

ADMINISTRATIVE PROCEDURE FOR CHILD ABUSE IN AN EDUCATIONAL SETTING

Child abuse in an educational setting is defined as . . . *any of the following acts committed in an educational setting by an employee or a 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 of the penal law.* The Act defines *child* as: *A person under 21 years of age enrolled in school.* *Educational setting* is defined as: *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 extracurricular activities both on and off school district grounds. All co-curricular and extracurricular activity sites, and any other location where direct contact between an employee or volunteer and a child has allegedly occurred.* This definition is broad enough that it may encompass activities occurring between the employee and the student in the employee's property or vehicle or the student's property or vehicle.

Article 23-B of the Education Law lays out the procedure for investigation and reporting of alleged child abuse in an educational setting. Further, there is an affirmative obligation of school district employees and volunteers to report oral or written allegations of child abuse in an educational setting even if the allegation does not pertain to their own school. For example, if the student complains to a district bus driver about abuse by a BOCES employee on the BOCES campus, the bus driver must make a report. The procedure for making a report is:

1. The employee receiving the allegation must complete a written report provided by the Commissioner's office entitled *Child Abuse in an Educational Setting Confidential Report of Allegation*.
2. The individual completing the report must then *personally* deliver the written report to the building administrator unless the person completing the report is the building administrator.
3. Once the building administrator has received the report, the building administrator must then make a determination of whether reasonable suspicion exists to believe that child abuse has occurred in the educational setting by a district employee or volunteer.
4. If the building administrator determines that reasonable suspicion exists, then the building administrator must notify the parents if the parent is not the party making the allegation.

5. Once the building administrator has notified the parents, the parents must be provided with a written statement of parental rights. The building administrator must also then contact local law enforcement.
6. Finally, the building administrator must refer any report determined to have reasonable suspicion to the Superintendent. Once the Superintendent has received the report, the Superintendent must ensure that law enforcement has been contacted and, in cases where the report of child abuse involves an employee or a volunteer either certified or licensed by the Department of Education, the Superintendent must file a report in the Commissioner's office regarding that individual's conduct.

Further, if charges are brought against an employee or volunteer pursuant to a report of child abuse in an educational setting, the district must notify the District Attorney.

All material collected by the school district relating to the report of child abuse in an educational setting shall be kept in confidence under the statute. If the building administrator or Superintendent determines no reasonable suspicion exists with respect to an allegation, the report should be expunged from any record kept by the school district after a period of five years from the date of the report. The statutory provisions contain no penalty for individuals making false allegations under this process.

The attached Child Abuse In An Educational Setting Confidential Report of Allegation Form is the required SED report form which must be completed for each incident and retained for a minimum of five years.

Comments

Neither the Statute nor the Commissioner's Regulations defines what constitutes *reasonable suspicion that child abuse occurred*.

CVES STATEMENT OF PARENTAL RIGHTS

Parents have the right to have all allegations of child abuse in an educational setting investigated and dealt with appropriately. Reporting of child abuse in an educational setting shall be governed by Regulations of the Commissioner of Education in accordance with Education Law § 1132. The procedures for doing so are:

1. Upon receipt of an allegation of child abuse in an educational setting as defined by Education Law § 1125, a school employee shall complete the *Child Abuse in an Educational Setting Confidential Report of Allegation* form and personally deliver the completed form to the building administrator as soon as possible.
2. If the reported allegation concerns an employee or volunteer in another school district or BOCES, the employee receiving the allegation shall deliver the completed Child Abuse in an Educational Setting Confidential Report Form to the Superintendent of the school district or BOCES employing the person making the report.
3. Upon receiving the completed form, the building administrator must determine if there is reasonable suspicion to believe that an act of child abuse has occurred. In situations where the Superintendent is the person receiving the initial report, the Superintendent must make the determination of reasonable suspicion.
4. If the building administrator or Superintendent determines that no reasonable suspicion exists to believe an act of child abuse occurred, then such report shall be expunged from any record the school district keeps after a period of five years from the date of making the report or at such earlier time as the school district determines.
5. If the building administrator determines that reasonable suspicion exists to believe an act of child abuse has occurred, then the building administrator shall:
 - a. notify the parent of the allegation if the parent is not the reporting party;
 - b. provide the parent with a written statement of parental rights;
 - c. personally deliver a copy of the completed report to the Superintendent as soon as possible;
 - d. after consultation with the Superintendent, the building administrator shall forward a copy of the completed report to the appropriate law enforcement agency. However, the report to the law enforcement agency shall not be delayed as a result of the building administrator's inability to contact the Superintendent promptly.

