



# SCHOOL & COLLEGE LEGAL SERVICES OF CALIFORNIA

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## LEGAL UPDATE

February 7, 2017

**To:** Superintendents, Member School Districts (K-12)

**From:** Mia N. Robertshaw *MNR*  
Assistant General Counsel

**Subject:** President Trump's "Sanctuary Jurisdiction" Executive Order  
Memo No. 05-2017

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On January 25, 2017, President Donald Trump issued an Executive Order ("Order") addressing "sanctuary jurisdictions," defined as "jurisdictions that willfully refuse to comply with 8 U.S.C. 1373."<sup>1</sup> The referenced code section, 8 U.S.C. 1373 sets forth rules regarding communication between federal, state, and local government agencies and the Immigration and Naturalization Service.<sup>2</sup> The Order authorizes the Secretary of Homeland Security ("Secretary") to designate a jurisdiction as a sanctuary jurisdiction. (Section 9(a).) Accordingly, a jurisdiction may be found to be a sanctuary jurisdiction even if it has not designated itself as such. The Order does not define the term "jurisdiction," but it could be interpreted to include federal, state, and local government agencies including school districts and county offices of education.

The Order outlines a number of measures that could impact sanctuary jurisdictions:

- The Order sets forth the policy of the executive branch to "Ensure that jurisdictions that fail to comply with applicable Federal law do not receive Federal funds, except as mandated by law. (Section 2(b).)
- The Order directs the Secretary to "issue guidance and promulgate regulations ... to ensure the assessment and collection of all fines and penalties that the Secretary is authorized under the law to assess and collect from aliens present in the United States *and from those who*

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<sup>1</sup> The Order is available online at <https://www.whitehouse.gov/the-press-office/2017/01/25/presidential-executive-order-enhancing-public-safety-interior-united>.

<sup>2</sup> A copy of 8 U.S.C. § 1373 is attached.

*facilitate their presence in the United States.”*<sup>3</sup> (Section 6, emphasis added.)

- The Order directs the Attorney General and Secretary to “ensure that jurisdictions that willfully refuse to comply with 8 U.S.C. 1373 (sanctuary jurisdictions) are not eligible to receive Federal grants, except as deemed necessary for law enforcement purposes by the Attorney General or the Secretary.” (Section 9(a).)
- The Order directs the Attorney General to “take appropriate enforcement action against” an entity that violates 8 U.S.C. 1373 “*or which has in effect a statute, policy, or practice that prevents or hinders the enforcement of Federal law.*” (Section 9(a), emphasis added.)
- The Order directs the Secretary to publish a weekly “list of criminal actions committed by aliens and any jurisdiction that ignored or otherwise failed to honor any detainers with respect to such aliens.” (Section 9(b).)
- The Order directs the Director of the Office of Management and Budget to obtain information on all federal grant funds currently received by a sanctuary jurisdiction. (Section 9(c).)

In addition, the Order directs the Secretary to authorize local law enforcement officials to perform the functions of immigration officers to investigate, apprehend, or detain aliens. This could impact law enforcement personnel assigned to school sites directly.

The *Los Angeles Times* estimates that there are 400 sanctuary cities and counties in the country.<sup>4</sup> A number of schools, colleges, and universities have designated themselves as sanctuary campuses.

On January 31, 2017, the City and County of San Francisco filed a lawsuit challenging the Order. The New York Attorney General announced that New York will join a lawsuit filed by the ACLU against President Trump over the Order. It is expected that other cities, counties, and/or campuses also will challenge the Order.

### **Recommendations**

At this point it is not clear how the Order will be implemented, and to what extent it may impact school districts, students, employees, and the school community. In addition, it is not clear whether challenges to the Order will succeed.

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

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<sup>3</sup> It is likely that the Trump Administration would interpret this to mean that “sanctuary jurisdictions” are subject to fines and penalties for facilitating the presence of undocumented immigrants.

<sup>4</sup> Dolan, *San Francisco sues Trump over executive order targeting sanctuary cities*, The Los Angeles Times (Jan. 31, 2017).



could jeopardize a 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.

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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8 U.S.C. § 1373

(a) In general

Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.

(b) Additional authority of government entities

Notwithstanding any other provision of Federal, State, or local law, no person or agency may prohibit, or in any way restrict, a Federal, State, or local government entity from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual:

- (1) Sending such information to, or requesting or receiving such information from, the Immigration and Naturalization Service.
- (2) Maintaining such information.
- (3) Exchanging such information with any other Federal, State, or local government entity.

(c) Obligation to respond to inquiries

The Immigration and Naturalization Service shall respond to an inquiry by a Federal, State, or local government agency, seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency for any purpose authorized by law, by providing the requested verification or status information.