



Police Interrogation of Youth on Campus

A Fact Sheet Prepared by Youth Law Center

This fact sheet addresses the participation of parents or guardians when police, or any law enforcement officer, question their minor children at school.

Can the police question a youth on campus about abuse or neglect at home without parental/guardian consent or notification?

California law specifically authorizes the police or any representative of a governmental agency investigating a report of child abuse or neglect that occurred in the child's home or out-of-home care facility to interview the suspected child victim on campus during school hours.¹ The statute affords the child the right to have the interview conducted in private or to have a school staff member present during the interview. The statute does not contain any provision requiring parental consent or notification.

However, *Greene v. Camreta* 588 F.3d 1011(9th Cir. 2009), *cert. granted* 131 S.Ct. 456 (2010) , may alter the practice of school interrogations without parental consent. The Ninth Circuit in *Greene* held that an on-campus two-hour interrogation of a nine-year-old suspected child abuse victim by a caseworker accompanied by a sheriff's deputy in the absence of a warrant, court order, exigent circumstances, or parental consent was an unconstitutional seizure under the Fourth Amendment. Despite the particular facts and holding in *Greene*, some law enforcement agencies have already changed their child abuse school interview policies to limit on campus interrogations of suspected child abuse victims. The Supreme Court's decision in *Greene* should provide further guidance on when, if at all, parental consent is necessary for law enforcement to interrogate a student at school regarding suspected child abuse.

Can the police interrogate a youth on campus without parental/guardian consent or notification?

Yes. Nothing in current law requires school officials or the police to obtain parental or guardian's consent in order to interrogate a student *on campus* about criminal activity.² No notification to the parents is required even *after* the minor has been questioned.³ The parent or guardian may learn about the questioning only later when the child tells his or her parent or guardian what happened at school.

¹ Cal. Penal Code § 11174.3

² Cal. Ed. Code §§ 48980 – 48985. Covers school notification to parents or guardians; ACLU-NC *You Have the Right to...Not Remain Silent* (2005), Available at: http://www.aclunc.org/youth/know_your_rights/index.shtml. In general, police do not need to obtain parental consent to interrogate a child in any situation.

³ *Id.*

Police Interrogation of Youth on Campus

The police are not required to permit a parent, guardian or school official to be present while the police are questioning a student. This is true even though the child may not have a genuine understanding of his or her rights while being questioned. Under existing law, a parent or guardian **MUST** be notified immediately if either of the following occur:⁴

- The police take the child *off-campus* for interrogation or questioning. The parent or guardian is entitled to be informed where the child is being taken.
- The police arrest the child at school.

Are school officials obligated to make a student available for questioning at a police officer's request?

No, except that the school must make the child available for questioning regarding child abuse or neglect investigations as discussed above.⁵ However, state laws encourage school and local law enforcement cooperation and collaboration with respect to school safety and violence prevention.⁶ Thus, most principals or school officials will be inclined to fully cooperate with police and will likely pull a student from their normal school activity to meet with the officer at their request.

What can a parent or guardian do to help prevent the police from questioning a child about criminal activity at school without their consent or presence?

Parents can educate their child about their rights when questioned by police on campus.

- A child can *immediately* ask to have a parent, or some other trusted adult, present before agreeing to talk to police. The police are not obligated to honor the student's request, but the school might take steps to notify a parent of the interrogation if the student makes their request clearly, immediately and consistently.⁷

⁴ Cal. Ed. Code § 48906.

