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

October 1, 2010

Opinion No. 10-101

DCS Authority to Reverse Child Protection Team Determination of Sexual Abuse

QUESTION

Is the Department of Children's Services ("DCS" or "the Department") authorized by statute or other authority to reverse a determination by the child protection team ("CPIT") that a child has been sexually abused for purposes of service provision?

OPINION

Yes. The Department is authorized generally by statute and rule to reverse a CPIT's determination that a child has been sexually abused.

ANALYSIS

Two separate but closely interrelated Parts of Title 37, Chapter 1 of the Tennessee Code Annotated govern child abuse investigations. To oversimplify somewhat, Part 4 governs child abuse investigations generally, while Part 6 specifically governs child sexual abuse investigations. See generally Tenn. Code Ann. §§ 37-1-401 through 414 and 37-1-601 through 616. However, both parts specify that they are to be read complementarily with each other and with any other statute. See Tenn. Code Ann. §§ 37-1-402(b) and 37-1-601(b). It therefore makes sense to read the two parts as an essentially unitary scheme.

Part 4 provides that child sexual abuse investigations shall be conducted by a child protection team (commonly known as a "CPIT") pursuant to the provisions of Part 6. Tenn. Code Ann. § 37-1-406(b). A CPIT is composed of representatives from various entities interested in civil and criminal investigation and prosecution of child sexual abuse. It must include one representative each from the Department, the District Attorney General's Office, the juvenile court, and local law enforcement. Tenn. Code Ann. § 37-1-607(a)(2). It may also include a representative of a mental health discipline and must include a representative of a child advocacy center in geographical areas served by such centers. Id.

When a CPIT investigates a report of child sexual abuse, the CPIT must determine whether the report "was indicated or unfounded and report its findings to the child abuse

registry." Tenn. Code Ann. § 37-1-406(i). The Legislature has required the Department to adopt rules to establish "administrative and due process procedures for the disclosure of the contents of its files and the results of its investigations" contained in the child abuse registry. Tenn. Code Ann. § 37-1-612(f)(1). Accordingly, the Department has promulgated rules that provide for review of the CPIT's determination of child sexual abuse. *See* Tenn. Comp. R. & Regs. ch. 0250-07-09-.01 through .11. The designee of the Department's Commissioner determines in a formal file review whether a report has been properly classified as indicated. Tenn. Comp. R. & Regs. ch. 0250-07-09-.06(1). The Commissioner's designee is authorized to reverse the CPIT's determination. Tenn. Comp. R. & Regs. ch. 0250-07-09-.06(9). Because the Department's reversal is a general reversal, it would apply for all purposes, including service provision.

ROBERT E. COOPER, JR.
Attorney General and Reporter

BARRY TURNER
Deputy Attorney General

DOUGLAS EARL DIMOND
Senior Counsel

Requested by:

Honorable Sherry Jones
State Representative
26 Legislative Plaza
Nashville, TN 37243-0159