

This model school district board policy is intended for school districts that do NOT have a regular police presence where one or more police officers are assigned to patrol, and do NOT have their own school district police department. For school districts that have their own police department, please refer to the ACLU-CA Model Board Policy Regarding School District Police Departments. For school districts that have a regular police presence where one or more police officers from an outside law enforcement agency are assigned to patrol the schools, please refer to the ACLU-CA Model Memorandum of Understanding between a school district and law enforcement agency.

BP #####

Student Contact with Law Enforcement and Student Questioning and Apprehension

The District is committed to providing a safe learning environment and ensuring the safety of students, staff, and the community. The District is committed to reducing student contact with law enforcement and the juvenile justice system, reducing the rate of school-based arrests and citations while maintaining a safe school climate, and protecting students from discrimination or implicit bias.

Matters of School Discipline

District administrators are responsible for ensuring consistent enforcement of school rules and policies. School administrators, in partnership with community and parents, have exclusive authority over school discipline issues, using the framework of restorative justice. No law enforcement officer shall act as a school disciplinarian. District and school staff shall never request law enforcement assistance to resolve student disciplinary issues, even if a parent/guardian requests that District or school staff call law enforcement.

Designated school site administrators and staff may request law enforcement assistance when there is a situation involving imminent¹ danger of serious physical injury or death to a person on school property. “Serious physical injury” is defined as “bodily injury which involves (A) a substantial risk of death; (B) extreme physical pain; (C) protracted and obvious disfigurement; or (D) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.” District or school staff shall not request the involvement of a law enforcement officer in a situation that can be safely and appropriately handled by the District’s internal student disciplinary procedures, even if a parent/guardian requests that District or school staff call law enforcement. A parent/guardian who requests that District or school staff call for law enforcement assistance where there is no imminent danger of serious physical injury or death to a person on school property shall be informed that District policy

¹ “A threat of death or serious bodily injury is ‘imminent’ when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or another person. An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed.” Cal. Penal Code § 835a(e)(2).

requires alternative measures shall be taken to respond to the situation. School and district administrators shall provide the parent/guardian with a list of alternative measures that may be taken to respond to the situation along with any community resources that may be used, as appropriate.

Disciplinary Issues where District and school staff may not request the involvement of a law enforcement officer include, but are not limited to:

1. “Disorderly conduct,” “willful defiance,” “defiance,” “disruption,” or “disturbing the peace,” which includes student behavior such as yelling, disrupting class, throwing food, or running;
2. Failure to participate in class or being unprepared for class;
3. Failure to carry hall-pass/appropriate identification;
4. Trespassing;
5. Loitering or hallway wandering;
6. Using profanity against students and/or staff;
7. Insubordination/defiance;
8. Verbal or written altercations, abuse, and/or harassment;
9. Altercations, abuse, and/or harassment over the internet;
10. Vandalism and/or graffiti;
11. Failure to follow school rules;
12. Inappropriate public displays of affection;
13. Failure to wear or correctly wear school uniform or follow policies regarding clothing;
14. Possession of a prohibited item that does not violate the penal code (e.g., cell phones or markers);
15. Inappropriate use of electronic devices or accounts;
16. Being late, cutting class, absenteeism, or truancy;
17. Physical altercations that do not involve a weapon or result in serious bodily injury;
18. Perceived drunkenness or intoxication;
19. Possession of tobacco, alcohol or marijuana;
20. Possession of a tool that could be taken to be, but is not intended as a weapon – such as a nail clipper or file, small pen knife, butter knife, toy gun, pepper spray, etc. – unless that item is being brandished as a weapon; and
21. Alleged or witnessed promoting or claiming to be part of a neighborhood or crew (including verbally, through graffiti, through clothing, or hand signs);
22. Theft, including unarmed robbery, of items valued under \$1000; and
23. Gambling.

