

**DRAFT**

## **LAW ENFORCEMENT OFFICIAL ON CAMPUS POLICY**

The Board of Directors of Downtown College Prep (“DCP” or “Charter School”) believes that the safety of students and staff is essential to achieving the goal of student learning. DCP recognizes that the safety of students, staff, and other persons on school grounds and at DCP related activities or events may require the presence and involvement of law enforcement. DCP expects its employees to respect and maintain the dignity of every student while in situations that may subject students to questioning and/or apprehension by law enforcement.

### **Initial Contact with Law Enforcement**

The Principal or designee acting with the proper standard of care in releasing a student to a law enforcement officer (“officer”) for an interview or other legitimate law enforcement purpose will incur no liability. The degree of care required of an Principal or designee consists of ascertaining:

- a) The identity and official capacity of the officer;
- b) The authority under which the officer acts before interrogating, interviewing, or apprehending the student; and
- c) In the case of the release of the child, the reason for such action.

When an officer requests an interview with a student, the Principal or designee shall obtain the officer’s identity and verify that the interview is part of an official investigation. The Principal or designee will request to see the officer’s badge, work identification (“ID”), and/or work credentials. The Principal shall ask for a business card that the Charter School will keep on file and shall record the officer’s name and badge/license/credential number and contact information. If there is any doubt as to the officer’s identity, the Principal shall contact their superior and confirm that the officer is with the agency they claim to be representing.

The Principal or designee will confirm why the officer is at the Charter School and what their intended actions are. (Is the officer going to question the student, investigate a child abuse claim, arrest the student?) Additionally, the Principal or designee will ask if the officer has a warrant, court order, or written parental consent.

The Principal or designee will suggest that the student be questioned or detained off campus during non-school hours.

**Commented [RS1]:** According to legal: This is not required to interview a student but can provide legitimacy to the police officer.

**Commented [RS2]:** According to legal: Police do not have to comply, but it is best practice to ask.

### **Interrogation/Interview of DCP Students by Law Enforcement**

An officer may enter a school site to interview or interrogate students as suspects or witnesses. For non-school related matters, absent extenuating circumstances such as child abuse/neglect or felony investigations, the officer will be requested to refrain from interrogating/interviewing DCP students on school grounds or at Charter School related activities or events. The Principal or designee has no right to prohibit an officer from interrogating or interviewing students while at school. Resisting, delaying, or obstructing an officer from discharging any official duty is a

**Commented [RS3]:** According to legal: Administration cannot prevent law enforcement from interviewing students on campus, but they can request that the interview happen outside of school hours and off school grounds. The police are not required to abide by the request.

criminal offense.

The Principal or designee shall notify the student's parent/guardian as soon as practicable when an officer requests to interrogate/interview a student on Charter School premises, except in cases of child abuse or neglect. When an officer seeks to interview/interrogate a student who has an individualized education plan ("IEP") or a plan under section 504 of the Rehabilitation Act of 1973 ("504 Plan"), or is an English Learner ("EL"), the Principal or designee will endeavor to provide notice to the student's parent/guardian of the officer's desire to interview the student and request authorization from the parent/guardian to notify the officer that the student has an IEP, a 504 plan, or is an EL.

The Principal or designee shall work with the officer to accommodate a requested interview/interrogation in a way that causes the least possible disruption for the student and Charter School and provides the student with appropriate privacy in a private location away from other students and staff, as necessary.

The Principal or designee, acting in *loco parentis*, must protect students' constitutionally protected rights, by informing the student(s) of their fundamental, constitutional right of the privilege against self-incrimination, or ensure that the officer informs the student, prior to questioning by the officer. Prior to any interrogation/interview by the officer of a student who is in temporary custody, and before any waiver of Miranda rights is made by a student seventeen (17) years of age or younger, the student shall first consult with legal counsel either in person, by telephone, or by video conference. The student or their parent/guardian may not waive this right to consult with legal counsel prior to a custodial interrogation or prior to a waiver of Miranda rights.

The Principal or designee will also inform students of their right to have the Principal or designee or parent/guardian present during any questioning of a minor DCP student and request to be present for any questioning of DCP students. The officer must include the Principal or designee in an interview of a minor if the minor requests the Principal or designee be present or the student does not object to the Principal or designee's request to be present. If the student requests to see their parent/guardian, the request must be construed as the minor's right to invoke the 5th Amendment.

