



N.Y. extends mandatory reporting of suspected child abuse by school staff and volunteers to private schools

By **Tina Sciocchetti, Zachary C. Osinski**

Introduction

Last week, New York acted to close a perceived gap in mandatory reporting of suspected child abuse in educational settings alleged to have been perpetrated by school employees or volunteers. Education Law Article 23-B has been amended to mandate reporting of such allegations by all New York State schools, including private schools and those within New York City that were previously exempt under the law. All schools must now report oral or written allegations of child physical or sexual abuse by a school employee or volunteer to law enforcement, the child's parents or guardians and, if the accused holds a professional license, to the State Education Department (SED). The state further has expanded the pool of school professionals deemed mandatory reporters to include, among others, school bus drivers, licensed teacher aides and therapists. The new law requires mandatory child abuse training for personnel and is slated to take effect in June 2019. A summary of the amendments and obligations follows.

What types of schools are covered by the law?

Under the prior version of the law, the mandatory reporting of child abuse in an educational setting extended only to public schools and school districts outside of New York City. The law now extends the reporting requirements to all nonpublic and private schools—including charter schools, BOCES, special act school districts, specified preschool special education programs and private schools for students with disabilities—throughout New York State.

Who is mandated to report?

The list of mandatory reporters has been expanded. Previously, teachers, nurses, guidance counselors, psychologists, social workers, administrators, board members and any other school personnel required to hold a teaching or administrative license or certificate were obligated to report child abuse in an educational setting. As revised, the law extends this obligation to school bus drivers and other persons employed or contracted to provide transportation services as well as licensed and registered physical therapists, occupational therapists, speech-language pathologists, teacher aides and school resource officers.

What conduct must be reported?

The law imposes reporting requirements for any oral or written allegations of child abuse that occurred in an educational setting committed by an employee or volunteer of the school. “Child abuse” includes intentionally or recklessly engaging in conduct which creates a substantial risk of, or actually causes, serious physical injury or death; child sexual abuse and attempted or actual criminal dissemination of indecent materials to a minor. “Child sexual abuse” is the same conduct covered by state criminal child sexual abuse laws.

Whose conduct is subject to mandatory reporting?

Allegations involving employees and volunteers alleged to have taken place in an educational setting must be reported. An “employee” is defined as any person who is paid by the school or who has duties involving direct student contact and/or either (i) works for a company that contracts with the school to provide transportation for students or (ii) is an employee of a contracted service provider placed within the school under specified public assistance employment programs. A “volunteer” is any non-employee who has direct student contact and provides services to a school, including transportation services to children.

What is an educational setting?

The “educational setting” in which the alleged abuse must take place is quite broad and includes the school building and grounds, the vehicles a school uses to transport students, sites of co-curricular and extracurricular activities (both on and off school grounds) and any other location where direct contact between an employee or volunteer and a child has allegedly occurred.

How must a mandatory report be made?

Responsibilities of Mandatory Reporters: When a covered mandatory reporter receives an allegation that a child has been abused by an employee or volunteer in an educational setting, that person must, on receipt of such allegation, *promptly* complete a *written* report of the allegation. The report should include all of the following:

- Full name of the child alleged to be abused
- Name of the child's parent(s) or guardian(s)
- Identity of the person making the allegation and his or her relationship to the alleged victim
- Name of the employee or volunteer against whom the allegation was made
- Listing of the specific allegations of child abuse in the educational setting.

The mandatory reporter must then promptly and personally deliver a copy of the written report to the school administrator of the school in which the abuse allegedly occurred. (If the school administrator is the person alleged to have abused the child, the report should be made to another administrator designated by the school.) School bus drivers must report to their supervisors who, in turn, report to the superintendent of the subject school, or in the case of a non-public school, an equivalent-level administrator.