For the commission of these and other violations of school rules, District and school administrators use non-law-enforcement interventions. District administrators shall develop a matrix to track the use of alternatives to calling law enforcement officers. School or District personnel who witness Disciplinary Issues shall locate a trained restorative justice practitioner to

respond to the situation. If a trained restorative justice practitioner is not available, school or District staff shall locate a social-emotional counselor or other non-law-enforcement, non-security intervention worker to respond to the situation. If those people are unavailable, school or District staff who witness Disciplinary Issues shall locate other school staff to respond to the situation. Under no circumstances shall school or District staff report any Disciplinary Issues to law enforcement agencies, including a police or Sheriff's department, county probation department or the District Attorney's Office. Each school shall establish a room to de-escalate situations involving student misbehavior that is short of a situation involving danger of death or serious physical injury to a person on school property. A trained restorative justice practitioner, social-emotional counselor, or other trained intervention worker shall be in the de-escalation room at all times when a student is in the room. A law enforcement officer may not place a student in this room or be present in this room with a student. The student shall not be secluded in the de-escalation room at any time. Any time a student is placed in this room, parental/caregiver notification pursuant to the procedures described below must immediately occur and the incident shall be recorded and reported pursuant to Board Policy ##### regarding Data Tracking.

School site administrators and staff shall not call law enforcement officers to interview students or collect evidence for District disciplinary purposes, including for expulsion matters.

Disproportionate requests by District or school staff for law enforcement officers to intervene in inappropriate situations shall be cause for corrective action by the District, including, but not limited to, placing the matter for public discussion on the meeting agenda for the Board of Education.

Student Questioning

Parent/Caregiver Notification Required Before a Student is Arrested, Searched, Restrained, Secluded, or Questioned by a Law Enforcement Officer

Pursuant to California Welfare & Institutions Code Section 625.6, prior to a custodial interrogation, and before the waiver of any Miranda rights, a youth 17 years of age or younger shall consult with legal counsel in person, by telephone, or by video conference. The consultation may not be waived. Cal. Welf. & Inst. Code § 625.6.

Prior to any student being questioned, arrested, booked, restrained, or secluded by a law enforcement officer on campus, a school site representative must call the student's parent/guardian or adult serving as a surrogate parent/caregiver and give the parent/guardian or adult serving as a surrogate parent/caregiver a reasonable opportunity to be present prior to the questioning, arrest, booking, restraint, or seclusion, unless the student is a suspected victim of child abuse in the home. The sole purpose of this notification to the parent/guardian or surrogate parent/caregiver is to inform them of the situation, not to gather information about the student. If the parent/guardian or adult serving as a surrogate parent/caregiver requests that the student not be questioned, arrested, booked, restrained, or secluded until the parent/guardian or adult serving as a surrogate parent/caregiver can be present, the law enforcement officer may

not question, arrest, book, restrain or seclude the student until the parent/guardian or adult serving as a surrogate parent/caregiver is present. If a parent/guardian or adult serving as a surrogate parent/caregiver does not answer the phone call or cannot be present, the principal or designee must be notified as soon as possible and must offer the student the option of having an adult of the student's choice available before the questioning, arrest, booking, restraint, or seclusion begins. If the parent/caregiver or adult serving as a surrogate parent/caregiver of a student who is a victim or witness (and not a suspect) cannot be reached, law enforcement officers may not question, arrest, book, restrain, or seclude the student unless the student's behavior presents an imminent danger of death or serious physical injury to a person on school property. The sole exception to this notification requirement is if the student is taken into protective custody by the officer as a suspected victim of child abuse by non-school staff or pursuant to California Welfare & Institutions Code § 305; or if the student's behavior presents a clear imminent danger of serious physical injury or death to a person on school property.

When notifying a parent/caregiver or adult serving as a surrogate parent/caregiver, school officials shall convey the following information:

1. The basis for the student questioning, search, seclusion, restraint, or arrest by a law enforcement officer, or other referral to a law enforcement officer;
2. Information regarding the student's rights, including the right to file a complaint with the Superintendent or Board of Education;
3. Whether the student will or may also be suspended or face disciplinary consequences independent of the questioning, search, seclusion, restraint, arrest or other referral to law enforcement; and
4. Whether the student has been taken into custody and where the parent/caregiver or adult serving as a surrogate parent/caregiver can reach the student.

The sole purpose of this notification to the parent/guardian or surrogate parent/caregiver is to inform them of the situation, not to gather information about the student.

