



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL
ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

MAURA HEALEY
ATTORNEY GENERAL

(617) 727-2200
(617) 727-4765 TTY
www.mass.gov/ago

**Attorney General Advisory: Information for Massachusetts
Colleges and Universities Regarding Immigrant Students**

Introduction

The Office of the Attorney General provides this guidance to the Commonwealth's public and private colleges and universities ("Institutions of Higher Education" or "IHEs").¹ This advisory is intended to address issues that may affect immigrant students at IHEs, including those who are undocumented, or who have been granted temporary legal protection, such as grantees of the Deferred Action for Childhood Arrivals ("DACA") program² or those with Temporary Protected Status ("TPS"). This advisory is not intended to address questions relating to international students studying in Massachusetts on F-1, J-1, or similar visas.

While we are not aware of any increased immigration detention or deportation activity on IHE campuses in Massachusetts, this Office has heard from many who are concerned about the potential impact of recent changes to federal immigration policies and enforcement priorities as well as Executive Orders issued by the President. Concerns raised include ways to support immigrant students on campus, the need for clear information and transparency concerning an IHE's policies affecting immigrant students, a potential increase of on-campus enforcement activities by federal immigration officers, and the ability of IHEs to protect information about students' immigration status. This advisory seeks to address these concerns and suggest aspirational methods by which IHEs can foster open and inclusive campuses. We encourage IHEs to consult with counsel to develop policies and protocols consistent with this advisory.

This advisory is not legal advice or a formal legal opinion of the Attorney General. A university, college, or student should consult with legal counsel about specific concerns.

I. Inclusion and Support for Immigrants on Campus

A. Admission and Participation in Campus Activities

Each year, approximately 65,000 undocumented students who have lived in the United States for at least five years graduate from American high schools.³ Many of these students were brought to the United States at a young age, have lived in this country for most of their lives, grew up

¹ Please see previously issued guidance to [health care providers](#) and [public K-12 schools](#) for additional information on related immigration issues.

² On September 5, 2017, the federal government announced its intention to end the DACA program. If necessary, this advisory will be updated to reflect future changes to DACA.

³ [Factsheet: An Overview of College-Bound Undocumented Students](#), Educators for Fair Consideration.

speaking English, and attended primary and secondary school in the U.S. Many undocumented high school graduates wish to further their education and some go on to attend an IHE. Particularly given recent actions by the federal administration, even those immigrant students with some type of legal protection or recognition, be it through DACA or TPS, experience tremendous uncertainty about their access to higher education. Many also must overcome significant barriers – economic, or otherwise – to enroll at and continue to attend IHEs.

Neither federal law nor Massachusetts law prohibits the admission or enrollment of undocumented immigrants at IHEs,⁴ nor are there any legal restrictions on an undocumented student’s ability to fully participate in the campus community and extracurricular programs.⁵

B. Proactive Policies to Support Immigrant Students

Many IHEs wish to provide particular support for immigrant students so that they may take full advantage of the academic and social programs offered. While some have recently called on IHEs to declare themselves “sanctuary campuses,” there is no legal definition of “sanctuary campus.” Since the term “sanctuary campus” is not a legal term, it confers no actual legal protection upon a campus community.⁶ IHEs may choose to support immigrant students in myriad ways, such as those listed below, without designating themselves a “sanctuary campus.”⁷ To be clear, none of the suggestions below is required by federal or state law. Nor are they specifically prohibited. Taking some of these steps may provide needed support to immigrant students and foster their sense of inclusion on campus.

As a starting point, IHEs should be sure to provide clear and accurate information to immigrant students about admission and enrollment. For both prospective and current students, IHEs should consider providing information uniquely relevant to immigrant students on a dedicated webpage. An IHE may also consider providing training to staff and faculty in order to increase sensitivity to issues that affect immigrant students’ ability to successfully complete their degrees and fully participate in campus life. To further that goal, IHEs may consider organizing a task force, peer mentorship program, or hotline for immigrant students. IHEs may also consider training a campus point of contact specifically for immigrant students. Ideally, such a position would be distinct from an IHE’s international student support staff. Such an advisor could

⁴ Questions regarding an immigrant’s eligibility for financial aid, work-study, and campus employment are more complicated to answer and outside of the scope of this advisory. IHEs and students should speak to legal counsel or the appropriate campus point person for clarity on these issues.

⁵ Note, however, that undocumented students may face challenges upon completion of certain majors, such as nursing or teaching, which require certification prior to working in the field of study. This also applies to graduate degrees requiring a professional license in order to practice. IHEs should provide students with clear guidance about certification requirements at the time of enrollment or selection of a major.

⁶ See, e.g., Elizabeth Redden, [Can a Campus Be a Sanctuary?](#), Inside Higher Ed, Nov. 15, 2016. An IHE might instead consider using a different term, such as “welcoming” campus.

