OVERVIEW

Many undocumented and immigrant students attending secondary or post-secondary 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.

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. This is also true when the collection and handling of such data is necessary for 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 when working with student data.

This guide highlights important federal and state laws regarding protecting student data and creating a safe environment on campus, including model policies released by California’s Attorney General. Guidance for safely and effectively using student data for legitimate educational purposes is also included. Additionally, the concrete steps listed on the last page provide clear recommendations about how to put these protections into practice. By familiarizing yourself with this content and taking definitive steps to ensure the laws are correctly implemented, you will be able to provide significant protections for undocumented and immigrant students at your school.

IMPORTANT FEDERAL AND STATE LAWS

Family Educational Rights and Privacy Act (FERPA)


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. However, if the third party presents a court order or judicial subpoena, schools are required to release information, even without the consent of the student or parent.

20 U.S.C. § 1232g, 34 C.F.R. Part 99.31

FERPA states that an educational agency or institution may disclose personally identifiable information from an education record of a student without the consent required if the disclosure is to other school officials, including teachers, within the agency or institution whom the agency or institution has determined to have legitimate educational interests. This is also known as the School Official Exception. However, an educational agency or institution must use reasonable methods to ensure that school officials obtain access only to those education records in which they have legitimate educational interests. [emphasis added]


FERPA states that an educational agency or institution may disclose directory information if it has given public notice to parents of students in attendance and eligible students in attendance at the agency or institution. ['Directory information' 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 is a California law that declares immigrants are valuable and essential members of the California community. This law’s primary elements include, but are not limited to:
• Disentangling state and local law enforcement agencies, school police, and security departments from federal immigration authorities.
• Prohibiting the use of CA resources and personnel to investigate, interrogate, detain, detect, or arrest persons for immigration enforcement purposes.
• Prohibiting law enforcement from inquiring into an individual’s immigration status.
• Requiring the CA Attorney General, in consultation with the appropriate stakeholders, to publish model policies limiting assistance with immigration enforcement.

**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 the immigration status of students, faculty, and staff, unless permitted by state or federal education privacy law.
• Designate a staff person to serve as a 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 the 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 AND 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 & 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 trained personnel has reviewed your campus’ 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 across the campus.

FIVE WAYS TO PROTECT STUDENT DATA WHILE USING IT FOR LEGITIMATE EDUCATIONAL PURPOSES (AS PERMITTED BY FERPA’S SCHOOL OFFICIAL EXCEPTION 99.31)

1. Use this resource and others to develop policies and procedures regarding the legitimate use of any data. Share it with all appropriate departments.
2. Ensure that everyone involved in these efforts has received extensive training in federal and state laws prior to receiving access to any data.
3. Limit access to protected data to no more than 2-3 trusted student service professionals who have received adequate training and are committed to protecting it.
4. Be sure that all files are password protected and passwords are regularly changed.
5. Verify that all information will be accessed and stored only on institutional servers.

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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 [immigrantsrising.org](#). For inquiries regarding this resource, please contact Nancy Jodaitis, Director of Higher Education, at nancy@immigrantsrising.org.