

STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL OPINION by TERRY GODDARD ATTORNEY GENERAL May 26, 2004	No. I04-003 (R04-003) Re: Law Enforcement Interviews of Students at Public Schools
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TO: The Honorable Slade Mead
Arizona State Senate

The Honorable Linda Lopez
Arizona House of Representatives

Questions Presented

You have asked the following questions related to the authority of law enforcement officers to interview students at public schools and the authority of school boards to adopt parental notification policies for such interviews:

1. Whether a school official must comply with a law enforcement officer's demand to interview a student;
2. Whether a school official must comply with a law enforcement officer's directive to refrain from contacting the parents of a student whom the officer intends to interview; and whether a school official may be held criminally liable for disregarding such a directive;

3. Whether a school official must comply with a law enforcement officer's directive to refrain from informing a student whom the officer intends to interview that the student has the right to consult his or her parents before answering the officer's questions; and whether a school official may be held criminally liable for disregarding such a directive;

4. Whether a school official must comply with a parent's demands to (a) inform the parent whenever a law enforcement officer seeks to interview the child/student, and (b) prohibit the officer from interviewing the child/student unless the parent is present; and

5. Whether a school official must advise a student of juvenile *Miranda* rights before interviewing the student regarding acts that constitute crimes.

Summary Answers

1. If law enforcement officers¹ are seeking only to interview a student, the officers are subject to regular school policy regarding access to students. Law enforcement officers making an arrest or serving a subpoena or a search warrant, however, generally have the right to immediate access to a student.

2. Although Arizona law does not require that school officials notify parents before law enforcement officers interview a student, school officials may generally provide such notice. However, in instances where law enforcement officers seek to interview a student in connection with an investigation of child abuse or other criminal activity by the student's parent, insistence on parental notification and/or

¹Throughout this opinion, the term "law enforcement officer" includes members of federal, state, and local law enforcement agencies, and anyone acting on their behalf, including school resource officers.

consent is improper. A school official who insists on parental notification under these circumstances may be subject to “criminal liability” for hindering prosecution if the school official acts with the “intent to hinder the apprehension, prosecution, conviction or punishment of another for any [crime].” A.R.S. §§ 13-2511 and -2512. Insistence on parental notification is also inappropriate under circumstances in which delay pending parental notification would jeopardize public safety.

3. School officials must comply with a law enforcement officer’s directive to refrain from informing a student that the student may consult his or her parents before answering the officer’s questions if the proposed interview relates to an investigation of child abuse or other criminal activity by the student’s parent or where delay pending notification of a parent would jeopardize public safety. In other circumstances, a school official may inform a student that he or she may consult with a parent prior to questioning.

4. School officials are not required to comply with unconditional demands from parents for prior notice of, or consent to, police interviews of a student. This issue may appropriately be addressed in school policies as described above.

5. A school official is not required to advise a student of juvenile *Miranda* warnings unless the official is conducting a custodial interrogation and acting in the capacity of a law enforcement officer.

Analysis

A. Authority of School Boards to Set Policies Regarding Law Enforcement Interviews.

“School boards have only the authority granted by statute, and such authority must be exercised in a manner permitted by statute.” *Campbell v. Harris*, 131 Ariz. 109, 112, 638 P.2d 1355, 1358 (App. 1981); *see also* Ariz. Att’y Gen. Op. I88-062. Rules that school boards prescribe and enforce to govern schools must be consistent with law. A.R.S. § 15-341(A)(1).

Law enforcement officers making an arrest or serving a subpoena or search warrant have the right of immediate access to a student. Ariz. Att’y Gen. Op. I77-211; *see also* Ariz. Att’y Gen. Ops. I82-002, I82-094 (addressing procedures for taking a student into temporary custody). However, law enforcement officers seeking only to interview a student are subject to the school’s overall policy regarding access to students who are in class. Ariz. Att’y Gen. Op. I77-211. School policies regarding access to students should make this distinction between law enforcement officers arresting a student and those interviewing a student.

B. School Parental Notification Policies.

Arizona law neither requires nor prohibits school policies requiring notice to parents before officers interview students. To the extent that schools adopt parental notification policies, they must be flexible enough to take into account a variety of circumstances, including whether the proposed questioning relates to allegations of child abuse or other criminal activity by the student’s parent(s), whether the student is suspected of committing a crime or is a possible witness in a criminal investigation, and whether delay pending parental notification will jeopardize public safety.

1. Questioning regarding possible child abuse or other criminal activity by a parent.

If a law enforcement officer seeks to interview a student in connection with an investigation

of alleged child abuse by a parent, parental notification is not permitted. *See* Ariz. Att’y Gen. Op. 188-062. Similarly, if a parent or guardian is suspected of some other type of crime and the student has information as a witness, parental notification is inappropriate because it could result in the parent evading arrest, destroying evidence, concealing the crime, or otherwise creating a threat to the community. *See* Wis. Att’y Gen. Op. OAG 5–94. Parental notification under these circumstances could expose school officials to criminal liability, depending on the school official’s intent. *See* A.R.S. §§ 13-2511, 13-2512.²

2. *Student suspected of criminal activity.*

When a student is suspected of criminal activity, the Fifth Amendment may apply to law enforcement interviews. The Fifth Amendment protection against compelled self-incrimination affords all citizens, including juveniles, the right to refuse to answer questions that a law enforcement officer poses. *State v. Maloney*, 102 Ariz. 495, 498, 433 P.2d 625, 628 (1967). Under *Miranda v. Arizona*, law enforcement officers may not conduct custodial interrogations without first advising criminal suspects that they have the right to remain silent, to consult with an attorney, to have an attorney appointed if they cannot afford an attorney, and that anything they say may be used against them in a court of law. 384 U.S. 436, 444 (1966). Questioning by law enforcement officers may be deemed “custodial” for *Miranda* purposes regardless of the location of the interview if the person being questioned has been deprived of freedom of action in any significant way. *See In re Jorge D.*, 202 Ariz. 277, 280-81, 43 P.3d 605, 608-09 (App. 2002) (custodial questioning of a

