



STATE OF IOWA • DEPARTMENT OF PUBLIC INSTRUCTION

GRIMES STATE OFFICE BUILDING • DES MOINES, IOWA 50319

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DECLARATORY RULING # 29
(Cite as 1 D.P.I. Dec. RuI. 67)
May 3, 1982

Mr. Edgar Bittle
AHLERS, COONEY, DORWEILER,
HAYNIE & SMITH
300 Liberty Building
Sixth and Grand
Des Moines, Iowa 50309

Dear Mr. Bittle:

On April 1, 1982, you filed a "Petition for Declaratory Ruling" with my office on behalf of the Des Moines Independent Community School District. The "Petition" describes a hypothetical situation where a child abuse investigator from the Department of Social Services requests permission from school authorities to have access to a student who is the alleged victim of child abuse. Usually the investigator has secured neither a court order nor parental permission for the interview to be held at school. The specific questions you raise are as follows:

- (1) May school officials, or the school corporation, permit such an investigation without the parental consent or court order?
- (2) If the school officials or school corporation permit the investigation to take place without notifying the parent where there has been no consent or court order, what penalty or liability may attach to the officials or the school corporation?

The answers to both questions were discussed and generally resolved in a recent Attorney General's Opinion [Hege to Krejci, #82-4-8(L)] dated April 16, 1982. I am in general accord with that ruling. (I make no representations regarding the accuracy of the discussion of the Family Educational Rights and Privacy Act of 1974 which is contained therein.) In the Opinion, the Attorney General's Office found that there was no provision of state law requiring school officials to notify parents or obtain parental permission prior to allowing access to alleged child abuse victims by child abuse investigators.

The Opinion stated in relevant part at page 10:

To reiterate, no provision of state law has been found which would require parental notification by school officials prior to allowing a child abuse investigator to interview the alleged

victim of sexual abuse. Given the affirmative duties to investigate child abuse allegations and the lack of an affirmative duty upon school officials to give parents notice, any perceived interest of school officials must yield to the child abuse investigation whose "primary purpose . . . shall be the protection of the child named in the report". Section 232.71(1), The Code 1981.

To further clarify, while the school's interest in cooperation with a child abuse investigation may not rise to a legal duty, absent mandatory reporter information, certainly the spirit of the child abuse protection scheme indicates they should cooperate for the protection of the alleged child abuse victim.

The issue of penalty or liability arising in the event school officials allow a child abuse investigator access to an alleged child abuse victim at school without court order or parent permission was only partially addressed in the Attorney General's Opinion. The Opinion addressed the question of potential penalty under the Family Educational Rights and Privacy Act at page 10:

Based upon the foregoing, it is the opinion of this office, that the Family Educational Rights and Privacy Act of 1974, Buckley amendment, 20 U.S.C. § 1232(g), does not compel school officials to notify parents of a child who is an alleged child abuse victim that the child will be or has been interviewed by a child abuse investigator. Further, no financial liability will be incurred under the Buckley amendment by school officials for allowing the interview of the child abuse victim without parental notification.

I concur with the Attorney General's Opinion in that regard.

The Opinion, however, did not address potential penalties under other provisions of law or the Constitution. My independent research indicates that several legal theories, such as right of privacy and parental rights, may potentially be raised, but I have found no clear-cut case law on the subject. In the absence of any clear-cut penalty and taking the clarity of purpose and intent of the child abuse reporting and investigation laws into account, I foresee no great likelihood of serious legal penalty or liability arising from school officials allowing child abuse investigators access to alleged child abuse victims without court order or prior parental consent. The public purpose as stated in Section 232.67, The Code 1981, is stated in part as follows:

It is the purpose and policy of this part 2 of division III to provide the greatest possible protection to victims or potential victims of abuse through encouraging the increased reporting of suspected cases of such abuse, insuring the thorough and prompt investigation of these reports, and providing rehabilitative services, where appropriate and whenever possible to abused children and their families which will stabilize the home environment so that the family can remain intact without further danger to the child. [emphasis added]

I would be remiss if I did not underscore the fact that the foregoing is my best opinion on the questions asked, but that there are some valid arguments to the contrary. I note that Section 232.71 provides that when parental per-

mission to interview a child in the home is refused, the person making the investigation must approach the juvenile court or the district court to attempt to obtain authorization to enter the home and examine the child. If parental rights are taken into account statutorily in the home setting, it seems unusual that they be ignored merely because the child is in the school setting. Is it to be assumed that other mandated reporters of child abuse, such as the staffs of hospitals, private social service agencies, day care facilities and mental health centers, must also allow the child abuse investigator access to an alleged child abuse victim without prior parental permission or court order?

I note, too, that immunity from criminal and civil liability for reporting child abuse in "good faith" found in Section 232.73 does not expressly extend beyond reporting and participation in any judicial proceeding resulting from a child abuse report. Again, it seems a bit unusual that the legislature, in developing what appears to be a detailed, comprehensive child abuse reporting, investigation and protection scheme, did not expressly include immunity from liability for persons aiding the child abuse investigation.

A short time after the legislature made considerable revisions in the child abuse reporting laws in 1974, the Department of Social Services worked jointly with the Department of Public Instruction to develop guidelines for the identification and reporting of child abuse. Those guidelines were contained in a question and answer format and were approved by the then Commissioner of Social Services. The guidelines were published originally in a pamphlet entitled, "They All Need Our Help." One of the questions and answers reads as follows:

12. May social services workers contact the child at the school?

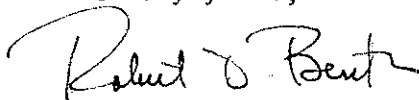
The law does not address the issue. However, since the intent of the legislation is to protect the child, schools are encouraged to cooperate as fully as possible and allow appropriate interviews. Schools may wish to have a professional staff member present at particular interviews. The school may wish to notify parents of the interview.

The concluding sentence of the response states that school officials could notify the parents of the interview. An inference that could be drawn is that parents could instruct the school officials to prevent or halt the interview.

From the foregoing discussion, you can see, and I suspect you already realize, that the questions you raise do not have firm answers on which to base firm school policy decisions. I suggest that legislative clarification be sought on the issues you raise. In the meantime, however, I strongly encourage school officials, law enforcement personnel and social service investigators to work together on this most important issue. I fully concur with the advice given at the conclusion of the Attorney General's Opinion:

The confrontation of institutions which you outlined is most unfortunate because both school officials and child abuse or law enforcement investigators undoubtedly proceed on the assumption that the child's best interests are furthered by their action.

Sincerely yours,

A handwritten signature in cursive script that reads "Robert D. Benton". The signature is written in dark ink and is positioned above the typed name.

Robert D. Benton, Ed.D.

State Superintendent of Public Instruction

RDB:tag-d