



Legal issues bulletin

Number 13 Updated July 2012

Interviews of students and staff by police and officers from Family and Community Services in schools

In carrying out their responsibility to investigate criminal matters and suspected child abuse and neglect, NSW Police and the officers of the department of Family and Community Services may require information from schools or seek to interview students or staff at school. Principals should ensure that all staff are aware of the following matters.

For the purposes of this bulletin, “student” will also include children enrolled in government preschools, Children’s Centres and those accessing playgroups and child minding services provided by AMES.

This Bulletin replaces previous bulletin 13. Staff should refer to [legal issues bulletin 47 – Requests for information from other government agencies](#) and [legal issues bulletin 50 - Exchanging information with other organisations concerning the safety, welfare or wellbeing of children or young people](#) when dealing with information requests concerning the safety, welfare or wellbeing of children and young people

[In what circumstances should students be interviewed at schools by NSW Police or Community Services officers?](#)

Unless special circumstances exist, students should not be interviewed on school sites. “Special circumstances” has a wide meaning but will include the following:

- When police have been called to the school by the principal as a result of a student being found with a prohibited weapon, knife, firearm or substance or as a result of any other criminal activity relating to the school.
- When students or their possessions are to be searched by police as a result of being suspected of being in possession of a prohibited weapon or substance.
- When the matter being investigated concerns allegations involving other family members and it would be inappropriate to conduct the interview at the student’s home.
- When the matter being investigated is of an urgent nature and the immediate safety and wellbeing of the student or some other person will be at risk if the interview does not take place at the school site.

[If special circumstances do exist and an interview is to take place at the school, what steps do I need to take?](#)

If special circumstances exist, principals should ensure the following occurs.

- Community Services and police should provide the principal with the reason why the interview must be conducted at the school.
- Parents or carers should be notified and requested to attend the school prior to the interview taking place unless there is an exceptional reason as to why they should not be informed. If the allegations involve a family member and the principal is satisfied, after receiving advice from Family and Community Services or police, that parental or carer

contact is inappropriate, the interview can proceed without contact being made. Family and Community Services and police personnel should be asked to explain why it is inappropriate for the parents to be contacted. If there is disagreement between the principal and Family and Community Services/NSW police officers about whether parents should be notified, the principal should contact the department's Legal Services and/or the School Response unit for advice.

- If it is a matter where parental or carer contact prior to the interview is appropriate and contact cannot be made or the parents or carers cannot attend, the student must be given the opportunity to have some other adult person present during the interview. This may include a member of staff and ideally will be someone with whom the student is familiar and with whom they feel comfortable.
- If the principal forms the view on reasonable grounds that the student is not capable of deciding whether or not he or she should have a support person the principal will make that decision. In reaching this conclusion and determining who may be suitable to act as a support person for a student, principals should have regard to the age, maturity, developmental level and any relevant cultural issues of the student, together with their own knowledge of the student's individual circumstances.
- Similarly, if it is a matter where parental or carer contact prior to the interview is inappropriate, the student should be given the opportunity to have some other adult present during the interview. This may include a member of staff. Principals need to be aware that some students may not be comfortable having a member of staff who they identify as being in a position of authority as a support person.
- If the parents or carers are contacted and refuse permission for the student to be interviewed, or the student refuses to be interviewed, the principal must not allow the interview to take place at the school.
- Any interview must not take place until the relevant support person is present.
- Principals should plan with the officers conducting the interview to ensure a suitable location for the interview is identified, appropriate arrangements for the way the student will leave and return to the classroom are implemented and strategies for maintaining confidentiality are addressed.
- Before any interview takes place, the principal must confirm that the purpose of the interview will be explained to the student by the police or Family and Community Services officers. This need not be done in the presence of the principal but should be undertaken in the presence of the support person.
- In relation to any interviews conducted by police in respect of criminal investigations, the principal must ensure the student is advised by police that he or she is not obliged to answer any questions asked by them. This is particularly important if the parents or carers are unable to be present during any interview held at the school.
- Any warning given by police must occur prior to the interview taking place. If Police decline to advise the student of his or her right not to answer any questions, the interview should not be allowed to occur on the school site.
- Principals should not allow other students who are under the age of 18 to act as a student's support person in interviews conducted on school premises.
- If police attend as a result of an incident at the school, principals should be careful not to allow any staff members to act as a support person if their presence may give rise to a conflict of interest.

What if my local police want to interview a student at my school about some criminal activity that they are investigating?

NSW Police operational guidelines stipulate that police should avoid interviewing children at school. While the guidelines refer only to children, the same approach should be adopted in respect of all school students who are under the age of 18. Unless special circumstances exist, the police should be advised they will need to arrange to interview the student at a time and place outside of school hours.

Are there any special provisions I need to be aware of in respect of interviews of students by members of JIRT?

