

To: Policy Subcommittee
From: Ty Alper and Susan Craig
Date: March 25, 2016
Re: BP re Interaction with Law Enforcement

Attached is a first draft policy governing District employees' interaction with law enforcement. There is more work to be done on it, but it is a draft for discussion at the March 25 meeting.

Berkeley USD

Board Policy

Interaction with Law Enforcement

BP XXXX

The Governing Board is committed to avoiding the unnecessary criminalization of BUSD students for whom arrest and juvenile court involvement creates serious long-term consequences; using law enforcement only as a last resort in relation to student conduct and only for incidents for which law enforcement is necessary to address a serious threat to school safety; and providing district employees with clear guidance about when it is permissible, and when it is not permissible, to contact law enforcement regarding student behavior. This policy governs the District's obligations to protect all TK-12 students, regardless of whether they are minors.

REDUCING LAW ENFORCEMENT CONTACT AND ARRESTS

BUSD administrators have primary responsibility to ensure consistent enforcement of school rules and policies. It is the responsibility of BUSD employees, not law enforcement, to discipline students.

BUSD employees shall not request that law enforcement officers interview students or collect evidence for BUSD disciplinary purposes, including for expulsion matters.

BUSD employees shall not report student behavior to law enforcement except in the event of an imminent threat to student or staff safety, or where required by law. Pursuant to the Education Code 48902, commission of the following offenses, and only the following offenses, requires reporting to law enforcement:

[List offenses]

[Ed Code. Sec. 48902]

Education Code 48902 requires notification of acts that have been committed in violation of the above-listed provisions of the Penal Code.

[Add provision regarding whether to share students' identifying information or other incident details for certain offenses.]

ARREST OF A STUDENT ON CAMPUS

The arrest of a BUSD student on a BUSD campus is a traumatic event for everyone involved, and is to be avoided whenever possible. District employees shall make every effort to minimize the likelihood that a BUSD student is arrested on a BUSD campus. In the rare instances in which such as arrest is unavoidable, BUSD employees shall make every effort to mitigate the impact by following the provisions set forth in this policy.

The site administrator shall immediately notify the parent/guardian upon police arrest of a student, except when the student is taken into custody as a suspected victim of child abuse as defined in Section 11165.6 of the Penal Code or pursuant to Section 305 of the Welfare & Institutions Code. In the case of these exceptions, the site administrator shall provide the law enforcement officer with the address and telephone number of the student's parent or guardian.

[Come up with short explanation of what Section 504 is?]

[Ed Code. Sec. 48906]

If notified in advance that law enforcement seeks to arrest a student on campus, the site administrator shall make every effort to arrange with law enforcement a private location out of sight and hearing of other students to effectuate the arrest of a student, in order to avoid invasion of the student's privacy. The site administrator shall make every effort to be physically present during the arrest, until the student is escorted off campus.

QUESTIONING A STUDENT ON CAMPUS

Law enforcement questioning of a student on campus during the school day disrupts that student's education, threatens to violate the student's privacy, and can be traumatic for the student. Students are also often unaware of their legal rights. Law enforcement questioning of students on a BUSD campus is to be avoided whenever possible. In the rare instances in which law enforcement questioning of a student on campus is unavoidable, BUSD employees shall make every effort to mitigate the impact by following the provisions set forth in this policy.

When any law enforcement officer requests an interview with a student on campus, the site administrator shall:

- 1) request the officer's identity and the reason for the interview;
- 2) request that the interview occur off campus outside of the school

day;

- 3) take immediate steps to contact a parent/guardian to get oral consent to permit any police interrogation of the student on campus;
- 4) make every effort to provide information about free legal counsel to students facing contact with law enforcement and encourage them to avail themselves of such representation; and
- 5) make every effort to provide a “know your rights” card to the student prior to any interview with law enforcement.

If the student is a suspected victim of child abuse, and the site administrator has a reasonable belief that the student would be endangered by disclosure to the parent/guardian, BUSD personnel may decide not to contact that parent/guardian and to instead have a BUSD employee in the room to support the student during any law enforcement questioning.

Efforts to contact parents by BUSD school officials must include calling all numbers listed on an emergency card, including work numbers, cell and pager numbers, and any numbers supplied by the student, as well as email addresses.

If the parent or guardian requests that the pupil not be questioned until he or she can be present, BUSD employees shall not facilitate the pupil's contact with law enforcement until the parent or guardian is present. If the parent or guardian cannot be reached, BUSD employees shall not facilitate the pupil's contact with law enforcement until the parent or guardian is successfully contacted. Facilitation includes but is not limited to locating the student, retrieving the student, and securing a room on campus for the interview.

If parental/guardian consent is obtained, the site administrator shall accommodate the interview in a way that causes the least possible disruption for the student and provides the student appropriate privacy. If parental/guardian consent is obtained but the parent/guardian does not insist on being present during the interview, a BUSD employee shall remain present during the interview unless the student requests that no BUSD employee is present.

The site administrator shall maintain a record of all documentation relative to law enforcement interviews of students. Such documentation must include a completed “Law Enforcement Student Questioning Form.”

CONTACT WITH PROBATION

BUSD employees are prohibited from sharing records or information with probation officers unless in response to a specific, lawful request or otherwise provided by law. No BUSD employee may offer unsolicited information to any law enforcement officer, including probation officers, about any student, unless specifically required to by law.

No BUSD employee may provide any information of any kind to a probation officer unless that employee has verified that the District has been notified in writing that the student is on probation.

[Ed Code. Sec. 48267.]

[Currently there is a parental notification form that teachers fill out for truancy-related contacts. Need to create one for all probation contacts.]

[Add more specifics about what can be shared with PO per Ed Code and FERPA.]

[Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Sec. 1232g et seq.).]

[Ed Code. Sec. 49076]

[Ed Code. Sec. 49076.5(3)]

CONTACT WITH COUNSEL FOR STUDENT

Teachers and other BUSD employees are permitted, but not required, to speak with legal counsel representing BUSD students. Teachers and other BUSD employees do not need permission from supervisory personnel to communicate with a student's legal counsel.

MEMORANDUM OF UNDERSTANDING WITH BERKELEY POLICE DEPARTMENT AND ALAMEDA COUNTY PROBATION OFFICE

District staff shall enter into an MOU with BPD and probation, covering the following terms:

[list them]

TRAINING ON AND DISTRIBUTION OF POLICY

Within 3 months of this policy's adoption, BUSD shall ensure that it is distributed to all school staff and that training about how to implement this policy is provided at least once per year to site administrators.

BUSD shall also ensure that this policy is distributed to all of its school sites.

BUSD shall ensure that all school safety plans are updated to include provisions and forms consistent with this policy.

Policy BERKELEY UNIFIED SCHOOL DISTRICT
adopted: [date] Berkeley, California