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## MEMORANDUM

**To:** Lieutenant Governor Lisa Cano Burkhead, and  
The Keep Nevada Working Task Force

**From:** Leslie Nino Piro, General Counsel, Office of the Attorney General  
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**Date:** December 14, 2022

**Subject:** Draft Model Immigration Policies Created Under NRS 228.206 and NRS 228.208 for State and Local Law Enforcement Agencies, Public Schools, Institutions of Higher Education, Health Care Facilities, and Courthouses

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Dear Lieutenant Governor Cano Burkhead and Task Force Members,

Assembly Bill (AB) 376 (81st Session (2021)) instructed the Attorney General to publish model policies limiting immigration enforcement to the fullest extent possible and consistent with any applicable law. The Attorney General's Office has therefore drafted the following model policies to carry out its statutory duties and accomplish the Nevada's Legislature's objective. Once complete, the model policies will equip state and local law enforcement agencies, public schools, institution of higher educations, health care facilities, and courthouses—as well as organizations that provide services relating to physical or mental health and wellness, education, and access to justice— with the information and resources to appropriately limit immigration enforcement activity.

I will present these draft policies to the Task Force this afternoon and be available for questions. I look forward to a meaningful and productive conversation.

Kind regards,

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Leslie Nino Piro  
General Counsel

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## Relevant Statutes

**NRS 228.206 Model policies which provide guidance and training recommendations to law enforcement agencies: Publication by Attorney General; law enforcement agency required to adopt consistent policies or notify and provide inconsistent policies to Attorney General.**

1. The Attorney General shall, in consultation with relevant stakeholders and the Keep Nevada Working Task Force created by [NRS 224.320](#), publish model policies which provide guidance and training recommendations to state or local law enforcement agencies. The model policies must prioritize guidance and training recommendations which:
  - (a) Foster trust between the community and state or local law enforcement agencies; and
  - (b) Limit, to the fullest extent practicable and consistent with any applicable law, the engagement of state or local law enforcement agencies with federal immigration authorities for the purpose of immigration enforcement.
2. Each state or local law enforcement agency shall:
  - (a) Adopt policies consistent with the model policies of the Attorney General published pursuant to subsection 1; or
  - (b) Notify the Attorney General that the state or local law enforcement agency is not adopting policies consistent with the model policies of the Attorney General.
3. The notification described in paragraph (b) of subsection 2 must include, without limitation:
  - (a) The reason that the state or local law enforcement agency is not adopting policies consistent with the model policies of the Attorney General; and
  - (b) A copy of the policies of the state or local law enforcement agency.
4. As used in this section, “state or local law enforcement agency” means:
  - (a) The sheriff’s office of a county;
  - (b) A metropolitan police department;
  - (c) A police department of an incorporated city;
  - (d) Any entity authorized to operate a prison, jail or detention facility, including, without limitation, any facility for the detention of juveniles;
  - (e) The Division of Parole and Probation of the Department of Public Safety;
  - (f) Any department of alternative sentencing; and
  - (g) Any other state or local agency, office, bureau, department, unit or division created by any statute, ordinance or rule which:
    - (1) Has a duty to enforce the law; and

(2) Employs any person upon whom some or all of the powers of a peace officer are conferred pursuant to [NRS 289.150](#) to [289.360](#), inclusive.

(Added to NRS by [2021, 3906](#), effective July 1, 2022)

**NRS 228.208 Model policies related to limiting immigration enforcement at public schools, institutions of higher education, health care facilities and courthouses: Publication by Attorney General; entities required to adopt consistent policies or notify and provide inconsistent policies to Attorney General; certain additional organizations encouraged to adopt.**

1. The Attorney General shall, in consultation with relevant stakeholders and the Keep Nevada Working Task Force created by [NRS 224.320](#), publish model policies for limiting, to the fullest extent possible and consistent with any applicable law, immigration enforcement at public schools, institutions of higher education, health care facilities and courthouses to ensure that such places remain safe and accessible to residents of this State regardless of the immigration status or citizenship of such persons.
2. Each public school, institution of higher education, health care facility and courthouse in this State shall:
  - (a) Adopt policies consistent with the model policies of the Attorney General published pursuant to subsection 1; or
  - (b) Notify the Attorney General that the public school, institution of higher education, health care facility or courthouse, as applicable, is not adopting policies consistent with the model policies of the Attorney General.
3. Any organization that provides services relating to physical or mental health and wellness, education or access to justice is encouraged to adopt policies consistent with the model policies of the Attorney General published pursuant to subsection 1.
4. The notification described in paragraph (b) of subsection 2 must include, without limitation:
  - (a) The reason that the public school, institution of higher education, health care facility or courthouse, as applicable, is not adopting policies consistent with the model policies of the Attorney General; and
  - (b) A copy of the policies of the public school, institution of higher education, health care facility or courthouse, as applicable.
5. A policy adopted pursuant to this section must comply with:
  - (a) Any applicable law;
  - (b) Any policy, grant, waiver or other requirement necessary to maintain the funding of the public school, institution of higher education, health care facility, courthouse or other organization, as applicable; and

(c) Any agreement related to the operation and functions of the public school, institution of higher education, health care facility, courthouse or other organization, as applicable.

6. As used in this section:

(a) “Health care facility” means a facility licensed pursuant to [chapter 449](#) of NRS and which is operated by this State or a political subdivision thereof.

(b) “Institution of higher education” has the meaning ascribed to it in [NRS 179D.045](#).

(c) “Public school” means any school described in [NRS 388.020](#).

(Added to NRS by [2021, 3906](#), effective July 1, 2022).

