

THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

OFFICE OF STUDENT SUPPORT SERVICES

in the obligations of school districts under Social Services Law §425(1). In light of our recent discussions with the field and attention to this important matter, the Department will continue to engage in dialogue with key stakeholders to determine whether a change in statute is appropriate and necessary in order to protect the health and safety of our children across the State and minimize the possibility of future risk of liability to school districts and school district personnel who permit CPS workers to interview students in child abuse investigations should other courts adopt the reasoning of Phillips v. County of Orange. Again, in the interim, unless and until there is a binding precedent in the Second Circuit, the State Education Department's current policy and guidance stand.

Key excerpts from the State Education Department's guidance are as follows:

When allegations or circumstances included in a report or factors that arise during an investigation make it advisable to interview the child(ren) apart from the family, the school should cooperate with CPS in the investigative process. Social Services Law, §425(1) provides that school districts, as political subdivisions of the State, must provide the New York State Office of Children and Family Services (OCFS) and CPS with such assistance and data as are necessary to enable them to fulfill their CPS responsibilities.

The circumstances or allegations which may, but do not necessarily, prompt a decision by CPS to interview a child at school, include but are not limited to:

- bruises inflicted by parents;
- unusual punishments;
- unattended illness;
- child fearful of returning home; and
- sexual abuse

Interviewing a child in his/her school setting is predicated upon ongoing cooperation and dialogue with school authorities so that both the CPS caseworker and the school authorities understand each other's policies, responsibilities and procedures. The school district and social services district may want to develop procedures setting forth how and when interviews of children will be conducted at school.

In general, circumstances where a child may be in imminent danger, where time is a factor, or where other considerations exist (for example, the child expresses a need to speak privately with the CPS caseworker) may make it advisable for CPS to interview a child at school. This could occur prior to or following CPS interviewing the parents.

In making the decision whether to interview the child at school, it should be kept in mind also that interviewing a child in school may have negative consequences such as:

- disrupting the child's school routine
- calling special attention to an allegation about a problem at home which in fact may not be a problem or may not be sufficiently significant to warrant such extraordinary attention; and

the 7th Circuit's decision in Doe v. Heck cannot constitute "clearly established law" in the 11th Circuit that would deprive a Florida social worker of qualified immunity that would protect that caseworker from liability for interrogating a student at school. The 11th Circuit concluded that there was "no controlling case law that establishes that it is unreasonable for a Florida social worker to interrogate a minor at her school during the course of an investigation of allegations of child abuse." Id. at 1205. Concluding that the social worker was entitled to qualified immunity, the 11th Circuit determinedo qualTJ 0.10 d1TwTJ d(ae)1 0.10 dturmermtur nttimatiincurshe cn

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