

N.D.A.G. Letter to Omdahl (Dec. 19, 1991)

December 19, 1991

Lloyd Omdahl, Chairman
Children's Services Coordinating Committee
Office of Lt. Governor
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505

Dear Lt. Governor Omdahl:

Thank you for your August 6, 1991, letter concerning the interest of the Children's Services Coordinating Committee in pursuing cooperation and collaboration in public and private agencies serving children at risk of abuse, neglect, or out-of-home placement. You advised the committee is concerned about constraints which seem to work against full cooperation and collaboration. The committee is focusing on the extent to which legal confidentiality requirements impede the transfer of information between involved agencies.

The Legislature shares the committee's concern that there be cooperation among various entities in connection with protective services for children. North Dakota Century Code (N.D.C.C.) § 50-25.1-12 provides that "[a]ll law enforcement officials, courts of competent jurisdiction, and appropriate state agencies shall cooperate in fulfillment of the purposes of [N.D.C.C. ch. 50-25.1]." You specifically requested my opinion regarding confidentiality constraints with respect to the Department of Human Services and county social service boards and other "entities."

The Department of Human Services (Department) includes the regional human service centers. N.D.C.C. § 50-06-01.4. In connection with the protection and treatment of abused or neglected children under N.D.C.C. ch. 50-25.1 the Department also includes its designee. N.D.C.C. § 50-25.1-02(3). County social service boards act as the designee of the Department in receiving reports of child abuse or neglect and conducting investigations. N.D. Admin. Code § 75-03-19-02. Otherwise there is a constraint regarding the exchange of information between the Department and county social service boards. For example, NDDHS Manual § 110-01-03-30 provides for an exchange of information between units of the Department on a "need to know" basis. County social service boards are not units of the Department for purposes of this section.

This policy has in the past created some uncertainty with respect to the exchange of information regarding services provided under N.D.C.C. ch. 50-25.1. This apparently prompted the issuance of the March 20, 1991, policy statement to the directors of the regional human service centers and the county social service boards entitled Regional

Human Service Center Policy Child Protective Services - Exchange of Information, a copy of which is attached.

Records of clients of the Department are confidential pursuant to N.D.C.C. § 50-06-15. NDDHS Manual, § 110-01-09-01 provides that the statute "does not apply to disclosures made in the administration of a program. . . ." Also see N.D.C.C. § 50-06-15. In my opinion, this was the thrust of the March 20, 1991, policy statement.

Among other things, the Department is required to administer "programs for children and families, including adoption services and the licensure of child-placing agencies, foster care services and the licensure of foster care arrangements, child protection services . . . and [administer] the interstate compacts on the placement of children and juveniles." N.D.C.C. § 50-06-01.4(1).

In administering such programs the Department is required "[t]o provide for the placing and supervision of children in need of substitute parental care, subject to the control of any court having jurisdiction of [a] child." N.D.C.C. § 50-06-05.1(6). An abused or neglected child is a deprived child. N.D.C.C. §§ 50-25.1-02(2),(6); 27-20-02(5); In re. S.W., 290 N.W.2d 675 (N.D. 1980); In re. J.Z., 190 N.W.2d 27 (N.D. 1971). A child found to be deprived in a juvenile court proceeding may be placed for foster care. N.D.C.C. §§ 27-20-30(1)(b); 27-20-47. Juvenile court proceedings are confidential but may be disclosed to a "public or private agency . . . providing supervision or having custody under order of the juvenile court." N.D.C.C. § 27-20-51(1). Such records may also be inspected upon order of the juvenile court. N.D.C.C. § 27-20-51(2). For purposes of this letter child protective services are to be understood to include out-of-home placement.

N.D.C.C. § 50-25.1-06 provides that "[t]he department and appropriate county social service board shall provide protective services for the abused or neglected child and other children . . . and shall provide other appropriate social services, as the circumstances warrant"

"Protective services' includes services performed after an investigation of a report of child abuse or neglect has been conducted, such as social assessment, service planning, implementation of service plans, treatment services, referral services, coordination with referral sources, progress assessment, monitoring service delivery, and direct services." N.D.C.C. § 50-25.1-02(7).

The usual confidentiality constraint does not apply to disclosures made in the administration of the child protective services program. N.D.C.C. § 50-06-15; NDDHS Manual § 110-01-09-01. Even privileged communications between husband and wife and professionals and patients or clients, excepting lawyers and clients, are abrogated with respect to reports regarding child abuse or neglect. N.D.C.C. § 50-25.1-10.

Because county social service boards serve as the designee of the Department in conducting investigations of child abuse or neglect, it is necessary to exchange

information in connection with such investigations and the provision of follow-up protective services.

The authority to exchange information between the Department and county social service boards and other entities in connection with child abuse or neglect investigations and follow-up protective services is provided for by N.D.C.C. § 50-25.1-11 which provides, in part:

All reports made under this chapter, as well as any other information obtained, are confidential and must be made available to:

. . . .

3. Authorized staff of the department, appropriate county social service boards, and appropriate state and local child protection team members.

. . . .

5. Public officials and their authorized agents who require such information in connection with the discharge of their official duties.
6. A court whenever it determines that the information is necessary for the determination of an issue before the court.

The Department and county social service boards as well as other entities must cooperate and exchange information in connection with programs providing protective services for children in carrying out the purpose of N.D.C.C. ch. 50-25.1. That purpose is "to protect the health and welfare of children" and "to encourage the provision of services which adequately provide for the protection and treatment of abused and neglected children. . . ." N.D.C.C. § 50-25.1-01."

Sincerely

Nicholas J. Spaeth

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