

## **ATTORNEY GENERAL OPINION NO. 93-2**

To: Mr. Ken Patterson, Administrator  
Division of Family and Children's Services  
Idaho Department of Health and Welfare  
450 W. State Street, Third Floor  
**STATEHOUSE MAIL**  
Boise, ID 83720

Per Request for Attorney General's Opinion

### **QUESTIONS PRESENTED**

1. What are the responsibilities of school personnel in reporting suspected child abuse?
2. Does the Idaho Department of Health and Welfare have the authority to investigate within school facilities reports of child abuse, abandonment and neglect?
3. Does the authority to investigate reports of child abuse, abandonment and neglect include the authority to determine who may be present and/or participate in the interview process?
4. What is the potential liability for school personnel if investigations are conducted in school facilities?
5. What are the requirements for parent notification of child protection investigations?

For the purposes of this opinion, there is no distinction made between public and private schools.

### **CONCLUSION**

1. School personnel must report all instances of suspected child abuse, abandonment and neglect to either law enforcement or the Department of Health and Welfare within 24 hours of discovery. Failure to do so is a misdemeanor.

2. The Department of Health and Welfare has the authority to investigate reports of suspected child abuse, abandonment and neglect. The department's authority to investigate extends to school facilities. The investigation should proceed in accordance with governing statutes, the department's promulgated rules, and internal policies.
3. The authority of the Idaho Department of Health and Welfare to investigate reports of child abuse, abandonment and neglect includes the ability to determine who may be present and/or participate in the interview process.
4. School personnel incur no liability for allowing use of school facilities for purposes of child abuse investigation so long as the reporting was done in good faith and without malice.
5. Interviews of suspected victims of child abuse, abandonment and neglect without parental consent or notification do not violate the parent's right to privacy in family relationships and the responsibility of notification is that of the Department of Health and Welfare.

## ANALYSIS

### Question No. 1:

Idaho is one of many states which has mandatory reporting requirements when child abuse, abandonment or neglect is suspected. Case law clearly upholds the validity of these statutes in that they are neither far reaching nor unconstitutional. Jett v. State, 605 So. 2d 926 (Fla. App. 1992); People v. Hedges, 13 Cal. Rptr. 2d 412 (Cal. Super. Ct. 1992); Morris v. Coleman, 194 Mich. App. 606, 488 N.W.2d 464 (Mich. App. 1992).

Idaho Code § 16-1619 provides:

Any physician, resident on a hospital staff, intern, nurse, coroner, school teacher, day care personnel, social worker, or other person having reason to believe that a child under the age of eighteen (18) years has been abused, abandoned or neglected or who observes the child being subjected to conditions or circumstances which would reasonably result in abuse, abandonment or neglect shall report or cause to be reported within twenty-four (24) hours such conditions or circumstances to the proper law enforcement agency or the department [of health and welfare]. The

department shall be informed by law enforcement of any report made directly to it.

(Emphasis added.) Idaho Code § 16-1602 defines "abused," "abandoned" and "neglected" as follows:

(a) "Abused" means any case in which a child has been the victim of:

(1) Conduct or omission resulting in skin bruising, bleeding, malnutrition, burns, fracture of any bone, subdural hematoma, soft tissue swelling, failure to thrive or death, and such condition or death is not justifiably explained, or where the history given concerning such condition or death is at variance with the degree or type of such condition or death, or the circumstances indicate that such condition or death may not be the product of an accidental occurrence; or

(2) Sexual conduct, including rape, molestation, incest, prostitution, obscene or pornographic photographing, filming or depiction for commercial purposes, or other similar forms of sexual exploitation harming or threatening the child's health or welfare or mental injury to the child.

(b) "Abandoned" means the failure of the parent to maintain a normal parental relationship with his child, including but not limited to reasonable support or regular personal contact. Failure to maintain this relationship without just cause for a period of one (1) year shall constitute prima facie evidence of abandonment.

.....

(s) "Neglected" means a child:

(1) Who is without proper parental care and control, or subsistence, education, medical or other care or control necessary for his well-being because of the conduct or omission of his parents, guardian or other custodian or their neglect or refusal to provide them; provided, however, no child whose parent or guardian chooses for such child treatment by prayers through spiritual means alone in lieu of medical treatment, shall be deemed for that reason alone to be neglected or lack

parental care necessary for his health and well-being, but further provided this subsection shall not prevent the court from acting pursuant to section 16-1616, Idaho Code.