## **Draft Model Policies for State and Local Law Enforcement Agencies**

### **Purpose**

- To establish policies and procedures that foster trust between the community and the [LEA] and limit, to the fullest extent practicable and consistent with any applicable law, the engagement of [LEA] with federal immigration authorities for the purpose of immigration enforcement.
- To ensure that [LEA's] policies and practices prohibit discrimination on the basis of any protected class under federal, state, and local law, including race, color, creed, sex, sexual orientation, gender identity or expression, age, disability, ancestry or national origin.
- To prohibit [LEA's] officers from using race, color, creed, sex, sexual orientation, gender identity or expression, age, disability, ancestry or national origin, including immigration status, when making routine or spontaneous law enforcement decisions, except when such information is part of a specific subject description.

### **Officer Responsibilities**

- [LEA officer] shall read and understand the [LEA's] policies: *Immigration Enforcement Procedures*, dated \_\_\_\_, 202\*.
- [LEA officer] shall not participate in any law enforcement activities where the primary or direct purpose is to enforce federal civil immigration laws or when participation violates state or local law or policy.

### **Model Policies and Procedures Regarding Information Gathering and Sharing**

- [LEA personnel] shall not inquire into a person's immigration status, except to provide victim services such as visa information or certifications, to investigate a criminal offense, or when otherwise required by law.

### **Model Policies for Interacting with Nevada Residents**

- [LEA personnel] shall not stop, detain, or question a person based solely on the person's immigration status.
- [LEA personnel] shall not detain, investigate, detect, interrogate, or arrest any person solely for civil immigration enforcement purposes.

### **Model Policies for Responding to Requests by Immigration Law Enforcement**

- [LEA personnel] shall not expend time while on duty or [LEA] resources of any kind disclosing information that belongs to the [LEA] and is available to them only in their official capacity, in response to federal immigration inquiries or in communicating with federal immigration authorities regarding any person’s incarceration status, release dates, court appearance dates, or any other information related to persons in the [LEA’s] custody, other than information related to a person’s citizenship or immigration status, unless such response or communication:
  - relates to a person convicted of a violent or serious crime<sup>1</sup> or identified as a possible match in the terrorist screening database;
  - is unrelated to the enforcement of civil immigration laws; or
  - is otherwise required by law.
- [LEA personnel] shall not detain or arrest any person based solely upon an administrative or civil immigration warrant for a violation of federal civil immigration law, including administrative and civil immigration warrants entered in the National Crime Information Center database, unless provided with a criminal warrant issued by a federal district judge or magistrate judge.

### **Model Policies for U and T Visa Certifications**

- [LEA] shall establish a policy and procedure for providing Status Certifications to applicants for U-Visas (victims of certain crimes) and/or Declarations to applicants for T-Visas (victims of human trafficking).
- If necessary, [Head of LEA] shall designate one or more Certifying Official(s) in a supervisory role who can review the applicant’s case and attest that the information is true and correct to the best of Certifying Official’s knowledge.
- Only a Certifying Official will certify and sign U-Visa Status Certifications and T-Visa Declarations under the guidelines set forth in the U.S.

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<sup>1</sup> The phrase “violent or serious crime” will be defined in consultation with stakeholders and the Task Force. The OAG contemplates the phrase will include crimes commonly deemed “violent” or “serious” such as murder, homicide, kidnapping, sexual assault, robbery, arson, burglary, home invasion, human trafficking, drug trafficking, etc.

Department of Homeland Security’s (DHS) U and T Visa Law Enforcement Resource Guide.<sup>2</sup>

- A Certifying Official shall review the available records within the [LEA’s] reporting systems to confirm the U-Visa or T-Visa applicant is eligible to receive a certification or declaration. If the available records are insufficient to confirm eligibility, the application will be returned to the applicant for additional information. It is the applicant’s responsibility to prove the requirements for a U-Visa certification or T-Visa declaration are met.

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<sup>2</sup> See DHS, U and T Visa Law Enforcement Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement, Prosecutors, Judges, and Other Government Agencies, *available at* [https://www.dhs.gov/sites/default/files/publications/PM\\_15-4344%20U%20and%20T%20Visa%20Law%20Enforcement%20Resource%20Guide%2011.pdf](https://www.dhs.gov/sites/default/files/publications/PM_15-4344%20U%20and%20T%20Visa%20Law%20Enforcement%20Resource%20Guide%2011.pdf) (last visited Dec. 13, 2022).



## **Draft Model Policies for Courthouses**

### **Model Policies Protecting Access to Justice**

- [Court] personnel are not required to disclose citizenship or immigration status about any person, except as required by federal or state law or if disclosure is specifically required by judicial warrant or order.
- [Court] personnel shall not inquire about any individual's immigration status, including a crime victim or witness, unless such inquiry is specifically required for the performance of the court personnel's regular duties.
- All [court] personnel shall be trained on the requirements of these policies and receive a copy of the policies.

### **Model Policies Regarding Training Court Staff on Responding to Immigration Enforcement Activity**

- The [Court] shall establish protocols for use by [court] personnel likely to receive in-person, written, telephonic, or electronic requests for information related to immigration enforcement.
- The [Court] shall identify nonpublic restricted locations within the court facilities. [Court] personnel shall be trained on who may access restricted locations.
- [Court] personnel shall receive training regarding the different types of warrants, subpoenas, and court orders that may be presented to effect an arrest or to obtain records in immigration enforcement actions. This training shall include the following requirements:
  - The ability to differentiate between administrative warrants and judicial warrants signed by a judge or magistrate judge.
  - The ability to differentiate between administrative and judicial subpoenas.
  - The procedure for responding to any warrant, subpoena, or order issued in connection with immigration enforcement activities.
- [Court] personnel shall be trained that Department of Homeland Security (DHS) administrative subpoenas and federal court subpoenas do not require immediate compliance despite the warning language that may be included on the form. All subpoenas shall be submitted for review and a decision by [the presiding judge, court administrator or executive officer, their delegate, or court counsel] on whether to comply with or challenge the subpoena.
- As Nevada's state courts lack jurisdiction to enforce federal immigration law, [Court] personnel are prohibited from assisting in immigration enforcement

actions except as specifically required by federal or state law or judicial warrant or order, and consistent with [Court] policy.

