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**MEMORANDUM**

DATE: January 17, 2025  
TO: College and University Presidents  
FROM: Aileen Miller, Education Division Chief<sup>1</sup>  
SUBJECT: **Immigration Related Questions**

**CONFIDENTIAL ATTORNEY/CLIENT PRIVILEGED COMMUNICATION  
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This is the second legal memoranda addressing some frequently asked questions (FAQ) posed to the Attorney General's Education Division on immigration related concerns and issues. These FAQ responses are designed to provide Colleges and Universities with a foundational understanding of the legal requirements and limitations relative to immigration enforcement and protection of immigration related data. The answers provided below may change depending on specific circumstances.

*This FAQ is not a substitute for obtaining more specific legal advice from the College or University's assigned Assistant Attorney General (AAG).* These issues can be highly fact specific and involve other laws and rights depending on the circumstances, which can impact the College or University's legal obligations. As such, you should consult with legal counsel as situations arise.

The following topics and questions are addressed in this memorandum:

**A. ACCESS TO PEOPLE AND PROPERTY**

1. [Can immigration enforcement authorities be excluded from public spaces on campus?](#)
2. [Who has authority to allow immigration enforcement authorities into the non-public spaces on campus?](#)

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<sup>1</sup> This Memorandum was drafted or contributed to by a number of Assistant Attorneys' General including Sharon English, Ellen Evans, Nancy Garland, Kerena Higgins, Jennifer Marion, Julie Nicoll, and Chalia Stallings-Ala'ilima.

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3. Can a faculty member invite immigration enforcement authorities into a classroom?
4. Can federal immigration authorities have a table at a career fair?
5. Are there other instances in which federal immigration authorities have a right or authority to access campus and/or information?

## B. INFORMATION AND RECORDS

6. Are employees required to provide immigration enforcement authorities with personally identifiable information on request?
7. Are Colleges required to provide records on request of immigration enforcement authorities?
8. Does the Family Educational Rights and Privacy Act (FERPA) apply when immigration enforcement authorities request records?
9. Can the College or its employees provide Directory Information of its students to immigration enforcement authorities?
10. Are Colleges and Universities required to provide lists of students who do not have a social security number?
11. What information can the College or University collect about its students, employees and others as it relates to their immigration status?
12. When are Colleges or Universities legally required to collect citizenship or immigration information?

12a. Do Colleges have to collect citizenship or immigration information for students with foreign visa status?

12b. What is the College's responsibility regarding foreign nationals (students and scholars with F-1 or J-1 status) if immigration enforcement authorities conducts an unannounced visit?

12c. How can Colleges protect nonimmigrant student information while complying with SEVIS requirements for students with foreign visa status?

## C. FINANCIAL AID

13. What protections exist for information disclosed in the FAFSA or WASFA applications?

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## **FREQUENTLY ASKED QUESTIONS: IMMIGRATION RELATED CONCERNS**

### **A. ACCESS TO PEOPLE AND PROPERTY**

#### **1. Can immigration enforcement authorities be excluded from public spaces on campus?**

No. As public Colleges and Universities, much of the campus is open to the general public. Colleges and Universities do not have authority to prohibit immigration enforcement authorities from accessing those public spaces on campus. Colleges and Universities may want to review and educate community members about their practices in terms of what areas are open to the public so that there is clarity about who is authorized to access specific spaces and under what circumstances.

#### **2. Who has authority to allow immigration enforcement authorities into the non-public spaces on campus?**

Non-public spaces are those spaces on campus to which access is limited to specified members of the campus community. Examples of non-public spaces are offices, restricted work areas, classrooms, and/or residential living spaces.<sup>2</sup>

In accordance with state law, College and University policies and procedures should identify the individual(s) with the authority to grant access to non-public spaces and in what circumstances. Institutions may want to consult with their assigned AAG as part of this process. Any such policies and procedures should comply with the Keep Washington Working Act (KWW) and its prohibition on use of state “agency funds, facilities, property, equipment, or personnel to investigate, enforce, cooperate with, or assist in the investigation or enforcement of any federal registration or surveillance programs or any other laws, rules, or policies that target Washington residents solely on the basis of race, religion, immigration, or citizenship status, or national or ethnic origin.” [RCW 43.17.425](#)(1).<sup>3</sup> Limitations on access may also be necessary to protect private or confidential information and for purposes of compliance with the Family Educational Rights and Privacy Act (FERPA).

