



Guidelines for School Officials Regarding Law Enforcement Officials Interviewing Students at School

Completed July, 2018

Please Note: This guidance was created to help school employees handle a request by a law enforcement official to interview a student at school, regardless of whether the student is a witness, victim or suspect. While it was developed in cooperation with prosecutors and law enforcement representatives, it does not address the legal considerations regarding custodial interviews of juvenile suspects. School employees are not, and should not be expected to be, experts in criminal law.

Safety is important for schools and the community as a whole. For that reason, MSBA encourages school districts to work closely with law enforcement officers and prosecutors at the local, state and federal levels, who are charged with keeping children and communities safe. However, school districts must maintain an education environment free of disruption, trusting relationships with parents, and a welcoming atmosphere for all students. These interests sometimes conflict when law enforcement officials interview students on school property, particularly when investigating conduct that is not related to school or school activities.

To help districts address situations where law enforcement officials request or insist on interviewing students at school, the Missouri School Boards' Association (MSBA) and MSBA's Center for Education Safety worked with the Missouri Office of Prosecution Services (MOPS), the Missouri School Resource Officer Association, and the Missouri Department of Social Services to provide this guidance.

An Interview

For the purposes of this document, an "interview" is a conversation between a law enforcement official and a student regarding conduct not related to school or school activities, assuming that the student is not officially under arrest or in the custody of the law enforcement official.

Collaborate for Clarity

Missouri law does not specifically address law enforcement's authority to conduct interviews of students at school or the school district's obligations when an interview occurs. It is MSBA's

opinion that law enforcement officials are not automatically entitled to interview a student on school property for conduct that is not related to school. Even if law enforcement officials have a warrant for the student's arrest or are investigating child abuse, the interview is not required to occur on school property. In certain situations where probable cause to arrest or take protective custody exists, law enforcement may decide to take the student into custody and interview the student in another place.

That said, MSBA encourages school districts to work cooperatively with law enforcement officials and recognizes that in many situations these interviews need to occur, and the school district should accommodate the request. MSBA Policy JFG (Interrogations, Interviews and Searches) creates some basic rules for these interviews to take place. But Policy JFG only gives direction to district staff - not law enforcement officials. Problems arise when law enforcement officials disagree with the directives of the Board policy.

MSBA strongly recommends that school districts meet collaboratively and regularly with law enforcement, the local prosecutor, the juvenile office, and the Children's Division in order to create a common understanding and to develop local protocols and procedures for interviewing of students. Ideally, any decisions should be memorialized in a memorandum of understanding between the relevant agencies so that the protocols are consistently applied in the future, even if there is a turnover in staff. Districts should also discuss the legal issues involved with interviewing students at school with the district's private attorney to ensure that all parties that might be involved in a dispute agree on the status of the law and its application in the school environment.

Designate District Contact

The district should identify one or more employees who will work with law enforcement to develop protocols and resolve any conflicts that may arise. The goal is to establish a positive working relationship while at the same time understanding and respecting the responsibilities of each agency involved. This could be assigned to the school resource officer (SRO). Alternatively, the district's contact could be the district's safety coordinator, a position required by state statute §160.660 and Policy EB (Safety Program), or another designated employee.

In Loco Parentis

Students require parental protection and supervision even when their parents/guardians are not present. Generally, in matters of student discipline and conduct in schools, school administrators, teachers, and other school personnel stand in the place of the student's parents and guardians. This is commonly referred to as *in loco parentis*.

It is this duty to supervise that obligates school districts to carefully analyze who is allowed to question students while the students are in the district's care and to act in the best interest of the student.

The Interview Process

A. Should the Interview Occur on School Property?

If a student commits a crime on school property, school officials contact law enforcement as well as the parents. In those instances, it makes sense for these outside officials to question the student on school property as part of the criminal investigation.

The real difficult issues arise when law enforcement officials seek to interview a student while at school when investigating off-campus offenses. This guidance focuses on these circumstances. If the interview pertains to an incident that is not related to school or the abuse or neglect of a child, law enforcement officials should make every effort to avoid interviewing the student at school.

However, there may be instances when law enforcement might determine such an interview is necessary and the only available option. If so, the law enforcement official should provide the principal or designee the reason(s) for the interview. If the principal or designee disagrees with the reason, the district should work with the law enforcement officer or his or her supervisor to resolve the dispute. If the law enforcement official fails to provide a reason, the principal or designee may refuse to allow the interview to take place on school property.

