

WEBINAR GUIDE ON

LESSONS FOR ORGANIZING SANCTUARY SCHOOLS AND CAMPUSES

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IMPORTANT: This Guide is designed to provide introductory information about protecting educational settings from intrusive immigration enforcement. It is not legal advice.

BACKGROUND ON THE SANCTUARY MOVEMENT: SCHOOLS AND CAMPUSES

The [Sanctuary Movement](#) was a religious and political campaign in the United States that began in the early 1980s to provide a safe-haven for Central American refugees fleeing civil conflict. It responded to federal immigration policies that made obtaining asylum difficult for Central Americans.

What is a Sanctuary or Safe Zone School?

Sanctuary and Safe Zone schools protect students and prohibit cooperation with Immigration and Customs Enforcement (ICE) officers.

It is a [movement](#) by organizers, advocates, teachers, students, and other local groups dedicated to protecting the rights of undocumented immigrants and other vulnerable groups. The term “sanctuary school” is a reference to “sanctuary cities,” which prohibit the use of local law enforcement to enforce immigration laws.

The present-day Sanctuary School and Campus movement emerged from a growing concern of rising attacks against students of color, Muslim and students perceived to be Muslim (Sikh) and the ongoing threats of deportation that threaten to interrupt school environments. Protections by sanctuary schools reaffirm the constitutional rights asserted under *Plyler v. Doe* that all students have a right to attend a public K-12 education.¹ Sanctuary policies help guarantee all children the right to a public education regardless of citizenship status and race. Although there is no guarantee against immigration enforcement, sanctuaries provide some protections and a framework to mobilize communities at the local level.²

¹ *Plyer v. Doe*, 457 U.S. 202, 222 (1982).

² Noah Zatz, [The Principle and Politics of Sanctuary](https://medium.com/@noahzatz/the-principle-and-politics-of-sanctuary-8316e50c293a#.h6gbzsyc4), available at <https://medium.com/@noahzatz/the-principle-and-politics-of-sanctuary-8316e50c293a#.h6gbzsyc4>

What Policies Can Sanctuary and Safe Zone Schools Use to Protect Students?

Sanctuary school districts have implemented the following policies:

- Districts refuse all voluntary information-sharing with ICE.
- Districts refuse ICE physical access to schools whenever possible under the law. If not possible under the law, the District demands that ICE notify the District in advance of taking any action.
- The districts require ICE agents to present credentials, probable cause, and/or a warrant before allowing school access.
- District staff and school police are prohibited from asking about students' or families' immigration status.
- Districts prohibit school police from enforcing immigration laws or participating in ICE or Border Patrol actions.
- Districts provide a plan for training staff on responding to ICE agents who request information about students and families or attempt to enter school property.
- Districts provide a procedure to notify families about ICE efforts to gain information about students and families, and how to support students with deported or detained family members.

What is a Sanctuary or Safe Zone Campus?

Sanctuary campus is a designation for a college or university that adopts policies to protect students including undocumented immigrants.

The term “sanctuary campus” does not yet have a universal meaning as different campuses pursue different policies and, at times, choose to avoid using the term altogether. Colleges and universities have implemented the following policies:

- Universities prohibit ICE officers from entering school property without a warrant.

- Universities prohibit campus police from enforcing immigration laws and participating in ICE actions.
- Universities prohibit the voluntary sharing of student information.
- Universities commit to not gathering information on immigration or citizenship status.
- Universities provide tuition support and scholarships, including in-state tuition rates at public universities to those with deferred action (DACA).
- Universities provide confidential legal support to students with immigration questions and issues.

Why Envisioning Sanctuary or Safe Zone Policies Broadly is Important?

The renewed focus on this Sanctuary Movement takes place in a changed socio-political context where youth of color are subject to increased criminalization in schools, Muslim students experience heightened surveillance and harassment, and all students identifying with vulnerable groups such as LGBTQ and the disabled are impacted. To help further the Sanctuary and Safe Zone Movement, it is helpful to combine sanctuary policies' focus on the urgency of immigration enforcement with providing safe learning environments for all students.

LIST OF RESOURCES/EXAMPLES

Local organizers may use the following resources and examples to draw applicable language from the resolutions. Note school governance structures may vary.

Online Resources for Advocates:

- [Legal Issues for School Districts Related to the Education of Undocumented Children](#)³
- [Open Letter to California's Educational Leaders](#)⁴
- [Protecting the Rights of Immigrant Students and their Families: Maria Blanco](#)⁵
- [Sanctuary Petition for Every College Campus](#)⁶
- [Example Petition Letter to Make University Campus a Sanctuary](#)⁷

Examples of School Resolutions

- [Minneapolis Public Schools](#)⁸
- [Portland Public Schools](#)⁹

³ *Legal Issues For School Districts Related to the Education of Undocumented Children*, NSBA & NEA, available at <http://www.nea.org/assets/docs/HE/09undocumentedchildren.pdf>.

⁴ An [open letter](#) signed by 120+ organizations coordinated on behalf of the statewide College for All Coalition has been used to pass local school board resolutions in places like San Bernardino and Sacramento. A few weeks after sending him our letter, State Supt. Tom Torlakson also recently issued a statement calling for all K-12 public schools in California to be safe havens for students regardless of immigration status. *Public Schools Remain Safe Havens for California Students*, California Department of Education, <http://www.cde.ca.gov/nr/el/le/yr16ltr1221.asp>.

