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December 31, 1980

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ATTORNEY GENERAL

The Honorable Jay Flake
Navajo County Attorney
Governmental Center
Holbrook, Arizona 86025

Re: 180-236(R80-070)

Dear Mr. Flake:

We have reviewed your opinion of March 13, 1980 in which you addressed several questions concerning the relationship between a school psychologist and students.

The first question asked whether A.R.S. § 32-2085 grants a privilege of confidentiality for communications between a school psychologist and a student. A.R.S. § 32-2085 has been amended since you wrote your opinion. It provides, in pertinent part, that ". . . the confidential relations and communications between a psychologist certified as provided in this chapter or person excepted from this chapter . . . and his client are placed on the same basis as those provided by law between attorney and client. . . ." Inasmuch as school psychologists are excepted from certification as psychologists by A.R.S. § 32-2083.A.2, they are within the scope of this statutory privilege.

However, in order for the privilege to apply, the school psychologist must have a client relationship with a student. The existence of a client relationship is a question of fact dependent upon a variety of factors. Among these factors are the following considerations:

1. The terms of the employment contract between the school psychologist and the school district, which establish the psychologist's scope of duties with respect to students;
2. The perception of both the psychologist and student as to whether a client relationship exists;
3. The circumstances surrounding the particular communication.

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The confusion over this issue is compounded by the fact that there is no statute setting forth the duties to be performed by a school psychologist. We think clarification of the role of a school psychologist, which would delineate the client relationship, should properly be accomplished legislatively.

The second question asked whether a minor may enter into counseling with a school psychologist without the express or implied consent of parents or guardians. Again, the answer depends upon the various factors enumerated above and thus cannot be answered definitively. Certainly the district could restrict or prohibit through its employment conditions the authority of a school psychologist to counsel a student without the parents' consent. This also is a question in need of legislative attention in our view.

Inasmuch as the third question requires an analysis of individual fact situations, we express no opinion with respect to your answer.

Sincerely,



BOB CORBIN
Attorney General

BC:cp



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