### **Model Policies for Responding to Requests for Court Access for Immigration Enforcement Purposes**

- As soon as possible, [court] personnel shall notify [the presiding judge, court administrator or executive officer, or their delegate] of any request by officers engaged in immigration enforcement for access to nonpublic restricted areas of a courthouse or any requests for review of nonpublic court documents.
- In addition to notifying [the presiding judge, court administrator or executive officer, or their delegate], [court] personnel shall take the following steps in response to the service of a subpoena or a request for access to execute an administrative arrest warrant:
  - Advise the officer that before proceeding with his or her request, [court] personnel must first notify and receive direction from the [presiding judge, court administrator or executive officer, or their delegate].
  - [Court] personnel should ask to see, and make a copy of or note, the officer's credentials (name and badge number). Also ask for and copy or note the phone number of the officer's supervisor.
  - [Court] personnel should ask the officer for his/her reason for being at the courthouse and note the response.
  - [Court] personnel should ask the officer to produce any documentation that authorizes court access.
  - If the officer orders immediate access to the [court facilities], [court] personnel should not refuse the officer's orders and immediately contact the [presiding judge, court administrator or executive officer, or their delegate].
  - State that [Court] does not consent to entry of [Court] facilities.
  - Without expressing consent, [court] personnel shall respond as follows if presented with the following documentation:
    - **An ICE administrative "warrant" (see Appendices \* and \*):** Immediate compliance is *not* required. [Court] personnel shall inform the officer that he or she cannot consent to any request without first consulting with the [presiding judge, court administrator or executive officer, or their delegate]. Provide copy of the warrant to the [presiding judge, court administrator or executive officer, or their delegate] (where possible, in consultation with legal counsel) as soon as possible.
    - **A federal judicial warrant (either search-and-seizure or arrest warrant; see Appendices \* and \*):** Prompt compliance with such a

warrant *is* usually legally required, but when feasible, consult with the [presiding judge, court administrator or executive officer, or their delegate] before providing the officer access to the person or materials specified in the warrant.

- **A subpoena for production of documents or other evidence (see Appendices \* and \*):** Immediate compliance is *not* required. Inform the officer that [court] personnel cannot respond to the subpoena until legal counsel for the court has reviewed the subpoena. Provide a copy of the subpoena to the [presiding judge, court administrator or executive officer, or their delegate] and/or court counsel as soon as possible.
- **A notice to appear (see Appendix \*):** This document is not directed at the [court facility]. [Court] personnel are under no obligation to deliver or facilitate service of this document to the person named in the document. If you get a copy of the document, give it to the [presiding judge, court administrator or executive officer, or their delegate] or court counsel as soon as possible.
- If the officer orders [court] personnel to provide immediate access to court facilities, [court] personnel should not refuse the officer's order and immediately contact the [presiding judge, court administrator or executive officer, or their delegate]. [Court] personnel shall not attempt to physically interfere with the officer, even if the officer appears to be exceeding the authorization given under a warrant or other document. If an officer enters a restricted area without consent, [court] personnel shall document the officer's actions.
- [Court] personnel shall document the officer's actions while in [court] premises in as much detail as possible but without interfering with the officer's movements.
- [Court] personnel shall complete an incident report. The report shall include the information described above that personnel were able to gather from the officer. The report shall also include a statement describing the officer's statements and actions with as much detail as possible.
- To the extent practicable, all [court] personnel who observe any immigration enforcement action taking place in, or in the immediate vicinity of, any court facility, shall report the incident to the [presiding judge, court administrator or executive officer, or their delegate].

#### **Model Policies for U-Visa Status Certification or T-Visa Declaration**

- The [Court] shall establish a policy and procedure for providing Status Certifications to applicants for U-Visas (victims of certain crimes) and/or

Declarations to applicants for T-Visas (victims of human trafficking) as required by the U.S. Department of Homeland Security (DHS), Citizenship and Immigration Services Division (USCIS).

- When available, the judicial officer who presided over the criminal proceeding that is the subject of the applicant’s U-Visa Status Certification or T-Visa Declaration shall conduct the review to certify eligibility.
- The judicial officer shall review the available records within the [LEA’s] reporting systems to confirm the U-Visa or T-Visa applicant is eligible to receive a certification or declaration. If the available records are insufficient to confirm eligibility, the application will be returned to the applicant for additional information. It is the applicant’s responsibility to prove the requirements for a U-Visa Status Certification or T-Visa Declaration are met.
- The [Court] shall prohibit all judicial officers who have completed a U-Visa Status Certification or T-Visa Declaration from disclosing the immigration status of a victim requesting U-Visa Status Certification or T-Visa Declaration, except to comply with federal law or legal process, or if authorized by the victim.

### **Model Policy Regarding the Collection and Dissemination of Personal Information**

- Unless necessary to perform one’s official duties, or required by law, [Court] personnel shall not:
  - Inquire into a person’s immigration status;
  - Provide information regarding a person’s release date to a federal immigration officer, unless the officer has a valid judicial warrant, subpoena, or court order; or
  - Provide personal information to a federal immigration officer, unless the officer has a valid judicial warrant, subpoena, or court order.
    - Personal information means any information that identifies or describes an individual, including, but not limited to, his or her name, social security number, physical description, home address, home telephone number, education, financial matters, and medical or employment history.

### **Model Policies Regarding Responses to Requests for Information for Immigration Enforcement Purposes**

- [Court] personnel shall not provide personal information to any person or entity for immigration enforcement purposes, unless: (1) such information is available to the public; or (2) is subject to a valid judicial warrant, subpoena, or court order.

- [Court] personnel shall not provide information regarding a person's release date or respond to requests for notification by providing release dates or other information (1) is available to the public; (2) is subject to a valid judicial warrant, subpoena, or court order; or (3) is in response to a notification request from authorities.
- [Court] personnel shall not share information regarding any juvenile case file for the purposes of immigration enforcement unless specifically authorized to do so by a judicial order.

