

THE RIGHT TO REMAIN A STUDENT

*How California School Policies
Fail to Protect and Serve*



The Right to Remain a Student: How California School Policies Fail to Protect and Serve

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We thank the students featured in this report. They felt unsafe in communities and schools where they were regularly subjected to police harassment, where they witnessed police indifference to their physical well-being, and where armed officers loomed over spaces designated for learning and socializing. But they did not feel powerless. Students Raquel B., Leslie M., and Carlos P. participated in South Central Youth Empowered Thru Action, a program offered by local advocacy organization Community Coalition to help students transform their own schools and disrupt the school-to-prison pipeline. Raquel called Community Coalition “my outlet,” and Leslie said that the organization “has believed in me more than I believed in myself.” We thank Community Coalition.



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03

EXECUTIVE SUMMARY

06

INTRODUCTION

10

BACKGROUND

Law Enforcement in California School Districts

12

SOCIAL IMPACT

How Law Enforcement Affects Students and School Climate

19

THE LAW

Legal Implications in Policing Schools

24

POLICIES AND FINDINGS

Current State of School Policies Regarding Law Enforcement

37

RECOMMENDATIONS

39

ENDNOTES

SEE APPENDICES ONLINE

<https://www.aclusocal.org/right-to-remain-a-student/appendix>



EXECUTIVE SUMMARY

Over the past two decades, police officers in the United States have increasingly displaced school administrators as disciplinarians, responding to minor offenses and conduct violations that pose no direct threat to personal safety. This increase in student-police interactions has funneled thousands of students into the school-to-prison pipeline and created adverse legal consequences for school districts. *The Right to Remain a Student: How California School Policies Fail to Protect and Serve* details these consequences and describes the current state of school district policies in California that pertain to police on campus. Additionally, it shares model policies that both promote school safety and protect student rights. These model policies are designed to ensure that school staff will manage police encounters safely and equitably for all students—no matter their race, class, disability status, gender, or where they go to school.

The ACLU of California (ACLU) is one of the first organizations to analyze recently-released data from the U.S. Department of Education Civil Rights Data Collection for the 2013-2014 school year. In that dataset, California K-12 schools reported 22,746 student referrals to police and 9,540 student arrests. We uncovered troubling statistics showing that these police interactions disproportionately affect students of color, students with disabilities, and low-income students. In particular, Black students are three times as likely as white students to be subjected to school-related arrest, American Indian students are twice as likely as white students to be arrested at school, and Hawaiian/Pacific Islander students are 1.5 times as likely. Latino students are also arrested at a rate higher than their rate of enrollment in California schools. Likewise, students with disabilities are three times as likely as students without disabilities to be arrested. Finally, the average arrest rate in schools where more than 80% of students are low-income is seven times the average arrest rate in schools where fewer than 20% of students are low-income.

Study after study establishes that arrest and incarceration increase students' odds of dropping out of school, even when controlling for relevant variables, including delinquent behavior, parental poverty, grade retention, and middle school grade-point average. To prevent these consequences from falling especially hard on vulnerable student populations, school districts must provide clear guidance to staff about when to call for police assistance. The policies we recommend will help counteract the influence of unconscious bias on staff decisions and eliminate police involvement in school disciplinary matters better left to administrators, counselors, and mental health professionals.

In Spring 2016, the ACLU analyzed the policies of the 50 school districts with the largest student enrollment as well as a representative statewide sample of districts, for a total of 119 unique California districts. We used this sample to generate representative estimates of policies in all California school districts. We found major inconsistencies across districts and found that few districts have strong policies in place to minimize police contact and promote safe campuses. To remedy this problem, we formulated a set of recommended policies for districts to adopt statewide.

FINDINGS

- ✎ Many districts have conflicting, vague, or absent law enforcement policies that provide little to no meaningful guidance to school staff on when to call police to campus or how to interact with police.
- ✎ Most school districts give staff complete discretion to call police to address student misbehaviors that should be handled by school staff such as administrators or counselors, including:
 - a. General school rule violations (62% of districts give staff discretion),
 - b. Bullying and harassment (60.7% of districts give staff discretion),
 - c. School disruption (57.4% of districts give staff discretion), and
 - d. Vandalism (66.7% of districts give staff discretion or even *require* reporting to police).Very few schools (4% or less in each category) have policies limiting police contact for rule-breaking or minor offenses.
- ✎ Many school districts (over 30%) do not require staff to ask for identification from a person who comes on campus purporting to be a law enforcement officer. Only 4.4% of school districts have rules on how staff should respond if a person claiming to be a law enforcement officer refuses to provide proper identification.
- ✎ California school districts provide inadequate guidance to school staff on what they should do when police officers question students on campus.
 - a. Of school districts statewide, 70.9% allow police officers to interview students immediately upon demand, stating that staff “shall not hinder or delay” interrogations.
 - b. Less than 1% provide that an adult (not a police officer) must be present to make sure the student’s civil rights are observed during police questioning.
 - c. Only 1.3% of districts have a policy ensuring that staff or police advise students of their constitutional right to remain silent.
- ✎ California school districts similarly do not protect students who are arrested or removed from campus by police.
 - a. Of California school districts, 30% have no barriers to police removing a student from campus and 8% provide no guidance whatsoever about police officers removing students from campus.
 - b. Only 18.3% of California school districts require a school administrator to ascertain the reason the officer must remove the student from school.
 - c. Only 5.6% of school districts maintain any procedures governing the enforcement of arrest warrants on campus.

- ✎ An estimated 1/3 of districts do not require staff to keep any records of police-student interactions, such as the date and time of an interview, the officer's and student's names, and the reason the officer conducted an interview. Even the districts that require some data collection generally do not aggregate and systematically analyze the data to better understand the reasons why police are interacting with students.
- ✎ Only very few school districts in California have policies that clearly describe the procedures by which students and families can complain about police practices or interactions.

RECOMMENDATIONS

- ✎ Counselors and other school officials should handle bullying, harassment, disruptiveness, vandalism, drug and alcohol abuse, and other non-violent incidents. School staff should only call police when there is a real and immediate physical threat to students, teachers, or public safety.
- ✎ School staff should consult with district legal counsel and receive consent before providing access to law enforcement officers who refuse to provide proper identification or written legal authority for their questioning or detention of a student.
- ✎ Law enforcement officers seeking to interview students on campus must first secure consent from the principal and the student's parents or guardians. The principal should provide consent only when the police officer has a judicial court order, except in cases where the student presents a real and immediate physical threat to students, teachers, or public safety. Students should have the right to have their parent, guardian, or adult of their choosing present during questioning, and interviews should occur in a private location, away from other students.
- ✎ Districts should adopt clear policies about when police officers can arrest students or remove them from campus. Districts should authorize a student's arrest or removal from campus only if an officer has a warrant or court order, or if the student presents a real and immediate physical threat to students, teachers, or public safety. The principal and parents or guardians should be notified of the arrest immediately. When possible, arrests should occur in a private location, away from other students.
- ✎ School districts must keep comprehensive data about law enforcement interactions with students, disaggregated by race, gender, ethnicity, and disability status of the student.
- ✎ School districts should establish a formal complaint process open to students, families, and community members who can use it to report incidents of possible police misconduct.
- ✎ School districts should commit to practices that increase fairness, improve communication, and promote positive problem-solving mechanisms. School districts should divert funding away from law enforcement and security officers and invest more in counselors, teachers, and restorative justice strategies.



INTRODUCTION

In an incident that shocked the nation and brought attention to police violence against youth, an October 2015 cell phone video posted on YouTube showed a white male police officer brutally assaulting a Black teenage girl named Shakara at Spring Valley High School in South Carolina. The recording shows the officer violently yanking her chair and desk backwards, slamming her to the ground, dragging her across the floor, and handcuffing her hands behind her back—all because she refused to leave class after using her cell phone.¹ In the days that followed, the Federal Bureau of Investigation and the United States Attorney’s Office opened separate civil rights investigations, and the officer was fired.²

Horrific incidents like this also happen with troubling regularity in California schools. In May 2014, a school police officer in Oakland assaulted Francisco Martinez, a high school sophomore with cerebral palsy. A classmate captured the incident on video. After Francisco did not comply with orders to go to class, the officer forcefully grabbed his wheelchair and pushed him down the hall. Francisco resisted by slapping at the officer’s hands and spitting. The officer handcuffed Francisco to his chair, punched him four times, and threw him to the floor. The officer was later convicted of felony assault.³ Police assaults like this have played out across the state, from Oakland to San Pedro to San Diego.⁴



Studies show that the majority of police enforcement on campus is in response to minor offenses and conduct violations that pose no direct threat to personal safety.⁵ The tragic result is that thousands of students—particularly students of color, low-income students, LGBTQ students, and students with disabilities—are shunted into the school-to-prison pipeline. Police presence in schools also often correlates with punitive practices such as searches and interrogations, drug-sniffing dogs, pepper spraying, police intimidation, verbal abuse, sexual harassment, handcuffing, and excessive force against students.⁶ These interactions and policies undermine the trust that is essential to school safety and betray California educators’ fundamental commitment to fairness.

Police presence on campuses throughout the nation has increased dramatically over the past two decades.⁷ As a result, police officers are displacing administrators as disciplinarians. In California, our study reveals that most school districts have deficient, vague, or even non-existent policies governing police contact with students. This lack of guidance creates confusion and opportunities for the exercise of poor judgment by school staff. When school officials lack proper guidance, they may resort to calling police officers to handle routine student conduct, which results in students being criminally cited or arrested rather than being provided with more effective and less stigmatizing school-based interventions, such as positive behavioral supports.

The overuse of police to handle disciplinary problems has negative consequences for both students and districts. A district’s failure to properly train its employees can render the district vulnerable to lawsuits.⁸ Districts may also be liable for violating federal and California civil rights laws when they maintain practices or policies that have a negative disparate impact on certain protected student groups like students of color or students with disabilities.⁹

The ACLU firmly believes that school districts and law enforcement agencies should never permanently assign police officers to school campuses. School staff should call for law enforcement assistance only where there is a real and immediate physical threat to students, teachers, or public safety.¹⁰ A safe school environment is one where students and staff build trust and where all students feel included and supported—not anxious that police officers may handcuff and arrest them or their classmates for common childish and adolescent conduct, including behavior problems caused by disability.¹¹

The ACLU has worked for many years with partners and coalitions across California to reform school district policies relating to discipline and police on campus. Together with Public Counsel, in 2013, the ACLU advocated to adopt a memorandum of understanding (MOU) between Pasadena Unified School District and the Pasadena Police Department (PPD). The MOU mandates that police officers “will not respond to calls of discipline problems involving students” and requires detailed data collection about student-police interactions.¹² In a joint effort, PPD worked closely with the district to train school staff to understand that arrests and referrals to law enforcement should be used only as a last resort. As a result of this training, school staff largely stopped referring students to the police for breaking school rules or other discipline issues. In addition, arrests, citations, and contacts between students and police officers plummeted throughout the district. In 2014, the ACLU, the Black Organizing Project, and Public Counsel successfully advocated for an Oakland school district to adopt policies that require better protections for students who are interrogated by police in school, as well as a complaint procedure for students and other victims of police misconduct in schools.¹³

Thoughtful, clear, and comprehensive written guidance from a school district is integral to ensuring a safe and positive school climate that keeps students in school and helps protect districts from legal liability. However, the adoption of sound district policies is just the first step. Written policies only work if people follow them, and vigorous advocacy and comprehensive training are required to ensure that school staff properly implement these policies.