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<sup>2</sup> Generally, students have authority to consent to entry by individuals, including law enforcement authorities, into their personal living spaces.

<sup>3</sup> This prohibition is subject to the exceptions found in [RCW 43.17.425](#)(3), which states that the “collection, use, or disclosure of information” is not prohibited if it is “required to comply with state or federal law”; “in response to a lawfully issued court order”; “necessary to perform agency duties, functions, or other business, as permitted by statute or rule, conducted by the agency that is not related to immigration enforcement”; “required to comply with policies, grants, waivers, or other requirements necessary to maintain funding”; or “in the form of deidentified or aggregated data, including census data.”

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While College and University employees cannot assist federal immigration authorities' enforcement activities, they should not hinder federal immigration authorities in the performance of those duties. If federal immigration authorities have a valid judicial warrant, prompt compliance is usually required. College and University employees should ask the federal immigration authority for their name, identification number, agency affiliation and a copy of any warrant, court order, or subpoena they have. Employees should inform the federal immigration authorities that they need to get the documents reviewed by the Designee and/or an AAG for legal sufficiency and that they are not obstructing the immigration authority's process.

To the greatest extent possible, College and University employees should direct federal immigration authorities to the institution's Designee for the purpose of verifying the legality and scope of the documents presented by federal immigration authorities.

Federal immigration authorities use a number of documents in the performance of their duties. Depending on the nature of these documents, they will seek or authorize access to a person, location, or records/evidence. Some of these documents are not immediately enforceable or are simply mechanisms for requesting consent to access locations, records, data, or evidence. For example, civil immigration warrants do not grant special power to compel the College or University to provide access to non-public spaces on campus or information/evidence. "*Civil immigration warrants*" are official documents seeking *consent* to access information or property. See [AGO KWW Guidance, Model Policies, and Best Practices](#), (defining civil immigration warrant (p. 3) and samples of civil immigration warrants (pp. 42-44)).

On the other hand, a court order or warrant signed by an Article III judge will generally require prompt or immediate compliance and authorizes the immigration enforcement official to search and seize the individual or property as described in the warrant. See [AGO KWW Guidance, Model Policies, and Best Practices](#), (defining court order and judicial warrant (p. 3)). Immigration judges are not Article III judges.

The College or University's Designee, in consultation with the assigned AAG, should be able to discern the nature of the document and any associated legal requirements. In all instances, a copy of the document(s) and the information necessary to complete the Immigration Enforcement Activity Log, Appendix A, should be obtained.

### **3. Can a faculty member invite immigration enforcement authorities into a classroom?**

It depends on the purpose for the invitation and the College or University policy. For example, a faulty member may be able to invite an immigration enforcement authority's representative into a classroom as a guest lecturer (i.e. not to perform immigration enforcement) if it is consistent with College or University policy and procedure, and germane to the course work. Should such a

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circumstance arise, it may have First Amendment and Academic Freedom implications, and it is recommended that you consult with your assigned AAG.

While federal law (8 U.S.C. § 1373) prohibits state and local governments from barring staff from sending immigration or citizenship status information to, or receiving that information from, federal immigration authorities, or “maintaining” such information, no such clear restriction applies to accessing property. Colleges and Universities are therefore allowed to implement policies and procedures to address access to campus by federal immigration authorities and require employees to comply with such policies and procedures. If adoption of such a policy changes or has the potential to impact working conditions or other labor rights, then it may be necessary to bargain the change or give notice and an opportunity to bargain; your AAG should be consulted in such circumstances.

As noted above, under state law, faculty cannot authorize use of “agency funds, **facilities, property**, equipment, or personnel to investigate, enforce, cooperate with, or assist in the investigation or enforcement of any federal registration or surveillance programs or any other laws, rules, or policies that target Washington residents solely on the basis of race, religion, immigration, or citizenship status, or national or ethnic origin.” [RCW 43.17.425\(1\)](#); [RCW 43.17.420\(15\)](#).

If faculty is presented with ***a judicially authorized warrant*** for entry into a classroom, they should not obstruct entry. They should contact the College or University Designee, obtain a copy of the warrant, comply with the College or University’s Policy, and direct the officers to the College or University Designee. This is important so that the Designee can ascertain the validity of the warrant.