It is the officer's responsibility to meet any legal requirements from a law enforcement perspective relating to advising a student of constitutional or statutory rights. An officer need not inform a student of their right to have a parent/guardian present and, absent a minor's request for a parent/guardian or other adult, the absence of a parent/guardian will not invalidate a confession. Officers have a statutory obligation to ensure a minor seventeen (17) years of age or younger speaks with an attorney prior to waiving the student's Miranda rights.

### **Apprehension of DCP Students by Law Enforcement**

In an effort to minimize disruption to the learning environment, the Principal or designee should discuss with the officer the reasonableness of making an arrest when students are actively participating in classroom instruction. When considering whether it is reasonable to arrest a student on campus, the Principal or designee should recommend the officer consider the following:

- The seriousness of the offense

**Commented [RS4]:** According to legal: This does not include probation officers coming on to campus to conduct drug tests. We recommend the Charter School not permit this to occur on campus.

**Commented [RS5]:** Legal Counsel, " This is not legally required, but is permissive. By informing law enforcement that the policy is to notify parents prior to police interview, you may incentive the police to seek to complete this interview off campus and off school hours. ."

**Commented [RS6]:** According to legal: The law here is permissive. DCP should decide if they want to inform students of this right.

Unless a student so requests, there is no requirement that a school official be present while a pupil is being questioned. Nonetheless, it is a good policy to have a school official present to ensure the rights of the student are protected.

- Whether the arrest can be affected by other means
- Whether there is an imminent threat to public safety.

Because the Charter School official stands in *loco parentis*, parental permission is not necessary before a minor can be questioned and/or arrested at the Charter School.

A minor may be taken into custody without a warrant if there is reasonable cause that the minor is:

1. A minor between twelve (12) years of age and seventeen (17) years of age, inclusive, who persistently or habitually refuses to obey the reasonable and proper orders or directions of the minor's parents, guardian, or custodian, or who is beyond the control of that person, or who is a minor between twelve (12) years of age and seventeen (17) years of age, inclusive, when the minor violated any ordinance of any California city or county establishing a curfew based solely on age is within the jurisdiction of the juvenile court which may adjudge the minor to be a ward of the court.
2. A person with four (4) or more trancies within one (1) school year as defined in Education Code section 48260;
3. A ward of the court;
4. A person under the age of eighteen (18) when the student violates any law of California, city, county, and/or of the United States and is therefore under the jurisdiction of the juvenile court; or
5. Any person alleged, when they are twelve (12) years or older, to have committed specified crimes under California Welfare and Institutions Code section 602, subdivision (b).

### Request for Student Information by Law Enforcement

Pursuant to student confidentiality under the Family Educational Rights Privacy Act ("FERPA"), written parent/guardian consent is required prior to disclosing a student's personally identifiable information ("PII") and education records. Should an officer request a student's PII or student records, the requested information may be protected by FERPA. With few exceptions, the Charter School must obtain written parent/guardian consent to release PII or student records unless the officer has provided DCP with a lawfully issued subpoena. If DCP receives a lawfully issued subpoena, DCP shall comply with the subpoena after providing the parent/guardian with reasonable notice of its intent to comply.

Under FERPA, DCP is permitted to disclose FERPA-protected information to an officer in connection with an emergency, which must be an actual, impending or imminent emergency. The health or safety emergency provision under FERPA permits such disclosures of PII or a student's educational records when the disclosure is necessary to protect the health or safety of the student or other individuals. This exception to FERPA's general consent requirement is limited to the period of the emergency and generally does not allow for a blanket release of PII from a student's educational records. Rather, these disclosures must be related to an actual, impending, or imminent emergency, such as a natural disaster, a terrorist attack, a campus shooting, or the outbreak of an epidemic disease.

The Charter School may disclose "directory information" of a student, which includes, but is not

**Commented [RS7]:** Legal: (1) Murder.  
 (2) Rape by force, violence, duress, menace, or fear of immediate and unlawful bodily injury.  
 (3) Sodomy by force, violence, duress, menace, or fear of immediate and unlawful bodily injury.  
 (4) Oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury.  
 (5) Sexual penetration by force, violence, duress, menace, or fear of immediate and unlawful bodily injury.

**Commented [RS8]:** Per legal: ERPA's health or safety emergency provision permits such disclosures when the disclosure is necessary to protect the health or safety of the student or other individuals. See 34 CFR §§ 99.31(a)(10) and 99.36. This exception to FERPA's general consent requirement is limited to the period of the emergency and generally does not allow for a blanket release of PII from a student's education records. Rather, these disclosures must be related to an actual, impending, or imminent emergency, such as a natural disaster, a terrorist attack, a campus shooting, or the outbreak of an epidemic disease.

