

CHILD ABUSE IN AN EDUCATIONAL SETTING

The Board of Education recognizes that children have the right to an educational setting that does not threaten their physical and emotional health and development. Child abuse by school personnel and school volunteers violates this right and therefore is strictly prohibited.

Allegations of child abuse by school personnel and school volunteers shall be reported in accordance with the requirements of Article 23-B of the Education Law and this policy.

Required Reporters

Any person holding any of the following positions shall be required to promptly report written and oral allegations of child abuse an employee or volunteer_in an educational setting:

- school administrator
- teacher
- school nurse
- school guidance counselor
- school psychologist
- school social worker
- other school personnel required to hold a teaching or administrative license or certificate
- licensed and registered physical therapist,
- licensed and registered occupational therapist,
- licensed and registered,
- speech-language pathologist,
- teacher aide,
- school resource officer,
- school board member, and
- any staff whose duties involve direct student contact and who is paid either by a school district or contracted to provide transportation services to children; or
- who is an employee of a contracted service provider or worker placed within the school under a public assistance employment program, pursuant to title nine-B of article five of the social services law.

For purposes of this policy, persons holding these positions shall be referred to as “required reporters.”

Definitions

"Administrator" or "school administrator" shall mean a principal of, or the equivalent title, in a public school, charter school or board of cooperative educational services, or other chief school officer.

“Child” means a person under the age of 21 enrolled in a school,

“Child abuse” means any one of the following acts committed in an educational setting by an employee or volunteer against a child:

- intentionally or recklessly inflicting physical injury, serious physical injury or death; or
- intentionally or recklessly engaging in conduct that creates a substantial risk of physical injury, serious physical injury or death; or
- any child sexual abuse as prohibited by sections 130 or 235 of the Penal Law; or
- the commission or attempted commission against a child of the crime of disseminating indecent materials to minors pursuant to Article 235 of the Penal Law.

“Educational setting” means the buildings and grounds of the school, the vehicles provided by directly or by contract the school for the transportation of students to and from school buildings, field trips, co-curricular and extra-curricular activities both on and off school grounds, all co-curricular and extra-curricular activity sites, and any other location where direct contact between an employee or volunteer and a child has allegedly occurred.

"Employee" means any person who is receiving compensation from a school district. Additionally, for the purpose of this policy, one whose duties involve direct student contact and is receiving compensation from any person or entity that contracts with a school to provide transportation services to children or is an employee of a contracted service provider or worker placed within the school under a public assistance employment program, pursuant to title nine-B of article five of the social services law, whereby such services performed by such person involve direct student contact.

“Law enforcement authorities” means any officer or office of municipal, sheriffs, or division of the state police department.

“Parent” means either both of a child’s parents or other persons legally responsible for the child.

“School” generally means any school district, public school, charter school, non-public school board of cooperative educational series or special act school district and additional entities as defined by section 1125(10) of Education Law.

"Volunteer" means any person, other than an employee, who has direct student contact and provides services to a school or school district which involve direct student contact and who provides services to any person or entity which contracts with a school to provide transportation services to children

Reporting Requirements

In any case where a written or oral allegation of child abuse by an employee or volunteer in an educational setting is made to a required reporter, the required reporter shall:

1. promptly complete the required State Education Department report form as annexed to this policy; and

2. personally deliver it to the Principal of the school in which the child abuse allegedly occurred.

If the allegation involves a child who was allegedly abused by an employee or a volunteer of a school in another school district, the required reporter must promptly forward the report form to the Superintendent of the district of attendance and the Superintendent of the school district where the abuse allegedly occurred (if different).

If an allegation is made to a school bus driver employed by a person or entity that contracts with a school to provide transportation services to children that a child has been subjected to child abuse by an employee or volunteer in an educational setting, such driver shall promptly report to his or her supervisor.

If an allegation is made to a supervisor of a school bus driver employed by a person or entity that contracts with a school to provide transportation services to children, that a child has been subjected to child abuse by an employee or volunteer in an educational setting, such supervisor shall promptly complete a written report and shall personally deliver it to the school district superintendent employed by the school district where the child abuse occurred.

If an allegation is made which involves a school that is not a school district or public school, the appropriate school administrator or administrators, in addition to any appropriate superintendent of schools, shall be notified if the allegation.

Upon receiving a written report, the Principal shall determine whether there is reasonable suspicion to believe that an act of child abuse has occurred. In those circumstances where the Superintendent receives the written report directly, he or she will be responsible for making the reasonable suspicion determination

In any case where the employee the allegation is being made against is the superintendent or the administrator, the report of such allegations shall be made to the Assistant Superintendent.