⁵ *Protecting the Rights of Immigrant Students and their Families: Maria Blanco*, Just Talk: Voices of Education and Justice, <https://centerx.gseis.ucla.edu/just-news/just-talk/protecting-the-rights-of-immigrant-students-and-their-families-maria-blanco-1>.

⁶ *Sign the Petition in Support of the Students*, COSECHA, available at <http://www.lahuelga.com/sanctuarycampus/>.

⁷ Barbara Bowen, *An Open Letter to Chairperson Thomson and Chancellor Milliken: Make CUNY a Sanctuary University* (Dec. 2, 2016) available at <http://psc-cuny.org/sites/default/files/Letter%20to%20Chairperson%20Thompson%20and%20Chancellor%20Milliken.pdf>.

⁸ *Resolution Regarding District Practices Related to Immigration and Customs Enforcement*, MINNEAPOLIS PUBLIC SCHOOLS (Dec. 13, 2016), available at <http://www.southwestjournal.com/wp-content/uploads/2016/12/ICE-resolution.pdf>.

⁹ *Rights of Undocumented Students and Protocols for INS and ICE Access to Schools*, PORTLAND PUBLIC SCHOOLS, available at <http://www.pps.net/cms/lib8/OR01913224/Centricity/Domain/219/Immigration%20Resolution%203%20FINAL.pdf>

- [Palo Alto Unified School District](#) (*Proposed Resolution*)¹⁰

Examples of Statements in Support of Sanctuary Campuses

- [Columbia University](#)¹¹
- [Harvard University](#)¹²
- [Pitzer College](#)¹³
- [Portland State University](#)¹⁴
- [Princeton University](#)¹⁵
- [Rutgers University](#)¹⁶
- [University of Pennsylvania](#)¹⁷

¹⁰ *Proposed Resolution Affirming Palo Alto Unified School District's Support of its Students and Families Regarding Immigration Enforcement Actions at Schools*, available at [http://www.boarddocs.com/ca/pausd/Board.nsf/files/AGGSLA6FD8D4/\\$file/20161213ResolutionRegardingImmigrationDraft.pdf](http://www.boarddocs.com/ca/pausd/Board.nsf/files/AGGSLA6FD8D4/$file/20161213ResolutionRegardingImmigrationDraft.pdf).

¹¹ *Responding to Post-Election Issues and Concerns*, COLUMBIA UNIVERSITY OFFICE OF THE PROVOST, available at <http://provost.columbia.edu/node/297>.

¹² *Supporting Our Community*, HARVARD UNIVERSITY OFFICE OF THE PRESIDENT (November 28, 2016), available at <http://www.harvard.edu/president/news/2016/supporting-our-community>.

¹³ *President Oliver and the Board of Trustees Declare Pitzer College a Sanctuary College*, PITZER COLLEGE OFFICE OF THE PRESIDENT (Nov. 30, 2016), available at <http://pitweb.pitzer.edu/president/president-oliver-and-board-of-trustees-declare-pitzer-a-sanctuary-college/>.

¹⁴ *Portland State is a Sanctuary University*, PORTLAND STATE UNIVERSITY, available at <https://www.pdx.edu/insidepsu/portland-state-is-a-sanctuary-university>.

¹⁵ President Eisgruber's Statement on Deferred Action for Childhood Arrivals, PRINCETON UNIVERSITY OFFICE OF THE PRESIDENT, available at <http://www.princeton.edu/president/eisgruber/speeches-writings/archive/?id=17355>.

¹⁶ *Supporting our Students' Respectful Free Expression and Privacy*, RUTGERS OFFICE OF THE PRESIDENT (Nov. 15, 2016), available at <file:///Users/JohnSandoval/Documents/Documents/Columbia%20Law%20School/Pro%20Bono/Law@theMargins/College%20Statements/Rutgers%20Supporting%20Our%20Students%20Respectful%20Free%20Expression%20and%20Privacy.webarchive>.

¹⁷ *A Message to the Penn Community Concerning our DACA and Undocumented Community Members*, UNIVERSITY OF PENNSYLVANIA (Nov. 30, 2016), available at <https://news.upenn.edu/message-penn-community-concerning-our-daca-and-undocumented-community-members>.

EXAMPLE SCHOOL RESOLUTION (K-12)

What follows is a template K-12 resolution that may be adapted per local needs. To make implementation simple for your district, it also includes a district policy administrators can follow.

BOARD OF EDUCATION¹⁸

RESOLUTION NO.

WHEREAS, it is the right of every child, regardless of immigration status, to access a free public K-12 education and the District welcomes and supports all students;

WHEREAS, the District has a responsibility to ensure that all students who reside within its boundaries, regardless of immigration status, can safely access a free public K-12 education;

WHEREAS, federal immigration law enforcement activities, on or around District property and transportation routes, whether by surveillance, interview, demand for information, arrest, detention, or any other means, harmfully disrupt the learning environment to which all students, regardless of immigration status, are entitled and 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 access a free public K-12 education;

WHEREAS, through its policies and practices, the District has made a commitment to a quality education for all students, which includes a safe and stable learning environment, means of transportation to and from school sites, the preservation of classroom hours for educational instruction, and the requirement of school attendance;

WHEREAS, parents and students have expressed to the District fear and confusion about the continued physical and emotional safety of all students and the right to access a free public K-12 education through District schools and programs;

