

Private Schools – Lunchtime Law Series: Child Abuse in an Educational Setting

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Presented by

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Panelists



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Overview

- Legal responsibilities regarding alleged child abuse in an educational setting.
- Mandated reporters, reasonable suspicion and the steps required to comply with state laws.
- Documenting and reporting allegations.

Child Abuse in an Educational Setting

Child Abuse

Any of the following acts committed against a child by an employee or volunteer in an educational setting:

- Intentionally or recklessly inflicting physical injury, serious physical injury or death;
- Intentionally or recklessly engaging in conduct which creates a substantial risk of physical injury, serious physical injury or death;
- Child sexual abuse (as defined by Penal Law Articles 130 or 263); or
- The commission or attempted commission against a child of the crime of disseminating indecent materials to minors (as defined by Penal Law Article 235).

Child Abuse in an Educational Setting (cont'd)

Child Abuse

Any of the following acts committed against a child by an employee or volunteer in an educational setting:

- **Using corporal punishment**, as that term is defined by the Commissioner of Education (*this was added to the law in 2023*)
 - All school staff are prohibited from using corporal punishment.
 - “Corporal punishment” is defined as any act of physical force upon a student to punish the student. It does not include the use of physical restraints to protect a student, teacher or any other person from physical injury when alternative procedures and methods not involving the use of physical restraint cannot reasonably be employed to achieve these purposes.

Child Abuse in an Educational Setting

Educational Setting

- Buildings and grounds of the school
- School vehicles (school-owned and non-school owned vehicles) provided for transportation to and from school buildings, field trips, co-curricular and extracurricular activities
- Co-curricular and extracurricular activity sites (on and off school grounds); and
- Any other location where direct contact between an employee or volunteer and a child has allegedly occurred.

Child Abuse in an Educational Setting

Child

- A person under the age of 21 enrolled in the school

Child Abuse in an Educational Setting

School

- Nonpublic School
- Charter School
- School District
- Public School
- BOCES
- NY State-approved preschool special education program
- Etc.

Mandated Reporters

The following required reporters must promptly (**within one school day**) report allegations of **child abuse in an educational setting**:

- School administrators
- Teachers
- School nurses
- School guidance counselors
- School psychologists
- School social workers
- School board members

Mandated Reporters (cont'd)

- Other school personnel required to hold a teaching or administrative license or certificate
- School bus drivers and other persons employed or contracted to provide transportation services to the school
- Licensed and registered physical therapists
- Licensed and registered occupational therapists
- Licensed and registered speech-language pathologists
- Teacher aides
- School resource officers

Mandated Reporters (cont'd)

*Regardless of whether a member of the school community is a “required reporter,” all members of the school community (students, parents, volunteers, etc.) are strongly encouraged to report allegations of child abuse in an educational setting.

Staff Training

- Each school must implement on an ongoing basis, a training program regarding the procedures for reporting child abuse in an educational setting for all current and new mandated reporters.
- Each school must annually provide all teachers and school officials with a written explanation concerning the reporting of child abuse in an educational setting.
- Employees of a school other than a school district or public school in titles equivalent to a teacher or administrator, and school bus drivers employed by an entity that contracts with the school, must complete two hours of coursework or training regarding the identification and reporting of child abuse and maltreatment. This training covers the identification and reporting of child abuse and maltreatment more broadly, and not solely within an educational setting.

Reporting Requirements

If the allegation involves a child who was allegedly abused by an employee or volunteer of the school where the mandated reporter is employed:

- Promptly (**within one school day**) complete a written report of the allegation on the report form required by the Commissioner of Education; and
- Personally deliver the report form (via hand delivery and email) to the Principal/building administrator of the school in which the child abuse allegedly occurred and email it to the Superintendent/School Administrator (for example, the Head of School).
 - For nonpublic schools, the responsibilities outlined in the law for Superintendents apply equally to the School Administrator (for example, the Head of School).

Reporting Requirements (cont'd)

If the allegation involves a child who was allegedly abused by an employee or volunteer at a school other than the school where the mandated reporter is employed:

- Promptly (**within one school day**) complete the report form; and
- Deliver the report form to the Superintendent of Schools/School Administrator for the school that the child attends and to the Superintendent of Schools/School Administrator for the school in which the abuse allegedly occurred (if different).