Efforts made to notify the parent/caregiver or adult serving as a surrogate parent/caregiver

Efforts to contact the student's parent/guardian or adult serving as a surrogate parent/caregiver by the principal or designee must include: (1) calling all numbers listed on the student's emergency card, including (a) work numbers, (b) cell phone numbers, (c) all numbers supplied by the student; and (d) phone numbers for any identified adults serving as a surrogate parent/caregiver; and (2) sending an email to all email addresses listed for the parent/caregiver and any adults identified as a surrogate parent/caregiver. The principal or designee shall record the time(s) of contact or attempted contact with the parent/guardian or adult serving as a surrogate parent/caregiver, and the District shall maintain a record of that contact for at least three years. If the principal or designee cannot reach the parent/guardian or adult serving as a surrogate parent/caregiver, they shall leave messages where applicable and follow up with written documentation.

Questioning by Law Enforcement

When any law enforcement official requests an interview with a student, the principal or designee shall request that the official provide verification of the officer's identity and official capacity and certify the legal authority under which the interview is being conducted. If the officer refuses to provide certification of the legal authority for the interview, the principal or designee shall document such refusal, consult with District legal counsel, and receive approval before allowing the interview to proceed.

Law enforcement officers may not remove students from class for questioning without a court order or arrest warrant that permits questioning unless the student's behavior presents a imminent danger of serious physical injury or death to a person on school property. Where there is no court order, arrest warrant, or imminent danger of serious physical injury or death to a person on school property, law enforcement officers shall wait until after school to approach the student.

If the law enforcement officer presents a court order or arrest warrant, or the student's behavior presents an imminent danger of serious physical injury or death to a person on school property, a private location out of sight and hearing of other students shall be arranged to question a student, where possible, that will help avoid invading the student's privacy, embarrassing or humiliating the student, jeopardizing the safety and welfare of other students, and causing further disruption of the school campus.

Except in the case where a student is alleged to have committed murder or rape, if a student under 12 years of age comes to the attention of law enforcement, law enforcement shall release the student to the student's parent, guardian, or caregiver; or law enforcement shall use the least restrictive response, such as referral to non-law-enforcement resources including restorative justice practitioners instead of, or in addition to, releasing the student to their parent, guardian, or caregiver. Cal. Welf. & Inst. Code § 602.1(b).

Student Arrest

Law enforcement officers may not make a lawful arrest of a student unless the officer displays either an authorization order signed by a judge of the juvenile court or a warrant for the student's arrest; the student has a firearm; or the student's behavior presents an imminent danger of serious physical injury or death to a person on school property. The District expects that law enforcement officers shall consult with the school principal or principal's designee before arresting a student unless the student's behavior presents an imminent danger of serious physical injury or death to a person on school property. In that case, the law enforcement officer shall notify the principal immediately following the arrest, and whenever safety permits, before removing the student from the school site.

The principal or designee shall request that the officer provide verification of the officer's identity and official capacity and certify the legal authority under which the arrest is being conducted. If the officer refuses to provide certification of the legal authority for the arrest, the

principal or designee shall document such refusal and should consult with District legal counsel and receive approval before allowing the officer access to the campus. If the arrest is not made pursuant to an authorization order signed by a judge of the juvenile court or a warrant for the student's arrest, the school principal or designee shall record what was the "imminent danger of death or serious physical injury to a person on school property" that necessitated the arrest. If the law enforcement officer does not provide either valid documentation or the "imminent danger of serious physical injury or death to a person on school property" that necessitated arrest of the student, District or school staff shall verbally state to the law enforcement officer that the arrest is being made in violation of District policy. School staff shall thereafter immediately notify the student's parent/caregiver or adult serving as a surrogate parent/caregiver about the arrest, pursuant to the procedures laid out above regarding notification, and notify District legal counsel that the student was arrested in violation of Board Policy #####.

If the arrest is deemed necessary given the considerations listed above, a private location on-campus, out of sight and hearing of other students, shall be arranged for the arrest of a student, where possible, that will help avoid invading the student's privacy, jeopardizing the safety and welfare of other students, and creating further disruption on the school campus. The principal or designee shall make meaningful efforts to prevent law enforcement officers from arresting or escorting students through school hallways in view of students. The District expects that law enforcement officers will provide the principal or designee the student's parent/guardian or adult serving as a surrogate parent/caregiver the opportunity to be present during any arrest of a student.

Students who are also parents or guardians must have an immediate opportunity to ensure that their children are in the custody of a trusted caregiver and have the opportunity to arrange for their child's/children's care for the duration of their time in custody.