A number of other school districts have recently approached the ACLU to help craft policies about police-student interactions. In response, we developed a set of model policies and a model MOU. During the course of our research, we discovered that, where policies exist, they are too broad or too vague to properly protect student rights or provide meaningful guidance to school staff on police contact. We developed this report to shine a light on the problem and to serve as a resource for school districts to proactively adopt sound policies. This report analyzes a statewide representative sample of school district policies relating to the role of police in schools, highlights common problems arising from student-police interactions, and recommends language in a model MOU and district policies.

In addition to adopting strong policies, we urge school districts to invest in constructive, long-term solutions to promote school safety. Safe schools use practices that promote social and emotional learning, and treat school discipline as an opportunity to teach, rather than criminalizing students through punitive practices. Districts must commit to practices that increase fairness, improve communication, and establish positive problem-solving mechanisms. Educators should receive better training and support in classroom management. This effort requires taking the millions of dollars from classroom budgets currently spent on police officers or security officers and investing that money back into classrooms as well as counselors. Research confirms that providing more counselors and mental health professionals in schools is the most effective approach to school safety.¹⁴

We hope that this report can inspire a statewide conversation that will lead to fewer students being pushed out of school and into the criminal justice system and ensure that all students receive equal opportunity to access a quality education in California.

The ACLU firmly believes that school districts and law enforcement agencies should never permanently assign police officers to school campuses.



Between four and eight police officers are permanently assigned to John C. Fremont High School in South Los Angeles. Leslie M. and Carlos P. attend Fremont and say that it feels like going to school in prison, surrounded by armed guards who make students feel more tense and less safe.

This feeling only grew after police intervened in a fight between students in June 2016. Los Angeles School Police responded to the fight by discharging pepper spray indiscriminately into the surrounding crowd, harming over 35 students. Leslie and Carlos were there that day and reported a chaotic scene. Carlos saw one student rush into a classroom, desperately trying to wash out his eyes. Leslie saw another student screaming in pain from the red welts on her skin and the irritant in her eyes. During the commotion, one of the officers locked the doors to one of the school buildings, trapping students inside with a cloud of pepper spray. The students were not told whether the district disciplined any of the officers, and many of the officers remained on campus after the incident.



BACKGROUND: Law Enforcement in California School Districts

California school districts maintain a variety of relationships and arrangements with law enforcement that fall into three general categories: districts with their own police departments, districts that enter into agreements with county or municipal police departments to assign officers to campuses, and districts that call outside police officers to campus on an as-needed basis.

First, some school districts hire and oversee their own law enforcement officers, who are employees of the school district. These officers typically are stationed on school campuses and patrol the adjacent areas. They possess the same general powers as other sworn law enforcement officers in California, including the power to question, detain, and arrest.

In the 2015-2016 school year, 19 school districts throughout California operated their own police departments.¹⁵ These districts ranged in enrollment size from 7,798 students (Snowline) to 639,337 students (Los Angeles) and were located throughout the state in both rural and urban areas. These districts* also varied in the number of counselors for every police officer employed by the district, from a ratio of 9:1 (Montebello) to only 1:1 (Oakland). Despite these wide variations, seven of the ten California school districts reporting the most arrests for 2013-2014 (the most recent year with available statewide statistics) were districts with their own

In 2013-2014, over 1.8 million California K-12 students, or 29% of all students enrolled in the state, attended schools with a sworn officer assigned to their campus.¹⁶

*Based on ACLU-CA calculations of CRDC 2013-2014 data, on file with the authors. Unified and elementary/high school districts only; County offices of education and independent charter schools were excluded from this list of districts with the most arrests. U.S. DEPT OF EDUC., OFFICE FOR CIVIL RIGHTS, CIVIL RIGHTS DATA COLLECTION 2013-14, <http://www2.ed.gov/about/offices/list/ocr/docs/crdc-2013-14.html> (last visited July 12, 2016).

police departments: Los Angeles Unified, San Bernardino City Unified, San Diego Unified, Hacienda La Puente Unified, Clovis Unified, Fontana Unified, and Santa Ana Unified.

This trend is particularly disturbing given that the ratio of students per counselor in California is 945:1, the highest in the nation and almost double the national average.¹⁷ This means that in California, school counselors are expected to handle the highest numbers of students in the country, and students have severely restricted access to counselor time compared to other states.

TABLE A: NUMBER OF FULL-TIME SWORN OFFICERS ASSIGNED TO POLICE DEPARTMENTS (2015-2016)

District	Full-Time Officers ¹⁸
1. Los Angeles USD PD	378
2. San Diego City Schools PD	41
3. Stockton USD PD	26
4. Santa Ana USD PD	25
5. San Bernardino USD PD	24
6. Compton USD PD	23
7. Kern High School District PD	23
8. Twin Rivers USD PD	22
9. Fontana USD PD	16
10. Oakland USD PD	16
11. Clovis USD PD	13
12. Baldwin Park USD PD	9
13. Hesperia USD PD	8
14. Hacienda/La Puente USD PD	6
15. Inglewood USD PD	5
16. Montebello USD PD	5
17. Apple Valley USD PD	4
18. El Rancho USD PD	4
19. Snowline Joint USD PD	4

Second, some school districts enter into agreements or MOUs with county or municipal police departments to station law enforcement officers on or around school campuses. These police officers are also commonly known as School Resource Officers (SROs) or School Safety Officers. For example, the Fresno Police Department assigns a number of police officers to the school district on a permanent or rotating basis. In San Jose, the school district uses a hybrid approach: the police chief is a school district employee who coordinates the activities of permanent site-based officers who are employees of the municipal police department.

Third, many school districts do not maintain a permanent police presence in their schools but instead call local police officers to campus on an as-needed basis. A small number of these school districts enter into agreements or MOUs with the local law enforcement agencies to govern interactions between school staff, students, and law enforcement officers.

School Security Officers: In addition to or in place of law enforcement officers, some districts use school security officers (civilian security guards), to perform duties related to law enforcement, school regulations, and campus safety. In some schools, these civilian guards may be overseen by law enforcement agencies.¹⁹ In Oakland, for example, the school district police department oversees about 80 school security officers in addition to sworn law enforcement officers.

SOCIAL IMPACT: How Law Enforcement Affects Students and School Climate

MORE POLICE ON CAMPUS LEADS TO DRAMATIC INCREASE IN STUDENT ARRESTS FOR MINOR STUDENT MISCONDUCT

Over the past two decades, on-campus police presence has skyrocketed, and school-based arrests and referrals to the juvenile justice system have increased alongside it.* In the 2013-2014 school year, 24% of elementary schools and 42% of all high schools in the U.S. had a full-time assigned police officer.²⁰ This figure is especially concerning given that student arrest rates in general, and arrests of Black students in particular, are higher in schools with a police officer on campus, even when controlling for schoolwide academic achievement, racial/ethnic composition, urbanicity, and student misconduct.²¹

Until recently, police departments were not required to collect data about officer interactions with students, which has hampered our understanding of the dynamics involved in increasing student-officer interactions in California.

Growing national concern about school-based law enforcement referrals caused the U.S. Department of Education's Office for Civil Rights to begin collecting data on student interactions with law enforcement in the 2009-2010 school year.²² Similarly, beginning in January 2017, a new California law titled the Racial Identity and Profiling Act of 2015 will require police officers to record comprehensive data about stops and detentions.²³

The large-scale growth of school-based referrals and arrests reflects a trend of school officials relying on police officers to handle basic classroom discipline and minor rule violations, including behavioral problems related to a student's disability.²⁴ A recent study found that having a regularly assigned police officer at school more than doubled the rate of arrests for "disorderly conduct," even when controlling for important factors such as school poverty.²⁵ In New York City, a school-police partnership initiative produced only a slight decrease in major crimes at school but the number of *noncriminal* police incidents increased by 50% after one year.²⁶ One juvenile court judge in Massachusetts reported to the ACLU that he deals with more school discipline in his courtroom than he did in his former job as a public school principal.²⁷

Unfortunately, the criminalization of student behavior is also common in California. Between 2005 and 2014, San Bernardino Unified school police made more than 30,000 student arrests, mostly for minor violations such as graffiti and failing to abide by daytime curfews.²⁸ A third of these arrests were for the vague disciplinary charge of "disturbing the peace." In one incident, a police officer choked, pepper sprayed, and beat a teen boy for hugging his girlfriend on campus.²⁹ In Los Angeles, school district police issued nearly 10,200 misdemeanor tickets in 2011 for low-level student misconduct, with 43% of the tickets given to children 14 and younger.³⁰

*AMANDA PETTERUTI, JUSTICE POLICY INST., EDUCATION UNDER ARREST: THE CASE AGAINST POLICE IN SCHOOLS 13 (2011), http://www.justicepolicy.org/uploads/justicepolicy/documents/educationunderarrest_fullreport.pdf. See also Michael P. Krezmien et al., *Juvenile Court Referrals and the Public Schools: Nature and Extent of the Practice in Five States*, 26 J. CONTEMP. CRIM. JUST. 273, 283 (2010) (finding increases in school-based arrests relative to other juvenile arrests in AZ, HI, MO, and WV in 1994-1995); Sara Rimer, *Unruly Students Facing Arrest, Not Detention*, N.Y. TIMES, Jan. 4, 2004, <http://www.nytimes.com/2004/01/04/us/unruly-students-facing-arrest-not-detention.html> (school-based arrests tripled in Miami Dade County FL 1999-2001); ADVANCEMENT PROJECT, EDUCATION ON LOCKDOWN: THE SCHOOLHOUSE TO JAILHOUSE TRACK 23-24 (2005), <http://www.advancementproject.org/resources/entry/education-on-lockdown-the-schoolhouse-to-jailhouse-track> (finding in Denver, CO in 2000-2004, student tickets and arrests increased by 71% and the large majority were for vague, non-serious offenses).

In spring 2015 at Washington Preparatory High School in South Los Angeles, Raquel B. was sitting outside with her leg up on a bench when she was approached by a school police officer. The officer scolded her, telling her that “girls shouldn’t sit like that” and demanding that she “close [her] legs.” Raquel refused, and the officer began to verbally harass her, mocking her for wearing “boys’ clothes” and telling her that being “gay” was “shameful and wrong.”

When Raquel, who is Black, replied that it was also wrong that white people like the officer enslaved her people for hundreds of years, the officer pushed her against a wall and handcuffed her. Crying with anger, Raquel was marched in handcuffs to the principal, who came to her defense and demanded that the officer release her.

Raquel was not arrested or disciplined, but the officer continued to harass Raquel after the incident, routinely patting her down and demanding that she turn out her bag.

CALIFORNIA STUDENTS WITH DISABILITIES ARRESTED FOR CLASSROOM BEHAVIOR

Stockton, 2011: School officials asked a district police officer to meet with Michael Davis, a 5-year-old child with a disability, to “scare him straight” because Michael often had behavioral problems in school. When Michael got upset and could not calm down, a senior police officer in the school district’s police department, Lt. Frank Gordo, zip-tied Michael’s hands and feet and took him to a mental health facility.³¹ The student’s family filed a lawsuit against the school district. In 2015, Lieutenant Gordo was dismissed from the department shortly after the student’s family settled with the district for \$125,000.³²

San Mateo, 2010: A police officer pepper-sprayed a 7-year-old child with disabilities after he refused to climb down from the top of a bookshelf in his special education classroom.³³ The child’s family filed a lawsuit against the Belmont-Redwood Shores School District, among other defendants, seeking damages for violations of the student’s civil rights, physical injury, and emotional distress.³⁴ Shortly after the complaint was filed, the lawsuit settled.³⁵ As part of the settlement agreement, the City of San Mateo agreed to meet with the County Office of Education to define the circumstances under which police will be called to the school in the future, as well as to establish parameters for police officers who respond to requests for assistance.³⁶

I feel like these police officers
have too much power.
-Raquel B.

