

Policy Information

Series 4000 - Personnel

Child Abuse in an Educational Setting

Policy # 4221

The Board of Education, its Officers and employees, shall endeavor to maintain an educational environment that is free from child abuse in an educational setting in accordance with the requirements of Article 23-B of the Education Law and Section 100.2(hh) of the Regulations of the Commissioner of Education. Child abuse in an educational setting by school personnel and school volunteers is strictly prohibited. Required reporters shall promptly report any and all written or oral allegations of child abuse in an educational setting, as required by law and regulations implementing this policy. Such report shall be received by the Building Principal, who shall thoroughly and promptly investigate the allegations to determine whether or not reasonable suspicion exists that an act of child abuse in an educational setting has occurred. The police authorities shall be immediately notified in any case where reasonable suspicion of child abuse in an educational setting by school personnel or volunteers has occurred. The Building Principal shall notify the Superintendent where there is a finding of reasonable suspicion that an act of child abuse in an educational setting has occurred. The Superintendent of Schools or designee shall send all requisite notices to parents and the State Education Department when there is a finding of such reasonable suspicion.

For purposes of this policy, “required reporter” is defined as any:

- school board member
- teacher
- school nurse
- school guidance counselor
- school psychologist
- school social worker
- school administrator
- other school personnel required to hold a teaching or administrative license or certificate

“Educational setting” is defined as the buildings and grounds of the district, the vehicles provided by the district to transport students to and from school buildings, field trips, 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.

The Superintendent of Schools shall develop regulations consistent with the requirements of Article 23-B of the Education Law and Section 100.2(hh) of the Commissioner’s Regulations for the purpose of implementing this policy and to assure the notification and annual training of school district officials and employees.

Adoption Date: 12/16/2004
4000 - Personnel

Child Abuse in an Educational Setting
Regulation Info 4221R

This law is intended to cover the specific allegation of an incident of child abuse in an educational setting by an employee or volunteer. A reasonable belief that child abuse or maltreatment committed by parents, guardians and other persons legally responsible for a child must still be reported to the statewide child abuse registry pursuant to the Social Services Law.

The law broadly defines an “educational setting” to include:

- Buildings and grounds of a public school district
- Vehicles provided by a school district for the transportation of students to and from school buildings, field trips, co-curricular and extra-curricular activities
- All other locations where direct contact between an employee or volunteer and a child has allegedly occurred

The law broadly defines “child abuse” to include any of the following acts committed in an educational setting by an employee or volunteer against a child:

- Intentional or reckless infliction of physical injury, serious physical injury or death
- Intentional or reckless conduct which creates a substantial risk of physical injury, serious physical injury or death
- Child sexual abuse, defined as an conduct prohibited by Articles 130 or 263 of the Penal Law (i.e., rape, sodomy, sexual abuse, course of sexual conduct against a child, and sexual performance by a child)
- 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

A child is defined as a person under 21 enrolled in a New York school district, other than New York City.

An employee is defined as any person receiving compensation from a school district or employee of a contractual service provider or worker under Title 9-B of Article 5 of the Social Services Law. A volunteer is defined as any person, other than an employee, who provides services to a school or school district which involve district student contact.

DUTIES OF EMPLOYEES

The duties of employees are as follows:

In any case where an oral or written allegation of child abuse by an employee or volunteer in an educational setting 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, such person shall:

- Promptly fully complete a written report on a form prepared by the Commissioner of Education; and
- Promptly personally deliver a copy of such written report to the principal or other chief school officer of the school in which the child abuse allegedly occurred; or
- Where the allegation involves an allegation of child abuse by an employee or volunteer of a school other than a school within the school district of the child’s attendance, promptly forward the report to the Superintendent of Schools of the school district of the child’s attendance and to the Superintendent of Schools where the abuse allegedly occurred.

DUTIES OF PRINCIPALS AND SUPERINTENDENTS

The duties of principals and Superintendents of Schools are as follows:

Where there is reasonable suspicion to believe that an act of child abuse has occurred upon receipt of a written report, the principal shall, unless such action is to be undertaken by the superintendents of schools:

