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Via E-Mail Transmittal

Date: November 15, 2024

To: California Community Colleges Chief Executive Officers

From: Kathy Lynch, Interim General Counsel

Re: Legal Advisory 24-11-15: California and its Community Colleges Remain Sanctuary Jurisdictions

A. Summary

In 2018, this office issued Legal Advisory 18-01, relating to “sanctuary jurisdiction” legislation enacted by the Legislature (Senate Bill (“SB”) 54, known as the California Values Act, and Assembly Bill (“AB”) 21), which prohibited state and local agencies from using resources to further certain federal immigration enforcement efforts. After the 2024 presidential election, many of our community members reached out to the Chancellor’s Office for support and guidance regarding our commitment to the safety and well-being of all of our students, faculty, staff, and administrators. The purpose of this Legal Advisory is to remind system leaders of their ongoing obligations under SB 54 and AB 21.¹

¹ The General Counsel's legal opinions and advisories on the implementation and interpretation of laws affecting community colleges do not form an attorney-client relationship and are not a substitute for community college districts obtaining legal advice in appropriate circumstances. (Ed. Code, § 70901, subd. (b)(14).)

B. Background

On January 25, 2017, shortly after taking office, former President Trump issued Executive Order 13768, which purported to bar sanctuary jurisdictions from receiving federal funding. In response, the California Legislature enacted SB 54 and AB 21, prohibiting state and local agencies from using resources to aid federal immigration enforcement and seeking to ensure that public and private institutions of higher education in California foster a campus community that is safe and supportive of all students, faculty, and staff, regardless of immigration status. Soon after the issuance of Executive Order 13768, the United States District Court for the Northern District of California found that the executive order violated the Constitution and issued a nationwide injunction preventing its enforcement. In 2021, President Biden rescinded the executive order.

C. Guidance

During the 2024 election campaign, one of President-elect Trump's campaign promises was that if elected, he would engage in mass deportations of undocumented individuals. We anticipate that the president-elect will issue new executive orders similar in scope and intent to Executive Order 13768. Moreover, given that the president-elect's party has won control of both branches of Congress, additional anti-immigrant legislation may soon be enacted.

Although the executive order that led to the enactment of SB 54 and AB 21 has been rescinded, both of those statutes remain in effect.

1. Senate Bill 54

a. Provides Guidance for Community College Police

The Education Code authorizes the governing board of a community college district to establish a community college police department under the supervision of a community college chief of police. (Ed. Code, § 72330, subd (a).) Community college police are sworn peace officers. (Ed. Code, § 72330, subd (c); Penal Code, § 830 et seq.)

SB 54 prohibits state and local law enforcement from using money or personnel to investigate, interrogate, detain, detect, or arrest persons, or to conduct other activities, for immigration enforcement purposes. (Gov. Code, § 7284.6.) Exceptions exist related to individuals who have committed serious crimes. (Gov. Code, § 7282.5, subd (a).) The legislation applies expressly to community college police. (Gov. Code, § 7284.4, subds (a) and (k).)

SB 54 reflects that California's public policy interests are best served "by a relationship of trust between California's immigrant community and state and local agencies" (Gov. Code,

§ 7284.2), and that this interest would be undermined, resources would be misallocated, and constitutional concerns would arise, if state and local law enforcement agencies cooperate with federal immigration enforcement officials.

The California Attorney General’s Office was required to publish model policies in 2018 to explain these requirements. ([Attorney General Model Policies](#); Gov. Code, § 7284.8.) The purpose of the model policies was to explain how to limit assistance to federal immigration enforcement “to the fullest extent possible.” The policies were designed for adoption by all public schools, health facilities operated by the state or a political subdivision of the state, and courthouses. (*Ibid.*) Police agencies must also comply with any more stringent policies adopted by local jurisdictions. (See Gov. Code, § 7284.6, subs. (a)(1)(C), (b).)

b. Limits Cooperation with Immigration Enforcement

SB 54 prohibits community college police from cooperating with federal immigration enforcement efforts in the following respects:

