

GUIDELINES WHEN LAW ENFORCEMENT OR OTHER GOVERNMENT AGENTS APPEAR ON CAMPUS

INITIAL CONTACT

1. Ascertain the identity and official capacity of the officer.

Request to see the officer's badge, work ID, and/or work credentials. Ask for a business card that the school can keep on file. Write down the date of inquiry, officer's name, and badge/license/credential number (including name of law enforcement agency) and contact information. If there is any doubt as to the officer's identity, contact their superior and confirm that the officer is with the agency they claim to be representing.

2. Ascertain the authority under which the officer acts.

- a. Confirm why the officer is at the school and what his/her intended actions are. Is the officer going to question the student, whether there is a threat to health or safety of a student, investigate a child abuse claim, arrest the student?
- b. Does the officer have a subpoena, warrant or court order, and/or written parent consent (if the student is a minor)? If so, the documentation may give further information as to the reason for coming to the school.
 - i. If the document is a subpoena, the school must first notify the parent or eligible student of the subpoena and ensure that the requesting party has given proper notice to the "consumer" – an eligible student or minor's parent or guardian – of the request for their personal information. Only after receipt and review of the subpoena by the school's legal department can the student determine whether the school should: (1) comply with the subpoena; (2) allow time for an objection to the release of student records by the parent or eligible student; (3) file a motion to quash the subpoena; or (4) do nothing and await a motion to compel.
- c. If still uncertain, call the officer's superior to obtain further information concerning the officer's presence on campus.

3. Suggest that the student be questioned off campus during non-school hours.

Whenever possible, officers should consult with school officials prior to appearing on campus to cause the least disruption to the school. However, this is not always possible. The California Attorney General has opined that public schools have a legal obligation to assist police officers in carrying out their duties, but these opinions do not indicate that police or other government actors have unfettered access to students on school grounds. Further, in 2018, the California Attorney General released guidelines indicating that public schools should be cautious when permitting U.S. Immigration and Customs Enforcement (ICE) officers on school grounds. For more information on responding to immigration enforcements on school grounds, see the end of these guidelines, and the school's *Board Policies on Protections for Students Relating to Immigration and Citizenship Status*.

4. Determine if the school should conduct its own investigation.

If the information given by the officer indicates there may be a school-related issue (e.g., student discipline, staff discipline), school administration should determine if it should also conduct their own investigation. Investigations should usually be in concert with law enforcement. Thus, the school should receive guidance from law enforcement as to how the school's investigation would affect law enforcement's investigation.

ACCESS TO STUDENT PROPERTY OR PERSON – SEARCH AND SEIZURE BY LAW ENFORCEMENT AUTHORITIES

Law enforcement may search a student or a student's property if: (1) the officer has obtained a warrant to search the student or student's property, or (2) the search is justified by reasonable suspicion that the student has violated or is violating the law or rules of the school. The officer must be able to articulate a *reasonable suspicion* and ensure that the search is *reasonably related* in scope to the objective of the search and is *not excessive*. These rules apply whether the search is conducted by law enforcement, or an unsworn school security officer. Additionally, law enforcement may use drug-sniffing dogs to search for drugs on campus, including unattended student property. Canine searches are generally seen as non-intrusive since there is no expectation of privacy in the air around objects, and drug-sniffing dogs only explore what is within their "plain smell."

REQUESTS FOR STUDENT INFORMATION (VIA SEARCH WARRANT)

1. Law enforcement may also present school staff with a search warrant issued by a court seeking disclosure of personally identifiable information from a student record. When a school official is presented with a search warrant by law enforcement, FERPA permits the disclosure of personally identifiable information in a student record without prior consent from the student or legal guardian.
2. The school must make a reasonable effort to notify the parent or eligible student of the warrant in advance of compliance, so that the parent or eligible student may seek protective action, unless the court or agency that issued the warrant has ordered that the existence or contents of the search warrant not be disclosed. School staff should obtain and keep a copy of the warrant in the student record after notifying the parent or eligible student of the request.

QUESTIONING OF STUDENTS

1. **Parental permission is not always necessary for a student to be questioned by an officer.**
A student can be questioned without parental consent if the officer has a warrant, or if the circumstances require immediate action.
2. **A school administrator should be present during questioning.**
Unless the student requests to be alone with the officer during questioning, the school administrator should be present with the student. The laws governing child abuse investigations permit the student to select a school employee to be in the room.

3. **School administrators have a duty to protect the constitutional rights of students.**

The school official standing in place of the student's parents has a duty to ensure that the student's constitutional rights are protected.

