

To: Policy Subcommittee
From: Ty Alper
Date: May 4, 2016
Re: BP re Law Enforcement

Attached is a clean revised draft policy governing District interaction with law enforcement, with a few comments in the margins. Also attached is a document that compares the current version of the policy with the version of the policy that was discussed at our March 25, 2016 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 student or staff 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.

DEFINITIONS

"Law enforcement" includes probation, parole, police, or any other peace officers, including any School Resource Officers (SRO).

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.

Except in extenuating circumstances that involve imminent threats to the safety of others, District employees shall not participate in law enforcement investigation of potential criminal behavior by students. The site administrator or designee shall immediately notify a student's parent/guardian upon notice by law enforcement that a student is under law enforcement investigation, except when doing so would, in the judgment of the site administrator or designee, pose a danger to the safety of students or staff.

BUSD employees shall not request that law enforcement officers interview students or collect evidence for BUSD disciplinary purposes, including for expulsion matters. The fruits of police investigation shall not be used in BUSD discipline proceedings.

BUSD employees shall not report student behavior with identifying

Comment [TA1]: Draft an AR that details the offenses in Ed Code 48902 and explains what "notification" means?

information to law enforcement except in the event of an imminent threat to student or staff safety, or where required by law. Nothing in this provision restricts the right of any employee to make a report to law enforcement in his or her individual capacity.

ARRESTING A STUDENT ON CAMPUS

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 or designee shall immediately notify the parent/guardian upon notice of intent by law enforcement to question, detain, or arrest a student on campus, except when a) doing so would, in the judgment of the site administrator or designee, pose a danger to the safety of students or staff, or b) law enforcement seeks to take the student 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.

The site administrator or designee shall immediately notify the parent/guardian upon the actual arrest of a student, except where 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.

[Ed Code. Sec. 48906]

If notified in advance that law enforcement seeks to arrest a student on campus, the site administrator or designee 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 and further disruption to the school site. In addition, the site administrator or designee shall make every effort to arrange with law enforcement a private method of egress from the school building for the same reasons. 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 inform the parent/guardian that his or her student is being interviewed by police on campus;
- 4) make every effort to wait a reasonable amount of time for a parent/guardian to be present if the parent/guardian or student requests that the parent/guardian be present during the interrogation;
- 5) 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
- 6) 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

Comment [TA2]: If SB 1052 passes, it will require that a minor MUST consult with counsel prior to any custodial interrogation or waiver of Miranda rights, so we may need an update to this that allows for proper space and time on the school site to access that consultation with an attorney.

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 parent/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." The student shall receive a copy of the completed form, and such form shall not be included in the Student's cumulative or disciplinary file. The student's parent or guardian shall receive a copy of the completed form, unless the form relates to suspected child abuse by the parent or guardian.

CONTACT WITH PROBATION

BUSD employees are prohibited from sharing records or information with probation, parole, or other peace 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.]

[Family Educational Rights and Privacy Act (FERPA) 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

Comment [TA3]: Add more specifics about what can be shared with PO per Ed Code and FERPA or put in AR?

Comment [TA4]: Currently there is a parental notification form that teachers fill out for truancy-related contacts. Need to create one for all probation contacts.

Speak with legal counsel representing BUSD students (or their education rights holder if the student has or is suspected of having disabilities). Teachers and other BUSD employees do not need permission from supervisory personnel to communicate with a student's legal counsel or his or her education rights holder.

Comment [TA5]: Can we limit this to counsel in criminal/delinquency or school discipline cases? What if student is suing BUSD? Get counsel on this?

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

District staff shall attempt to enter into a memorandum of understanding (MOU) with the Berkeley Police Department and the Alameda County Probation Office. The MOU should seek to cover the following terms, in addition to any others that are appropriate:

- Coordination between BUSD, BPD, and probation
- Data collection and reports related to law enforcement interaction
- Hiring and assignment of school resource officers
- Mutual cooperation & mutual respect
- Training
- Campus security
- Requesting police assistance
- Record sharing
- Student discipline
- Entry onto school campuses
- Arrests on school campuses, including notification of parents/guardians and location of arrest
- Questioning of students on school campuses
- Treatment of Students with Disabilities
- Feedback/Disputes/Complaints
- Police activity near school grounds

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 and all other school staff who are likely to be involved in any contact or communication with law enforcement.

