

REGULATION

1992

7440-R

Orleans/Niagara BOCES

Subject: Child Abuse and Maltreatment

Pursuant to Board of Education Policy and Section 411, et seq. of the Social Services Law and Article 23-B of the Education Law, BOCES staff should be on the alert for the purpose of identifying abused and maltreated children and reporting such findings as directed herein.

Child Abuse Occurring in a Setting Other Than an Educational Setting

For the purposes of this section, the following definitions shall apply.

An "abused child" means a child less than 18 years of age whose parent or other person legally responsible for care: (i) inflicts or allows to be inflicted upon such child physical injury, by other than accidental means, which causes or creates a substantial risk of death, serious protracted disfigurement, protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ; (ii) creates or allows to be created a substantial risk of physical injury to such child, by other than accidental means, which would be likely to cause death or serious protracted disfigurement, or protracted impairment of physical or emotional health, or protracted loss or impairment of the function of any bodily organ; or (iii) commits, or allows to be committed, a sex offense against such child, as defined in the Penal Law, provided, however, that the corroboration requirement contained therein shall not apply to proceedings under this regulation.

A "maltreated child" includes a child under the age of 18 years of age who: (i) Is defined as a neglected child under the Family Court Act; or (ii) has had serious physical injury inflicted upon him or her by other than accidental means. A "neglected child" is one, under 18 years of age, whose physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as a result of neglect by a parent, or other person legally responsible for his or her care, to exercise a minimum degree of care in (a) Supplying the child with adequate food, clothing, shelter, education, medical, dental, optometrical or surgical care although financially able to do so or offered financial or other reasonable means to do so, or (b) providing the child with proper supervision or guardianship, by (i) unreasonably inflicting or allowing to be inflicted harm, or a substantial risk thereof, including the infliction of excessive corporal punishment, (ii) misusing a drug or drugs, (iii) misusing alcoholic beverages to the extent that s/he loses self control of his or her actions, or (iv) any other act(s) of a similarly serious nature requiring the aid of the court. A child who has been abandoned by his parent(s) or other person(s) legally responsible for his or her care shall also constitute a "neglected child".

1. Persons Obligated to Report Cases of Suspected Child Abuse or Maltreatment

Under Social Services Law Section 413, persons falling within the definition of "school official", as defined under that statute, are required to report or cause a report to be made in accordance with the Social Services Law when: The school official has reasonable cause to suspect that a child coming before him or her in his or her professional or official capacity is an abused or maltreated child; or when the school official has reasonable cause to suspect that a child is an abused or maltreated child where the parent, guardian, custodian, or other person legally responsible for such child comes before him or her in his or her professional or official capacity and states from personal knowledge facts, conditions, or circumstances which, if correct, would render the child an abused or maltreated child.

Under the statute, "school official" is defined to include but not be limited to school teacher, school guidance counselor, school psychologist, school social worker, school nurse, school administrator, or other school personnel required to hold a teaching or administrative license or certificate.

Pursuant to Social Services Law Section 414, any person (even an employee not coming within the definition of "school official" as defined above) may make a report of suspected child abuse or maltreatment if the person has reasonable cause to suspect that a child is an abused or maltreated child.

2. Reporting Procedure

A school official, as defined in Section 1 above, shall make a report of suspected child abuse or maltreatment immediately by telephone. The oral report shall be made to the Statewide Registry and to the Local Child Protective Service. The general hotline telephone number, for reporting a case of suspected abuse or maltreatment, is 1-800-342-3720. An additional hotline for school officials and employees to use is 1-800-635-1522.

An oral report made by a school official (as defined in Section 1 above) must be followed within 48 hours by a written report. The written report shall be made by telephone facsimile (fax) to the appropriate Local Child Protective Service on a form (LDSS-2221-A) prescribed by and supplied by the New York State Office of Children and Family Services. The telephone facsimile (fax) report shall be made to a special telephone facsimile (fax) number for use only by persons mandated by law to make reports. The written report shall be submitted to the Department of Social Services of the county in which the abused or maltreated child resides.

