

ALERTS

New York Child Abuse Reporting Requirements Will Extend to Private Schools

January 11, 2019

Governor Cuomo recently signed a law which will require all private schools to report allegations of sexual and physical abuse of students in their schools to law enforcement, and to notify parents and the New York Commissioner of Education (“Commissioner”). The new law adds private schools to the existing structure that most public schools in New York State use for reporting, set out in Article 23-B of New York’s Education Law, Child Abuse in an Educational Setting.

The law requires school administrators, other employees and bus drivers who receive an allegation of abuse of a student in an educational setting by a school employee or volunteer, to report the abuse to a school administrator. Administrators must notify the student’s parent, prepare a written report, notify law enforcement authorities and notify the Commissioner. Additionally, all required reporters must complete two hours of child abuse training or coursework.

Reporting Requirements

Who Must Report?

Those required to report allegations of child abuse are the school’s teachers, nurses, guidance counselors, psychologists, social workers, administrators (including principals/heads of school), board members, licensed and registered physical therapists, licensed and registered occupational therapists, licensed and registered speech pathologists,

teacher aides, resource officers, bus drivers or other school personnel that are required to hold a teaching or administrative license or certificate. Reporters also include employees of companies contracting with the school, including school bus drivers.

What Must Be Reported?

Required reporters who receive oral or written allegations of child abuse in an educational setting by a school employee or volunteer must cause a report to be made. Note that the school where the alleged abuser works or volunteers is not important. All that is needed to trigger the reporting requirement is that an employee or volunteer of any school is alleged to have abused a student in an educational setting.

“Child Abuse” includes acts that create a substantial risk of physical injury to a student; acts that inflict physical injury to a student; acts that qualify as child sexual abuse prohibited by the New York Penal Laws, including sexual touching, sexual assault and sexual intercourse with a student under the age of 17; and sending or showing, or attempting to send or show, a student “indecent materials” as defined by the New York Penal Law, including materials that depict human genitals and sexual conduct.

“Educational Setting” includes school grounds, school buses or other vehicles that transport students to or from school, all extracurricular activity sites, all co-curricular sites, including field trip sites, as well as any other location where a school employee or volunteer had direct contact with a student. Note that this definition includes any other location where direct contact is made between an employee or volunteer and a student. Therefore, any location where a school employee or volunteer is alleged to have abused a student will qualify as an educational setting.

“Employee” means any person who receives compensation from the school, or any person who has duties that involve direct student contact and either (a) receives compensation from any contractor that transports the school’s students (e.g., bus drivers) or (b) is employed by a contractor and placed within the school as part of a public assistance employment program. “Volunteer” is any person, other than an employee, who has direct contact with students and provides services to the school, or provides services to any contractor that transports the school’s students.

How Is a Report Made?

After receiving an allegation of child abuse, required reporters (except school bus drivers) must:

- Promptly complete a written report in a form provided by the Commissioner's office. This report must include the full name of the allegedly abused child, the name of the child's parent, the identity of the person making the allegation and their relationship to the alleged victim, the name of the alleged abuser, and a list of the specific allegations of abuse; and
- Personally deliver a copy of the written report to the school administrator (principal or the equivalent, e.g., head of school, director, etc.) of the school where the child abuse occurred. If the alleged abuser is the school administrator, then the report of abuse must be delivered to another school administrator designated by the school.

School bus drivers and other employees of a person or entity which contracts with a school to provide transportation, who receive an oral or written allegation that a child has been subjected to child abuse by an employee or volunteer in an educational setting, shall promptly report or cause a report to be made to his or her supervisor employed by such contracting person or entity. The supervisor must then promptly complete a written report in a form provided by the Commissioner's office (including the details set forth above). The supervisor must personally deliver the report to the school administrator of the school where the child abuse occurred.

If the alleged abuser is an employee or volunteer of a school other than the school of the student victim's attendance, the written report of the allegations must be promptly forwarded, in addition to the school administrator of the school where the child abuse occurred, to the school administrator of the alleged abuser's school.

What Must the School Administrator Do When They Receive a Report?

After the school administrator receives the written report of child abuse and there is reasonable suspicion to believe that an act of child abuse occurred, the school administrator must do the following:

1. If the victim child has made the allegation: (a) promptly notify the parent of the victim of the allegation of abuse and provide the parent of the victim with a written statement prepared pursuant to the Commissioner's regulations setting forth parental rights,

- responsibilities and procedures; (b) promptly provide a copy of the report to his or her supervisor, if applicable; and (c) promptly forward such report to appropriate law enforcement authorities.
2. If a parent of a victim child has made the allegation: (a) promptly provide the parent with a written statement prepared pursuant to the Commissioner's regulations setting forth parental rights, responsibilities and procedures; (b) promptly provide a copy of the report to his or her supervisor, if applicable; and (c) promptly forward such report to appropriate law enforcement authorities.
3. When someone other than the victim child or the parent of the child has made the allegation: (a) promptly notify the parent of the victim of the allegation of abuse and provide the parent with a written statement prepared pursuant to the Commissioner's regulations setting forth parental rights, responsibilities and procedures under this law; (b) ascertain from the person making such report the source and basis for such allegation; (c) promptly provide a copy of the report to his or her supervisor, if applicable; and (d) promptly forward such report to appropriate law enforcement authorities.

