To: Presidents, State-operated campuses

From: Joseph B. Porter  
Senior Vice Chancellor for Legal Affairs, General Counsel and Secretary of the University

Date: February 6, 2017

Re: Follow-up on Immigration Policy and Undocumented Students

I am writing with an update to our ongoing conversations concerning immigration law and undocumented students. In recent weeks, many within the college community have expressed concerns about the safety and security of our undocumented students. This memo is intended as a resource which underscores SUNY’s commitment to diversity, equity, and inclusion, and reflects on what SUNY does and will continue to do to support its international student community (immigrants, non-immigrants, and undocumented students). It includes (1) an affirmation of SUNY Principles adopted by the Board of Trustees, and (2) a Frequently Asked Questions (FAQ) section in an effort to clarify the legal and regulatory framework regarding undocumented students, both at SUNY and nationally, with a link to SUNY’s resource website so that SUNY may continue to support its international student community to the fullest extent possible.

Pursuant to its authority under section 355 of NYS Education Law and SUNY’s long standing policy, the Board of Trustees adopted a resolution at its January 24, 2017 meeting affirming the support of the State University for its undocumented students and its strong commitment to diversity, equity, and inclusion across the SUNY system. The resolution also requires that on or before April 1, 2017, the president of each State-operated campus certify to the Chancellor, or her designee, that his/her campus has adopted policies for its University police department that are consistent with the NYS Attorney General’s recently issued Guidance Concerning Local Authority Participation in Immigration Enforcement. A copy of the resolution is attached hereto,1 and the SUNY Principles it affirms are as follows:

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1 An electronic version of the resolution is available at [http://www.suny.edu/about/leadership/board-of-trustees/meetings/webcastdocs/ResoTab8_Affirmation%20of%20Support%20for%20Undocumented%20Students.pdf](http://www.suny.edu/about/leadership/board-of-trustees/meetings/webcastdocs/ResoTab8_Affirmation%20of%20Support%20for%20Undocumented%20Students.pdf)
I. SUNY Principles

1. The University reaffirms its strong commitment to diversity, equity, and inclusion, ensuring that SUNY is the most inclusive higher education system in the county and offers a welcoming environment for individuals of all backgrounds.

2. The University reaffirms its strong support for the Deferred Action for Childhood Arrivals program, as illustrated most recently by Chancellor Zimpher and several SUNY presidents signing on to a letter to the President strongly supporting continuation of the program.

3. The University will continue its long-standing practice of prohibiting discriminatory actions on the basis of protected class, including national origin. Campuses have well-trained professionals ready to investigate and respond to allegations of discriminatory conduct and hate crimes. University police, student affairs, Title IX, human resources, and affirmative action personnel will investigate any such allegations as potential violations of law and University policy.

4. The University will continue to advocate for federal and state financial assistance for undocumented students. In January 2012, the SUNY Board of Trustees passed Resolution No. 2012-007 affirming its support for legislation that would provide equitable financial aid and educational access to higher education for all New Yorkers, including undocumented students.

5. The University will continue its long-standing practice of vigorously defending the privacy rights of students and requiring a subpoena, court order, search warrant, or other applicable exception to the Family Education Rights and Privacy Act (such as a health and safety emergency or student waiver), prior to releasing information to law enforcement about a student or group of students. This includes information about national origin, religion, and immigration status.

6. The University will continue its long-standing practice of allowing undocumented individuals to pay resident tuition on SUNY campuses provided that they meet criteria specified by New York State.

7. SUNY does not and will not consider national origin or immigration status as a factor in admissions.

8. The University will continue its long-standing practice of supporting international and immigrant students through the International Student and Scholar Services (ISSS) offices.

9. The University will continue its long-standing practice of developing diverse and inclusive campus populations and will continue inclusivity and diversity training for faculty and staff.

10. The University will continue its long-standing practice of welcoming students of all religions, making reasonable accommodations where necessary to allow students to complete their educational experience while practicing their religion. The University also believes that religious tolerance is maximized through education and encourages persons of all faiths to teach others about their faith and religious practices.

11. The University will expand the resources available for immigrant and international students and strive to make student resources accessible.