- Promptly notify the parent of the child that such allegation has been made
- Promptly provide the parent with a written statement of parental rights which shall include, but not limited to:
 - The duties of the employees upon receipt of an allegation of child abuse in an educational setting
 - The duties of principals and Superintendents of Schools upon receipt of a written report alleging child abuse in an educational setting
 - Additional duties of Superintendents of Schools
 - Notification by district attorneys¹ to Superintendents of Schools and actions to be taken upon criminal conviction of a licensed or certified school employee
 - Duties of the Commissioner of Education
 - Confidentiality of records
 - Penalties for failure to comply with the requirements regarding written reports
 - Prohibition and penalty against agreements relating to unreported resignation of an employee or volunteer involved in an allegation of child abuse
- Promptly provide a copy of such report to the Superintendent of Schools; and promptly forward such report, without delay by reason of the inability to contact the Superintendent of Schools, to appropriate law enforcement authorities.
- In cases where a person other than the child or the parent of the child has made the allegation, in addition to the requirements above, the principal or Superintendent of Schools shall ascertain from the person making the report, the source, and basis for the allegation.
- Maintain confidentiality of written reports, materials and photographs submitted or taken concerning allegations of child abuse in an educational setting
- Maintain the prohibition against unreported resignations

ADDITIONAL DUTIES OF SUPERINTENDENTS OF SCHOOLS

When a Superintendent of Schools forwards to law enforcement a report of child abuse in an educational setting, the Superintendent of Schools shall also refer such report to the Commissioner of Education where the employee or volunteer holds a certificate or license issued by the Department of Education.

The Superintendent of Schools shall expunge from any record kept by a school or school district, after five (5) years from the date of making of a report or at such earlier time as may be determined, a report made pursuant to this law which, after investigation, does not result in criminal conviction.

SCHOOL DISTRICT DUTIES

Each school district shall establish, and implement on an ongoing basis, a training program regarding the procedures set forth in the 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 certificate or license, and school board members.

The training program shall include, but is not limited to, training regarding:

- Duties of employees, identified in the law, upon receipt of an allegation of child abuse in an educational setting
- Confidentiality of records
- Duties of school administrators and Superintendents upon receipt of a report of an allegation of child abuse in an educational setting
- Additional duties of a Superintendent of Schools
- Penalties for failure to comply with the law
- Notification by district attorneys, and actions taken upon conviction of a licensed or certified school employee
- Prohibition against unreported resignations or voluntary suspension of employees against when an allegation is made

- Immunity provisions

¹This refers to the district attorneys who investigate and prosecute criminal matters, not to the school district's legal counsel.

Each school district shall annually provide to each teacher and all other school officials a written explanation, pursuant to Education law, Section 3028-b, concerning the reporting of child abuse in an educational setting, including the immunity provisions of the law.

UNREPORTED RESIGNATION AGAINST PUBLIC POLICY

Neither a school administrator nor a Superintendent of Schools shall make any agreement to withhold from law enforcement authorities, the Superintendent of Schools or the Commissioner of Education, where appropriate, the fact of an allegation of child abuse in an educational setting against an employee or volunteer in return for the resignation or voluntary suspension of the employee.

A violation, of such prohibition shall constitute a Class E Felony, and shall also be punishable by a civil penalty not to exceed \$20,000.00.

CONFIDENTIALITY OF RECORDS

Reports and other written material submitted pursuant to the laws and regulations, and photographs taken concerning a report of alleged child abuse in an educational setting, in the possession of any person authorized to receive such information, shall be confidential and shall not be re-disclosed 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 superintendent of Schools shall exercise reasonable care in preventing such authorized 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

The willful failure of an employee to prepare and submit a written report at an allegation of child abuse in a public setting shall be a Class A misdemeanor.

The willful failure of a school administrator or Superintendent of Schools to submit a written report of child abuse to an appropriate law enforcement authority shall be a Class A misdemeanor; and shall also be punishable by a civil penalty not to exceed \$5,000.00 upon an administrative determination by the Commissioner of Education.

The 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.

IMMUNITY PROVISIONS

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 the law shall have immunity from civil liability which might otherwise result from such actions.

Any school administrator or Superintendent of Schools who reasonably and in good faith makes a report of allegations of child abuse in an educational setting, or reasonably and in good faith transits such report to a person or agency and in a manner required by the law, shall have immunity from civil liability which might otherwise result from such actions.

Any Superintendent of Schools who reasonably and in good faith reports to law enforcement official's information regarding a resignation of an employee against whom an allegation has been made shall have immunity from any liability, civil or criminal, which might otherwise result by reason of such action.