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

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

¹⁸ The following resolution has been excerpted in its entirety. *Sample School Board Resolution & Policy on “Safe Zone” Immigration Safety*, NATIONAL EDUCATION ASSOCIATION, available at <http://educationvotes.nea.org/neaedjustice/social-justice-issues/immigration/>; see also *Model Campus Safe Zones Resolution Language (K-12)*, NATIONAL IMMIGRATION LAW CENTER, available at <https://www.nilc.org/issues/immigration-enforcement/campus-safe-zones-language-k-12/>.

any federal, state, or local agency attempting to enforce federal immigration laws, are to follow District Policy ____, attached to and incorporated in this Resolution, to ensure the District meets its duty to provide all students, regardless of immigration status, access to a free public K-12 education;

BE IT FURTHER RESOLVED, that the Board declares the District to be a Safe Zone for its students, meaning that the District is a place for students to learn, to thrive and to seek assistance, information, and support related to any immigration law enforcement that interferes with their learning experience;

BE IT FURTHER RESOLVED, that the District shall, within 30 days of the date of this Resolution, create a Rapid Response Team to prepare in the event a minor child attending school in the District is deprived of adult care, supervision, or guardianship outside of school due to a federal law enforcement action, such as detention by ICE or a cooperating law enforcement agency;

BE IT FURTHER RESOLVED, it continues to be the policy of the District not to allow any individual or organization to enter a school site if the educational setting would be disrupted by that visit; given the likelihood of substantial disruption posed by the presence of ICE or state or local law enforcement agencies acting for ICE, any request by ICE or other agencies to visit a school site should be presented to the Superintendent's Office for review as to whether access to the site 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 at a school site;

BE IT FURTHER RESOLVED, in its continued commitment to the protection of student privacy, the District 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; and cease any such collection as it is irrelevant to the educational enterprise and potentially discriminatory;

BE IT FURTHER RESOLVED, should ICE or other immigration law enforcement agents request any student information, the request should be referred to the Superintendent's Office to ensure compliance with 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, the District shall post this Resolution at every school site and distribute it to District staff, students, and parents using usual means of communication, and that the Resolution will be translated into all languages spoken by students at home;

BE IT FURTHER RESOLVED, the Superintendent shall report back on compliance with this Resolution to the Board at its next meeting;

BE IT FURTHER RESOLVED, the Board directs the Superintendent to review District policies and practices regarding bullying and report back to the Board at its next meeting and

communicate to staff, students, and parents the importance of maintaining a bullying-free environment for all students;

BE IT FURTHER RESOLVED, the Board affirms that certificated District employees have the academic freedom to discuss this Resolution during class time provided it is age-appropriate; and students are to be made aware that District counselors are available to discuss the subjects contained in this Resolution; and

BE IT FURTHER RESOLVED, after-school providers and other vendors and service providers who contract with the District shall be notified of this Resolution within 30 days and required to abide by it. [FOLLOWED BY SCHOOL BOARD SIGNATURE PAGE]

DISTRICT POLICY NO. _____

**ACCESS TO EDUCATION, STUDENT PRIVACY, AND IMMIGRATION
ENFORCEMENT**

School personnel must not allow any third party access to a school site without permission of the site administrator. The site administrator shall not permit third party access to the school site that would cause disruption to the learning environment.

The School Board, in Resolution No. _____, based on its educational experience and as part of its deliberative process as our governing body, has found that access to a school site by immigration law enforcement agents substantially disrupts the learning environment and any such request for access should be referred to the Superintendent's Office immediately.

School personnel must contact the Superintendent's Office immediately if approached by immigration law enforcement agents. Personnel must also attempt to contact the parents or guardians of any students involved.

The Superintendent's Office must process requests by immigration law enforcement agents to **enter a school site** 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 District;
3. Request and retain notes of the names of the students and the reasons for the request;
 - a. If school 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 District;
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 school site or student data.

Resolution to Designate College/University Campuses as Safe Zones and to Create Resource Centers for Students and Families Threatened by Immigration Enforcement¹⁹

WHEREAS: The XX College/University System welcomes and supports students without regard to their citizenship or immigration status and will continue to admit students in a manner that complies with our nondiscrimination policy and without regard to a student's race, national origin, religion, citizenship, or any other protected characteristic. The College/University is committed to providing an environment in which all admitted students can pursue their studies and careers and graduate successfully;

WHEREAS: Federal law protects student privacy rights, and the XX State Constitution and other statutes provide broad privacy protections to all students, faculty, staff, and other employees of the College/University;

WHEREAS: Migration to this country is often propelled by social, economic, and political factors and native country conditions, which result partly from U.S. government and corporate policies and interests, and thus immigrants and their families are entitled to compassionate and humane treatment in this country;

WHEREAS: Ensuring that our College/University campuses are safe and inviting for all students and their families will facilitate the physical safety and emotional well-being of all students in the College/University, and is paramount to students' ability to achieve;

WHEREAS: This safe and inviting environment, as well as the learning environment and educational setting, would be disrupted by the presence of Immigration and Customs Enforcement ("ICE") agents or other immigration agents who come onto College/University property or conduct activities in and around College/University campuses to remove students or obtain information about students or their family members for the purposes of enforcement;

WHEREAS: Immigration enforcement activities around College/University campuses 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 in our College/University, 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 and their families create severe emotional, psychological and physical barriers to learning and education that can and should be allayed or reduced through support systems, including legal representation, provided by the College/University;

¹⁹ *Model Campus Safe Zones Resolution Language (Colleges & Universities)*, NATIONAL IMMIGRATION LAW CENTER & NATIONAL EDUCATION ASSOCIATION, available at <https://www.nilc.org/issues/immigration-enforcement/campus-safe-zones-language-college/>. See also *Sample "Safe Zone" Resolution for Higher Education Institutions*, NATIONAL EDUCATION ASSOCIATION, available at <http://educationvotes.nea.org/neaedjustice/social-justice-issues/immigration/>.