## **Draft Model Policies for Public Schools**

### **Policy Recommendations Regarding Collecting and Retaining Student Information**

- The [title of appropriate official or name of public school] shall maintain in writing [public school's] policies and procedures for gathering and handling sensitive student information, and appropriate personnel shall receive training regarding those policies and procedures.
- If the [public school] possesses information that could indicate immigration status, citizenship status, or national origin information, the [public school] shall not use the acquired information to discriminate against any students or families or bar children from enrolling or attending school.
- If parents or guardians choose not to provide information that could indicate their own or their children's immigration status, citizenship status, or national origin information, the [public school] shall not use such actions as a basis to discriminate against any students or families or bar children from enrolling or attending school.
- The [public school] shall not allow school resources or data to be used to create a registry based on race, gender, sexual orientation, religion, ethnicity, or national origin.

### **Model Policies for Inquiries Regarding Immigration Status, Citizenship Status, and National Origin Information**

- [Public school] personnel shall not inquire specifically about a student's citizenship or immigration status or the citizenship or immigration status of a student's parents or guardians; nor shall personnel seek or require, to the exclusion of other permissible documentation or information, documentation or information that may indicate a student's immigration status, such as a green card, voter registration, a passport, or other citizenship papers.
- When any law contemplates submission of national origin related information to satisfy the requirements of a special program, [public school] personnel shall not solicit that documentation or information separately from the school enrollment process.
- When permitted by law, the [title of officer or school] of the [public school] shall enumerate alternative means to establish residency, age, or other eligibility criteria for enrollment or programs, and those alternative means shall include among them documentation or information that are available to persons regardless of immigration status, citizenship status, or national origin, and that do not reveal information related to citizenship or immigration status.

- When residency, age, and other eligibility criteria for purposes of enrollment or any program may be established by alternative documents or information permitted by law or this [resolution/policy], the [public school's] procedures and forms shall describe to the applicant, and accommodate, all alternatives specified in law and all alternatives authorized under this [resolution/policy].

### **Model Policies for Monitoring and Receiving Campus Visitors**

- No outsider, which includes immigration enforcement officers, shall enter or remain on school grounds of the [public school] during school hours without having registered with the principal or designee. If there are no exigent circumstances necessitating immediate action, and if the immigration officer does not possess a judicial warrant or court order that provides the basis for the visit, the officer must provide following information to the principal or designee:
  - Name, address, occupation;
  - Age, if less than 21;
  - Purpose in entering the school grounds;
  - Proof of identity; and
  - Any other information as required by law.
- The [public school] shall adopt measures for responding to outsiders that avoids classroom interruptions, and preserves the peaceful conduct of the school's activities, consistent with local circumstances and practices.
- The [public school] shall post signs at the entrance of its school grounds to notify outsiders of the hours and requirements for registration.
  - [Public school] personnel shall report entry by immigration enforcement officers to any on-site school police or other appropriate administrator as would be required for any unexpected or unscheduled outside visitor coming on campus.

### **Model Policies Responding to On-Campus Immigration Enforcement**

- As early as possible, [public school] personnel shall notify the [Superintendent or designated administrator] of any request by an immigration enforcement officer for school or student access, or any requests for review of school documents (including for the services of lawful subpoenas, petitions, complaints, warrants, etc.).
- In addition to notifying the [Superintendent or designated administrator], [public school] personnel shall take the following actions steps in response to

an officer present on the school campus specifically for immigration enforcement purposes:

1. Advise the officer that before proceeding with their request, and absent exigent circumstances, school personnel must first receive notification and direction from the [Superintendent or administrator].
2. Ask to see, and make a copy of or note, the officer's credentials (name and badge number). Also ask for and copy or note the phone number of the officer's supervisor.
3. Ask the officer for their reason for being on school grounds and document it.
4. Ask the officer to produce any documentation that authorizes school access.
5. Make a copy of all documents provided by the officer. Retain one copy of the documents for school records.
6. If the officer declares that exigent circumstances exist and demands immediate access to the campus, [public school] personnel shall comply with the officer's orders and immediately contact the [superintendent or other administrator].
7. If the officer does not declare that exigent circumstances exist, respond according to the requirements of the officer's documentation. If the immigration officer has.
  - **An ICE (Immigrations and Customs Enforcement) Administrative Warrant (see Appendix \* & \*):** [Public school] personnel shall inform the agent that they cannot consent to any request without first consulting with the [public school's counsel or other designated administrator] before providing the agent access to the person or materials specified in the warrant.
  - **A Federal Judicial Warrant (Search-and-Seizure Warrant or Arrest Warrant) (see Appendix \* & \*):** Prompt compliance with such a warrant is usually legally required. If feasible, consult with the [public school's legal counsel or designated administrator] before providing the agent access to the person or materials specified in the warrant.
  - **A Subpoena for Production of Documents or Other Evidence (see Appendix \* & \*):** Immediate compliance is *not* required. Therefore, [public school] personnel shall inform the [public school's] legal counsel or other designated official of the subpoena and await further instructions on how to proceed.



8. While [public school] personnel should not consent to access by an immigration enforcement officer, except as described above, they should not attempt to physically impede the officer, even if the officer appears to be exceeding the authorization given under a warrant or other document. If an officer enters the premises without consent, [public school] personnel shall document their actions while on campus.
9. After the encounter with the officer, [public school] personnel shall promptly take written notes of all interactions with the officer. The notes shall include the following items:
  - List or copy of the officer’s credentials and contact information;
  - Identity of all school personnel who communicated with the officer;
  - Details of the officer’s request;
  - Whether the officer presented a warrant or subpoena to accompany their request, what was requested in the warrant/subpoena, and whether the warrant/subpoena was signed by a judge;
  - [Public school] personnel’s’ response to the officer’s request;
  - Any further action taken by the agent; and
  - Photo or copy of any documents presented by the agent.
10. [Public school] personnel shall provide a copy of those notes, and associated documents collected from the officer, to the [public school’s legal counsel or other designated official].
11. In turn, the [public school’s legal counsel or other designated official] shall submit a timely report to the [public school’s] governing board regarding the officer’s requests and actions and the [public school’s] response(s).