UNNECESSARY POLICE-STUDENT CONTACT DAMAGES STUDENT OUTCOMES AND SCHOOL SAFETY

An arrest during elementary, middle, or high school can have terrible consequences for a student's future. Analysis of a nationally representative dataset shows that an arrest doubles a high school student's odds of dropout, and subsequent court involvement doubles those odds again, even when controlling for variables such as parental poverty, grade retention, and middle school GPA.³⁷ One study in Chicago matched arrested students to their identical peers on a comprehensive set of more than 60 individual, family, peer, neighborhood, and school characteristics that jointly predict juvenile arrest and educational attainment.³⁸ Only 27% of students who were arrested graduated from high school, as opposed to 49% of their identical peers. Other studies find that students incarcerated during high school are far more likely to drop out and be incarcerated adults as compared to their peers who have also engaged in delinquent and risky behavior.³⁹

Juvenile arrest also increases students' chances of future imprisonment and decreases their employability. Another Chicago-based study found that a first arrest increases young people's likelihood of future arrest, even when controlling for reported criminal activity. The authors suggest that this is because a first arrest makes youth subject to greater surveillance and harsher discipline from police and other adults.⁴⁰ Additionally, many prospective employers routinely ask potential employees about convictions or even arrests, negatively impacting job opportunities for students who have been arrested (even if the arrest led to no criminal charges).

Moreover, police officers in schools can negatively impact *all* students' feelings of connectedness to school, even among those students who are not arrested. Police presence on campus "criminalizes" non-criminal student behavior, causing many students to feel less safe at school and less bonded to school adults.⁴¹ Studies show that restrictive and punitive "safety" measures such as locked doors, metal detectors, and a police presence on campus increase disorder by making students more fearful and less trusting of school officials and police.⁴² Many students feel that school police practices are fundamentally unfair,⁴³ which also contributes to alienation from school and mistrust that reduces campus safety and student engagement.

The daily presence of police officers often leads to officers exceeding their stated roles, particularly when officers and school staff are not properly trained. For example, Los Angeles Unified School District has a policy that requires school staff to perform purportedly random daily metal detector wand searches of students in all of their middle and high schools during class time.⁴⁴ While the policy expressly states that police should not conduct the searches, the ACLU's review of the district's search logs revealed that police frequently perform the searches. This policy has led to the unnecessary criminalization of students who possess minor contraband or do not wish to comply with the searches. Further, such policies raise concerns about whether police or administrators improperly target students or discriminate against certain student groups.

HOW DOES LCFF RELATE TO POLICE IN SCHOOLS?

California's Local Control Funding Formula (LCFF) increases school funding and directs more resources to California's highest-need students. Under LCFF, all school districts are required to set goals, take specific actions, and use LCFF funds to improve the "school climate" for their students, all of which must be described in the district's Local Control Accountability Plan (LCAP).

Rather than spend LCFF dollars on "school climate" programs that are proven to benefit high-need students, such as Restorative Justice or other interventions that focus on decreasing suspension and expulsion rates, some districts use these critical LCFF dollars to expand the presence of school law enforcement. For example, Stockton Unified recently spent over \$2 million (65% of its LCFF school climate dollars) on its police department.⁴⁵ Students and their families should use the district LCAP – which is released every summer – to monitor whether a school district plans to increase the presence of law enforcement and advocate against such plans. Increasing and expanding the presence of law enforcement on school campuses is not an appropriate use of LCFF dollars in the "school climate" priority area.

In 2015, the 13-year-old daughter of Anita Wilson-Pringle was strip-searched at Serrano Middle School in San Bernardino.

A female vice-principal forced the eighth grade girl to pull her bra away from her body and shake it. When the girl tried to cover her breasts for modesty, the vice-principal pulled her hands away. This all took place under the observation of a male officer employed by the district police department.

After hearing about the incident from her daughter, Wilson-Pringle visited the school seeking an explanation, but the school would not release an incident report or even give her the police officer's name. Wilson-Pringle's daughter felt so violated after the incident that her grades plummeted. Wilson-Pringle reported, "She hasn't been herself. . . . She makes sure she doesn't have any kind of contact with any of the principals, with any of the teachers. She does her work and comes home."

THE DISPROPORTIONATE NEGATIVE IMPACT ON LOW-INCOME STUDENTS, STUDENTS OF COLOR, AND STUDENTS WITH DISABILITIES

Increased police-student contact at schools has a disproportionately negative impact on low-income students, students of color, and students with disabilities. The most recent data from the U.S. Department of Education Office for Civil Rights (Office for Civil Rights), collected from more than 95,500 U.S. schools in 2013-2014, show that the average arrest rate in California schools where more than 80% of students receive free or reduced-price lunch is seven times the average arrest rate in schools where fewer than 20% of students receive free or reduced-price lunch.* Additionally, American Indian students are 3.4 times as likely, Black students 2.7 times as likely, and Hawaiian/Pacific Islander students 1.4 times as likely as their white peers to receive a school-based referral to police (see Table B below). Further, after receiving a referral to police,** white students' likelihood of arrest decreases while Black, Latino, and Asian American students' likelihood of arrest increases.⁴⁶ This corroborates a trend noted by many social scientists, where school staff and police officers tend to give whites the benefit of the doubt while punishing Black children and adults for the same behaviors.⁴⁷

TABLE B: SCHOOL-RELATED REFERRALS TO LAW ENFORCEMENT AND ARRESTS IN CALIFORNIA (2013-2014)

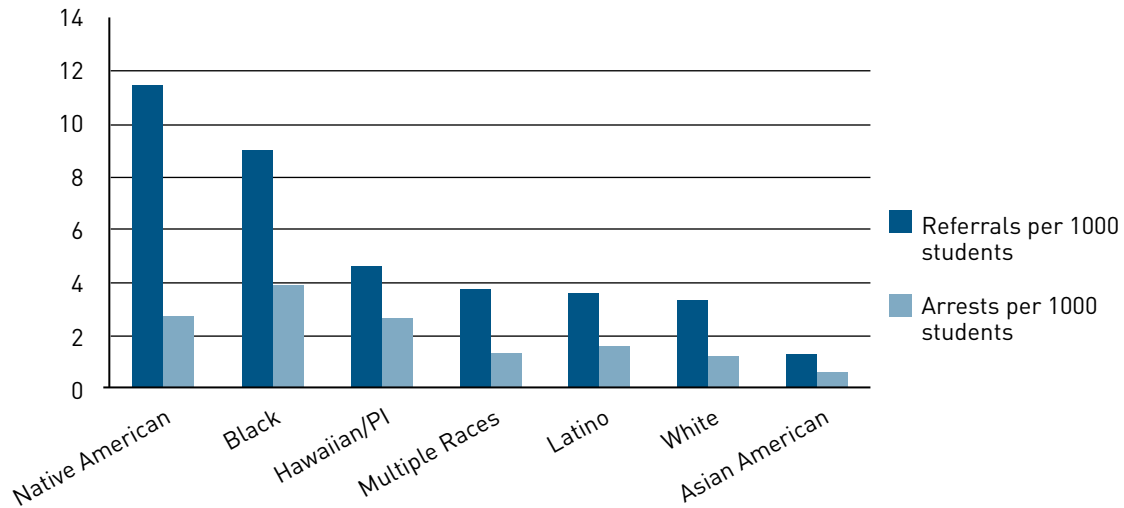
Bolded numbers indicate that the student group is overrepresented in this category

	Population	Referrals	Arrests
White	25.0%	22.6%	20.2%
Black	6.2%	15.1%	15.7%
Latino* (*In the Civil Rights Data Collection, this group is referred to as "Hispanic.")	53.1%	51.9%	54.6%
Asian American	10.9%	3.8%	4.5%
Hawaiian/Pacific Islander	0.75%	0.93%	0.94%
Native American /Alaska Native	0.75%	2.3%	1.3%
Two or More Races	3.30%	3.4%	2.8%

*Based on ACLU-CA calculations of CRDC 2013-2014 data, on file with the authors. U.S. DEP'T OF EDUC., OFFICE FOR CIVIL RIGHTS, PUBLIC-USE DATA FILE 2013-2014, <http://www2.ed.gov/about/offices/list/ocr/docs/crdc-2013-14.html> (last visited June 9, 2016).

**The phrase "after receiving" here assumes a time sequence between referral and arrest, which is generally true but not always.

CHART A: STUDENT REFERRAL AND ARREST RATES BY RACE/ETHNICITY⁴⁸



Disturbingly, the 2013-2014 CRDC First Look report from the Office for Civil Rights states that 1.6 million students in the U.S. attended a high school with a full-time assigned police officer, but no counselor.⁴⁹

Latino students were 1.4 times as likely as white students to be arrested or referred, Asian American students 1.3 times as likely, and Black students 1.2 times as likely.⁵⁰

This increased rate of law enforcement contact on school campuses mirrors a broader criminalization of youth, especially youth of color. Between 1980 and 2000, the percentages of boys in the U.S. ages 15-18 charged with a crime, convicted, and sentenced to a correctional facility all increased substantially, despite a major drop in reported delinquent behavior.⁵¹ The increase in charges and incarceration rates especially affected Black male youth.⁵² In 2014, the arrest rate for Black youth was nearly three times that of their white peers.⁵³ This difference is even more pronounced with respect to discretionary, non-serious crimes—the most frequent types of crimes reported on or around school campuses. For example, Black youth were four times more likely than white youth to be arrested for curfew/loitering (when students were off campus during school hours) and disorderly conduct violations.⁵⁴ These disparities are not based on differences in behavior between Black and white youth, but on the influence of implicit and explicit racial bias on adults' decisions to arrest, charge, and incarcerate.⁵⁵

For example, LAUSD's recently released disciplinary report for 2015-2016 shows the persistence of major racial disparities in arrests and expulsions. The single-student suspension rate for Black students (2.18%) was seven times that of white students (0.31%), and the per capita arrest rate for Black students (3.59 arrests per 1,000 students) was 17 times that of white students (0.44 arrests per 1,000 students). Stated differently, although Black students

comprise only 8.5% of school enrollment, 46.6% of arrests involved a Black student. In addition, the per capita arrest rate for Latino students (0.91 arrests per 1,000 students) was over twice that of white students, and the per capita police referral rate for Latino students (1.22 referrals per 1,000 students) was more than four times that of white students (0.28 referrals per 1,000 students).⁵⁶

Although Black students comprise only 8.5% of school enrollment in Los Angeles Unified School District, 46.6% of arrests involved a Black student.