WHEREAS: Students' ability to achieve is undermined by the removal of their family members during ICE raids and arrests, and the College/University should have in place policies and procedures to protect and provide emotional counseling and legal support for such students, and all faculty, staff, administrators and other employees should be trained on such procedures;

WHEREAS: Immigration arrests, detentions, and deportations affect families every day, and indications that deportations will increase dramatically have created a climate of heightened fear and anxiety for many students and their families;

WHEREAS: The record number of deportations in recent years tragically has broken apart loving families, devastated communities, and caused widespread fear among immigrants and their family members;

WHEREAS: Involving campus police in enforcing federal civil immigration law will create the perception that they are immigration agents and decrease students' likelihood of cooperating with campus police based on fears that this would lead to their deportation or the deportation of family members;

WHEREAS: Primary jurisdiction over federal immigration laws does not rest with campus police or any other state or local law enforcement agency; community trust is essential in allowing campus police to serve the College/University effectively; and campus police's limited resources should not be diverted from the critical mission of keeping our students safe, by participating in enforcement of federal immigration laws or by assisting federal immigration authorities in any way;

WHEREAS: Several courts have concluded that civil immigration detainers are voluntary requests to local law enforcement and compliance is not mandatory. No written state or federal law mandates that local colleges/universities assist ICE in the enforcement of immigration laws. In addition, local law enforcement agencies may be liable for improperly detaining an individual who is otherwise eligible for release based on a civil immigration detainer;

WHEREAS: Some cities, counties, schools, and higher education institutions have adopted policies that limit entanglement with ICE and resist any government action that may lead to the discovery of a person's immigration status;

WHEREAS: ICE's longstanding policy states that it will not conduct immigration enforcement activity at any sensitive location, which includes schools and college/university campuses, without special permission by specific federal law enforcement officials, unless exigent circumstances exist;

WHEREAS: A federal effort to create a registry based on any protected characteristics, including but not limited to religion, race, national origin, or sexual orientation, would be antithetical to the United States Constitution, federal and state laws, and principles of nondiscrimination that guide our College/University;

THEREFORE BE IT RESOLVED: That the Board of Governors of the XX College/University System hereby declares that every XX College/University site is a safe place for its students and their families to seek help, assistance, and information if faced with fear and anxiety about immigration enforcement efforts;

RESOLVED FURTHER: That the President/Chancellor shall establish that the College/University, and any associated education centers, be established as resource and information sites for immigrant students and families;

RESOLVED FURTHER: That the Board of Governors encourages the President/Chancellor to increase and enhance partnerships with community-based organizations and legal services organizations that provide resources for students and families facing deportation;

RESOLVED FURTHER: That the Board of Governors directs the President/Chancellor to create and make available in-language Know Your Rights presentations and materials for students and family members to understand their rights regarding interactions with law enforcement and immigration agents;

RESOLVED FURTHER: That the Board of Governors directs the President/Chancellor to create a rapid response network to assist students or their family members who have been detained;

RESOLVED FURTHER: 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 detainees, 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.
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 in order 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.

RESOLVED FURTHER: In order to provide access to education, regardless of a student's or family member's immigration status, absent any applicable laws, the College/University shall abide by the following conduct:

1. College/University personnel shall not inquire about or record a student's or a family member's immigration status, and pursuant to the Family Education Rights and Privacy Act ("FERPA"), shall not disclose, without student consent if the student is at least 18 years old, or otherwise without parental consent, the immigration status, citizenship status, place of birth, or other personally identifiable information of any student.
2. Any communication to federal agencies or officials initiated by a school or school personnel concerning confidential information about a student or a student's family member, including but not limited to: information about gender identity; sexual orientation; status as a survivor of domestic violence; survivor of sexual assault; crime witness; recipient of public assistance; actual or perceived immigration or citizenship status; national origin; school discipline record; all information included in an individual's or household's income tax records; or records related to financial aid, scholarships, tuition or residency determinations, is prohibited, unless permission is granted by the student if the student is at least 18 years of age, or otherwise by the student's parent or guardian.
3. The College/University shall refuse all voluntary information sharing with immigration agents across all aspects of the College/University to the fullest extent possible under the law, with the exception of mandatory reporting in compliance with the Student and Exchange Visitor Program regarding the College/University's enrollment of foreign exchange students.
4. Any request by immigration agents for **access to a campus** shall be initially denied and immediately forwarded to the President/Chancellor and General Counsel for review and a decision on whether to reverse the denial and allow access to the site. The request must be provided with adequate notice so that the President/Chancellor and General Counsel can take steps to provide for the emotional and physical safety of the College's/University's students and staff.
 - a. b. Should an immigration agent request access to a campus, the President/Chancellor and/or General Counsel shall ask for the immigration agent's credentials, ask why the agent is requesting access, and ask to see a warrant signed by a federal or state Judge. The President/Chancellor and/or General Counsel will refuse access to a campus unless immigration agents provide a warrant signed by a federal or state Judge which specifies the name of the person under arrest, **as well as** written authority from ICE instructing them to enter College/University property and describing the purpose for which they request entry.
5. Any request by immigration agents for information regarding a student shall be initially denied and immediately forwarded to the President/Chancellor and General Counsel, who will review the denial according to the following guidelines. In keeping with the individual's right to privacy, no part of a student's education record, however created, may be divulged with personally identifiable information to any person, organization, or agency in any manner unless there is:
 1. Informed written consent by the student, if the student is 18 years of age or older, or otherwise by the parent or guardian;
 2. A valid court order or judicial warrant requesting such information (in such cases, prior to complying with such court order or judicial warrant, the student, if the student is 18 years of age or older, or otherwise the parent or guardian, shall be notified immediately in writing of the information that is the subject of the court order or judicial warrant);