### **Model Policies for Parental Notification of Immigration Enforcement Actions**

- [Public school] personnel must receive consent from the student’s parent or guardian before a student can be interviewed or searched by any officer seeking to enforce the civil immigration laws at the school, unless the officer presents a valid warrant or court order signed by a federal district judge or magistrate judge.
- [Public school] personnel shall immediately notify the student’s parent(s) or guardian(s) if a law enforcement officer requests or gains access to a student for immigration enforcement purposes, unless such access was in compliance with a judicial warrant or subpoena that restricts the disclosure of the information to the parent or guardian.

### **Model Policies and Procedures Regarding Information Sharing**

- The [public school] shall avoid the disclosure of information that might indicate a student’s or family’s citizenship or immigration status if the disclosure is not authorized by Family Educational Rights and Privacy Act (FERPA).
- [Public school] personnel shall take the following actions steps upon receiving an information request related to a student’s or family’s immigration or citizenship status:
  - Notify a designated [public school] official about the information request.
  - Provide students and families with appropriate notice and a description of the immigration officer’s request.
  - Document any verbal or written request for information by immigration authorities.
  - Unless prohibited, provide students and parents/guardians with any documents issued by the immigration enforcement officer.
- Except for investigations of child abuse, child neglect, or child dependency, or when the subpoena served on the public school prohibits disclosure, the [public school] shall provide parental or guardian notification of any court orders, warrants, or subpoenas before responding to such requests.
- The [public school] shall require written parental or guardian consent for release of student information, unless the information is relevant for a legitimate educational interest or includes directory information only. Neither exception permits disclosing information to immigration authorities for immigration enforcement purposes; no student information shall be disclosed to immigration authorities for immigration-enforcement purposes without a court order or judicial subpoena.
- The [public school’s] request for written or parental or guardian consent for release of student information must include the following information: (1) the signature and date of the parent, guardian, or eligible student providing consent; (2) a description of the records or information to be disclosed; (3) the reason for release of the records or information; (4) the parties or class of parties receiving the information; and (5) if requested by the parents, guardians, or eligible student, a copy of the records to be released. The [public school] shall permanently keep the consent notice with the record file.
- The parent, guardian, or eligible student is not required to sign the consent form. If the parent, guardian, or eligible student refuses to provide written consent for the release of student information that is not otherwise subject to release, the [public school] shall not release the information.

## **Model Policies for Annual Information Notice to Parents and Guardians**

### *General Information Policy*

- The [public school] must provide an annual notice to parents and guardians of the school’s general information policies that includes:
  - Assurances that the [public school] will not release information to third parties for immigration enforcement purposes, except as required by law or court order.
  - A description of the types of student records maintained by the [public school].
  - A list of the circumstances or conditions under which the [public school] might release student information to outside people or entities.
  - A statement that, unless the [public school] is providing information for a legitimate educational purpose under FERPA and NRS Title 34 – Education or directory information, the [public school] shall notify parents or guardians and eligible students, and receive their written consent, before it releases a student’s personally identifiable information.

### *Directory Information Policy*

- If the [public school] decides to release directory information, the [public school] shall provide an annual notice to parents and guardians, and “eligible students” in attendance, of the [public school’s] directory information policy that includes:
  - The categories of information that the [public school] has classified as public directory information that may be disclosed without parental consent.
  - A statement that directory information does not include citizenship status, immigration status, place of birth, or any other information indicating national origin (except where the [public school] receives consent).
  - The recipients of the directory information.
  - A description of the parent’s or guardian’s abilities to refuse release of the student’s directory information and how to refuse release.
  - The deadline in which the parent, guardian, or student must notify the school in writing that they do not want the information designated as directory information.

## **Draft Model Policies for Institutions of Higher Education**

### **Model Policies for Collecting and Retaining Student Information**

- [College or university personnel] shall treat all students equitably in the receipt of all school services, including, but not limited to, the gathering of student and family information for the institution's benefit programs.
- The [title of appropriate official or name of unit] shall maintain in writing [college or university] policies and procedures for gathering and handling sensitive student information, and appropriate personnel shall receive training regarding those policies and procedures.
- [College or university] will provide students and families with annual notice, at the beginning of each school year, of institutional policies for student privacy and the abilities of parents or eligible students to inspect student information.
- [College or university] will provide students an opportunity to opt out of disclosure of directory information. Notices must describe the following:
  - The kind of information that the school has identified as directory information;
  - The eligible student's ability to refuse to let the school designate the information as directory information, which could be disclosed to outside entities;
  - The period of time in which the eligible student has to notify the school in writing that he or she does not want the information designated as directory information; and
  - That opting out by the noted deadline is the students' only way to prevent the release of directory information.
- Any sensitive information, such as a student's, parent's, or guardian's SSN, or citizenship status information collected by the [college or university] or disclosed by the student, should be maintained only for as long as necessary.
- If the [college or university] possesses information that could indicate immigration status or citizenship status, [college or university personnel] shall not consider the acquired information in admissions decisions or access to educational courses or degree programs.
- Students may elect not to provide immigration or citizenship status information to the institution, and this election shall not impede admissions or enrollment in educational programs.
- [College or university personnel] shall not create a list of student names linked with immigration status.

- [College or university] police or security departments shall not inquire into an individual's immigration status for immigration enforcement purposes.
- [College or university] police or security departments shall not aid any effort to create a registry containing individuals' country of birth or based on any other protected characteristics of victims, witnesses, or suspects of crimes unless required by law for specified purposes.

