

Insights, News & Events

THE REALITY OF “SANCTUARY CAMPUSES”

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Throughout the course of his campaign, President-elect Donald Trump pledged to deport millions of undocumented immigrants and also eliminate the federal Deferred Action for Childhood Arrivals policy (DACA) – which allows some undocumented young people a renewable two-year period to work and live in the United States without fear of deportation. In response to his election, higher education students across the country have been circulating petitions at approximately 50 colleges and universities demanding their schools create “sanctuary campuses.”

This article briefly discusses the most common student demands, as well as the practical concerns higher education institutions should consider while assessing these demands and navigating a changing landscape.

WHAT IS A “SANCTUARY CAMPUS?”

The phrase “sanctuary campus” has no true legal significance. In general, though, sanctuary campus advocates are demanding two commitments from their institutions. First, they want their administrators to refuse to cooperate with immigration enforcement officials seeking undocumented students on campus, including refusing to turn over student records and denying immigration officials entry to campus absent a warrant. Second, they want an affirmation from campus

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police that they will not enforce or assist in the enforcement of immigration laws.

ASSESSING THE LEGAL TERRAIN

In large part, the sanctuary campus movement is more symbolic than substantive. With respect to sharing student information with immigration enforcement officials, the Family Educational Rights and Privacy Act (FERPA) already prevents colleges from sharing student records without their consent, except in a few narrow cases. Of course, a court order trumps FERPA, and higher education institutions would be without recourse if a law enforcement agency attempted to obtain otherwise protected educational records through a subpoena.

Some schools are considering whether they will ban entry to Immigration Customs and Enforcement (ICE) agents without a warrant. For public institutions, there are clear constitutional problems with such an approach. For private institutions, which generally have open campuses, there are obvious practical concerns. Most notably, there is an open question as to how such restrictions could possibly be enforced. In addition, as it now stands, ICE already applies an internal policy restricting its enforcement of immigration laws on college campuses and other “sensitive locations” such as churches – a policy from which it rarely deviates.

With respect to campus law enforcement, it is questionable how those officers could assist in the enforcement of immigration laws in the first place. The bulk of campus law enforcement agencies are specifically barred from inquiring about immigration status. Meanwhile, at least one major campus police department, at the University of Wisconsin, has balked at the suggestion that the administration could curb its authority to enforce the laws.

CONCERNS WITH SANCTUARY CAMPUS DESIGNATION

As discussed above, the campus sanctuary designation carries very little practical significance. With that said, university discussions about the establishment of sanctuaries have already drawn strong rebukes from politicians who have raised the specter of the loss of federal funding. Some pundits have suggested schools that actively obstruct the enforcement of immigration laws could jeopardize their receipt of institutional federal financial aid under the Trump administration.

Along the same lines, Texas Governor Greg Abbott recently tweeted, "Texas will not tolerate sanctuary campuses or cities. I will cut funding for any state campus if it establishes sanctuary status." A prominent Georgia legislator has also indicated that he is considering drafting legislation to punish Georgia institutions which declare themselves sanctuary campuses.

This blowback, coupled with the limited protections by the sanctuary designation, prompted Harvard University President Drew G. Faust to declare that Harvard will not designate itself a "sanctuary campus." According to Faust, the term has no legal significance and risks drawing special attention to the students in ways that could put their status in greater jeopardy. "I believe it would endanger, rather than protect, our students," he said, "and that is not something I am willing for this institution to do."

WHAT NEXT?

Considering the anxiety felt by undocumented students over the possibility of deportation, schools should consider making students aware of available mental health counselling services. In addition, several schools are extending immigration services to students to strengthen their cases for permanent citizenship if possible.

One area that may warrant particular attention for higher education institutions is when undocumented students are studying abroad. Several weeks ago, in a

letter sent to each of its 23 campuses, the California State University's Office of the Chancellor advised administrators to tell DACA recipients currently studying abroad to return to the U.S. before the new president's inauguration. "It is highly likely that, as of January 20, DACA students who are abroad will not be allowed to re-enter the U.S," the letter said. Whether that is true remains to be seen, but careful consideration should be given to these situations.

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