

# ICSA Illinois Council of School Attorneys

## Guidelines for Interviews of Students at School by Law Enforcement Authorities

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Cooperation between school districts and the various law enforcement agencies in a community is vital to school safety and the administration of justice. To these ends, school districts and law enforcement agencies shall cooperate with each other, within the confines of the law and consistent with their respective legal responsibilities.

The DuPage County State's Attorney's Office and Regional Superintendent of Schools participated in the original development of these guidelines to assist law enforcement authorities and school officials in determining when it is appropriate for law enforcement authorities to interview students while the students are at school or participating in school related activities. The goal of these guidelines is to provide law enforcement authorities, police liaison officers, and school administrators with specific guidance on interviewing students in the school setting, and to foster a cooperative relationship between all parties involved. These guidelines also include a section on interview and examination of students at school by the Illinois Department of Children and Family Services (DCFS).

**These guidelines should be supplemented with continued training to ensure that both students' rights and law enforcement's need for effective investigation are protected. School officials are encouraged to consult board legal counsel as may be needed to factor local considerations into the guidelines and to provide local law enforcement agencies in their jurisdiction with copies of their finalized guidelines to promote effective cooperation in implementing them.**

**Nothing contained in the *Guidelines* is intended to be taken as legal advice, nor is the document intended to be an exhaustive treatise on the topic. If you have questions, please contact Kimberly A. Small, IASB Assistant General Counsel, 630/629-3776 ext. 1226.**

### I. School Officials' *In Loco Parentis* Authority Over Matters Relating To School Discipline

In all matters relating to the discipline in and conduct of the schools and the school children, school administrators, teachers, and other certificated/licensed educational employees stand in the relation of parents and guardians (*in loco parentis*) to the students.<sup>2</sup> *In loco parentis* status also applies to other persons providing a related service for a student, whether or not they are a certificated/licensed employee of the school. It also extends to non-disciplinary matters and to all activities connected with the school program, including athletic and extracurricular programs.<sup>3</sup> School officials' *in loco parentis* status over students for school discipline purposes does not automatically mean that they "stand in the place" of a student(s)' parent(s) and/or guardian(s) to allow law enforcement to question students at school for law enforcement purposes.

Nor, as discussed below, can school officials who are carrying out searches and other disciplinary functions to advance school policies claim a parent's immunity from restrictions of the U.S. Constitution's Fourth Amendment protection against unreasonable searches and seizures.<sup>4</sup>

## **II. School Police Liaison Officers or School Resource Officers (SROs)**

Under controlling U.S. Supreme Court precedent, schoolchildren can have legitimate expectations of privacy in their persons and in personal possessions they bring to school. *New Jersey v. T.L.O.*, 469 U.S. 325, 105 S.Ct. 733 (1985). However, because the school has a legitimate need to maintain an environment conducive to learning, the Court recognized that the school setting requires some easing of the restrictions to which searches by public school officials are ordinarily subject. Therefore, the Court held that school officials do not need a warrant before searching a student, and the legality of such a search is based upon a standard of "reasonableness" rather than probable cause.<sup>5</sup>

Although the U.S. Supreme Court in *T.L.O.* clearly relaxed the Fourth Amendment standard for school officials acting alone, the Supreme Court has not yet ruled on what standard should be used to determine the legality of searches which school officials conduct in concert with or at the request of law enforcement agencies. Many lower courts have considered this issue, and the guidelines set out in the next paragraph are based on those rulings.

When a search or seizure is initiated and conducted by school officials alone, or when police involvement is minimal, the *T.L.O.* reasonableness standard is applied. The reasonableness standard also applies to a search or seizure conducted by a school resource officer (SRO) on his or her own initiative (not at the direction of a law enforcement agency) to further educationally related goals, such as safety of students or maintaining order and discipline in schools. Where "outside" police officers initiate the search or seizure of a student for investigative purposes, probable cause and warrant requirements will be applied.<sup>6</sup>

## **III. Interviews of Students by School Officials**

Although school officials are charged with maintaining order and discipline in their schools, they are generally not acting as law enforcement agents and thus, are not required to administer *Miranda* warnings before questioning students.<sup>7</sup> When a school official is not acting under the direction of the police, *Miranda* does not apply. When acting under the direction of the police, the school official is required to obtain a parent's or guardian's permission before questioning a student and *Miranda* requirements may apply. When *Miranda* requirements do apply, law enforcement agents, not school officials, should administer the *Miranda* warnings.

