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MEMORANDUM

DATE: January 3, 2025
TO: College and University Presidents
FROM: Aileen Miller, Education Division Chief¹
SUBJECT: **Keep Washington Working Act**

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This is the first of two legal memoranda that will address some frequently asked questions (FAQ) posed to the Attorney General's Education Division on immigration related concerns and issues. These FAQ responses are designed to provide Colleges and Universities with a foundational understanding of the legal requirements and limitations relative to immigration enforcement and protection of immigration related data. The answers provided below may change depending on specific circumstances.

This FAQ is not a substitute for obtaining more specific legal advice from the College or University's assigned Assistant Attorney General (AAG). These issues can be highly fact specific and involve other laws and rights depending on the circumstances, which can impact the College or University's legal obligations. As such, you should consult with legal counsel as situations arise.

What actions are Colleges and Universities legally required to take to ensure that the institutions remain accessible to immigrant students, families, and employees?

Under the Keep Washington Working (KWW) Act Colleges and Universities are prohibited from using their resources to support immigration surveillance or enforcement and must adopt a Model Policy in order to ensure educational opportunities for all individuals without regard to national origin or immigration status, while leaving immigration enforcement efforts to the federal government.

This prohibition is subject to the exceptions found in [RCW 43.17.425\(3\)](#), which states that the "collection, use, or disclosure of information" is not prohibited if it is "required to comply with

¹ This Memorandum was drafted or contributed to by a number of Assistant Attorneys' General.

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state or federal law”; “in response to a lawfully issued court order”; “necessary to perform agency duties, functions, or other business, as permitted by statute or rule, conducted by the agency that is not related to immigration enforcement”; “required to comply with policies, grants, waivers, or other requirements necessary to maintain funding”; or “in the form of deidentified or aggregated data, including census data.”

Colleges and Universities are prohibited from using their resources to support immigration enforcement. State law prohibits state agencies from using “agency funds, facilities, property, equipment, or personnel to investigate, enforce, cooperate with, or assist in the investigation or enforcement of any federal registration or surveillance programs or any other laws, rules, or policies that target Washington residents solely on the basis of race, religion, immigration, or citizenship status, or national or ethnic origin.” [RCW 43.17.425](#)(1); [RCW 43.17.420](#)(15) (defining state agency by reference to the broad definition in the Public Records Act). The prohibition on use of resources encompasses actions by employees.

This prohibition helps maintain the distinction between the roles of state agencies and their unique missions as compared to the role of federal immigration authorities and their duties and obligations.

Colleges and Universities are required to adopt and implement a Model Policy. Since 2019, under state law, Colleges and Universities are required to adopt policies that limit “immigration enforcement to the fullest extent possible consistent with federal and state law . . . to ensure [Colleges and Universities] remain safe and accessible to all Washington residents, regardless of immigration or citizenship status.” [RCW 43.10.310](#); [RCW 43.17.420](#)(13) (defining public school to include public institutions of higher education).

The Washington State Attorney General’s Office (AGO) issued the following guidance: [Keep Washington Working Act: Guidance, Model Policies, and Best Practices for Public Schools](#). Colleges and Universities must: 1) adopt the Model Policy; 2) make changes to existing policies consistent with the Model Policy; and/or 3) notify the AGO that the College/University “is not adopting the changes to its policies consistent with the model policy, state the reasons that the agency is not adopting the changes, and provide the attorney general with a copy of the agency’s policies.” [RCW 43.10.310](#)(2). Whether a policy is inconsistent with the Model Policy is a nuanced analysis. A departure from the Model Policy if legally required and operationally necessary would likely still be consistent with the Model Policy. Please consult with your AAG so they can assist you in determining whether any departures from the Model Policy are inconsistent.

Every College or University should have already taken one or more of these actions. If your College or University has not done so, it should immediately bring itself into compliance with its legal obligations under state law. A word version of the Model Policy and implementation checklist are attached to facilitate compliance with your legal obligations. Please consult with

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your assigned AAG if you have specific questions about the Model Policy and/or implementation.