

Local educational agencies generally should limit their contact with law enforcement agencies. For more information, please consult the ACLU model policy on “Law Enforcement Contact with Students.” As a general matter, schools should *not* authorize third parties, including private companies, to contact law enforcement or family regulation agencies. To the extent that a school considers doing so, the model policy below includes necessary safeguards to minimize harm.

## **Search and Seizure BP #####**

The District is fully committed to promoting a safe and healthy school environment that supports all students in every aspect of their education and wellbeing, which includes eliminating the possession and use of weapons and illegal substances on school premises and at school activities. Only as necessary to protect the health and welfare of students and staff, and under limited circumstances outlined in this policy, may school officials and staff search students, their property, and/or District property under their control or seize illegal, unsafe, or otherwise prohibited items under the circumstances described in this policy.

In all cases where a student is searched on campus as a result of a stop by a law enforcement officer, the District expects the law enforcement agency to comply with the District’s policy on the Racial and Identity Profiling Act (RIPA).

The District Board urges employees to exercise discretion and good judgment that respects student dignity and promotes a positive school climate. When conducting a search or seizure, school officials and staff shall act in accordance with the law, District Board policy, and administrative regulations.

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 at least once per year.

### **Individual Searches**

With the exception of electronic devices and online accounts, which are discussed below, school officials and staff may search any individual student or their property within the student’s wingspan, or District property under the student’s control when there is individualized and reasonable suspicion that the search will uncover evidence that the student is violating the law, District Board policy, administrative regulation, or other rules of the District or the school. Reasonable suspicion must be based on specific and objective facts that the search will produce evidence related to the alleged violation. Curiosity, rumor, hunch, mere disruptive activity, attempts to shield private possessions from view, or invocations of a student’s constitutional rights *cannot* form the basis for said reasonable suspicion. Searches may not be conducted to find evidence of other students’ violations of school rules. Notwithstanding this legal standard, the District recognizes the harm of intrusive searches and thus District staff may only search a student under the reasonable suspicion standard in instances where there is a danger of physical injury to a person on school property.

Any search of a student, their property, or District property under the student's control shall be limited in scope and designed to produce evidence related to the specific, alleged violation. Factors to be considered by school officials when determining the scope of the search shall include the danger to the health or safety of students or staff, such as the possession of weapons or other dangerous instruments, and whether the item(s) to be searched by school officials are reasonably related to the contraband to be found. In addition, school officials shall consider the intrusiveness of the search in light of the student's age, gender, disability, and the nature of the alleged violation. All efforts shall be made to avoid searching students during instructional time to minimize educational disruption.

School officials and staff shall not under any circumstances conduct strip searches or body cavity searches of any student. School officials and staff may not require students to remove or lift any items of clothing during a search. Cal. Educ. Code § 49050.

Searches will be conducted by or under the supervision of the school site administrator or certificated designee. It is preferred that searches be made in the presence of at least two District employees. Any District employee conducting a student search shall be of the same gender identity as the student, and students should be advised of this right. If school officials know the student to be transgender, intersex, or non-binary, they must ask, document, and honor the student's preference as to the gender of staff performing the search.

The principal or designee shall notify the parent/guardian or caregiver of a student subjected to an individualized search in writing immediately after the search.

The Superintendent or designee will also ensure that both students and their parents/guardians/caregivers are notified of the policy herein stated by sending a written communication to parents/guardians/caregivers at the opening of each school year and by including it in the Parent-Student Handbook.

Barring an emergency situation rendering the search impossible otherwise, all searches and pat downs that take place at school should happen outside the view of other youth and uninvolved staff to maintain the student's privacy and to decrease public embarrassment, humiliation, and any other future stigmatization and discrimination against the student(s) involved.

The Superintendent shall create and disseminate a policy regarding the return of seized student property. Seized items, such as electronics, clothing, or personal effects will be returned to the student at the end of the school day unless they are illegal substances or returned to the parent/caregiver. Seized items that are illegal substances will be disposed of by the administration. Seized items will only be turned over to law enforcement if those items are part of a criminal investigation involving imminent 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.

### **Searches of Student Lockers/Desks**

Because lockers and desks are under the joint control of the student and the District, school officials have the right to open and inspect any school locker or desk without student permission or prior notice when they have reasonable suspicion that the search will uncover evidence of illegal possessions or activities, or when odors, smoke, fire and/or other threats to health, welfare, or safety emanate from the locker or desk. Any items contained in a locker or desk shall be considered the property of the student to whom the locker or desk was assigned. The contents of any closed or sealed student belongings found in a locker shall not be searched without individualized and reasonable suspicion that it will contain evidence that the student is violating the law, District Board policy, administrative regulation, or other rules of District or the school.

Immediately upon seizing any item from a student locker or desk, the District administrator who conducted the search shall record the time, place, circumstances of the search, and list all items seized. The District administrator shall file such report with the school principal's office along with any item seized which shall be sealed and stored appropriately to assure that it is not tampered with or destroyed. The school shall follow all District policies concerning disciplinary procedures in dealing with the student, including providing behavioral interventions and supports before imposing exclusionary discipline.