Colleges and Universities should only grant access by immigration enforcement authorities after being presented with a valid court order or judicial warrant. Under all such circumstances, the designated college official should be informed of the request for access and consult with their assigned AAG.

#### **4. Can federal immigration authorities have a table at a career fair?**

Yes. Federal law (10 U.S.C. § 983) prohibits recipients of federal funds from denying representatives of the secretary of a military department or the Secretary of Homeland Security access to campus/students for recruiting in a manner that is at least equal in quality and scope to the access to campuses and to students that is provided to any other employer.

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### **5. Are there other instances in which federal immigration authorities have a right or authority to access campus and/or information?**

Yes. While state law (KWW) prohibits state agencies from using facilities and property to assist in immigration enforcement, subject to exceptions identified in footnote 2, not every action taken by an immigration officer at a college or university campus is considered an enforcement action: immigration officers such as Immigration and Customs Enforcement (immigration enforcement authorities) or U.S. Citizenship and Immigration Services (USCIS) or others may arrive unannounced to inspect I-9 records or conduct an administrative site visit for a compliance review. However, Colleges and Universities should have policies for such required interactions in order to ensure they are acting within the limits set in both federal and state law.

It is important for individuals who greet visitors to know that they are not necessarily or legally required to do whatever immigration officers request. Employees should be trained to direct immigration officers to the appropriate College or University employee. They should also be trained to understand that they may not have authority to give consent to certain requests from immigration officers and it may not always be clear that consent is being sought. In many instances, all campus employees need to do is collect information from the officers and then contact the designated College or University official who is authorized to represent the institution in the situation. *See Sample Instructions for Front Line Employees.*

## **B. INFORMATION AND RECORDS**

### **6. Are employees required to provide immigration enforcement authorities with personally identifiable information on request?**

No, employees are not required to provide immigration enforcement officials with personally identifiable information (PII) upon request (i.e., just because they ask). In fact, state law *prohibits* College and University employees from sharing, providing, or disclosing personal information about any person for immigrant enforcement purposes without a lawfully-issued court order, judicial warrant, other compelled process, or approval by the school's designee.

Moreover, because immigrants (both documented and undocumented) generally have the same privacy rights as non-immigrants, doing so without a lawfully-issued court order or judicial warrant may violate other federal or state laws. For example, FERPA prohibits disclosure of PII in student education records absent written consent or an applicable exception. If the request for information is contained in or accompanied by a public records request, judicial subpoena, or similar, please consult with your institution's Designee, or AAG.

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**7. Are Colleges required to provide records on request of immigration enforcement authorities?**

It depends.

State law prohibits a College or University, or its volunteers and employees from sharing, providing, or disclosing personal information—including by disclosing records—about any person for immigrant enforcement purposes without a court order, judicial warrant, other compelled process, or approval by the school’s designee. And, immigration enforcement officers can submit public records requests. If an immigration enforcement officer seeks to submit a public records request, they should be directed to the appropriate process.

The College or University should ensure that all employees are trained on how to respond to records requests from immigration enforcement officials, including reporting the request to the individual designated by the College or University for such purposes. All requests and responsive documents should be reviewed to ensure compliance with state law such as KWW, the Public Records Act (PRA), and federal law, such as FERPA, and any other applicable legal requirements.

**8. Does the Family Educational Rights and Privacy Act (FERPA) apply when immigration enforcement authorities request records?**

Yes, FERPA applies to the education records of all students. If the record being requested is an education record, FERPA only permits the College or University to release the records if it obtains consent from the affected student(s) or in response to a lawfully-issued warrant, court order, or subpoena, or if another exception to student consent to disclosure applies.

FERPA does not define “lawfully-issued” but Department of Education guidance has clarified that a subpoena that complies with state law would be considered “lawfully issued.” FERPA requires that the College or University first give reasonable notice to the affected student(s) of the receipt of the subpoena, court order, or warrant so the student(s) have the opportunity to pursue an injunction or to quash the subpoena. Reasonable notice will take into account the requirements of the court order or lawfully-issued subpoena. Notice cannot be given if the subpoena, court order, or warrant prohibits it.

