



# Immigration and Related Issues on Campus: DACA, Privacy, Speech, and other FAQ

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# Agenda

- Dream Center at Mt. SAC
- DACA
- California law v. Federal law
  - Privacy
- Protections Against Discrimination and Harassment
- Speech

# Discussion

- **DREAM Program** at Mt. San Antonio College (Mt. SAC).

# DACA Overview

## “Deferred Action for Childhood Arrivals”:

- Executive Order, not law or regulation.
- Prosecutorial *discretion* to permit individuals to remain in the country for two years without fear of deportation.
- Also eligible for two-year employment authorization.
- Did not confer legal status or provide a pathway to citizenship.

# DACA Overview

**DACA status was available to undocumented individuals who had no lawful status on 6/15/12, *and:***

- Were physically present in U.S. on 6/15/12.
- Were under the age of 31 as of 6/15/12.
- Came to U.S. before 16<sup>th</sup> birthday.
- Have continuously resided in U.S. since 6/15/07.
- Are in school, graduated or have a certificate of completion or GED, or honorably discharged from the Coast Guard or Armed Forces.
- Haven't been convicted of a felony, significant misdemeanor, or 3+ misdemeanors, and don't pose a threat to national security or public safety.

# DACA Benefits

- Employment authorization document (“EAD” or “work permit”).
  - Recipient obtained a social security number, legal employment, a drivers license, etc.
- Deferred action (no deportation) for two years and possibly longer.
- Possible advance parole to travel outside of the US.

# Deferred Action for Childhood Arrivals

## Deferred Action for Childhood Arrivals

### 2017 Rescission Announcement: What It Means

| IF  | THEN  |
|---|---|
| You currently have DACA   | You will retain both your period of deferred action and your employment authorization document (EAD) until they expire, unless terminated or revoked. |
| USCIS received your properly filed initial or renewal DACA request and associated application for an EAD on or before Sept. 5, 2017 | We will continue adjudicating your request.   |
| Your DACA expires between Sept. 5, 2017, and March 5, 2018, and you wish to renew it  | USCIS must receive your properly filed renewal request on or before Oct. 5, 2017.   |
| You did not request initial DACA on or before Sept. 5, 2017   | The DACA process is no longer available to you.   |
| Your DACA expired and you did not properly file your renewal request on or before Sept. 5, 2017                                     | The DACA process is no longer available to you.   |
| You have DACA and your still-valid EAD is lost, stolen, or destroyed  | You may submit Form I-765 to request a replacement EAD.   |



U.S. Citizenship  
and Immigration  
Services

Get all the facts about DACA:  
[uscis.gov/daca2017](http://uscis.gov/daca2017)

If you have questions about your request,  
please call USCIS Customer Service at  
**1-800-375-5283**  
(TDD for hearing-impaired: 1-800-767-1833)

# Injunctions of DACA Rescission Pending Litigation

- Jan. 2018, U.S. District Judge William Alsup in San Francisco issued a nationwide injunction pending litigation; DACA recipients can continue to submit renewal applications.
- Feb. 2018, Judge Nicolas G. Garaufis of the US District Court in Brooklyn, New York ruled that the rescission of DACA was “arbitrary and capricious” and that the equities and reliance interests favored an injunction.



# DACA renewal statement by United States Citizenship and Immigration Services (USCIS)

“Important information about DACA requests: Due to federal court orders, USCIS has resumed accepting requests to renew a grant of deferred action under DACA. USCIS is not accepting requests from individuals who have never before been granted deferred action under DACA. Until further notice, and unless otherwise provided in this guidance, the DACA policy will be operated on the terms in place before it was rescinded on Sept. 5, 2017. For more information, visit Deferred Action for Childhood Arrivals: Response to January 2018 Preliminary Injunction.”

<https://www.uscis.gov/archive/consideration-deferred-action-childhood-arrivals-daca>

# What happens to work permits if injunction ends

- Work permits are valid until they expire. For example, if a student's work permit expires October 31, 2018, the student cannot renew it but the permit is valid and the student can work until that date.

# California Law

- The California Dream Act allows undocumented students to receive in-state tuition and apply for the same financial aid opportunities available to legal residents and citizens.
- Not DACA dependent.

