

BOARD AGENDA ITEM

January 14, 2014

SUBJECT:

Policy JIH – *Amendment to Policy JIH – Student Searches, Interrogations, & Arrests* – First Reading

BACKGROUND:

This policy addresses several important areas of student rights and the protocols followed when law enforcement and/or the Department of Social Services needs to be in the school house for purposes of interacting with students. While the existing policy statements cover the substantive law, this is a policy that would benefit from amendments to cover more situations, first of all, and further to set forth the basic rules in a less confusing and more understandable manner. All law enforcement agencies in the District have received a copy of the exiting policy and the marked up amended copy, along with an explanation of the changes, and each of the larger agencies has responded affirmatively in support of these amendments. No agency has responded negatively.

ADMINISTRATIVE CONSIDERATION:

The word interrogation is used exclusively in the existing policy and, while frequently is appropriate to the context, it seems a little harsh to some patrons and has a negative connotation in instances where questioning or getting statements from students constitutes little more than talking to a by-stander or mere witness. Accordingly we have divided the general interactions into two categories – *Interviews* and *Interrogations*. We believe those categories clearly define different levels of presumed parental interest or concern. Also, resource officers have frequent interactions with students, but the policy amendments reflect a change in federal case law whereby a law enforcement official, upon seeing that what started as a routine interview or discussion seems to be leading to the possibility of incrimination, must provide a *Miranda* warning. (School Officials have an absolute right to question students, interview students, and interrogate them, and the *Miranda* type warnings are not required of them, nor does the policy change imply that it does.) The historical understanding always has been, and continues to be, that school officials ultimately will not delay or hinder law enforcement in the conduct of its responsibilities. Law enforcement has the discretion in certain instances to move forward with interviews prior to parental contact and, where exigencies may dictate, to interrogate a student. Normally, school administrative officials are supposed to contact a parent ahead of the interrogation to make them aware (subject to the agreement of the investigating officer for the delay). If prior contact is not possible or agreeable with law enforcement – or in the case of an interview, just not practical – parents are to be contacted by the school personnel after the fact to make them aware. (There is an exception to the law where D.S.S. is investigating a parent, and that continues to be stated in the policy.)

RECOMMENDATION:

Approve the proposed changes to Policy JIH on first reading.

ATTACHMENT:

Proposed amendments to Policy JIH

PREPARED BY:

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STUDENT SEARCHES, INTERVIEWS, INTERROGATIONS, AND ARRESTS

Code **JIH** Issued **4/02**

Purpose: To establish the basic structure for conducting searches of students or their property; interviews and interrogation of students; and arrests of students on school property.

SEARCHES

Students do not lose their constitutional rights upon entering school premises. The Fourth Amendment to the United States Constitution protects all citizens, including students, from unreasonable searches.

However, unique considerations for maintaining discipline and order and the need to provide for schoolhouse safety have resulted in a different legal standard for student searches and searches of those on school premises.

Students and their belongings are subject to reasonable searches and seizures when administrators have a belief or suspicion considered to be reasonable under these circumstances.

- A student committed a crime or a violation of a school rule.
- Such a search will reveal contraband or evidence of a violation of a school rule or a criminal law.

Any search conducted must be reasonable in scope given the age and sex of the student and the nature of the alleged infraction.

Only the principal or his/her designee may conduct such searches within the constitutional parameters outlined above unless exigent circumstances exist which require another staff member to take immediate action for safety reasons.

School personnel may, in the course of an investigation and upon reasonable suspicion, ask a student voluntarily to empty the contents of his/her pockets, purse or similar bags or places of potential concealment or to allow school personnel to search a purse, bag or other items of potential concealment not a part of immediate wearing apparel. However, no school personnel will conduct a search that may be considered a strip search. If a personal search is deemed necessary, or if the search of a pocket, purse or similar bag or place of potential concealment is deemed necessary and not voluntarily consented to by the student, the parent/guardian will be requested to perform the search or the matter may be turned over to the appropriate law enforcement agency.

C-2

Attachment

PAGE 2 – JIH -STUDENT INTERROGATIONS, SEARCHES AND ARRESTS

Random searches

In order to help provide for the safety of the school population and to prevent weapons, illegal substances and other contraband items from being brought upon school premises, notice is given that occasional school-wide or random, large scale searches of student areas may be conducted. Such searches may include the use of sniffer dogs around lockers or other school spaces utilized by students including automobiles parked on school premises, or on public right of ways immediately adjacent to school premises and ordinarily utilized for student parking when the school is in session. State law authorizes personal belongings such as purses, bookbags, wallets and satchels reasonably to be searched. The administration may use electronic detection device as an aid for finding possible weapons on school premises and/or preventing the same from being brought. Any searches conducted pursuant to these provisions will be implemented in a non-discriminatory manner.

School lockers and desks

All lockers ~~and desks~~ are the property of the school district. The principal or his/her designee may search a student's locker ~~or desk~~ when such employee has reasonable suspicion that the locker is improperly used for the storage of any substance or object, the possession of which is illegal, or may pose a hazard to the safety of the school. Unless an emergency exists, the student should be present and personally remove the contents of the locker ~~or desk~~ for inspection. General locker searches may be called for at any time to include all lockers in a selected section of lockers for general housekeeping and safety of the school.