Colleges or Universities should designate a single college official to review and handle subpoenas, warrants, and other court orders, and ensure that all College employees know who that person is and that they are required to notify them immediately if they receive such a document.

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On receipt of a subpoena, court order, or warrant, College or University employees should consult with their AAG to review the validity and scope of the documents and help ascertain whether KWW and FERPA requirements have been satisfied.

**9. Can the College or its employees provide Directory Information of its students to immigration enforcement authorities?**

Directory information is information contained in a student's education record that, if disclosed, would generally not be considered harmful or an invasion of privacy. Under FERPA, schools may designate information as "directory information" that can be released in response to a public records request unless the student has requested that it not be.

The State Board for Community and Technical Colleges has designated directory information for the entire CTC system: student's name; major field of study; enrollment status; dates of attendance; participation in recognized sports; degree or certificate earned; and term degree or certificate awarded honors. Disclosure of any other information would require the affected student's consent before release in response to a public records request. Recall also that even if the response to a request is "Directory Information," if responding to the request reveals non-Directory Information about the student then that disclosure would be governed by FERPA student consent rules and their exceptions. E.g., if a request asks for a list of "international students," even if the disclosure would be directory information, it is not allowable under FERPA's Directory Information exception as status as an international student is not directory information. Colleges or Universities that are not within the CTC system should review their own definition of directory information.

Under FERPA, the College must provide students with notice of the designated directory information and of their opportunity to opt out of having their directory information being released to any requestors. Typically, schools do this as part of their Annual Notice, if that has occurred, no additional notice to students on a per-request basis is required. If a student has opted out of Directory Information, a school cannot provide any information under the Directory Information exception to student consent, including confirming whether or not the individual is or was a student.

**10. Are Colleges and Universities required to provide lists of students who do not have a social security number?**

Under the PRA, colleges are only required to provide records that already exist. If a College or University does not have a list of students who do not have a social security number, the PRA does not require creating one in order to respond to a request. Further, as noted above, "not having a social security number" is not directory information, so any disclosure of education

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records or information from education records would need to meet a separate exception to student consent under FERPA.

If a College or University receives a subpoena or warrant demanding this information, we strongly encourage the school to consult with its AAG about its legal obligations.

Colleges and Universities are strongly encouraged to consider their practices in terms of collecting and maintaining records that include social security numbers, taxpayer IDs, or any other information that may inadvertently disclose a student's immigration status. If not legally required to be collected, state law discourages the practice. Colleges and Universities may also want to refrain from doing so and may also want to make sure it is timely in compliance with the State's record retention schedules.

**11. What information can the College or University collect about its students, employees and others as it relates to their immigration status?**

State law prohibits Colleges and Universities and their employees from inquiring about, requesting, or collecting any information about the immigration or citizenship status or place of birth of any person accessing services provided by, or in connection with the institution, absent a legal requirement to do so. Examples of instances in which this information might be legally required would be for purposes of I-9 or Student and Exchange Visitor Information Systems compliance (discussed below).

Residency officers or related staff may review information voluntarily provided by students or others for the purpose of determining whether a student is qualified for in-state tuition rates. However, review of information does not necessarily mean that the information must be collected, and staff should be mindful of this distinction.

In cases where the College or University is required to collect information related to a student's national origin for federal reporting requirements for special programs, KWW requires the school to take certain steps prior to collecting the information to protect the information consistent with state and federal law. These steps include considering program or documentation alternatives, explaining the federal reporting requirements to the affected students, getting consent from the student before collecting the information, and maintaining the information separately from any of the student's other education records.

**12. When are Colleges or Universities legally required to collect citizenship or immigration information?**

In order to enroll students in exchange visitor programs or F or M nonimmigrant students, Colleges or Universities must enter information into the [Student and Exchange Visitor Information System](#) (SEVIS), which is the online system that the U.S. Department of Homeland

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Security (DHS) uses to maintain information on Student and Exchange Visitor Program (SEVP). Only schools certified by the SEVP can enroll F or M nonimmigrant students, U.S. Department of State-designated Exchange Visitor Program sponsors and J-1 visa Exchange Visitor Program participants.