These racial disparities are also present in the school discipline context. For instance, the California Education Code allows students in grades 4-12 to be suspended for “willful defiance,”⁵⁷ a subjective rule violation open to interpretations of student behavior that often reflect implicit racial and other biases. A 2015 study showed that willful defiance is the single largest category for which students are suspended in California,⁵⁸ and, per capita, Black students in California experience substantially more suspensions for disruption/defiance than white students per capita.⁵⁹

Increased police-student contact at schools also has a disproportionately negative impact on students with disabilities. According to the Office for Civil Rights, despite making up only 12% of the student population nationwide, students with disabilities account for 23% of students referred to law enforcement, 23% of students arrested at school,⁶⁰ and more than 67% of all students placed in seclusion, involuntary confinement, or physical restraint at school.⁶¹ In California, our analysis of the 2013-2014 data from the Office for Civil Rights shows that students with disabilities are approximately three times as likely as students without disabilities to be subjected to referral and arrest.⁶² Thus, it is no surprise that in 2014, the U.S. Department of Justice and the Office for Civil Rights issued a letter expressing that “evidence of significant disparities in the use of discipline and aversive techniques for students with disabilities raises particular concern for the Departments.”

Nationwide, students of color are more likely to be identified as having a disability, and they are also more likely to be enrolled in schools with a high proportion of students receiving free or reduced-price lunch.⁶³ Taken together, our statistics suggest that many students of color are triply vulnerable to harsh discipline based on their race, their status as students with disabilities, and their enrollment in high-poverty schools.

From Cesar Chavez High School in Stockton, 2016 graduate D’Ahjanique Smiley reports a climate of fear created by a heavy district police presence. Multiple times each month, students are subjected to random searches where police bring drug-sniffing dogs into classrooms and force students to turn out pockets and backpacks. D’Ahjanique says these searches make students feel that police are “more there to scare us than to help us and to make us feel safe and comfortable.”

This climate of intimidation was especially harmful to D’Ahjanique’s friend Richard. The 17-year-old had been looking forward to college and to walking across the stage at graduation to make his grandparents proud. But throughout his senior year, Richard faced ongoing police harassment due to his appearance as a biracial Latino-Filipino student who wore baggy shorts and tattoos. He regularly faced questioning and pat-downs when walking to class, was made to sit on the curb in handcuffs during a vehicle stop for expired tags, and was finally arrested for breaking up a scuffle between his 15-year-old brother and another freshman boy. Tired of the harassment, Richard decided that school was not for him anymore and dropped out.*



**Richard’s name has been changed to protect his privacy.*

THE LAW: Legal Implications in Policing Schools

Beyond the negative impact on students, policies that are vague or inadequate can leave school districts vulnerable to significant legal liability. This section touches briefly on issues of legal liability for school districts and school district employees. It is not intended to provide legal advice about any specific situation, nor is it intended to be a complete discussion of legal issues that may arise from interactions between police officers and students in schools. Legal advice on specific factual circumstances or questions should be obtained from independent legal counsel.

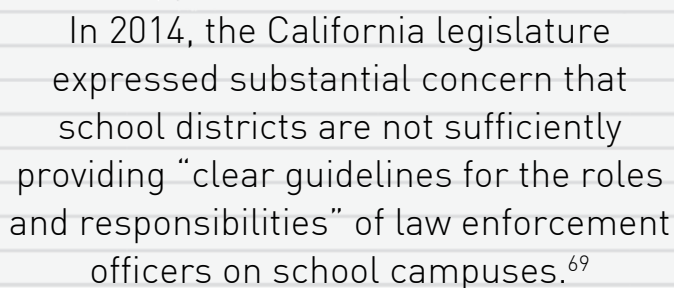
SCHOOL DISTRICTS CAN BE HELD LIABLE FOR ACTS PERFORMED BY POLICE OFFICERS

School districts and school staff are legally responsible for the acts of police officers in a number of circumstances. First, when a police officer commits an unconstitutional act that represents official district policy or custom (written or unwritten), school administrators and board members can be sued for those violations as responsible parties.* This liability may attach even if the school district policy or custom never received formal approval from the school board or superintendent.⁶⁴ For example, in the face of evidence that the lack of training will cause constitutional violations, a district's failure to train its employees about how to handle certain situations can be categorized as "official policy" and render the district liable.⁶⁵ Similarly, district officials may be liable where school and district staff are found to be deliberately indifferent to constitutional violations.⁶⁶

Second, a school district is liable under state law for its employees' conduct when employees act within the scope of their employment and harm a student.⁶⁷ For example, when a school employee directs a police officer to handcuff a student at school unlawfully, the district may be liable for false imprisonment.** Under the same principle, a school district may be liable for the acts of police officers or security officers employed by the school district police department when they are acting within the scope of their jobs.

Finally, school employees who violate the law or who direct school police to violate the law may be held individually liable under state or federal law and be subject to civil and criminal penalties. For example, if a police officer unlawfully handcuffs a student at the direction of a school employee, even if the school employee does not have any official supervisory capacity over the police officer, the school employee may be liable for the constitutional violations flowing from the police action.⁶⁸

Below is an overview of some federal and state law claims commonly filed against school districts and school staff involving interactions between students and police on campus. This is not intended as a comprehensive review of all potential legal claims against school districts.



In 2014, the California legislature expressed substantial concern that school districts are not sufficiently providing "clear guidelines for the roles and responsibilities" of law enforcement officers on school campuses.⁶⁹

**Monell v. Dep't of Soc. Servs. City of New York*, 436 U.S. 658 (1978); *Pacheco v. Hopmeier*, 770 F. Supp. 2d 1174 (D.N.M. 2011) (granting summary judgment for 16-year-old student-plaintiff on Fourth and Fourteenth Amendment claims against a high school principal who allowed police to handcuff the student).

***See Samuels v. Indep. Sch. Dist.* 279, No. Civ. 02-474, 2003 WL 23109698 (D. Minn. Dec. 8, 2003) (allowing false imprisonment claims to proceed against a school district where a school employee requested that a police officer handcuff a ninth-grade student to "teach him a lesson").

U.S. CONSTITUTION, AMENDMENT IV

The Fourth Amendment to the U.S. Constitution protects students from unreasonable searches, unlawful seizure, and excessive force.⁷⁰ California and federal courts have long recognized that students in public schools have a legitimate expectation of privacy in the personal belongings they bring to school.⁷¹ A student's Fourth Amendment rights are violated—and a school district may be liable—when a police officer searches a student or his/her belongings on campus and (1) it was not reasonable for the officer to believe that the search would reveal evidence that the student violated the law or a school rule, or (2) the search was too intrusive in light of the circumstances.⁷² Outside of campus, or if the police officer is not regularly assigned to work in schools, a police officer's search of a student is unconstitutional if it is performed without probable cause to believe a crime was or is being committed.⁷³ In some instances, a search warrant may be constitutionally required. Additionally, school staff may be personally subject to civil liability, including monetary damages, for unconstitutional searches.⁷⁴

Law enforcement officers also violate students' Fourth Amendment rights when they apply excessive physical force to stop or detain a student.⁷⁵ Courts are particularly disposed to determining that students' constitutional rights have been violated when student-police interactions involve young children or when they occur in the school setting.* For example, in one recent California case, Sonora School District staff called the police when a calm but noncompliant 11-year-old student with disabilities refused to come in from recess.⁷⁶ After trying to engage with the student for a few minutes, the police handcuffed the student, placed him in the back of a patrol car, and drove him to a family member.⁷⁷ The student sued.⁷⁸ The school district settled the lawsuit, but the case continued against the police department and individual officers.⁷⁹ The student ultimately won at trial on his Fourth Amendment claims and under state law claims of false arrest and intentional infliction of emotional distress.^{80**}

DISCRIMINATION BASED ON RACE, DISABILITY, AND OTHER PROTECTED CATEGORIES

A number of federal and California civil rights laws prohibit school districts from maintaining policies or otherwise discriminating based on race, gender, disability status, immigration status, and other protected categories, even when those policies have neutral language but have an adverse disparate impact on certain student groups.

Civil Rights Act of 1964 and the Fourteenth Amendment

Title IV and Title VI of the federal Civil Rights Act of 1964 protect students from discrimination on the basis of race, color, and national origin (among other things), in connection with all academic, educational, extracurricular, athletic, and other school programs, including school safety and student discipline.⁸¹ Title IX similarly protects students from discrimination on the basis of gender, including gender identity.⁸² Title IV and Title VI prohibit school districts not only from adopting policies that intentionally discriminate against students in protected classes, but also from maintaining policies or engaging in practices that have an adverse disparate impact on those student groups. For instance, school districts generally may not maintain policies that result in students of a particular race being disciplined with harsher punishments or at a higher rate than students of another race.⁸³

The Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution also protects individuals from discrimination on the basis of race, national origin, and gender, among other categories. In 1982, the Supreme Court struck down a law in Texas that excluded children with irregular immigration status from attending Texas public schools, affirming that undocumented children have equal access to public education in the U.S.⁸⁴ Since then, federal courts have consistently struck down state and local policies that bar or otherwise prevent undocumented

*The law governing students' Fourth Amendment rights to be free from unreasonable searches is beyond the scope of the limited discussion in this section.

***Hoskins v. Cumberland Cty. Bd. of Educ.*, No. 2:13-cv-15, 2014 WL 7238621 at *6-8 (M.D. Tenn. 2014) (holding that an officer's handcuffing of an 8-year-old student, who had threatened and swung his fist at his teacher, constituted an unlawful seizure as a matter of law and noting that "simple common sense dictates that it is not reasonable or appropriate to bring criminal charges against young children for relatively minor school misbehavior").

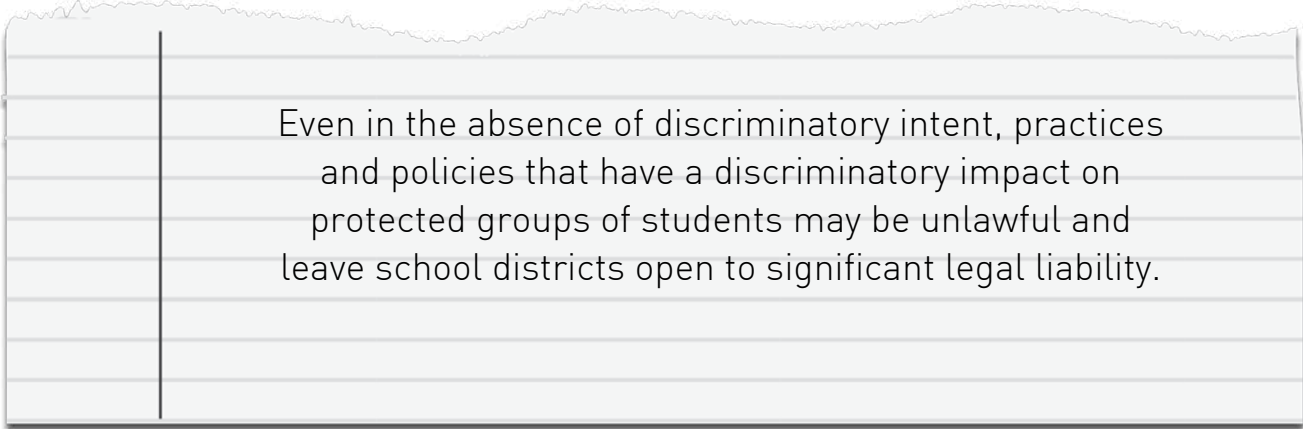
children from attending public schools.* This principle has been acknowledged in the law enforcement context as well, including by the Immigration and Customs Enforcement Agency.⁸⁵

