



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. Special thanks to Tejas N. Shah of Barnes & Thornburg LLP for his work supplementing these guidelines with regard to Immigration and Customs Enforcement (ICE) 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 the 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 IASB General Counsel Kimberly A. Small at 630/629-3776 ext. 1226 or IASB Assistant General Counsel Maryam T. Brotine at 630/629-3776 ext. 1219 or IASB Assistant General Counsel Debra H. Jacobson at 630/629-3776 ext. 1211.

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 students² *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 programs³ 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.⁴

II. Search and Seizure of Students by 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.*, 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” or reasonable suspicion rather than probable cause.⁵

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 (non-criminal) purposes, such as safety of students or maintaining order and discipline in schools.⁶ Where “outside” police officers initiate the search or seizure of a student for investigative purposes, probable cause and warrant requirements will be applied.

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.⁷ 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 may need to seek permission from a parent or guardian before questioning a student as explained below and *Miranda* requirements may apply. When *Miranda* requirements do apply, law enforcement agents not school officials, should administer the *Miranda* warnings. In fact, State law requires that a law enforcement officer, State’s Attorney, juvenile officer, or other public official or employee administer *Miranda* warnings, followed by specific questions, to minors under 18 years of age prior to custodial interrogations.⁸

IV. Interviews of Students for Non-Law Enforcement Purposes by School Resource Officers (SROs) or Other School Security Personnel

When acting on their own initiative and authority to further a proper educational environment at the school, or at the request of school personnel to further a school response to student misconduct, to promote school interventions, or school discipline (as opposed to acting for law enforcement purposes), SROs or other school security personnel 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 on school grounds without obtaining permission from parents/guardians.⁹

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 or distributing drugs or weapons while on school property
- Smoking or vaping on school property
- Hazing of another student on school property
- Being in unauthorized areas of the school building/property
- Sexual harassment, sexual assault, teen dating violence on school property

No interview can be conducted or continued by an SRO or other school security personnel on school grounds if the student being interviewed is under 18 years of age and suspected of criminal conduct, unless the SRO or other school security personnel complies with the required procedures described in Section VI, below.

V. Interviews of Students for Law Enforcement Purposes by Law Enforcement Authorities (Including School Resource Officers (SROs) or Other School Security Personnel) on School Property

Law enforcement authorities (including SROs or other school security personnel) do not have inherent authority to interview students on school property for law enforcement purposes. School administrators have the discretion

to determine whether or not to allow law enforcement authorities to interview a student on school property. When a law enforcement authority seeks or is requested by school administrators to interview a student on school property 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 principal or designee shall make a written record of the law enforcement agent's request, including presentation of any legal process such as subpoenas, warrants, or court orders.
3. The school principal or designee shall verify the identity of the law enforcement agent, if not known by the school principal or designee, by checking and photocopying the agent's picture identification card, unless the authority is in uniform.
4. If the school principal or designee permits the law enforcement agent to interview the student on school property, the law enforcement agent must comply with the following procedures:
 - a. School officials should attempt to contact a student's parents/guardians and document the time and manner in writing.
 - b. If the student refuses to speak to law enforcement authorities, the interview may not proceed on school property.
 - c. If the parent/guardian conditions consent on being present, then absent exigent circumstances, the interview should be delayed until the parent/guardian arrives at the site. Examples of exigent circumstances include:
 - 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(s)/guardian(s) 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.
 - d. If the school principal or designee determines it is appropriate for law enforcement authorities to interview the student at school without the presence or permission of a parent/guardian, the school principal or designee should ask the student if he or she wants the school principal or other school personnel to remain in the room with the law enforcement agent and the student during the interview.¹⁰
 - e. School officials should document in writing and take notes of all interviews of students by a law enforcement agent held in their presence.
 - f. 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.

These requirements do not limit the authority of law enforcement authorities to make lawful arrests on school grounds.

Absent the exigent circumstances described in Section V(4)(c), above (e.g., preventing destruction of evidence of a serious crime or preventing flight from the jurisdiction by a student suspected of serious criminal activity), interviews of students by law enforcement authorities about matters unrelated to school should generally be conducted off school grounds after school hours.