3. A health and safety emergency and disclosure of personally identifiable information from an education record to appropriate parties is necessary to protect the health or safety of the student or other individuals; or
 4. Another reason to do so that is required by law. Questions concerning the validity of a court order or judicial warrant, or whether there is a health and safety emergency or other possible reasons for releasing education records that contain personally identifiable information, should be directed to the College/University Chancellor/President and General Counsel.
6. The College/University will not enter into agreements with state or local law enforcement agencies, ICE, or any other federal agency for the enforcement of federal immigration law, except as required by law.
7. The College/University and its staff, faculty, employees, and campus police will not honor any ICE detainers or requests.
8. College/University personnel shall treat all students equitably in the receipt of all school services for which they are eligible.
9. The College/University will offer (a) legal support to immigrant students and their families; (b) counseling that adequately acknowledges the impact of immigration status on students and their family members; and (c) Know Your Rights presentations to students and parents in-language; and (d) the College/University will ensure that students are aware of opportunities to gain access to in-state tuition, financial aid, scholarships, internships and career opportunities, regardless of their status. To implement this support system, the College/University shall establish an office space on campus that serves as a resource center for immigrant students and their families and shall establish at least one paid position for an immigrant liaison, with expertise in immigrant and undocumented populations, to fulfill these duties.
10. The College/University shall fund attorneys to represent students facing removal proceedings, and assist family members of students who are in removal proceedings with legal resources and information.
11. The College/University and its faculty, staff, and other employees shall 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.

RESOLVED FURTHER: That the President/Chancellor shall ensure that all faculty, staff, administrators, and other employees will be trained on how to implement this policy, and notification in no less than the top 10 primary languages spoken by students throughout the College/University to be distributed to students to fully inform them of their rights in the College/University;

RESOLVED FURTHER: Within the next 90 days the President/Chancellor shall develop a plan for training all faculty, staff, administrators, and other employees on how to respond to ICE or other immigration enforcement personnel who are requesting information about students and/or are attempting to enter campus. The plan shall also include procedures for notifying individual students about ICE and other immigration enforcement agencies' efforts to gain information about them, and how to support students whose family members have been displaced because of

ICE and other immigration enforcement agencies. This plan shall be communicated to all College/University students in all supported languages.

RESOLVED FURTHER: The President/Chancellor shall prepare an implementation plan defining partnerships with community organizations and training and support for campus employees to ensure rapid response and effective coordination and report back to the Board of Governors in 90 days.

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.

Resolution to Declare Borough of Manhattan Community College of the City University of New York a “Sanctuary Campus” for Immigrants and Members of Vulnerable and Directly Impacted Communities²⁰

PREAMBLE: Since the election results were announced, the climate of fear and uncertainty about the new administration’s impact on our communities has increased the anxiety that many of our students are experiencing. There have also been increasing reports of bias incidents and attacks, including on college campuses, targeting African Americans, Latinos, immigrants, the LGBT community, Muslims, and people of Middle Eastern and South Asian descent, including at least one such incident on our own campus. As a college, we must make clear that we stand against all forms of discrimination and maintain an environment where our students can learn in an environment free from harassment, threats and violence. Declaring the Borough of Manhattan Community College a sanctuary campus will magnify our existing commitment to a vibrant, pluralistic learning community, which is the heart of our mission and goals as a college.

WHEREAS: Chancellor Milliken has affirmed that “[a]t CUNY, we have an unwavering commitment to providing opportunity to low income and underrepresented students and immigrants, a point of honor and strength that makes our mission so vital. [...] CUNY is the undisputed leader among universities in this country in the support and services we provide to immigrants on our campuses and throughout the city. That will remain the case.”

WHEREAS: the President of the Borough of Manhattan Community College (BMCC), Antonio Pérez has affirmed that “[we] celebrate our diversity and the vital role that BMCC plays in expanding educational opportunity, particularly for immigrants and underrepresented populations.”

WHEREAS: BMCC’s mission states that the “Borough of Manhattan Community College is a vibrant, pluralistic learning community committed to the intellectual and personal growth of students. Working closely with organizations across New York City and beyond, we prepare students from around the globe for degree completion, successful transfer, career achievement, lifelong learning, and civic participation.”

WHEREAS: As faculty members in the BMCC community, we are all deeply committed to the work we do to serve our students, many of whom make every effort to pursue their education despite economic struggles, discrimination, and other barriers.

WHEREAS: The recent shifts in the political landscape have produced a general climate of fear among marginalized communities who have heightened concerns about harassment, physical abuse, sexual assault, racial profiling, police brutality, deportation, mandatory registration and other forms of violence. Immigrants, especially undocumented ones, and Muslims have been most directly targeted, though people of color, women, transgender people, members of LGBTQ communities, refugees, Jews, disabled people and others are also affected by recent statements and actions.