When the school administrator forwards the written report of child abuse to the law enforcement authorities, he or she must also refer the report to the Commissioner where the alleged abuser holds a certification or license issued by the department.

If a written report of child abuse does not, after investigation, result in a criminal conviction of the alleged abuser, then the report must be expunged from any record kept by the school within five years from the date the report was made.

What Happens After Law Enforcement Notification?

Where a criminal investigation of an allegation of child abuse by an employee or volunteer is undertaken in response to a report forwarded by a school administrator to law enforcement authorities, and where law enforcement authorities have provided such report to the district attorney, it shall be the responsibility of the district attorney, as soon as practicable, to notify the school administrator of the school where the acts of child abuse allegedly occurred and of the school where the child is attending, if different, of an indictment or the filing of an accusatory instrument against the employee or volunteer. The district attorney shall

also notify the school administrator of the disposition of the criminal case or the suspension or termination of the criminal investigation of such employee or volunteer.

Unreported Resignation Against Public Policy

The new law prohibits school administrators from making any agreement to withhold from law enforcement authorities, the superintendent or the Commissioner, where appropriate, the fact that an allegation of child abuse in an educational setting on the part of any employee or volunteer as required by this law, in return for the resignation or voluntary suspension from his or her position, against whom the allegation is made.

Immunity and Penalties

Any required reporter, including any employee, volunteer or supervisor who is employed by a person or entity that contracts with a school to provide transportation, who reasonably and in good faith makes a report of child abuse in accordance with this law, will have immunity from any civil liability which might otherwise result because of his or her actions, such as immunity from a defamation lawsuit. A school administrator who reasonably and in good faith makes a report of child abuse or reasonably and in good faith transmits such a report to a person or agency in accordance with this law will have immunity from any civil liability which might otherwise result because of his or her actions, such as immunity from a defamation lawsuit. Any school administrator who reasonably and in good faith reports to law enforcement officials information regarding allegations of child abuse or a resignation as required by this law shall have immunity from any liability, civil or criminal, which might otherwise result by reason of such action.

Willful failure of an employee to prepare and submit a written report of an allegation of child abuse as required by this law shall be a Class A misdemeanor. The willful failure of a school administrator to submit a written report of child abuse to an appropriate law enforcement authority, as required by this law, shall be a Class A misdemeanor. Additionally, any failure to submit a written report of child abuse to an appropriate law enforcement authority as required by this law shall be punishable by a civil penalty not to exceed \$5,000 upon an administrative determination by the Commissioner.

All reports of abuse and other materials submitted with the report, such as photographs, are confidential and may only be disclosed to law enforcement authorities involved in an investigation of the abuse or as expressly authorized by law or a court-ordered subpoena. Willful disclosure of such records to an unauthorized person or entity is a Class A misdemeanor.

A violation of the unreported resignation prohibition shall constitute a Class E felony and will also be punishable by a civil penalty not to exceed \$20,000.

Training Requirements

The new law requires the Commissioner to promulgate rules and regulations for training regarding mandatory reporting of child abuse and maltreatment under the New York Social Services Law, including, at a minimum, information regarding the physical and behavioral indicators of child abuse and maltreatment, as well as the statutory reporting requirements set out in the law, including when and how a report must be made, the legal protections afforded to reporters and the consequences for failing to report. All employees employed on or after July 1, 2019 as, or in equivalent title to teachers or administrators, and any school bus driver employed by a contractor to transport students are required to complete two hours of coursework or training regarding the identification and reporting of child abuse and maltreatment. The coursework or training must be obtained from an institution or provider that has been approved by the New York Department of Education to provide such coursework or training. Each such employee must provide the school administrator of the school with documentation showing that he or she completed the required training. Each school bus driver must provide his or her contractor with documentation showing that he or she completed the required training. The Department of Education may request your training records on a periodic basis and it may publish a list of any persons or schools who are not in compliance with the training requirements on its website.

Recommended Actions

The new law will take effect in June 2019. All independent schools in New York State should review and revise their policies on reporting abuse to

comply with the new reporting structure. Additionally, schools should prepare to require the mandated trainings.

Authored by Mark E. Brossman and Donna Lazarus.

If you have any questions concerning this *Alert* or would like assistance complying with the new requirements, please contact your attorney at Schulte Roth & Zabel or one of the authors.

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**Mark
Brossman**

Partner
New York



**Donna
Lazarus**

Partner
New York

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