

### **OVERVIEW**

Federal and California state laws require that educational personnel protect confidential student records from inadvertent or unlawful disclosure to third parties. Schools and educational institutions must safeguard student records, student data, and any personally-identifiable information, even when the collection and handling of such data is necessary to further legitimate educational purposes. Therefore, it is important that school personnel receive the proper training to understand the laws and responsibilities they are required to follow within their institutions.

Many undocumented and immigrant students attending secondary or postsecondary institutions in California are concerned about providing their information and/or information about their families. This fear has prevented many students and aspiring students from applying for college financial aid and other important services for which they are eligible. It is vital that schools ensure students are aware of the protections afforded to them through federal and state law.

This guide highlights important federal and state protections over student data, including the recent model policies that were released by the California Attorney General, and offers five concrete ways that schools can protect student data. We encourage you to familiarize yourself with these laws and take definitive steps to protect undocumented and immigrant students at your school.

### **IMPORTANT FEDERAL AND STATE LAWS**

#### **Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, 34 C.F.R. Part 99**

FERPA is a federal law that prohibits schools from disclosing personally identifiable information in a student's "education records" to a third party without the consent of the student (or parent, if the student is under 18 years old). FERPA applies to all schools that receive federal education funds. One **IMPORTANT EXCEPTION** is if the third party presents a court order or judicial subpoena. Additionally, note that it is possible for schools to publicly disclose "directory information," which is defined as information that would not generally be considered harmful or an invasion of privacy if disclosed. Examples of "directory information" could include name, address, telephone listing, and date of birth, plus other specific items the educational institution defines as directory information.

#### **SB 54 (The California Values Act)**

SB 54 disentangles state and local law enforcement agencies, school police, and security departments from federal immigration authorities. This state law prohibits the use of CA resources and personnel to investigate, interrogate, detain, detect, or arrest persons for immigration enforcement purposes and prohibits law enforcement from inquiring into an individual's immigration status.

#### **AB 21 Public Postsecondary Education: the Access to Higher Education for Every Student Bill**

AB 21 **REQUIRES** Cal State University (CSU) campuses, Community Colleges of California (CCC), and independent institutions of higher learning—and **REQUESTS** the University of California (UC) campuses—to adopt and implement the following by March 1, 2019:

- Refrain from disclosing personal information, including immigration status of students, faculty, and staff, unless permitted by state or federal education privacy law.
- Designate a staff person to serve as point of contact for any student, faculty, or staff person subject to an immigration order or inquiry on campus.
- Immediately notify the institution's chancellor or president if the school or institution suspects or becomes aware that an immigration agent is expected to, will enter, or has entered campus.
- Refer all presented documents by immigration to the office of chancellor or president for purposes of verifying their validity.
- Comply with a request by ICE to enter nonpublic areas only if a judicial warrant is presented.
- Immediately notify the emergency contact of student, faculty, or staff if that person is taken into immigration custody.
- Maintain resources for students, faculty, and staff, including a list of free legal service providers.
- Adopt and implement, by March 1, 2019, the Attorney General's model policy developed pursuant to SB 54 or equivalent policy (see below), AND post this policy on school website and email policy to students, faculty, and staff each quarter/semester.
- Make all reasonable and good faith efforts to assist in the retention and reacquisition of campus services, including reenrollment, for undocumented students who are experiencing detention, deportation proceedings, or enforcement actions in relation to a federal immigration order.

### **PUTTING LAWS INTO ACTION: GUIDANCE & MODEL POLICIES**

Under SB 54 and AB 21, the Attorney General of California was charged with providing guidance and model policies on creating safe and accessible school campuses for all California students, regardless of immigration status. The Attorney General has developed a higher education guide, as well as a K-12 school counterpart; every public school must have adopted the Attorney General's model policies or an equivalent by March 1, 2019.

The Attorney General's Model Policies address the following circumstances:

- Gathering and Handling Student Information
- Responding to Law Enforcement Requests for Access to Campuses and Residential Units for Immigration Enforcement Purposes
- Responding to Law Enforcement Requests to Access Student Records for Immigration Enforcement Purposes
- Responding to Immigration Actions Against Students or Family Members

Find the Attorney General's Model Policies Here:

- Higher Education: [Promoting a Safe and Secure Campus for All: Guidance and Model Policies to Assist California's Colleges and Universities in Responding to Immigration Issues](#)
- K-12 Schools: [Promoting a Safe and Secure Learning Environment for All: Guidance and Model Policies to Assist California's K-12 Schools in Responding to Immigration Issues](#)

### **ADDITIONAL GUIDANCE FROM THE UCOP, CSU CHANCELLOR'S OFFICE, AND CCC CHANCELLOR'S OFFICE**

Each system of public higher education institutions in California created a Frequently Asked Questions (FAQ) or Advisory explaining what to do if Immigration and Customs Enforcement (ICE) or Customs and Border Protection (CBP) comes onto campus.

- University of California: [Frequently Asked Questions for University Employees about Possible Federal Immigration Enforcement Actions on University Property](#)
- California State University: [FAQs for California State University Employees about Federal Immigration Enforcement Actions on University Property](#)
- Community Colleges of California: [Advisory 18-01: "Sanctuary" Jurisdiction Legislation Senate Bill 54 \(2017\) and Assembly Bill 21 \(2017\)](#)

### **FIVE WAYS FOR YOU AND YOUR SCHOOL TO PROTECT STUDENT DATA**

1. Familiarize yourself with these resources and share them with your colleagues, administrators, and key departments such as admissions, financial aid, and the registrar.
2. Ensure that your school has reviewed their enrollment, residency, and data collection policies and practices to affirm that any data gathered shall remain confidential consistent with federal and state law and shall be used only for the limited purpose for which it was intended.
3. Ensure that any data collection for educational purposes, including outreach, analysis of milestones, etc. adheres to FERPA and the Attorney General's model policies and recommendations.
4. Post your data/information policies regarding the handling of student data, including directory information, within key departments and on the school's website. Additionally, ensure that annual notice of these policies is emailed to current and prospective students.
5. Develop a protocol to respond to the request for student documents by a federal immigration officer (such as an ICE or CBP agent) or other third party. Be sure to share these protocols throughout the campus.

### **ACKNOWLEDGMENTS**

We wish to thank the **National Immigration Law Center (nilc.org)** for their support in creating this resource.

### **ABOUT US**

Founded in 2006, **Immigrants Rising** transforms individuals and fuels broader changes. With resources and support, undocumented young people are able to get an education, pursue careers, and build a brighter future for themselves and their community. Immigrants Rising is a fiscally-sponsored project of Community Initiatives. For more information, visit [www.immigrantsrising.org](http://www.immigrantsrising.org). For inquiries regarding this resource, please contact Nancy Jodaitis, Director of Higher Education, at [nancy@immigrantsrising.org](mailto:nancy@immigrantsrising.org).