## **IV. Interviews of Students by School Resource Officers (SRO)**

When acting on their own initiative and authority to further a proper educational environment at the school or at the request of school personnel (as opposed to acting upon the request of outside law enforcement authorities), SROs who are investigating a school related incident or any incident which may have potential consequences for the safety of the students or employees at the school may interview students without obtaining permission from parents.<sup>8</sup> Examples of incidents which may have potential consequences for the safety of students or employees at the school include the following:

- fights between students that may result in retaliation at school;
- threats made by a student against another student or employee at the school;
- gang related offenses such as assault, battery, and intimidation;
- possessing drugs or weapons while on school property.

## **V. Interviews of Students by Law Enforcement Authorities at School For Law Enforcement Purposes**

### **A. Law Enforcement Interviews About School-Related Incidents**

When a law enforcement authority seeks or is requested by school officials to interview a student at school about a school-related incident for law enforcement purposes, the following procedures shall apply:

1. The law enforcement agent shall upon arrival at the school contact the building principal or other designated school official, identify or confirm the student sought to be interviewed, and identify or confirm the reason(s) for the interview.
2. Unless the school has initiated the request for the interview, the school official shall make a written record of the law enforcement agent's request, including presentation of any legal process such as subpoenas or warrants.
3. The school official shall verify the identity of the law enforcement agent, if not known by the school official, by checking and photocopying the agent's picture identification card, unless the authority is in uniform.
4. When law enforcement authorities seek to interview a student, the school official shall, before allowing the law enforcement agent to interview the student, attempt to contact and obtain permission of the student's parent or guardian unless extenuating circumstances dictate that this not be done. Extenuating circumstances exist when, for example:
  - There is a risk that delay in proceeding with the interview may pose imminent danger to the health or safety of students, school employees, or other persons in the community.
  - The student's parent or parents are suspected of serious criminal activity or of co-involvement with the student in criminal activity.
  - Law enforcement authorities need to act promptly to prevent destruction of evidence of a serious crime, or flight from the jurisdiction by a person suspected of serious criminal activity.
5. All attempts to contact a student's parents should be documented.
6. If the student refuses to speak to law enforcement authorities, the interview may not proceed on school grounds.
7. If the parent conditions consent on being present, then absent exigent circumstances, the interview should be delayed until the parent arrives.
8. Absent an emergency or circumstances justifying other action, all interviews of students should be conducted in private, to avoid disrupting school, protect the student's privacy, and preserve the integrity of the investigation.
9. If the school official determines it is appropriate for law enforcement authorities to interview the student at school without the presence of a parent or guardian, the law enforcement agent must inform the student that if requested, the school official may remain in the room with the law enforcement agent and the student during the interview.<sup>9</sup> School officials should document and take notes of all interviews of students by a law enforcement agent held in their presence.
10. If a law enforcement agent requests to interview a student as a non-suspect witness to a school related incident that occurred on or off school property, the school official may, but is not required to, permit such an interview without prior notification or consent of the parent. Such an interview shall be conditioned upon the law enforcement agent agreeing to notify the school official if the student becomes a suspect during the interview. Upon such notification, the school official should require that the interview cease and be conducted at the police department, or that it cease until notification and consent of a parent, unless extenuating circumstances exist.

#### **B. Law Enforcement Interviews About Non-School Related Matters**

Absent extenuating circumstances (e.g., preventing destruction of evidence of a serious crime or preventing flight from the jurisdiction by a student suspected of serious criminal activity), interrogation of students by law enforcement authorities about matters unrelated to school should generally be conducted away from school after school hours. If a law enforcement agent wants to interview a student at school about a non-school related matter, the procedures outlined in Part V. A. above shall apply.

## **VI. Arrest and Removal of Students from School**

School officials must cooperate with law enforcement authorities when law enforcement authorities deem it necessary to arrest a student on school grounds. Law enforcement agents are authorized to arrest a student based upon a warrant or without a warrant if they determine there is probable cause to believe that the individual has committed a crime.

A law enforcement agent who arrests a student at school should take the student into custody in a manner which minimizes disruption to the school and embarrassment to the student.

