



# SCHOOL & COLLEGE LEGAL SERVICES OF CALIFORNIA

*A Joint Powers Authority  
serving school and  
college districts  
throughout the state.*

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## LEGAL UPDATE

December 15, 2016

**To:** Superintendents, Member School Districts (K-12)  
**From:** Mia N. Robertshaw, Assistant General Counsel *MNR*  
Carl D. Corbin, General Counsel *CDC*  
**Subject:** Immigration Questions and Concerns  
Memo No. 44-2016

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A number of clients have asked for information about how to address students' and families' concerns about immigration enforcement activities by the federal government. In this memorandum, we outline background information, options moving forward, and additional considerations.

### Background Information

President-elect Donald Trump has promised to deport as many as 3 million people who are in the country unlawfully, focusing on people who have been convicted of crimes.<sup>1</sup> President-elect Trump's election has caused unrest and fear among many immigrants and their allies who fear deportation, discrimination, harassment, or other negative treatment. In response to President-elect Trump's election, and in prior years when immigration issues have been hotly contested, some cities have vowed to be "sanctuaries" for immigrants. In general terms, these cities have stated that they will not cooperate with federal immigration enforcement efforts. For example, a city could refuse to utilize its police force to identify or detain undocumented immigrants.

Similarly, school districts and college campuses across the country are vowing to be "sanctuary campuses," but at this time it is not clear what that will mean legally. At this point, there is a great deal of uncertainty surrounding what President-elect Trump's administration and Congress may do, and how schools and colleges lawfully may respond.

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<sup>1</sup> Wang, *Donald Trump plans to immediately deport 2 million to 3 million undocumented immigrants*, The Washington Post (Nov. 14, 2016).



Currently, U.S. Immigration and Customs Enforcement (“ICE”) policy is that immigration enforcement actions will not occur at schools unless certain criteria are met. In a 2011 memorandum, ICE Director John Morton addressed ICE enforcement actions at “sensitive locations” including schools.<sup>2</sup> The memorandum expresses the policy that ICE “enforcement actions do not occur at nor are focused on sensitive locations such as schools and churches unless (a) exigent circumstances exist, (b) other law enforcement actions have led officers to a sensitive location as described in [the memorandum], or (c) prior approval is obtained.” The enforcement actions covered by the memorandum include arrests, interviews, searches, and immigration-enforcement surveillance. The memorandum does not cover obtaining records, providing notice to officials or employees, serving subpoenas, or engaging in other activities as outlined in the memorandum. In addition, the memorandum expressly states that the policy is not intended to prohibit enforcement operations when there is an immediate need for enforcement action without prior approval.

### Options

The options outlined here are based on current law. Should a district choose to pursue any action regarding these immigration issues, it will be critical that the district stay up-to-date on changes to applicable law in the future.

Please note that the examples listed herein are draft examples only. If a district wishes to pursue any of these or other options, we recommend the district work with our office or other legal counsel.

Districts could take one or more of the following steps:

1. Provide information to students and families regarding their rights. This could be presented as a Q&A document, list, or statement. The district could distribute the information by posting it on the district website, sending it to families via an automated voicemail message, or sending an email/letter to families. For example:
  - a. All students have a right to public education regardless of immigration status.<sup>3</sup>
  - b. All students, regardless of immigration status, may be eligible for services such as free lunch, free breakfast, transportation, and educational services.
  - c. Unless required by law, the district will not ask students or families about their immigration status at any time.
  - d. Unless required by law, the district will not ask students or families to show documents relating to their immigration status at any time.
  - e. The district does not discriminate on the basis of nationality, race, or ethnicity.

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<sup>2</sup> The memorandum is available online at <https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf>.

<sup>3</sup> *Plyler v. Doe* (1982) 457 U.S. 202.



2. Provide tips and resources to students and families to assist with emergency and immigration planning. For example:
  - a. All parents should ensure that their emergency contact information is up-to-date.
  - b. All parents should designate a trusted adult who may pick up their child from school if parents are not able to be there.
  - c. Parents should create an emergency plan so that all family members know what to do if a family member is detained by immigration agents.
3. Adopt a Board Policy or Board Resolution setting forth a district policy relating to these issues. Examples of statements that could be addressed in the policy include:
  - a. Unless required by law, district employees shall not ask about a student's immigration status at any time.
  - b. District employees shall not refer students or families to ICE for questions about their immigration status.
  - c. All requests by ICE to visit a school site or obtain student records shall be forwarded immediately to the Superintendent for review and to determine whether the request will be granted.

A primary goal of these options is to communicate accurate information to students, families, and district personnel. Many people do not have accurate information about the role of schools in immigration issues, and what rights undocumented immigrants may have with respect to public education. The examples outlined above are illustrative only, and districts may wish to provide more information than what is contained in these examples. Any of these options can be tailored or expanded to meet the specific needs of a district.

### Risks and Additional Considerations

President-elect Trump has promised to block federal funding to sanctuary cities.<sup>4</sup> It is possible that his administration may seek to block federal funding to sanctuary cities and campuses, or otherwise restrict federal funding in ways linked to immigration. Public education agencies in California receive federal funding, including through federal programs such as free and reduced lunch, federal student loans, federal grants, and other sources of funding. A refusal to comply with federal law, regulations, and other federal requirements could jeopardize the district's receipt of federal funding. We recommend that districts comply with all state and federal law and regulations. Any Board Policy, Administrative Regulation, Board Resolution, or other statement by districts on these issues should confirm that the district will comply with applicable state and federal law.

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<sup>4</sup> Kaste, *Trump Vows to End 'Sanctuary Cities,' But No One Can Agree What That Label Means*, NPR (Nov. 19, 2016).



In addition, it is important that districts not promise more than what they can in fact deliver. For example:

1. Districts cannot promise to bar entry to school grounds by law enforcement agents or ICE agents, even if the agents' presence on campus is disruptive to the educational environment.<sup>5</sup>
2. Districts cannot guarantee that they will not release student information to immigration authorities. Districts may be required to release student information pursuant to a valid subpoena or court order, in connection with a health or safety emergency, or in other situations pursuant to the federal Family Educational Rights and Privacy Act and applicable state law.
3. District employees should not obstruct criminal investigations.

Please contact our office with questions regarding this Legal Update or any other legal matter.

*The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.*

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<sup>5</sup> While the California Penal Code allows districts to bar entry to school grounds by, or remove from school grounds, "outsiders" or disruptive visitors under certain circumstances, these sections generally would not cover public employees, such as law enforcement or ICE agents, whose duties require them to be on school grounds. See, e.g., California Penal Code §§ 626.8, 627 *et seq.*