NOTIFICATION BY DISTRICT ATTORNEY AND ACTIONS UPON CRIMINAL CONVICTION OF A LICENSED OR CERTIFIED EMPLOYEE

Where a criminal investigation is undertaken of an allegation of child abuse in an educational setting, and law enforcement authorities have provided such report to the district attorney and requested assistance, as soon as practicable, the district attorney shall notify the Superintendent of Schools of the district where the acts allegedly occurred and of the school district where the child is attending, if different, of an indictment or the filing of an accusatory instrument against the employee or volunteer; and the district attorney shall make such same notification of the disposition of the criminal investigation.

In the event that a licensed or certified school employee is convicted of any crime involving child abuse in an educational setting, the district attorney shall provide notice thereof to the Commissioner of Education, the Superintendent of Schools where the child abuse acts occurred and to the Superintendent of Schools where the child is attending, if different.

ACCUSED EMPLOYEE'S OR VOLUNTEER'S RIGHTS

Nothing in the law creates any authority to take adverse action against an employee or volunteer by virtue of a report of alleged child abuse in an educational setting which has not been substantiated.

An employee or volunteer who has adverse action taken against him or her by virtue of or in connection with a report pursuant to the law shall be entitled to receive a copy of such report and to respond to the allegations therein. Any employee or volunteer, in addition, shall be entitled to seek disclosure of such report pursuant to Public Officers Law, Article 6.

STATEMENT OF PARENTAL RIGHTS, RESPONSIBILITIES AND PROCEDURES UPON THE REPORTING OF AN ALLEGATION OF CHILD ABUSE IN AN EDUCATIONAL SETTING

In accordance with Education Law, Section 1128 and Commissioner of Education regulation 8-A N.Y.C.R.R. Part 100.2 (hh), please be advised of the following:

1. As the parent of, or the guardian or person in parental relation to, a child under the age of twenty-one (21) enrolled in a New York school district, you have the right to:
prompt notification of our receipt of an allegation that your child has been abused in an educational setting; to be made aware of our responsibilities to report such allegation; and the procedures to be followed upon the receipt of such allegation.
 - a. Child abuse in an educational setting means: intentional or reckless infliction of physical injury, serious physical injury or death; or intentional or reckless conduct which creates a substantial risk of physical injury, serious physical injury or death; or child sexual abuse, defined as conduct prohibited by Article 130 or 263 of the Penal Law; or the commission or attempted commission against a child of the crime disseminating indecent materials to minors pursuant to Article 235 of the Penal law, occurring on or in 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.

2. 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 teaching or administratively licensed or certified employee that a child has been subjected to child abuse in an educational setting by an employee or volunteer, the individual to whom such oral or written allegation is made must:

a. Promptly complete a written report of such allegation setting forth:

- i. The full name of the child alleged to be abused;
- ii. The name of the child's parent'
- iii. The identity of the person making the allegation and their relationship to the alleged child victim;
- iv. The name of the employee or volunteer against whom the allegation was made; and a listing of the specific allegations of child abuse in the educational setting.

b. Except where the school administrator is the person receiving the oral or written allegation, the individual receiving the oral or written report must promptly personally deliver a copy of the written report described above to the school administrator of the school in which the child abuse allegedly occurred.

c. In the case where it is alleged that the 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 will be promptly forwarded to both the Superintendent of Schools of the child's attendance and the Superintendent of Schools where the abuse allegedly occurred, and both superintendents shall meet their obligations under the law.

3. Upon the administrators receipt of the written report described above, for which there is a reasonable suspicion to believe an act of child abuse has occurred, the administrator or superintendent of Schools shall:

a. Promptly notify the parent, unless the parent is the one who has made the allegation, that an allegation of child abuse in an educational setting has been made regarding their child;

b. Promptly provide the parent with this Statement of Parental Rights, Responsibilities and Procedures Upon the Reporting of an Allegation of Child Abuse in an Educational Setting;

c. Promptly provide a copy of the received written report described above to the Superintendent of Schools; and

d. Promptly forward the received written report described above to appropriate law enforcement authorities;

e. Where the person other than the subject child or the parent of the subject child has made the allegation, the administrator shall ascertain from the person making the report the source and basis for the allegation.

4. Where the Superintendent of Schools forwards to the law enforcement authorities the written report described above, the Superintendent of Schools shall also refer such report to the Commissioner of Education if the employee alleged to have committed an

act of child abuse in an educational setting holds a certificate or license issued by the Department of Education.

5. Where a criminal investigation of alleged child abuse in an educational setting by an employee or volunteer is undertaken in response to a report received from a school administrator or Superintendent of Schools, and law enforcement authorities have provided such report to the District Attorney and requested assistance, the District Attorney, as soon as practicable, shall notify the Superintendent of Schools of the District where the acts of child abuse allegedly occurred and of the school district where the child is attending, if different, of an indictment or the filing of an accusatory instrument against the employee or volunteer; and shall further notify such Superintendent(s) of the disposition of the criminal case or of the suspension or termination of the criminal investigation.

