

DISTRICT PRACTICE:

1. Ministry of Children and Family Development:

1.1 Investigations:

In cases of child abuse or neglect being investigated by social workers, administrators should not contact parents when they are informed that an investigation is taking place, unless specifically asked to do so by the investigating social worker. The responsibility for contact with the parents of the child who is allegedly abused or neglected rests with the investigating social worker.

- (i) In such cases, an educator (a principal or a teacher) may be requested to be present at an interview to provide support to the child; however, the presence of an educator is certainly not mandatory. The appropriateness of the educator attending when a child is being interviewed in cases of abuse or neglect is determined by the social worker, not by the educator. A social worker investigating child abuse is carrying out the legislative mandate for the protection of children if necessary. Section 30 of the Child, Family and Community Services Act permits a representative of the Superintendent of Family and Child Services to apprehend a child in any location, including a school.

1.2 Other Consultation:

The school should work in partnership with the Ministry of Children and Family Development in situations where third-party intervention or support is required.

2. Police:

2.1 Initiated by the School:

- (i) The school administration should not call the RCMP when the purpose of the interviews is the maintenance and enforcement of school rules.
- (ii) When an administrator is concerned that a breach of student conduct involves a breach of the Criminal Code, (i.e. theft, physical assault, or breach of the Controlled Drug and Substances Act possession of illegal drugs), then the principal has the right to question the student involved in the same manner as s/he would question a student in respect of any other breach of student conduct.
- (iii) If, however, the Principal obtains information from the student relating to a criminal act by that student and delivers the student's statement to the RCMP, such statement could not be used by the RCMP against the student as an admission, unless the Principal had first,

POLICY 5700 STUDENT INTERVIEWS

REFERENCES: School Act, Section [76](#), [85](#)
[School Act, Regulation 5 \(7\) \(g\)](#) BCSTA Legal Opinion 1697
BCSTA Legal Opinion - December 1, 1986 Youth Criminal Justice Act, Section 146

ADOPTED: October 1999
Amended: December 2001, November 2007, June 2020

before obtaining the statement, complied with Section 146 of the Youth Criminal Justice Act, which provides:

Section 146:

- (1) Subject to this section, the law relating to the admissibility of statements made by persons accused of committing offences applies in respect of young persons.*
- (2) No oral or written statement made by a young person who is less than eighteen years old, to a peace officer or to any other person who is, in law, a person in authority, on the arrest or detention of the young person or in circumstances where the peace officer or other person has reasonable grounds for believing that the young person has committed an offence is admissible against the young person unless
 - (a) the statement was voluntary;*
 - (b) the person to whom the statement was made has, before the statement was made, clearly explained to the young person, in language appropriate to his or her age and understanding, that
 - (i) the young person is under no obligation to make a statement,*
 - (ii) any statement made by the young person may be used as evidence in proceedings against him or her,*
 - (iii) the young person has the right to consult counsel and a parent or other person in accordance with paragraph (c), and*
 - (iv) any statement made by the young person is required to be made in the presence of counsel and any other person consulted in accordance with paragraph (c), if any, unless the young person desires otherwise;**
 - (c) the young person has, before the statement was made, been given a reasonable opportunity to consult
 - (i) with counsel, and*
 - (ii) with a parent or, in the absence of a parent, an adult relative or, in the absence of a parent and an adult relative, any other appropriate adult chosen by the young person, as long as that person is not a co-accused, or under investigation, in respect of the same offence; and***

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- (d) *if the young person consults a person in accordance with paragraph (c), the young person has been given a reasonable opportunity to make the statement in the presence of that person.*
- (3) *The requirements set out in paragraphs (2)(b) to (d) do not apply in respect of oral statements if they are made spontaneously by the young person to a peace officer or other person in authority before that person has had a reasonable opportunity to comply with those requirements.*
- (4) *A young person may waive the rights under paragraph (2)(c) or (d) but any such waiver*
- (a) must be recorded on video tape or audio tape; or*
 - (b) must be in writing and contain a statement signed by the young person that he or she has been informed of the right being waived.*
- (5) *When a waiver of rights under paragraph (2)(c) or (d) is not made in accordance with subsection (4) owing to a technical irregularity, the youth justice court may determine that the waiver is valid if it is satisfied that the young person was informed of his or her rights, and voluntarily waived them.*
- (6) *When there has been a technical irregularity in complying with paragraphs (2)(b) to (d), the youth justice court may admit into evidence a statement referred to in subsection (2), if satisfied that the admission of the statement would not bring into disrepute the principle that young persons are entitled to enhanced procedural protection to ensure that they are treated fairly and their rights are protected.*
- (7) *A youth justice court judge may rule inadmissible in any proceedings under this Act a statement made by the young person in respect of whom the proceedings are taken if the young person satisfies the judge that the statement was made under duress imposed by any person who is not, in law, a person in authority.*
- (iv) If the Principal, for some reason, wishes to obtain a statement from the student concerned, which could be used as an admission against the student by the RCMP in subsequent criminal proceedings, then the Principal must first comply with Section 146 of the Youth Criminal Justice Act above. Each of its provisions must be complied with if the statement is to be used against the student in a proceeding under that Act or the Criminal Code. If the Principal is content to carry out his/her own investigation pursuant to his/her obligations under the *School Act* and allow the RCMP to carry out their independent investigation under the Federal Statutes, then the only limitations of the Principal's

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investigations are those contained in the *School Act*, namely, that he/she should act as a kind, firm and judicious parent.

2.2 Initiated by the Police:

(i) Child Protection Issues

In accordance with the "Child Abuse Reporting Protocol - School District No. 6 (Rocky Mountain)", the RCMP will only be involved if it appears a criminal offence has occurred.

(ii) Criminal Investigations

(a) Where the RCMP has the legal authority to interrogate, that legal authority must always be respected by school administrators. This will occur when the RCMP have a warrant of arrest, a search warrant, or are in hot pursuit in the investigation of an offence.

(b) If the RCMP requests an interview with a student who is under the school's supervision, the Principal or the RCMP, whichever is appropriate, shall seek permission from the parent or guardian. If the parent grants permission for the interview with the Principal present, the parent must speak directly to the Principal, or, if deemed necessary, give written permission.

(c) If the RCMP claims the right by federal or provincial statute to interview the student without a parent or guardian present, the Principal shall consent but keep a written record of the circumstances, preferably signed by the attending RCMP officer.

(d) Interviews and interrogations by persons in authority of students who are between the ages of twelve and seventeen inclusive are governed by Section 146 of the Youth Criminal Justice Act.

(iii) Potential Witness

(a) The RCMP should be strongly encouraged to interview the student when they are not under the supervision of the school.

(b) If this is not possible, the parent/guardian should be contacted.

(c) The parent/guardian should be present at such an interview.

(d) The administrator should not assume this parental responsibility.

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