

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

March 6, 2009

Opinion No. 09-22

School Officials' Membership on Child Abuse Review Teams

QUESTIONS

1. Are the opinions that your Office expressed in Op. Tenn. Att'y Gen. No. 87-101 (June 9, 1987) still valid, particularly your opinion that school employees may not demand to be present at interviews of children who are the focus of child abuse investigations?
2. May school security officials, including certified security officers, be members of the child abuse review team created by Tenn. Code Ann. § 37-1-407?
3. May a school official or school security officer be a member of a child abuse review team in order either "to protect the child or prevent further abuse" or for any other purpose?

OPINIONS

1. Yes, all opinions expressed in Opinion No. 87-101 remain valid, including our conclusion that school employees may not demand to be present at interviews of children who are the focus of child sexual abuse investigations.
2. No, school security officials may not be members of the child abuse review team, at least not by virtue of their employment as school security officers or their certification as security officers.
3. No, a school official or school security officer may not be a member of a child abuse review team because a school official or security officer is not among the individuals statutorily listed as members of the child abuse review team, and the membership of such a team is limited only to those individuals set out in the relevant statutes.

ANALYSIS

1. In Opinion No. 87-101, we expressed the following opinions:

- a. Public schools and their administrators or employees are local agencies with a duty to cooperate in child abuse investigations including permitting the child abuse review team to conduct interviews while the child is at school.
- b. The principal may not insist that a school employee be present during the interview.
- c. The principal may reasonably control the time, place and circumstances of the interview.
- d. The principal does not violate any laws in failing to inform the parents/guardian that the pupil is to be interviewed when asked by the team that the parents/guardian not be notified.
- e. The previous conclusion remains the same even if the suspected abuser is not a member of the child's household.
- f. Neither the principal nor another school official may demand to be present during the interview even if the suspected abuser is a school employee or another student.

Op. Tenn. Att'y Gen. No. 87-101 at 2 (June 9, 1987) (copy attached). These opinions were based principally on our review of Tenn. Code Ann. §§ 37-1-401 *et seq.* and 37-1-601 *et seq.*, the statutory schemes governing investigations of child abuse and investigations of child sexual abuse, as the statutes were then written. While the statutes have since been amended, we have found nothing in the current statutes that would affect the validity of the opinions expressed in Opinion No. 87-101.

2. The separate schemes set out in Tenn. Code Ann. § 37-1-401 *et seq.* ("Part 4"), governing child abuse investigations generally, and 37-1-601 *et seq.* ("Part 6"), governing child sexual abuse investigations, are supplementary and cumulative. You ask specifically about child abuse review teams, which are created under Part 4, and whose membership is set out in Tenn. Code Ann. § 37-1-407. A child abuse review team must include a representative of the Department of Children's Services ("DCS"), a physician, a psychologist or psychiatrist, and a social worker. Tenn. Code Ann. § 37-1-407(b)(1)(A) through (D). The team may also include a representative of the local juvenile court if desired by the juvenile judge and a representative of the local law enforcement agency if requested by the District Attorney General. Tenn. Code Ann. § 37-1-407(b)(2). Part 6 creates similar child protective teams, whose composition is set out in Tenn. Code Ann. § 37-1-607. A child protective team must include a DCS representative, a representative from the Office of the District Attorney General, and one properly trained law enforcement officer with countywide jurisdiction from the county where the child resides or

where the offense occurred. Tenn. Code Ann. § 37-1-607(a)(2) The team may also include a representative from one of the mental health disciplines. *Id.* Neither statute authorizes expansion of the membership of an investigative team beyond that set out in the statute. Moreover, as child abuse investigations are made confidential under penalty of law, Tenn. Code Ann. §§ 37-1-409(g) and 37-1-615(b), the teams may contain no members other than those authorized by the relevant statutes.

You ask whether a child abuse review team may include any school security official, including a certified security officer. A school security official, regardless of whether the official is a certified security officer, is not listed among the members of the child abuse review team set out in Tenn. Code Ann. § 37-1-407 and thus may not participate in the team in that capacity. However, if the school security official is also a member of the local law enforcement agency, the school security official may be included in the child abuse review team at the request of the District Attorney General. Tenn. Code Ann. § 37-4-407(b)(2).

3. The final question is whether school officials or school security officers may be included on the child abuse review team either “to protect the child or prevent further abuse” or for any other purpose. The quoted language, which is drawn from Section VI of Opinion No. 87-101, refers to exceptions to the confidentiality of child abuse reports and investigations, not exceptions to the membership of child abuse review teams. Both Part 4 and Part 6 make DCS investigations generally confidential. Tenn. Code Ann. §§ 37-1-409(a)(1) and 37-1-612(a). As an exception to that general rule, both Parts authorize DCS to establish procedures to disclose the results of its investigations to schools and other entities and individuals in order to protect children from abuse. Tenn. Code Ann. §§ 37-1-409(e) and 37-1-612(f). However, neither Part contains a similar exception permitting school officials to participate in a child abuse investigation as a member of the child abuse review team either “to protect the child or prevent further abuse” or for any other purpose. On the contrary and as noted above, membership on the child abuse review team should be limited only to those individuals explicitly listed by statute because child abuse investigations are made strictly confidential under penalty of law. Tenn. Code Ann. §§ 37-1-409(g) and 37-1-615(b). Thus, while the statutes may authorize DCS to disclose results of an investigation to a school, they do not authorize a school official or school security officer to participate in an investigation as a member of the child abuse review team.

ROBERT E. COOPER, JR.
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

DOUGLAS EARL DIMOND
Senior Counsel

Requested by:

Honorable Harry Brooks
State Representative
117 War Memorial Building
Nashville, TN, TN 37243-0119