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November 25, 1985

ATTORNEY GENERAL OPINION NO. 85- 164

Steven E. Worcester
County Attorney
Graham County Courthouse
413 North Pomeroy Avenue
Hill City, Kansas 67642

Re: Infants--Kansas Code for Care of Children--
Investigation of Reports of Suspected Child
Abuse or Neglect; Interviews on School Premises

Synopsis: K.S.A. 1984 Supp. 38-1523 gives the Department of Social and Rehabilitation Services (SRS) and certain law enforcement agencies authority to investigate reports of suspected child abuse or neglect, and to interview children on school premises pursuant to such investigations. That statute does not give school officials the right to be present at interviews conducted on school premises. Similarly, L. 1985, ch. 112, §1, which allows for the prerecording of a child's statement, does not prohibit the making of such recordings during the course of interviews conducted on school premises. The thrust of both K.S.A. 1984 Supp. 38-1523 and L. 1985, ch. 112, §1 is to require the schools, SRS and law enforcement to cooperate with one another in doing what is in the best interests of the child. Cited herein: K.S.A. 1984 Supp. 38-1507, as amended by L. 1985, ch. 145, §1; K.S.A. 1984 Supp. 38-1508; 38-1523; L. 1985, ch. 112, §1.

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Dear Mr. Worcester:

As Graham County Attorney, you request our opinion regarding the authority of the Department of Social and Rehabilitation Services (SRS) and law enforcement personnel to conduct interviews on school premises with children suspected to be victims of abuse or neglect. Specifically, you inquire: (1) whether a school district may prohibit the use of audio or video equipment in the course of such an interview; and (2) whether the school district has the right to require the presence of school personnel during the interview.

The second of these queries has been addressed by this office before, but always in letter-opinion form. We will simply reiterate what we have said previously. K.S.A. 1984 Supp. 38-1523 gives SRS and appropriate law enforcement agencies authority to investigate reports of suspected child abuse or neglect. K.S.A. 1984 Supp. 38-1523(g) requires administrators of elementary and secondary schools to provide a setting on school premises for the purposes of interviewing a child as a part of such investigation. This section of the statute is designed to provide a nonthreatening atmosphere so that the child may feel more comfortable and secure during the interview session.

K.S.A. 1984 Supp. 38-1523 does not require the presence of school personnel during interviews, and there are several arguments in favor of prohibiting their presence. In many instances, the subject matter of these interviews must remain confidential for various reasons, including the safety and well-being of the child. SRS employees and law enforcement personnel are required, pursuant to K.S.A. 1984 Supp. 38-1507 as amended by L. 1985, ch. 145, §1, and K.S.A. 1984 Supp. 38-1508, to keep confidential all records and reports concerning child abuse. This would include information gleaned from interviews with the child. School personnel are not subject to this confidentiality requirement. Thus, it is often in the child's best interest to exclude school personnel from an interview with the child which takes place at the school.

In addition, the presence of individuals at the interview who are not subject to confidentiality requirements may hinder law enforcement and SRS officials in their investigation of a possible crime. The number one concern in these situations should be to protect the child (the victim), and not the possible offender. We have stated in a previous letter regarding this subject that "school officials may not intervene or obstruct the official duties of SRS or law enforcement officials in any manner," including insistence on being present at a confidential

interview with a child on school premises. "The schools have no role in [the investigation of child abuse] beyond reporting suspected cases, giving information to SRS and law enforcement and providing a physical setting, if requested to do so, for the interview." It is our opinion, therefore, that a school district has no right to require the presence of school personnel at a confidential interview by SRS or law enforcement personnel on school premises of a child suspected to be a victim of abuse or neglect.

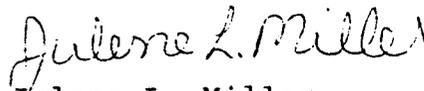
You also inquire whether a school district may prohibit the use of audio or video tape by the investigator to record a confidential interview on school premises. L. 1985, ch. 112, §1 provides that a recording of a child's statement, made before any proceedings have begun and in compliance with the guidelines listed in the enactment, will be admissible in evidence in any proceeding in which a child less than 13 years of age is alleged to have been abused or neglected. The purpose of this legislation is to allow the child to make his statement as few times as possible and thus prevent unnecessary trauma, while at the same time requiring procedures which should minimize the possibility of admitting into evidence an inaccurate or incomplete statement. As long as the guidelines are followed to the letter, there is nothing in L. 1985, ch. 112, §1 which would prevent the making of these recordings on school premises.

The legislative intent underlying both K.S.A. 1984 Supp. 38-1523(g) and L. 1985, ch. 112, §1 appears to be the protection of the child. The schools, SRS and law enforcement should all be working toward the same goal, namely the best interest of the child. With this in mind, each agency should strive to cooperate with one another in determining whether a school official should be present during an interview with a child and whether or where an interview should be recorded.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Julene L. Miller
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RTS:JSS:JLM:jm