School districts are accountable for discriminatory actions taken by their staff, security officers, school police, or anybody else who administers and implements their programs. “Schools cannot divest themselves of responsibility for the nondiscriminatory administration of school safety measures and student discipline by relying on school resource officers, school district police officers, contract or private security companies, security guards or other contractors, or law enforcement personnel.”⁸⁶ Moreover, police departments’ obligations under the U.S. Constitution and the federal Civil Rights Act extend to their actions in schools.** Anyone who believes that a school district has a policy or practice that discriminates against protected student groups in violation of federal anti-discrimination statutes may initiate an investigation by filing a complaint with the federal Office for Civil Rights.⁸⁷ If the Office for Civil Rights determines that a violation has occurred and the district does not address the problem, it may withhold federal funding from the district.⁸⁸ In recent years, the Office for Civil Rights and the U.S. Department of Justice have more carefully scrutinized police action in public schools.⁸⁹

Title II of the Americans with Disabilities Act

Title II of the Americans with Disabilities Act (“Title II”) prohibits school districts from discriminating on the basis of disability.⁹⁰ School districts may not use educational practices, including disciplinary practices, which “have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability.”⁹¹ Moreover, school districts must make “reasonable modifications in policies, practices, or procedures” for students with disabilities, unless the district can demonstrate that making the modifications would be a fundamental alteration.⁹² Title II can be enforced against school districts either through an administrative action by the Office for Civil Rights or through lawsuits by students whose rights have been violated.⁹³

Title II violations commonly occur when districts or law enforcement agencies have policies or practices that result in students with disabilities being disproportionately disciplined and put into physical restraints at school by police or security officers.⁹⁴ For example, a federal court judge recently allowed Title II claims to proceed against a Sheriff’s Office that stationed police officers in local schools for its practice of handcuffing students with disabilities (including behavioral disabilities).⁹⁵ The judge held that the students’ allegations that the school police did not properly accommodate their disabilities by failing to use other means of correction to address behavioral problems, and failed to modify school police practices to take into account the nature of the students’ disabilities, were sufficient to plead actionable discrimination under Title II.⁹⁶



Even in the absence of discriminatory intent, practices and policies that have a discriminatory impact on protected groups of students may be unlawful and leave school districts open to significant legal liability.

*See *Hispanic Interest Coalition of Ala. v. Governor of Ala.*, 691 F.3d 1236 (11th Cir. 2012) (holding that state law requiring school officials to verify citizenship and immigration status of undocumented students was unconstitutional under the equal protection clause).

**See *Settlement Agreement, United States v. City of Meridian*, No. 3:13-cv-978-HTW-LRA (S.D. Miss. Sept. 18, 2015), <https://www.justice.gov/crt/file/778016/download>.

California Anti-Discrimination Laws

California law offers similar protection against discrimination. California Education Code section 220 states that schools have an “affirmative obligation to combat racism, sexism, and other forms of bias, and a responsibility to provide equal educational opportunity.”⁹⁷ School districts may not subject students to discrimination on the basis of “disability, gender, nationality, race or ethnicity, religion, sexual orientation, or any other characteristic that is contained in the definition of hate crimes.”⁹⁸ Moreover, school districts must adopt, publicize, and translate anti-discrimination policies, implement a process for receiving and investigating complaints, and ensure complainants are protected from retaliation, among other obligations.⁹⁹

California Government Code section 11135 provides additional protections for students, preventing districts from discriminating on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, genetic information, or disability.* California courts have made clear that section 11135 prohibits both intentional discrimination and actions that have a disparate impact on the protected groups.¹⁰⁰ Students who have been discriminated against can file lawsuits directly against their school districts under either Education Code section 220 or Government Code section 11135.

It is beyond dispute that many California school districts have law-enforcement-related policies or practices that have a disparate impact on protected student groups—in particular, on students of color. According to data released by the Office for Civil Rights in June 2016, across the United States, Black students are 2.3 times more likely than white students to receive a referral to law enforcement or be subject to a school-based arrest.¹⁰¹ As discussed, even in the absence of discriminatory intent, practices and policies that have a discriminatory impacts on protected groups of students may be unlawful and leave school districts open to significant legal liability.**

*The California Unruh Civil Rights Act similarly prohibits school districts from discriminating on the basis of sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status. *See Michelle M. v. Dunsmuir Joint Union Sch. Dist.*, 2006 WL 2927485 (E.D. Cal. Oct. 12, 2006).

** *See* CAL. GOV'T CODE § 11135(a); *Darensburg v. Metro. Transp. Comm'n*, 636 F.3d 511 (9th Cir. 2011) (holding that a legal challenge to a facially neutral policy based on disparate impact discrimination is viable under CAL. GOV'T CODE § 11135); *Butt v. State*, 4 Cal. 4th 668, 681 (1992) (observing that under the state constitution, the State is required to take steps to correct disparities “even when the discriminatory effect was not produced by the purposeful conduct of the State or its agents”).



POLICIES AND FINDINGS: Current State of School Policies Regarding Law Enforcement

METHODOLOGY

In 2016, the ACLU of California generated and analyzed a statewide representative sample of school district policies governing police on campus. We examined school board policies and administrative regulations in each school district in our sample and MOUs in the school districts where they existed. We first reviewed the policies to create codes for district policies governing various aspects of police presence on campus. We then coded all policies in the sample and used statistical weighting techniques to provide a representative overview of district policies throughout the state.

California has 1,038 school districts serving 6.2 million students. To draw conclusions on the policies of these districts, the ACLU of California contracted an outside consultant who designed a statistically sound sampling procedure to generate a weighted sample* that is representative of all California districts. The final sample combined a census of the 50 largest school districts by enrollment (which together serve over 40% of California students) and a random sample of 75 districts that oversampled County Offices of Education. Six districts overlapped between the two components of the sample, resulting in a total of 119 unique districts (listed in Appendix A). Ten districts did not respond to our request for policies or were unable to provide them.** Testing shows that these districts were statistically similar to the composition of all districts on a number of key characteristics, confirming the representativeness of the sample. For a complete description of our study methodology and the list of schools in our survey, please see Appendix A.

Relevant school district rules and guidance covering police on campus can be found in several places, including: a variety of school district board policies and administrative regulations, MOUs between school districts and outside law enforcement agencies, and school-site guidance contained in school safety plans and school handbooks.*** An MOU, in this context, is a contractual agreement between the school district and an outside entity, usually a law enforcement agency. District and school policies and MOUs may not conflict with the legal requirements of the Education Code. The Education Code is a statute and cannot be changed except through the legislative or judicial branches of government. Further, school district policies are adopted by school boards, and school-site policies may not conflict with the requirements of district policies.

Why oversample County Offices of Education? A review of 2013-2014 data on California schools from the Office for Civil Rights shows that three of the five districts with the highest rates of student arrests and six of the 10 districts with the highest rates of student referrals to police were County Offices of Education. In addition, our general examination of policies prior to data sampling indicated that County Offices of Education tend to have far fewer policies about law enforcement interactions with students than other districts. We oversampled these districts to capture their diversity but then weighted them in the final analysis to reflect their proportion among all districts.

*Results in the report are weighted to reflect each district's probability of inclusion in the study.

**For accuracy, these schools were included in our data analysis as "no response." Because of this designation, the percentages presented below will not add up to 100.¹⁰²

***Although some school sites may include guidelines about police on campus in their school site policies, we believe that such detailed and comprehensive guidance is necessary at the school district level. Schools should be consistent in how their staff respond to law enforcement and districts will leave themselves open to liability if they allow school site administrators to craft their own policies. Ensuring consistent policies across district schools also may minimize disparities between how certain student groups are treated and disciplined.

Below, we discuss general concerns with the district policies we reviewed. Then, we present our findings about specific district policies governing police interactions with students in the following categories:

- ◆ When School Staff Request Police Assistance to Address Student Misconduct
 - ◆ Violations of school rules
 - ◆ Bullying / harassment
 - ◆ School disruption / campus disturbance
 - ◆ Vandalism
- ◆ When Police Officers Are Required to Identify Themselves
- ◆ Police Questioning of Students
- ◆ Student Arrests
- ◆ Data Collection
- ◆ Complaint Procedures
- ◆ Memoranda of Understanding with External Police Department

As we describe our findings below, we also highlight some of the better policies from specific school districts. Even those policies we have highlighted, however, are missing many of the provisions included in the more comprehensive model policies provided in Appendix B of this report. Also, while we note that these districts have better written policies in place, we encourage *all* districts to ensure that policies governing police interactions are properly implemented.

ISSUES WITH POLICIES REVIEWED

We encountered a number of issues in our review that raised significant concerns. First, many districts have internally conflicting policies. For example, we found numerous examples where board policies and administrative regulations disagree on whether school staff are required to contact the police when a student is accused of vandalism.

Second, many district policies are so vague that they provide no meaningful guidance to school staff. Vague and conflicting policies only serve to confuse school and district staff who try to implement them and do little to protect students in their interactions with police in school.

Third, guidance about whether to call police to address student behavior and how police should interact with students in the school context was often spread out in various documents, including board policies, administrative regulations, and MOUs. We were able to aggregate these documents to interpret the district policy in each subject area, but it took considerable effort to identify all of the locations where the district kept its policies governing police on campus. When district staff search for the policy, it is unlikely that they will find all of the relevant documents.

Fourth, many district policies were unavailable online, which impedes students' and families' access to the rules and can easily lead to confusion. We encourage school districts to adopt clear, consistent guidance for students and staff. Further, districts should have this information accessible on and offline and in multiple languages.

SCHOOL DISRUPTION / CAMPUS DISTURBANCE

57.4% of schools give staff discretion to **call the police** when dealing with students who are “disturbing the school” or “disrupting the campus.”



VANDALISM

33.1% of districts force school staff to call police officers to report “damage or loss of school property,” vandalism, or graffiti. **30.6%** give staff discretion to call the police.



POLICIES ADDRESSING POLICE QUESTIONING STUDENTS

An estimated **70.9%** of school districts statewide allow police officers to interrogate students **immediately upon demand**, mandating that staff “shall not hinder or delay” interrogations.



COURT ORDERS AND WARRANTS

An estimated **99.6%** of districts statewide **do not require** a court order or warrant for an interrogation to proceed.



PARENTAL/GUARDIAN NOTIFICATION

97.5% of the school districts analyzed **do not require** notification of parents or guardians before their child is interviewed by police.



STUDENTS ADVISED OF THEIR MIRANDA RIGHTS

An estimated **98.7%** of districts statewide **do not require** school staff or police to advise students of their constitutional rights, including the right to remain silent.



POLICIES ADDRESSING STUDENT ARRESTS

An estimated **51.6%** of school districts statewide have **no barriers or conditions** to police removing a student from campus.



NOTIFICATION TO SCHOOL PRINCIPAL

An estimated **99.3%** of school districts statewide **do not require** the school principal to be notified before police remove a student from school.



POLICIES REQUIRING DATA COLLECTION

An estimated **one-third** of districts **do not require** staff to record police-student interactions.



FINDINGS

POLICIES GOVERNING WHEN SCHOOL STAFF SHOULD REQUEST POLICE ASSISTANCE

To ensure students' rights are respected, and the school environment is both safe and inclusive of all students, school staff should call for law enforcement assistance only when there is a real and immediate physical threat to students, teachers, or public safety.¹⁰³ Yet, many districts fail to provide clear guidance on the extremely limited situations when school staff should call the police. Our analysis showed that many district policies are vague, inadequate, or even nonexistent, allowing—or even encouraging—school staff to call police officers to handle student violations of school rules or low-level, non-violent crimes common among children or adolescents (such as minor vandalism).