12. The University will continue to keep the SUNY community informed of specific actions taken by federal agencies that could affect immigration law and/or enforcement measures.
II. Frequently Asked Questions on Immigration Policy

1. Citizenship and Student Status

- Is U.S. citizenship required for admission?
  No. During the admissions process, SUNY does not discriminate on the basis of immigration status or require proof of citizenship or other legal status. New York State law also allows undocumented individuals to qualify for lower resident tuition rates if the student graduated from a New York State high school after attending for at least two years, or if the student received a GED after attending a New York GED exam preparation program, as long as the student applies for SUNY admission within 5 years of receiving a diploma or GED.

2. Student Data and Privacy

- Does SUNY share student information with federal officials?
  SUNY vigorously defends the privacy rights of students and will not release information about a student’s immigration status to anyone, including federal immigration officials, without a validly issued subpoena, court order, search warrant, or pursuant to any other applicable exception to the Family Education Rights and Privacy Act ("FERPA"). FERPA prohibits colleges and universities from releasing information from students’ education records without consent, except under certain specified circumstances. SUNY may also share certain student information under the Student Exchange and Visitor Program ("SEVP") (see below).

- Under what circumstances does SUNY share student information with federal officials?
  There are two important exceptions to FERPA:
  a. First, the Student Exchange and Visitor Program ("SEVP") provides that participating institutions are subject to on-site review at any time, meaning that SEVP field representatives visiting a campus are authorized to obtain information about students on temporary student and training visas (F and J) – but not about DACA or undocumented students.
  b. Second, the USA Patriot Act serves as an exception to FERPA and permits federal officials, upon issuance of a court order alleging terrorist activities, to obtain information from education records without consent.
  c. Campuses should immediately contact their campus counsel if any federal agency seeks to obtain immigration-related information, except when directly related to the SEVP program.

3. The Deferred Action for Childhood Arrivals Program ("DACA")

- What is DACA?
  The acronym "DACA" refers to the federal "Deferred Action for Childhood Arrivals" program, which was established by executive action on June 15, 2012.

- Is DACA permanent?
  The DACA program was not established by executive order, law, or regulation. It is essentially federal agency guidance, and, as such, may be modified or rescinded at any time.
• **Is DACA a pathway to citizenship?**
  DACA does not confer legal status, nor does it offer a pathway to permanent residency or citizenship. Only certain undocumented individuals who have no criminal history and meet educational criteria are eligible for the program. DACA status provides temporary administrative relief from the possibility of deportation (two years subject to renewal). Those granted DACA status also may receive a Social Security number and are eligible for two-year employment authorization documents. Many individuals with DACA status are college students.

• **How many SUNY students have DACA status?**
  The population of SUNY students with DACA status is currently unknown.

• **Is there a danger of DACA data being disclosed to immigration officials?**
  It is the internal policy of the U.S. Citizenship and Immigration Services (USCIS) that DACA data will not be disclosed to ICE or U.S. Customs and Border Protection for the purpose of immigration enforcement proceedings unless certain criteria are met, such as national security concerns, fraud or misrepresentation, or specific criminal offenses. This is agency policy not based in law or regulation, and may be modified or rescinded at any time. Immigration enforcement agencies can be expected to exercise their prosecutorial discretion not to apprehend individuals with DACA status or initiate removal proceedings unless or until there is a policy change.

4. **Immigration Enforcement**

• **What authority do immigration officials have over college campuses?**
  A 2011 memo from U.S. Immigration and Customs Enforcement (ICE) designates college campuses as “sensitive locations,” meaning that enforcement actions (i.e. arrests, searches, interviews, and surveillance) cannot occur or be focused on college campuses unless: (a) exigent circumstances exist; (b) other law enforcement actions have led officers to campus; or (c) prior approval is obtained.

• **What are exigent circumstances?**
  Exigent circumstances exist when the enforcement action involves a national security or terrorism matter; there is an imminent risk of death, violence, or physical harm to any person or property; the enforcement action involves the immediate arrest or pursuit of a dangerous felon, terrorist suspect, or any other individual(s) that present an imminent danger to public safety; or there is an imminent risk of destruction of evidence material to an ongoing criminal case.

5. **Other Resources**

• Please visit [http://www.suny.edu/immigration/resources/](http://www.suny.edu/immigration/resources/) for a list of legal and other resources on immigration issues.

CC: Chancellor Nancy L. Zimpher  
Chancellor's Cabinet  
Government Relations  
Chief Academic Officers  
Office of General Counsel  
Attorneys and Staff