BUSD shall also ensure that this policy is distributed to all of its school sites and refer to these policies in the Parent Student Handbook.

BUSD shall ensure that all school safety plans are updated to include

provisions and forms consistent with this policy.

DATA COLLECTION AND REPORTING

[What data do we want collected related to students' contact with law enforcement?]

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

[NOTE: THIS DOCUMENT SHOWS THE REVISIONS THAT WERE MADE TO THE VERSION OF THE POLICY THAT WAS DISCUSSED AT THE MARCH 25, 2016 POLICY SUBCOMMITTEE 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~~student or staff 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.

DEFINITIONS

"Law enforcement" includes probation, parole, police, or any other peace officers, including any School Resource Officers (SRO).

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.

Except in extenuating circumstances that involve imminent threats to the safety of others, District employees shall not participate in law enforcement investigation of potential criminal behavior by students. The site administrator or designee shall immediately notify a student's parent/guardian upon notice by law enforcement that a student is under law enforcement investigation, except when doing so would, in the judgment of the site administrator or designee, pose a danger to the safety of students or staff.

BUSD employees shall not request that law enforcement officers

interview students or collect evidence for BUSD disciplinary purposes, including for expulsion matters. The fruits of police investigation shall not be used in BUSD discipline proceedings.

BUSD employees shall not report student behavior with identifying information to law enforcement except in the event of an imminent threat to student or staff safety, or where required by law. Pursuant to Nothing in this provision restricts the Education Code 48902, commissionright of the following offenses, and only the following offenses, requires reportingany employee to make a report to law enforcement: in his or her individual capacity.

[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 OFARRESTING 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 or designee shall immediately notify the parent/guardian upon police notice of intent by law enforcement to question, detain, or arrest of a student on campus, except when a) doing so would, in the judgment of the site administrator or designee, pose a danger to the safety of students or staff, or b) law enforcement seeks to take the student 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.

The site administrator or designee shall immediately notify the parent/guardian upon the actual arrest of a student, except where 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 305 is?]~~

[Ed Code. Sec. 48906]

If notified in advance that law enforcement seeks to arrest a student on campus, the site administrator or designee 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. ~~and further disruption to the school site. In addition, the site administrator or designee shall make every effort to arrange with law enforcement a private method of egress from the school building for the same reasons.~~ 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 and~~ inform the parent/guardian ~~to get oral consent to permit any~~ that his or her student is being interviewed by police ~~interrogation of the student~~ on campus;
- 4) make every effort to wait a reasonable amount of time for a parent/guardian to be present if the parent/guardian or student requests that the parent/guardian be present during the interrogation;
- 4)5) _____ 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)6) _____ 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~~parent/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.” The student shall receive a copy of the completed form, and such form shall not be included in the Student’s cumulative or disciplinary file. The student’s parent or guardian shall receive a copy of the completed form, unless the form relates to suspected child abuse by the parent or guardian.

CONTACT WITH PROBATION

BUSD employees are prohibited from sharing records or information with probation, parole, or other peace 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 (FERPA) 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- (or their education rights holder if the student has or is suspected of having disabilities).

Teachers and other BUSD employees do not need permission from supervisory personnel to communicate with a student's legal counsel or his or her education rights holder.

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

District staff shall attempt to enter into ~~an a memorandum of understanding~~ (MOU) with ~~BPD and probation, covering the Berkeley Policy Department and the Alameda County Probation Office.~~ The MOU should seek to cover the following terms, in addition to any others that are appropriate:

~~[list them]~~

- Coordination between BUSD, BPD, and probation
- Data collection and reports related to law enforcement interaction
- Hiring and assignment of school resource officers
- Mutual cooperation & mutual respect
- Training
- Campus security
- Requesting police assistance
- Record sharing
- Student discipline
- Entry onto school campuses
- Arrests on school campuses, including notification of parents/guardians and location of arrest
- Questioning of students on school campuses
- Treatment of Students with Disabilities
- Feedback/Disputes/Complaints
- Police activity near school grounds

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 and all other school staff who are likely to be involved in any contact or communication with law enforcement.

BUSD shall also ensure that this policy is distributed to all of its school sites, and refer to these policies in the Parent Student Handbook.

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

DATA COLLECTION AND REPORTING

[What data do we want collected related to students' contact with law enforcement?]

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