1. *Use of state and local resources.* Community college police may not use personnel or funds to investigate, interrogate, detain, detect, or arrest persons by inquiring into an individual’s immigration status; detaining an individual on the basis of an Immigration and Customs Enforcement hold request; providing non-public information relating to a person’s release date from custody; providing personal information about an individual, including non-public contact information; making or intentionally participating in arrests based on civil immigration warrants; assisting immigration authorities in activities not authorized by a judicial warrant (see 8 U.S.C. § 1357(a)(3)); or performing the functions of an immigration officer. (Gov. Code, § 7284.6, subd. (a)(1).)

2. *Federal supervision.* Community college police may not be under the supervision of federal agencies or be deputized as special federal officers or special federal deputies for purposes of immigration enforcement. California peace officers remain subject to California law governing the conduct of peace officers and the policies of the employing agency. (Gov. Code, § 7284.6, subd. (a)(2).)

3. *Immigration authorities as interpreters.* Community college police shall not use immigration authorities as interpreters for law enforcement matters relating to individuals in agency or department custody. (Gov. Code, § 7284.6, subd. (a)(3).)

4. *Transfers to immigration authorities.* Community college police shall not transfer an individual to immigration authorities unless authorized by a judicial warrant or judicial probable cause determination, or if the person has convicted a serious crime listed in Government Code section 7282.5. (Gov. Code, § 7284.6, subd. (a)(4).)

5. *Facilities contracts.* Community college police shall not contract with the federal government to allow local facilities to house individuals as federal detainees, except to conclude an existing contract, or to house unaccompanied minors, as authorized by the Government Code. (Gov. Code, § 7284.6, subd. (a)(6), citing Gov. Code, §§ 7310, 7311].)

c. Permissible Cooperation with Immigration Enforcement

SB 54 also identifies categories of state and local police cooperation with federal immigration enforcement that remain permissible, provided they are also authorized by local policy.

1. *Re-entry following deportation.* If in the course of an unrelated law enforcement activity a community college police agency detects a violation of the federal prohibition against re-entry following deportation (8 U.S.C. § 1326), that agency may investigate, enforce, detain, or arrest, under applicable standards. (Gov. Code, § 7284.6, subd. (b)(1).)

2. *Specific criminal history inquiries.* Community college police may respond to a request from immigration authorities for information about a specific person's criminal history, including previous criminal arrests, convictions, or similar criminal history information accessed through the California Law Enforcement Telecommunications System (CLETS), where otherwise permitted by state law. (Gov. Code, § 7284.6, subd. (b)(2).)

3. *Task force participation.* Community college police may conduct enforcement or investigative duties associated with a joint law enforcement task force, including the sharing of confidential information with other law enforcement agencies for purposes of task force investigations, subject to a number of specified conditions, as long as the task force's primary purpose is not immigration enforcement. (Gov. Code, § 7284.6, subd. (b)(3).)

4. *Crime victim information.* Community college police may inquire whether an individual who has been identified as a potential crime or trafficking victim may be certified for a visa program. (Gov. Code, § 7284.6, subd. (b)(4).)

5. *Custodial interviews.* Immigration authorities may be provided access to custodial interviews of an individual in agency or department custody, provided the access is in compliance with the TRUTH Act. (Gov. Code, § 7284.6, subd. (b)(5) [citing Gov. Code, § 7283].)

2. Assembly Bill 21

AB 21 places a number of affirmative obligations on community college districts to prevent student, staff, and faculty from participating in federal immigration enforcement efforts unless required by state or federal law. The statute is intended to ensure that everyone in California has an opportunity to pursue an education free from intimidation and without fear or undue risk. (Ed. Code, § 66093, subd. (a).) AB 21 imposes the following obligations:

1. *Protection of Personal Information.* College districts must refrain from disclosing personal information about students, faculty, and staff. There are five exceptions to this rule: (1) when there is proper consent; (2) when state and federal privacy laws permit the disclosure; (3) when necessary to implement the program for which the information was obtained; (4) when included in a directory that does not include residence addresses or individual persons' course schedules and the person has not elected to opt out of the directory; or (5) when in response to a *judicial* warrant, court order, or subpoena. (Ed. Code, § 66093.3, subd. (a).)