The statute clearly requires anyone, specifically teachers and other employees within a school system, to report suspected child abuse, abandonment and neglect to the department of health and welfare or law enforcement. The reporting party is immune from criminal and civil liability so long as he or she has reason to believe that a child has been abused, abandoned or neglected and, acting upon that belief, makes a report of abuse, abandonment or neglect as required in section 16-1619 of the Idaho Code. Any person reporting in bad faith or with malice is not immune from liability.

Although "reasonable belief" is not defined within Idaho Code, the elements of abuse, abandonment or neglect are in Idaho Code § 16-1602(a)(b)(s). This does not mean school personnel must report every bruise or scratch noticed on a child. Mattingly v. Casey, 509 N.E.2d 1220 (Mass. App. Ct. 1987) "It requires reporting on a basis of indicators which give reasonable cause to believe that a child is being abused. That conclusion requires an element of judgment to separate an incident from a pattern, the trivial from the serious." *Id.* at 1222-23. The "reasonable belief" standard is what a similarly situated person would do under similar circumstances. White by White v. Pierce County, 797 F.2d 812 (9th Cir. 1986).

Forming a "reasonable belief," however, does not reach the level of performing a preliminary investigation. A preliminary investigation may include interviewing the child, family members, or collateral contacts, physically examining the child, and determining whether a valid child abuse complaint exists. IDAPA 16.06.01300-16.06.01302 *et seq.*, 16.06.01310, 16.06.01311, and 16.06.01315 *et seq.* The responsibility to perform the preliminary investigation is that of the Department of Health and Welfare. Therefore, school personnel have no obligation to perform any further investigation once the suspected abuse is reported.

It should be noted that communications regarding child abuse, abandonment and neglect disclosed between a child and the child's counselor, psychologist, or clergy are not confidential and are subject to disclosure to the Department of Health and Welfare. Idaho Code § 9-203(3) and (6); Jett v. State, 605 So. 2d 926 (Fla. App. 1992); People v. Hedges, 13 Cal. Rptr. 2d 412 (Cal. Super. 1992). In other words, the confidential nature of communications between a counselor and a student is testimonial only and does not apply to child protection cases.

## Question No. 2:

You next ask whether the authority of the Department of Health and Welfare to investigate reports of child abuse, abandonment and neglect extends within school facilities.

The Idaho Legislature has clearly placed the authority and responsibility to investigate reports of child abuse, abandonment and neglect in the Idaho Department of Health and Welfare. Idaho Code § 16-1601 provides:

The policy of the state of Idaho is hereby declared to be the establishment of a legal framework conducive to the judicial processing of child abuse, abandonment and neglect cases, and the protection of children whose life, health or welfare is endangered. Each child coming within the purview of this chapter shall receive, preferably in his own home, the care, guidance and control that will promote his welfare and the best interest of the state of Idaho, and if he is removed from the control of his parents, guardian or other custodian, the state shall secure adequate care for him; provided, however, that the state of Idaho shall, to the fullest extent possible, seek to preserve, protect, enhance and reunite the family relationship. This chapter seeks to coordinate efforts by the state and local public agencies, in cooperation with private agencies and organizations citizens' groups, and concerned individuals, to:

- (1) preserve the privacy and unity of the family whenever possible;
- (2) take such actions as may be necessary and feasible to prevent the abuse, neglect or abandonment of children.

Idaho Code § 56-204A provides:

The state department [of health and welfare] is hereby authorized and directed to maintain, by the adoption of appropriate rules and regulations, activities which, through social casework and the use of other appropriate and available resources, shall embrace:

- (a) Protective services on behalf of children whose opportunities for normal physical, social and emotional growth and development are endangered for any reason;

....

Such rules and regulations shall provide for:

(1) Receiving from any source and investigation all reasonable reports or complaints of neglect, abuse, exploitation or cruel treatment of children;

(2) Initiation of appropriate services and action where indicated with parents or other persons for the protection of children exposed to neglect, abuse, exploitation or cruel treatment.

(Emphasis added.)

The legislature has clearly indicated the intent to protect children from abuse. In a declaratory judgment action involving the exact question you pose, it was held that such specific child protection statutes and policies giving school boards power to control activities occurring at schools. Decatur City Board of Education v. Aycock, 562 So. 2d 1331 (Ala. Civ. App. 1990). Department employees investigating child abuse cases are defined as law enforcement agents. Idaho Code § 9-337(5). Therefore, the scope of the Idaho Department of Health and Welfare's authority is not limited by statute and extends into all public and private facilities, including school facilities, just as law enforcement's authority is not limited when investigating crimes committed by youth. Idaho Code § 16-1811.