Interviews by JIRT personnel will usually be by way audio and or video recording. Aside from this aspect, the steps to be following by principals will be the same as previously outlined.

What should I do if parents or care givers subsequently seek information or make a complaint about what has taken place during the course of an interview conducted on the school site?

Community Services or NSW Police are responsible for communicating with parents or carers about any matters related to an interview. Any person making an inquiry or complaint concerning an interview with a student should be referred to the relevant officer from Community Services or NSW Police.

What should I do if the JIRT indicates that the student they wish to interview is not to have a member of staff involved as a support person?

Any student who is required to be interviewed on school premises is entitled to be given the opportunity to have a support person present. If the JIRT indicates that this opportunity is not to be offered, then the principal should not consent to the interview taking place on the school site.

What should happen if Family and Community Services want to use information from a staff member in subsequent legal proceedings?

Sometimes Community Services officers will obtain statements or oral information from staff as part of their investigations into child protection issues. If information provided by department staff is subsequently to be used as part of any legal proceedings, Community Services has agreed to the following process being followed:

- When Community Services contact departmental staff they will advise them of the potential use of the information and obtain their agreement to that happening.
- Care will be taken in relation to the content of any documents that are subsequently created by Community Services staff (e.g. the identification of names).
- Wherever practicable, any document that is to be used in legal proceedings and purports to record any conversation with departmental staff will be provided to staff for comment and their agreement that it reflects the conversation between Community Services and the staff member or members prior to being used.
- Wherever practicable, education staff are to be given an opportunity to make amendments to the document.
- If agreement cannot be reached about the contents of the document it will not be used by Community Services in legal proceedings.

If the police indicate they want to arrest the student, what should I do?

Principals must not interfere with any decision of the police to arrest a student. If arrested, the student must accompany the police and the principal must immediately notify the parents or care givers, unless instructed not to by the police.

If police do wish to arrest a student, as far as possible arrangements should be made to safeguard the privacy of the student concerned. Suitable arrangements should be made to minimize any disturbance and or distress to the student concerned and other students and staff at the school. Principals may contact the department's School Response unit for advice on what arrangements may be possible if a student is to be arrested.

Principals should ensure that students are aware that there is no obligation to accompany police from the school site unless they are formally arrested.

What should I do if officers from Family and Community Services indicate they want to remove a student from the school?

Again this situation should be treated to ensure as far as possible the student's right to confidentiality and privacy. Principals should ensure the procedures set out in the [Collection of students by the department of Community Services, procedures](#) are complied with.

What if police indicate they wish to interview a member of staff at the school?

In the absence of special circumstances, police should be asked not to conduct interviews of staff on school premises unless they have been called to the school in response to an incident. If no other suitable alternative is available, principals should endeavour to implement strategies that have regard to the privacy considerations of the staff member and the sensitivity of students. Principals should also take into account the views of the relevant staff member concerned when determining whether an interview should take place at the school.

Can staff have a support person with them during a police interview?

Staff will generally be permitted to have a support person with them during any interview provided the presence of the support person does not interfere with the process. The support person is not permitted to answer or suggest answers to any questions. Staff should also be made aware by Police that they do not have to answer any question that may be asked by them.

What should happen if the police want a statement from a staff member?

While there is no compulsion to provide a statement to the police, generally it will only be in unusual circumstances that such a request would be denied.

If police are conducting criminal investigations and staff are asked to provide a statement, the request for the statement should generally be supported.

In circumstances where police are conducting an investigation on behalf of the Coroner as a result of a death of a person during school activities, any request for a statement should be supported. It should be noted however that the ability of some members of staff to provide a statement on the same day as the relevant incident may be affected because they are distressed. In these circumstances police should be asked to defer obtaining any statement until a reasonable period of time has elapsed. Prior to making any statement to police in respect of coronial investigations, staff should seek advice from the department's Legal Services.

Am I able to amend any statement prepared by the police if I do not agree with what is in it?

Staff should be aware that they should not sign any statement until they have read through it and are completely happy with its contents. If changes are considered necessary, staff should bring this to the attention of the police. If staff are in any doubt about their obligations or rights in respect of providing statements to the police, they can seek advice from Legal Services.

What if the police indicate they want to arrest the staff member?

Staff need not accompany police away from the school site unless they are formally arrested or otherwise agree to leave. If police attend with the specific intent of arresting a staff member, the principal should ensure that suitable arrangements are made to minimize any disturbance and or distress to students and other staff as well as preserving as far as possible the staff member's right to confidentiality and privacy. Principals can contact the department's School Response unit for further advice on what arrangements may be possible if a staff member is to be arrested.

About Legal Services

Legal Services is here to support our government schools. **[Staff can contact Legal Services by email or phone.](#)**

Legal Services can only provide legal advice to departmental staff. It is not able to provide legal advice or assistance to parents, students or members of the public due to the potential for a conflict of interest.