²A.R.S. § 13-2512(A) provides: “A person commits hindering prosecution in the first degree if, with the intent to hinder the apprehension, prosecution, conviction or punishment of another for any felony, the person renders assistance to the other person.” The definition of “rendering assistance” to the other person—the parent in this scenario—includes knowingly “[w]arning the other person of impending discovery.” A.R.S. § 13-2510(2). Hindering prosecution in the second degree is the same crime except that it applies to those who hinder prosecution of persons who have committed misdemeanors rather than felonies. A.R.S. § 13-2511.

juvenile at school).

Confessions to law enforcement officers are presumed involuntary—notwithstanding *Miranda* warnings—and to rebut this presumption, the State must show by a preponderance of the evidence that the suspect made the confession freely and voluntarily. *State v. Jimenez*, 165 Ariz. 444, 448–49, 799 P.2d 785, 789–90 (1990). Courts apply a “totality of the circumstances” test in assessing the validity of a confession or of a juvenile’s waiver of his Fifth Amendment right against self-incrimination. *Fare v. Michael C.*, 442 U.S. 707, 724–25 (1979). Arizona courts have attached particular significance to whether a parent was present when police interviewed the juvenile. *See In re. Andre M.*, 2004 WL 875629 ¶ 11 (Ariz. Apr. 23, 2004) (noting that a parent “can help ensure that a juvenile will not be intimidated, coerced or deceived during an interrogation”). Although a parent’s absence during questioning does not, in itself, render a juvenile’s statement to police inadmissible, in that situation “the State faces a more daunting task of showing that the confession was neither coerced nor the result of ‘ignorance of rights or of adolescent fantasy, fright or despair’ than if the parent attends the interrogation.” *Id.*

In light of the significance that Arizona courts place on having a parent present during a juvenile’s custodial interrogation, school districts may appropriately adopt policies requiring parental notification prior to a law enforcement interview of a student suspected of committing a crime.

3. *Student is a possible witness in a criminal investigation.*

Fifth Amendment concerns do not present themselves when a student is a potential witness, rather than a suspect, in a criminal investigation. Although parental notification is not required under Arizona law, it is permissible in this situation (unless the child has witnessed criminal activity

relating to the child's parent), and schools may adopt policies requiring such notification.

4. *Public Safety Concerns.*

Parental notification is inappropriate if delay pending notification creates a significant risk to public safety. Such a situation would exist, for example, if law enforcement officers suspect a student of possessing or having information about a handgun on campus. In other instances, delay attendant to a notification/consent policy may result in destruction of evidence or concealment of a crime. Any parental notification policy should be flexible enough to accommodate these types of circumstances and to allow for the exercise of common sense by school officials.³

C. **Informing Students that They May Refuse to Participate in a Law Enforcement Interview Without First Speaking with a Parent.**

School officials must comply with a law enforcement officer's directive to refrain from informing a student that the student may consult his or her parents before answering the officer's questions if the proposed interview relates to an investigation of child abuse or other criminal activity by the student's parent or if delay pending parental notification would jeopardize public safety. Under other circumstances, a school official may inform a student that he or she may consult with a parent and/or an attorney prior to questioning by the police, notwithstanding a police directive to the contrary.

The parameters regarding these types of communications are not established by caselaw or

³An analysis of potential criminal liability requires specific facts. However, notifying parents under these circumstances, without more, would not subject a person to criminal liability for obstructing criminal investigations or prosecutions. *See* A.R.S. §13-2409. A person violates A.R.S. § 13-2409 when he or she "knowingly attempts by means of bribery, misrepresentation, intimidation or force or threats of force to obstruct, delay or prevent the communication of information or testimony relating to a violation of any criminal statutes to a peace officer . . ." Under some circumstances, a person could violate A.R.S. § 13-2403 by refusing to aid a peace officer. A person violates A.R.S. § 13-2403 if, "upon a reasonable command by a person reasonably known to be a peace officer," he or she "knowingly refuses or fails to aid" the peace officer in effectuating or securing an arrest or preventing the commission by another of any offense.

by statute but school officials and law enforcement should strive to strike the appropriate balance between the interests of schools in keeping parents informed of matters affecting their children and the needs of law enforcement officers conducting criminal investigations.

D. Complying with Parental Requests for Notification Prior to Law Enforcement Interviews of the Student.

As set forth above, school officials may notify parents of a proposed law enforcement interview of their child except when law enforcement authorities suspect a parent of abuse or some other type of crime or when delay pending notification creates a significant risk to public safety. School officials are not required to comply with parental demands regarding parental notification. This issue may, however, be addressed by school policies.

E. Advising Students of Juvenile Miranda Rights.

The *Miranda* requirement applies only to custodial interrogation by law enforcement agents. “School principals, though responsible for administration and discipline within the school, are not law enforcement agents.” *Navajo County Juvenile Action No. JV91000058*, 183 Ariz. 204, 206, 901 P.2d 1247, 1249 (App. 1995). However, a school official must give *Miranda* warnings if he or she is acting as an agent or instrument of the police. *Id.* Thus, a school official who interviews a student at the request or direction of a law enforcement agency, acts as an instrument of that agency and must advise the student of his or her *Miranda* rights before proceeding with the interview. *Id.*

Conclusion

Generally, school officials may notify parents before police interview their children. Any policy requiring parental notice or consent, however, must not apply when any alleged criminal

conduct involves the parent or when advance parental notification creates an unreasonable risk to public safety.

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