The school official may take or cause to be taken photographs of the area(s) of trauma visible on a child who is subject to a report and, if medically indicated, cause to be performed a radiological examination on the child. Any photographs or x-rays taken shall be sent to the child protective service at the time that the written report is sent, or as soon thereafter as possible.

After making the required report, a mandated reporter shall immediately notify the appropriate BOCES building or program supervisor (principal or his or her designee). The responsible BOCES administrator shall be responsible for all subsequent administration necessitated by the report.

A BOCES employee who does not come within the definition of "school official" as defined above shall report to the responsible BOCES administrator or supervisor (principal or his or her designee) information providing reasonable cause to suspect that a child has been subjected to abuse or maltreatment. Such information shall be provided to the responsible BOCES administrator or supervisor (principal or his or her designee) whether or not the employee makes a report directly to state or local authorities.

3. Reporting Requirements

Each report shall contain the following information: The name(s) and address(es) of the child and his or her parents or other person responsible for his/her care, if known; the child's age, sex and race; the nature and extent of the child's injuries, abuse or maltreatment, including any evidence of prior injuries, abuse or maltreatment to the child or his or her siblings; the name(s) of the person or persons responsible for causing the injury, abuse or maltreatment, if known; family composition; the source of the report; the person making the report and where s/he can be reached; the actions taken by the reporting source, including the taking of photographs and x-rays, removing or keeping of the child or notifying the medical examiner or coroner; and any other information of which the law may require the report to contain or which the person making the report believes might be helpful in the furtherance of the investigation.

Additionally, any report made by a "school official" as defined in Section 1 above shall include the name, title, and contact information for every staff person who is believed to have direct knowledge of the allegations contained in the report.

4. Access to School Records by the Child Protective Services

The District may disclose personally identifiable information from the educational records of a student to Child Protective Services personnel when it is necessary to protect the health or safety of the student or other individual(s). In deciding whether or not the disclosure should be made, the seriousness of the threat to the health or safety of the student or other individuals, the need for the information to meet the emergency and the extent to which time is of the essence should be considered. (Federal Family Educational Rights and Privacy Act of 1974.)

5. Student Interviews by Child Protective Services Personnel on School Property

If it is necessary for a Department of Social Services Child Protective Services employee to interview a child at school to ascertain whether s/he has been abused or maltreated, or to obtain documentation of such abuse or maltreatment, a school official should be present during the interview unless circumstances require otherwise.

6. Taking a Child into Protective Custody

School officials and staff members do not have the power to take a child into protective custody under the Social Services Law or Education Law. A peace officer, police officer, law enforcement official, agent of a duly incorporated society for the prevention of cruelty to children or a designated employee of the County Department of Social Services may take a child into protective custody without the consent of a parent or guardian. The building principal shall cooperate with any of the officials referenced above who produces official documentation stating that a student is to be taken into protective custody. Release of a child to such official(s) shall be authorized by the District Superintendent or his or her designee.

7. Confidentiality of Reports

Reports of suspected child abuse and maltreatment are confidential and may only be made available to those individuals who are specified by law. The Commissioner of Social Services may intervene to prohibit the release of a report by determining that to do so would be detrimental to the safety of interests of the reporter.

8. Reporting of a Child's Death

A post-mortem report must be made to the medical examiner or coroner in the event that a child dies as a result of abuse or maltreatment. If such death occurs at school, the report shall be made by the District Superintendent to the appropriate medical authority. (Section 418, Social Services Law).

9. Immunity from Liability

The law provides persons or entities who act in good faith in the making of a report or the taking of photographs with immunity from liability. The immunity from liability extends to civil or criminal liability that might otherwise result from such actions. The law establishes, for mandated reporters (school officials), a presumption of good faith provided that the school official was acting in discharge of his or her duties and within the scope of his or her employment and that such liability did not result from the willful misconduct or gross negligence of such person, official, or institution. (Section 419, Social Services Law).

10. Penalties for Failure to Report

A person, official or institution required by law to make a report of suspected child abuse or maltreatment who willfully fails to do so shall be guilty of a Class A Misdemeanor. A person, official or institution required by law to make a report of suspected child abuse or maltreatment who knowingly and willfully fails to do so shall be civilly liable for the damages proximately caused by such failure. (Section 420, Social Services Law).