6. In cases when the Superintendent is the original recipient of the allegation of child abuse in an educational setting, the Superintendent shall follow the enumerated steps under paragraph 5.
7. Upon a finding by the building administrator or upon investigation of a report originating with the Superintendent that reasonable suspicion exists to believe that an act of child abuse in an educational setting occurred, the Superintendent shall ensure that the appropriate law enforcement authorities have been contacted.
8. In reports of child abuse in an educational setting involving employees or volunteers certified or licensed by the Department of Education, the Superintendent must forward a copy of the report to the Commissioner of Education pursuant to Part 83 of the Commissioner's Regulations.
9. Where a criminal investigation of an allegation of child abuse by an employee or volunteer is undertaken by a law enforcement agency as a result of a report forwarded by the school district, the District Attorney shall notify the Superintendent of the school district the child attends and, if different, the Superintendent of the school where the incident occurred of any indictment or filing of an accusatory instrument against the employee or volunteer and the disposition of any criminal case or termination of any investigation.
10. Upon criminal conviction of a licensed or certified school employee arising out of a report of child abuse in an educational setting, the Commissioner of Education shall be notified by the District Attorney of the conviction and the Commissioner shall proceed to determine whether the person convicted possesses good moral character pursuant to Part 83 of the Commissioner's Regulations.
11. All materials concerning reports of child abuse in an educational setting in possession of the school district shall be confidential and shall not be re-disclosed except to law enforcement or where otherwise permitted by law.
12. Willful failure of a school district employee to prepare and submit a report of child abuse in an educational setting is a Class A misdemeanor. Willful failure of a school administrator to refer a report of child abuse in an educational setting to law enforcement in accordance with Education Law Article 23-B is a Class A misdemeanor and the Commissioner of Education may also assess a fine of up to \$5,000.
13. Failure of a school administrator to report to law enforcement a resignation or voluntary suspension of an employee upon an allegation of child abuse in an educational setting is a Class E felony and the Commissioner of Education may assess a fine of up to \$20,000.

CHILD ABUSE IN AN EDUCATIONAL SETTING
DEFINITIONS

Definitions contained in Section 1125 of Article 23-B, Title I of the Education Law

1. “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 235 of the Penal Law.
2. “Child” shall mean a person under the age of 21 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.
3. “Employee” shall mean any person receiving compensation from a school district or 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, and consistent with the provisions of such title for the provision of services to such district, its students or employees, directly or through contract, whereby such services performed by such person involve direct student contact.
4. “Volunteer” shall mean any person, other than an employee, who provides services to a school or school district, which involve direct student contact.
5. “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.
6. “Administrator” or “school administrator” shall mean a principal of a public school, charter school or board of cooperative educational services, or other chief school officer.
7. “Law enforcement authorities” shall mean a municipal police department, sheriff’s department, the division of state police or any officer thereof. Notwithstanding any other provision of law, law enforcement authorities shall not include any child protective service or society for the prevention of cruelty to children as such terms are defined in section four hundred twenty-three of the social services law.
8. “Parent” shall mean either or both of a child’s parents or other persons legally responsible for the child.
9. “Child sexual abuse” shall mean conduct prohibited by article one hundred thirty or two hundred sixty-three of the penal law.