Responsibilities of Administrators and Superintendents: On receipt of a written report of alleged child abuse, a school administrator or superintendent “shall, where there is a reasonable suspicion to believe that the act of child abuse has occurred,” *promptly* take the following action:

- Notify the child’s parent(s)/guardian(s) that an allegation of abuse was made and provide them with a written statement setting forth parental rights, responsibilities and procedures under the law.¹
- Where the source for the report is a third party (not the subject child or parent(s)/guardian(s)), ascertain the source and basis for the allegations.
- For administrators, notify the superintendent (or non-public school equivalent) and provide them with the written report.²
- Forward such report to the appropriate “law enforcement authorities,” defined as local or state police entities, not child protective services.³

Where it is alleged that a student was abused by an employee or volunteer from another school, notice is to be made to the superintendent or non-public school equivalent administrator *both* where the child attends and where the abuse allegedly occurred. Thereafter, the school superintendents/administrators from both locations must ensure that proper notifications are made.

If the accused employee or volunteer holds a professional license, the superintendent or administrator must further report the matter to SED.⁴ Schools required to report child abuse to the Justice Center for the Protection of People with Special Needs, and who report such abuse, do not need to make a separate or additional report until Article 23-B.

Is there civil or criminal liability associated with making a report?

Mandatory reporters are protected from civil liability if they act reasonably and in good faith in making reports under the law. However, they face a potential criminal misdemeanor charge for a willful failure to report. Administrators and superintendents also face a potential administrative fine of up to \$5,000 for failing to notify law enforcement as required. Moreover, administrators and superintendents may not negotiate a resignation or voluntary suspension with an employee in lieu of making a mandatory report to law enforcement or SED and face a felony charge and a potential penalty of up to \$20,000 if they do.

¹ The commissioner’s regulations specify the content of such notifications. See 8 NYCRR 100.2(hh)(1).

² The law makes clear that the inability to locate the superintendent shall not delay a report to law enforcement.

³ It is important to remember that these reporting obligations are distinct from the mandatory obligations to report child abuse to child protective authorities that may apply to specified school personnel and administrators under Title 6 of New York’s Social Services Law. In many cases, child abuse allegations may trigger both reporting requirements.

⁴ Reports regarding licensed educators can be filed with SED [here](#).

How are records related to mandatory reports to be handled?

The law provides that written reports, materials and photographs related to child abuse reports generated by schools are to be treated confidentially, and may not be re-disclosed except to law enforcement authorities investigating the abuse, under express legal authority or in response to a subpoena. Mandatory reporters and schools must take care in this regard as unauthorized, willful disclosure of these materials can constitute a misdemeanor offense.

Where a child abuse report does not ultimately result in a criminal conviction, it must be expunged from school records within five years of the date the report was made. Under the law, the district attorney handling an investigation related to a child abuse report is obligated to notify school administrators and SED of any criminal charges and dispositions.

What type of training is required?

The law now specifies that training is required for all covered mandatory reporters regarding the identification and reporting of child abuse and maltreatment.⁵ In addition, for those employed on or after July 2019, **all** teachers and administrators (other than those in a school district or public school) and **all** school bus drivers must undergo two hours of specified child abuse coursework or training, including the reporting obligations under the new law. These employees must provide their school administrator or employer proof of attendance. SED can audit compliance with this training requirement and may publish a list of any persons or schools who are not in compliance on its website.

Next Steps

Private schools should take steps to understand their significant obligations under the new law, and prepare policies and protocols for compliance. In addition, personnel require appropriate training and preparation. It is advisable to seek legal counsel in making decisions about abuse allegations and mandatory reporting obligations as serious consequences, including potential criminal charges, exist for failures to report suspected abuse.

Nixon Peabody will be monitoring any additional updates regarding Article 23-B, and counsel is available to assist in reviewing the impact of the new legal mandates for your school, to train responsible personnel and to ensure compliance going forward.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

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⁵ The commissioner's regulations currently require schools to "establish, implement on an ongoing basis," a training program for specified personnel regarding the requirements of Article 23-B. 8 NYCRR 100.2(hh)(2). The updated law contains specific parameters for training and requires SED approval of providers of the mandated two-hour training. The regulations will require updating to satisfy the statutory requirements.