⁷ Because of recent threats to eliminate federal funding for “sanctuary cities,” IHEs may be concerned that, by declaring themselves “sanctuary campuses,” their access to federal funding—most significantly the grants and loans administered through Title IV of the Higher Education Act—could be at risk. The enrollment of undocumented students does not, under the terms of the law, render an IHE ineligible for Title IV funding. IHEs should speak with legal counsel about any potential concerns.

inform immigrant students of the availability of private scholarships without age, immigration status, or full-time student status restrictions. Similarly, an advisor could inform immigrant students of relevant internships and even conduct outreach to internship coordinators on behalf of immigrant students.

Because of financial challenges as well as a lack of access to federal loans, many immigrant students struggle to remain enrolled over a sustained period of time. IHEs can also support immigrant students by informing them of services on campus that are available to all students, often at a low cost or for free. Depending on the IHE, such services may include tutoring sessions, writing workshops, mental health counseling, resume writing workshops, textbook lending libraries, food pantries, student clubs, and legal advice.

II. Federal Immigration Activities at IHEs

A. Immigration Detention or Deportation Activities on Campus

i. *Sensitive Locations*

Under the current policy of U.S. Immigrations and Customs Enforcement (“ICE”), certain places, including IHEs, are deemed “sensitive locations” where immigration enforcement activities such as surveillance, interviews, searches, and arrests are generally prohibited absent special circumstances or prior approval.⁸ The purpose of this policy is to ensure that immigrants can access the important services offered at sensitive locations, including IHEs, without fear of deportation.⁹

While IHEs are deemed sensitive locations for immigration detention or deportation activities, immigration officers may be present on campus for reasons unrelated to such enforcement. For example, approximately 60,000 international students study in Massachusetts each year on F-1, J-1, or similar visas. IHEs are required to report certain information about international students to immigration officers, including ICE officers, who may visit campus to meet with such students and IHE staff. As part of administering international student visas, immigration officers may engage in routine regulatory enforcement site visits to campuses. While members of IHE communities may feel threatened by an immigration officer’s presence on campus for any reason, incorrectly assuming that federal authorities are present on campus to remove individuals or conduct a raid could spark further panic and anxiety. Therefore, IHEs may wish to proactively inform their communities that immigration officers may be present on campus for reasons unrelated to detention or deportation,¹⁰ develop a consistent protocol to use when immigration officers are present on campus, and refrain from taking actions that may unnecessarily alarm students.

⁸ See [Memorandum of ICE Director](#), John Morton, Policy Number 10029.2, October 25, 2011. This policy is subject to change.

⁹ Immigration and Customs Enforcement, [FAQ on Sensitive Locations and Courthouse Arrests](#).

¹⁰ By contrast, when immigration officers are present on campus to detain or deport immigrants, IHEs should consult with legal counsel before communicating to the community regarding the detention or deportation operation.

ii. *Proactive Steps Regarding Immigration Detention or Deportation*

We have no present reason to believe that ICE intends to formally change its “sensitive locations” policy. However, due to increased immigration enforcement actions in Massachusetts and throughout the country, IHEs may take proactive steps to prepare for immigration detention or deportation activities on campus. IHEs may develop protocols to be used in the event immigration officers request access to a space on campus or seek to interview or take custody of a member of a campus community. As an example, IHEs could instruct relevant members of their communities to follow a protocol¹¹ similar to the one below in the event an immigration officer requests access to an immigrant student. In such a situation, so long as reasonable in the circumstance, IHEs may direct their members to take the following steps *before* providing an immigration officer with the requested access:

- First, ask the immigration officer for his or her name, identification number, and the name of the agency with which he or she is affiliated;
- Second, ask the immigration officer for a copy of any warrant, subpoena, or court order he or she has;
- Third, inform the immigration officer that you are not attempting to obstruct his or her actions, but you are not authorized to respond to the request and need to contact the appropriate campus person before you can provide access; and
- Fourth, ask the immigration officer to wait outside while you contact your IHE’s campus police, legal counsel, or other appropriate point person.

To maximize the utility of such protocols, IHEs can disseminate them widely to the campus community, including by publishing them on their websites and by distributing them directly to students, faculty, and staff.

iii. *Distinction Between Public and Private Spaces*

IHEs should be mindful of which parts of campus are public spaces and which are private. Consistent with requirements of constitutional law, IHEs generally may not prohibit immigration officers from accessing the public portions of their campuses, but may restrict them from accessing private spaces without a judicial warrant. Different types of warrants carry different authority and legal consequences. Judicial warrants are signed by a judge or court officer, while administrative warrants may be signed by an immigration officer. Generally, administrative warrants do not authorize immigration officers to enter private areas of an IHE without consent whereas judicial warrants do. An IHE’s legal counsel is best suited to determine the type of warrant and its scope.

Even on public campuses, private spaces may include lecture halls while classes are in session, faculty and staff offices, dormitories, research laboratories, kitchens, locker rooms, and

¹¹ This protocol is based primarily on principles adopted by the University of California system. Should an IHE choose to develop protocols, legal counsel should ensure that such protocols comply with applicable laws. Among other things, federal law prohibits individuals from hiding evidence or individuals who are the subject of law enforcement activity or interfering with an arrest. *See, e.g.*, 8 U.S.C. § 1324.

maintenance areas. Legal counsel for each IHE should determine which spaces are public and which are private and may inform the campus community of the distinction and its importance.