2. *Notice of Immigration Enforcement Activity.* College districts must advise all students, faculty, and staff to notify the office of the college district chancellor or president immediately if an immigration officer is expected to enter, will enter, or has entered the campus to execute a federal immigration order. (Ed. Code, § 66093.3, subd. (b).)

3. *Notification of Emergency Contact.* If there is reason to suspect that a student, faculty, or staff person has been taken into custody in an immigration enforcement action, the college district shall immediately notify the person's emergency contact. (Ed. Code, § 66093.3, subd. (c).)

4. *Compliance with Judicial Warrants and Subpoenas.* An immigration officer may only be allowed access to nonpublic areas of the campus upon presentation of a judicial warrant. This subdivision shall not apply to nonenforcement activities, including an immigration officer's request for access or information related to the operation of international student, staff, or faculty programs, or employment verification efforts. (Ed. Code, § 66093.3, subd. (d).)

5. *Response to On-Campus Immigration Enforcement.* The college district shall advise all students, faculty, and staff having contact with an immigration officer executing a federal immigration order to refer that officer or responsible entity to the office of the district chancellor or president to verify the legality of the warrant, court order, or subpoena. (Ed. Code, § 66093.3, subd. (e).)

6. *Single Point of Contact.* College districts shall designate a staff person to serve as a point of contact for any student, faculty, or staff person who could be subject to an immigration order or inquiry on campus. Faculty and staff shall be prohibited from discussing personal information, including immigration status information, of any student, faculty, or staff person with anyone, or revealing that personal information to anyone, unless the disclosure is permitted by state and federal education privacy law. (Ed. Code, § 66093.3, subd. (f).)

7. *Legal Services.* College districts shall maintain and provide students a contact list of immigration legal services providers upon request and free of charge. (Ed. Code, § 66093.3, subd. (g).)

8. *Attorney General's Office Model Policy.* College districts shall adopt and implement the model policy developed by the Attorney General's Office or an equivalent policy to limit assistance with immigration enforcement to the fullest extent possible consistent with federal and state law. (Ed. Code, § 66093.3, subd. (h).)

9. *Internet Resources.* College districts must prominently display on their Internet sites current information, including the Attorney General's Office model policy and relevant guidance, regarding their rights under state and federal immigration laws. (Ed. Code, § 66093.3, subd. (i).)

10. *Hold Undocumented Students Harmless.* In the event that an undocumented student is detained, deported, or is unable to attend to his or her academic requirements due to an immigration enforcement action, the college district shall make all reasonable efforts to assist the student in retaining any eligibility for financial aid, fellowship stipends, exemption from nonresident tuition fees, funding for research or other educational projects, housing stipends or services, or other benefits he or she has been awarded or received, and permit the student to be reenrolled if and when the student is able to return to the college. Staff should be available to assist undocumented students, and other students, faculty, and staff whose education or employment is at risk because of federal immigration actions. (Ed. Code, § 66093.3, subd. (j).)

D. Conclusion

The California Community Colleges serve the largest and most diverse student body and workforce in higher education. We are committed to creating a safe, welcoming and inclusive

environment across our system.² Given these principles and the state laws discussed above, our system will refrain from cooperating in federal enforcement of national immigration laws unless compelled to do so by state or federal law. Further, our system does not capture information on undocumented students, and our colleges will not release personally identifiable student information related to immigration status unless required by judicial order.

Further questions about the applicability of SB 54 and AB 21 should be addressed to district legal counsel.

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² As of the date of this Legal Advisory, Governor Newsom has called for a special session of the California Legislature to convene in December 2024 to prepare legislation to counter the incoming Trump administration's stated policy agenda. The Chancellor's Office will monitor any relevant statutory developments and communicate those to the system as appropriate.