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DEPARTMENT OF LAW LETTER OPINION NO. 72-29-L (R-62)

REQUESTED BY: THE HONORABLE WELDON P. SHOFSTALL
Superintendent of Public Instruction

- QUESTIONS:
1. Are the records and/or information transcripts of school personnel, i.e., school doctor, school nurse, certified school psychologist, certified school social worker, school counselor, teacher, public records or confidential records of a school district?
 2. In case of arrest on school property, what is the responsibility of the school authority regarding the parents?
 3. What is the right of the school authority to search lockers?
 4. What is the right of the school to search a student without warrant?
 5. How does school policy affect the teacher's responsibilities in any of these areas?

ANSWERS: See body of opinion.

1. The records referred to in the question are confidential and are not part of the public records of the school. These records pertain strictly to the drug control program and are not part of the records which must be kept as a matter of law. Further, the disclosure of such records would be detrimental to the school's program.

The only time these records may be opened to other than an appropriate school official is when a parent can show an overriding interest in inspecting some portion of the records. This does not mean that a parent has a right to all of these records. The person in charge of the records must, on request of a parent, decide if the record should be disclosed and, if so, what portion should be made available to the parents.

These records are not privileged. This means that under the appropriate circumstances the court may force the school to produce these records. It also means that the student or his parent does not hold the privilege and that the school may decide whether to honor a student's request for the opening of the records. The Arizona cases on this subject hold that the ultimate decision as to the disclosure of these records rests with the courts. Mathews v. Pyle, 75 Ariz. 76, 251 P.2d 893 (1952); Industrial Commission v. Holohan, 97 Ariz. 122, 397 P.2d 624 (1964).

2. When a student is arrested on school property, the school stands in loco parentis. The school may and must cooperate with the police. However, the school official must not attempt to coerce or influence the student to confess. The school should leave police work to the police and, while cooperating, not attempt to become actively involved in the matter. The school should advise the student to go peacefully with the officer.

Where possible, the school should ask the officer to wait until the parents of the student can be notified of the arrest. Under all circumstances the parents must be notified as soon as possible. When the officer asks to use school property to question a student, a school official should ask to be present until such time as the parent arrives. Under no circumstances should the school attempt to interfere with the arrest or to counsel the student to resist the arrest.

3. The right of the school to search students' lockers has not been settled by our courts. It is our opinion that lockers are not rented to students under the same terms as other property is rented. Should the court in the future find that this is a straight rental situation, the school would have no right to open a locker without the student's permission.

We feel, however, that the school does not act as a landlord in this situation. Because it is necessary for the school to have immediate access to all district property for the protection of its students and because traditionally the school has treated lockers as part of the district property, which the students are allowed to utilize, we feel that the school may inspect the lockers at will.

We suggest that, to avoid any misunderstanding in the future, either the application forms or the receipts for the lockers spell out the school's right to inspect the lockers, including the right to remove the locks if the student is unavailable or uncooperative.

4. A school district cannot obtain a search warrant. This is available only to police officers. Therefore, a search of the type suggested does not apply to school districts. However, because the school district is not building a criminal case, it is not under the same restrictions as a police officer. The school may, when safety of others depends upon it, search a student.

The school may require the student to empty his pockets and display his belongings to the appropriate official. The school may not use force to accomplish this. If the student refuses to cooperate, he should be removed from the school grounds and his parents called, or the school may ask the parent to come and search the student or remove him from the district property. The school district must not attempt to search a student for any reason other than immediate necessity. If the school authorities believe a crime is being committed, they should call the police and allow them to handle the search.

5. The school's policy will affect the teacher's responsibility completely in all of these situations. The teacher is an arm of the school board, and must follow board policy as to all of these questions. If no policy is provided, the teacher must then use his own judgment. The only time a teacher may contravene the school's policy is in the event of an immediate emergency, and then it behooves the teacher to be correct both as to the emergency and the action taken. If he is not correct, he will be subject to discipline for insubordination.

Respectfully submitted,

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