VI. Interviews of Students Suspected of Criminal Conduct by Law Enforcement Authorities (Including School Resource Officers (SRO) or Other School Security Personnel) on School Property

As noted above in Section V, school administrators have the discretion to determine whether or not to allow law enforcement authorities to conduct an interview on school property with a student who is suspected of criminal conduct. If school administrators allow such an interview, they should follow Section V(1), (2), (3), (4)(b), (4)(e), and 4(f), above. In addition, a law enforcement authority (including SROs or other school security personnel) who

wants to interview a student under age 18 who is suspected of criminal conduct, on school property during regular school hours (when school is in session and students are present), must:

1. Notify or attempt to notify the student's parent/guardian and document the time and manner in writing;
2. Make reasonable efforts to ensure the student's parent/guardian is present during the questioning or, if they are not present, ensure that school personnel (including, but not limited to, a school social worker, psychologist, nurse, guidance counselor, or any other mental health professional) are present during the questioning; and
3. If practicable, make reasonable efforts to ensure a law enforcement officer, trained in promoting safe interactions and communications with youth is present during questioning.¹¹

The law enforcement authority is responsible for his/her own compliance with these requirements. However, for SROs or other security personnel, best practice is for school administrators to ensure and verify compliance before allowing the interview of the student.

These requirements apply regardless of whether the suspected criminal conduct is school related or non-school related.

These requirements do not apply to circumstances that would cause a reasonable person to believe that urgent and immediate action is necessary to: (1) prevent bodily harm or injury to the student or any other person; (2) apprehend an armed or fleeing suspect; (3) prevent the destruction of evidence; or (4) address an emergency or other dangerous situation.

These requirements do not limit the authority of law enforcement authorities to make lawful arrests on school grounds.

If a law enforcement authority (including SROs or other school security personnel) wants to interview a student age 18 or older who is suspected of criminal conduct, school administrators should require that the interview be conducted at the police department, unless exigent circumstances exist.

In the event of a custodial interrogation of a student who is the subject of a criminal investigation, or if an interview changes into one where the student becomes a suspect or the subject of a criminal investigation, a student is protected by the Fifth Amendment right against self-incrimination and may have a right to an attorney even when there is a subpoena, warrant or court order.

VII. Attempts to Interview Students at School by ICE

Because schools are "sensitive locations" under Immigration and Customs Enforcement (ICE) policy¹², ICE has stated that agents will generally not seek to enforce immigration laws on school grounds other than requesting records or conducting compliance review, *i.e.* for the Student and Exchange Visitor Program (SEVIS). This would apply only to schools enrolled with SEVIS for the purpose of accepting F-1 or M-1 students.

ICE has stated that other immigration enforcement activities (e.g., detention or apprehension, arrest, interview, searches, or surveillance of individuals) should generally be avoided at sensitive locations, and require either prior supervisory approval or the presence of exigent circumstances.¹³ Exigent circumstances exist when, for example:

- The enforcement action involves a national security or terrorism matter.
- There is an imminent risk of death, violence, or physical harm to any person or property.
- The enforcement action involves the immediate arrest or pursuit of a dangerous felon.
- There is an imminent risk of destruction of evidence material to an ongoing criminal case.¹⁴

Although the sensitive locations policy is subject to change by ICE, ICE stated in March 2017 that the policy remains effective.¹⁵

The extent of a school's cooperation or non-cooperation with ICE is a decision best left to its respective school board. In the event that ICE agents request to interview students on school grounds (be it under the "exigent circumstances" noted above or not), schools might either:

1. Document the agents contact information, inform them that someone will be in contact shortly, and immediately contact the school board's attorney. DO NOT confirm the student is in attendance, release student information, or make the student available for an interview on the spot.¹⁶; or
2. Treat ICE requests to interview students at school in the same manner as it would permit law enforcement to interview students, as provided in Part V(B), above.

Whether permitting ICE agents to interview a student on school property or to conduct other immigration enforcement activities at school might violate the Supreme Court's guidance in *Plyler v. Doe* is an issue that has not been addressed by the courts.

VIII. Arrest and Removal of Students from School

A. By Law Enforcement Authorities, Excluding ICE Agents

School officials must cooperate with law enforcement authorities when law enforcement authorities deem it necessary to arrest a student on school property. 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 both 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 guardian of the arrest and of the location to which the student will be taken.¹⁷

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

Note: Public Act 100-463 created the Illinois TRUST Act which prohibits law enforcement agencies and officials from enforcing federal civil immigration laws. Under Section 15(b), law enforcement cannot arrest a person based solely on the individual's citizenship or immigration status.