⁵ Cal. Penal Code § 11174.3

⁶ Cal. Ed. Code §§ 32228 – 32228.5 established the School Safety and Violence Prevention Act which provides funding to establish programs that promote school safety and reduce school violence. Such funding can be used by school districts to hire law enforcement personnel and to establish cooperative arrangements with local law enforcement agencies. Cal. Ed. Code §§ 41510 – 41514 established a competitive grants program commonly referred to as the "School Community Violence Prevention Program." This funding also encourages collaboration between school districts and local law enforcement agencies. To learn more about how this funding can be used and which school districts receive such funding, see the following link on the California Department of Education web-site <http://www.cde.ca.gov/ls/ss/vp/funding.asp> and on the California Attorney General's web-site <http://www.safestate.org/index.cfm?navId=944>

⁷ ACLU-NC *You Have the Right to...Not Remain Silent* (2005). Available at: http://www.aclunc.org/youth/know_your_rights/index.shtml

Police Interrogation of Youth on Campus

- A child has a constitutional *right to remain silent* when questioned by either school officials or the police about anything including the criminal activity of the minor child, other students, their siblings or parents.⁸ Encourage the child to exercise that right until their parent or a trusted adult of their choosing can be present during the interrogation.

Schools are obligated to develop comprehensive school safety plans in cooperation with local law enforcement agencies that are aimed at the prevention of incidents of crime and violence on campus. Parents, through the school site council, must be included in the development of such plans. In addition, these plans must be reviewed and updated by March 1 of every year and the public must be given an opportunity to express opinions about the plan before they are approved. There is nothing in the education code that would preclude a provision in a safety plan requiring principals to notify parents/guardians prior to any questioning of a student by school officials or police. (See Cal. Ed. Code §§ 32280 – 32289.). Furthermore, parents can inform children and school officials of the potential Fourth Amendment protections of children against on-campus interrogations and ensure that schools are aware that they are potentially liable for any unreasonable seizure.

In addition, a parent or guardian can negotiate individually with their child's school. Inform the principal that the parent/guardian wants to be notified prior to any questioning of the child, by school officials or police, on campus. While the school is not legally obligated to acquiesce to the request, officials may be more likely to work cooperatively with a parent or guardian if a specific request is made.

What can advocates do?

Advocacy groups representing children, youth, and parent's rights can work together to develop school district policy limiting police accessibility to students for interrogation on campus without parental/guardian notice. As noted above, the school safety plan process may provide an opportunity for the development of such a policy. Advocates should request copies of each school's school safety plan and review them to ensure that they are consistent with statutory and constitutional provisions. They should also review them to see if they are reviewed on a yearly basis and that proper notice is sent out for public comment on the plans. It is also important to approach various parent advisory committees, including District and school site English Learner advisory committees, to see if they have been given the opportunity to review and comment on the school safety plan.

There is also nothing that would preclude a School Board from adopting such a policy on its own. For this reason, advocates should develop relationships with school board members and eventually approach them about adopting such a policy. The development or adoption of such a policy may be more easily facilitated if you can

⁸ USCS Const., Amend. 4; Cal. Const., Art. I

Police Interrogation of Youth on Campus

demonstrate that certain groups of students, on the basis of their race, ethnicity or language status, are more likely to be subject to on-campus police interrogation than other groups.

Integral to any proposed school district policy are the following provisions:

- A requirement that the principal or school official take immediate steps to seek the consent of the parent or guardian of an elementary school student or minor high school student prior to making the student available to police for questioning.
- A prohibition against making any student available to police for questioning if the parent or guardian requests that the student not be questioned until the parent can be present.
- A requirement that, if a parent is unable to be present within a reasonable time, a member of the school administration, a school counselor or teacher is permitted to be present at the questioning. The adult should be selected by the student to ensure they are comfortable and feel safe in the questioning atmosphere.
- A requirement that the principal inform the student of their right to have an adult present during interrogation prior to making the student available to police for questioning.⁹

In addition, advocates can educate parents and youth about students' rights, including the right to remain silent or to have an attorney present when questioned by police on campus. Advocates can also educate school officials about the Fourth Amendment implications of school interrogations and potential liability for unreasonable seizures.

⁹ These provisions were included in Assembly Bill 1012 (Steinberg, February 2003). Full text of the bill available at: http://www.leginfo.ca.gov/pub/03-04/bill/asm/ab_1001-1050/ab_1012_bill_20040825_enrolled.pdf. Ultimately, AB 1012 was vetoed by Governor Arnold Schwarzenegger on September 30, 2004. Similar efforts have also been unsuccessful.