Duties of the Principal/Building Administrator

- Receive the completed written report form.
- Provide a copy of the completed report form to the School Administrator/Head of School.
- Promptly consult with the School Administrator/Head of School regarding the allegation (do not provide a copy of the written report form to other school employees).
- If a person other than the subject child or parent/guardian makes the allegation, ascertain from the reporting person the source and basis for the allegation and complete that portion of the report form.
- **Determine if there is reasonable suspicion to believe that an act of child abuse has occurred.**

Duties of the Principal/Building Administrator (cont'd)

If the Principal/Building Administrator determines that there is reasonable suspicion to believe that an act of child abuse has occurred:

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

Duties of the School Administrator/Head of School

- When a report form is forwarded to law enforcement involving an employee or volunteer who holds a certification or license issued by the NYS Education Department, the School Administrator/Head of School must forward the report to the **Commissioner of Education**.

No Reasonable Suspicion

- If the Principal/Building Administrator determines that there is no reasonable suspicion to believe that an act of child abuse has occurred:
 - The Principal/Building Administrator should use his/her discretion regarding how to notify the parents that an allegation has been made or received regarding their child.

Confidentiality

- All reports, records, photographs and other material must remain confidential and may not be disclosed except to law enforcement authorities involved in the criminal investigation of child abuse, as expressly authorized by law or pursuant to a court-ordered subpoena.
- Willful disclosure of this material to a person not authorized to receive or review it is a class A misdemeanor.
- Principals/Building Administrators and School Administrators/Heads of School must exercise reasonable care to prevent unauthorized disclosure.

Penalties for Failing to Report

- Willful failure to prepare and submit a required report form is a Class A misdemeanor.
- Commissioner of Education may impose a civil penalty of up to \$5,000 on the Principal/Building Administrator or School Administrator/Head of School for failing to forward a copy of the report form to law enforcement when required to do so.
- May be subject to civil litigation (including personal liability).

No Quiet Resignations or Voluntary Suspensions

- Principals/Building Administrators and School Administrators/Heads of School cannot agree to withhold a report from appropriate law enforcement authorities or the Commissioner of Education in exchange for the employee/volunteer's resignation or voluntary suspension.
- Violations of this prohibition can result in a class E felony charge and a civil penalty of up to \$20,000.
- Potential for civil litigation (personal liability).

Immunity From Civil Liability

- The law provides immunity from civil liability for employees, volunteers, Principals/Building Administrators and School Administrators/Heads of School who reasonably and in good faith make a report of child abuse in an educational setting.
- Immunity from civil liability is also provided for Principals/Building Administrators and School Administrator/Head of School who reasonably and in good faith forward a report form to appropriate agencies (e.g., law enforcement).

Record Retention for Unfounded Reports

- Any report of child abuse by an employee or volunteer that does not result in a criminal conviction must be expunged from the school's records after five years from the date the report was made, or at an earlier time as determined by the school in accordance with NY Education Law.
- This time period for expungement may change due to the Child Victims Act.

What would you do?

- Student reports that her friend (a 16-year old female high school student) was spending private time with a male teacher.
- The male teacher had gone to the female student's dance class in the evenings and talked with her privately at that location.
- The student said that the teacher had given her friend gifts and driven her in his car.
- The student also said that her friend had many phone conversations with the teacher.

Matter of Binghamton City School District (2006)

- 32-year old tenured teacher
- 16-year old female student
- Almost constant telephone contact
- Student frequently visited teacher in his office at school even though he was not one of her teachers
- Teacher called the student 1,329 times within a six month period, including while he was on vacation

Matter of Binghamton City School District (2006) (cont'd)

- Teacher once called the student 21 times in a single day
- Teacher gave the student cell phone cards worth \$400, enabling her to call him without a record of her calls appearing on any phone bills
- Went to student's dance class in the evening
- Drove student in his car
- Student's mother and three school administrators told the teacher to stay away from the student

Matter of Binghamton City School District (2006) (cont'd)

- Despite being told to stay away, teacher drove student to his home when his wife was out of town, closed the blinds, and spent six hours alone with the student in his home
- When mom found out, she went to the teacher's home and pounded on the door several times until her daughter came out of the house alone
- Later, the student said the teacher loved her and was leaving his wife to be with her

Matter of Binghamton City School District (2006) (cont'd)

- Student and teacher denied any sexual contact
- Hearing officer suspended teacher for one year without pay – NY Supreme Court and Appellate Division ruled penalty not harsh enough
- NY Supreme Court found the penalty to be “shockingly lenient” and vacated the hearing officer’s decision so that a new penalty could be imposed

Matter of Binghamton City School District (2006) (cont'd)

- The Appellate Division agreed that the hearing officer's decision failed to protect the public.
- The court cited “**New York's explicit and compelling public policy to protect children from harmful conduct of adults particularly in an educational setting.** When an educator's conduct involves inappropriate contact with students who are minors, this policy gives the highest priority to protecting their welfare.”

Questions?

Thank You

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It is not to be considered as legal advice.

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