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To: School and College Presidents and Deans
From: Office of the Senior Vice Chancellor for Legal Affairs and General Counsel
Re: Updated Guidance on CUNY Response to Immigration Enforcement
Date: March 12, 2025

This memorandum is intended to update that certain memorandum dated March 20, 2017, issued by the Office of the Senior Vice Chancellor for Legal Affairs and authored by then Interim Senior Vice Chancellor for Legal Affairs and General Counsel, Jane Sovern. This updated memorandum has not changed in substance and contains minor changes to the original 2017 memorandum, including providing the correct identification of individuals charged with its implementation. It also provides further guidance to The City University of New York (the “University” or “CUNY”) community regarding procedures to be followed if agents from the federal office of Immigration and Customs Enforcement (“ICE”) seek access to a school or college campus, or if ICE or other federal agents seek information regarding CUNY students. Finally, this memorandum also details steps that the University is taking to protect the confidentiality of student immigration status information.

ICE Access to the CUNY Campuses

Immigration enforcement officials should not be permitted to enter its campuses except to the extent required by warrant or court order. The warrant referred to herein is a judicial warrant, signed by a judge, which clearly orders access to the campus. Should an immigration agent request access to a campus, School or College Public Safety employees must ask for the agent's badge or credentials, the reason for access, and any documentation permitting access. Because ICE officers need a judicial warrant to enter those areas of a school or college campus where there is a reasonable expectation of privacy, Public Safety should not permit ICE officials to enter those areas without a proper judicial warrant. School or College Public Safety must show any documentation to the Campus Counsel before permitting entry. If that is not possible for some reason, School or College Public Safety should contact the University Executive Director of Public Safety, Andre Brown.

When ICE agents seek entry onto a CUNY campus, they may present a so-called "administrative" warrant rather than a judicial warrant. An administrative warrant is signed by an ICE official, not a judge, and no showing of probable cause is required to obtain it. The immigration regulations and applicable case law make clear that administrative warrants do not give ICE the authority to enter a place where there is a reasonable expectation of privacy, if the owner or other person in control of the site does not consent.

Whether a reasonable expectation of privacy exists in particular areas of a school or college is a factual determination that each campus President or Dean must make in conjunction with the Campus Public Safety Director and clearly communicate to Public Safety and the Campus Counsel. At many CUNY campuses, we understand that members of the public may enter the outdoor or lobby areas of the campus without showing an ID card. There is no reasonable expectation of privacy in those areas. However, on many campuses, a college ID card is required to enter campus buildings. We consider CUNY employees and students who use those buildings to have a reasonable expectation of privacy in those ID-required areas because members of the public are not permitted inside. On the other hand, there are one or more campuses where an ID is necessary to enter the school or college premises from the perimeter. In those cases, there would be a reasonable expectation of privacy on the entire campus and ICE would need a judicial warrant for entry. Please feel free to contact the Office of the Senior Vice Chancellor for Legal Affairs and General Counsel if you wish to discuss the application of this distinction to your particular campus.

In the past, ICE has taken the position that, absent an emergency, ICE enforcement actions should not occur at sensitive locations, such as churches and schools, including colleges and universities. It is not known whether the current federal administration will continue this practice, as it has indicated a departure from this practice and it is possible that ICE agents will attempt to undertake enforcement actions at sensitive locations.¹

Access to Information Regarding CUNY Students

CUNY has and will continue to protect student records in compliance with the Federal Educational Rights and Privacy Act ("FERPA"). FERPA protects the privacy of student education records, and prohibits CUNY from divulging those records, or the contents thereof, without the student's consent. In particular, students' immigration status information must be treated with utmost confidentiality and only divulged when legally required, as determined by school or college legal counsel.

¹ The ICE Policy Memorandum dated October 24, 2011, "Enforcement Actions at or Focused on Sensitive Locations" has been abrogated by the Policy Memorandum issued by then acting DHS Secretary Huffman on January 20, 2025. Further, it specifically rescinds and supersedes the Biden Administration's October 27, 2021 memorandum entitled "Guidelines for Enforcement Actions in or Near Protected Areas."

