

N.D.A.G. Letter to Kalsch (May 23, 1991)

May 23, 1991

Mr. Dwight F. Kalash
Assistant City Attorney
P.O. Box 1335
Grand Forks, ND 58206-1335

Dear Mr. Kalash:

Thank you for your May 17, 1991, letter. In that letter, you have inquired as to whether House Bill 1409 requires that law enforcement agencies provide notice to the principal of the school where a student is enrolled of violations of municipal ordinances equivalent to N.D.C.C. §§ 5-01-08, 19-03.1-23, 39-08-01, or 39-08-18.

The portion of House Bill 1409 relevant to your inquiry provides:

Law enforcement agencies - Duty to inform team. Notwithstanding any other provision of law, a law enforcement agency shall provide notice of any incident occurring within the agency's jurisdiction in which the agency has probable cause to believe a student violated section 5-01-08, 19-03.1-23, 39-08-01, or 39-08-18, except when there is a prolonged criminal investigation and revealing information would jeopardize a successful conclusion to the case. The notice shall be in writing and shall be provided within two weeks after an incident occurs, to the principal of the school where the student is enrolled. The principal shall forward the reports to the school's chemical abuse preassessment team or building level support team.

House Bill 1409 does not require, as a condition precedent to the written notice, that the student violator be cited or charged with one or more of the specified offenses. Rather, the requirement of the written notice to the school principal arises when a law enforcement agency has probable cause to believe that a student has violated one or more of these North Dakota laws. A law enforcement officer or agency need only make a determination that probable cause exists to believe that the student violated the listed alcohol or drug laws and the written notice will then be provided to the principal regardless of whether the student is actually charged with an offense.

House Bill 1409 does not include language applying the written notice requirement to "an equivalent ordinance" of a city. If this Act imposed as a condition precedent to the written notice requirement that the student be arrested or cited with those specific offenses, then the legislative failure to include the "equivalent ordinance" language would be an important consideration in response to your inquiry. However, no such requirement is imposed by House Bill 1409. Therefore, the law enforcement officer or agency need only

determine that probable cause exists that one or more of the listed offenses have occurred to impose the written notice requirement of House Bill 1409 regardless of what later action taken upon this probable cause determination.

In enacting a statute, it is presumed that a just and reasonable result feasible of execution is intended. N.D.C.C. § 1-02-38. In addition, the object sought to be attained by the legislation, the circumstances under which the statute was enacted, the legislative history of the statute, and the consequences of a particular construction may be considered in determining the intention of ambiguous legislation. N.D.C.C. § 1-02-39.

An examination of the legislative history of House Bill 1409 discloses that the purpose of this enactment was to allow early intervention of school authorities if a student was involved in drug or alcohol abuse and to allow law enforcement agencies to work as partners with schools in dealing with drug or alcohol abuse by our youth.

Probable cause to believe that a student has violated a city ordinance would also constitute probable cause to believe the equivalent state statute had been violated. Reading House Bill 1409 as requiring that a student must be cited solely for the state law violation to the exclusion of an equivalent city ordinance would be beyond the express language of House Bill 1409 and could defeat the object of the legislation to permit school authorities to provide early intervention and services to a student with a drug or alcohol problem. I see no legislative language or intention in House Bill 1409 that the drug or alcohol abuse intervention is dependent upon whether an officer later cites a student for a municipal or state law violation.

In summary, the written notice requirement of House Bill 1409 is not dependent upon the arrest, citation, or conviction of a student. The notice should be provided to the school principal if the law enforcement agency has probable cause to believe that the student has violated one or more of the specific statutory provisions set forth in House Bill 1409. If probable cause does exist, this written notice should be provided to the principal whether or not the student has been arrested, is cited, or is ultimately found to have committed the offense.

I hope that I have adequately responded to your inquiry.

Sincerely,

Nicholas J. Spaeth

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