6. Upon the conviction of a licensed or certified employee, against whom an allegation of child abuse in an educational setting has been made, for any crime involving child abuse in an educational setting, the District Attorney shall provide notice thereof to the Commissioner of Education and to the Superintendent of Schools where the act of child abuse occurred, and to the superintendent of Schools where the child is attending, if different. The Commissioner of Education shall, without delay, proceed to determine whether the individual possesses good moral character, in accordance with the regulations of the Commissioner of Education governing such determination.

7. The Commissioner of Education shall prepare a form to be used for the recording and transmitting of allegations of child abuse in an educational setting; and, shall also promulgate rules and regulations for training of individuals necessary for the implementation of this law.

8. Reports and other written materials submitted, and photographs taken concerning reports of alleged child abuse in an educational setting, in the possession of any person authorized to receive such information shall be kept confidential and shall not be re-disclosed 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 Superintendent of Schools shall exercise reasonable care in preventing unauthorized disclosure.

9. The willful failure of an employee to prepare and submit a written report of an allegation of child abuse in an educational setting, as required by law, shall be a Class A misdemeanor.

The willful failure of a school administrator or Superintendent of Schools to submit a written report of child abuse in an educational setting to an appropriate law enforcement authority, as required by law, shall be a Class A misdemeanor; and shall be punishable by a civil penalty not to exceed \$5,000.00 upon an administrative determination of the Commissioner of Education.

The willful disclosure of a written record required to be kept confidential, pursuant to law, to a person not authorized to receive or review such record shall be a Class A misdemeanor.

10. A school administrator or Superintendent of Schools shall not make any agreement to withhold from law enforcement authorities, the Superintendent of Schools, or the Commissioner of Education, where appropriate, the fact that an allegation of child abuse in an educational setting against any employee or volunteer in return for the employee's or volunteer's resignation or voluntary suspension from their position.

Each violation of the above prohibition shall constitute a Class E Felony, and shall also be punishable by a civil penalty not to exceed \$20,000.00.

11. A Superintendent of Schools who reasonably and in good faith reports to law enforcement officials information regarding allegations of child abuse in an educational setting or a resignation as required by law shall have immunity from any liability, civil or criminal, which might otherwise result from such actions.

An 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 the law shall have immunity from civil liability which might otherwise result by reason of such actions.

A school administrator or Superintendent of Schools who reasonably and in good faith makes a report or transmits a report of allegations of child abuse in an educational setting in a manner described in the law shall have immunity from civil liability which might otherwise result by reason of such actions.

CHILD ABUSE IN AN EDUCATIONAL SETTING

CONFIDENTIAL REPORT OF ALLEGATION

SUBJECT CHILD				PARENT OF SUBJECT CHILD					
Name				Name					
	Last	First	MI		Last	First	MI		
Address					Address (if different)				
School									
Grade		Sex (M,F, Unknown)							
Age or Birthday (Mo/Day/Yr)									

SOURCE OF ALLEGATION (Check as Appropriate)									
Child	Parent	Other – Name	Relationship to Child (if any)						
<hr/>									

ALLEGED PERPETRATOR (EMPLOYEE OR VOLUNTEER)									
--	--	--	--	--	--	--	--	--	--

Name	School District
School Building	School Position

SPECIFIC ALLEGATION

Use this space to provide information to describe or explain the circumstances surrounding the allegation (attach additional sheets if necessary)

REPORTER INFORMATION

Name	School District		
School Address		School/Telephone	
Relationship to Child (if any)			
Teacher	School Guidance Counselor	School Nurse	School Psychologist
Administrator	School Board Member	School Social Worker	
School personnel required to hold teaching or administrator license or certification			
Date Submitted to Administrator ____/____/____/		Signature:	

FOR ADMINISTRATOR USE ONLY

FOR SUPERINTENDENT OF SCHOOL USE ONLY					
Reasonable Suspicion	Yes	No	Reasonable Suspicion	Yes	No
Date Submitted to Superintendent ____/____/____			Date Submitted to Law Enforcement ____/____/____/____		
Name/Signature _____			Name/Signature _____		
Date Submitted to Law Enforcement ____/____/____			Date Submitted to Commissioner ____/____/____/____		
Name/Signature _____			Name/Signature _____		