If a District administrator confiscates any student possessions that should be returned to the student, they must maintain it in a secure location and make it available to the student at the end of the school day. When the item is confiscated, school staff shall notify the student of their right to have the item returned.

### **Prohibition on the Use of Metal Detectors, Contraband Detection Dogs, and Other School Hardening Measures**

The District understands that the use of metal detectors, contraband detection dogs, and other school hardening measures—including but not limited to security cameras, police presence, and surveillance technologies that track students' actions online and in-person—harms school climate and student education. Accordingly, the District does not use metal detectors, contraband detection dogs, or other school hardening measures.

### **Privacy in Possession and Use of Personal and School-Issued Electronic Devices and Accounts**

Students have the right to a reasonable expectation of privacy in their electronic devices, electronic information (including electronic communication information or electronic device information), and online activity when they are using digital devices or accounts. This includes, but is not limited to personal devices, devices loaned to students by the school, school networks, or school-issued electronic accounts like Single Sign-Ons, emails, or other accounts.

“Electronic device” is any device that stores, generates, or transmits information in electronic form.

“Electronic information” is any electronic communication information or electronic device information.

“Electronic communication information” is any information about an electronic communication or the use of an electronic communication service, including, but not limited to, the contents, sender, recipients, format, or location of the sender or recipients at any point during the communication; the time or date the communication was created, sent, or received, or any information pertaining to any individual or device participating in the communication, including, but not limited to, an IP address.

“Electronic device information” is any information stored on or generated through the operation of an electronic device, including, but not limited to, the current and prior locations of the device.

### **Prohibition Against Blanket Digital Searches of Student Electronic Devices, Accounts, and Information**

Student electronic devices and accounts contain a vast amount of sensitive and confidential information, including information about a student’s immigration status, religion, sexual orientation, sex, gender identity, gender expression, and other protected characteristics under California Education Code sections 200 and 220, and speech protected under the U.S. Constitution and California Education Code. The California Electronic Communications Privacy Act (CalECPA), Penal Code sections 1546 et seq., protects student privacy rights in electronic devices and accounts and electronic information by prohibiting searches except under specified exceptions such as searches pursuant to a valid a search warrant and searches with consent or in a specified emergency. Within these limited exceptions, there are still procedural safeguards on any searches conducted. To protect sensitive and confidential student information, District personnel—including school police, and third parties that contract with the District—shall not monitor, track, or search a student’s electronic devices, accounts, or information without the student’s consent unless the school complies with CalECPA and any other relevant laws that limit the school’s authority to conduct the search, or to use or disclose any information obtained by the search.

### **Searches of Personal and School-Issued Electronic Devices and Accounts**

Pursuant CalECPA, school administrators, school staff, or other employees or agents of the schools, may only search an individual student’s cell phone, electronic device, or online account with the consent of the student, pursuant to a search warrant issued by a magistrate judge based on probable cause to believe the device contains evidence of criminal activity, or pursuant to a good faith belief that an emergency involving threat of death or serious physical injury exists that requires an immediate search of the device. Consistent with CalECPA, these protections apply to all electronic devices and accounts owned or possessed by the student, including school-issued devices or accounts.

In conducting any search of a student’s personal device pursuant to a search warrant, school staff shall: (1) document the individualized facts that supported the finding of probable cause; (2)

notify the student and the student's parent or legal guardian of the particular suspected criminal activity and the type of data to be searched for as evidence; and (3) provide the student's parent or legal guardian the opportunity to be present during the search. In conducting any search of a student's personal device pursuant to a good faith belief that an emergency exists, school staff shall, no later than 72 hours after accessing the device, provide the student, the student's parent or legal guardian, and the principal's office with: (1) a written description of the emergency, including the facts that supported the good faith belief that an emergency required an immediate search of the device; and (2) a description of the search conducted, including a summary of the data accessed and/or seized when the device was searched.

During the course of a search, a school official shall not copy, share, or in any way transmit any information from a student's cell phone, electronic device, or account, or modify or delete any information.

The scope of any search shall not extend beyond that to which the student consents, that which is necessary to produce evidence of criminal activity pursuant to a search warrant, or that which is required in an emergency.

A student or their parent or caregiver have the right to access, inspect, and copy any notes or documents added to their educational record that flow from a search of their devices or accounts. The school will destroy information obtained through a search of a student's electronic device or account after the student turns 18 years of age or within one year after the student is no longer enrolled in the school district, whichever occurs first.