Below, we detail our findings based on the statewide weighted estimates from the full sample of 119 schools. We also note where the 50 largest school districts tended to differ from other districts.

The fact that a student violates a school rule does not and should not necessarily give a police officer authority to detain or arrest a student.

Recently, for example, a Kentucky federal court determined that two elementary school students with disabilities stated viable claims for unconstitutional seizure where a law enforcement officer handcuffed them in separate incidents for behavior ranging from “defiant and noncompliant” to “a violent temper tantrum.”*

Violations of School Rules

Our statewide estimates show that 62% of schools give staff discretion to call police to address any school rule violation. Approximately 24% of school districts do not have a districtwide policy on disciplinary measures for violations of school rules or are silent on whether police should be called to address violations of school rules, providing no guidance to school staff. Only three of the 119 districts we analyzed made clear that police should *not* be called to handle student violations of school rules.

BETTER POLICY (Pasadena USD): “[Police] Officers will not respond to calls of discipline problems involving students. School administration will be responsible for handling these issues except those issues where administrators will call law enforcement as required by Ed Code 48902.”

Bullying and Harassment

Bullying and harassment are serious issues facing students in California schools. School staff are required by law to intervene to stop the bullying of students by their peers or adults, and this intervention is essential to ensure a healthy school environment where all students feel welcome and included. Nevertheless, police intervention to stop bullying can lead to cascading negative consequences for all students involved, and it is less effective than school-based intervention by trained teachers, counselors, or other mental health professionals.¹⁰⁴

Among school districts statewide, an estimated 60.7% give school staff discretion to call the police when dealing with incidents of student bullying or harassment; 9.4% of district policies do not mention police assistance and provide no guidance on the matter; and 17.5% of school districts in California do not have any policies on bullying or harassment, in violation of Education Code 234.1.

*S.R. v. Kenton Cty. Sheriff's Office, No. 2:15-cv-143 (WOB-JGW), 2015 WL 9462973, at *3-5 (E.D. Ky. Dec. 28, 2015); see also Gray v. Bostic, 458 F.3d 1295, 1306 (11th Cir. 2006) (holding that handcuffing a nine-year-old student who threatened to hit a coach was an unlawful seizure where the student posed no threat and handcuffing by sheriff's deputy was an attempt to punish student and change her behavior).

A campus police officer tased one student and several more were pepper-sprayed at Lincoln High School in San Diego in February 2016. Five students, along with the officer, were taken to a hospital for their injuries. The students had been “play fighting” in a manner that a student witness described as “just a normal part of being a teenager.”

The officer arrived to break up the fight and students dispersed. Then, the officer followed one student to a parking garage outside the range of surveillance cameras. A “scuffle ensued” between the officer and the student, and the officer tased the student. This was the second time this particular officer tased a student, and the fourth time a student was tased in San Diego Unified School District since the it had acquired the weapons in 2009. Following the incident, the San Diego County Sheriff’s Department launched an investigation into the police officer’s conduct, but the students now face felony and misdemeanor charges. Further, students organized campus dialogues and a press conference in response to the officer’s excessive force. Still, students like Aisah de los Santos worry that her school continues to be over-policed. She reports that her tight-knit school community now “feel like a prison.”¹⁰⁵

School Disruption / Campus Disturbance

Most of the school district policies we analyzed addressed “school disruptions” or “campus disturbances.” Like “willful defiance,” these violations are subjective and susceptible to interpretations of student behavior that can reflect implicit racial and other biases. Whether a student is “disrupting school” or just “acting like a normal teenager” when she is “horsing around” with her friends is left to the discretion of school staff, who all too often allow their racial and other biases to inform their perceptions of the event. As such, it is especially important that school districts clarify to staff that police should not be called to handle student behavior where there is no real and immediate physical threat to students, teachers, or public safety.¹⁰⁶ Yet, none of the school policies we analyzed did so.

Estimates from our statewide sample show that 57.4% of schools give staff discretion to call the police when dealing with students who are “disturbing the school” or “disrupting the campus.” In 30.4% of districts, school policies do not mention police or have any guidelines on how to address this type of student misconduct.

Vandalism

At first blush, “vandalism” may seem like a clear criminal act. But a wide range of conduct falls within the definition of vandalism, including relatively innocuous behavior such as drawing on a wall with chalk or carving a name into a tree. Marking or drawing on objects falls well within the “normal” range of behaviors for children and adolescents.

As with “school disruption,” the decision whether to treat marking school property as the crime of “graffiti” or the childish misbehavior of “doodling” depends on the perspective of the decision-maker, which leads to wide variations in punishment that are susceptible to influence by implicit racial bias. It is therefore important for school districts to have clear policies defining “vandalism” in school as student misbehavior more effectively addressed through school-based interventions rather than criminal justice referrals.*

Our statewide estimates show that 33.1% of districts force school staff to call police officers to report “damage or loss of school property,” vandalism, or graffiti. In 30.6% of districts, staff members have discretion to call police for vandalism, and an estimated 24% have no policies regarding how staff should respond to vandalism and graffiti and do not mention police, providing school staff no meaningful guidance on the matter.

*District board policies on this topic were often missing and sometimes conflicted with administrative regulations on this topic. Wherever an administrative regulation used mandatory language requiring staff to contact the police, we coded each of those district policies as, taken as a whole, directing staff to call police. School districts should be careful to align their regulations and policies to give clarity to school staff.

Among the 50 largest school districts, fewer require school staff to call police officers (18%) to report “damage or loss of school property,” vandalism, or graffiti than in the state as a whole, but 42% give staff discretion to call police when dealing with students who commit vandalism.

In 2011, East Side Union High School District in San Jose referred students to police 1,745 times. One of these students was fifteen-year-old Adrian Crosby, a seventh-grader with autism, who was arrested and cited for “vandalism” after he used a small rock to write his initials temporarily on the sidewalk outside his school. Adrian’s juvenile citation will remain on his record until he is 18, when he can petition to have it expunged. For Adrian, living with a criminal record is a “feeling of desperation. It’s a feeling like they have cut the oxygen out of you—like you can’t breathe and it’s painful and it makes you kind of want to give up.”¹⁰⁷

POLICIES REQUIRING POLICE OFFICERS TO IDENTIFY THEMSELVES

It is the most basic precaution that school staff should confirm the identity of any person who comes to a school campus purporting to be a police officer, particularly when that person asks to remove a student from school. Most families would be appalled to learn that 21 of the 119 districts in our sample have no policy whatsoever requiring that school staff ask alleged law enforcement officers for identification and only seven provide a protocol governing when a person claiming to be an officer refuses to provide identification.

Among school districts statewide, an estimated 69.4% require school staff to ask for identification and 4.5% require school staff to take “reasonable care” to verify police identities. Yet, only 4.4% percent instruct staff how to handle the situation if an officer refuses to provide identification and 13.9% have no policy whatsoever on police identification.

BETTER POLICY (Sweetwater): “When any law enforcement officer requests an interview with a student, the principal or designee shall request that the official provides verification of his/her identity and official capacity and certifies the legal authority under which the interview is being conducted. If the officer refuses to provide certification of the legal authority for the interview, the principal or designee shall document such refusal and should consult with district legal counsel, as appropriate, before allowing the interview to proceed. The principal or designee shall maintain a record of all documentation relative to law enforcement interviews of students.” BP 5145.11

California Education Code section 48902 sets forth limited circumstances when school principals must notify law enforcement authorities when students commit legal violations. These legal violations include assault with a deadly weapon or force likely to produce great bodily injury; unlawful possession of a firearm in a school zone; unlawful possession or distribution of a firearm on school grounds or at a school activity off grounds; unlawful possession of certain other deadly weapons on school grounds; use or distribution of certain controlled substances or any intoxicants; and possession of an explosive on school grounds or at a school activity off school grounds. School officials have no obligation under section 48902 to report other student behavior or violations to law enforcement. District and school staff should consult with legal counsel to further clarify these requirements.

POLICIES ADDRESSING STUDENT QUESTIONING BY POLICE

The vast majority of school districts in California do not provide adequate guidance to school staff on what they should do when a police officer comes on campus to question a student. There is an extreme imbalance of power between police officers and students, and most students do not understand their rights when interacting with the police. Children are particularly susceptible to interrogation techniques and may falsely incriminate themselves or others without adequate protection.¹⁰⁸

An estimated 70.9% of school districts statewide allow police officers to interrogate students immediately upon demand, mandating that staff “shall not hinder or delay” interrogations. There is no policy at all about police interviewing students in 11.7% of districts. These statistics indicate that more than 80% of California students attend a school where school staff have no meaningful tools with which to protect students’ rights and emotional well-being when they are questioned by police.

Even where districts adopt better-written policies, it is important to keep in mind that written policies only work if people follow them. Vigorous advocacy and comprehensive training are required to ensure that school staff properly implement these policies on the ground. In Oakland USD, community activists (including the Black Organizing Project) successfully advocated to adopt a district policy that requires parents to be notified before their child is interrogated by police at school. Nevertheless, successful implementation of the policy has been difficult absent any mechanism to ensure that school police are actually trained on the policy or held accountable to it.

Interview Location

District policies should make clear that student interviews with law enforcement should be conducted during non-school hours and at an off-site location. Holding interviews away from the school setting preserves the integrity of the school environment, protects student privacy, and minimizes the disruption to the students’ education. This includes but is not limited to reducing heightened tension on campus, the loss of learning time, and other unintended consequences that often result when law enforcement come on campus.

Only two of the 119 districts we studied had policies preferring off-campus interviews and both were found among the 50 largest school districts (Antelope Valley Union High and Pomona Unified). Analysis of the sample estimated that fewer than 2% of California school districts have such policies.

BETTER POLICY (Pomona): “Police officers have a limited right to enter the school premises for the purpose of questioning a student. When students become involved with law enforcement officers, the officer is to be requested to confer with the student at a time when the student is not under the jurisdiction of the school, if this can be arranged.” AR 5145.11

In El Segundo, high school sophomore Sasha Rawlinson was removed from class for interrogation by three armed police officers, the school principal, and a security guard based only on social media rumors. The school officials and officers accused Sasha of selling marijuana, which was false. They told him that he was in “a lot of trouble” and that he should admit to the crime. The officers did not explain his Miranda rights or offer to call his parents, so Sasha had no advocate to make clear that he should remain silent. After over an hour of intense interrogation, Sasha told the officers that he had previously used marijuana off campus. Based on this admission, he was told to dis-enroll from school and issued a suspension. Sasha challenged the suspension and the district eventually overturned it.¹⁰⁹

Consultation with School Principal

The principal bears ultimate responsibility for student safety and school climate on each school site. District policies should require that the principal is consulted before police officers interview a student.

Of the top 50 districts, 12% provide that police must first consult with the principal before interrogating a student, producing the estimate that only 3% of schools statewide have this requirement in their policies.