# Executive Order re Sanctuary Jurisdictions

- On January 25, 2017, President Trump issued Executive Order 13,768, entitled “Enhancing Public Safety in the Interior of the United States.”
  - Designate “jurisdictions that fail to comply with applicable Federal law” as “sanctuary jurisdictions.”
  - Directed Attorney General and Secretary of Homeland Security to “take appropriate enforcement action” against sanctuary jurisdictions including withholding federal funds.

# *County of Santa Clara v. Trump*, Nov. 20, 2017 – Injunction Against Sanctuary Jurisdiction Executive Order

"I GRANT the Counties' motions for summary judgment on the Executive Order and permanently enjoin Section 9(a). ... The Counties have demonstrated that the Executive Order has caused and will cause them constitutional injuries by violating the separation of powers doctrine and depriving them of their Tenth and Fifth Amendment rights. Accordingly, the Counties' motions for summary judgment are GRANTED regarding Section 9(a). The defendants are permanently enjoined from enforcing Section 9(a) of the Executive Order against jurisdictions they deem as sanctuary jurisdictions. Because Section 9(a) is unconstitutional on its face, and not simply in its application to the plaintiffs here, a nationwide injunction against the defendants other than President Trump is appropriate."

# Senate Bill 54 – California Values Act

## Gov. Code §§ 7284-7284.12

### Findings:

- Immigrants are valuable and essential members of the California community. Almost one in three Californians is foreign born and one in two children in California has at least one immigrant parent.
- A relationship of trust between California's immigrant community and state and local agencies is central to the public safety of the people of California.
- This trust is threatened when state and local agencies are entangled with federal immigration enforcement, with the result that immigrant community members fear approaching police when they are victims of, and witnesses to, crimes, seeking basic health services, or attending school, to the detriment of public safety and the well-being of all Californians.

Gov. Code § 7284.2

# Senate Bill 54 – California Values Act

## Gov. Code §§ 7284-7284.12

- Encourages entities that provide physical/mental health and wellness, education, or access to justice services to adopt a model policy limiting immigration enforcement to the fullest extent possible consistent with federal/state law

Gov. Code § 7284.8

# Senate Bill 54 – California Values Act

## Gov. Code §§ 7284-7284.12

- Effective January 1, 2018, state and local law enforcement agencies, including community college police and security departments, are prohibited:
  - from using money or personnel to investigate, interrogate, detain, detect, or arrest persons for immigration enforcement purposes.
  - Engaging in activities or conduct in connection with immigration enforcement by law enforcement agencies
  - Detaining an individual exclusively for any actual or suspected immigration violation.
  - Reporting or turning an the individual in to federal immigration authorities where the law enforcement official has discretion to cooperate with immigration authorities..



# Senate Bill 54 – California Values Act

- Exceptions exist related to individuals who have committed serious crimes.

Gov. Code, § 7282.5, subd (a)

# Assembly Bill 21 - Access to Higher Education for Every Student, Ed Code §§ 66093, 66093.3

- California's colleges ... have traditionally been beacons of free thought that challenge students in a peaceful, safe environment...
- With great risks presented by changes to immigration policies and enforcement at the federal level, **it is more important than ever to work to protect the students, faculty, staff, and the public, and ensure that, regardless of their immigration status, they can continue to take advantage of the education to which they are entitled, and are free from intimidation or loss of access to resources and programs that other students enjoy.**
- Ensure that the state's students, faculty, staff, and the public have every opportunity to continue their education without fear or undue risk.

# Assembly Bill 21 - Access to Higher Education for Every Student, Ed Code §§ 66093, 66093.3

- Single Point of Contact.
- Legal Services Contact List.
- By March 1, 2019, Implement Model Policy developed by AG's Office limiting assistance with immigration enforcement only as required by federal and state law
- Publish Internet Resources.
- Assist Undocumented Students in Case of Detention or Deportation to retaining any eligibility for financial aid, stipends, exemption from nonresident tuition fees, etc. and permit reenrollment.

