

THE SCHOOL DISTRICT OF OSCEOLA COUNTY, FLORIDA

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Superintendent of Schools

Dr. Mark Shanoff

TO: Principals and Assistant Principals, All K-12

CC: Dr. Mark Shanoff, Superintendent
Dr. Michael Allen, Chief of Staff and Strategy
Dr. Rene Clayton, Deputy Superintendent

FROM: Sarah Wallerstein Koren, B.C.S. Education Law 
General Counsel

DATE: January 27, 2025

RE: Interviews and Arrests of Students by Government Officials

In response to questions regarding the interview and arrest of students by government officials, please be reminded of the following guidance which remains in effect for of all students, regardless of immigration status.

As the principal, you are the person in charge of the school. Only you or your assistant principal(s) are authorized to speak or act on behalf of the school when dealing with federal or state law enforcement officers or agencies, or independent third parties such as private attorneys, private investigators or non-parent/non-legal custodians.

Provision of Student Records

Pursuant to 20 U.S.C. 1232g(b)(2)(B), educational entities must not release student records without parental consent, unless such record is "furnished in compliance with judicial order, or pursuant to any lawfully issued subpoena, upon condition that parents and the student are notified of all such orders or subpoenas in advance of the compliance therewith by the educational institution or agency..." See also 34 C.F.R. s. 99.31(a)(9)(1) requiring the same. Failure to comply with FERPA could subject the District to loss of federal funding. See 34 U.S.C. s. 99.67(a)(1). FERPA applies to any federal or state law enforcement officer or agency (including Immigration and Customs Enforcement) seeking records; both federal and state law require a subpoena for production of student records.

Florida law requires school districts to comply with FERPA. See s. 1002.22(2), Fla. Stat.: "The rights of students and their parents with respect to education records created, maintained, or used by public educational institutions and agencies shall be protected in accordance with the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. s. 1232g, the implementing regulations issued pursuant thereto, and this section." Moreover, students and parents "shall have the right of privacy with respect to such records and reports." (See s. 1002.22(2)(d), Fla. Stat.)

To the extent that any law enforcement officer, whether federal or state, asks for a student record, such law enforcement officer should be told that a subpoena is required in order to produce such records¹. Law enforcement officers should be referred to the General Counsel's office for any further questions or concerns. If a subpoena is presented by law enforcement to school administration, administration should contact the General Counsel's office for guidance on how records will be provided.

Private attorneys, private investigators and non-parent/non-legal guardians must not be provided any information regarding a student. They may not be informed if a student is enrolled, be provided access to records, or have access to any student absent court documentation allowing such access. You may refer this group of individuals to the General Counsel's office should they have further questions.

Immigration Status and Access to Education Services

The District does not ask students their immigration status when enrolling. Public schools in Florida are bound by the federal consent decree entered in LULAC et al v. FL DOE (1990) and Section 908.108, Florida Statutes, affirming the applicability of FERPA in relation to federal immigration enforcement, which states in part:

- No personally identifiable data of any kind shall be elicited, compiled, or maintained as to any individual student's immigration status except as described above.
- No prospective students nor student shall be referred or reported to the U.S. Immigration and Naturalization Services (INS) for any reason prior or subsequent to admission. A parent or guardian of a child on an I-20 visa or applying for such a visa may sign a release of data authorizing such referral on reporting.

Student Interview and Arrest

In accordance with 8 U.S.C. s. 1357(a)(1), Immigration and Customs Enforcement ("ICE") Agents may "interrogate any alien or person believed to be an alien as to his right to be or to remain in the United States" without a warrant. Note that the federal statute refers to undocumented persons as "aliens." Additionally, ICE Agents may, without a warrant, arrest any undocumented person "in the United States in violation of any such law or regulation [regulating the admission, exclusion, expulsion or removal of undocumented persons] and is likely to escape before a warrant can be obtained for his arrest."

Law enforcement officers, the Florida Department of Children and Families ("DCF") investigators, and guardian ad litem ("GAL")² may also interview students in the course of an investigation.

Guidance for administration is as follows:

1. Administrators will confirm the identity of the law enforcement officer³ by asking for identification, including badges, business cards, and court documentation. Administration will document the identity of the law enforcement officer.
2. Administrators will ask the law enforcement officer if the parent can be contacted prior to interviewing and/or arresting⁴ the student.
 - A. If law enforcement states that parents may be contacted, the administrator will call the parent to see if the parent consents to such interview prior to the interview commencing or if the parent wishes to be present when the

¹ In an emergency, FERPA permits school officials to disclose, without consent, education records, including personally identifiable information from those records, to protect the health or safety of students or other individuals.

² GALs must have a court order expressly allowing the interview of a student. GALs may visit and interview their court-assigned child; however, the GAL should be required to schedule a date and time in advance of visiting to not interfere with any mandated instructional time. Classroom observation requests should be reviewed by the General Counsel.

³ For the purposes of this section, "law enforcement officer" collectively hereafter includes law enforcement officers, ICE agents, DCF investigators, and GALs. .

⁴ For the purposes of this section, "arrest" means arrest, detainment, or shelter of a student. GALs do not have the authority to remove a student from school absent a court order.

student is arrested. Administrators will document law enforcement direction and parent response. Administration will provide the information to the law enforcement officer.

- i. If the parent consents to the student speaking to the law enforcement officer without a parent or attorney present, the law enforcement officer will proceed. If the parent declines to allow such interview, the administrator will inform the law enforcement officer that the parent does not want the student interviewed. Administrators will document the conversation with the parent.
- B. If law enforcement states that parents may not be contacted, the administrator will tell law enforcement that all questions from the parent will be referred to the law enforcement officer. Administration will document law enforcement officer direction to not contact the parents.
 - i. In the event that a law enforcement officer states a parent may not be contacted, the administrator should ask if he or she may remain with the student during questioning. If the law enforcement officer states the administrator may not remain, the administrator should vacate the room and allow questioning by the law enforcement officer. Administration will document the law enforcement officer decision.
 - ii. If an administrator informs the parent of an interview after being told not to do so by law enforcement, if the administrator refuses to leave the room when directed by law enforcement, or if the administrator interferes with the arrest of a student by law enforcement, the administrator may be subject to arrest on charges of tampering with a law enforcement investigation or obstructing a law enforcement officer.
3. If a student is arrested, administration shall immediately notify the parent and provide the contact information of the law enforcement officer and agency. If the law enforcement officer directs administration to not inform the parent of the arrest and/or provide the parent with any additional information regarding the arrest, administration will document the law enforcement officer's direction and refer all questions from the parent to the law enforcement officer.

For any questions or concerns, please contact Dr. Michael Allen, Chief of Staff and Strategy, Dr. Gabriel Berrio, Assistant Superintendent for Student Services, or the General Counsel's office.