



ALAN WILSON
ATTORNEY GENERAL

August 19, 2022

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Dear Ms. White:

Attorney General Alan Wilson has referred your letter to the Opinions section. The request letter reads as follows:

This firm serves as general counsel to the Cherokee County School District (“the District”). At its meeting on November 8, 2021, the District's Board of Trustees voted unanimously to seek an opinion from your office regarding the parameters the District may place on interviews of children on school grounds by employees of the Department of Social Services (“DSS”).

By way of brief background, the District historically has permitted DSS workers to interview children who are suspected victims of abuse and/or neglect while those children are at school. Such interviews are contemplated pursuant to S.C. Code Section 63-7-920(C). Until recently, DSS ... allow[ed] a school administrator or guidance counselor to be present during the interview. Because school officials are responsible for the well-being of students while they are at school, this practice protects the student as well as the District. ...

Earlier this school year, the District was advised by the DSS head for Cherokee County that, because of confidentiality concerns, school employees would no longer be permitted in the room while a student was interviewed. I subsequently contacted the legal counsel for DSS and was informed that DSS would only permit school resource officers to be present during interviews because of the concern that a DSS employee who allowed a third party other than law enforcement to be present could be considered in violation of S.C. Code Section 63-7-1990 and subject to criminal penalties. I offered the solution of asking each

school employee who sits in during an interview to sign a confidentiality requirement, but that solution was rejected.

Because school resource officers are often tied up with other duties, the District wishes to be able to use its administrators and guidance counselors to sit in on interviews unless a student states his/her desire to proceed alone with the interview. The District has and will continue to work cooperatively with DSS to ensure that children are safe from abuse and neglect, but it is imperative that school officials be able to sit in on these interviews.

Law/Analysis

While the S.C. Department of Social Services' (the "Department") personnel may interview children on school premises in a number of different circumstances, the issues raised in your letter appear to mainly concern case determination interviews described in S.C. Code § 63-7-920. This opinion will examine the text of section 63-7-920 and related statutes in Chapter 7 of Title 63 to explain the constraints which the Department operates under when conducting these interviews and what additional parameters a school district board of trustees ("school district") may establish for those interviews that occur on school district property.

Section 63-7-920(A)(1) requires the Department to begin an investigation within twenty-four hours of any of three events: (1) receipt of a report of suspected child abuse or neglect, (2) the Department assuming legal custody of a child pursuant to Section 63-7-660 or 63-7-670, or (3) receiving notification that a child has been taken into emergency protective custody. The Department's investigation must be "appropriate and thorough" to determine whether a report of suspected child abuse or neglect is "indicated" or "unfounded." *Id.* The statute mandates that a case determination "must be made no later than forty-five days from the receipt of the report" with the possibility for a single extension of up to fifteen days where good cause is shown. S.C. Code § 63-7-920(A)(2). To facilitate these case determinations, the General Assembly authorized the Department and law enforcement to conduct interviews on school premises.

The department or law enforcement, or both, may interview the child alleged to have been abused or neglected and any other child in the household during the investigation. The interviews may be conducted on school premises, at childcare facilities, at the child's home or at other suitable locations and in the discretion of the department or law enforcement, or both, may be conducted outside the presence of the parents. To the extent reasonably possible, the needs and interests of the child must be accommodated in making arrangements for interviews, including time, place, method of obtaining the child's presence, and conduct of the interview. The department or law enforcement, or both, shall provide notification of the interview to the parents as soon as reasonably possible during the investigation if notice will not jeopardize the safety of the child or the course of the investigation. All state, law enforcement, and community agencies providing child welfare intervention into a child's life should coordinate their services to

minimize the number of interviews of the child to reduce potential emotional trauma to the child.

S.C. Code § 63-7-920(C) (emphasis added). The Department is further authorized to seek a warrant from the family court. S.C. Code § 63-7-920(B). Of particular relevance to the school setting, the statute specifically contemplates the warrant “may authorize the department to interview the child” and to obtain school records. Id.