11. Obligations for Provision of Services and Procedures to Safeguard Life and Health

If, during the course of an investigation of suspected child abuse, the responsible building or program administrator (principal or his or her designee) determines that a child's health or safety is threatened, the administrator shall immediately contact the Child Protective Service and police to recommend having the child placed in protective custody pursuant to paragraph "6", above.

12. Training Program for Staff and New Hires

The District Superintendent shall establish and implement, on an ongoing basis, a training program for all current staff members and newly hired employees regarding child abuse and the procedures described hereinabove. (Section 3209-a Education Law).

13. Non-retaliation

Neither the BOCES nor any BOCES official or employee shall engage in any retaliation against any employee on the basis that the employee had reasonable cause to suspect child abuse or maltreatment or on the basis that the employee made a report of such suspected child abuse or maltreatment in accordance with the Social Services Law. Further, no school or school official shall impose any conditions, including prior approval or prior notification, upon a staff member coming within the definition of "school official" as defined in Section 1 above.

14. Distribution of Policy and Regulations

The District Superintendent shall distribute copies of the policy and regulations regarding child abuse reporting requirements to all current employees and new employees. (Section 413, Social Services Law)

Child Abuse Occurring in an Educational Setting

The BOCES and all BOCES employees shall comply with the provisions and requirements of Education Law Article 23-B, concerning child abuse in an educational setting.

For the purposes of this section, the following definitions shall apply.

“Child abuse” shall mean any of the following acts committed in an educational setting by an employee or volunteer against a child: (a) Intentionally or recklessly inflicting physical injury, serious physical injury or death, or (b) intentionally or recklessly engaging in conduct which creates a substantial risk of such physical injury, serious physical injury or death, or (c) any child sexual abuse as defined in this section, or (d) the commission or attempted commission against a child of the crime of disseminating indecent materials to minors pursuant to article two hundred thirty-five (235) of the Penal Law.

“Child” shall mean a person under the age of twenty-one years enrolled in a school district in this state, other than a school district within a city having a population of one million or more.

“Educational Setting” shall mean the building and grounds of a public school district, the vehicles provided by the school district for the transportation of students to and from school buildings, field trips, co-curricular and extra-curricular activities both on and off school district 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.

“Administrator” or “School Administrator” shall mean a principal of a public, charter school or board of cooperative educational services, or other chief school officer.

“Law Enforcement Authorities” shall mean a municipal police department, sheriff’s department, the division of state police or any officer thereof.

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

“Child Sexual Abuse” shall mean conduct prohibited by article one hundred thirty (130) or two hundred sixty-three (263) of the Penal Law.

1. Duties of Employees

In any case where an oral or written allegation is made to a teacher, school nurse, school guidance counselor, school psychologist, school social worker, school administrator, school board member or other school personnel required to hold a teaching or administrative license or certificate, that a child has been subjected to child abuse by an employee or volunteer in an educational setting, such person shall upon receipt of such allegation:

- a. Promptly complete a written report of such allegation including: The full name of the child alleged to be abused; the name of the child’s parent; the identity of the person making the allegation and their relationship to the alleged child victim; the name of the employee or volunteer against whom the allegation was made; and a listing of the specific allegations of child abuse in an educational setting. Such written report shall be upon a form as prescribed by the commissioner.
- b. Except where the school administrator is the person receiving such oral or written allegation, promptly personally deliver a copy of such written report to the school administrator of the school in which the child abuse allegedly occurred.

In any case 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 of the child’s attendance, the report of such allegations shall be promptly forwarded to the superintendent of schools of the school district of the child’s attendance and the school district where the abuse allegedly occurred, whereupon both school superintendents shall comply with applicable law.

Any employee or volunteer who reasonably and in good faith makes a report of allegations of child abuse in an educational setting to a person and in a manner described in this section shall have immunity from civil liability which might otherwise result by reason of such actions.

