



# ARREST, QUESTIONING, AND SEARCH OF STUDENTS ON SCHOOL PREMISES

FC No.: 512

Date: 03-03-04

If a provision of a regulation, departmental directive, rule, or procedure conflicts with a provision of the contract, the contract prevails except where the contract provision conflicts with State law or the Police Collective Bargaining Law. (FOP Contract, Article 61)

Contents:

- I. Policy
- II. Arrests on School Premises
- III. Questioning on School Premises
- IV. Searches on School Premises
- V. Enforcement Action on School Premises
- VI. Reporting Procedures
- VII. Release of Information
- VIII. Proponent Unit
- IX. Cancellation

## I. Policy

It is the policy of this department to set forth specific guidelines whenever students are alleged to have violated the law on school premises and to parallel those guidelines with the policies of the Montgomery County School Board.

## II. Arrests on School Premises

- A. School Board policy places certain restrictions on school officials during arrest situations. The arresting officer will cooperate with school officials in any way possible in order that they can comply with their policy.
- B. Nothing that a school official is required to do, such as notification of parents, will relieve the police of their responsibilities for complying with Department of Police policy. (CALEA 44.2.2.e)
- C. When possible and appropriate, arrests should be made during non-school hours and away from the school premises. (CALEA 74.3.1)

D. Arrests on school premises during school hours shall be done in such a manner as to avoid both embarrassment to the pupil being arrested and jeopardizing the safety and welfare of other pupils. (CALEA 74.3.1)

E. When an officer charges a juvenile student with a crime, whether by arrest or by exception, the officer must notify the juvenile's parent/guardian of the charges. The officer making the notification, the individual notified, and the date and time of the notification must be recorded in the event report. (CALEA 44.2.2.e, 74.3.1)

## III. Questioning on School Premises (CALEA 1.2.3)

A. The questioning of a pupil under arrest is not permitted on school premises unless a failure to question the pupil would jeopardize the safety of other students or staff.

B. A school official should be present when a pupil is questioned by the police in connection with a crime committed on the school premises. A school official should also be present in connection with an investigation which, if not immediately permitted, would compromise the success of that investigation or endanger the lives of the pupils or other persons.

C. In those cases where investigative questioning by police is conducted on school premises, appropriate facilities should be provided by the principal or the principal's authorized representative. Under no circumstances is questioning to be continued if the pupil declines to answer questions, requests a lawyer, requests that the pupil's parents be contacted, or otherwise indicates to the principal or the principal's authorized representative that the pupil does not wish to be questioned by the investigating officer.

- D. In the absence of an arrest, the removal of a pupil from school for the purpose of investigative questioning without the consent of the parent or guardian is not permitted.
- E. The arresting officer should remove the pupil from the premises as soon as practical after an arrest is made and transport the pupil to a police facility.

#### IV. Searches on School Premises

- A. Searches on school premises shall only be permitted:
  - 1. Upon the authority of a search warrant. (CALEA 74.3.1)
  - 2. In any case where the search is essential to prevent imminent danger to the safety or welfare of the pupil, officer, other persons, or school property. (CALEA 1.2.4.e)
  - 3. Incidental to an arrest. (CALEA 1.2.4.d)
- B. Police officers have the authority to conduct a stop-and-frisk for weapons as long as: (CALEA 1.2.4.b)
  - 1. The officer has reasonable suspicion that the suspect is committing, has committed, or is about to commit a crime; and
  - 2. The officer has reason to believe that the suspect is armed and is a threat to the safety of the officer or another person.
- C. Every effort will be made to conduct searches in a manner that will minimize disruption of the normal school routine and minimize embarrassment to pupils affected.