B. By ICE Agents

As noted above, the extent of a school's cooperation or non-cooperation with ICE is a decision best left to its respective school board. There are legal bases for arguing both that school officials *should* and *should not* cooperate with ICE attempts to arrest students at school. For information purposes, both arguments are set forth below.

Cooperation Argument

School officials should cooperate with ICE when its agents deem it necessary to arrest a student on school property. The Immigration and Nationality Act authorizes ICE agents to arrest individuals:

- Based upon an arrest warrant;¹⁸ or
- Without a warrant if they determine there is:
 - Reason to believe (probable cause) that the person to be arrested has committed an offense against the United States or is an alien illegally in the United States; and
 - The person is likely to escape before a warrant can be obtained.¹⁹

Non-Cooperation Argument

Some courts that have addressed the issue of the standard which must be met to justify a detention based on suspected immigration violations have concluded that probable cause would be required.²⁰ Moreover, to the extent ICE agents are arresting an undocumented individual for a criminal purpose, a school is a place where there is a reasonable expectation of privacy. Therefore, only a criminal arrest warrant, signed by a judge that authorizes both a search and the detainer of the student, will allow ICE agents to enter a school without permission to arrest a student.

Criminal arrest warrants are issued by judges after they have determined that probable cause exists. In contrast, ICE warrants are civil warrants issued by immigration officials pursuant to 8 C.F.R. §287.5(e) without any probable cause determination, thus they are referred to as *administrative warrants*. "However, administrative warrants may not be used by INS to justify the seizure of persons." *Illinois Migrant Council v. Pilliod*, 531 F.Supp. 1011, 1020 (N.D. IL. 1982). Federal district courts have also ruled that arrests made based on ICE administrative warrants were essentially warrantless arrests. See *El Badrawi v. DHS*, 579 F. Supp. 2d 249 at 275-276 (D. Conn. 2008).

In the event that ICE agents attempt to arrest a student on school property, immediately contact the school board's attorney.

An ICE 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 ICE agent should immediately make a reasonable attempt to notify the student's parent or guardian of the arrest and of the location to which the student will be taken.

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

IX. Sharing of Information

State law requires a reciprocal reporting system between school districts and local law enforcement agencies regarding criminal offenses committed by students.²¹

If ICE requests information for the purposes of conducting a compliance review, such as circumstances where the school is registered with SEVIS, or if agents present a subpoena or a court order, then the school must comply. If a subpoena or court order for student records is presented, contact legal counsel for assistance in complying with it.²²

Schools have limited authority to release student record information in an emergency, without parent/guardian consent, in connection with an articulable and significant threat to the health or safety of a student or other individuals, to appropriate persons if the knowledge of the requested information is necessary to protect the health or safety of the student or other individuals.²³ Otherwise, schools are not required to share information and must not share information protected under the Family Educational Rights and Privacy Act (FERPA) or the Illinois School Student Records Act (ISSRA).

This includes information regarding students' immigration status. Illinois State Board of Education regulation 23 Ill.Admin.Code §1.240 provides that "no school system may deny access to its schools or programs to students who lack documentation of their immigration status or legal presence in the United States, and no school system may inquire about the immigration status of a student (*Plyler v. Doe*, 457 U.S. 202 (1982))." Based on this, schools cannot report undocumented students to immigration authorities, as this would effectively deny students access to school.

X. Interviews and Examinations of Students at School by DCFS²⁴

School employees shall cooperate with the Illinois Department of Children and Family Services (DCFS) in identifying child abuse or neglect.²⁵

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 student at school. The principal or designee may insist upon his or her presence during the interview and condition the requested interview of the student at school on the principal's or designee's presence during the interview.²⁶
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 student's parent/guardian when appropriate (generally when the parent/guardian is not the subject of the investigation), of the fact that an interview was conducted, but may not disclose any information about the interview.

Coordination with Children's Advocacy Centers (CACs) Upon Referral by DCFS

Children's Advocacy Centers (CACs) are child-focused, trauma-informed, facility-based programs that provide a multi-disciplinary, comprehensive response to child abuse. Illinois CACs are organized and operate under the Children's Advocacy Center Act.²⁷ CACs are accredited based on standards set by the National Children's Alliance.²⁸ See www.nationalchildrensalliance.org/. When DCFS accepts a report of child abuse for investigation, it may refer the matter to the local CAC.