2. Confidentiality of Records

Reports and other written material submitted pursuant to Article 23-B of the Education Law, and photographs taken concerning such reports in the possession of any person authorized to receive such information, pursuant to Article 23-B of the Education Law, shall be confidential and shall not be redisclosed except to law enforcement authorities involved in an investigation of child abuse in an educational setting or as expressly authorized by law or pursuant to a court-ordered subpoena. A school administrator or school superintendent shall exercise reasonable care in preventing such unauthorized disclosure. Willful disclosure of a written record required to be kept confidential pursuant to this section to a person not authorized to receive or review such record is a Class A Misdemeanor.

3. Duties of School Administrators Upon Receipt of a Written Report Alleging Child Abuse in an Educational Setting

Upon receipt or preparation of a written report alleging that a child has been abused in an educational setting, a school administrator or superintendent shall where there is a reasonable suspicion to believe that an act of child abuse has occurred:

- a. Where the subject child has made the allegation: (1) Promptly notify the parent of such child that the allegation of child abuse in an educational setting has been made regarding such child and promptly provide the parent with a written statement prepared pursuant to regulations of the commissioner setting forth parental rights, responsibilities and procedures under the law; (2) promptly provide a copy of such report (and a copy of any written allegation(s) received by the administrator) to the District Superintendent and any designee(s); and (3) promptly forward such report to appropriate law enforcement authorities. In no event shall reporting to law enforcement be delayed by reason of an inability to contact the District Superintendent.
- b. Where a parent of the child has made the allegations: (1) Promptly provide the parent of such child with a written statement prepared pursuant to regulations of the commissioner setting forth parental rights, responsibilities and procedures under the law; (2) promptly provide a copy of such report (and a copy of any written allegation(s) received by the administrator) to the District Superintendent and any designee(s); and (3) promptly forward such report to appropriate law enforcement authorities. In no event shall reporting to law enforcement be delayed by reason of an inability to contact the District Superintendent.
- c. Where a person other than the subject child or the parent of subject child has made the allegation: (1) Promptly notify the parent of the subject child that an allegation of child abuse in an educational setting has been made regarding his or her child and promptly provide the parent with a written statement prepared pursuant to regulations of the commissioner setting forth parental rights, responsibilities and procedures under the law; (2) ascertain from the person making such report the source and basis for such allegation; (3) promptly provide a copy of such report (and a copy of any written allegation(s) received by the administrator) to the District Superintendent and any designee(s); and (4) promptly forward such report to appropriate law enforcement authorities. In no event shall reporting to law enforcement be delayed by reason of an inability to contact the superintendent.
- d. Any school administrator or District Superintendent who reasonably and in good faith makes a report of allegations of child abuse in an educational setting or reasonably and in good faith transmits such a report to a person or agency as required by Article 23-B of the Education Law and in a manner described in this Regulation shall have immunity from civil liability which might otherwise result by reason of such actions.

Any procedural or other questions shall be directed to either the District Superintendent or the Director of Labor Relations/Personnel.

4. Penalties for Failure to Comply

Willful failure of an employee to prepare and submit a written report of an allegation of child abuse, as required by Article 23-B of the Education Law, shall be a Class A Misdemeanor. Willful failure of a school administrator or superintendent to submit a written report of child abuse to an appropriate law enforcement authority, as required by Article 23-B of the Education Law, shall be a Class A Misdemeanor. The failure to submit a written report of child abuse to an appropriate law enforcement authority as required by Article 23-B of the Education Law is also punishable by a civil penalty of up to five thousand dollars (\$5,000).

5. Unreported Resignation Against Public Policy

Pursuant to Article 23-B of the Education Law, a school administrator or superintendent shall not make any agreement to withhold from law enforcement authorities, the superintendent or the commissioner, where appropriate, the fact of an allegation of child abuse in an educational setting on the part of any employee or volunteer, encompassed by Article 23-B of the Education Law, in return for the resignation or voluntary suspension from his or her position of the person against whom the allegation is made.

6. Training Program for Staff and New Hirees

The BOCES shall establish, and implement on an ongoing basis, a training program regarding procedures set forth in Article 23-B of the Education Law for all current and new teachers, school nurses, school counselors, school psychologists, school social workers, school administrators, other personnel required to hold a teaching or administrative license or certificate, and school board members.

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