Legal Update: New Laws, Mandated Reporting

MARIN COUNTY OFFICE OF EDUCATION

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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 § 1165.4.)
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 § 1166.05.)
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.)

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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

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!
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