Upon the arrest of a student, the law enforcement agent should immediately make a reasonable attempt to notify the student's parent or legal guardian of the arrest and of the location to which the student will be taken.<sup>10</sup>

In addition to the law enforcement agent's reasonable attempt to notify the student's parent or legal guardian, school officials shall also promptly notify or attempt to notify the parent or guardian of any student arrested at school, unless the parent or guardian was present at school with the student when the student was arrested.

## **VII. Sharing of Information**

School districts are encouraged to enter into reciprocal reporting agreements with their local police departments if such agreements do not already exist.<sup>11</sup>

## **VIII. Interviews and Examinations of Students at School by DCFS<sup>12</sup>**

School employees shall cooperate with the Illinois Department of Children and Family Services (DCFS) in identifying child abuse or neglect.

### **A. Interviews**

If DCFS employees or local law enforcement authorities seek to interview at school a student suspected of being abused or neglected, they shall make a request to the building principal or to the principal's designee.

1. The school district should provide DCFS investigators and local law enforcement authorities reasonable access (without a court order) to a suspected victim of child abuse or neglect for the purpose of interviewing the child at school. The principal or designee may insist upon his or her presence during the interview and condition the requested interview of the child at school on the principal's or designee's presence during the interview.<sup>13</sup>
2. An interview of the student at school shall be allowed upon presentation of a court order. If the interview takes place based upon a court order, the principal or designee shall request a copy of the order. The presence of the principal or designee at the in-school interview shall be at the discretion of the DCFS employee(s) or law enforcement authorities.
3. After the interview has been conducted, the principal or designee may notify the parent or guardian when appropriate (generally when the parent is not the subject of the investigation), of the fact that an interview was conducted, but may not disclose any information about the interview.

### **B. Examinations and Photographs**

If DCFS employees or law enforcement authorities seek to physically examine or photograph at school a student suspected of being abused or neglected, they shall make a request to the principal or the principal's designee and inform him or her of DCFS's intent to secure photographs during the interview.<sup>14</sup>

1. The principal or designee may grant the request (without a court order) if he or she believes there is a reasonable explanation for conducting the examination at school. The principal's decision as to whether or not to grant the request shall take into consideration the sex of the student and of the examiner; the age, maturity and sensitivities of the student, including the student's willingness to be examined and/or photographed; and the location of the trauma and its seriousness. The presence of the principal or designee at the examination and

photographing shall be at the discretion of the DCFS or law enforcement agent. If the principal or designee is present during the examination or photographing, they shall not participate in the examination or photographing of the student.

2. Examination or photographing of the student at school shall be allowed upon presentation of a court order or administrative subpoena. The presence of the principal or designee at the photographing or examination shall be at the discretion of the DCFS employee or law enforcement agent. If the principal or designee is present at the examination or photographing, he or she shall not participate in the examination or photographing of the student. If the examination or photographing takes place based upon a court order, the principal or designee shall request a copy of the order.
3. The principal or principal's designee may notify the parent or guardian of the fact of the examination or photographing session after it has occurred, but shall not otherwise disclose information about the occurrence.

### **C. Temporary Custody / Temporary Protective Custody**

If a law enforcement authorities assume temporary custody of a student at school pursuant to the Juvenile Court Act, or if a local law enforcement agent or a DCFS employee assumes temporary protective custody pursuant to the Illinois Abused and Neglected Child Reporting Act, the principal or principal's designee shall request that the DCFS or law enforcement agent: (1) sign an appropriate document memorializing that fact, before assuming custody; or (2) provide permission for the school official to create a copy of the documentation presented authorizing the temporary custody of the student.

## **IX. Judicial Proceedings**

School employees shall testify fully in any judicial proceeding and shall comply with State and federal law when served with court orders and subpoenas.<sup>15</sup>

### **Legal References**

- People v. Dilworth*, 169 Ill. 2d 195, 661 N.E.2d 310 (1996).  
*People v. Klein*, 355 Ill.App.3d 770, 824 N.E.2d 295 (3d Dist. 2005).  
*People v. Pankhurst*, 365 Ill.App.3d 248, 848 N.E.2d 628 (2d Dist. 2006).  
*U.S. v. Hollingsworth*, 495 F.3d 795 (7th Cir. 2007).  
*Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602 (1966).  
*New Jersey v. T.L.O.*, 469 U.S. 325, 105 S.Ct. 733 (1985).  
*J.D.B. v. North Carolina*, 131 S.Ct. 2394 (2011).