If the Principal/Superintendent determines there is reasonable suspicion to believe that an act of child abuse has occurred, he or she shall promptly notify the parent of the alleged child victim (assuming that the parent is not the person who originally reported the alleged abuse) that an allegation of child abuse in an educational setting has been made and promptly provide the parent with the written statement setting forth parental rights, responsibilities and procedures prepared in accordance with the Regulations of the Commissioner of Education.

If the person making the allegation of abuse is someone other than the child or the child's parent, the Principal/Superintendent shall contact the person making the report to learn the source and basis for the allegation.

The Principal shall also promptly provide a copy of the written report to the Superintendent and send a copy to the appropriate law enforcement authorities. In no event shall the Principal delay in sending the report to law enforcement because of an inability to contact the Superintendent.

The Superintendent shall send to the Commissioner of Education any written report forwarded to the local law enforcement authorities where the employee or volunteer alleged to have committed an act of child abuse holds a certification or license issued by the department.

Rights of Employees and Volunteers

Any employee or volunteer against whom an allegation of child abuse has been made and against whom the district intends to take adverse action shall be entitled to receive a copy of the report and to respond to the allegations. In addition, such persons are entitled to seek disclosure of reports involving them under the Freedom of Information Law.

Confidentiality

All reports, photographs, and other written material submitted pursuant to this policy and Article 23-B of the Education Law shall be confidential and may not be redisclosed except to law enforcement authorities involved in investigating the alleged abuse or except as expressly authorized by law or pursuant to a court-ordered subpoena. The Principal and Superintendent shall exercise reasonable care to prevent unauthorized disclosure.

Willful disclosure of a written record required to be kept confidential to a person not authorized to receive or review such record is a class A misdemeanor.

Penalties

Willful failure of an employee to prepare and submit a written report of alleged child abuse required by Article 23-B of the Education Law shall be a class A misdemeanor.

Willful failure of any Principal or Superintendent to submit a written report of alleged child abuse to an appropriate law enforcement authority, as required by Article 23-B of the Education Law, shall be a class A misdemeanor. In addition, the Commissioner of Education may, following an administrative determination, impose a civil penalty of up to five thousand dollars on any administrator who fails to submit a report of child abuse to an appropriate law enforcement authority.

The law further prohibits any Principal or Superintendent from agreeing to withhold from the appropriate law enforcement authorities, a superintendent or the Commissioner of Education, where appropriate, an allegation of child abuse in an educational setting on the part of any employee or volunteer as required by law, in return for the resignation or voluntary suspension of the alleged perpetrator. Violation of this prohibition can result in a class E felony charge and a civil penalty of up to \$20,000.

Record Retention

Any report of child abuse by an employee or volunteer that does not result in a criminal conviction shall be expunged from the records kept by the district with respect to the subject of the report after five years from the date the report was made.

Training

The Superintendent shall be responsible for establishing and implementing on an ongoing basis a training program for all current and new required reporters on the procedures required under

Article 23-B. The program shall include at a minimum information regarding the physical and behavioral indicators of child abuse and maltreatment, reporting requirements including but not limited to, when and how a report must be made, what other actions the reporter is can and should take, the legal protections afforded reporters, and the consequences for failing to report, and any other elements specified in Commissioner's regulations.

Further, all persons employed on or after July 1, 2019 as a school bus driver employed by any person or entity that contracts with a school to provide transportation services to children shall be required to complete two hours of coursework or training (from an approved provider) regarding the identification and reporting of child abuse and maltreatment. The coursework or training shall include information regarding the physical and behavioral indicators of child abuse and maltreatment, reporting requirements including but not limited to, when and how a report must be made, what other actions the reporter is can and should take, the legal protections afforded reporters, and the consequences for failing to report. Each employee in such titles shall provide the school administrator of the school with documentation showing that he or she completed the required training. In addition, each school bus driver shall provide such contracting person or entity with documentation showing that he or she completed the required training. The department shall be authorized to request such records on a periodic basis and may publish a list of any persons or schools who are not in compliance with this subdivision on its website.

The coursework or training required by this section shall not apply to those persons already required to undergo coursework or training regarding the identification and reporting of child abuse and maltreatment pursuant to sections three thousand three and three thousand four of this chapter.

