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*Child abuse contact with children at school
Educational Interventions on suspected child abuse*

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STATE OF MAINE

DEPARTMENT OF THE ATTORNEY GENERAL

AUGUSTA, MAINE 04333 June 16, 1978

To: David Smith, Human Services Commissioner; Attn: Peter Walsh,
Director, Bureau of Resource Development and Carolyn McTeague,
Child Protective Consultant

From: Eliot Field; Assistant Attorney General

Subject: Opinion on school official's and teacher's authority/responsibility
to allow protective workers to interview children during school hours.

I have drafted the following response to your inquiry of May 19, 1978. It focuses on the authority and responsibility of school officials and teachers in the situation you mention, although it also discusses the rights and duties of the other parties involved.

FACTS:

After receiving a report of suspected child abuse or neglect, the Department of Human Services must promptly investigate the report to determine its validity and the need, if any, for ameliorative and protective action. 22 M.R.S.A. §3860, sub-section 1. In some cases, particularly those involving allegations of sex abuse, the Department child protective worker may determine that it would be better for the child, and his or her family, to first contact the child independently of the family to discuss the suspected abuse or neglect. Typically this means the social worker will want to meet with the child at school. Some school officials and teachers have been uncertain of their authority or responsibility in responding to a request from a worker to meet with and interview the child during school hours. As a result the response to such requests has been inconsistent across the state with many school officials and teachers allowing such meetings and interviews, and others first informing the parents and obtaining their consent.

For purposes of this opinion we assume that the child is at least willing to meet with the worker. A child may not be forced to meet with the worker and answer questions against his or her will.

QUESTION:

What is the authority and responsibility of school officials and teachers with respect to requests by child protective workers to meet with and interview a student during school hours in the context outlined above?

ANSWER:

School officials and teachers, acting in loco parentis and with a duty of reasonable care to the child, may, and in most cases should, allow a child protective worker to meet with and interview a child during school hours.

REASONS: Since the question posed here has not, as yet, been directly and specifically addressed by either statutory or case law, reference must be made to the general legal principles governing the relationships of school officials, children, and parents. Generally, the relationship of school officials and teachers to their pupils may be described as follows:

The teacher and other school officials, to a limited extent at least, stand in loco parentis as to students attending the school, and they may exercise such powers of control, restraint, and correction over pupils as may be reasonably necessary to enable teachers to perform their duties and accomplish the purposes of education. [Brooks v. Jacobs, 139 Me. 371 (1943); 79 C.J.S. Schools §493; 68 Am. Jur. 2d Schools §242.] The teacher's power and duty extend beyond the teaching and preservation of order and discipline to matters affecting the morals, health, and safety of his pupils, and he may and should do everything he deems necessary to these ends, when they are not in conflict with the primary purpose of the school or opposed to law or rule of the school board....[79 C.J.S. Schools §493]. (Emphasis and bracketed cites added).

Courts have consistently affirmed that schools have independent authority and responsibility to act and regulate matters reasonably related to students' interests and school functioning, even though the action may be contrary to the child's and parents' wishes and is to some extent invasive of individual and family privacy. Ingraham v. Wright, 430 U.S. 651, at 662 (1977) and Baker v. Owen, 423 U.S. 907, aff'g. 395 F. Supp. 294, at 299-301 (MDNC 1975) (corporal punishment in schools); Tinker v. Des Moines School Dist., 393 U.S. 503, at 507 (1969), and Egner v. Texas City Independent School Dist., 338 F. Supp. 931 (1972) (restraints on speech and press); State v. McKinnon, 558 P.2d 781 (1977) (search of student for drugs); Laucher v. Simpson, 276 N.E. 2d 261 (1971), Farrel v. Smith, 310 F. Supp. 732 (SD Me. 1970), and Leonard v. School Committee of Attleboro, 212 N.E. 2d 468 (1965) (regulating student's hair). From these cases one can conclude that school officials and teachers have broad authority¹ subject to a duty of reasonable care with respect to the custody and care of pupils. Brooks v. Jacobs, supra.

It is clear that allowing a social worker to meet with and interview a child in connection with alleged abuse or neglect of that child is well within the bounds of authority of school officials and teachers, and in most cases it is likely to be the responsibility of these persons to allow such interviews. The

¹This authority is not without limits, e.g., Tinker, supra, p. 3 of text, Goss v. Lopez, 419 U.S. 565 (1975), and courts themselves do not always agree on these limits, e.g., Kerr v. Schmidt 401 U.S. 1201 (1971) and Breen v. Kahl 419 F 2d 1034 (1969). For purposes of the question posed, the limits do not need to be detailed here.

parents' consent is not necessary². In fact, notifying the parents to ask for their consent may often be contrary to the child's interests since it may prematurely inform the allegedly abusive parent of the investigation. Such notification may exacerbate the child-family relationship and increase the jeopardy to the child, all before the worker has even obtained preliminary information to determine what course of action should be taken³.

²Some school personnel have been unsure of their responsibility to the parents in this situation, thinking that allowing an interview will somehow infringe on a parent's rights, perhaps exposing the school person to liability. While the law of liability is uncertain and must depend on the facts of each case, we do not believe there is a significant risk of liability here. In fact, recent case law suggests that if there is any possible basis for liability here, it is more likely to be for hindering the protective process by failing to carry out a duty owed to the child, if that failure causes harm to the child. Landeros v. Flood 551 P 2d. 389 (1976).

And it has been held in relation to corporal punishment in schools that the parent's approval of such punishment is not constitutionally required, even though the parent had expressly disapproved it. Baker v. Owen, supra, p.3. In comparing the realities of child abuse or neglect cases--discussed in part in note 3 and in the text at note 3, below--to those of school corporal punishment, one must conclude that in the abuse/neglect context there is even less rationale for the notion that parental consent to the school action is required, constitutionally or otherwise.

³In cases of suspected abuse or neglect of a child by the parent, the rights of the child and parent are typically at odds with each other. Action which advances one's rights or interests usually limits or infringes the other's.

In this regard, it should be noted that when the courts have set limits on the authority of school personnel, it has been in situations in which the school action has infringed on the interests of both parent and child. The school action here is in a wholly different light since, rather than infringing on parallel interests, it is advancing the rights and interests of the child, to whom an independent duty of care is owed.

In exercising this responsibility, the school personnel have some discretion. They are not obligated to allow every requested interview under every circumstance. If under the facts known to them (e.g., information presented by the social worker, their knowledge of the child and his family) it appears that the interview is in the child's interests, then it should be allowed. If, for some reason, it appears that the interview will do the child more harm than good and is thus contrary to his or her interests, it should not be allowed, unless it can be modified in some way to mitigate its adverse effect on the child. The school personnel should insure that each interview is conducted with due regard for the child's needs under all the circumstances (personal, family, school, etc.). Thought should be given to the physical environment of the interview, the people present⁴, the timing, and other pertinent factors.

In sum, school officials and teachers, acting to a certain extent in loco parentis and having a duty of reasonable care to the child, may, and in most cases would be obliged to, allow a child protective worker to meet with and interview a child during school hours, provided that the interviews are conducted with due regard for the child's interests.

⁴Depending on the circumstances, it may be appropriate for a school official or teacher who is familiar with the child to be present with the child during some or all of the interview process.