Students in Police Custody (also see the following topic, Pupils Under Temporary Custody (Removal))

A police officer is required to read Miranda rights to a student **in police custody**¹ before proceeding with a custodial interrogation/questioning.² A student aged 17 or younger in police custody **must** consult with an attorney before the student can provide information to a law enforcement officer that would be legally admissible in a court of law (WIC section 625.6). The consultation with the attorney can occur by phone or video conference. Neither the minor nor the minor's parent can waive this right. The only acceptable reason for the attorney consult

¹ A student does not have to be at the police station to be in "custody"- this can occur on the school campus if a law enforcement officer detains a student and the student is not reasonably free to leave. Whether or not a student is in "custody" is a factual determination, and the age of the student is a relevant factor. *J. D. B. v. North Carolina*, 564 U.S. 261 (2011). J.D.B., a thirteen-year-old seventh-grade student, was taken from his classroom to a closed-door conference room where uniformed police and school administrators questioned him for at least 30 minutes regarding two home break-ins nearby. Before beginning, they did not give J.D.B. Miranda warnings, the opportunity to call his legal guardian, or tell him he was free to leave the room. After J.D.B. subsequently confessed to the break-ins and wrote a statement at the request of police, two juvenile petitions were filed against him. J.D.B.'s public defender moved to suppress his statements and the evidence derived therefrom, arguing that he had been interrogated in a custodial setting without being afforded Miranda warnings and that his statements were involuntary. At issue was whether the age of a child subjected to police questioning was relevant to the custody analysis of *Miranda v. Arizona*. The Court held that it was beyond dispute that children would often feel bound to submit to police questioning when an adult in the same circumstances would feel free to leave. Seeing no reason for police officers or courts to blind themselves to that commonsense reality, the Court held that a child's age group properly informed the Miranda custody analysis. Accordingly, the Court reversed and remanded to the state courts to address whether J.D.B. was in custody when he was interrogated, taking account of all of the relevant circumstances of the interrogation, including his age at the time.

² It is unclear to what extent this law may implicate school officials if the officials are part of an interview where police are involved. Absent additional information, however, the Charter School should continue to conduct its own internal investigation to determine disciplinary consequences. Welfare and Institutions Code section 625.6 will not apply to investigatory interviews conducted by school administrators. These interviews do not require Miranda warnings because they are not considered custodial interrogations. We advise caution when the investigation involves questioning the student 17 or under with a police officer (including a school resource officer) present. Statements made in front of a police officer and school official could prevent the statements from being used in criminal prosecution. Unless the law is further amended, however, the statements may still be used in disciplinary proceedings.

to *not* occur is if a law enforcement officer reasonably believes an immediate custodial interrogation is necessary to “protect life or property from an imminent threat,” as long as the officer’s questions are limited to those necessary to obtain the needed information (WIC section 625.6(c)).

If the officer fails to inform the student of their Miranda rights, the school official must so inform the student. In addition to being told of their right against self-incrimination and the right to an attorney, the student must also be informed of their right to have a parent or school administrator present during questioning.

4. Students can invoke their Fifth Amendment rights without explicitly stating so.

If a student requests to have their parents or a school administrator present during officer questioning, the courts have held that such a request is tantamount to claiming the Fifth Amendment right against self-incrimination. If a student makes this request, then the interview should stop, and the officer should wait for the parent(s) to arrive. If the officer requires the interview to move forward, the school administrator should document their attempts to intervene and the instructions given by the officer.

PUPILS UNDER TEMPORARY CUSTODY (REMOVAL) OR ARREST BY LAW ENFORCEMENT

1. If officers in their line of duty take custody of the student (whether by removing the student from school, otherwise detains the student on campus, or arresting the student), the school administrator must immediately inform the students’ parents, guardian or responsible relative. The only time the student’s parents or guardians should not be informed by school administrators is in the case of students being taken into custody because they have suffered child abuse. In those cases, the school must give to the officer information as to how the student’s parents or guardian can be contacted.
2. Under no circumstances should school administrators release confidential information such as details of the student’s apprehension to other pupils or parents of other pupils unless those persons have a right to such information.
3. Law enforcement may take temporary custody of a minor student under the following circumstances (WIC section 305):
 - a. When the officer has reasonable cause for believing that:
 - i. The student has been or is under substantial risk of being a victim of child abuse, neglect, or sexual trafficking, if physical custody of the child has been surrendered and he/she has been left without any provision for support, or is otherwise described by Welfare & Institutions Code section 300; **and**
 - ii. The student has an immediate need for medical care or is in immediate danger of physical or sexual abuse (WIC sections 300, 305(a)).
 - *Note:* social workers can also take custody of students for the above reasons, pursuant to CPS investigations/reports/judicial orders.
 - b. The student violated a juvenile court order or a condition of probation (WIC section 305(c)).
 - c. Permission of the student’s parent/guardian has been given.

4. Student Arrests

Arrest of a student on school grounds may be effectuated by a police officer pursuant to a valid arrest warrant or a valid warrantless arrest under state and federal law. When possible and appropriate, arrests should be made during non-school hours and away from the school premises. Arrests on school premises during school hours shall be done in such a manner as to avoid jeopardizing the safety and welfare of other students.