Ref: Education Law §§1125-1133
Penal Law §§130, 235, 263
8 NYCRR §100.2 (hh) (Reporting of Child Abuse in an Educational Setting)
Appeal of S.S., 42 EDR 273 (2003)

Effective Date: March 3, 2020

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CHILD ABUSE IN AN EDUCATIONAL SETTING EXHIBIT -
NOTICE/REPORTING REQUIREMENTS

Duties of Employees

The law imposes reporting requirements on school administrators, teacher , school nurse, school guidance counselors, school psychologists, school social workers, other school personnel required to hold a teaching or administrative license or certificate, licensed and registered physical therapists, licensed and registered occupational therapists, licensed and registered, speech-language pathologists, teacher aides, school resource officers, school board members, any staff whose duties involve direct student contact and who is paid either by a school district or contracted to provide transportation services to children, or who is an employee of a contracted service provider or worker placed within the school under a public assistance employment program, pursuant to title nine-B of article five of the social services law.

When these employees of the district or to a school bus driver employed by a person or entity that contracts with a school to provide transportation services receive an allegation of child abuse by an employee or volunteer in an educational setting, they must take the following steps:

- a. Upon receipt of an oral or written allegation of child abuse in an educational setting, the employee must promptly complete the “Child Abuse in an Educational Setting” report form (attached).
- b. Upon completion of the report form, the employee must personally deliver it to the school building administrator of the school in which the child abuse allegedly occurred.
- c. If the allegation(s) involves a child who was allegedly abused by an employee or a volunteer of a school in another school district, the employee must promptly forward the report form to the superintendent of schools of the school district of attendance and the school district where the abuse allegedly occurred.

Duties of School Building Administrators

In all cases, upon receipt of a report form, the school building administrator must review the form and determine if there is reasonable suspicion to believe that an act of child abuse, as defined by law, has occurred. If he or she finds reasonable suspicion to believe that an act of child abuse has occurred, additional steps must be taken which differ depending upon the individual who has made the allegation.

Child makes the Allegation

- a. Promptly notify the parent of the child that an allegation of child abuse in an educational setting has been made.
- b. Promptly provide the parent with the written statement setting forth parental rights, responsibilities and procedures prepared in accordance with the Commissioner’s regulations (8 NYCRR §100.2(hh)).
- c. Promptly provide a copy of the completed report form to the superintendent.

- d. Promptly forward a copy of the completed report form to the appropriate law enforcement authorities. The report to law enforcement may not be delayed by reason of inability to contact the superintendent.

Parent Makes the Allegation

- a. Promptly provide the parent with the written statement setting forth parental rights, responsibilities and procedures prepared in accordance with the Commissioner's regulations (8 NYCRR §100.2(hh)).
- b. Promptly provide a copy of the completed report form to the superintendent.
- c. Promptly forward a copy of the completed report form to the appropriate law enforcement authorities. The report to law enforcement may not be delayed by reason of inability to contact the superintendent.

Person other than the Parent or the Child Makes the Allegation

- a. Promptly notify the parent of the child that an allegation of child abuse in an educational setting has been made.
- b. Promptly provide the parent with the written statement setting forth parental rights, responsibilities and procedures prepared in accordance with the Commissioner's regulations (8 NYCRR §100.2(hh)).
- c. Ascertain from the reporting employee the source and basis for the allegation and complete that portion of the report form.
- d. Promptly provide a copy of the completed report form to the superintendent.
- e. Promptly forward a copy of the completed report form to appropriate law enforcement authorities. The report to law enforcement may not be delayed by reason of inability to contact the superintendent.

Duties of Superintendents

In most cases, the school building administrator will receive the completed report form from an employee and make the reasonable suspicion determination. However, there are situations in which the superintendent will receive the report form directly and he or she will be responsible for making the reasonable suspicion determination such as:

- a. Where the school building administrator receives the oral or written allegation and is required to complete the report form;
- b. Where it is alleged that a child was abused by an employee or volunteer of a school other than a school within the school district where the child attends.

In addition, a superintendent may receive an oral or written allegation of child abuse in an educational setting from local law enforcement officials or from child protective services. In these cases, the superintendent would be responsible for completing the report form and, subsequently, making the reasonable suspicion determination.

If the superintendent finds reasonable suspicion to believe that an act of child abuse has occurred, as defined by law, additional steps must be taken which differ depending on the individual who has made the allegation.