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<sup>2</sup> 105 ILCS 5/24-24 states that school employees shall maintain discipline and "stand in the relationship of parents and guardians to the pupils."

<sup>3</sup> Courts generally cite this common law doctrine that originated in William Blackstone's *Commentaries on the Laws of England* 441 (1769). They reason that even in schools with few or no disciplinary problems, a State still has a substantial interest in maintaining a proper educational environment for the schoolchildren entrusted to its custody and tutelage, through close supervision of students.

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<sup>4</sup> School officials must be aware they are not protected from liability for violations of students' federal constitutional rights (see, e.g. *People v. Pruitt*, 278 Ill.App.3d 194, 662 N.E.2d 540 (1<sup>st</sup> Dist. 1996), appeal denied 167 Ill.2d 564, 667 N.E.2d 1061, and *Picha v. Wielgos*, 410 F.Supp.1214 (N.D. Ill. 1976).

<sup>5</sup> A school search is reasonable if (1) the search was justified at its inception because school officials had grounds to suspect it would turn up evidence that the student has violated the law or school rules, and (2) the scope of the search was reasonably related to the circumstances that justified conducting the search in the first instance. See, *New Jersey v. T.L.O.*, 469 U.S. 325, 105 S.Ct. 733 (1985).

The Illinois General Assembly found as a matter of public policy that students have no reasonable expectation of privacy in places and areas such as lockers, desks, parking lots, and other school property and equipment owned or controlled by the school as well as students' personal effects left in those places and areas. 105 ILCS 5/10/22.6 (e). This section of The School Code states broadly that school officials may inspect and search students' personal effects, without a search warrant or notice to or consent of the student. However, school officials should use caution when relying upon the above statute as a basis for a warrantless search of students' personal effects. School officials would be on safer ground basing such searches upon the established standard of "reasonableness" as outlined in *New Jersey v. T.L.O.*, 469 U.S. 325, 105 S.Ct. 733 (1985).

<sup>6</sup> On January 8, 2014, the U.S. Depts. of Education and Justice issued a *Dear Colleague Letter* (Letter), available in the Nondiscriminatory Administration of School Discipline, Appendix, p. 3, on the Department of Education's Discipline Guidance Package website at [www.ed.gov/school-discipline](http://www.ed.gov/school-discipline). The Letter discusses the obligation of public elementary and secondary schools to administer student discipline without discriminating on the basis of race, color, or national origin. It identifies the "appropriate use of law enforcement" as an important element in this process but urges schools to "clearly define and document roles and areas of responsibility of school resource officers (SROs) and law enforcement personnel" in written agreements. It also directs school officials to "ensure that school personnel understand that they, rather than SROs and other law enforcement personnel, are responsible for administering routine student discipline."

<sup>7</sup> In an effort to ensure that any waiver of constitutional rights to remain silent and to consult with an attorney is a knowing and voluntary waiver, law enforcement agents must give *Miranda* warnings to criminal suspects in police custody before questioning suspects about their possible involvement in a crime, with certain exceptions. See, *Miranda v. Arizona*, 384 U.S. 436 (1966). *Miranda* warnings are not required if questioning occurs under circumstances that do not amount to the suspect's being in "custody."

An Illinois appellate court has held that school officials' questioning of a student about illegal acts- even if the questioning is prompted by a police investigation – is not "custodial," provided the school officials are legitimately concerned about the student's suspected misconduct because of their role as school administrators, and they are not acting as agents of the police when questioning the student. See, *People v. Pankhurst*, 848 N.E. 2d 628 (2<sup>nd</sup> Dist. 2006).

A child suspect's age is relevant (although not dispositive) in a *Miranda* custody analysis when the child's age is known to the law enforcement agent at the time of questioning, or would have been objectively apparent to a reasonable law enforcement agent, and a reasonable child of that age would perceive that he or she was not free to leave. See, *J.D.B. v. North Carolina*, 131 S.Ct. 2394 (2011).

<sup>8</sup> Some school districts may wish to develop an agreed procedure for the SRO to follow before interviewing individual students at the request of school personnel. For example, a district might specify that: "Before interviewing a student one-on-one in an office or other private setting at school, the SRO will discuss the purpose of the interview with the building principal, and they will decide jointly with the principal whether the SRO should conduct the interview alone, or instead in the presence of the building principal or his/her designee."