FERPA provides that student education records may be disclosed pursuant to a "lawfully issued subpoena." ICE has statutory authority to issue an administrative subpoena, signed by an ICE official, or may seek a judicial subpoena, signed by a judge. A subpoena for records does not give an ICE agent permission to access the campus other than to serve the subpoena. If an ICE agent appears with a subpoena for records, the Campus Counsel should accept service. Public Safety must ask for the agent's badge or credentials and escort the ICE agent to and from the Campus Counsel's office. If the subpoena is an administrative subpoena, Campus Counsel must consult with the Office of the Senior Vice Chancellor for Legal Affairs and General Counsel to discuss the subpoena and the available legal options before providing any records.

The only exception to the subpoena requirement is that higher education institutions are required by law to provide specified information regarding foreign students on F-1 visas to ICE officials upon request. If you have any questions regarding this exception, please contact the Office of the Senior Vice Chancellor for Legal Affairs and General Counsel.

In addition, FERPA allows the release of "directory information" which is information that has traditionally not been considered particularly private. Generally, this includes a student's address, telephone number and dates of enrollment, among other things.² However, pursuant to CUNY's FERPA Guidelines issued in July 2019, a student's address, email address and telephone number are only considered directory information within CUNY and not to outside entities.³ Therefore, absent a lawfully issued subpoena, this information may only be released to employees of CUNY and its constituent schools and colleges for legitimate business purposes. While it is not a FERPA violation to provide directory information to federal officials, such disclosure is not mandatory. **It is now CUNY's position that campuses may not provide directory information to ICE officials without a subpoena.**

We have also received questions about how to handle situations where federal agents seek student records for employment background checks pursuant to a release electronically signed by the student. The "Authorization for Release of Records" form used by the federal government constitutes a student's consent to the release of education records and complies with FERPA. CUNY schools and colleges should accordingly release student records based on these authorizations, after requiring the agent (who may be an independent contractor) to provide a credential or badge and checking with the student to make sure that the student in fact authorized the disclosure. If the individual who signed the authorization is a

² Directory information at CUNY consists of a student's name, attendance dates (not daily records), address, telephone number, date and place of birth, photograph, e-mail address, full or part-time status, enrollment status (undergraduate, graduate, etc.), level of education (credits) completed, major field of study, degree enrolled for, participation in officially recognized activities and sports (teams), the height and weight of members of athletic teams, previous school attended, and degrees, honors and awards received.

³ See "GUIDELINES FOR THE IMPLEMENTATION OF THE STUDENT RECORDS ACCESS POLICY AND THE FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA)": <https://www.cuny.edu/wp-content/uploads/sites/4/page-assets/about/administration/offices/legal-affairs/policies-resources/FERPA-2.pdf>

former student, the college must use its best efforts to locate the student to confirm that the student consented to the disclosure.

Protecting the Confidentiality of Student Information

CUNY maintains information about the immigration status of its students, as necessary to meet legal and operational requirements. As with all sensitive information, the University limits the number of employees who have access to this information to only those few employees with an essential need to know. As stated above, CUNY treats its students' immigration status information with utmost confidentiality and will only divulge such information when legally required, as determined by Campus Counsel and/or the Office of the Senior Vice Chancellor for Legal Affairs and General Counsel.

If you have questions about any of these topics, please contact me, Senior Vice Chancellor for Legal Affairs and General Counsel, Derek Davis at derek.davis@cuny.edu, or alternatively, Associate Vice Chancellor and Deputy General Counsel, Peter Lattanzio at peter.lattanzio@cuny.edu.

Cc: Chancellor Félix V. Matos Rodríguez
University Director of Public Safety Andre Brown
University Provosts
Vice Presidents for Student Affairs
Vice Presidents for Finance & Administration
Campus Chief Information Officers
Senior Registrars
Campus Public Safety Directors
Campus Counsel
UFS Chair and Trustee, John Verzani
USS Chair and Trustee Daniel Reden