### **Question No. 3:**

You next ask whether the authority of the Department of Health and Welfare to investigate reports of child abuse, abandonment or neglect includes the authority to determine who may be present and/or participate in the interview process.

Title 6, chapter 1, of the Rules and Regulations Governing Social Services sets forth the procedures which the department must follow when investigating child abuse. IDAPA 16.16.013000 *et seq.* Those procedures include assigning the case for investigation, investigating the complaint, entering the complaint on a "Child Neglect and Abuse Register," and forwarding this information to law enforcement. All complaints are deemed "reasonable for purposes of preliminary investigation unless" the information received discredits the report beyond reasonable doubt. IDAPA 16.06.01301,01(a)(b)(c)

and (d). The internal policy of the Department of Health and Welfare directs how investigations are to proceed.

In making investigations, the Department of Health and Welfare "shall use its own resources, and may enlist the cooperation of peace officers for phases of the investigation for which they are better equipped." Idaho Code § 16-1625. Idaho Code § 16-1627 grants great latitude to the Department of Health and Welfare in determining how investigations of child abuse cases should proceed by requiring that the provisions of the Child Protective Act be "liberally construed."

It is presumed that the Department is in the best position to make decisions regarding the protection of children and their families. The Department has staff trained in dealing with all aspects of child abuse from the recognition of abuse to the removal of children from dangerous environments. The Department's services must also include assistance and support for the families of the abused child. Idaho Code § 16-1601.

The importance of properly handling child abuse investigations becomes apparent with State v. Wright, 116 Idaho 382, 775 P.2d 1224 (1989). In Wright, the Idaho Supreme Court excluded hearsay testimony regarding the statements of a 2½-year-old victim given to a pediatrician from the criminal trial because the statements were taken outside the scope of a proper investigation. Wright was appealed to the United States Supreme Court. Idaho v. Wright, 110 S. Ct. 3139 (1990). The United States Supreme Court ruled that in order for hearsay statements to be admissible at trial, the investigation must be free from any suggestive or intimidating procedure by participants. Wright, 110 S. Ct. at 3142:

The purpose of an in-school interview outside the presence of parents, guardians, or other persons responsible for the care of the child is so that welfare officials and police officers may obtain an untainted interview. *R.S. v. State of Minnesota and Hennepin County*, 459 N.W.2d 680, 687 (1990).

The dangers of not conducting a proper investigation are obvious. The presence of school officials could hinder the investigation itself, involve a potentially intimidating authority figure, and taint potential evidence for future court proceedings. Therefore, the determination of who should be present during the course of a child abuse investigation is solely within the discretion of the Department of Health and Welfare and law enforcement. The department in its sole discretion may exclude school personnel from the interview.

The same conclusion was reached by the Court of Civil Appeals of Alabama in Decatur City Board of Education v. Aycock, 562 So. 2d 1331 (1990). In that case, several local school boards had adopted a policy "denying private, on-campus interviews to [the Alabama Department of Human Resources] in every instance . . . ." 562 So. 2d at 1331-32. The school boards insisted that school personnel needed to be present at the investigative interview "to protect the child's welfare, to limit the potential liability of the Boards, and to fulfill an obligation to the parents and the children." *Id.* at 1334. The boards argued further that their organic statutes gave "them the power to control all activities occurring at schools and involving school children." *Id.*

The court in Decatur agreed with the Department of Human Resources that private interviews with an alleged victim of child abuse were needed to establish rapport with the child and to avoid embarrassment for the child. They stressed the need for special training for those present at interviews to learn to relate at the child's level, to learn to use specific interview techniques to enhance ability to elicit information, and to learn not to react to the child's statement about abuse.

The Alabama court, relying on much the same general statutory framework as exists in Idaho, concluded: "[T]here is no reasonable justification for, or right to, the Boards' policy requiring that an official school representative be present at all interviews, . . . ." We are convinced an Idaho court would reach the same conclusion.

#### **Question No. 4:**

You next ask whether school personnel expose themselves to liability if investigations are conducted in school facilities.

Idaho Code § 33-601(7) authorizes and directs the board of trustees of each school district to use "any school building of the district . . . for any public purpose." The policy of the Child Protective Act establishes that the coordination between state and local public agencies to prevent child abuse should be considered to be such a public purpose. Idaho Code § 16-1601; Decatur City Board of Education v. Aycock, 562 So. 2d 1331, 1334 (Ala. Civ. App. 1990). Moreover, the Department of Health and Welfare is required to cause a child abuse investigation to be made in accordance with the Child Protective Act as appropriate under the circumstances. Idaho Code § 16-1625.

