

Legal Update: New Laws, Mandated Reporting

MARIN COUNTY OFFICE OF
EDUCATION

February 14, 2014
Jan Tomsy, Heather Ravani



Fagen Friedman & Fulfrost LLP

NOTEWORTHY NEW LAWS

- AB 1266: Transgender Youth
- AB 256: Cyberbullying
- AB 216: Foster Youth and HS Graduation
- AB 570: Continuation Schools
- AB 449: Failure to Report Emp. Action



Purpose of Update re: Mandated Reporting

- Protect children from abuse and neglect
- Fulfill legal duty
- Avoid liability



Recognizing Abuse and Neglect

- What is child abuse?
- Physical abuse
- Sexual abuse
- Neglect
- Emotional abuse



Physical Abuse

- Physical injury or death inflicted by other than accidental means
- Willful harming or injuring of a child
- Willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering
- Willfully causes or permits child or child's health to be endangered

(Pen. Code § 11165.3)



Physical Abuse

- Unlawful corporal punishment
 - Willful infliction of cruel or inhuman corporal punishment or injury resulting in traumatic condition

(Pen. Code § 11165.4.)



Physical Abuse

- Indicators

- Location of injury

- Injury where it is difficult to accidentally bump or fall?

- Type of injury

- Patterned injuries such as loop marks, slap marks, grab marks are suspicious



Physical Abuse

- Indicators
 - History
 - Statements by the child
 - Parent delays seeking care



Physical Abuse

- Indicators

- Behavioral indicators

- Drastic behavioral changes/Acting out
 - Aggressive, oppositional or defiant
 - Violent or destructive
 - Cruel to animals
 - Destructive to self or others
 - Come to school too early/don't want to leave school (i.e., possible fear of going home).
 - Visibly depressed/suicidal



Physical Abuse

■ Indicators

□ Behavioral indicators

- Fearlessness/Extreme risk taking
- "Accident prone"
- Cheat, steal or lie (may be related to too high expectations at home)
- Be a low achiever (to learn, children must convert aggressive energy into learning; children in conflict may not be able to do so)
- Unable to form good peer relationships



Physical Abuse

- Indicators

- Behavioral indicators

- Wear clothing that covers the body and that may be inappropriate in warmer months (caution regarding cultural issues)
 - Exhibit regressive or less mature behavior
 - Cower or demonstrate fear of adults
 - Dislike or shrink from physical contact – may not tolerate physical praise, such as a pat on the back



Sexual Abuse

- Sexual assault
 - Rape/statutory rape/"gang rape"
 - Incest
 - Sodomy
 - Lewd or lascivious acts upon a child
 - Oral copulation
 - Sexual penetration
 - Child molestation

(Pen. Code § 11165.1(a)&(b).)



Sexual Abuse

- Does NOT include
 - Consensual sex between minors >14 of similar age and sophistication



Sexual Abuse

- Sexual exploitation
 - Child pornography
 - Child prostitution

(Pen. Code § 11165.1(c).)



Sexual Abuse

■ Indicators

- Child reports of sexual activities
- Child's injury/disease is unusual for specific age group
- Young girl's pregnancy coupled with other information/factors such as STD, statements by minor, indication of coercion, etc.



Sexual Abuse

■ Indicators

- Sexually acting out
- Sexualized behavior with adults
- Abuse of peers/younger children
- Intense promiscuity
- Self-injurious behavior (eating disorders, “cutting”)
- Suicidal ideation



Neglect

- Neglect treatment of maltreatment of a child by a person responsible for child's welfare indicating harm or threatened harm to child's health or welfare
 - Includes acts and omissions

(Pen. Code § 11165.2).)



Neglect

- Severe neglect

- Negligent failure of caregiver to protect child from severe malnutrition or medically diagnosed nonorganic failure to thrive
- Caregiver willfully causes or permits child or child's health to be endangered, including intentional failure to provide adequate food, clothing, shelter, or medical care

(Pen. Code § 11165.2(a).)



Neglect

- General neglect
 - Negligent failure of caregiver to provide adequate food, clothing, shelter, medical care, or supervision
 - No physical injury to child has occurred

(Pen. Code § 11165.2(b).)



Neglect

■ Indicators

- Lack of adequate medical/dental care
- Child often sleepy or hungry
- Child lacks proper hygiene
- Child is inappropriately dressed for weather
- Evidence of poor supervision
- Home is unsanitary



Neglect

- Indicators
 - Unattended material needs
 - Stealing or hoarding food
 - Poor attendance at school
 - Descriptions of parental behavior might indicate substance abuse



Neglect

- Indicators

- Questions:

- Would looking at the family in the context of the community or culture provide any answers?
 - Is this culturally acceptable child-rearing, a different lifestyle, or true neglect as defined by law?



Emotional Abuse

- May report knowledge or reasonable suspicion of serious emotional damage or substantial risk of serious emotional damage
 - Including, severe anxiety, depression, withdrawal, untoward aggressive behavior

(Pen. Code § 11166.05.)



Emotional Abuse

- Includes:
 - Blaming, belittling or rejecting the child
 - Constantly treating siblings unequally
 - Persistent lack of concern by the caretaker for the child's welfare



Emotional Abuse

- Indicators:
 - Overly compliant and undemanding
 - Aggressive and over-demanding



Emotional Abuse

- Indicators are similar to students who are emotionally disturbed, but parental behavior can help to distinguish the two
 - Parents of emotionally disturbed children generally accept existence of a problem; are concerned about welfare and seek help.
 - Parents of emotionally abused/maltreated child may blame the child for the problem, may ignore the problem's existence, may refuse offers of help and may be unconcerned about the child's welfare.