#### V. Enforcement Action on School Premises

- A. CDS Possession
  - 1. Under **CR 5-901**, all CDS arrests are considered to be felonies for the purpose of arrest or search and seizure. This provides officers with the authority to make warrantless arrests regardless of the amount of CDS involved. (All CDS crimes are **Criminal Procedure Article 2-203** exceptions.)
  - 2. It is the policy of the department to make mandatory physical arrests for CDS violations on school property.
- B. Weapons Violations
  - 1. Any person unlawfully in possession of any handgun on school property in violation of

**CR 4-203** will be arrested and removed from school property by the investigating officer. This includes situations where a school administrator has removed the handgun from a student or student's locker prior to the officer's arrival. (The State's Attorney's opinion is that this complies with **Criminal Procedure Article 2-203** because if not arrested, the student could conceivably retrieve another firearm, return to the school, and cause injury to another person.)

- 2. Officers will investigate the origins of any firearm possessed by a juvenile by using an ATF search. The original officer will provide the information from the search to the ISB Criminal Investigations Division, which will be responsible to then track the weapon and determine where the student came into possession of it and consider charges under **CR 4-104**, if appropriate.
- 3. Any person unlawfully in possession of any dangerous or deadly weapon, as defined in **CR 4-101**, on school property will be arrested and removed from school property by the investigating officer if the investigating officer has probable cause to believe that if not arrested the person could conceivably retrieve another weapon, return to the school, and cause injury to another person. This includes situations where a school administrator has removed the weapon from a student or student's locker prior to the officer's arrival. (The State's Attorney's opinion is that this complies with **Criminal Procedure Article 2-203**.)
- 4. Any person unlawfully in possession of any dangerous or deadly weapon, as defined in **CR 4-102**, on school property will be investigated for possible charges or for referral to the **Family Crimes Division (FCD)** for disposition.
- 5. **Officers will consult with a shift supervisor prior to making a physical arrest of a student seven years of age or younger for those crimes listed in this section. The officer and supervisor will consider the safety of the students and faculty. If it is determined an arrest should not be made, the investigation will be closed by exception and referred to FCD for disposition.**

C. Second Degree Assaults

1. **Criminal Procedure Article 2-202** is the principal guideline in determining whether or not to make an on-scene warrantless arrest. The requirements for an on-scene warrantless arrest must include the intent to do great bodily harm.
2. If there is probable cause that the intent is to do great bodily harm, then an on scene physical arrest will be made.
3. If intent does not exist, then the case should be closed by exception and referred to the **FCD** for disposition.

D. Pagers On School Property

**Education Article 26-104 no longer applies in Montgomery County. There are no State restrictions on carrying pagers on school property.**

E. Threatening School Personnel

1. Education Article 26-101 states that a person may not molest or threaten with bodily harm any student, employee, administrator, or any other individual lawfully on or in the immediate vicinity of any institution of elementary, secondary, or higher education.
2. When probable cause exists that a juvenile has violated this article, the case may be closed by exception and referred to **FCD** for disposition.

VI. **Reporting Procedures**

Any incident occurring on school property requiring a police report will be documented fully whether or not an arrest is made. Any contraband, CDS, etc., will be seized and handled in accordance with established procedures.

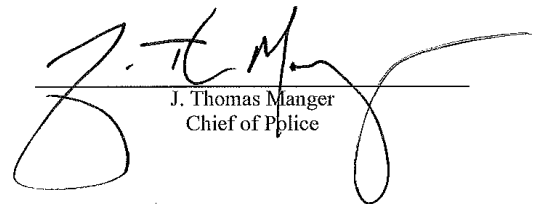
VII. **Release of Information**

Information such as requests for attendance information, date of birth, address, telephone number, etc., may be released to the officer **provided the principal ensures it meets the guidelines outlined in FERPA and** decides on the propriety of the request. This information may also be released to the officer over the telephone after proper identification is made.

VIII. **Proponent Unit:** FSB and ISB Administrations

IX. **Cancellation**

***This directive cancels Function Code 512, effective date 02-9-99.***



J. Thomas Manger  
Chief of Police