²⁰ *CUNY Chancellor Milliken Statement* (Dec. 14, 2016) <http://www1.cuny.edu/mu/forum/2016/12/14/a-statement-from-chancellor-james-b-milliken/> (“I have stated unequivocally that CUNY will take any steps available under the law to protect and support its undocumented students.”)

WHEREAS: BMCC is a minority-serving institution that provides educational resources and resources to potentially impacted marginalized populations. Over 85% of our students are racial/ethnic minorities. There are over 161 foreign birth countries represented in, and over 108 foreign languages spoken by, our student body.

WHEREAS: Our students are expressing heightened fear and worry for themselves, and their friends, families, and communities. That we are entering a period of chance and uncertainty in which the specific details of the impacts our communities is not yet clear only adds to the anxiety that our students are experiencing.

BE IT RESOLVED THAT: BMCC will not, for the purposes of immigration enforcement only, cooperate with the arrest, interview, search and/or surveillance of any member of the BMCC community, except insofar as required by the law, and even then, will explore any and all legal avenues to protect the safety of its students. BMCC will not allow immigration officials on campus without a warrant. BMCC will not share information about any member of the BMCC community without their permission, especially regarding immigration status, unless required by a court order or subpoena.

BE IT RESOLVED THAT: BMCC will support undocumented students in their pursuit of their education. This commitment includes continued in-state tuition rate and support in locating additional forms of financial resources for educational expenses.

BE IT RESOLVED THAT: BMCC will stand against all forms of discrimination. We commit to protecting the rights of all students, staff, and faculty “without regard to race, color, creed, national origin, ethnicity, ancestry, religion, age, sex, sexual orientation, gender, gender identity, marital status, partnership status, disability, genetic information, alienage, citizenship, military or veteran status, pregnancy, or status as a victim of domestic violence/stalking/ sex offenses, or any other legally prohibited basis in accordance with federal, state and city laws.” We also stand against all forms of sexual harassment, gender harassment and sexual violence, as well as forms of sex or gender discrimination.

BE IT RESOLVED THAT: the Academic Senate of the Borough of Manhattan Community College of the City University of New York supports designating the Borough of Manhattan Community College a “Sanctuary Campus.” The Senate supports asking BMCC’s administration to agree to exercise available power to implement this Resolution in order to protect our students, staff, faculty, and others on campus from protected surveillance, intimidation, investigation, deportation or other status-based attacks or discrimination while on campus.

Immigration Issues in Higher Education Post-Election Q & A²¹:

Is it relevant that an institution is geographically within a “sanctuary city”?

Federal law enforcement authorities could act in a range of ways regarding DACA students and other undocumented individuals who are part of K-12 or higher education communities without involvement by local authorities. In those circumstances, a campus’s location within a sanctuary city may not be sufficient to curb ICE activity.

How have institutions responded to calls for sanctuaries and safe zones on campuses?

Immediate institutional responses typically have included reaffirming institutional or community principles or values, underscoring policies of inclusion and free expression, expressing continued support for DACA, and committing to supporting community members as much as possible while complying with the law. Some schools have stated that they will not voluntarily (without a court order) assist the federal government in immigration enforcement.

Many sanctuary campus petitions incorporate uncontroversial demands for support and counseling to students and other undocumented community members. It is likely that institutions already have resources and practices in place that may align with such demands. Quickly and clearly organizing, cataloging, and publicizing them, as well as basic informational and “know your rights” materials, is one sensible immediate and beneficial response.

Anticipating—and having clear, consistent, and accurate and ready answers to—questions about policies and practices is important. This can be a challenge on a campus with several schools and distinct student populations (undergraduate schools, PhD candidates, business schools, medical schools, etc.).

As suggested below, understanding campus police department policies and practices—and being transparent about them where appropriate—should not be overlooked. For example, it may be helpful to understand and be able to accurately explain whether, when, and how fingerprints taken by campus or local law enforcement will be added to the national fingerprint file maintained by the Federal Bureau of Investigation, since such fingerprints are likely to be forwarded to the DHS/ICE fingerprint database. State law generally determines the circumstances when law enforcement, including campus police departments, may fingerprint individuals; and those laws evolve.

What about institutions being asked to pledge non-cooperation?

As a general proposition, the law imposes no affirmative duty on individuals or organizations to inform law enforcement authorities of illegal activity. Furthermore, in many circumstances it is reasonable and appropriate to have, and abide by, institutional policies which require an individual’s consent, or receipt of a subpoena or warrant, before complying with requests by authorities for non-public information about campus community members. Indeed, federal and state privacy laws (such as those relating to education and medical records) may compel such a response.

²¹ The following section has been excerpted in part and supplemented in part. See *Immigration Post-Election Q&A*, AMERICAN COUNCIL ON EDUCATION, available at <http://www.acenet.edu/news-room/Documents/ACE-Issue-Brief-Immigration-DACA-Sanctuary-Campus.pdf>.

However, some sanctuary campus petitions ask institutions to categorically refuse to cooperate with federal law enforcement; some propose not allowing officials to enter campus property unless they have a warrant, court order, or other lawful process. Such requests may run counter to applicable aspects of current and evolving federal or state laws, with particular challenges for public institutions. Also, they could risk termination of federal and state aid to institutions. And, as suggested below regarding campus police department discretion, they may conflict with campus law enforcement obligations, including on private campuses with sworn officers. Nonetheless, institutions may implement policies within legal bounds, which allow sufficient protections against enforcement risks.