Child makes the Allegation

- a. Promptly notify the parent of the child that an allegation of child abuse in an educational setting has been made.
- b. Promptly provide the parent with the written statement setting forth parental rights, responsibilities and procedures prepared in accordance with the Commissioner's regulations (8 NYCRR §100.2(hh)).
- c. Promptly forward a copy of the completed report form to the appropriate law enforcement authorities.

Parent Makes the Allegation

- a. Promptly provide the parent with the written statement setting forth parental rights, responsibilities and procedures prepared in accordance with the Commissioner's regulations (8 NYCRR §100.2(hh)).
- b. Promptly forward a copy of the completed report form to the appropriate law enforcement authorities.

Person other than the Parent or the Child Makes the Allegation

- a. Promptly notify the parent of the child that an allegation of child abuse in an educational setting has been made.
- b. Promptly provide the parent with the written statement setting forth parental rights, responsibilities and procedures prepared in accordance with the Commissioner's regulations (8NYCRR §100.2(hh)).
- c. Ascertain from the reporting employee the source and basis for the allegation and complete that portion of the form.
- d. Promptly forward a copy of the completed report form to the appropriate law enforcement authorities.

In all cases where a completed report is forwarded to the appropriate law enforcement authorities and the employee or volunteer alleged to have committed an act of child abuse holds a certification or license issued by the Department, the superintendent must also refer such report to the Commissioner of Education.

Expungement

A report that does not, after investigation, result in a criminal conviction shall be expunged from any record which may be kept by a school or school district with respect to the subject of such a report after a period of five years from the date of the making of such report or at such earlier time as such school or school district determines.

Penalty Provisions

The requirements set forth within the law are mandatory. Willful failure of an employee to prepare and submit a report form as required by the law is a Class A misdemeanor. The law also provides that a willful failure of a school building administrator or superintendent to forward a copy of the report form to the appropriate law enforcement authority is a Class A misdemeanor. In addition, the Commissioner of Education can also fine a school building administrator or a superintendent up to \$5,000 for failure to forward a copy of the completed report form to the appropriate law enforcement authorities.

Immunity Provisions

The law provides immunity from civil liability for employees, volunteers, school building administrators and superintendents who reasonably and in good faith make a report of child abuse in an educational setting in the manner described in the law. The law also provides immunity from civil liability to school building administrators and superintendents who reasonably and in good faith forward a copy of the report form to a person or agency as required by law and in the manner described in the law.

Confidentiality of Records

In general, the only persons authorized to receive the written report form and any related materials are the school building administrator and the superintendent. The law requires that all reports, records, photographs and other material submitted remain confidential and may not be disclosed except to law enforcement authorities involved in the criminal investigation of child abuse in an educational setting or as expressly authorized by law or pursuant to a court-ordered subpoena. Willful disclosure of a written record required to be confidential, to a person not authorized to receive or review such record is a class A misdemeanor. The law requires that school building administrators and superintendents exercise reasonable care to prevent unauthorized disclosure.

Duties of District Attorneys

Where a criminal investigation is undertaken in response to a report forwarded to the appropriate law enforcement authorities, the district attorney must notify the superintendent of the school district where the acts of child abuse occurred and the superintendent of the school district where the child attends, if different, of the following:

- an indictment;
- the filing of an accusatory instrument;
- the disposition of the criminal case; or,
- the suspension or termination of the investigation.

Where a criminal conviction is obtained for a crime involving child abuse in an educational setting by a licensed or certified school employee, the district attorney is required to notify the Commissioner of Education, as well as the superintendent of the school district in which the acts of child abuse occurred and the superintendent of the school district where the child attends, if different.

Duties of the Commissioner of Education

Upon receiving notification of conviction from a district attorney, the Commissioner of Education must begin proceedings against the convicted individual pursuant to Part 83 of the Commissioner's regulations to determine whether the individual possesses good moral character. The determination may result in additional action taken against the individual related to his or her license or certification.

The Commissioner has also issued the attached form that must be used for the recording and transmission of allegations of child abuse in educational settings.

The Commissioner and the Board of Regents also promulgated §100.2(hh)(2), which sets forth the training requirements relating to child abuse in an educational setting.

Unreported Resignations or Voluntary Suspensions

The law prohibits school building administrators or superintendents from agreeing to withhold from the appropriate law enforcement authorities, a superintendent or the Commissioner of Education, where appropriate, an allegation of child abuse in an educational setting on the part of any employee or volunteer as required by law, in return for the resignation or voluntary suspension of the alleged perpetrator. Violation of this prohibition can result in a class E felony charge and a civil penalty of up to \$20,000.

Effective Date: March 3, 2020