### **Model Policies for Responding to Inquiries of Immigration Status, Citizenship Status, and National Origin Information**

- Unless required by federal or state law, [college or university personnel] shall not inquire specifically about a student's citizenship or immigration status or the citizenship or immigration status of a student's parents or guardians; nor shall personnel seek or require, to the exclusion of other permissible documentation or information, documentation or information that may indicate a student's immigration status, such as a green card, voter registration, a passport, or citizenship papers.
- Where any law contemplates submission of immigration status or citizenship status information to satisfy the requirements of a special program, [college or university personnel] shall not use that documentation or information for decisions related to admissions or enrollment in courses or degree programs.
- [College or university] is not permitted to use immigration status, citizenship status, or national origin information in personal statements outside the application process, other than for legitimate educational interests, including the provision of a service or benefit relating to the student, such as health care, counseling, job placement or financial aid.
- If [college or university] learns of a student's immigration status through its application process (including the students' personal statement or answers to personal insight questions), [college or university] shall create policies and procedures to protect such personal identifiable information and retain the information only to the extent it is necessary or required by law. The [college or university] shall avoid the disclosure of information that might indicate a student or family's citizenship or immigration status if the disclosure is not authorized by the Family Educational Rights and Privacy Act (FERPA) or state law.
- Where permitted by law, the [title of officer or unit] of [college or university] shall enumerate alternative means to establish residency, age, or other eligibility criteria for enrollment or programs, and those alternative means shall include among them documentation or information that are available to persons regardless of immigration status or citizenship status, and that do not reveal information related to citizenship or immigration status.

- Examples of documents that can be used as proof of residency include but are not limited to:
  - Registering a motor vehicle operated in Nevada;
  - Obtaining a Nevada driver's license or Nevada identification card;
  - Listing a Nevada address on a federal income tax return;
  - Listing a permanent military address or home of record in Nevada;
  - A professional or vocational license obtained from a Nevada state licensing agency (e.g., nursing, teaching credentials);
  - Maintaining active resident memberships in Nevada based professional organizations (e.g., police union, teachers' union); and
  - Maintaining an active bank account at a Nevada bank.
- When a [college or university] is permitted by law to request a minor student's parent's residency information in order to determine tuition or aid, the educational institution shall only require documentation or information that is available to persons regardless of immigration status (as noted above).
- When residency, age, and other eligibility criteria for purposes of enrollment or any program may be established by alternative documents or information permitted by law or this [resolution/policy], the [college or university's] procedures and forms shall describe to the applicant, and accommodate, all alternatives specified in law and all alternatives authorized under this [resolution/policy].
- Specifically, when [college or university] must determine a student's residency for purposes of in-state tuition, a [college or university] shall not inquire about a parent/guardian's citizenship or immigration status and shall enumerate alternative means of establishing a parent/guardian's residency. If the student is considered a minor dependent of a Nevada resident, the college or university shall only require documents to determine whether the parent has resided in Nevada for one year (e.g., vehicle registration, lease agreements, etc.)

### **Model Policies for Responding to Requests for Access for Immigration Enforcement Purposes**

- [College and university personnel] shall provide guidance and offer training to campus employees addressing law enforcement access to campus buildings and student residences. This guide shall include the following required topics:
  - Instructions that law enforcement officers cannot enter living quarters to make arrests without a judicial warrant, valid consent, or exigent circumstances.

- Instructions that [college and university personnel], including campus police, cannot consent to the entry into a residence or dormitory for the purpose of a search or arrest, but a judicial warrant or exigent circumstances may authorize officer entry without consent.
- Campus police contact information to report concerns about the presence of officers engaged in immigration enforcement on any campus property.
- Samples of warrant and subpoena documents that could be used for access onto campus property, or to seize or arrest students or other individuals on campus (see Appendices \* to \*).
- Sample responses for [building personnel or residence hall staff] to use in response to officers seeking access for immigration enforcement purposes that avoids classroom interruptions, and that preserves the peaceful conduct of the school's activities.
- [College and university personnel] shall advise all students, faculty, and staff to immediately notify the office of the chancellor or president, or his or her designee, if he or she is advised that an officer engaged in immigration enforcement is expected to enter, will enter, or has entered the campus for immigration enforcement purposes. Campus police should also be notified as soon as possible.
- No personnel may consent to entry of [college or university] facilities or portions thereof.
- [College and university personnel] shall advise all students, faculty, and staff responding to or having contact with an officer engaged in immigration enforcement executing an immigration order, to refer the entity or individual to the office of the chancellor or president, or his or her designee, for purposes of verifying the legality of any warrant, court order, or subpoena.
- If the officer declares that exigent circumstances exist and demands immediate access to the campus, [college or university personnel] should not refuse the officer's orders and should immediately contact the [designated administrator or campus police liaison].
- The office or designee of the chancellor's or president's office shall determine what type of authorization is being provided to support the officer's request for access:
  - A U.S. Immigrations and Customs Enforcement (ICE) "warrant" (see Appendices A and B): Immediate compliance is not required. [College and university personnel] shall inform the officer that he or she cannot consent to any request without first consulting with the [designated campus official]. Provide copy of the warrant to the designated administrator (where possible, in consultation with legal counsel) as soon as possible.

