



OFFICE OF THE DISTRICT ATTORNEY

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Colorado's 4th Judicial District - Serving El Paso & Teller Counties

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COOPERATION BY SCHOOLS WITH LAW ENFORCEMENT INVESTIGATORS

The Office of the District Attorney presents this summary of Colorado Law and local practice to aid in the working relationship between law enforcement and schools. Cooperation among our organizations is critical to the safety of all children and we are grateful for the continued support given to law enforcement by educators throughout the Fourth Judicial District. The following outline attempts to answer some of the more frequently asked questions as to what a school official should do upon a request from the police or Department of Human Services to contact a child during school hours and on school premises.

MANDATORY REPORTING: All school officials and school employees are required by law to **immediately** report suspected child abuse or neglect to the Department of Human Services or to a local law enforcement agency. Section 19-3-304(2)(1), C.R.S. 2017.

"Child abuse or neglect", means any act or omission in one of the following categories that threatens the health or welfare of a child:

1. Any situation resulting in visible injury, malnutrition, failure to thrive, broken bone, and/or swelling and "the history given concerning such condition is at variance with the degree or type of such condition or death; or the circumstances indicate that such condition may not be the product of an accidental occurrence."
2. Any case in which a child is subjected to unlawful sexual behavior.
3. Any failure to provide adequate food, clothing, shelter, medical care, or supervision that a prudent parent would take.
4. Any case in which a child is subjected to emotional abuse (an identifiable and substantial impairment of the child's intellectual or psychological functioning or development or a substantial risk of impairment of the child's intellectual or psychological functioning or development.)
5. Any act or omission involving abandonment, mistreatment, or abuse of the child; a lack of proper parental care and/or the child's environment is injurious to his or her welfare.
6. Any case involving the manufacture of a controlled substance in the presence of a child or where a child resides.
7. Any case in which a child is subjected to human trafficking.

A person who willfully fails to **immediately** report suspected child abuse can be charged with a misdemeanor criminal offense. Section 19-3-304(4), C.R.S. 2017.

Furthermore, it is a criminal misdemeanor offense to intentionally obstruct, impair, or hinder the performance of a governmental function by a public servant under section 18-8-102, C.R.S. 2017. Notifying the subject of the allegation or anyone else that could notify the subject of the allegation of the report to law enforcement and/or the pending investigation is obstructing, impairing, and/or hindering the law enforcement authorities. Therefore, in the event of an allegation you should **notify law enforcement immediately and then treat the situation as strictly confidential**. The law enforcement authorities will handle notification of additional parties. You should also act to ensure that all staff members strictly adhere to the mandatory reporting requirements and the necessary subsequent confidentiality.

Upon receipt of a report of alleged child abuse or neglect, law enforcement or the Department of Human Services must respond immediately. Section 19-3-308, C.R.S. 2017. Because this investigation is a required duty, it is my opinion that there is a legal requirement for school officials and employees to allow the investigation to proceed as may be requested by either law enforcement or the Department of Human Services.

INTERVIEWS OF CHILDREN: Reports of child abuse or neglect often involve a parent, family member and/or guardian. Therefore, it is frequently essential that contact be made by law enforcement with the child victim away from the home, outside the presence of their parents/guardians and without their parents'/guardians' knowledge. The school consequently becomes a logical place to contact the child victim. Neither the parents' permission, nor the school officials' permission is legally needed prior to interviewing a child who is suspected of being a victim of abuse or neglect.

We are often asked whether a school official can be present when a child is interviewed at the school by law enforcement. Some discussions with children need a more private setting with fewer persons present. For example, when a child alleges that she or he is a victim of sexual assault, more people in the room generally leads to less information being obtained from the victim. In any event, if school officials would like to be present during an interview, please make your request known to the officer or caseworker conducting the interview. That request may be honored, but the decision is up to the officer or caseworker. Keep in mind that any person present for an interview may be subject to subpoena at a later court proceeding.

Once the interview is completed, it is very helpful if all parties reach an understanding as to who will have a discussion with the child's parents or guardians and what they should be told. If the information is going to come from another agency, such as Human Services in a situation where a child is removed from the home, the school officials still need to know what information should be given out if the parents contact the school prior to hearing from Human Services.

RUNAWAYS: Another common reason for law enforcement to contact a child at school is on a runaway report. When a child is reported as a runaway, but nonetheless continues to attend school, law enforcement personnel will frequently attempt to contact the child at school. Since the investigation is an official governmental function, school officials should cooperate with law enforcement.

CRIMINAL ACTIVITY: When a child under the age of eighteen is suspected of committing a criminal act, he or she will generally be interrogated at their residence. The law requires (with some exceptions) a parent or guardian to be present when a child is in custody and is questioned concerning suspected illegal conduct. Section 19-2-511, C.R.S. 2017. Therefore, only rarely will

law enforcement personnel come to the school to question a student suspected of criminal activity. For a student who is merely a "witness," as opposed to a "suspect," there is no legal requirement that said witnesses are to be questioned in the presence of their parent or guardian. Nevertheless, when dealing with minors who are to be questioned either as a suspect or as a witness, most local law enforcement agencies will endeavor to contact them at home. In any event, should law enforcement personnel come to the school to question a student, either as a suspect or as a witness, the school officials should cooperate with the law enforcement investigation.

ARRESTS: While law enforcement officers are legally entitled to make an arrest at any location, they will typically do so at school only as a last resort. Law enforcement officers understand the disruption this kind of activity can create at a school. However, if it is necessary, as in an emergency to protect the safety of others, school officials need to be aware of the laws regarding arrests. A peace officer may make an arrest either with or without an arrest warrant. Section 16-3-102, C.R.S. 2017. The officer may use necessary and reasonable force to affect the arrest, which includes entry into a building or property.

We encourage anyone who may have questions or concerns to call the District Attorney's Office. We maintain regular communications with law enforcement agencies, the Department of Human Services, school officials, and attorneys who represent the various school districts in areas outside the criminal law. We are fortunate that these lines of communication have been helpful in alleviating some of the conflicts and concerns that necessarily arise as we all try to fulfill our job duties. I look forward to continuing our work together.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Michael J. Allen', written in a cursive style.

Michael J. Allen
District Attorney