BETTER POLICY (Fresno): “Law enforcement officers have a right to interview students on school premises, as suspects or witnesses. If the officer is not acting pursuant to a valid search warrant, the principal or designee may request that he/she conduct the interview outside of school hours. If the officer expresses the need to interview the student immediately, the principal or designee should seek to accommodate the questioning in a way that will avoid disrupting the school process and also serve the best interests of the student. If, after reasonable discussion, the law officer and the principal or designee continue to disagree, the principal or designee may consult with the Superintendent or with legal counsel. Whenever a representative of a child protective agency deems it necessary, a suspected victim of child abuse may be interviewed during school hours, on school premises, concerning a report of suspected child abuse that occurred within the child’s home.” BP 5145.11

Court Orders and Warrants

Students should be told that information that a student shares during a police interview can be used in future criminal prosecutions. Due to their young age and limited experience, most students who are interviewed by police lack a clear understanding of their legal rights and the serious consequences at stake. A judicial court order ensures that an impartial judicial decision-maker has an opportunity to evaluate the evidence behind the police investigation, providing students with the same constitutional protections given to children and adults in the non-school context.

An estimated 99.6% of districts statewide do not require a court order or warrant for an interrogation to proceed.

BETTER POLICY (Los Angeles County Office of Education): “Police officers may not remove students from class for questioning without a court order or arrest warrant permitting questioning unless there is an immediate threat that the student will cause bodily injury or property damage.” AR 5145.11

Parental/Guardian Notification

Many families are surprised to discover that California has no general law requiring school staff to notify parents or guardians before police officers question their child at school. Yet, district policies can and should add this requirement to maintain trust between school staff and families and to protect vulnerable children and youth.

Of the school districts we analyzed, 97.5% do not require notification of parents or guardians *before* their child is interviewed by police, and only two require parental consent for the interview to proceed.

Statewide, an estimated 21.9% of districts require staff to notify parents only when the interview is already in progress, and an estimated 47.2% do not require school staff to notify parents or guardians until *after* the interrogation is finished. An additional 18% have no policy at all regarding parental notification for a police interview.

Districts ranked among the 50 largest are more likely than other districts to require staff to provide parental notification before an interview (6%) or at the time of the interview (34%).

BETTER POLICY (San Francisco USD): “SFUSD Board Policy requires that a school official must call a parent/guardian and give such parent/guardian a reasonable opportunity to be present for any police interrogation, unless the child is a suspected victim of child abuse.” Memorandum of Understanding Between the San Francisco Police Department and the San Francisco Unified School District (January 14, 2014).

POLICIES ADDRESSING INTERVIEW PROCEDURES

Adult Present with the Student During Police Questioning

Students, few of whom fully understand interrogations and procedures, should be provided an opportunity to have an adult present for support and to protect the students' interests and rights.

An estimated 68.6% of schools statewide allow the student to request the presence of an adult but give police officers discretion to deny this request, undermining the student's interests. Fewer than 1% of districts statewide provide assurance to students and families that an adult (not a police officer) must be present for the student during police questioning, 3.9% give police discretion to decide whether another adult will be present, and 13.4% have no policy regarding adult presence during interviews.

BETTER POLICY (Pomona): "The following steps shall be taken to cooperate with the authorities: 1. The officer shall properly identify himself/herself to the principal or other designated administrator. 2. Parents are notified immediately, if possible, except in cases of child abuse or neglect. The principal should make every effort to inform parent/guardian of the interest of the police authorities, and to advise them that they may be present at the interview and may give or deny consent for the interview. 3. If an officer questions a student or takes any action with a student at school, the principal or other certificated witness must be present. It is the responsibility of the officer to advise the student of his/her rights." AR 5145.11

Student Advised of Their *Miranda* Rights

As noted above, due to their young age and limited experience, most students who are interviewed by police lack a clear understanding of their legal rights and the serious consequences that can result from saying the wrong thing. Many students do not understand that they have the right to remain silent and may make statements without fully understanding the need to be honest and accurate. Students may "guess" or fabricate stories to please the questioning officer.*

Accordingly, it is essential that either school staff or police officers properly advise students of their constitutional rights prior to police questioning.

BETTER POLICY (Oakland): "Immediately prior to questioning a student who is in custody, [Oakland School Police Department] officers shall advise the student of the Miranda admonishment. The OSPD officer shall make every effort to ensure that the student fully understands the Miranda admonishment, including by checking for understanding, explaining any terms that may or may not make sense to the student and invoking Miranda in [the] student's primary language if not English. If the student decides to proceed with answering questions after the Miranda admonishment, the officer shall tell the juvenile that he or she may have a parent/guardian present before and during an interrogation and that he or she may decide to wait for the parent before questioning begins. A request by a student to have a parent/guardian present may be interpreted by the courts as an invocation of the right of the student to remain silent." BP 5415.14

An estimated 98.7% of districts statewide do not require police officers to advise students of their constitutional rights, including the right to remain silent.

Districts among the 50 largest districts also fall short—12% of the 50 largest districts have a policy requiring police officers to advise students of their constitutional rights.

Student Privacy Respected

A positive finding from our analysis is that a wide majority of districts require police officers to respect student privacy and protect a student from humiliation by requiring that police questioning take place away from peers and teachers.

*See *J.D.B. v. North Carolina*, 564 U.S. 261, 269 (2011) (citing to an amicus brief quoting empirical studies that illustrate the heightened risk of false confessions from youth, and noting that "risk [of false confessions] is all the more troubling...[and] all the more acute—when the subject of custodial interrogation is a juvenile."); Richard A. Leo, *False Confessions: Causes, Consequences, and Implications*, 37 J. AM. ACAD. PSYCHIATRY LAW, 332, 336 (2009); Jennifer J. Walters, *Illinois' Weakened Attempt to Prevent False Confessions by Juveniles: The Requirement of Counsel for the Interrogations of Some Juveniles*, 33 LOY. U. CHI. L.J. 487 (2002).

An estimated 65.4% of school districts' policies statewide include a privacy protection.

BETTER POLICY (Romoland): "The principal or designee shall accommodate the interview in a way that causes the least possible disruption for the student and school and provides the student appropriate privacy." BP 5145.11

POLICIES ADDRESSING STUDENT ARRESTS

Most districts' policies lack sufficient clarity as to how staff should respond when a police officer attempts to arrest or otherwise remove a student from campus. For districts that provide little or no guidance to school staff and protections for students, police removal of students on campus can violate students' rights and result in legal liability for school districts.

An estimated 51.6% of school districts statewide have no barriers or conditions to police removing a student from campus. Furthermore, an estimated 11.7% of districts statewide provide no guidance whatsoever about police removing students from campus.

Of the 50 largest districts, 30% have no barriers or conditions to police removing a student from campus and 8% provide no guidance whatsoever regarding police removing students from campus.

*A federal court in Alabama recently held that the young age and smaller size of high school students, particularly as compared to the age and size of adult police officers, were relevant factors in finding that School Resource Officers used excessive force by using chemical spray in their interactions with students.**

Arrest Warrants

Only 15 district policies of the 119 analyzed maintained any procedures governing the enforcement of arrest warrants on campus; 16% of the largest 50 districts and an estimated 5.6% of school districts statewide have such a policy.

BETTER POLICY (Anaheim Union): "If in the course of the interview the law officer finds it necessary to remove the student from school so as to better aid the investigation, the principal or designee shall first ascertain the reason for such action. The Board of Trustees 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." BP 8607.

Notification to School Principal

An estimated 99.3% of school districts statewide do not require the school principal to be notified before police remove a student from school. Additionally, only 18.3% of California school districts require a school administrator to ascertain the reason the student must be removed from school if the administrator is notified of the arrest. Yet, even these districts do not provide guidelines for school staff on appropriate or inappropriate grounds to allow a student to be removed from school.

* J.W. v. Birmingham Bd. of Educ., Civil Action No. 2:10-cv-03314-AKK, 2015 WL 6945118, at *20, 40-47 (N.D. Ala. Sept. 30, 2015) (holding, in a class action on behalf of all current and future students in the school district, that SROs used excessive force against students pursuant to official policy or custom and enjoining specific use of force tactics until the parties developed trainings and procedures to address the constitutional deficiencies).

BETTER POLICY (Ventura County Office of Education): “The police officer shall: (1) identify himself/herself; (2) verify his/her official capacity and authority; (3) indicate to the staff in charge his/her intended purpose (to interview, apprehend, or remove the student from school); (4) assume responsibility for notifying student of his/her rights against self incrimination and advise the student of other rights as required by law; (5) notify staff in charge when a student is being taken from school...” AR 5145.11

Student Privacy Respected

Arresting a student in a public setting can result in humiliation and embarrassment for a student and disrupt to the school environment. However, only two districts in our sample of 119, both of which come from the largest 50 districts, require police officers to take student privacy into consideration when arresting a student on campus (Oakland USD and San Francisco USD).

BETTER POLICY (Oakland): “A private location out of sight and hearing of other students should be arranged for the arrest of a student, where practicable, that will help avoid invasion of the student’s privacy, jeopardizing the safety and welfare of other students, and further disruption of the school campus.” BP 5145.14

Parental or Guardian Notification

Being arrested or otherwise removed from campus by the police is a traumatic experience, and families must be able to provide assistance to their children as quickly as possible. California law recognizes this by mandating that parents or guardians be alerted immediately if their child is removed from campus by police.¹¹⁰

Yet, this mandate is not reflected in all district policies, and the vast majority of districts fail to provide clear and comprehensive instructions to school staff to try multiple methods of contacting parents and guardians. Under such urgent circumstances, merely leaving a phone message is not enough. Reasonable efforts should be made to locate the parent(s) or guardian(s) promptly, using phone numbers and other information from the student’s emergency contact card, along with any additional suggestions from the student.

Among school districts statewide, our analysis estimated that 72.2% require staff to immediately notify parents or guardians when their children are taken into custody by law enforcement, but only 3.7% provide instructions on the efforts school staff must make to reach out to parents. An estimated 11.7% have no policy whatsoever clarifying this legal requirement.

UNLAWFUL POLICIES: San Juan USD ignores the district’s responsibility to contact parents/guardians and assigns it to the police officers, who often have an interest in delaying notification to parents. Chaffey Joint Union High School District allows the police officer to prevent staff from fulfilling their obligation to notify parents. Both of these policies violate the law. Education Code section 49806 states:

When a principal or other school official releases a minor pupil to a peace officer for the purpose of removing the minor from the school premises, the school official shall take immediate steps to notify the parent, guardian, or responsible relative of the minor regarding the release of the minor to the officer, and regarding the place to which the minor is reportedly being taken, except when a minor has been taken into custody as a victim of suspected child abuse, as defined in Section 11165.6 of the Penal Code, or pursuant to Section 305 of the Welfare and Institutions Code.

BETTER POLICY (Elk Grove): “If the student is arrested, the principal or designee shall release the student into the custody of the officer and shall immediately telephone the parent/guardian or responsible relative. The principal or designee shall record the time(s) of contact or attempted contact with the parent/guardian. If, after reasonable effort, contact has not been made by telephone, a letter shall be mailed to the parent/guardian on the same day the student was arrested. The letter will contain information regarding the student’s release, the place to which he/she was reportedly taken, and the time(s) of attempted contact with the parent/guardian.”

POLICIES REGARDING DATA COLLECTION

Reliable, meaningful data collection is key to understanding and minimizing the negative impacts of police interactions on students. Districts cannot simply hide their heads in the sand and refuse to collect information because they are afraid of what they may find. Information is an essential first step for districts to create an educational environment that is inclusive of all students, supportive of their academic achievement, and legally compliant. Data collection also allows school districts to evaluate the effectiveness (and ineffectiveness) of their policies and practices.