Most school districts are located within a county served by an accredited CAC. For a map of accredited CACs, and to identify a CAC that may serve the school district, see www.childrensadvocacycentersofillinois.org/about/map. If a school employee in such a school district reports an *alleged incident of sexual abuse*²⁹ of a

student to DCFS and DCFS accepts the report for investigation, then DCFS will refer the matter to the local CAC. The school district must coordinate with the CAC and must refrain from interviewing the student about the *alleged incident of sexual abuse* until after the CAC completes its *forensic interview*³⁰ of the student.³¹ The school district may, however, request information from the student or the student's parent/guardian to ensure his or her safety and well-being at school.³²

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.³³

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 student's parent/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 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.

XI. Judicial Proceedings, Court Orders and Subpoenas

School employees shall testify fully in any judicial proceeding and shall comply with State and federal law when served with court orders and subpoenas. A subpoena for student records requires consultation with the school board's attorney to ensure compliance with both federal and State student records laws.³⁴

Legal References

- People v. Dilworth*, 169 Ill. 2d 195 (1996).
- People v. Klein*, 355 Ill.App.3d 770 (3d Dist. 2005).
- People v. Pankhurst*, 365 Ill.App.3d 248 (2d Dist. 2006).
- U.S. v. Hollingsworth*, 495 F.3d 795 (7th Cir. 2007).
- Miranda v. Arizona*, 86 S.Ct. 1602 (1966).
- New Jersey v. T.L.O.*, 105 S.Ct. 733 (1985).
- J.D.B. v. North Carolina*, 131 S.Ct. 2394 (2011).
- Plyler v. Doe*, 102 S.Ct. 2382 (1982).

¹ **The following attorneys are members of this committee:** **Cynthia M. Baasten**, Engler Callaway Baasten & Sruga, LLC; **Maryam T. Bro-tine**, Illinois Association of School Boards; **Luis Rodriguez**, Engler, Callaway Baasten & Sruga, LLC; **Kimberly A. Small**, Illinois Association of School Boards; **Zaria Udeh**, Robbins Schwartz; **Scott F. Uhler**, Klein, Thorpe and Jenkins, Ltd.; **George A. Wagner**, Klein, Thorpe and Jenkins, Ltd. The 2020 ICOSA Executive Committee provided peer review.

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

³ Id. 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.

⁴ 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(1st Dist. 1996), appeal denied 167 Ill.2d 564, and *Picha v. Wielgos*, 410 F.Supp.1214 (N.D. IL. 1976).

⁵ 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.*, 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.*, 105 S.Ct. 733 (1985).

⁶ U.S. Const. amend. IV. On January 8, 2014, the U.S. Depts. of Education and Justice issued a *Dear Colleague Letter* (Letter) on the Nondiscriminatory Administration of School Discipline, at www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.html. 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.”

⁷ 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*, 86 S.Ct. 1602 (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 (2d 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).

⁸ 705 ILCS 405/5-401.5; 725 ILCS 5/103-2.1. The specific questions that a law enforcement officer, State’s Attorney, juvenile officer, or other public official or employee must ask the minor are “do you want to have a lawyer?” and “do you want to talk to me?” 705 ILCS 405/5-401.5(a-5)(2)(A), (B).

⁹ 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 whether the SRO should conduct the interview alone, or instead in the presence of the building principal or his/her designee.”

¹⁰ 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.

¹¹ 105 ILCS 5/22-85(b)(4) (final citation pending), added by P.A. 101-478. A trained law enforcement officer is someone who: (1) received training in youth investigations approved or is certified by his/her law enforcement agency as a school resource officer per 50 ILCS 705/10.22, or (2) is a juvenile police officer per 705 ILCS 405/1-3(17).

¹² Memorandum from John Morton, Director, U.S. Immigration and Customs Enforcement, “Enforcement Actions at or Focused on Sensitive Locations” 10029.2 (October 24, 2011). See also *Sensitive Locations FAQs*, at: www.ice.gov/ero/enforcement/sensitive-loc.

¹³ Enforcement actions are apprehensions, arrests, interviews, or searches, and, for purposes of immigration enforcement only, surveillance. Id.

¹⁴ October 24, 2011 ICE Memorandum.

¹⁵ www.ice.gov/doclib/sevis/pdf/bcm1703-05.pdf

¹⁶ Negron, Jr., F. M., Carter, T., Burns, T., and Patterson, J. (2017, October 27) LIFTING THE LAMP, A Legal Guide to Serving Undocumented Students in Public Schools, nsba.org/-/media/NSBA/File/legal-lifting-the-lamp-beside-the-schoolhouse-door-guide.pdf.