# Assembly Bill 21 - Access to Higher Education for Every Student, Ed Code §§ 66093, 66093.3

- Protect Personal Information.
- Notice of Immigration Enforcement Activity
- Notify Emergency Contact if person is taken into custody
- Comply with Judicial Warrants and Subpoenas
- Response to On-Campus Immigration Enforcement – refer to chancellor or president

# Criminal and Civil Penalties

- **Immigration Nationality Act (INA)**
  - Prohibits concealing, harboring, or shielding from detection unauthorized aliens.
  - Must know that the person is in the U.S. illegally, or act in reckless disregard of that fact.
  - Applies to both individuals and organizations.
  - Penalties are fine, imprisonment for one year or less, or both.

# What is Harboring, Concealing or Shielding from Detection?

- INA Does Not Provide a Definition.
- Federal Court Definitions.
  - Simple sheltering. (*U.S. v. Acosta de Evans* (9th Cir. 1976) 531 F.2d 428.
  - “Conduct tending substantially to facilitate an alien’s remaining in the U.S. illegally”. (*U.S. v. Lopez* (2d Cir. 1975) 521 F.2d 437.).

# Is Failure to *Inform* “Harboring, Concealing, or Shielding”?

- No. The law does not impose an affirmative duty to inform law enforcement of illegal activity.
- ...*But*, a government entity or official may not prohibit or restrict any government entity or official from sending to, or receiving from, ICE information relating to immigration status, or prohibit them from “maintaining” such information. (8 U.S.C. Section 1373.)
  - Note: The currently enjoined executive Order defines “sanctuary” as a government agency that violates this section.

# Is Failure to *Cooperate* “Harboring, Concealing, or Shielding”?

- **Courts have not addressed this question directly.**
  - Requiring an officer to obtain a warrant or subpoena (if required by law) would likely *not* constitute harboring, concealing or shielding.
  - Helping someone escape while the warrant is being obtained likely *would* constitute harboring, concealing or shielding.
  - Other actions taken to thwart immigration officials’ enforcement activities may also constitute harboring, concealing or shielding.



# What About ICE/DHS Requests for Student Records?

- **Legal Overview**

- Student education records aren't subject to nonconsensual disclosure, unless a specific exception applies.
  - But, where an exception applies, district may still require a lawful subpoena, warrant or judicial order.
- Directory information is not a “student record” and doesn't require consent to disclose.
  - But, districts must offer opt-out process for nondisclosure of directory information.

*\*Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g (“FERPA”) 34 C.F.R. § 9.31(d); Cal. Educ. Code 76243(a).*

# What About ICE/DHS Requests for Student Records?

- **Exceptions include:**
  - Disclosure to authorized representatives of the Comptroller General, Attorney General, Secretary of Education, or state or local educational authorities in connection with an audit of federal- or state-supported educational programs or with the enforcement of or compliance with federal legal requirements relating to those programs. (34 C.F.R. §§ 99.31 (a)(3) and 99.35.)
    - **Note:** Under current law, ICE and other federal agencies charged with enforcing immigration laws are not referenced as authorized representatives in FERPA or the Education Code.

# What About ICE/DHS Requests for Student Records?

- **Exceptions also include:**
  - Student & Exchange Visitor Program (SEVP). Institutions are subject to on-site review at any time by an ICE Field Representative who has authority to ask for information on temporary and training visas.
  - Students on temporary F, J or M visas generally waive their rights under FERPA.
  - By signing a student/employee's H-1B visa petition.
  - Under the US Patriot Act.

# What About ICE/DHS Requests for Student Records?

- Even where an exception applies the school has discretion not to release the information  
UNLESS pursuant to:
  - Warrant
  - Court order
  - Subpoena
    - Must provide notice to subject student.
  - Consent by subject student.

# What About ICE/DHS Requests for Student Records?

- **Objections To Disclosure.**
  - If the college has a good faith basis, it can move to quash a subpoena/challenge administrative warrant or otherwise assert objections to bar disclosure.
  - Once the issue is brought before a court via a motion, the Court determines whether disclosure is warranted.