We reiterate the General Assembly’s directive to the Department in section 63-7-920(A) is to make a determination regarding whether a report of suspected child abuse or neglect is either “indicated” or “unfounded.” The Department’s General Counsel made the following point regarding information gathered from an investigation before a case determination is made. “[T]he Department takes the position... that a case is unfounded until it is indicated; that is, the case information should be treated under the rules/statute applicable to unfounded cases until such time as a preponderance of the evidence is determined to make the case indicated for child abuse and neglect.” This position closely mirrors the statutory definition of “unfounded report” which means “a report made pursuant to this chapter for which there is not a preponderance of evidence to believe that the child is abused or neglected. For the purposes of this chapter, it is presumed that all reports are unfounded unless the department determines otherwise.” S.C. Code § 63-7-20(30) (emphasis added).

Chapter 7 of Title 63 of the South Carolina Code limits distribution of records and information related to both unfounded cases and indicated cases. See S.C. Code §§ 63-7-940 (Access to and use of unfounded case information); -1990 (Access to indicated case information). It is a misdemeanor to release information collected in both unfounded and indicated cases except as authorized by statute. See S.C. Code §§ 63-7-940(B); -1990(A). Access to and use of unfounded case information is “strictly limited” to the following:

- (1) a prosecutor or law enforcement officer or agency, for purposes of investigation of a suspected false report pursuant to Section 63-7-440;
- (2) the department or a law enforcement officer or agency, for the purpose investigating allegations of abuse or neglect;
- (3) the department or a law enforcement officer or agency, when information is received that allows the reopening of a Category III unfounded report pursuant to Section 63-7-920(A);
- (4) as evidence in a court proceeding, if admissible under the rules of evidence as determined by a judge of competent jurisdiction;
- (5) a person who is the subject of a report in an action brought by a prosecutor or by the department, if otherwise subject to discovery under the applicable rules of procedure;

(6) the department, for program improvement, auditing, and statistical purposes;

(7) as authorized in Section 63-7-2000;

(8) the Department of Child Fatalities pursuant to Section 63-11-1960;

(9)(a) the director or his designee who may disclose information to respond to an inquiry by a committee or subcommittee of the Senate or the House of Representatives or a joint committee of the General Assembly, which is engaged in oversight or investigating the activities of the department, provided that such information is reviewed in closed session and kept confidential. ...

(10)(a) the state director or the director's designee, for the purpose of publicly disclosing findings or information about a prior unfounded case of child abuse or neglect in the preparation and release of reports pursuant to Section 63-7-1990(H), ...

S.C. Code § 63-7-940. Because a case is presumptively unfounded prior to making a determination, releasing information gathered in the course of an investigation is only permitted as described above. Generally, school administrators and employees do not fall within these categories. The statute does not contemplate expanding the categories of persons permitted access to unfounded case information by signing a confidentiality agreement. However, school resource officers are authorized to access this information under the second category as a law enforcement officers for the purpose of investigating allegations of abuse or neglect. S.C. Code § 63-7-940(A)(2).

After a case is found to be indicated, school administrators and employees may be granted access to case information. Section 63-7-1990(B)(16) authorizes the Department to grant access to the records of indicated cases to “a person or agency with authorization to care for, diagnose, supervise, or treat the child, the child's family, or the person alleged to have abused or neglected the child.” The role of teachers and school administrators includes providing supervision and care for the children they educate and therefore will generally be considered to fall within those persons permitted access to indicated case information under subsection (B)(16). This authorization is permissive, not mandatory, and the Department is further permitted to “limit the information disclosed ... to that information necessary to accomplish the purposes for which it is requested or for which it is being disclosed.” S.C. Code § 63-7-1990(C). Moreover, if a teacher, principal, or other school employee reported the suspected child abuse or neglect, the Department may provide a summary of the investigation's outcome to that person. S.C. Code § 63-7-1990(F). The Department may limit the information provided to the reporter at its discretion “based on whether the reporter has an ongoing professional or other relationship with the child or the family.” *Id.*