Schools that participate in SEVP must have a “designated school official” (DSO) or a “principal designated school official” (PDSO) who is the point of contact for any issue relating to the College or University’s compliance with SEVP regulations. Periodically, schools must also report certain information to SEVP through SEVIS. Schools must provide confirmation that a student initially arrived in the United States, confirmation that the student is active each semester, transfer information, changes in students’ status, and general information regarding students’ employment, academic programs, and dependents. Once an international student is accepted into SEVP, a school issues a Form I-20, Certificate of Eligibility for Nonimmigrant Student Status.

### **12.a. Do Colleges have to collect citizenship or immigration information for students with foreign visa status?**

While generally Colleges and Universities are not required to collect citizenship or immigration information, SEVIS does require those institutions to retain information on individuals with foreign student visa status (F, J and M visas) for the purpose of reporting information to SEVIS. The school's legal reporting responsibility includes student addresses, courses of study, enrollment, employment, and compliance with the terms of the student status. The DSO must update and maintain the SEVIS records of nonimmigrant students in F and M visa categories and comply with [reporting requirements and time limits for completing the tasks](#).

### **12.b. What is the College’s responsibility regarding foreign nationals (students and scholars with F-1 or J-1 status) if immigration enforcement authorities conduct an unannounced visit?**

Colleges may not refuse to report information concerning an F or M nonimmigrant student or a J nonimmigrant exchange visitor that the College is required to report to comply with SEVP regulations. A FERPA exemption permits institutions to comply with information requests from the DHS and its Immigration and Customs Enforcement Bureau (ICE) in order to comply with the requirements of SEVIS. The College or University Designee should be notified of this activity and the Immigration Enforcement Log should be completed for this type of visit.

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**12.c. How can Colleges protect nonimmigrant student information while complying with SEVIS requirements for students with foreign visa status?**

Because information on nonimmigrant students with certain foreign visas must be retained and reported to SEVIS, Colleges and Universities should keep separate all information on individuals with foreign student visa status (F, J and M visas) retained for the purpose of reporting to SEVIS from general enrollment platforms or other directory information.

**C. FINANCIAL AID**

**13. What protections exist for information disclosed in the FAFSA or WASFA applications?**

**FAFSA**

The Higher Education Act prohibits use of Free Application for Federal Student Aid (FAFSA) data for any purpose other than determining and awarding federal financial assistance. Nevertheless, federal law relied upon by the US Department of Education to protect FAFSA data allows for disclosure “to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought.” 5 U.S.C. 552a(b)(7). Disclosure is also allowed when it is “pursuant to the order of a court of competent jurisdiction.” 5 U.S.C. 552a(b)(12). This authority could be used by federal immigration authorities to obtain FAFSA data.<sup>4</sup>

Once a College or University receives FAFSA information it is subject protection under FERPA. As discussed above, such information will not be disclosed absent consent or another FERPA exception. The exception most likely applicable in this context is the lawfully issued subpoena, court order, or warrant exception discussed in Section A2, above.

**WASFA**

The Washington Student Achievement Council (WSAC), which is a Washington state agency, administers the Washington Application for state Financial Aid (WASFA). As a state agency,

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<sup>4</sup> We were asked about best practices for mixed-status families. Mixed-status families are households with family members who have different citizenship or immigration status. Each mixed-status family is best situated to know their own circumstances, risks, and concerns about potential disclosure of immigration status as a result of completing the FAFSA application and they should make a considered decision about whether to submit their identifying information to the government. In making their decisions, they should understand that it is possible for immigration enforcement authorities to obtain FAFSA data under current law.

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WSAC is subject to the prohibitions and protections set out in RCW 43.17.425(1) of KWW. WSAC also protects student personally identifiable information as required by FERPA.

Colleges and Universities are required to protect student WASFA data in accordance with the requirements of FERPA. As discussed above, such information will not be disclosed absent consent or another FERPA exception. The exception most likely applicable in this context is the lawfully issued subpoena, court order, or warrant exception discussed in Section C13, above.

## Immigration Enforcement Activity Log

**NOTE:** Any Subpoena, Court Order, and/or Judicial Warrant shall be reviewed by authorized staff to ensure that it is valid and lawfully issued. Employees should inform immigration enforcement authorities that they are not obstructing their process, but they need to follow the school's procedures to ensure compliance with state law by directing them to the appropriate authority on campus.

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