F3 Law

The Right To Remain Silent: Rules for Questioning Students

Senate Bill 203: New Restrictions for Peace Officers on Interrogating Minors

School administrators may find themselves confronted with the difficult situation of whether to permit school resource officers (SROs) and other law enforcement officers to question a student on school grounds. Effective January 1, 2021, a peace officer's right to question a student who is age 17 or younger is subject to new and important restrictions. Previously, similar restrictions were only applicable to a student who is age 15 or younger. In this tip sheet, we provide a general overview of what school administrators need to know.

WHAT WERE THE PREVIOUS REQUIREMENTS FOR CUSTODIAL INTERROGATIONS?

Before 2018, a peace officer who had reasonable cause to believe that a minor had committed a crime or violated a juvenile court order could take the minor into temporary custody and question him or her, so long as the officer first advised the student of his or her ***Miranda*** rights, i.e., that he or she had the right to remain silent, to have an attorney present during any interrogation, and to have legal counsel appointed if he or she was unable to afford counsel.

As of January 1, 2018, Senate Bill 395 (Welfare & Institutions Code section 625.6) prohibited peace officers from conducting custodial interrogations of a youth who is age 15 or younger until after the youth has actually consulted with legal counsel. Thus, it was no longer sufficient for a peace officer to merely advise the minor of his or her right to have counsel present or appointed.

If a peace officer proceeded with a custodial interrogation in violation of this right, the minor's statement was not automatically inadmissible in court, but a court must consider the effect of the violation when determining whether to admit the statement.

WHAT ARE THE NEW REQUIREMENTS FOR CUSTODIAL INTERROGATIONS?

Effective January 1, 2021, Senate Bill 203 amended Welfare & Institutions Code section 625.6 to extend and expand the previous restrictions to peace officers conducting custodial interrogations of a student who is age 17 or younger. If a peace officer proceeds with a custodial interrogation in violation of this expanded right, a court must also consider whether the officer willfully violated the right when determining the officer's credibility in a court proceeding.

WHAT IF THE MINOR HAS INFORMATION RELEVANT TO AN IMMINENT THREAT?

A peace officer need not allow the minor to consult with legal counsel when: (1) the officer reasonably believes that the information sought is necessary to protect life or property from imminent threat, and (2) the officer's questions are limited to those that are reasonably necessary to obtain that information.

DO THESE RESTRICTIONS APPLY TO SCHOOL ADMINISTRATORS?

No. These restrictions apply only to "peace officers," which may include SROs, school police officers (SPOs), school safety officers (SSOs), and other types of law enforcement officers. The relevant question is whether the individual's primary duty is the enforcement of the law.

WHAT IS A "CUSTODIAL INTERROGATION"?

The U.S. Supreme Court has defined a "custodial interrogation" as the "questioning . . . by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way."(Miranda v. Arizona (1966) 384 U.S. 436, 444.) The relevant question is whether a reasonable person would have believed that he or she was not free to end the interrogation and leave.

HOW DO THESE CHANGES AFFECT SCHOOL INVESTIGATIONS AND DISCIPLINARY PROCEEDINGS?

SB 203 does not apply to school administrators, nor does it apply to disciplinary hearings before school district or county boards of education. In other words, unlike SROs, school administrators may question minors immediately, without waiting until after the minor has consulted with legal counsel. SB 203 does not restrict the admissibility of any statements made by the minor to the administrator.

School administrators generally should not allow peace officers to conduct interviews on their behalf. Nor should they wait to conduct interviews until after the officers have done so, because, under SB 203, the officers will be required to postpone their questioning until after the minor has consulted with legal counsel. Allowing peace officers to conduct an interview on an administrator's behalf also may make it difficult for administrators to obtain the results of investigations conducted by officers, or the officers may later refuse to testify in disciplinary hearings, citing the confidentiality of juvenile court records.

By its terms, SB 203 does not prohibit the introduction ***in school disciplinary hearings*** of statements made by minors under the age of 18 to school administrators before the minor's consultation with legal counsel. This interpretation is underscored by the fact that the California Legislature added SB 395 and SB 203 to the chapter of the Welfare & Institutions Code concerning juvenile courts, and not to the section of the Education Code addressing student discipline. Nevertheless, school districts should be prepared for students and their attorneys to make contrary arguments during the course of disciplinary proceedings.

WHAT IMPACT DOES SB 395 HAVE ON STUDENT SEARCHES AT SCHOOL?

None. SB 203 pertains to the questioning of students by peace officers, not to searches of students' property. Student searches are still subject to a reasonableness standard, whether conducted by school administrators, SPOs, SSOs, or SROs.