

**OPINION NO. 82-029****Syllabus:**

A board of education may require by rule, adopted pursuant to R.C. 3313.20, that an investigator from a county children services board obtain parental consent or permit a school official to be present before allowing such investigator to interview a child on school property in the course of an investigation required to be conducted under R.C. 2151.421. The reasonableness of any such rule is, however, subject to judicial review.

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**To: Lowell S. Petersen, Ottawa County Prosecuting Attorney, Port Clinton, Ohio**  
**By: William J. Brown, Attorney General, May 4, 1982**

I have before me your request for my opinion concerning the following:

May the county department of welfare or the children's services board charged with investigating reports of alleged child abuse and neglect pursuant to Ohio Revised Code Section 2151.421, speak with an alleged abused child alone and on school property without first obtaining parental consent, or may a school board, pursuant to its general powers to make reasonable regulations, regulate to require parental consent or the presence of a principal or other school official during any questioning of a student during school hours by a children's services worker investigating a report of an alleged abuse of such child in accordance with Revised Code Section 2151.421?

In essence, your question concerns a board of education's power to make rules regarding the entrance of outsiders upon school property, and whether this power is in any way limited by R.C. 2151.421, which requires that a county children services board, or a county board of welfare exercising the children services function, investigate all reports of child abuse or neglect.

R.C. 3313.20 grants authority to local boards of education to make rules and regulations. It states in pertinent part:

The board of education shall make such rules and regulations as are necessary for its government and the government of its employees, pupils of its schools, and all other persons entering upon its school grounds or premises. Rules and regulations regarding entry of persons other than students, staff, and faculty upon school grounds or premises shall be posted conspicuously at or near the entrance to such grounds or premises, or near the perimeter of such grounds or premises if there are no formal entrances, and at the main entrance to each school building. (Emphasis added.)

Beyond a general authority to make rules for the government of its educational system, R.C. 3313.20 specifically empowers local boards of education to make rules "as are necessary for . . . the government of . . . all . . . persons entering upon its school grounds or premises." As a board of education clearly has the authority to make rules, the question becomes, what are the limits of this power.

Local boards of education enjoy an extraordinary amount of discretion in the exercise of their powers:

A court has no authority to control the discretion vested in a board of education by the statutes of this state, or to substitute its judgment for the judgment of such board, upon any question it is authorized by law to determine.

A court will not restrain a board of education from carrying into effect its determination of any question within its discretion, except for an abuse of discretion or for fraud or collusion on the part of such board in the exercise of its statutory authority.

Brannon v. Board of Education, 99 Ohio St. 369, 124 N.E. 235 (1919) (syllabus, paragraphs 2 and 3). Provided that the rules established by the board are reasonable, they will be sustained by a court. Board of Education of Sycamore v. State ex rel. Wickham, 80 Ohio St. 133, 88 N.E. 412 (1909). Thus, a local board of education's rules governing the activities of outsiders upon school property are valid unless they are unreasonable or constitute an abuse of the board's discretion. Whether a particular rule is unreasonable or an abuse of discretion is, of course, a question of fact which only a court is competent to determine.

One might question the wisdom of a rule requiring an investigator from the county children services board to either obtain the consent of a parent or permit a school official to be present during the interview before allowing the investigator to talk with an allegedly abused child on school property. Such a rule does not appear, however, to violate any provision of state law.

R.C. 2151.421 states in pertinent part:

Any . . . school teacher or school authority . . . acting in his official or professional capacity, having reason to believe that a child less than eighteen years of age or any crippled or otherwise physically or mentally handicapped child under twenty-one years of age has suffered any wound, injury, disability, or condition of such a nature as to reasonably indicate abuse or neglect of the child, shall immediately report or cause reports to be made of such information to the children services board or the county department of welfare exercising the children services function, or a municipal or county peace officer in the county in which the child resides or in which the abuse or neglect is occurring or has occurred.

. . . .

Upon the receipt of a report concerning the possible abuse or neglect of a child, the municipal or county peace officer shall refer such report to the appropriate county department of welfare or children services board.

. . . .

The county department of welfare or children services board shall investigate, within twenty-four hours, each report referred to it under this section to determine the circumstances surrounding the injury or injuries, abuse, or neglect, the cause thereof, and the person or persons responsible. The investigation shall be made in cooperation with the law enforcement agency. . . . The department or board shall submit a report of its investigation, in writing to the law enforcement agency.

. . . .

Any report made under this section is confidential, and any person who permits or encourages the unauthorized dissemination of its contents is guilty of a misdemeanor of the fourth degree.

The only duty imposed on school teachers and school authorities by R.C. 2151.421 is a requirement they report suspected abuse to either law enforcement officers, or the county children services board or county board of public welfare performing the children services function. A rule which requires the consent of parents prior to an investigative interview, or in the alternative the presence of a school official at the interview, does not violate the duty imposed on school authorities to report suspected abuse. Nor would it necessarily conflict with the duty of a children services board to investigate such reports.

R.C. 2151.421 requires a county children services board, or the county department of welfare performing the children services function, to begin an investigation within twenty-four hours of receiving a report of suspected abuse or neglect. It further makes the unauthorized dissemination of a report of abuse or neglect a misdemeanor of the fourth degree. A board of education's rule requiring parental consent or the presence of a school official at any interview conducted on school property does not appear to necessarily conflict with either of the above provisions. Again there may be some question as to the reasonableness of a rule which may make it more difficult for a county children services board or county board of public welfare to investigate suspected abuse or neglect. The reasonableness of such rules is, however, a question of fact which can only be resolved by a court of law. Thus, while I personally may have some doubts as to the reasonableness of such a rule, I am constrained to conclude that a board of education has the authority to adopt such rules.

Therefore, it is my opinion, and you are advised, that a board of education may require by rule, adopted pursuant to R.C. 3313.20, that an investigator from a county children services board obtain parental consent or permit a school official to be present before allowing such investigator to interview a child on school property in the course of an investigation required to be conducted under R.C. 2151.421. The reasonableness of any such rule is, however, subject to judicial review.