

## **N.D.A.G. Letter to Stastney (May 31, 1988)**

May 31, 1988

Mr. Ron Stastney  
Assistant Superintendent  
Department of Public Instruction  
State Capitol  
Bismarck, ND 58501

Dear Mr. Stastney:

Thank you for your letter dated May 11, 1988. You have inquired as to recent demands for the interviewing of students, presumably juveniles, without notification of the parent or guardian and without an opportunity for the parent or guardian to be present.

You have requested my opinion regarding the right of a police officer to demand an interview of student without parental notification or the presence of a parent at the interview. A police officer may certainly demand an interview under these circumstances, but it appears that the main concern of your letter is whether the school officials must submit to that demand.

It is difficult to provide a general response to your inquiry since each specific instance must often be judged on a case-by-case basis. However, some basic principles set forth in statutory and case law may be helpful in resolving these questions. Different procedures may, however, apply which are dependent upon whether the child to be interviewed is a suspect for the commission of a delinquent act, a witness to an offense, or a victim of an offense.

If an investigation of an offense focuses upon the child as the person who committed the offense, any statement of the child must be made in the presence of that child's parent, guardian, or custodian, or in their absence, in the presence of an attorney. An attorney must be provided for the child, even at state expense, if that child is not represented by his parent, guardian, or custodian. Absent the presence of one of these persons at the interview, the child's statement will not be admissible at later proceedings. In Interest of D. S., 263 N.W.2d 114 (N.D. 1978). Although not all statements made by juveniles to police officers will come within this rule, I would anticipate that an interview with a child when an investigation has focused upon that child for the purpose of determining involvement in the offense will cause this rule's application. Our supreme court has specifically stated that a juvenile in this instance has a right to the presence of an attorney, parent, guardian, or custodian at the time of the questioning.

A somewhat different situation arises when the child is a witness to an offense or a victim of a criminal act. 1984 N.D. Att'y Op. 112 concluded that school officials were not required to obtain parental consent before a child is interviewed at school by a protective service

worker regarding a report of suspected child abuse or neglect. That opinion also concluded that school officials have immunity from liability under N.D.C.C. § 50-25.1-09 to the extent that their actions are part of the process of making a report or part of the process of providing protective services for the child.

In addition, N.D.C.C. § 12.1-20-16 authorizes the appointment of a guardian ad litem to act on behalf of a child who is a material or prosecuting witness in criminal proceedings involving certain sex offenses at all stages of the proceedings arising from the violation. N.D.C.C. § 12.1-35-04 requires, to the extent possible, the prosecuting attorney and appropriate law enforcement personnel to protect a child victim or witness from psychological damage of repeated interrogation.

Although these statutory provisions are in place to protect child victims and witnesses, none of these provisions directly relate to whether school officials should, or are required to, allow interviews of students by law enforcement officials. These situations may involve difficult decisions especially when the child is alleged to be the victim of abuse by that child's parent or guardian. In these instances, it may very well not be appropriate to notify the parent or guardian or permit the parent or guardian to be present at the time of the child's interview.

In the instances in which the child is a victim of an offense, I believe that 1984 N.D. Att'y Op. 112 would be applicable. However, in those cases where the child is only a witness, and not the victim, of an offense, each case must be viewed in light of the facts and circumstances existing at the time of proposed interview. As in the case of interviewing a child abuse victim, no law prohibits contacts with the child by law enforcement authorities or notice to and presence of a child's parents when that child is a witness to an offense. Although there may be situations where parental notice or consent may not be appropriate, such as an investigation concerning criminal acts committed by the parents or other family members, it may be appropriate for parental contact prior to the interview of a child witness. In fact, support of the parents may very well assist the law enforcement authorities in obtaining the child's cooperation in providing information concerning offenses which that child may have witnessed.

As I have stated previously, I can set forth no specific rule which must be followed in instances in which the child is either a victim of, or a witness to, a criminal offense. Both the school authorities and law enforcement officials must evaluate each incident on a case-by-case basis.

If a law enforcement officer would seek to interview a child victim or witness off of school property, school officials would have little involvement in that interview. However, since the school board has authority to operate and maintain its schools (N.D.C.C. § 15-29-08(2)) and to have custody and control of all school property belonging to the district (N.D.C.C. § 15-29-08(9)), a school district may very well establish guidelines for the interviewing of students on or within school property.

I have had an opportunity to review the proposed policies of the North Dakota School

Boards Association. I hesitate to give my stamp of approval or disapproval to these policies since I believe that guidelines and policies of this kind should be created to strike a balance between the protection of the child and the necessity for prompt and thorough investigation of criminal acts. The local school district may make its decision to be more or less restrictive than the recommended policies. I can envision instances wherein in-school interviews may be inappropriate, but in other cases such interviews may be the only practicable way to obtain evidence of a criminal offense or to protect the child from further harm.

I do note, however, that not all interviews by law enforcement officers will be an interrogation of a child. This is especially true when the child is a victim or witness to an offense. In addition, in these specific incidents rarely will a child be informed of what is commonly known as the Miranda warnings since the child is not a suspect of a criminal offense and the officer has not focused his or her investigation upon the child as the perpetrator of an offense.

As I have stated previously, law enforcement officers are under certain statutory and legal constraints when interrogating a juvenile who is a suspect in a criminal offense. However, these legal constraints may not be applicable if the child is a victim or a witness to a criminal offense. It may be appropriate to consider these distinctions in any recommended policies.

I do, however, completely support the concept set forth in the recommended policies that parents be notified of the interview when circumstances make such notice appropriate, that the child be protected against embarrassment and loss of class time, and that school officials be notified and assist the law enforcement official and the student in ensuring the timely and appropriate resolution of the interview.

I hope that this response is of some help to you. I know that generally law enforcement officials are more than willing to cooperate with school officials in formulating policies to assist each in the performance of their responsibilities and duties. If local school boards anticipate adopting the recommended policies in the form submitted to me or with modifications to meet local needs, I would suggest that the boards initiate contact with their city and county law enforcement officials to permit the adoption of appropriate regulations and to avoid misunderstanding and confusion in later implementation of those policies.

Sincerely,

Nicholas J. Spaeth

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