Circumstances that might justify an interview on school property regarding an issue that is not related to school might include, but are not limited to:

- A risk that delaying the interview or contacting the parent prior to the interview may pose a danger to the health or safety of the student, other students, school employees, or others in the community.
- The student's parents/guardians are suspects in serious criminal activity or of co-involvement with the student in suspected criminal activity.
- Law enforcement needs to act promptly to prevent the destruction of evidence of a serious crime, or flight from the jurisdiction by a person suspected of criminal activity.
- Law enforcement has a warrant, subpoena, or other valid court order authorizing the arrest, detention, or interview of the student.
- Other reasons, as articulated by law enforcement officials, which are satisfactory to the principal or designee.

B. Advance Notice

When possible, prior to arrival, law enforcement officials will notify the SRO or the principal or designee of the need to interview a specific student, identify the student, and state the reason for the interview. If prior notification is not possible, the law enforcement official will contact the SRO, principal or designee upon arrival to discuss the interview.

C. Verify and Document Identity of Officer

For safety reasons, school officials must verify the identity of any person who wishes to speak with a student, no matter how official the person might appear. A legitimate officer should not object to a request to provide official identification, including photographic identification. The district may also call the law enforcement office directly to verify that a particular officer is employed and is on duty. The district should document the name and purpose of the interview, as well as obtain the name and contact information of the officer to share with parents or guardians.

D. Minimize Disruption

When possible, law enforcement officials and the school district will work together to arrange a time when the student can be questioned with the least amount of disruption to the student or to the educational environment. MSBA's Policy JFG states that interviews by law enforcement "are discouraged during class time, except when law enforcement officials have a warrant or other court order or when an emergency or other exigent circumstances exist."

E. Parent Notification and Consent

Even after the district and law enforcement agree that the interview can occur on school property, the building principal or designee should notify and obtain permission from the student's parent or guardian prior to the interview. If the principal or designee is unable to contact the parent or guardian, he or she should document that attempts were made to do so and may allow the interview to proceed. If a parent or guardian is notified and does not give permission for the interview to proceed, the interview will not take place unless law enforcement takes the student into custody or there is an immediate and serious emergency.

However, there may be circumstances when law enforcement officials believe it is necessary to interview a student at school without notifying or obtaining permission from the parent/guardian. In these instances, law enforcement officials should provide the principal or designee the relevant reason(s). If law enforcement does not provide a reason, the principal or designee will notify the parent. If the principal or designee disagrees with the reason, the district contact should work with the law enforcement officer or his or her supervisor to resolve the dispute.

Some examples under which it would be appropriate for law enforcement to interview a student without first obtaining prior parent/guardian permission would be:

- A risk that delaying the interview or contacting the parent/guardian may pose a danger to the health or safety of the student, other students, school employees, or the community at large.
- The student's parents/guardians are suspected in serious criminal activity or of co-involvement with the student in criminal activity.
- Law enforcement needs to act promptly to prevent destruction of evidence of a serious crime, or flight from the jurisdiction by a person suspected of criminal activity.

- Law enforcement has a warrant, subpoena, or other valid court order authorizing the arrest or the interview of the student.
- Other reasons, as articulated by law enforcement officials, which are satisfactory to the principal or designee.

If the interview takes place without parent notification, law enforcement official will be responsible for notifying the parents as soon as possible after the interview has taken place. The district will verify this obligation with law enforcement prior to the interview. The school official can then direct any further inquiries about the matter to the law enforcement official.

F. Blanket Parent Prohibition

In some circumstances, a parent might notify the school district that he or she does not ever want his or her child interviewed by law enforcement. If law enforcement ever requests to interview the student, the district should share this information with the law enforcement officer. However, MSBA believes these decisions need to be made on a case-by-case basis and does not recommend that the district honor these blanket prohibitions. Instead, the district should provide parents the district's policy or protocol and verify that the district has the necessary parent contact information in case it is ever needed.

G. Location of Interview

School officials and investigators are encouraged to use a comfortable interview space that allows the student as much privacy as possible.

H. School Official Presence in Interview

MSBA Policy JFG requires the school principal or designee to be in the room whenever law enforcement interviews a student at school and a parent or guardian is not present. MSBA's policy is based on the concern that law enforcement can intimidate the student and that, while rare, law enforcement could use inappropriate tactics to obtain information from a student.

That said, MSBA recognizes that there are situations where law enforcement officials would prefer to interview a student without a school employee present. A school official might unintentionally influence or intimidate the student, or discourage a student from speaking with the law enforcement officer. Further, if a school official is in the room, he or she may be called to testify in court.

Unfortunately, there is no Missouri law or court case that resolves this issue. ***For this reason, MSBA emphasizes that districts must work proactively with local law enforcement and prosecutors to address this potential disagreement prior to a situation where a student must be interviewed and a conflict arises between the district and these agencies.*** MSBA strongly recommends that the district, law enforcement and prosecutors obtain input from parents and the community on this issue prior to making a policy decision and that the district also discuss the issue with its private attorney.