### **Log of Device and Digital Searches**

The school principal's office shall maintain a personal device or electronic account access log in which the following information shall be recorded for each search of a student's personal device or electronic account by school staff or other public employees: the name of the school official or other public employee accessing the device or account; the business address and other contact information for the person accessing the device or account; the date of access; the data or functions accessed; the basis for the search; and whether the search resulted in contacting law enforcement, probation, or any family regulation agency (including, but not limited to, the California Department of Social Services or local child welfare agency). The log shall include documentation of searches undertaken in emergencies. Personal device and account access logs maintained pursuant to this provision shall not contain any personally identifiable student data, shall be made available to members of the public upon request, and shall be considered public records subject to the public records law.

Confiscated electronic devices, as well as information obtained from the electronic device through a search under this policy, will only be turned over to law enforcement or lead to a request to law enforcement or family regulation agency for assistance only when there is a situation involving imminent danger of serious physical injury or death to a person on school property. "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).

“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.” The District, including, but not limited to school staff, and their contractors, 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 the District or school staff call law enforcement. 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).

### **Personal Responsibility & Storage of Confiscated Devices**

Students may possess or use personal electronic devices, including cell phones, on school campus provided that such devices do not disrupt the educational program or school activity and are not used for illegal or unethical activities such as cheating on assignments or tests.

Unless a student is using their personal electronic device(s) for school-related work or extracurricular activities, electronic devices shall be turned off and kept out of sight during class time or at any other time as directed by a school district employee, except where deemed medically necessary or when otherwise permitted by the teacher or administration. No student shall be prevented from using their cell phone in the case of an emergency, except where that use inhibits the ability of school district employees to effectively communicate instructions for student safety.

No student shall use an electronic device with camera, video, or voice recording function in a way or under circumstances which infringe the legal privacy rights of other students, such as when there is a reasonable expectation of privacy as in bathrooms or locker rooms, or while engaging in private interactions.

Students are responsible for the cell phones or electronic devices that they bring to school. The District shall not be responsible for loss, theft, or destruction of any such device brought onto school property, except that it shall be the responsibility of the school to ensure the safekeeping of any confiscated devices. School staff will not search or otherwise read or access the contents of a confiscated cell phone.

The Superintendent shall create and disseminate a policy regarding the return of confiscated electronics. Confiscated electronic devices shall be stored by school district employees in a secure manner in a centralized location. Confiscated electronic devices must be made available to the student at the end of the school day.

### **Student and Family Notification**

Students and their parents shall be notified of this policy at the beginning of every school year. Students and their parents who transfer to the school district in the middle of a school year shall be notified of the above policy within one week of the students' enrollment.

### **Staff Notification and Training**

Within three months of this policy's adoption, the District shall ensure that it is distributed to all school staff and that training is provided at least once per year. New or temporary staff who arrive during the middle of the school year shall be notified and trained on the policy within one week of their hire or assignment.

### **Data Tracking**

District or school staff shall compile a monthly written report of law enforcement officers or social service agents who respond to emergency situations within the District's jurisdiction, including those flagged by contractors. These monthly written reports shall be filed with the Board of Education. For more detailed information, refer to [District]'s Board Policy on "Data Tracking and Public Review."<sup>1</sup>

If, as a result of a digital search, the District, school, or a third party acting on the District's behalf, shares or inputs student and family information into a database, including but not limited to the National Center for Exploited and Missing Children Child Exploitation, then the District/school will track this information similar to the way it tracks referrals to law enforcement or social regulation agencies.

### **Record Keeping**

The school principal or designee shall document each instance (1) when District staff, school staff, or a third party acting on the District's behalf, calls a law enforcement agency or family regulation agency to interact with a student, (2) when a law enforcement officer or social service agent interviews a student on school grounds, and (3) when a law enforcement officer arrests or detains a student on school grounds or as a result of a call by District staff, school staff, or contractor. Such records shall include the date and time, the name and identifying number of the officer or social agency worker, the agency employing the officer or social agency worker and their official capacity, the time when the officer/social service agency worker arrived and left, the presence or absence of a principal or designee during the interview, the reason the student was questioned and/or released, and any other relevant information.

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<sup>1</sup> The model policy on "Data Tracking and Public Review" is publicly available at <https://www.aclunc.org/docs/ACLU-Model-BP-Data-Tracking.pdf>.

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’s 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 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 and will be made available in response to a Public Records Act request.

**Policy**

**[District]**

**Adopted:** [Redacted]

**[Location]**

**Revised:** [Redacted]

**AUTHORITIES:**

- U.S. Const. amend. I.
- U.S. Const, amend. IV.
- Cal. Const. art. I, § 1.
- Cal. Const. art IX, § 5.
- Cal. Educ. Code § 49050
- Cal. Educ. Code § 48907
- Cal. Educ. Code §§ 49010 et seq.
- Cal. Penal Code § 835a(e)(2).
- Cal. Penal Code §§ 1546 et seq.
- Cal. Welf. & Inst. Code § 602.
- New Jersey v. T.L.O.*, 469 U.S. 325 (1985).
- In re William G.*, 40 Cal. 3d 550, 564 (1985).
- Riley v. California*, 573 U.S. 373 (2014).