Idaho Code § 16-1620 provides immunity to any person who has reason to believe that a child has been abused, abandoned or neglected and acts upon that belief. Thus, so long as the school official does not report in bad faith or with malice, Idaho Code § 16-1620 will provide protective immunity. The qualified good faith standard is what a

similarly situated person would do under similar circumstances. White by White v. Pierce City, 797 F.2d 812 (9th Cir. 1986). Such immunity extends to participating in any judicial proceeding resulting from such reporting. The school district or school employees will not incur liability for allowing use of school facilities for such a purpose. Idaho Code § 6-904(1).

A school district may be liable for negligence if the danger noted in the Act should have been "protected against by the District" or if either law enforcement or the Department of Health and Welfare is obstructed from completing a proper investigation. Boykin v. District of Columbia, 484 A.2d 560 (D.C. App. 1984); State v. Wright, *supra*. Therefore, if a school district refuses to allow the Department of Health and Welfare access to a child at any time, thereby delaying the investigation of the allegation, the protection of that child may be hindered. Balancing the respective interests, it is more likely that liability could be incurred by hindering, delaying or obstructing a child protection investigation than by permitting it to proceed as authorized by the governing law. The public interest will best be served by allowing the child protective professionals to do their jobs.

It should be noted that the Public Records Act states that the Idaho Department of Health and Welfare is a "law enforcement agency" in performing its duties under the Child Protective Act. To this extent, its social workers are law enforcement officers. Idaho Code § 9-337(5). Thus, there may also be criminal liability against school officials should a law enforcement officer be obstructed from discharging his or her duty when investigating a child abuse report just as if they hindered a peace officer's investigation of any other crime. Idaho Code § 18-705.

#### **Question No. 5:**

Your final question asks whether parents must be notified of child protection investigations.

The very nature of a child abuse investigation and the fact that parents cannot invoke a legal privilege to prevent a child from testifying against them in Child Protective Act cases negates the requirement for parental consent or notification prior to interviewing the child. Idaho Code § 9-203(7).

Interviewing the suspected victim of child abuse without parental consent or notification, even when the "identification of the perpetrator is unknown, is a reasonable means to effectuate the state's interest in identifying and protecting abused children." R.S. v. State of Minnesota and Hennepin County, 459 N.W. 2d 680, 690 (1990).

The responsibility of notifying parents is that of the Department of Health and Welfare and is not required until such time as the department deems it necessary to ensure the best interest and needs of the child are met.

## **AUTHORITIES CONSIDERED**

### **1. Idaho Code:**

§ 6-904(1).  
§ 9-203(3).  
§ 9-203(6).  
§ 9-203(7).  
§ 9-337(5).  
§ 16-1601.  
§ 16-1602.  
§ 16-1619.  
§ 16-1620.  
§ 16-1625.  
§ 16-1627.  
§ 16-1811.  
§ 18-705.  
§ 33-601(7).  
§ 56-204A.

### **2. IDAPA:**

16.06.01300  
16.06.01301  
16.06.01302  
16.06.01303  
16.06.01304  
16.06.01305  
16.06.01310  
16.06.01311  
16.06.01315 *et seq.*

### **3. U.S. Supreme Court Cases:**

Idaho v. Wright, 110 S. Ct. 3139 (1990).

**4. Idaho Cases:**

State v. Wright, 116 Idaho 382, 775 P.2d 1224 (1989).

**5. Other Cases:**

Boykin v. District of Columbia, 484 A.2d 560 (D.C. App. 1984).

Decatur City Board of Education v. Aycock, 562 So. 2d 1331 (Ala. Civ. App. 1990).

Jett v. State, 605 So. 2d 926 (Fla. App. 5 Dist. 1992).

Mattingly v. Casey, 509 N.E.2d 1220 (Mass. App. Ct. 1987).

Morris v. Coleman, 194 Mich. App. 606, 488 N.W.2d 464 (Mich. App. 1992).

People v. Hedges, 10 Cal. App. 4th. Supp. 20, 13 Cal. Rptr. 2d 412 (Cal. Super. 1992).

R.S. v. State of Minnesota and Hennepin County, 459 N.W.2d 680 (1990).

White by White v. Pierce City, 797 F.2d 812 (9th Cir. 1986).

DATED this 24th day of March, 1993.

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**Analysis by:**

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