Except in the case where a student is alleged to have committed murder or rape, if a student under 12 years of age comes to the attention of law enforcement, law enforcement shall release the student to the student's parent, guardian, or caregiver; or law enforcement shall use the least restrictive response, such as referral to non-law-enforcement resources including restorative justice practitioners instead of, or in addition to, releasing the student to their parent, guardian, or caregiver. Cal. Welf. & Inst. Code § 602.1(b).

Limitations on Use of Force

"Use of force" means the use of mechanical restraints or other physical force.

"Deadly force" means any use of force that creates a substantial risk of causing death or serious bodily injury, including, but not limited to, the discharge of a firearm. Cal. Penal Code § 835a(e)(1).

"Mechanical restraint" is "the use of any device or equipment to restrict a student's freedom" and includes physical force.

“Physical force” includes, but is not limited to, physical restraint (e.g., putting a student’s arm behind their back); the use of handcuffs or other restraint devices such as zip ties, TASERs and stun guns; and firearms.

Law enforcement officers shall never use chemical spray (e.g., pepper spray or mace), carotid restraints, or chokeholds to restrain a student. Cal. Gov't Code § 7286.5.

Law enforcement officers operating in a school environment shall be cautious about the serious and negative impact of use of force tactics on the subject student, any student witnesses, and the entire school environment. Law enforcement officers shall never use any type of physical force on a student, including by using mechanical restraints, to punish, intimidate, or discipline the student; or on restrained students (including students who are handcuffed or contained in a police vehicle). This policy aims to go beyond the legal minimum requirements and intends for deadly uses of force to be used on a student only in the most extreme situations such as an active school campus shooter. . Use of force shall never be used as a response to inappropriate behavior by the student (e.g., Disciplinary Issues, as defined above), even if the behavior is directed at the law enforcement officer.

Law enforcement officers may not use physical force, which includes the use of mechanical restraints, on a student unless the student’s behavior presents an imminent danger of serious physical injury or death to a person on school property. Even where the student’s behavior presents an imminent danger of serious physical injury or death to a person on school property, law enforcement officers must use the least restrictive force technique necessary to end the threat. Law enforcement officers may use physical force and mechanical restraints only when no reasonable effective alternative appears to exist, and only then to the degree that is reasonable to effect a lawful purpose. The only law enforcement officers and school program personnel permitted to use physical force are those who are trained and certified by a State-approved crisis intervention training program. If using mechanical restraints on a student with disabilities, law enforcement officers must keep the student’s arms in front so the student has the ability to communicate in sign language, if necessary.

Reasonable effective alternatives to use of force on a student may include separating the student and simply waiting for the student to calm down, or using other de-escalation techniques such as:

1. Remaining calm;
2. Using positive body language;
3. Taking a step back;
4. Disengaging by leaving the encounter entirely to interact with student at a later time or date;
5. Recognizing the student’s feelings;
6. Using “I” statements;
7. Suggesting talking about the issue at a later time;
8. Telling the student what you are doing at all times, preferably before you do it;

9. Conducting yourself to avoid or minimize the possibility of accidentally touching private areas;
10. Always respect the student's history and cultural background; and
11. Remembering that the child may have an invisible disability and that you have legal obligations to provide accommodations.

The level of force used by a law enforcement officer must be developmentally appropriate according to the student's age, size, weight, developmental abilities, known or perceived disabilities, potential pregnancy, and other factors. Proportional force often will not require officers to use the same type or amount of force as the student. The use of physical force on a student shall immediately cease when the danger of serious physical injury is lessened. Law enforcement use of force on a student shall be closely and critically reviewed by District or school administrators. In assessing whether use of force is proportional or necessary, District and school administrators must ask:

1. Does the student's behavior pose a clear imminent² risk of serious physical injury or death to a person on school property?
2. How would the general public view the action taken by the law enforcement officer(s)?
3. Would the public think it was appropriate to the entire situation and to the severity of the threat posed by the student?
4. Is this how I would want a child I love and care for to be treated?
5. Does this show respect for human rights and dignity and for the sanctity of every human life?
6. Is it possible that the student has a physical, mental health, developmental, or intellectual disability that affects their ability to understand or comply with commands from peace officers, which weighs against the decision to use force?
7. Has the law enforcement officer used any reasonable effective alternatives to use of force on the student?

