

# Recent Developments Relating to Voting Initiatives on Campuses

March 10, 2026

In the past year, higher-education institutions have faced dramatically higher levels of scrutiny and enforcement in connection with admissions, hiring, handling of antidiscrimination complaints, foreign funding disclosures and other issues. With the Trump administration's focus turning to the midterm elections in November 2026, it is also important to consider the developments at the U.S. Department of Education ("ED"), and potentially other agencies, relating to student voting, get-out-the-vote campaigns and related issues.

This client update examines recent developments in this area, including ED's investigation of the National Study of Learning, Voting, and Engagement (the "NSLVE"), and offers practical suggestions for university counsel in this election year.

**NSLVE Investigation.** On February 5, 2026, ED's Student Privacy Policy Office announced an investigation into Tufts University and the National Student Clearinghouse (the "NSC") concerning the NSLVE for alleged violations of the Federal Educational Rights and Privacy Act ("FERPA").<sup>1</sup> ED characterized the investigation as an "action[] to protect integrity of U.S. elections" and warned institutions that using NSLVE data could put them at risk of violating FERPA.

The NSLVE is a study of university students' civic engagement, housed at Tufts University. Working with a third-party vendor, the NSC combines participating institutions' student enrollment data with public voting records to enable the NSLVE to identify patterns in student registration and voting in national elections. According to the NSLVE, the NSC matches student data received from participating schools with voting records and removes students' personally identifiable information ("PII"). The NSLVE receives that de-identified data from the NSC, analyzes it, produces a tailored

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<sup>1</sup> Press Release, U.S. Dep't of Educ., *U.S. Department of Education Takes Actions to Protect Integrity of U.S. Elections*, Feb. 5, 2026, <https://www.ed.gov/about/news/press-release/us-department-of-education-takes-actions-protect-integrity-of-us-elections>; Dear Colleague Letter, U.S. Dep't of Educ. Student Privacy Policy Office, Feb. 5, 2026 [https://studentprivacy.ed.gov/sites/default/files/resource\\_document/file/NSLVE%20DCL\\_02-05-2026.pdf](https://studentprivacy.ed.gov/sites/default/files/resource_document/file/NSLVE%20DCL_02-05-2026.pdf).

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aggregated report for each participating university, and publicly releases a report with national data.

As most readers of this update will know well, FERPA prohibits disclosure of students' PII without prior written consent, unless an exception applies. Two such exceptions are relevant here: (1) the "directory information" exception, which permits disclosure of certain student information provided that there is sufficient notice and opportunity to opt out of it; and (2) the "studies" exception, which permits disclosure of PII for the purposes of improving instruction, facilitating predictive tests, or administering student aid programs.

The NSLVE has stated that it complies with FERPA because: (1) the matching process conducted at the NSC uses only directory information; (2) for any non-directory PII, the NSLVE qualifies under FERPA's studies exception, likely on the basis that the aggregated reports can be used to improve civics instruction; and (3) the data that the NSLVE receives from the NSC is de-identified and therefore can be shared with the NSLVE regardless of the application of the studies exception.

In its letter to universities about participation in the NSLVE,<sup>2</sup> ED stated that the NSC's data-matching process combines directory and non-directory information, thereby requiring students' consent before the information is disclosed to the NSC. Further, the letter stated that, based on ED's preliminary analysis, the NSLVE might not fall within the studies exception, likely because, in ED's view, the NSLVE's purpose does not fully align with the types of studies that the FERPA exception was intended to cover. The letter did not address the NSLVE's argument that the data it receives is de-identified and therefore not subject to FERPA.

ED warned universities that any institution that "utilizes NSLVE data released in 2026 could be at risk of being found in violation of FERPA." On February 23, 2026, Tufts announced that, at ED's request, it was pausing the release of NSLVE reports until the investigation concludes.<sup>3</sup>

**Voter Education and Federal Work-Study Positions.** In the context of the recent NSLVE investigation and the focus on voting issues, it is important for universities not to lose sight of the guidance provided in ED's August 19, 2025 Dear Colleague letter.<sup>4</sup>

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<sup>2</sup> Dear Colleague Letter, U.S. Dep't of Educ. Student Privacy Policy Office, Feb. 5, 2026

[https://studentprivacy.ed.gov/sites/default/files/resource\\_document/file/NSLVE%20DCL\\_02-05-2026.pdf](https://studentprivacy.ed.gov/sites/default/files/resource_document/file/NSLVE%20DCL_02-05-2026.pdf).