Motor vehicles

The privilege of bringing a student-operated motor vehicle onto school premises is conditioned on consent by the student driver to allow search of that motor vehicle when there is reasonable suspicion for a search of that motor vehicle. The act of bringing a motor vehicle upon school premises will allow school officials to presume consent by the student, parent/guardian or owner of the vehicle for a search of that motor vehicle. Refusal by a student, parent/guardian or owner of the vehicle to allow access to a motor vehicle on school premises at the time of a request to search the motor vehicle will be cause for termination without further hearing of the privilege of bringing a motor vehicle onto school premises. The principal or his/her designee may request a law enforcement officer to search a motor vehicle on school premises, subject to provisions of this policy.

INTERVIEWS AND INTERROGATIONS: by school personnel

By School Administrators & Teachers

~~Administrators and teachers, as well as School Resource Officers~~ Teachers and principals may question students about any matter pertaining to the operation of a school and/or enforcement of

PAGE 3 – JIH - STUDENT INTERROGATIONS, SEARCHES AND ARRESTS

its rules. The staff member ~~or School Resource Officer~~ will conduct the questioning discreetly and under circumstances that will avoid unnecessary embarrassment to the person being questioned. ~~School Resource Officers will act consistent with law enforcement guidelines should any routine questioning turn into a criminal investigation.~~ Any student who answers falsely or evasively or who refuses to answer a proper question may be disciplined.

Interrogations By Law enforcement personnel

Law enforcement officers have the right to come on campus to ~~conduct~~ interviews ~~with~~ students and witnesses ~~and to conduct interrogations of student~~ other suspects, or witnesses. School officials will not delay, hinder or obstruct law officers from the performance of their duties. Before any such interview ~~or interrogation~~, the principal or his/her designee will carefully ascertain the officer's identity, official capacity and the authority under which he/she acts.

Except in cases of child abuse or neglect, ~~and/or routine interviews or inquiries by a regularly assigned School Resource Officer~~ the principal or his/her designee will attempt to contact the student's parent/guardian and solicit his/her consent when a law enforcement officer requests an interview on school premises with a student ~~or student witness, or seeks to conduct an interrogation with a student suspect.~~ Time constraints, the number of witnesses, and/or other reasonable circumstance vest law enforcement officials with discretion to proceed without prior notice or consent by a parent or guardian (particularly with regard to student witnesses).

When law enforcement officers find it necessary to question students during the school day, ~~at the law officer's discretion and with the student's approval, the school principal or his/her designee will be present,~~ the principal or his/her designee will cooperate and request to be present, at the law officer's discretion and with the student's approval, so long as his/her presence does not impede the investigation. ~~If prior consent could not be obtained, or notification could not be made, the principal or his/her designee (except in cases of child abuse or neglect) will notify the parent or guardian of the law enforcement officials' interview or interrogation with his or her child.~~

ARRESTS OR REMOVALS BY LAW ENFORCEMENT

If in the course of the interview the law officer finds it necessary to remove a student from school so as to better aid the investigation, the principal or his/her designee will first ascertain the reason for such action. Upon releasing the student, the principal or his/her designee will immediately attempt to inform the student's parent/guardian.

The board authorizes site administrators to release minor students into the custody of a law enforcement officer upon presentation of a court order or warrant for the student's arrest or to remove a student from school premises if the officer or school administrator has reason to believe that the student has violated the law. The principal or his/her designee will immediately attempt to notify the parent/guardian or responsible relative of the student's release and the place to which the student is reportedly taken, except in cases of suspected child abuse.

PAGE 4 – JIH -STUDENT INTERROGATIONS, SEARCHES AND ARRESTS

Whenever a student is suspected of being a victim of child abuse and is being removed from the school premises, the superintendent or his/her designee must give the telephone number and address of the student's parent/guardian to the law enforcement officer. The officer then has the responsibility of immediately notifying the parent/guardian.

CONTACTING LAW ENFORCEMENT:

School administrators will contact law enforcement authorities immediately upon notice that a person is engaging in, or has engaged in, certain ~~conduct or~~ activities on school property or at a school sanctioned or sponsored activity ~~these activities are ones~~ that may result, or does in fact result, in injury or serious threat of injury to the person or to another person or his/her property (see policy KLG).

Adopted 6/10/75; Revised 7/26/76, 1/25/83, 8/20/85, 9/27/94, 4/23/02

Legal references:

A. U. S. Supreme Court Cases:

1. New Jersey v. T.L.O. -U.S.-, 105 S. Ct. 733 (1985).

B. United States Constitution, Fourth Amendment.

C. South Carolina Constitution:

1. Article I, Section 10.

D. S.C. Code, 1976, as amended:

S.C. Code, 1976, as amended:

1. Section 59-5-65 - State board to set regulations for minimum standards for student conduct, attendance and scholastic achievement; enforcement.
2. Section 59-24-60 - Requires administrators to contact law enforcement.
3. Section 59-63-1110, et seq. - Search of persons and effects on school property.
4. Section 63-19-810 - Taking a child into custody.

E. S. C. Acts and Joint Resolutions:

1. 1994 Act #393, P. 4097 – Allows searches.