

**Immigration Enforcement on
College Campuses:
Joint Presentation Between
AACRAO and NACUA**

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Panelist

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Immigration Developments

Immigration is a hot topic again!

**Higher Education + Immigration
A Challenging Combination**

Immigration Developments

- Sensitive Locations policy cancelled
 - Schools
 - Churches
 - Courthouses
- No ICE raids yet

Immigration Developments

- Culture of “No”
 - Employment Based visas more challenging
 - “Extreme vetting” at for visas US consular posts
 - Potential Travel Bans
 - Expect reduction in international students

Immigration Developments

- In the News:
 - Individuals detained for Pro-Palestinian Activity
 - Student Visa Cancellations (State Department)
 - Student SEVIS Record Cancellations (DHS/ICE)
 - Circumstances vary – case by case analysis by school for each student

Immigration Developments

- Device Searches at US Ports of Entry
 - Not a new policy
 - Are searches more frequent?
 - How to protect confidential data

Immigration Developments

- Campus Policy – ICE Response
 - FERPA exception – only for sponsored F-1 students and sponsored J-1 exchange visitors
 - Administrative Subpoenas and Warrants
 - Judicial Subpoenas and Warrants

Immigration Developments

- Campus Policy – ICE Response
 - What might an ICE raid look like on campus?
 - Extrapolate from employer ICE enforcement
 - Immigration crimes ICE charges (employment context)
 - Aiding and abetting, concealing, harboring, domestic transporting, obstruction of justice
 - DOJ now mandated to prosecute

Immigration Developments

- Campus Policy for ICE Response:
 - Who is authorized to represent the institution to law enforcement?
 - Administrative Subpoenas and Warrants
 - Judicial Subpoenas and Warrants
 - Consult counsel – warrant or subpoena may be challenged

Immigration Developments

- What should people do if they see ICE on or near campus?
 - Be respectful and courteous
 - Explain campus policy to ICE, call the appropriate person; it's not your role or duty to engage with ICE
 - Do not let strangers into locked areas with your key card
 - Openly record on video if an incident develops

Immigration Developments

- Risk Assessment – Possible Risk Factors for Institutions?
 - Political Activity
 - Records created on campus (undocumented students, DACA employees, TPS or other parole programs)
 - Undocumented population in the community
 - Recent audits (SEVP/SEVIS, ICE/I-9, Dep't of Labor) showing issues

Disclosing Personally Identifiable Information (PII).

**What does that mean for
Education Records &
Immigration Records**

Department of Homeland Security Directive

- Authorizes ICE and CBP enforcement action to take place on college campuses
- Immigration Officials may seek access to PII from education records
- Institutions may only disclose PII from education records to immigration officials in a manner that is compliant with the Family Educational Rights and Privacy Act (FERPA)

FERPA

- FERPA prohibits institutions from disclosing PII from education records without the written consent of the student, unless the disclosure is permitted under an exception to consent
- Institutions may disclose PII from education records to immigration officials to comply with a judicial order or lawfully issued subpoena if certain conditions are met
- Institutions are generally required to record any disclosure to immigration officials

Judicial Order or Subpoena

- Prior to complying with an order or subpoena, an institution must make a reasonable effort to notify the student of the order or subpoena so the student can seek protective action.
- The court may order that the existence of the order or subpoena or the information provided in response to the order or subpoena not be disclosed.
- Institutions must record the disclosure to immigration officials unless the court order that the existence of the order not be disclose.

Judicial Order or Subpoena

- Prior to complying with an order or subpoena, contact the institution's legal counsel to ensure it is
 - Valid
 - Enforceable under State law
- If the institution receives an administrative order or subpoena, it should seek legal advice on how to respond

Directory Information

- An institution may disclose directory information if it has given public notice of the types of information designated as directory information and students have not opted out of the disclosure of directory information
- Directory information includes such information as name, address, telephone number, and date of birth
- Directory information does not include such information as SSN, race, gender, country of citizenship, or religion
- An institution cannot disclose directory information that is combined with non-directory information

Nonimmigrant Visa Classifications

- Federal law requires institutions to report to federal authorities certain information concerning students in the F, J, or M nonimmigrant visa classifications
- Institutions may only report without consent the information required under federal law: student's identity, address, nonimmigrant classification, academic status, and disciplinary action taken against student as a result of a criminal conviction
- FERPA does apply to information of nonimmigrant student exchange visitors, unless the Attorney General determines information is needed to carry out SEVP.

Recommendations for Institutions

- Establish institutional policies and procedures for responding to judicial orders and subpoenas
- Designate a point-of-contact employees to should contact upon receiving an order or subpoena
- Seek legal advice to determine if the order or subpoena is consistent with state law before complying
- Establish procedures for notifying a student of an order or subpoena
- Record disclosure to immigration official unless prohibited by the court

AACRAO Resource Page

Immigration Enforcement on College Campuses and FERPA

<https://www.aacrao.org/advocacy/issues/immigration-enforcement-on-college-campuses-and-ferpa>

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