When an officer arrests or charges a juvenile student with a crime, the officer must notify the juvenile's parent/guardian of the arrest and charges. The officer making the notification, the individual notified, and the date and time of the notification must be recorded in an event report by school personnel.

RESPONDING TO IMMIGRATION ENFORCEMENT ON CAMPUS

The following guidelines align with AB 699/Education Code section 234.7(f)(1) and the school's *Board Policies on Protections for Students Relating to Immigration and Citizenship Status*.

No visitor – which includes immigration-enforcement officers – shall enter or remain on school grounds during school hours without having registered with the Area Superintendent 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 a basis for the visit, the officer must provide the following information to the school administrator or designee:

1. Name, address, and occupation;
2. Age, if less than 21;
3. Purpose of entering school grounds;
4. Proof of identity; **and**
5. Any other information as required by law

Please note: An ICE administrative warrant does not allow a law enforcement officer to enter or to search any area he/she could not otherwise enter as a member of the public. The officer may ask for permission, or “consent,” to access non-public areas of the school, even without a judicial warrant giving the officer the power to do so. Absent exigent circumstances or a judicial warrant, school personnel are not required to give an immigration enforcement officer permission or consent to enter a non-public area of the school or conduct a search of any kind. Nor is that employee required to provide information or records about a student or his or her family without a judicial warrant or order.

The Charter School requires that any visitor, including immigration enforcement officers, must not interrupt students and faculty during class time for immigration enforcement or other purposes, and must instead wait until a designated break period prior to or following a class period to carry out their judicial warrant or court order.

The Charter School has posted signs at the entrance of its school grounds to notify outsiders of the hours and requirements for registration.

Procedures for Responding to On-Campus Immigration Enforcement

As early as possible, Charter School personnel will notify the Area Superintendent or designee of any request by an immigration-enforcement officer for student access or access to school grounds for purposes related to immigration enforcement, or any requests for review of school documents (including for the services of lawful subpoenas, petitions, complaints, warrants, etc.).

In addition, Charter School personnel will take the following steps in response to an officer present on the school campus specifically for immigration-enforcement purposes:

1. Advise the officer that before proceeding with his or her request, and absent exigent circumstances, school personnel must first receive notification and direction from the Area Superintendent or designee.
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 his/her 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 the school records.
6. If officer declares that exigent circumstances exist and demands immediate access to the campus, School personnel should comply with the officer's orders and immediately contact the Area Superintendent or designee.
7. If the officer does not declare that exigent circumstances exist, respond according to the requirements of the officer's documentation. If the immigration-enforcement officer has:
 - a. **An ICE warrant**, Charter School personnel shall inform the agent that he or she cannot consent to any request without first consulting with the Charter School's counsel or other designated agency official
 - b. **A federal judicial warrant**, such as a search-and-seizure warrant or an arrest warrant; prompt compliance is usually legally required. If feasible, consult with the Charter School's legal counsel or designated administrator before providing the agent access to the person or materials specified in the warrant
 - c. **Subpoena for production of documents or other evidence**, immediate compliance is not required. Therefore, Charter School personnel shall inform the Charter School's legal counsel or other designated official of the subpoena, and await further instructions on how to proceed
8. While Charter School personnel should not consent to access by an immigration-enforcement officer, except as described below, he/she should not attempt to physically impede the officer, even if the officer appears to be exceeding authorization given under a warrant or document. If an officer enters the premises without consent, Charter School personnel shall document his or her actions while on campus

9. After the encounter with the officer, Charter School personnel shall promptly take written notes of all interactions with the officer. The notes shall include the following items:
 - a. List or copy of the officer's credentials and contact information;
 - b. Identity of all school personnel who communicated with the officer;
 - c. Details of the officer's request;
 - d. Whether the officer presented a warrant or subpoena to accompany his/her request, what was requested in the warrant/subpoena, and whether the warrant/subpoena was signed by a judge;
 - e. School personnel's response to the officer's request;
 - f. Any further action taken by the agent; and
 - g. Photo or copy of any documents presented by the agent
10. Charter School personnel shall provide a copy of those note, and associated documents collected form the officer, to the Charter School's legal counsel or other designated agency official.
11. In turn, the Charter School's legal counsel or other designated official shall submit a timely report to the Charter School Board of Directors regarding the officer's requests and actions and the Charter School's response(s).
12. The Charter School's legal counsel shall also email the Charter School Board of Directors and Bureau of Children's Justice in the California Department of Justice, at BCJ@doj.ca.gov, regarding any attempt by a law-enforcement officer to access a school site or a student for immigration-enforcement purposes.

Charter School personnel shall immediately notify the student's parents or guardians 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.

Charter School personnel shall 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, effective warrant signed by a judge, or presents a valid, effective court order.

**IN ANY CASE WHERE THERE IS DOUBT CONCERNING ANY OF THE ABOVE CIRCUMSTANCES,
CONTACT THE SCHOOL'S LEGAL COUNSEL IMMEDIATELY.**