

**SAN DIEGO POLICE DEPARTMENT
ORDER**

DATE/TIME: January 6, 2015 – 1600 Hours

NUMBER: OR 15-02

SUBJECT: Obtaining Court Orders In Lieu of Parental/Guardian Notification and Consent for Interviews of Minors at Public Schools

COST CENTER: 1914141111

SCOPE: ALL MEMBERS OF THE DEPARTMENT

When an officer interviews a student on school grounds as part of a law enforcement agency investigation unrelated to school activity (whether a suspect, victim or witness) the officer needs consent, a court order/warrant, or exigent circumstances. Exigent circumstances exist if a child is likely to experience serious injury or harm in the time it would take to get a warrant or court order. In contrast, officers are generally not required to obtain consent, a warrant, or court order to investigate incidents occurring on school grounds related to maintaining discipline and/or safety in the classroom, on school grounds, or at school functions. This distinction is made because government officials have authority to maintain a safe and secure school campus.

Background: In 2009, the Ninth Circuit Court of Appeals ruled that a two-hour interview of a child at school conducted by a caseworker and accompanied by a deputy sheriff, without consent, a warrant, or a court order constituted an unreasonable seizure under the Fourth Amendment. *Greene v. Camreta*, 588 F.3d 1011 (9th Cir. 2009). In that case, which occurred in Oregon, a case worker and law enforcement were investigating allegations that the child was the victim of child abuse. Because the Ninth Circuit had not previously announced this rule of law (a Fourth Amendment violation), the caseworker and sheriff's deputy were protected by qualified immunity and were not liable because they had not violated a *clearly established constitutional right*. However, in its ruling, the Ninth Circuit cautioned that government officials were now on notice that they needed consent, a warrant, court order, or exigent circumstances before conducting an interview for LEA purposes on school grounds. Consequently, qualified immunity would not be available if the same conduct were repeated in the future.

In 2011, the U.S. Supreme Court reviewed the case. *Camreta v. Greene*, 131 S. Ct. 2020 (2011). The Supreme Court vacated the Ninth Circuit's decision as moot, since the student had moved out of the state and was about to turn 18. In vacating the Ninth Circuit's ruling, the Supreme Court left open the question of what requirements must be satisfied prior to allowing a student to be interviewed on school grounds. Qualified immunity is only available to government officials so long as their conduct does not violate clearly established constitutional rights. As a result of the Supreme Court vacating the Ninth Circuit's decision, there is no clearly established constitutional right. Therefore, if the same conduct occurred again (interview

of a student at school without consent, a warrant, court order, or exigent circumstances), the government official would have qualified immunity. Nonetheless, even though qualified immunity might afford protection from liability for the government, a future decision might still find that the interview was an unlawful seizure, and unconstitutional.

Barring exigent circumstances, Department members must obtain parental/guardian consent or a court order prior to interviewing a minor victim, suspect, or witness on public school grounds during school hours. If a court order is required prior to conducting the interview, Department members will immediately contact the “on-call” Child Abuse or Sex Crimes supervisor for cases involving sexual assaults, child abuse, child molest or child neglect investigations. The Area Station Juvenile Services Team supervisor or detective should be contacted for all other cases involving juvenile victims, suspects, or witnesses necessitating a court order. The supervisors and detectives assigned to these units will assist the Department member with obtaining the court order.

This procedure involves an “ex parte” application and other documents that are not reviewed by either a district or city attorney. A supervisor will review the prepared documents prior to the Department member seeking the court order in Superior Court. The procedure and documents for obtaining the court order, as well as Parental Consent Forms, in English and Spanish, are located in the Department’s F Drive under F:/Templates/Greene Decision Documents. The “All Files” tab must be used to obtain the signed Points and Authority document which is in a PDF format.

A court order is not necessary when Department members are investigating incidents that were initiated at school. An example of this would be when Department members receive information about a pending disturbance at a school or other incidents involving students that occurred on school grounds during school hours. This precedent is well established in existing case law that school administrators and government officials have a duty to maintain discipline at the school.

The paramount issue is the safety and welfare of the minor. Reasonable steps must be taken by the Department member to obtain consent from the minor’s parent or guardian prior to the interview. In the event the parent(s) or guardian(s) is (are) a suspect(s), or other exigent circumstances arise that precludes obtaining consent, these facts must be articulated in the Department member’s report. The Department member will also memorialize the time the minor was removed from the classroom, the length of the interview, the time the minor was released from the interview, and whether the interview was recorded.

Please read at squad conferences and give a copy to all personnel.