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Opinion No. 07-127

DCS Reports of Delinquency Adjudications to Schools

QUESTIONS

1. Since Tenn. Code Ann. § 49-6-3051 requires DCS to report to school principals adjudications "involving" certain enumerated offenses, does that include adjudications of the inchoate offenses of attempt, solicitation, and conspiracy?

2. Since Tenn. Code Ann. § 49-6-3051, Tenn. Code Ann. § 37-1-153, and Tenn. Code Ann. § 37-1-154 cross reference each other, may DCS report the offenses listed in Title 37 but not in Title 49?

3. May DCS report to school principals the adjudications enumerated in Tenn. Code Ann. § 37-1-131, as amended by 2007 Public Acts, ch. 200, without a court order?

4. Since 2007 Public Acts, ch. 200, requires DCS to develop a policy detailing information it can share at meetings mandated by the statute, may DCS release the information required by Tenn. Code Ann. § 37-1-131, as amended by 2007 Public Acts, ch. 200, to school personnel in meetings held pursuant to both Tenn. Code Ann. § 49-6-3051 as well as at meetings held pursuant to Tenn. Code Ann. § 37-1-131?

OPINIONS

1. Yes. Tenn. Code Ann. § 49-6-3051 requires DCS to notify the school principal when a student enrolls in a local education agency (LEA), returns to school after a suspension or expulsion, or changes schools within the LEA if a student has ever been adjudicated delinquent for any of the offenses listed in that statute, or attempt, solicitation, or conspiracy to commit of any of those offenses.

2. When DCS is carrying out the reporting responsibilities imposed by Tenn. Code Ann. § 49-6-3051, it may only report the specific offenses listed in that statute.

3. DCS may not report adjudications under the authority of Tenn. Code Ann. § 37-1-131 without a court order. However, Tenn. Code Ann. § 49-6-3051 provides separate statutory authority requiring DCS to notify the school principal of the adjudications listed in that statute.

4. Tenn. Code Ann. § 49-6-3051 only requires DCS to provide written information to the school principal. Since Tenn. Code Ann. § 49-6-3051 does not require DCS' attendance at meetings, any policy developed pursuant to and regarding meetings conducted under the authority of Tenn. Code Ann. § 37-1-131 as amended would not be applicable to the notice provisions of Tenn. Code Ann. § 49-6-3051.

ANALYSIS

1. You have requested our opinion on the construction of several statutes which require notification of the school principal when a student has been found delinquent by virtue of committing certain offenses. Our analysis of these issues is complicated by the fact that the statutes dealing with notification to the school of juvenile delinquency offenses are not consistent in either the offenses for which notification is required or the conditions under which DCS, or another specified entity or individual, is required to provide notification.

Your first question addresses the construction of Tenn. Code Ann. § 49-6-3051, which provides:

> Notwithstanding any provision of law to the contrary, when a student initially enrolls in an LEA, resumes school attendance after suspension, expulsion, or adjudication of delinquency, or changes schools within the LEA, the parents, guardians, or custodians, including the department of children's services acting in any capacity, shall provide to the school principal the abstract provided for under § 37-1-153 or § 37-1-154, or other similar written information, if such student has ever been adjudicated delinquent *for an offense involving* first degree murder, second degree murder, rape, aggravated rape, aggravated robbery, especially aggravated robbery, kidnapping, aggravated kidnapping, especially aggravated kidnapping, aggravated assault, or felony reckless endangerment. Such information shall be shared only with employees of the school having responsibility for classroom instruction of the child, but such information is otherwise confidential and shall not be shared by school personnel with any other person or agency except as may otherwise be required by law. This written notification shall not become a part of such child's student record.

(Emphasis added).

The primary rule of statutory construction is to give effect to the legislative intent by giving words their natural and ordinary meaning. *City of Lenoir City v. State ex rel. City of Loudon*, 571 S.W.2d 297, 299 (Tenn. 1978). Because Tenn. Code Ann. § 49-6-3051 requires DCS to provide written notice to the school principal if a student has been "adjudicated delinquent for *an offense involving*" certain specified crimes, this Office concludes that the statute also applies to attempt, solicitation, and conspiracy to commit those crimes.

2. Tenn. Code Ann. §§ 37-1-153 and 37-1-154 limit public inspection of juvenile court records and law enforcement records, respectively. However, each statute contains an exception requiring the parent or guardian of a child, including DCS, to provide a school written notice of adjudication of certain delinquency offenses as set forth in Tenn. Code Ann. § 49-6-3051. Tenn. Code Ann. § 37-1-153 (e); Tenn. Code Ann. § 37-1-154(e). Because Tenn. Code Ann. §§ 37-1-153 and 37-1-154 do not list specific delinquency adjudications to be reported, but only cross-reference Tenn. Code Ann. § 49-6-3051, DCS may only report those delinquency adjudications listed in Tenn. Code Ann. § 49-6-3051 when carrying out its reporting responsibilities under that statute.