B. Requests for Information

i. *Protections Granted by Federal Privacy Law*

There is some concern that immigration officers may seek information about a student's immigration or citizenship status from an IHE. In general, federal law prohibits state and local governmental entities and actors from creating policies that restrict sharing information about individuals' immigration status with federal immigration officials. *See* 8 U.S.C. § 1373. For both public and private IHEs, however, the Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g, provides some protection from disclosure absent legal process, such as a subpoena or warrant. FERPA protects personally identifiable information contained in a student's education records, including disciplinary records, from disclosure to third parties without a court order or subpoena. 34 C.F.R. § 99.3. FERPA applies to IHEs that receive federal funds through the U.S. Department of Education, including Title IV financial aid. With some exceptions, IHEs cannot disclose personally identifiable information without a student's written consent.

Under FERPA, an IHE may disclose information it has designated "directory information," such as a student's name, address, phone number, grade level, and dates of attendance as long as the IHE has notified students that it may disclose this information and has provided an opportunity to opt out of disclosure. *Id.* §§ 99.3, 99.31(a)(11). Directory information does not include citizenship or immigration status.¹²

When an IHE is subject to a judicial order or lawfully issued subpoena, it can be required to disclose personally identifiable information without student consent. *Id.* § 99.31(a)(9). While IHEs must generally provide the affected student notice and a reasonable opportunity to seek a protective order, there are particular circumstances in which IHEs may be ordered not to disclose the request to a student. 20 U.S.C. §§ 1232g(b)(1)(J) and g(j). To best protect students' information and to ensure students are informed when immigration officers seek information about them, IHEs may require staff to contact legal counsel upon receipt of any request for information from a law enforcement officer, including a request contained in an order, subpoena, or other document the officer may present. In those instances when legal counsel makes a determination to release the requested information, IHEs may keep logs of any information released and ensure that only a designated point person releases the information.

ii. *Proactive Steps to Protect Students' Immigration Information*

While FERPA provides some protections for students' personally identifiable information, IHEs may adopt proactive measures as additional layers of security. For example, IHEs may review the information they collect from students to ensure they do not unnecessarily obtain information about a student's (or family members') immigration or citizenship status without a compelling

¹² This advisory is not intended to address questions relating to international students studying in Massachusetts on F-1, J-1, or similar visas. The disclosure requirements for such students may be different.

reason.¹³ IHEs may also limit the types of information they designate as “directory” by excluding information that may be related to citizenship or immigration, such as birthplace or language spoken at home. In addition, IHEs may provide students with a regular opportunity to opt out of the disclosure of a student’s directory information and may provide this notice in easily accessible formats such as in an academic catalog or on the school’s website.

Furthermore, IHEs may provide periodic training to all faculty and staff on privacy and confidentiality policies. Such training may include specific steps to follow if an immigration officer requests information about a student, including that all such requests should be directed to the IHE’s legal counsel. IHEs may similarly choose to review any existing contracts with immigration agencies regarding information sharing to ensure that immigration status information is shared only when required by a valid subpoena or court order.

C. The Role of Campus Police

IHEs should ensure that their campus police policies and practices are consistent with the recent Supreme Judicial Court decision in *Lunn v. Commonwealth*, which held that law enforcement officers may not hold an individual “solely on the basis of a Federal civil immigration detainer.”¹⁴ IHEs also should consider publicly explaining the authority of campus police and what role, if any, campus police will have in immigration enforcement.¹⁵ Immigrant students may be more willing to come forward with information about crimes or other concerns on campus when they do not view campus police as a threat.

Toward that goal, campus police may also issue statements to demonstrate support for immigrant students. For example, campus police may affirm that they will not inquire about immigration status except where required by law and that they will not investigate or detain individuals solely on the basis of uncertain immigration status. Such affirmations may increase trust among immigrant students and campus police and improve the efficacy of campus law enforcement.

Resources

IHEs and immigrant students may find the following resources helpful.

- [Student Immigrant Movement](#)
- [United We Dream](#)
- [U.S. Department of Education, Supporting Undocumented Youth](#)
- [Demos, Sanctuary, Safety and Community](#)
- [Massachusetts Immigrant and Refugee Advocacy Coalition](#)
- [University of California, Principles in Support of Undocumented Members](#)
- [National Immigration Law Center](#)
- [Greater Boston Legal Services](#)

¹³ To the extent IHEs already possess information about students’ immigration status, they should not destroy or delete any relevant documents before consulting with legal counsel to ensure they are in compliance with applicable laws. See, e.g., 18 U.S.C. § 1519.

¹⁴ *Lunn v. Commonwealth*, 2017 WL 3122363, at *13 (Mass. 2017).

¹⁵ Generally speaking, the fact that an individual is present in the United States without legal status is a civil, not a criminal, matter. *Arizona v. United States*, 567 U.S. 387, 407 (2012).