<sup>9</sup> Id. at footnote 7, *supra*. School officials sitting in on law enforcement interviews at school should follow the local procedures developed in consultation with the board's legal counsel. These procedures are often developed in conjunction with local agency and police interview policies and procedures.

<sup>10</sup> 705 ILCS 405/2-6, 3-8, 4-5, and 5-405.

<sup>11</sup> 105 ILCS 5/10-20.14 (b). There are several other statutes that discuss and/or require communication back and forth between school administrators and law enforcement authorities:

- A. 705 ILCS 405/1-7(A)(8) and 405/5-905(1)(h), amended by P.A. 97-1104, address law enforcement authorities' reporting capabilities to schools under reciprocal reporting agreements, etc.
- B. 105 ILCS 5/22-20 also requires law enforcement authorities (and other entities) to report to public school principals when a student is detained for proceedings under the Juvenile Court Act, or for any criminal offense, including illegal gang activity, or any violation of a municipal or county ordinance."
- C. Building principals must also communicate with law enforcement authorities pursuant to several State law requirements. They include, but are not limited to:
  1. Utilizing the resources of law enforcement agencies when the safety and welfare of students and teacher are threatened by illegal use of drugs and alcohol, illegal use or possession of weapons or by illegal gang activities (105 ILCS 5/10-21.4a);
  2. Reporting to local law enforcement authorities a person on school grounds possessing a firearm (105 ILCS 5/10-27.1A);

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3. Reporting to local law enforcement and Ill. State Police a written complaint of a battery against staff (105 ILCS 5/10-21.7);
  4. Reporting to local law enforcement and Ill. State Police verified drug-related incidents (105 ILCS 5/10-27.1B);
  5. Reporting to local law enforcement authorities a student who committed a criminal offense (105 ILCS 5/10-20.14);
  6. Reporting to local law enforcement hazing that results in death or great bodily harm to any person (720 ILCS 5/12C-50.1);
  7. Reporting to the municipal police department, or the office of the county sheriff of the municipality or county where the school is located, that a drug violation occurred on school property, including any conveyance used to transport students, or within 1000 feet of the school (105 ILCS 127/);
  8. Reporting to local law enforcement that a student whose parent/guardian fails to provide a certified copy of the student's birth certificate or other reliable proof of the child's identity and age within 30 days of enrolling the student (325 ILCS 50/ and 325 ILCS 55/); and
  9. Reporting to the Ill. State Police (ISP) that a student or other person poses a clear and present danger to himself, herself, or others (430 ILCS 66/105 and 405 ILCS 5/6-103.3) for consideration of this information by the ISP in determining whether the person should be issued a firearm concealed carry license. It is not clear how the last requirement can be reconciled with federal (FERPA) confidentiality protections for student education records, when such records are the source of a school administrator's "clear and present danger" determination.

<sup>12</sup> The U.S. Supreme Court vacated a part of a Ninth Circuit ruling requiring a child protective services worker to obtain a warrant before conducting an in-school interview of a student to confirm whether the student was a victim and/or a witness of child abuse. See, *Camreta v. Greene*, 131 S.Ct. 2020 (2011). Illinois is part of the Seventh Circuit, which has concluded that the "strictures of the probable cause or the warrant requirement" [are] inapplicable in these situations. *Darryl H. v. Coler*, 801 F.2d 893, 901 (7th Cir. 1986).

<sup>13</sup> See footnote 9, *supra*.

<sup>14</sup> 89 Ill. Admin. Code § 300.110.

<sup>15</sup> A subpoena for student records requires consultation with the school board's attorney to ensure compliance with both federal (Family Education Rights and Privacy Act (FERPA), 20 U.S.C. §1232g) and State (Illinois School Student Records Act (ISSRA), 105 ILCS 10/) laws. Both laws differ in many respects. State law requires a school board to adopt a policy and procedures implementing ISSRA and specifying the content of school records (23 Ill.Admin.Code §§ 375.100 and 226.740). Releasing confidential information given by a student to a therapist is governed by the Mental Health and Developmental Disabilities Confidentiality Act (740 ILCS 110/). Information kept by law enforcement professionals working in a school are not "school student records" (105 ILCS 10/2).