<sup>3</sup> Center for Information & Research on Civic Learning and Engagement, *Update on the U.S. Department of Education Review of NSLVE*, Feb. 23, 2026 <https://circle.tufts.edu/update-us-department-education-review-nslve>

<sup>4</sup> Dear Colleague Letter, U.S. Dep't of Educ., Aug. 19, 2025 <https://www.ed.gov/media/document/dear-colleague-letter-updated-requirements-distribution-of-voter-registration-forms-and-federal-work-study-allowable-uses-of-funds-august-19-2025-110519.pdf>.

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The letter rescinded earlier ED guidance that had permitted the use of Federal Work-Study funds to employ students in roles relating to voter registration, voter assistance, or poll worker service.<sup>5</sup> The August 2025 letter classified such roles as political activity, rendering them ineligible for the ED-administered Federal Work-Study program.<sup>6</sup> The letter reminded universities that they must put in place proper controls to ensure that Federal Work-Study jobs do not involve “political activity” or “work that serves the interest of a particular group.”<sup>7</sup>

In the same letter, ED addressed the universities’ obligation under the Higher Education Act to make a good faith effort to distribute voter registration materials to the students. The letter encouraged universities to consider reminding students of voter eligibility criteria, including that: (1) only U.S. citizens may vote in federal elections; (2) voting more than once is prohibited; (3) knowingly or willfully providing false information for the purpose of establishing eligibility to register or vote is prohibited; and (4) in most states, individuals may register to vote only where they are domiciled and may not be domiciled in more than one place. Universities were also reminded of their obligation to avoid aiding and abetting voter fraud, including any actions to aid or abet “a noncitizen to vote in a federal election.”

**Practical Considerations.** In light of these developments and the current environment, universities should consider ensuring that their policies and procedures related to student voting and voter engagement activities are compliant with FERPA and other relevant laws, regulations and guidance.

In particular, universities should consider reviewing their implementation of the “directory information” exemption to FERPA, including confirming that the public notice and opt-out requirements are satisfied and that the university is appropriately withholding directory data of students who have opted out. Universities should also consider reviewing their use of the “studies” exemption, both in connection with their participation in the NSLVE and otherwise. Finally, universities may want to ensure that they are in compliance with the August 2025 Dear Colleague letter’s guidance and review their Federal Work-Study student employment to confirm that it complies with ED’s articulation of “political activity.”

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<sup>5</sup> Dear Colleague Letter, U.S. Dep’t of Educ., April 21, 2022 <https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2022-04-21/requirements-distribution-voter-registration-forms>; Dear Colleague Letter, U.S. Dep’t of Educ., Feb. 26, 2024 <https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2024-02-26/use-federal-work-study-funds-voter-registration>.

<sup>6</sup> 34 CFR §675.22(b)(5).

<sup>7</sup> Dear Colleague Letter, U.S. Dep’t of Educ., Aug. 19, 2025 <https://www.ed.gov/media/document/dear-colleague-letter-updated-requirements-distribution-of-voter-registration-forms-and-federal-work-study-allowable-uses-of-funds-august-19-2025-110519.pdf>.

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Given the administration's focus on voter fraud, it is possible that student voting—particularly in swing states and jurisdictions with competitive races—will come into additional focus this year. It is therefore important to ensure that the voter-related information that universities provide to their students fully aligns with applicable laws and guidance and that university staff involved with student voting, voter registration, or get-out-the-vote efforts are properly trained.

Please do not hesitate to reach out if we can be of assistance to you or your colleagues about these matters or related issues, including foreign student and foreign funding compliance as well as immigration enforcement at or near university campuses.

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Please do not hesitate to contact us with any questions.



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