1975 S.C. Op. Atty. Gen. 126 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4049, 1975 WL 22346

Office of the Attorney General

State of South Carolina
Opinion No. 4049
July 9, 1975

***1** Mr. Walter W. Lewin
Administrative Assistant
Santee-Wateree Mental Health Center
P. O. Box 1946
Sumter, South Carolina 29150

Dear Mr. Lewin:
Pursuant to your request for an opinion dated May 29, 1975, and your subsequent telephone conversation with Mr. Raymond Halford, Assistant Attorney General, I have been asked to reply. You set forth three questions for resolution, which are:

(1) To what extent may a State Mental Health Facility provide information to school systems, concerning a specific student's mental health?

(2) Does it matter whether the school system is public or private?

(3) Is exception (4) to Section 32–1022, South Carolina Code, 1962, as amended applicable to questions (1) and (2)?

Section 32–1022 is indeed the controlling legislative enactment, and a previous opinion of this office by Mr. Edwin E. Evans on a similar question as to the construction of this statute is attached. Mr. Evans pointed out that Section 32–1022 being protective legislation must be broadly interpreted to protect the privacy of patients and former patients, and, thereby exceptions must be narrowly and strictly construed. This rule of statutory construction is on firm legal ground, as cited in Mr. Evans opinion letter.

Section 32–1022 provides:
'All certificates, applications, records and reports made for the purpose of this chapter and directly or indirectly identifying a patient or trainee or former patient or trainee or an individual whose confinement has been sought under this chapter shall be kept confidential and shall not be disclosed by any person, except insofar as:
(1) The individual identified or his legal guardian, if any, or, if he is a minor, his parent or legal guardian, shall consent;

. . .

(4) Disclosure is necessary in cooperating with State and Federal agencies or subdivisions thereof in furthering the welfare of the patient or his family;

. . .'

Clearly exception (4) cannot apply to the private school system, yet it may be construed to allow disclosure to public school systems, as they are political subdivisions of this State. However, it does not appear that a public school system has an absolute need to confidential patient information to accomplish its educational purpose.

Therefore, a strong showing that disclosure would further the welfare of the children involved must be first made on an individual basis. Secondly, this benefit would then have to be weighed against the attendant risks of disclosure to persons who have no need for the information and who may maliciously or otherwise use the information to the detriment of a child or his family.

Perhaps such a showing could be made to allow disclosure directly to a school physician treating the particular child, or to a guidance counsellor who has sufficient psychiatrically related education and experience as to allow professional use of the information. However, disclosure indirectly through a school system administration would seem violative of the intent of Section 32–1022.

***2** Not withstanding these considerations, exception (1) allows disclosure when consent is obtained from the parents or legal guardians of minor children. This then is the preferred method for a school system—public or private—to obtain protected patient information, but this consent would not relieve them of responsibility to guard against unnecessary disclosure.

It is the opinion of this office that public school systems are entitled to confidential patient information only after a strong showing that they will use the information to further the welfare of the patient or his family, pursuant to Section 32–1022(4) supra; and that parental or guardian's consent is required otherwise for disclosure, Section 32–1022(1), supra.

I trust that this answers your inquiries. If not, please correspond. With best wishes, I am
Very truly yours,

Harry B. Burchstead, Jr.
Assistant Attorney General

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