- A federal judicial warrant (search-and-seizure warrant or arrest warrant; see Appendices \* and \*): Prompt compliance with such a warrant is usually legally required, but where feasible, consult with the [designated campus official] before responding.
- A subpoena for production of documents or other evidence (see Appendices \* and \*): Immediate compliance is not required. Inform the officer that the [college or university] cannot respond to the subpoena until after it has been reviewed by a designated administrator. Provide a copy of the subpoena to a designated administrator or legal counsel as soon as possible.
- A notice to appear (see Appendix \*): This document is not directed at the [college or university]. [College and university personnel] is under no obligation to deliver or facilitate service of this document to the person named in the document. If you get a copy of the document, give it to a designated administrator as soon as possible.
- College or university personnel should not attempt to physically interfere with an officer, even if the officer appears to be acting without consent or exceeding the authorization given under a warrant or other document. If an officer enters the premises without consent, [college or university personnel] shall make a record of the contact and forward the information to the office of the president or chancellor.
- In making record of the contact with an immigration enforcement officer, [college or university personnel] shall provide the following information:
  - Name of the officer, and, if available, the officer's credentials and contact information;
  - Identity of all school personnel who communicated with the officer;
  - Details of the officer's request;
  - Whether the officer presented a warrant, subpoena, or court order to accompany his/ her request, what was requested in the warrant/subpoena/court order, and whether the warrant/subpoena/court order was signed by a judge;
  - [College or university personnel's] response to the officer's request;
  - Any further action taken by the immigration officer; and
  - Photo or copy of any documents presented by the agent.
- [College or university personnel] shall provide a copy of those notes, and associated documents collected from the officer, to the [general counsel or other designated campus official].



- In turn, the [general counsel or designated campus official] shall submit a timely report to the [college's or university's] governing board and the campus public safety office regarding the officer's requests and actions and the [college's or university's] response(s).

### **Model Policies for Responding to Request for Access to Student Records for Immigration Enforcement Purposes**

- [College or university] must obtain a student's written consent before disclosing educational records, unless the information is relevant for a legitimate educational interest or includes directory information only. Neither exception permits disclosing information for immigration enforcement purposes; no student information shall be disclosed for immigration enforcement purposes without a court order or judicial warrant. Without a court order or a judicial warrant, written consent must be signed and dated by the student, or (if the student is a minor) by the student's parent(s) or guardian(s), before disclosure of the information, and must specify the records that may be disclosed, the purpose of the disclosure, and the party or class of parties to whom the disclosure may be made. If desired by the student, [the college or university] must provide a copy of the records to be released. The party to whom the information is disclosed may not redisclose the information to any other party without the prior consent of the student or subsequent court order.
- [College and university personnel] shall develop a written policy for interactions with immigration authorities seeking to review student records. At minimum, such policies shall include the following information:
  - Contact information [name, title, e-mail addresses, and phone numbers] for the correct person to review and respond to a request for student records.
  - Access to sample warrant and subpoena documents that could be used for access onto campus property, or to seize or arrest students or other individuals on campus (see Appendices A to G).
  - [College and university personnel] shall provide a set of responses for [building personnel or residence hall staff] to use in response to officers seeking access to records for immigration enforcement purposes.
- In addition to notifying the [designated campus official], [college or university personnel] shall take the following action in response to an officer other than campus police requesting access to student records:
  - Ask for the officer's name, identification number, and agency affiliation;
  - Record or copy this information;
  - Ask for a copy of any warrants;

- Inform the officer that you are not obstructing his or her efforts but that you need to contact a campus administrator or campus counsel for assistance.
- Campus police shall not provide personal information about an individual for immigration enforcement purposes, unless that information is publicly available, or required by a court order or judicial warrant. “Personal information” is defined as any information that identifies or describes an individual, and includes but is not limited to, a student’s physical description, home or work address, telephone number, education, financial matters, medical or employment history, and statements made by, or attributed to, the individual. This restriction does not apply to information regarding the immigration or citizenship status of an individual.
- Unless [college or university] is served with a judicial subpoena or court order that by its terms prohibits disclosure to the student, the student must be notified of any judicial order or subpoena before the institution complies with the order in accordance with FERPA.

## Draft Model Policies for Health Care Facilities

### Model Policies and Procedures Regarding Gathering and Sharing Patient and Family Information

- [Health care facility] should develop and post its policies, if at all possible, in the languages commonly spoken in the local community, and make these policies accessible on the [health care facility's] website. Staff, including any relevant volunteers, should be well-trained in these policies and procedures.
- [Health care facility] shall designate a health care facility administrator to handle immigration issues, ensuring that staff members and relevant volunteers are adequately dealing with immigration enforcement inquiries and requests, dissemination of information to patients, and compliance with internal procedures.
- [Health care facility] shall implement a policy that is protective of patient information, under which [health care facility] staff members and volunteers disclose patient information only when required or expressly authorized to do so by law.
- [Health care facility] shall limit collection of information about immigration status, citizenship status, and national origin to information that the facility is required by law to collect.
  - If [Health care facility] must collect such information for a patient, [Health care facility] should avoid including that information in the patient's medical and billing records.
  - [Health care facility] shall collect such information for only the person seeking care, not their family members.
- [Health care facility] and [designated health care facility administrator] should consult legal counsel to help [health care facility] determine when and to what extent [health care facility] is required to comply with administrative requests.
- [Health care facility] shall require that an immigration enforcement official provide their badge or identification card to be photocopied by [health care facility] personnel.
- For responding to requests issued by immigration enforcement officials, [health care facility] shall develop a verification procedure to determine and document:
  - The specific agency the requester is from;
  - Whether the requester has law enforcement power;
  - The specific types of protected health information the requester seeks; and

- The reason the requester wants the information.
- [Health care facility] shall develop procedures for handling information requests by telephone, such as requiring a call-back process through publicly listed agency phone numbers. Staff members and volunteers receiving immigration inquiries and requests shall first consult with the [designated health care facility administrator] to ensure that correct protocols are followed.
- [Health care facility] shall establish policies that provide guidance on determining whether a document labeled “subpoena,” “warrant,” or “summons” has been issued by a court or judicial officer. Often such requests are handled by the [health care facility’s] privacy officer or medical records department, to assure that information is disclosed appropriately. If possible, [health care facility] should consult with competent legal counsel each time on such matter.
- If [health care facility] is required to make a disclosure of patient information to immigration enforcement officials without the patient’s authorization in compliance with a court order or judicial warrant, then the [health care facility] should document the disclosure in compliance with facility policies and procedures. Such documentation should include information that supported the decision to disclose the patient’s information. Disclosures to law enforcement are subject to the accounting-of-disclosures requirement under the HIPAA Privacy Rule.