The Immigration and Nationality Act (INA) says that “a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS, ICE, or CBP] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.” Whether this prohibition would, in fact, apply to a particular institution, just its campus police department, or not apply at all would depend on the facts, such as whether the institution is public or private, and the legal status and authority of its campus police. In terms of consequences for violation of this federal prohibition, to date the focus has been on revocation of a state or local entity’s entitlement to certain federal funds under the Edward Byrne Memorial Justice Assistance Grant Program and the State Criminal Alien Assistance Program, but an individual should consider all risks, including criminal prosecution, if considering non-compliance with a federal enforcement.

How should institutions consider requests by federal officials for records identifying undocumented students or other community members?

As a general proposition, colleges and universities have no obligation to comply with a request by officials for institutional records in the absence of a subpoena or warrant. Indeed, the Family Educational Rights and Privacy Act’s (FERPA) basic premise is that a valid legal subpoena, warrant, or court order typically is required for nonconsensual access to a student’s education records. Additionally, institutions may review policies and data to ensure sensitive information such as students’ immigration status is not acquired unnecessarily or disclosed without a warrant.

However, exceptions exist which explicitly allow for access to some students’ records. To note just a couple:

The Student and Exchange Visitor Program (SEVP) requires that institutions participating in SEVP are subject to on-site review at any time. An ICE Field Representative visiting such a campus has the authority to ask for information about students on temporary student and training visas (F and J) administered by or present at the institution, but currently not about DACA or undocumented students. While FERPA restricts access to defined “education records” (but not to employee records) absent a student’s consent, students on temporary F or J visas have largely waived their rights under FERPA through the visa process. Also, institutions agree to grant access to certain employment-related information by signing H-1B, O-1, and other temporary visa petitions. Administrators can advise students of this risk and promptly notify students if a request for information is made.

The USA PATRIOT Act (post-9/11 legislation) allows exceptions to FERPA to enable nonconsensual disclosure of education records, and personally identifiable information

contained in such records, where there is a judicial order based on the government's assertion of terrorist activities.

It would be prudent for institutions to review applicable policies and protocols to assess how they may be interpreted and applied in the future to requests for information from government officials, and to the protection of campus community members' privacy. Campus administrators who are likely to be the first points of contact by immigration officials should be fully aware of institutional philosophy and policy, and know where to turn for immediate advice and direction regarding nuanced situations.

What about calls for institutions to preclude ICE officials and agents from coming on campus?

As a legal and practical matter an institution may be unable to prevent ICE officials and agents from coming onto campus without a warrant. Significant portions of virtually every college and university campus—public and private—are open to anyone. While these accessible spaces can be made subject to reasonable time, place, and manner restrictions, it is difficult to imagine a court finding a targeted restriction against federal immigration officials to be reasonable. By contrast, restricted buildings or other areas (such as dormitories and other living spaces) would carry legitimate privacy interests, and therefore it could be appropriate to insist on an immigration warrant for access. Here again, however, state and local law, as well as existing cooperation agreements between campus police and external authorities should be assessed.

Campus security procedures may request ICE officers to notify the university when seeking access to campus. Even where there may be a good-faith basis to insist on a warrant for access (or, in certain cases, a subpoena for access to records), such a request should not be seen as a license to frustrate the law enforcement purpose. For instance, if, while awaiting service of the warrant, an institution were to hide an undocumented person or destroy records, a law enforcement authority or court might very well take the position that an institution had run afoul of the "harboring" provision discussed below. Such steps could also trigger liability for obstruction of justice.

Might campus police departments have less discretion to minimize or avoid cooperation?

Federal law does not obligate local law enforcement—including sworn campus police officers—to devote resources to the enforcement of federal immigration laws. The INA provides that state or local police may enter into cooperative agreements with immigration enforcement officials and agents, though they are not compulsory. Some college and university police departments have pledged not to sign up for a voluntary program if one is offered. Regardless of the university policy in place, campus police should be properly trained on what to do if ICE is present on campus.

State laws often establish and inform campus police officers' authority and activities. This can be the case for private institutions' police departments as well as those of public institutions. A review and understanding of the source of campus police officers' authority and applicable state law is prudent. For example, a campus police department that is asked to consider adopting practices to implement or support sanctuary campus practices may find itself unable to do so due to applicable state law.

Also worthy of consideration are a campus police department's obligations pursuant to the department's or the institution's relationship with other law enforcement authorities, particularly those detailed in increasingly common memoranda of understanding between

institutions and/or their campus police departments and local police departments (and perhaps state or federal law enforcement agencies as well).

Lack of cooperation by campus police could impact unwritten, but significant, cooperative expectations among federal, state, and local law enforcement. Resulting tensions may have negative consequences for state and local police and government responsiveness on a range of other matters that significantly affect college and universities, their campuses, and their communities.

Could an institution's officials or campus community members violate federal "harboring" law?

The INA provides for the imposition of criminal penalties and fines on individuals and organizations for employing, concealing, harboring, or shielding from detection unauthorized aliens. The statute also makes it unlawful to encourage or induce an alien to come to, enter, or reside in the United States. The statute penalizes attempts to commit the prohibited acts, as well as aiding or assisting such acts.

In the past, courts have interpreted the harboring prohibition broadly, generally considering "shielding," "harboring," and "concealing" to encompass "conduct tending substantially to facilitate an alien's remaining in the United States illegally." This includes conduct "tending to substantially facilitate an alien's remaining in the United States illegally and to prevent government authorities from detecting the alien's unlawful presence."