The health and safety of the student must be closely monitored at all times during and after the use of force. Law enforcement officers are required to render prompt medical assistance to students who have been injured as a result of police actions, including where there is a visible injury or the student complains of an injury; and where deadly force has been deployed.

Law enforcement officers have a duty to prevent other law enforcement officers from using unnecessary force. If an officer witnesses a colleague using unnecessary force, the

² "A threat of death or serious bodily injury is 'imminent' when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or another person. An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed." Cal. Penal Code § 835a(e)(2).

officer is required to intervene and to report and document the unnecessary and excessive use of force to a superior.

Law enforcement officers shall not unholster a firearm on school property unless an individual's behavior presents a clear imminent danger of serious physical injury or death to a person on school property, such as an active shooter.

Subpoenas

Although subpoenas may legally be served at school on students age 12 or older, the Board believes that the disruption to the student being served, the students in the surrounding area, and to the school environment generally are such that it is not an appropriate practice on a school campus. To that end, District and school staff shall not allow subpoena service on students on school campuses.

If presented with any subpoena for student records, including an ICE Administrative Subpoena,³ the District's General Counsel shall make a determination whether the request is education-related and, if not, refuse access to the records based on the District's general policy against sharing student records for any purpose that is not education-related and the District's need to ensure its resources are effectively allocated. In the event the law enforcement agency seeks to enforce the subpoena for the records in court, the District will oppose that motion and may appeal a court order enforcing the subpoena. The District will comply with any final court order enforcing a subpoena for access to records.

Record Keeping

The school principal or designee shall document each instance when District or school staff call a law enforcement officer(s) on campus; each instance when a law enforcement officer interviews a student on school grounds; and each instance when a law enforcement officer arrests a student on school grounds. Such records shall include the date and time, name and identifying number of the officer, the agency employing the officer and the officer's official capacity, the time when the officer arrived and left, whether the principal or designee was or was not present during the interview, the reason the student was questioned and/or released, and any other pertinent information.

The school principal or designee shall also notify the District Superintendent and enter a written Incident Report the same day to detail the police response to any incident involving a student, including any incident where a student is placed in a de-escalation room. All Incident Reports shall be logged into the District centralized database system. All Incident Reports, and the centralized database system, must record the school site, nature of the incident or alleged offense, race, ethnicity, gender, disability (if applicable), and age of the student or students involved in the incident. The database system shall be structured in a way that will protect the

³ "ICE Administrative Subpoena" is a subpoena to require the testimony of witnesses or production of records.

individual student’s identity. Data from this system shall be made available to the public by publishing it on the District’s website at six-month intervals.

Training and Distribution of Policy

Within three months of this policy’s adoption, the District shall ensure that it is distributed to all current and new school staff and that training is provided on the content of this policy at least once per year.

Policy

Adopted: [REDACTED]

Revised: [REDACTED]

[District]

[Location]

AUTHORITIES

Cal. Civil Code § 51

Cal. Educ. Code § 220 *et seq.*

Cal. Educ. Code § 48900.5

Cal. Gov’t Code § 7286.5

Cal. Penal Code § 835a

Cal. Welf. & Inst. Code § 625.6

Cal. Welf. & Inst. Code § 305

Cal. Welf. & Inst. Code § 602.1

28 C.F.R. § 35.130

Scott v. Cty. of San Bernardino, 903 F.3d 943, 950 (9th Cir. 2018)

S.R. v. Kenton Cty. Sheriff’s Office, 302 F. Supp. 3d 821 (E.D. Ky. 2017)

C.B. v. Sonora, 769 F.3d 1005, 1030 (9th Cir. 2014)

Hoskins v. Cumberland Cty. Bd. of Educ., No. 2:13-cv-15, 2014 WL 7238621 (M.D. Tenn. 2014)

G.C. v. Owensboro Pub. Sch., 711 F.3d 623 (6th Cir. 2013)

Zeno v. Pine Plains Cent. Sch. Dist., 702 F.3d 655 (2d Cir. 2012)

Pacheco v. Hopmeier, 770 F. Supp. 2d 1174 (D.N.M. 2011)

Ilias v. Johnson, No. CIV. 07-513-ST, 2008 WL 4838846 (D. Or. Nov. 4, 2008)

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Graham v. Connor, 490 U.S. 386 (1989)

U.S. Dep’t of Educ., *Restraint and Seclusion: Resource Document*

(2012), <https://www2.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf>