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Critical

## EXPLANATION: INTERVIEWS WITH OR REMOVAL OF STUDENTS

This is a **NEW** policy for district consideration. MSBA has split policy JFG into one policy addressing searches (see JFG) and this policy addressing interviews with and removal of students.

Last year MSBA released "Guidelines for School Officials Regarding Law Enforcement Officials Interviewing Students at School," a guidance created in consultation with law enforcement, school resource officers (SROs), prosecutors and the Children's Division (CD) of the Missouri Department of Social Services. Many of you may have this guidance, which offered practical advice based on the law as we understood it at the time. It was based on the premise that, with some exceptions, law enforcement officials should not interview students at school.

Recently, a federal district court in Missouri refused to dismiss claims against a school district, an SRO in the district and the city that employed the SRO based on a police interview that took place at school. The incident under investigation was off campus and outside school hours. The suit claims the district did not follow its policy on requiring accompaniment of students by an administrator; that the district did not contact the student's parent in advance to obtain consent; that an SRO went and retrieved the student, put her in a room with the police, shut the door, and did not attend the conversation (nor did anyone else for the district); and that the district had an informal policy or custom of permitting all this, the written policy notwithstanding.

Surveying the current state of constitutional law on a scenario of this kind, the court determined that when a school official removes a student from a classroom at the behest of the police and places the student in a room with two police officers behind a closed door, that school official is participating in the "seizure" of the student for a *criminal* investigation. The student's reasonable belief that she was not free to refuse or leave the interview contributed to classifying the scenario as a criminal seizure. Indeed, the court noted that courts generally agree that students will not feel free to decline or terminate the encounter and go about their normal business.

Where there is a seizure without consent, warrant, court order or probable cause, a student's Fourth Amendment rights are violated in this scenario, said the court, noting:

[Student] has alleged that [school official] was the one who directed her out of her class room and told [student] that two [police] officers had come to the school to question her, and who led [student] into the room with the [police] officers and left her there, after closing the door. In short, the complaint alleges that [school official] seized

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[student]. The fact that [school official] did not herself question [student] does not mean that [school official] cannot be sued for unconstitutional seizure.

The court's decision means the student can proceed to present her case at trial. The factual setting may be different, but the court's survey of the constitutional issues applicable to the *allegations*, if proven, is not dependent on any additional fact-finding.

Thus, MSBA is concerned about this "seizure" analysis applied to the involvement of school officials (including SROs) when the investigation is for police criminal purposes instead of school purposes. Because violations of constitutional rights are serious and can provoke protracted, expensive litigation, remedies and/or expensive settlement costs, this policy will take a much stricter approach to law enforcement interviews than was proposed in the guidance.

Quite simply, law enforcement requests to have students taken from class to be questioned about off-campus crimes have a heightened risk to the *school official* under this new court decision. Seizures of this type, if found unconstitutional, may also cause the criminal case to have evidence obtained during the seizure excluded from the prosecutor's case. Thus instead of a successful criminal case, the government officials involved may become defendants in a civil rights action.

**It is extremely important that the district train all administrators and SROs on this policy or whatever policy the district has adopted to regulate access to students by law enforcement. The district should also share this policy and the rationale behind it with those impacted by this policy. Such discussion will go a long way toward maintaining a good relationship with law enforcement officials and other entities.**

<i>MSBA recommends that copies of this document be routed to the following areas because the content is of particular importance to them. The titles on this list may not match those used by the district. Please forward copies to the district equivalent of the title indicated.</i>					
	Board Secretary	X	Business Office		Coaches/Sponsors
	Facility Maintenance		Food Service		Gifted
X	Human Resources	X	Principals		Library/Media Center
	Health Services	X	Counselor		Special Education
	Transportation		Public Info/Communications		Technology

## INTERVIEWS WITH OR REMOVAL OF STUDENTS

### District Personnel Discussions with Students

There are many situations where school employees will meet with individual students. School counselors meet with students to discuss academics and personal issues, teachers often discuss academic performance with students, and school officials meet with students when investigating disciplinary violations. These conversations are an essential part of the educational process. The district will not honor requests by parents/guardians to be informed prior to these discussions, be present during the discussions or prohibit conversations between a student and staff members.

### School Resource Officers (SROs)

An SRO's role in interviewing students or taking students into custody will be addressed in the agreement between the district and the law enforcement agency commissioning the SRO.

### Crimes Committed on District Property or at District Activities

If a student commits a crime on district property or at a district activity, school officials will contact law enforcement as required by law and Board policy. School officials will also contact the student's parent/guardian. District staff will interview the student as part of the misconduct investigation and student discipline process, but law enforcement will not be allowed to interview the student except as described below.

### Law Enforcement Interviews

Law enforcement officials requesting to interview a student at school will provide the principal or designee the reason for the interview and provide any applicable warrant or court order. The principal or designee will record the identity of the law enforcement officials and the stated reason for the interview.

The district will not allow law enforcement officials to interview students at school unless one of the following applies:

1. The law enforcement official has presented an applicable warrant or court order authorizing the official to take custody of the student or interview the student.
2. Consent for the interview is provided by the parent/guardian or the student if the student is 18 or older and is otherwise competent to consent.

3. Exigent circumstances exist that school officials consider sufficient to justify the interview. Exigent circumstances are sufficient if the law enforcement officials demonstrate that delaying the interview may pose a danger to the health or safety of the student, other students, district employees or others.

If the interview is permitted, the principal or designee will be present during the interview. Unless the parent/guardian was already contacted, the principal or designee will attempt to contact the parent/guardian immediately after the interview.

### **Removal of Students from School by Law Enforcement Officials**

If a law enforcement official or other legally authorized person wishes to remove a student from school, the principal or designee must take the following steps:

1. Verify the identity of any law enforcement official or other legally authorized person before they are allowed to take a student into custody.
2. Verify, to the best of his or her ability, the official's authority to take custody of the student before they are allowed to take a student into custody.
3. Require officials who are determined to have the authority to take custody of a student to remove the student in a manner that minimizes disruption to the school environment.
4. Notify the student's parents/guardians that the student is being removed from school.

### **Children's Division (CD) Interviews**

CD representatives may meet with students on campus. The district liaison will work with the CD to arrange such meetings to be minimally disruptive to the student's schedule. If the student is an alleged victim of abuse or neglect, the CD may not meet with the student in any school building or childcare facility where the abuse of the student allegedly occurred. The principal or designee will verify and record the identity of any CD representatives who request to meet with or take custody of a student.

### **Guardian Ad Litem and Court-Appointed Special Advocate Interviews**

When a court-appointed guardian ad litem or special advocate finds it necessary to interview a student during the school day or during periods of extracurricular activities, the principal or designee must be notified prior to the scheduled interview. The principal or designee will verify and record the individual's identity through the court order that appointed the individual. The interview must be conducted in a private setting and with the least disruption to the student's schedule.

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## Student Records Access

Student records will be provided only in accordance with state and federal law.

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***Note: The reader is encouraged to check the index located at the beginning of this section for other pertinent policies and to review administrative procedures and/or forms for related information.***

Adopted:

Cross Refs: KNAJ, Relations with Law Enforcement Authorities

Legal Refs: §§ 210.145, 544.193, RSMo.  
The Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g

Raytown C-2 School District, Raytown, Missouri