Schools should advocate for more favorable interpretations of the definition of "harboring." Some recent court decisions have begun to limit the definitions of that which constituted "harboring" under the statute by requiring that the defendant do more than simply provide shelter to an undocumented alien. Those court cases suggest that "harboring" means keeping an alien in any place with the intent to conceal from government authorities, moving an alien, or providing physical protection to an alien. For example, in one case, a restaurant owner was convicted under the harboring provision for employing and providing housing for unauthorized aliens where the court agreed that the defendant had not simply provided housing, but rather had "deliberately safeguard[ed] members of a specified group from the authorities."²² The federal appeals court said that "a defendant is guilty of harboring for purposes of § 1324 by providing a known illegal alien a secure haven, a refuge, a place to stay in which the authorities are unlikely to be seeking him."²³ However, there is significant variation among the federal courts as to what must be established regarding the defendant's intent—in other words, whether the defendant must act with clandestine intent (to hide the alien), whether the defendant must "substantially facilitate" the person's unlawful stay, or whether "simple sheltering"²⁴ is sufficient to trigger statutory liability. In addition, some federal courts have taken the position that a person illegally "encourages" an unauthorized alien to "reside" in the

²² *United States v. McClellan*, 794 F. 3d 743, 751 (7th Cir. 2015).

²³ *Id.* at 749-50 (quoting *United States v. Costello*, 666 F.3d 1040, 1050 (7th Cir. 2012)); see also *United States v. Vargas-Cordon*, 733 F.3d 366, 381 (2d Cir. 2013) (harboring requires that the defendant intended to facilitate an illegal alien's remaining in the United States and to prevent the alien's detection by immigration authorities).

²⁴ *United States v. Acosta de Evans*, 531 F.2d 428, 430 (9th Cir. 1976) ("harbor" means "to afford shelter to").

United States when the person takes some action “to facilitate the alien’s ability to live in this country indefinitely.”²⁵

Given the fluidity of the broader national attention to immigration issues, the various ways this is being experienced geographically and the possibility that states’ laws may be relevant, as well as the current uncertainty about the particular focus of the new administration’s immigration agenda, it would be prudent to remain attentive to future interpretations of “harboring” by governmental officials, law enforcement, and the courts.

How worried should an institution be about losing federal funding if it is perceived as non-cooperative?

A federal funds recipient certifies or represents generally that it will comply with “all applicable laws” in connection with the receipt of a federal grant or other federal funding. However, at this time, no federal grant documents or guidance have been identified indicating that the primary federal agencies that provide federal financial assistance to institutions (such as the U.S. Department of Education, the National Institutes of Health, and the National Science Foundation) have adopted policies to compel or even request cooperation with the ICE by federal funds recipients, or policies that would provide a specific basis on which to withhold federal funding for noncooperation with ICE’s investigations or requests. Of course, this could change in the future. If federal funding is later conditioned on cooperation, the conditions may run afoul of the 10th Amendment rights of the states.²⁶

Should international members of our campus communities be concerned?

While media attention has focused on DACA and undocumented students, the change in administration could bring with it policies and protocols that impact international members of campus communities. For example, students from predominantly Muslim countries could face extended security delays for travel to the United States after January 20 if the new administration encourages some of its suggested policy actions. The 9/11 terrorist attacks prompted a call-in registration program that targeted anyone from 26 countries, all but one of which have predominantly Muslim populations. A similar program could be implemented, or existing review for national security concerns could be expanded.

Campus leaders, as well as advisers to international students, faculty, and staff should remain attentive to the possible implementation of these or other discretionary measures. They could have a significant impact on the attractiveness and accessibility of American higher education to potential undergraduate and graduate students from other countries.

²⁵ See *U.S. v. Thum*, 749 F. 3d 1143, 1148 (9th Cir. 2014). Defendants have been convicted under the harboring statute for doing as little as occasionally employing an alien housekeeper and offering advice on how to avoid deportation. See *U.S. v. Henderson*, 857 F. Supp. 2d 191, 210 (D. Mass. 2012) (explaining that encouragement entails “affirmative assistance that makes an alien lacking lawful immigration status more likely to enter or remain in the United States than she otherwise might have been,” quoting *DelRio-Mocci v. Connolly Properties Inc.*, 672 F. 3d 241, 248 [3d Cir. 2012]); *Edwards v. Prime*, 602 F. 3d 1276 (11th Cir. 2010) (finding that defendants had “encouraged or induced” illegal aliens to reside in the United States by knowingly supplying them with jobs and social security numbers to facilitate their employment, because the “Court [gives] a broad interpretation to the phrase ‘encouraging or inducing’ in this context, construing it to include the act of ‘helping’ aliens come to, enter, or remain in the United States”).

²⁶ See Erwin Chemerinsky et al., *Trump Can’t Force ‘Sanctuary Cities’ to Enforce his Deportation Plans*, WASHINGTON POST, https://www.washingtonpost.com/opinions/trump-cant-force-sanctuary-cities-to-enforce-his-deportation-plans/2016/12/22/421174d4-c7a4-11e6-85b5-76616a33048d_story.html?utm_term=.004d0b24e23f.

WEBINAR GUIDE ON SANCTUARY SCHOOLS AND CAMPUSES

If you are interested in organizing for sanctuary schools and/or campuses, and have any additional information that should be included in this guide, you may contact Chaumtoli Huq at chaumtoli@lawatthemargins.com and editors@lawatthemargins.com

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