### **Model Policies for Responding to Immigration Law Enforcement at Health Care Facilities**

- As soon as possible, [health care facility] personnel shall notify the [designated health care administrator] of any request (including subpoenas, petitions, complaints, warrants, or court orders) by an immigration law enforcement officer to access a health care facility or a patient, or any request for review of [health care facility] documents.
- In addition to notifying the [designated health care facility administrator], [health care facility] personnel shall take the following steps in response to an officer present at [health care facility] for immigration enforcement purposes:
  1. Advise the officer that before proceeding with their request, [health care facility] staff must first notify and receive direction from the [designated health care facility administrator].
  2. Ask to see, and make a copy of or note, the officer’s credentials (name and badge number). Also ask for and copy or note the telephone number of the officer’s supervisor.

3. Ask the officer to explain the purpose of the officer’s visit and note the response.
4. Ask the officer to produce any documentation that authorizes health care facility access.
5. Make copies of all documents provided by the officer.
6. Decline to answer questions posed by the officer and direct them to speak to the [designated health care facility administrator].
7. State that [health care facility] does not consent to entry of [health care facility] or portions thereof.
8. Without expressing consent, [health care facility] staff shall respond as follows if presented with the following documentation:
  - **An ICE administrative “warrant” (see Appendices \* and \*):** Immediate compliance is *not* required. Inform the officer that [health care facility] cannot respond to the warrant until after it has been reviewed by [legal counsel or designated administrator] as soon as possible.
  - **A federal judicial warrant (either search-and-seizure or arrest warrant; see Appendices \* and \*):** Prompt compliance with such a warrant *is* usually legally required, but where feasible, staff should consult with legal counsel before responding.
  - **A subpoena for production of documents or other evidence (see Appendices \* and \*):** Immediate compliance is *not* required. Inform the officer that [health care facility] personnel cannot respond to the subpoena until after it has been reviewed by [legal counsel or the designated administrator]. Provide a copy of the subpoena to [legal counsel or the designated administrator] as soon as possible.
  - **A notice to appear (see Appendix \*):** This document is not directed at the [health care facility]. [Health care facility] staff is under no obligation to deliver or facilitate service of this document to the person named in the document. If you get a copy of the document, give it to [legal counsel or the designated administrator] as soon as possible.
9. Document the officer’s actions in as much detail as possible when they enter [health care facility] premises but without interfering with the officer’s movements.
10. If the officer orders staff to provide immediate access to facilities, [health care facility] staff should comply with the officer’s order and also immediately contact [legal counsel or the designated administrator]. Personnel also should not attempt to physically interfere with the officer, even if the officer appears to be acting without consent or appears to be

exceeding the purported authority given by a warrant or other document. If an officer enters the premises without authority, [health care facility] personnel shall simply document the officer's actions while at the facility.

11. [Health care facility] staff should document the officer's actions while in [health care facility] premises in as much detail as possible, but without interfering with the officer's movements.
12. [Health care facility] staff should complete an incident report. The report should include the information described above that staff were able to gather from the officer. The report should also include a statement describing the officer's statements and actions with as much detail as possible.

### **Model Policies for Monitoring and Receiving Visitors into Health Care Facilities**

- [Health care facility] shall establish policies for individuals who are not patients or employees of [Health care facility] who may come to the facility for business or personal reasons (“visitor(s)”). Such policies will require all visitors, including immigration enforcement officers, who enter or remain on [health care facility] grounds to register with [health care facility's] designee and provide the following information:
  - Name, address, occupation;
  - Age, if less than 21 years;
  - Purpose in entering [health care facility]; and
  - Proof of identity
- [Health care facility] shall post signs at the entrances of the facility to notify visitors of the hours of operation and requirements for visitor registration.
- If the immigration enforcement officer declares that exigent circumstances exist and demands immediate access to the [health care facility], [health care facility personnel] should not refuse the officer's orders and should immediately contact the [health care facility's legal counsel or designated health care facility administrator].
- If there are no exigent circumstances necessitating immediate action, and if the immigration enforcement officer does not possess a judicial warrant or court order that provides a basis for the visit, the visitor must provide the information required for all visitors.
  - Try to obtain this information even from a visitor or officer with a court order.
- [Health care facility] personnel shall report entry by immigration enforcement officers to the [designated health care facility administrator], as

would be required for any unexpected or unscheduled visitor coming into the facility.

### **Model Policies for Information Notice to Patients or Representatives**

- [Health care facility] shall post and issue general information policies telling patients of their privacy rights.
  - [Health care facility] should provide a comprehensive list of privacy protections, under both federal law and Nevada law.
- [Health care facility] should give assurances that it will not release information to third parties for immigration enforcement purposes, except as required or expressly authorized by law or court order.
- [Health care facility] should post information guides regarding immigrant patient rights, including the right to remain silent. Although immigration enforcement at [health care facility] is limited, immigration enforcement officials may enter a public area of [health care facility] without a warrant or the facility's consent and may question any person present (with that person's consent).

### **Model Policies for Parental Notice of Immigration Enforcement Actions**

- [Health care facility] personnel must obtain consent from a minor patient's parent or guardian (provided the child is not legally regarded as their own personal representative of their medical records) before a minor patient can be interviewed or search by any officer seeking to enforce the civil immigration laws at [health care facility], unless the officer presents a valid, effective warrant signed by a judge, or presents a valid, effective court order.
- [Health care facility] personnel shall immediately notify the minor patient's parent or guardian if a law enforcement officer requests or gains access to a patient for immigration enforcement purposes, unless such access was in compliance with a judicial warrant or subpoena that restricts the disclosure of the information to the parent or guardian.