¹⁷ 705 ILCS 405/2-6, 3-8, 4-5, and 5-405.

¹⁸ 8 C.F.R. §287.5(e)(2).

¹⁹ 8 U.S.C. §1357; 8 C.F.R. §287.8(c).

²⁰ See Kagan, Michael, "Immigration Law's Looming Fourth Amendment Problem" (2015). *Scholarly Works*. 913. <http://scholars.law.unlv.edu/facpub/913>

²¹ 105 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) 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." The information derived from such reports must be kept separate from the student's official school record, shall not be a public record, and shall be used solely by appropriate school officials whom the school has determined to have a legitimate educational or safety interest to aid in the student's proper rehabilitation or to protect the safety of students and employees. Id.
- 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(b));
 3. Reporting to local law enforcement and Ill. State Police (ISP) a written complaint of a battery against staff (105 ILCS 5/10-21.7(b));
 4. Reporting to local law enforcement and ISP verified drug-related incidents (105 ILCS 5/10-27.1B(b));
 5. Reporting to local law enforcement authorities a student who committed a criminal offense (105 ILCS 5/10-20.14(b));
 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 127/2);
 8. Reporting to local law enforcement if a student's 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 50/5 and 325 ILCS 55/5); and
 9. Reporting to 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 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.

²² See **Answers to FAQs Responding to a Subpoena** (January 2015), at: www.iasb.com/iasb/media/documents/icsafaqrespondingtoa-subpoena2015.pdf.

²³ 20 U.S.C. §1232g(b)(l); 34 C.F.R. §§99.31(a)(10) and 99.36; 105 ILCS 10/6(a)(7); 23 Ill.Admin.Code §375.60. Any such release requires parent/guardian notification, no later than the next school day after the release, of: the date of the release; the person, agency, or organization receiving the information; and the purpose of the release. Factors to be considered in determining whether emergency release is appropriate include:

- The seriousness of the threat to the health or safety of the student or other individuals;
- The need for the requested records to meet the emergency;
- Whether the individuals to whom the requested records are released are in a position to deal with the emergency; and

- The extent to which time is of the essence in dealing with the emergency.

Following any such release, the school or school district must make a record of the nature of the threat that formed the basis for the disclosure and the parties to whom the school or district disclosed the information. 23 Ill.Admin.Code §375.60.

- ²⁴ 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).
- ²⁵ The Abused and Neglected Child Reporting Act (ANCRA, 325 ILCS 5/) requires *education personnel* to immediately report or cause a report to be made to DCFS when they have reasonable cause to believe a child known to them in their professional or official capacities may be abused or neglected; *education personnel* includes school personnel (including administrators and certified and non-certified school employees) and educational advocates assigned to a child in accordance with the School Code. 325 ILCS 5/4(a) (4). Abuse and neglect are defined in 325 ILCS 5/3.
- ²⁶ See footnote 9, *supra*.
- ²⁷ 55 ILCS 80/.
- ²⁸ 55 ILCS 80/2.5.
- ²⁹ An *alleged incident of sexual abuse* is an incident of sexual abuse of a child, as defined in 720 ILCS 5/11-9.1A, that is alleged to have been perpetrated by school personnel, including a school vendor or volunteer, that occurred: on school grounds during a school activity; or outside of school grounds or not during a school activity. 105 ILCS 5/22-85(b) (final citation pending), added by P.A. 101-531.
- ³⁰ A *forensic interview* is an interview between a trained forensic interviewer, as defined by National Children’s Alliance standards, and a child in which the interviewer obtains information from children in an unbiased and fact finding manner that is developmentally appropriate and culturally sensitive to support accurate and fair decision making by the multidisciplinary team in the criminal justice and child protection systems. 55 ILCS 80/2.5.
- ³¹ 105 ILCS 5/22-85(f) (final citation pending), added by P.A. 101-531.
- ³² *Id.*
- ³³ 89 Ill. Admin. Code § 300.110.
- ³⁴ See the Family Educational Rights and Privacy Act (FERPA, 20 U.S.C. §1232g) and the Illinois School Student Records Act (ISSRA, 105 ILCS 10/). Both laws differ in many respects. ISSRA requires a school board to adopt a policy and procedures implementing it and specifying the content of school records. 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(d)). See **Answers to FAQs Responding to a Subpoena** (January 2015), at www.iasb.com/iasb/media/documents/icsafaqrespondingtoasubpoena2015.pdf.

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