# What About ICE/DHS Requests for Directory Information?

- **Districts may:**
  - Choose not to designate any directory information.
    - But this requires individual consent to disclose. Impedes publishing yearbooks, honor roles, etc.
  - Define directory information more narrowly.
    - For example: not include address or place of birth.
  - Specify that disclosure of directory information will be limited to specific parties, for specific purposes, or both.(34 CFR 99.37(d).
    - ***But remember:*** 8 U.S.C. Section 1373.
  - Ensure annual opt out notice, process and forms are well publicized, understood and easy to access.

# Protected Classifications Under California Law

# Discussion

- Has your District experienced a rise in harassment claims based on race, religion, or national origin?



# Cal. Education Code Section 200

Education Code Section 200 states, “It is the policy of the State of California to afford all persons in public schools, regardless of their disability, gender, gender identity, gender expression, *nationality, race or ethnicity, religion*, sexual orientation... equal rights and opportunities in the educational institutions of the state.”

# Protected Classifications under Cal. Fair Employment and Housing Act

- Religious creed
- Marital status
- Race/National Origin/Ancestry/Color
- Disability/Medical Condition
- Military And Veteran Status
- Genetic Information
- Sex (Gender, Pregnancy, Gender Expression, Gender Identify, Etc.)
- Sexual Orientation
- Age
- Opposition To Harassment
- Association/Perception

# Discrimination

- Treating individuals differently ***because of***:
  - A protected classification.
  - A perception that an individual is a member of a protected classification.
  - An association with an individual of a protected classification or perceived protected classification.

# Harassment

- Conduct that is:
  - Physical
  - Verbal
  - Visual
- Taken “***because of***” a protected classification.
- Hostile Work/Education Environment.

# “Hostile Work/Education Environment”

- Protected Classification.
- Physical, Verbal or Visual Conduct.
- Objectively and Subjectively Offensive (Unwelcome).
- Severe **or** Pervasive.
- Unreasonably interferes with work or learning opportunities.

# Speech Issues

# Discussion

- Has a respondent to a complaint asserted First Amendment/academic freedom as a defense to harassment?
- Has your district faced student demonstrations with large turnouts on both sides of a political issues?
- Does your district train employees/students to prepare for these issues?
- Does your district use a team approach to prepare?

# Individual Free Speech Issues

- Claims of feeling “unsafe” due to speech of others:
  - Minority view in a politically charged environment;
  - Xenophobic speech.
- Not protected from acrimony, free speech of opponents.
- But can assure:
  - Fully protected against retaliation by administration, faculty.
  - Fully protected from any unlawful conduct.



# Employee Speech: Is It Protected Speech?

## The Two Part Test:

*Is the District Employee Speaking:*

1. As a private citizen?
2. On a matter of public concern?



# Employee Speech: The *Pickering* Balance

Interest of employee, as a citizen, in commenting on matters of public concern

VS.

Interest of public employer in promoting efficiency of the public services

# Student Speech

- Remember that even offensive speech can be protected speech.

Education Code § 66301

# Education Code and Student Free Speech

- Exceptions - where that expression is:
  - Obscene, libelous or slanderous according to current legal standards, or
  - Which so incites students as to create a clear and present danger of the commission of unlawful acts on community college premises, or
  - The violation of lawful community college regulations, or
  - The substantial disruption of the orderly operation of the community college.

Ed. Code section 76120

# Free Speech – General Rules

- Very difficult to restrict speech in campus free speech area.
- Other areas can use “reasonable” and “viewpoint-neutral” restrictions (e.g., forums for limited topics, e-mail systems, etc.)
- In general, can halt speech that causes or threatens a substantial disruption on campus.
- Unlawful censorship can result in civil rights liability under 42 U.S.C. section 1983.

# Academic Freedom Issues

- Faculty have academic freedom rights.
  - Through policies and contract.
  - Through First Amendment right to academic freedom in “scholarship and teaching.”
- Colleges are likely to see increased concerns in
  - Students recording in class
  - Social media
  - Protecting political speech
  - Example: Professor Watchlist <http://www.professorwatchlist.org/>

*“Students, parents, and alumni deserve to know the specific incidents and names of professors that advance a radical agenda in lecture halls.”*

# Thank You



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# Questions?

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