

LETTER OPINION
94-L-278

October 17, 1994

Mr. Jeff Roterling
Adams County State's Attorney
P.O. Box 1379
Hettinger, ND 58639-1379

Dear Mr. Roterling:

Thank you for your September 28, 1994, letter concerning whether a school is obligated to provide supervision while a child is being interviewed in the school facility by a social worker for a child abuse investigation.

The statutes relevant to your inquiry are N.D.C.C. ?? 50-25.1-05 and 50-25.1-05.05. Those sections state:

50-25.1-05. Investigation. The department, in accordance with rules adopted by the department, shall immediately initiate an investigation, or cause an investigation, of any report of child abuse or neglect including, when appropriate, the investigation of the home or the residence of the child, any school or child care facility attended by the child, and the circumstances surrounding the report of abuse or neglect. If the report alleges a violation of a criminal statute involving sexual or physical abuse, the department, or the department's designee, and an appropriate law enforcement agency shall coordinate the planning and execution of their investigation efforts to avoid a duplication of factfinding efforts and multiple interviews. The department, department's designee, or appropriate law enforcement agency may interview, without the consent of a person responsible for the child's welfare, the alleged abused or neglected child and any other child who currently resides or who has resided with the alleged perpetrator. The department, department's designee, or law enforcement agency may conduct the interview at a school, child care facility, or any other place where the alleged abused or neglected child or other child is found.

Mr. Jeff Rotering
October 17, 1994
Page 2

50-25.1-05.05. Interviews on school property.

The department, department's designee, or appropriate law enforcement agency shall notify the school principal or other appropriate school administrator of its intent to conduct an interview on school property pursuant to section 50-25.1-05. The school administrator may not disclose the nature of the notification or any other related information concerning the interview to any person, including a person responsible for the child's welfare. The school administrator and department, department's designee, or law enforcement agency shall make every effort to reduce the disruption of the educational program of the child, other students, or school staff when an interview is conducted on school property.

N.D.C.C. ? 50-25.1-05 requires the Department of Human Services to immediately provide for investigation of reported child abuse, including investigating a school facility attended by the child. The Department, pursuant to that section, without the consent of a person responsible for the child's welfare, may interview the alleged abused or neglected child or any other child who currently resides or who has resided with the alleged perpetrator. The Department or its designee may conduct the interview at a school or any other place where the alleged abused or neglected child is found.

N.D.C.C. ? 50-25.1-05.05 requires the Department to notify the school principal or other administrator of its intent to conduct an interview under N.D.C.C. ? 50-25.1-05. The school administrator is prohibited from disclosing the nature of the notification or any other related information concerning the interview. The school administrator must make every effort to reduce the disruption of the child's educational program when an interview is conducted on school property.

These two provisions make it clear that the Department of Human Services, its designee, or a law enforcement officer is in control of child abuse investigations and is authorized to conduct those investigations and interviews without the consent of a person responsible for the child's welfare, and on school property if desired. The only responsibility of the school administrators for purposes of the interview and investigation is to make every effort to reduce

Mr. Jeff Rotering
October 17, 1994
Page 3

disruption of the child's educational program. The school administrator has no responsibility for supervision of the child while the child is being interviewed by persons authorized by specific law to conduct that interview on school property. Because the phrase "person responsible for the child's welfare" means the child's parents and public school employees, N.D.C.C. ? 50-25.1-02(1), the Department of Human Services or its designee controls when the interview is conducted at a school as well as those in attendance at the interview.

Providing supervision would breach certain confidentiality requirements. The school administrator that is notified about a prospective interview at a school "may not disclose the nature of the notification or any other related information concerning the interview to any [one]." N.D.C.C. ? 50-25.1-05.5.

In a phone conversation with a member of my staff, you indicated a family in your vicinity has mentioned a lawsuit against the school or its officials because of their concern about an unsupervised interview. Consistent with their responsibility to assist in the investigation provided for by N.D.C.C. ?? 50-25.1-05 and 50-25.1-05.05, school administrators and employees are immune from liability for their participation in assisting in the investigation or furnishing information to an investigator. N.D.C.C. ? 50-25.1-09. 1984 N.D. Op. Att'y Gen. 112. Since the date of the 1984 opinion, N.D.C.C. ? 50-25.1-09 has been amended to broaden its coverage to those individuals "assisting in an investigation" or "furnishing information to an investigator." This provides further support for immunity of school officials assisting in child abuse investigations.

Furthermore, providing information for purposes of a child abuse investigation under N.D.C.C. ch. 50-25.1 is not in violation of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. ? 1232(g), because interviews of a child at school and provision of assistance in the investigation do not constitute a release of educational records. 1984 N.D. Op. Att'y Gen. 112.

It is therefore my opinion that school district

Mr. Jeff Roterling
October 17, 1994
Page 4

officials are not obligated to provide supervision of a child being interviewed by a social worker conducting a child abuse investigation within a school facility under N.D.C.C. ch. 50-25.1. It is further my opinion that school officials are immune from liability for participating in good faith in assisting an investigation, furnishing information for it, making a report, and providing protective services under the chapter.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

rel/pg
cc: Henry C. Wessman, Director, Department of Human
Services