

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 42

OPINION NO. 2

CHILD ABUSE - School staff members attending investigative interviews;
PRIVACY - School staff members attending investigative interviews of reportedly abused and neglected children;
SCHOOL DISTRICTS - Policy requiring school staff members to attend investigative interviews of reportedly abused and neglected children;
SOCIAL AND REHABILITATION SERVICES, DEPARTMENT OF - School staff members attending investigative interviews of reportedly abused and neglected children;
TEACHERS - Attending investigative interviews of reportedly abused and neglected children;
MONTANA CODE ANNOTATED - Title 41, chapter 3; sections 41-3-108, 41-3-201, 41-3-202, 41-3-205;
OPINIONS OF THE ATTORNEY GENERAL - 41 Op. Att'y Gen. No. 49 (1986).

HELD: A school district policy requiring that an individual investigating a child abuse or neglect case have a school staff member present at the child's interview if the interview is conducted without parental notification, is prohibited.

OPINIONS OF THE ATTORNEY GENERAL

19 January 1987

Scott B. Spencer
Deputy Lincoln County Attorney
Lincoln County Courthouse
Libby MT 59923

Dear Mr. Spencer:

You have requested my opinion on the following issue:

Whether a school district policy which requires that an individual investigating a child abuse or neglect case have a school staff member present at the child's interview if the interview is conducted without parental notification, is in conflict with section 41-3-205, MCA.

You have informed me that the school's stated reason for having a school staff person present at the interview is to protect the child.

I conclude that the presence of a school staff member at an investigative interview conducted to determine if a child has been neglected or abused is prohibited.

Title 41, chapter 3 of the Montana Code Annotated is the chapter on child abuse, neglect, and dependency. Pursuant to statute, a school teacher or employee who knows or has reasonable cause to suspect that a child known to him in his professional or official capacity is an abused or neglected child must report the matter promptly to the Department of Social and Rehabilitation Services or its local affiliate. § 41-3-201, MCA. Section 41-3-202, MCA, provides in part that upon receipt of a report that a child may be an abused or neglected child:

(1) ... [A] social worker or the county attorney or a peace officer shall promptly conduct a thorough investigation into the home of the child involved or any other place where the child is present, into the circumstances surrounding the injury of the child, and into all other nonfinancial matters which in the discretion of the investigator are relevant to the investigation. ...

(2) The social worker is responsible for assessing the family and planning for the child. If the child is treated at a medical

OPINIONS OF THE ATTORNEY GENERAL

facility, the social worker, county attorney, or peace officer shall, consistent with reasonable medical practice, have the right of access to the child for interviews, photographs, and securing physical evidence and have the right of access to relevant hospital and medical records pertaining to the child.

(3) If from the investigation it appears that the child suffered abuse or neglect, the department shall provide protective services to the child and may provide protective services to any other child under the same care. The department will advise the county attorney of its investigation.

(4) The investigating social worker, within 60 days of commencing an investigation, shall also furnish a written report to the department. The department shall maintain a record system containing child abuse and neglect cases.

A social worker, the county attorney, or a peace officer investigates reports of possible abuse or neglect. The statute provides for no involvement of school staff persons in the conduct of an investigation following such a report.

Further, the records resulting from the investigation, including any interview with the child, would be included in the written report of the investigating social worker and become part of the case record. § 41-3-202(4), MCA.

Abuse and neglect records are strictly confidential. Section 41-3-205, MCA, states:

(1) The case records of the department of social and rehabilitation services and its local affiliate, the county welfare department, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect shall be kept confidential except as provided by this section. Any person who permits or encourages the unauthorized dissemination of their contents is guilty of a misdemeanor.

(2) Records may be used by interagency interdisciplinary child protective teams as

OPINIONS OF THE ATTORNEY GENERAL

authorized under 41-3-108 for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan. Members of the team are required to keep information about the subject individuals confidential.

(3) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds such disclosure to be necessary for the fair resolution of an issue before it.

(4) Nothing in this section is intended to affect the confidentiality of criminal court records or records of law enforcement agencies.

The language is clear. It expressly limits disclosure of abuse and neglect records to an interagency interdisciplinary child protective team and to a court when relevant to an issue before it. School officials, teachers, and employees are not included in interagency interdisciplinary child protective teams. § 41-3-108, MCA. They would therefore have no access to the abuse and neglect records of the Department of Social and Rehabilitation Services, the county welfare department, the county attorney, or the court.

I held in 41 Op. Att'y Gen. No. 49 (1986) as follows:

Absent a court order, section 41-3-205, MCA, prohibits the Department of Social and Rehabilitation Services from disclosing case records and reports of child abuse and neglect to: (1) the natural parents or parent, or other person having legal custody of a child who is the subject of a dependency and neglect action filed under section 41-3-401, MCA; (2) health care professionals who are treating a child suspected of being abused or neglected; (3) the noncustodial parent of a child who has been removed from the custodial parent following an incident of abuse or neglect; and (4) the natural parents or parent, or other person having legal custody of a child who has been abused or neglected while in the care of foster parents.

Allowing a member of the school staff to attend the actual interview of the child would clearly circumvent

OPINIONS OF THE ATTORNEY GENERAL

the statutory scheme limiting access to abuse or neglect records.

As I noted in 41 Op. Att'y Gen. No. 49 (1986):

Strict disclosure limitations are enacted for a variety of reasons. Reports of child abuse often contain information about the most private aspects of personal and family life. The information may or may not be corroborated and can be very damaging to the integrity of the family unit if released indiscriminately. Confidentiality also encourages the public to report incidents of child abuse. Case workers and those providing information rely on the confidential nature of the case records. A further reason disclosure is limited is to alleviate the potential stigma to the abused or neglected child.

I conclude the school's desire to protect a child under its care would not justify setting aside these statutory and policy reasons for refusing to allow school staff members access to investigative interviews with children concerning possible abuse or neglect.

In conclusion, if school officials are concerned about protecting a child when parents are not notified of an investigative interview, they may have a school staff person accompany the child to the site of the interview. However, the school staff person has no statutory authority or practical justification for attending the interview and should not be present in the room where the interview takes place.

THEREFORE, IT IS MY OPINION:

A school district policy requiring that an individual investigating a child abuse or neglect case have a school staff member present at the child's interview if the interview is conducted without parental notification, is prohibited.

Very truly yours,

MIKE GREELY
Attorney General