MSBA continues to advise districts that a school official needs to be in the room during an interview, as stated in Policy JFG. However, MSBA recognizes that there might be some situations where school official presence might not be absolutely necessary. The following is a list of considerations that might be relevant when making this decision:

- The availability of an interview space where the school official may monitor the interview without being physically present in the room during the interview. Some schools may have the option to listen to or visually monitor the room where the interview is being conducted.
- The student's choice as to whether there is another person in the room and who that person should be. Those involved should take into account the student's age, developmental ability, and any past history with school officials and investigators when giving a student this choice.
- The number of other professionals who will be present in the interview (e.g., multiple law enforcement officials, Children's Division staff, prosecutor(s), or other non-school personnel).
- Whether the student's parent/guardian has been notified and has given permission for the interview.
- The student's age and developmental level.
- Whether there is any possible involvement of a school official in the subject of the investigation. If possible, the interview should be held away from school property if the school official is potentially involved in the subject of the investigation.
- If the interview involves criminal activity, the nature of the crime involved may be considered. Some conversations are more sensitive than others. Talking about child sexual abuse, for instance, can be very difficult to do in the presence of persons the student may see on a daily basis. This decision should be made on a case-by-case determination depending on the other factors listed.
- Whether a Children's Division employee will be present for the interview.
- The potential traumatic effect of the interview on the student and whether the student will be seeing the school official on a frequent basis after the interview and could be thereafter traumatized by the continued reminder of the traumatic topic of the interview.
- Other factors that may arise on a case-by-case basis.

If the district does decide to allow law enforcement to interview students without school officials present in some limited circumstances, districts and law enforcement should conduct training so that the persons making these decisions and the weight to be given to each factor when making such decisions.

When a school principal or designee is present in an interview, that person is primarily a witness. The principal or designee should not interject or interrupt the interview unless necessary. However, the principal or designee, or other school official may stop the interview in extreme circumstances such as, but not limited to, threats, coercion, physical intimidation, and/or unreasonable promises where the principal or designee, or other school official believes there could be potential harm to the student if the interview continues.

If the interview takes place without a school official present, the law enforcement official will be responsible for notifying the parents as soon as possible after the interview has taken place. The district will verify this obligation with law enforcement prior to the interview. The school official can then direct any further inquiries about the matter to the investigator who assumed responsibility for notifying the parents.

Arrest of Student at School

School officials should cooperate with law enforcement authorities when law enforcement authorities deem it necessary to arrest a student on school grounds. Law enforcement authorities are authorized to arrest a student if they determine there is probable cause to believe the individual has committed a crime, even if there is no warrant.

MSBA recommends that the principal or designee verify the identity of the arresting officer and obtain contact information prior to the arrest so that the parents can be appropriately notified. If a law enforcement officer arrests a student at school, every effort should be made to take the student into custody in a manner that minimizes disruption to the school environment.

Interviews by the Children's Division

This guidance does not apply to interviews of students at school by Children's Division employees, and law enforcement authorities that may accompany them, when investigating alleged child abuse and neglect.

Role of the School Resource Officer (SRO)

SROs are law enforcement officials. However, in many districts these officers have been selected by the district and are considered joint employees of the school district. These officers interact daily with students and school district employees on a variety of school-related issues. Further, SROs tend to focus on incidents that happen on campus, not off-campus criminal investigations. For this reason, it is difficult to apply this guidance to SROs. Instead, MSBA recommends that the district clarify the process for SROs interviewing students in the agreement between the district and the sponsoring law enforcement entity.

Conclusion

All persons involved in creating this guidance agree that school districts, law enforcement, prosecutors, and the Children's Division should work together closely for the good of students, families, and the community. While we may not fully agree on the methods of accomplishing these goals, these disagreements are best resolved with continued dialogue and partnership.

MSBA is particularly grateful for the input and patience of the following participants who helped inform this document:

- Catherine Vannier, Family Violence Resource Prosecutor for the Missouri Office of Prosecution Services
- Chris Seufert, Assistant Prosecuting Attorney, Platte County, Missouri
- Kara Wilcox-Bauer, Program Development Specialist, Missouri Department of Social Services
- Trevor Fowler, Director of Safety, Columbia Independent School
- Kara Sanders, Administrative Assistant, Missouri Center for Education Safety
- John Warner, Emergency Planning Coordinator, Missouri Center for Education Safety

Nothing contained in these guidelines is intended to be taken as legal advice, nor is the document intended to be an exhaustive treatise on the topic. If you have questions, please contact the Missouri School Boards' Association's Legal Department at 1.800.221.6722 or your district's private attorney.