An estimated one-third of districts do not require staff to record police-student interactions. Most often, districts require staff to record statistical information about police interviews of students, such as: the date and time of the interview, name of the officer and student, and the reason the interview was conducted. While this is a positive first step, it is unclear whether this information is ever aggregated and systematically analyzed to better understand the reasons why police are interviewing students at school. The federal Office for Civil Rights now mandates that school districts biennially report student arrests and referrals to law enforcement, disaggregated by race, gender, English Learner status and disability status of the student. School districts are well advised to collect this information on an annual basis and to ensure that this data collection encompasses other student-police contacts as well.¹¹¹ The ACLU has developed a comprehensive model data collection policy, available in Appendix B.

POLICIES REGARDING COMPLAINT PROCEDURES

It is essential that students, families, and community members are able to expose police officer misconduct in their schools. A policy regarding complaint procedures is key for a district to maintain the integrity of its schools and ensure that it sufficiently protects its students' rights.

Our study revealed that very few school districts in California clearly describe the procedures by which students and families can complain about police practices. A notable exception is Oakland USD, which lays out its policy and process for complaints about school police in its board policies and in its MOU with the Oakland Police Department. This complaint process was adopted after vigorous and sustained activism by community members in the Black Organizing Project and is a model for school districts statewide. The ACLU developed a model complaints procedure policy found in Appendix B and Appendix D for school districts that do not have their own school police department, and in Appendix C for school districts that have their own school police department.

MEMORANDA OF UNDERSTANDING WITH EXTERNAL POLICE DEPARTMENTS

As noted at the beginning of this report, the ACLU strongly believes that school districts should never permanently assign police officers to school campuses. School staff should call for law enforcement assistance only when there is a real and immediate physical threat to students, teachers, or public safety.¹¹² District staff should take a close look at school campuses that have permanent police presences and assess the data to determine what the student-police interactions look like and what impacts they have on students. In many instances, school district funding would be more effectively spent on supports for students like counselors and mental health professionals in the school.

Regardless of whether school districts maintain a regular police presence on campus, districts should adopt an MOU to govern their relationships with external police agencies (such as local police departments). School district policies govern the behavior of school district employees but do not typically control employees of a different government agency, such as an external police department. As such, school districts and local police departments

should maintain open lines of communication and establish clear roles and protocols to govern their interactions. To that end, the MOU can act as a comprehensive agreement between the school district and police department that provides guidance to both school staff and police officers. These agreements are integral to creating safe and positive school environments that keep students in school and minimize legal liability for districts. MOUs should *not* be used to formalize the presence of police in schools but to provide clear guidance for the limited circumstances when police do visit school campuses.

Very few school districts statewide have MOUs with police departments. Of those that do, an even smaller number address the topics covered in this report. Better examples of MOUs are found in Pasadena USD, Oakland USD, and San Francisco USD. None, however, provide the level of detail sufficient to protect student rights and better insulate California school districts from liability. Appendix D of this report contains a sample MOU containing model language that we recommend school districts adopt. The ACLU would be pleased to work with any district in the state to tailor this model MOU (<https://www.aclusocal.org/right-to-remain-a-student/appendix>) to its particular needs.

RECOMMENDATIONS

1. District policies should mandate proper protection for students' rights in all interactions with police officers. Most critically, police should not arrest, discipline, or otherwise interact with students for violations of school rules or for low-level, non-violent misconduct.

School staff should not call police to handle violations of school rules, including:

- ◆ Failure to participate in class/unpreparedness for class
- ◆ Failure to carry hall-pass/appropriate identification
- ◆ Trespassing
- ◆ Loitering
- ◆ Profanity
- ◆ Inappropriate public displays of affection
- ◆ Failure to wear or correctly wear school uniforms or follow policies regarding clothing
- ◆ Possession of a prohibited item that does not violate the penal code (e.g., cell phones or markers)
- ◆ Inappropriate use of electronic devices
- ◆ Insubordination/defiance
- ◆ Disorderly conduct
- ◆ Verbal altercations, abuse and/or harassment
- ◆ Altercations, abuse and/or harassment over the internet
- ◆ Vandalism and/or graffiti
- ◆ Being late, cutting class, absenteeism, or truancy
- ◆ Physical altercations that do not involve a weapon
- ◆ Perceived drunkenness or intoxication
- ◆ Possession of alcohol
- ◆ Possession of a tool that could be taken to be, but is not intended as, a weapon—such as a nail clipper or file, small penknife, butter knife, toy gun, pepper spray, etc.—unless that item is being brandished as a weapon
- ◆ Alleged or witnessed promoting or claiming of a neighborhood or crew (including verbally, through graffiti, through clothing, or hand signs)
- ◆ Failure to follow school rules

School staff should exhaust all other alternatives before involving police officers for low-level misconduct, including:

- ◆ Battery
- ◆ Battery on school property
- ◆ Battery against school staff
- ◆ Disturbing the peace (or similar offense such as causing a disturbance)
- ◆ Possession of marijuana for personal use

2. Police should have to identify themselves, show proper credentials, and provide the legal authority for their actions when deployed to a school campus to question or detain a student. The principal should be notified immediately when an officer arrives on campus.

3. Student Questioning

Police should not interview students on school campuses during school hours absent a real and immediate physical threat to students, teachers, or public safety

In the limited circumstances when police must question students on school campuses, school districts should require that police:

- ♦ Show a legal warrant
- ♦ Consult with the principal, explain the reason for the interview, the reason the interview must be done at school, and obtain consent before proceeding
- ♦ Conduct the interview in a private location outside of instructional time
- ♦ Notify the student's parents or guardians immediately, and ask for their consent before the interview begins
- ♦ Advise the student of his or her constitutional rights, including the right to remain silent and explaining that anything he/she says can be used against him/her
- ♦ Allow the student to have his/her parent or guardian present during questioning or, if they are unavailable or the student prefers, a school employee of the student's choosing

4. Student Arrests

Police should not arrest students on school campuses during school hours absent a real and immediate physical threat to students, teachers, or public safety.

In the limited circumstances when police must arrest students on school campuses, school districts should require that police:

- ♦ Have a legal warrant
- ♦ Consult with the principal and explain the reason for the arrest, if the arrest is done at school
- ♦ Conduct the arrest in a private location
- ♦ Advise the student of his or her constitutional rights, including the right to remain silent and explaining that anything the student says can be used against him/her and the student has a right to counsel
- ♦ Immediately notify the student's parents or guardians; school staff must also separately notify the student's parents or guardians immediately

5. School districts should collect comprehensive data regarding police-student interactions, publicly reported 2-4 times per year, disaggregated by race, sex, English-learner status, and disability status.

6. School districts should have a comprehensive, easily understood, well-publicized procedure through which students and community members can complain about school or local police misconduct.

The ACLU has developed model school board policies and a model MOU that reflect the above recommendations. Those model policies and model MOU are included in the appendices to this report. They can be accessed online at <https://www.aclusocal.org/right-to-remain-a-student/appendix>

Appendix A is a description of the methodology of the ACLU's study and how we arrived at the findings contained in *The Right to Remain a Student: How California School Policies Fail to Protect and Serve*.

Appendix B is a set of model school board policies for school districts that do not have their own police department. **Appendix C** is a comprehensive model school board policy for school districts that have their own police department. **Appendix D** is a model MOU between a school district and an external law enforcement agency.

ENDNOTES

- 1 See News & Entertainment, *Spring Valley High 'Assault' Student Slammed to Floor and Dragged by School Police Officer*, YouTube (Oct. 27, 2015), <https://www.youtube.com/watch?v=w3T5yVBz5j4>.
- 2 See Polly Mosendz, *FBI, Justice Department will Investigate Spring Valley High School Video of Police Officer Flipping Student*, NEWSWEEK, Oct. 27, 2015, <http://www.newsweek.com/authorities-request-fbi-justice-department-investigation-spring-valley-high-387600>.
- 3 See Henry K. Lee, *Guard Convicted of Video-Recorded Attack on Oakland Student in Wheelchair*, SF GATE, (July 21, 2015), <http://www.sfgate.com/crime/article/Guard-convicted-of-video-recorded-attack-on-6398154.php>.
- 4 Laura Anthony, *Caught on Tape: Oakland Officers Attack High School Student*, ABC7 NEWS (Mar. 6, 2015), <http://abc7news.com/news/oakland-officers-attack-student-caught-on-tape/548326/>; Carmen Tse, *11-Year-Old Star Student Breaks Wrist When School Officer Handcuffs Him*, LAIST (May 21, 2015, 10:50 AM), http://laist.com/2015/05/21/handcuffed_fifth_grader.php; Maureen Magee, *School District Calls for Investigation After Officer Fires Taser at Student During Campus Fight*, L.A. TIMES, March 24, 2016, <http://www.latimes.com/local/lanow/la-me-ln-officer-fires-taser-at-student-during-school-fight-20160324-story.html>.
- 5 EMILY MORGAN ET AL., COUNCIL OF STATE GOV'TS JUSTICE CTR., *THE SCHOOL DISCIPLINE CONSENSUS REPORT: STRATEGIES FROM THE FIELD TO KEEP STUDENTS ENGAGED IN SCHOOL AND OUT OF THE JUVENILE JUSTICE SYSTEM* 11 (2014), https://https://csgjusticecenter.org/wpcontent/uploads/2014/06/The_School_Discipline_Consensus_Report.pdf.
- 6 Matthew T. Theriot, *School Resource Officers and the Criminalization of Student Behavior*, 37 J. CRIM. JUST. 280–87 (2009).
- 7 AMANDA PETTERUTI, JUSTICE POLICY INST., *EDUCATION UNDER ARREST: THE CASE AGAINST POLICE IN SCHOOLS* 13 (2011), http://www.justicepolicy.org/uploads/justicepolicy/documents/educationunderarrest_fullreport.pdf. See also Michael P. Krezmien et al., *Juvenile Court Referrals and the Public Schools: Nature and Extent of the Practice in Five States*, 26 J. CONTEMP. CRIM. JUST. 273, 283 (2010) (finding increases in school-based arrests relative to other juvenile arrests in AZ, HI, MO, and WV in 1994-1995); Sarah Rimer, *Unruly Students Facing Arrest, Not Detention*, N.Y. TIMES, Jan. 4, 2004, http://www.nytimes.com/2004/01/04/us/unruly-students-facing-arrest-not-detention.html?_r=0 (school-based arrests tripled in Miami Dade County FL 1999-2001); ADVANCEMENT PROJECT, *EDUCATION ON LOCKDOWN: THE SCHOOLHOUSE TO JAILHOUSE TRACK 23-24* (2005), <http://www.advancementproject.org/resources/entry/education-on-lockdown-the-schoolhouse-to-jailhouse-track> (finding in Denver, CO 2000-2004, student tickets & arrests increased by 71% and the large majority were for vague, non-serious offenses).
- 8 See *City of Canton, Ohio v. Harris*, 489 U.S. 378, 388 (1989).
- 9 *Monell v. Dep't of Soc. Servs. City of New York*, 436 U.S. 658 (1978); *Pacheco v. Hopmeier*, 770 F. Supp. 2d 1174 (D.N.M. 2011) (granting summary judgment for 16-year-old student-plaintiff on Fourth and Fourteenth Amendment claims against a high school principal who allowed police to handcuff the student).
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