What is not Child Abuse

- District employees using reasonable and necessary force
 - To stop disturbance that is threatening physical injury or property damage
 - In self defense
 - To obtain possession of weapon/dangerous object in control of child

(Pen. Code § 11165.4).)



What is **not** Child Abuse

- Spanking
- Injuries caused by children fighting by mutual consent
 - Unless cruel or inhuman resulting in traumatic condition (Pen. Code § 11165.4.)
- Pregnancy alone
 - By itself, insufficient (Pen. Code § 11166(a)(1).)
- Injuries caused by children fighting by mutual consent (Pen. Code § 11165.6.)



What is not Child Abuse

- Past abuse of child who is adult at time of disclosure

UNLESS . . .

- Mandated reporter has reasonable suspicion that another minor is being abused or is in danger of being abused



Who is a Mandated Reporter?

- Teachers
- Instructional aides
- Teacher's aides/assistants employed by district
- Classified employees
- Administrative officers
- Supervisors of child welfare/attendance
- Certificated pupil personnel employees
- Administrators or employees whose duties require direct contact and supervision of children

(Pen. Code § 11165.7).)



Who is not a Mandated Reporter?

- Volunteers
 - Though encouraged to receive training
 - Permissive reporters
- Mandated reporters outside of work
 - Permissive reporters in private capacity



Standard for Reporting

- Knowledge
- Reasonable suspicion
 - “Objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing, when appropriate on his or her training and experience, to suspect child abuse or neglect.”

(Pen. Code § 11166(a).)



Reasonable Suspicion

- Does not require certainty
- Does not require specific medical indication
- Does not require investigation
- When in doubt, report!



To Whom do you Report

- Police or sheriff department; or
 - But not school district police/security
- County welfare department; or
 - (Child protective services)
- County probation department
 - If designated by county to receive reports
- Reporting to employer, supervisor, principal, school counselor, coworker, or anyone else is **NOT** enough! (Pen. Code § 11166(i)(3).)



Reporting: How and When

- By phone
 - Immediately or as soon as practicably possible
- AND written report
 - Within 36 hours of phone call
 - Send, fax, or electronically transmit written follow up report

(Pen. Code § 11166(a).)



Mandated Report

- Name
- Business address
- Telephone number of mandated reporter
- Capacity that makes person a mandated reporter
- Information that gives rise to reasonable suspicion of child abuse/neglect and source(s) of that information

(Pen. Code § 11167(a).)



Mandated Report

- If known, also include the following:
 - Child's name and address
 - Child's present location
 - School, grade and class
 - Names, addresses and phone numbers of parents/guardians
 - Name, address, phone number and other relevant information about person(s) who might have abused/neglected child
- Make report even if some of information is not known or is uncertain
(Pen. Code § 11167(a).)



Additional Information

- Any other relevant information
(Pen. Code § 11167(b).)
- May include with report any non-privileged documentary evidence the mandated reporter possesses relating to the incident
(Pen. Code § 11166(a).)



Joint Reporting

- When two or more mandated reporters suspect child abuse/neglect, may designate one member of group to submit single report
- Any member who has knowledge that the designated member failed to report shall thereafter make the report
- Reporting is individual responsibility
 - Best practice is to file individual report



Consequences of **Not** Reporting

- Failure to report
 - Guilty of a misdemeanor
 - Up to six months in county jail, or fine of \$1000, or both (Pen. Code § 11166(c).)
 - If abuse/neglect results in death or great bodily injury, up to one year in county jail, or fine of \$5000, or both (Pen. Code § 11166.01(b).)
- Intentional concealment of failure to report known abuse or severe neglect
 - Continuing offense until agency discovers offense (Pen. Code § 11166(c).)



Consequences of **Not** Reporting

- Supervisors impeding/inhibiting reporting
 - Up to six months in county jail, or fine of \$1000, or both (Pen. Code § 11166.01(a).)
 - If abuse/neglect results in death/great bodily injury, up to one year in county jail, or fine of \$5000, or both (Pen. Code § 11166.01(b).)



Consequences of Reporting

- None!
 - So long as not intentionally false or made with reckless disregard of the truth



Confidentiality of Mandated Reporter's Identity

- Mandated reporters must disclose identity to agency when making report
 - Persons not mandated reporters (e.g., volunteers) may make anonymous reports
 - Identity shall remain confidential
 - Disclosed only to specified agencies and persons receiving, investigating, or prosecuting child abuse/neglect
 - Identity not disclosed to employer except with employee consent or court order

(Pen. Code § 11167).)



Confidentiality of Mandated Reports

- Generally confidential
 - Disclosed only to specified agencies/persons, including
 - Investigative agencies
 - State agencies
 - Hospitals
 - Law enforcement

(Pen. Code § 11167.5.)



What Happens After Report

- Investigating agency shall inform person required or authorized to report of the results of the investigation and of any action the agency is taking with regard to the child/family

(Pen. Code § 11170(b)(2).)



Report . . .

Report . . .

Report!



the education series

e-ducation series

In partnership with the Association of California School Administrators, F3 proudly offers online professional development on legal and legislative matters affecting public education. All webinars are taped and archived. Access these free workshops. Encourage members of your department/team to use these resources. acsa.org/e-ducation

Information in this presentation, including but not limited to PowerPoint handouts and the presenters' comments, is summary only and not legal advice. We advise you to consult with legal counsel to determine how this information may apply to your specific facts and circumstances.



Fagen Friedman & Fulfroft LLP