With this statutory framework in mind, this opinion will next address what parameters a school district may place on case determination interviews on school district property. The General Assembly requires boards of trustees to “[t]ake care of, manage and control the school

property of the district.” S.C. Code § 59-19-90(5). Consistent with this duty, a court would likely find it reasonable for a school district to adopt policies setting the times and facilities available for the Department to conduct interviews with students. However, this Office is unaware of authority that would allow a school district to require that school administrators, guidance counselors, or teachers be present in interviews conducted according to S.C. Code § 63-7-920(C). It is this Office's long standing policy, like that of our state courts, to defer to an administrative agency's reasonable interpretation of the statutes and regulations that it administers. See Op. S.C. Att'y Gen., 2013 WL 3133636 (June 11, 2013); see also Kiawah Dev. Partners, II v. S.C. Dep't of Health & Env'tl. Control, 411 S.C. 16, 34, 766 S.E.2d 707, 718 (2014) (“[W]e give deference to agencies both because they have been entrusted with administering their statutes and regulations and because they have unique skill and expertise in administering those statutes and regulations.”). The South Carolina Code requires the Department to promulgate regulations and develop policies and methods of administration for carrying out child protective services. See S.C. Code § 63-7-910(E) (listing duties of the Department). Therefore, this Office will defer to the Department's reasonable interpretations of state law regarding suspected child abuse or neglect investigations.

It is this Office's opinion that the Department's policy is reasonable; that is viewing interviews conducted under section 63-7-920(C) as unfounded case information until a determination is made that a case is indicated. See S.C. Code § 63-7-20(30) (“[A]ll reports are unfounded unless the department determines otherwise.”). It is also reasonable to construe S.C. Code § 63-7-920(C) in combination with S.C. § 63-7-940, regarding access to unfounded case information, to limit those persons present in initial case determination interviews. See Penman v. City of Columbia, 387 S.C. 131, 138,691 S.E.2d 465,468 (2010) (Where statutes deal with the same subject matter, it is well established that they “are in *pari materia* and must be construed together, if possible, to produce a single, harmonious result.”). It is this Offices opinion, therefore, that a court would likely hold the Department cannot be compelled to permit school administrators or other personnel who are not law enforcement officers to be present in interviews conducted under S.C. Code § 63-7-920(C).

Conclusion

It is this Office's opinion that a school district board of trustees (“school district”) may establish parameters regarding the times and facilities available on school district property that S.C. Department of Social Services (the “Department”) may use to conduct an interview of a child alleged to have been abused or neglected. See S.C. Code § 59-19-90(5) (A board of trustees powers and duties include management and control of the district's school properties.). However, this Office is unaware of authority that would allow a school district to require that school administrators, guidance counselors, or other personnel that are not law enforcement officers be present in interviews under S.C. Code § 63-7-920(C).

It is difficult for this Office to anticipate how a dispute between a school district and the Department over including school personnel in interviews on school property would be resolved because that will likely depend on the facts of a given case. Hypothetically, a school district could refuse to permit such interviews on school property. The Department could then decide, in

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some circumstances, it would be better to conduct an interview at another location. In other circumstances, it may be appropriate for the Department to seek a warrant from the family court to authorize the Department to an interview a child. See S.C. Code § 63-7-920(B).

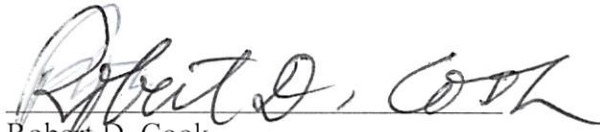
Despite this apparent disagreement, it is this Office's understanding that the Department and the school district are operating with the best interests of children in mind. From this perspective, we hope that the parties can find a mutually agreeable solution.

Sincerely,



Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General