usual on-campus posting locations and distribute it to College faculty, staff, students, and major vendors using usual means of communication;

BE IT FURTHER RESOLVED, the Board directs the [Chancellor/President] to review College policies and practices regarding bullying and communicate to faculty, staff, and students the importance of maintaining a bullying-free environment for all students;

BE IT FURTHER RESOLVED, the College shall make available to students materials, workshops, and legal referrals relating to immigration rights;

BE IT FURTHER RESOLVED, the College shall implement a forum for ongoing feedback from students, faculty, and staff about campus climate and additional future actions to protect the safety and dignity of the College community as a Safe Zone;

BE IT FURTHER RESOLVED, the Board affirms that faculty and teaching assistants have the academic freedom to discuss this Resolution during class time; and students are to be made aware that counselors are available to discuss the subjects contained in this Resolution; and

BE IT FURTHER RESOLVED, the [Chancellor/President] shall report back on compliance with this Resolution to the Board at its next meeting.

[FOLLOWED BY BOARD SIGNATURE PAGE]

C. Sample Safe Zone Model Policy – Higher Education

[NAME OF COLLEGE OR UNIVERSITY] POLICY

CAMPUS SAFE ZONE, STUDENT PRIVACY, AND IMMIGRATION ENFORCEMENT

The [name of college or university governing board] (“Board”), in its [date of resolution] Resolution, based on its educational experience and as part of its deliberative process as our governing body, has found that access to campus by immigration law enforcement agents substantially disrupts the learning environment and any such request for access should be referred to the [Chancellor/President]’s Office immediately.

The [Chancellor/President]’s Office must process requests by immigration law enforcement agents to **enter campus** or **obtain student data** as follows:

1. Request identification from the officers or agents and photocopy it;
2. Request a judicial warrant and photocopy it;
 - a. If no warrant is presented, request the grounds for access, make notes, and contact legal counsel for the [College/University];
3. Request and retain notes of the names of any students identified by the agents and the reasons for the request;
 - a. Do not attempt to provide anecdotal information or conjecture about the students, such as their schedule, for example;
4. Provide the agents with a copy of this Resolution and Policy;
5. Contact legal counsel for the [College/University];
6. Request the agents’ contact information; and
7. Advise the agents you are required to complete these steps prior to allowing them access to campus or any student data.

BE IT FURTHER RESOLVED, that because community trust and cooperation are essential in allowing campus police to protect our students, faculty, staff, and employees on campus effectively, the campus police will abide by the following conduct:

1. Campus police shall create a policy acknowledging that they have no authority to enforce federal immigration law and declaring that they will not participate in immigration enforcement efforts of federal authorities. This includes campus police not holding people on ICE detainers, not responding to ICE notification or transfer requests, not making arrests based on civil immigration warrants, and not allowing ICE to use campus facilities for immigration enforcement purposes.¹⁰⁵

¹⁰⁵ This does not interfere with any mandatory on-site visits by Student and Exchange Visitor Program officials regarding initial certification or re-certification of the [College/University] to enroll foreign exchange students.

2. No [College/University] police department will join any state and/or local law enforcement agencies that have entered into an agreement with ICE or other immigration enforcement agency, nor undertake any other joint efforts with federal, state, or local law enforcement agencies, to investigate, detain, or arrest individuals for violations of federal immigration law.
3. Campus police are prohibited from inquiring about or recording any information regarding an individual's immigration status, citizenship status, or country of birth, including when interviewing victims, witnesses, or suspects of crimes.
4. Campus police officers will not contact, detain, question, or arrest an individual solely on the basis of suspected undocumented immigration status or to discover the immigration status of an individual.
5. The campus police department and its officers will not use any resources to aid in any federal effort to create a registry based on any protected characteristics, including but not limited to religion, race, national origin, or sexual orientation.

BE IT FURTHER RESOLVED, should ICE or other immigration law enforcement agents request any student or employee information, the request should be referred to the [Chancellor/President] to ensure compliance with Family Educational Rights and Privacy Act (FERPA), student and employee constitutional privacy, standards for a judicial warrant, employee privacy protections, and any other limitation on disclosure. This review should be conducted expeditiously, but before any production of information is made, and shall abide by the College's protocol.

BE IT FURTHER RESOLVED, the [Chancellor/President] must process requests by immigration law enforcement agents to enter the [College/University]'s campus or obtain student data as follows:

1. Request identification from the officers or agents and photocopy it;
2. Request a judicial warrant and photocopy it;
 - a. If no warrant is presented, request the grounds for access, make notes, and contact legal counsel for the institution;
3. Request and retain notes of the names of the students or employees and the reasons for the request;
 - a. If educational institution site personnel have not yet contacted the students' parents or guardians, do so;
 - b. Do not attempt to provide your own information or conjecture about the students, such as their schedule, for example, without legal counsel present;
4. Provide the agents with a copy of this Policy and Resolution No. _____;
5. Contact legal counsel for the institution;
6. Request the agents' contact information; and

7. Advise the agents you are required to complete these steps prior to allowing them access to any educational institution site or student data.

Definitions

- "Citizenship or immigration status" means all matters regarding questions of citizenship of the United States or any other country, the authority to reside in or otherwise be present in the United States, the time or manner of a person's entry into the United States, or any other civil immigration matter enforced by the Department of Homeland Security or other federal agency charged with the enforcement of civil immigration law.

- "Immigration agent" shall mean an agent of U.S. Immigration and Customs Enforcement, U.S. Customs and Border Protection, any individuals authorized to conduct enforcement of civil immigration laws under 8 U.S.C. §1357(g) or any other federal law, other federal agents charged with enforcement of civil immigration laws, and any successors.

- "Enforcement actions" include arrests; interviews; searches; surveillance; obtaining records, documents, and similar materials; and other actions for the purposes of immigration enforcement.

- "Campus police" includes any campus security force, squad, or organization; any campus police department, force, squad, or organization; or any law enforcement agency solely dedicated to protecting and serving the [College/University] campus.

[FOLLOWED BY EDUCATIONAL INSTITUTION BOARD SIGNATURE PAGE]