3. Before the 2007 amendment, Tenn. Code Ann. § 37-1-131 provided:

> (a) If the child is found to be a delinquent child, the court may make any of the following orders of disposition best suited to the child's treatment, rehabilitation and welfare:
>
> (1) Any order authorized by § 37-1-130 for the disposition of a dependent or neglected child;
>
> (2) Placing the child on probation under the supervision of the probation officer of the court or the department of children's services, or any person, persons or agencies designated by the court, or the court of another state as provided in § 37-1-143, under conditions and limitations the court prescribes. If the adjudication of delinquency was for an offense involving first degree murder, second degree murder, rape, aggravated rape, rape of a child, aggravated robbery, especially aggravated robbery, kidnapping, aggravated kidnapping, especially aggravated kidnapping, aggravated assault, or felony reckless endangerment, and if school attendance is a condition of probation, or if the child is to be placed in the custody of a state agency and is to be placed in school by a state agency or by a contractor of the state agency, *the court shall make a finding that the principal of the child's school shall be notified. The court shall then enter an order directing the youth service officer, probation officer, or the state agency if the child has been committed to the custody of the state agency, to notify in writing the school principal of the nature of the offense and probation requirements, if any, related to school attendance, within five (5) days of the order or before the*

> *child resumes or begins school attendance, whichever occurs first.* Such information shall be shared only with employees of the school having responsibility for classroom instruction of the child, but such information is otherwise confidential and shall not be shared by school personnel with any other person or agency, except as may otherwise be required by law. Such notification in writing of the nature of the offense committed by the child and any probation requirements shall not become a part of such child's student record. A violation of the confidentiality provisions of the preceding sentence is a Class C misdemeanor;

Tenn. Code Ann. § 37-1-131 (a)(1) and (2) (2006) (emphasis added). 2007 Public Acts, ch. 200, expands the list of delinquent adjudications of which a court is required to direct the appropriate official to provide written notification to the school principal to include voluntary manslaughter; criminally negligent homicide; sexual battery by an authority figure; statutory rape by an authority figure; possession, manufacture, or transportation of a prohibited weapon; unlawful carrying or possession of a firearm; carrying weapons on school grounds; carrying weapons on certain public property; handgun possession; providing handguns to minors; and certain drug offenses. The amendment additionally requires the school principal, upon receiving such notification, to convene a meeting that is to include representatives from DCS to develop a plan to establish goals to provide the child the opportunity to succeed in school and to provide for school safety. DCS must also develop a policy detailing the information to be shared with the school under this statute.

Tenn. Code Ann. § 37-1-131 provides the disposition a court may make after a child is adjudicated delinquent. Tenn. Code Ann. § 37-1-131 (a). One of the options is to "[place] the child on probation under the supervision of the probation officer of the court or the department of children's services, or any person, persons or agencies designated by the court . . ." Tenn. Code Ann. § 37-1-131 (a)(2). Thus, the notification required under Tenn. Code Ann. § 37-1-131 (a)(2) applies only when a juvenile is placed on probation and either school attendance is a condition of probation or the child is placed in DCS custody and will attend school. Further, the statute requires the court to direct the youth service officer, probation officer, or the state agency, if the child has been committed to state custody, to provide written notice to the school principal when the offense involved is one of those listed in the statute. Tenn. Code Ann. § 37-1-131 (a)(2). Separate statutes, Tenn. Code Ann. §§ 37-5-107 and 37-1-153, make DCS and juvenile court records confidential in general. Given the confidentiality of this information and the limitations contained in Tenn. Code Ann. § 37-1-131, we believe DCS may only release such confidential information under this statute when directed to do so by court order.

While Tenn. Code Ann. § 37-1-131 authorizes DCS to release the adjudications specified in the statute only when directed to do so by court order, a separate statute — Tenn. Code Ann. § 49-6-3051— requires the Department to give notice of certain adjudications without being directed to do so by court order. Since some, but not all, of the adjudications listed in Tenn. Code Ann. § 49-6-3051 are repeated in Tenn. Code Ann. § 37-1-131, we believe each statute must be looked at separately. Therefore, DCS may release information of an adjudication listed both in Tenn. Code

Ann. § 37-1-131 and Tenn. Code Ann. § 49-6-3051 without a court order because of the obligation imposed upon it by Tenn. Code Ann. § 49-6-3051. However, if an adjudication is listed in Tenn. Code Ann. § 37-1-131 but not in Tenn. Code Ann. § 49-6-3051, DCS may only release that adjudication when directed to do so by court order.

4. Finally, you ask whether it would be legal under the policy required by 2007 Public Acts, ch. 200, to release the information required by Tenn. Code Ann. § 37-1-131 in meetings required both under that section and under Tenn. Code Ann. § 49-6-3051. We read Tenn. Code Ann. § 49-6-3051 to require only written notification by DCS. Since Tenn. Code Ann. § 49-6-3051 does not require DCS' attendance at any meetings, we do not believe that any policy developed pursuant to or regarding meetings mandated by Tenn. Code Ann. § 37-1-131 as amended would be applicable to those situations where DCS is acting solely under Tenn. Code Ann. § 49-6-3051.

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