**Commented [RS9R8]:** We are following up with legal counsel to get emergency defined or at least have examples

**Commented [RS10]:** Per legal: Under this health or safety emergency provision, an educational agency or institution must determine whether to disclose personally identifiable information from education records on a case-by-case basis, taking into account the totality of the circumstances pertaining to a threat to the health or safety of the student or others. If the school determines that there is an articulable and significant threat to the health or safety of the student or other individuals and that a party needs personally identifiable information from education records to protect the health or safety of the student or other individuals, it may disclose that information to appropriate parties without consent. (34 CFR § 99.36).

The phrase "articulable and significant threat" means that if a school official can explain why, based on all the information then available, the official reasonably believes, for instance, that a student poses a significant threat, such as a threat of substantial bodily harm to any person, including the student, the school official may disclose personally identifiable information from education records without consent to any person whose knowledge of the information will assist in protecting a person from threat. This is a flexible standard under which the Department of Education defers to school administrators so that they may bring appropriate resources to bear on the situation, provided that there is a rational basis for the educational agency's or institution's decisions about the nature of the emergency and the appropriate parties to whom the information should be disclosed.

Also, please note that within a reasonable period of time after a disclosure is made under this exception, an educational agency or institution must record in the student's education records the articulable and significant threat that formed the basis for the disclosure, and the parties to whom the information was disclosed. (34 CFR § 99.32(a)(5)).

limited to, information such as the student's name, address, telephone listing, date and place of birth, participation in officially recognized activities and sports, and dates of attendance, to law enforcement officials, without the parent/guardian or eligible student's written consent, if the Charter School has given public notice to parents and eligible students of (1) the types of PII that it has designated as "directory information," (2) the right of the parent or eligible student to restrict the disclosure of such information, and (3) the period of time within which a parent or eligible student has to notify the educational agency or institution in writing that he or she does not want any or all of those types of information designated as "directory information."

### Records of Student Interviews and Removals by Law Enforcement

The Principal or designee shall maintain a record of an officer's interview(s) or interrogation(s) of DCP students at the Charter School site and the removal of a DCP student by an officer from the school site.

Although subpoenas may legally be served at the Charter School on students aged twelve (12) or older, the DCP believes that serving officials should be strongly urged to serve subpoenas at the home of the student or other non-school location whenever possible. When served at the Charter School, the Principal or designee shall take reasonable steps to minimize the student's embarrassment and protect the student's privacy and loss of class time.

If an officer takes custody of a student (removes the student from school), the Principal or designee must immediately inform the student's parent(s)/guardian(s) or responsible relative. The only time the student's parent(s)/guardian(s) should not be informed by the Principal or designee is in the case of a student being taken into custody because they have suffered child abuse. In those cases, the Charter School must provide the officer information as to how the student's parent(s)/guardian(s) can be contacted.

Under no circumstances should the Principal or designees release confidential information such as details about the student's apprehension to other students or parent(s)/guardian(s) of other students unless those persons have a right to such information.

Parent/guardian permission for the Principal to release the child to the authorities is not required. Parent(s)/guardian(s) must be notified immediately in case of emergency or if the release of a student to an officer is necessary, e.g., removal of the student from campus in order to aid law enforcement in an investigation. An emergency exists if the immediate assistance of the child is required by the officer in the detection or apprehension of a criminal.

**Commented [RS11]:** DCP currently has the following in student & family handbooks: "Directory Information" is information that is generally not considered harmful or an invasion of privacy if released. Charter School may disclose the personally identifiable information that it has designated as directory information without a parent's or eligible student's prior written consent. The Charter School has designated the following information as directory information:

- Student's name
- Student's address
- Parent's/guardian's address
- Telephone listing
- Student's electronic mail address
- Parent's/guardian's electronic mail address
- Photograph/video
- Date and place of birth
- Dates of attendance
- Grade level
- Participation in officially recognized activities and sports
- Weight and height of members of athletic teams
- Degrees, honors, and awards received
- The most recent educational agency or institution attended
- Student ID number, user ID, or other unique personal identifier used to communicate in electronic systems that cannot be used to access education records without a PIN, password, etc. (A student's social security number, in whole or in part, cannot be used for this purpose.)

If you do not want the Charter School to disclose directory information from your child's education records without your prior written consent, you must notify the Charter School in writing at the time of enrollment or re-enrollment. Please notify the Principal at your school site. A copy of the complete Policy is available on the Charter School website or upon request at the main office.