

PROFESSIONAL ETHICS IN PRACTICE

WHY, WHEN, AND HOW DO I REPORT EDUCATOR MISCONDUCT?

As chief administrative officers in Pennsylvania's public schools, including charter and cyber charter schools, licensed private academic schools and contracted educational providers, you play a critical role in ensuring that the educators who serve in your entities are held to the highest ethical standards. Fostering an ethical climate within a school involves effective policies, productive in-services, good hiring practices, zero tolerance for professional misconduct, and a commitment to the profession at large.

The Professional Standards and Practices Commission, which is responsible for promoting professional integrity and adjudicating educator misconduct, shares your commitment to the education profession and would like to take this opportunity to offer some specific reminders of your responsibilities as school leaders in the area of reporting educator misconduct.

The devastating impact of educator misconduct on students, schools and the community at large cannot be overstated. As a self-regulated profession, it is incumbent upon school leaders to understand their professional responsibilities to report misconduct and to be vigilant in fulfilling those responsibilities.

Please note that our focus in this publication is solely on your duties to report misconduct to the Department of Education ("PDE") under the Educator Discipline Act ("Act"). Reporting to PDE does not relieve you of any other duty to report to either law enforcement and/or child protective services.

The Professional Standards and Practices Commission is an independent body charged with advising the State Board of Education on issues related to educator preparation and certification and with adjudicating educator misconduct cases. In an effort to increase awareness of professional standards for educator conduct and the consequences of the breach of such standards, the Commission will be issuing periodic bulletins on issues of concern to the profession. We welcome your suggestions and comments.

Mandatory Reporting to PDE

Under the Act, as amended effective February 18, 2014, all **chief school administrators** are required to report within 15 calendar days to PDE:

(1) Any educator who has been provided with notice of intent to dismiss or remove for cause, notice of nonrenewal for cause, notice of removal from eligibility lists for cause or notice of a determination not to reemploy for cause.

(2) Any educator who has been arrested or indicted for or convicted of any crime that is graded a misdemeanor or felony. For purposes of this section, the term conviction shall include a plea of guilty or nolo contendere.

(3) Any educator against whom allegations have been made that the educator has:
(i) committed sexual abuse or exploitation involving a child or student; or
(ii) engaged in sexual misconduct with a child or student.

(3.1) Information which constitutes reasonable cause to suspect that an educator has caused physical injury to a child or student as a result of negligence or malice.

(4) Any educator who has resigned, retired or otherwise separated from employment after a school entity has received information of alleged misconduct under this act.

(5) Any educator who is the subject of a report filed by the school entity under the reporting requirements of 23 Pa.C.S. Ch. 63 (relating to child protective services).

(6) Any educator who the school entity knows to have been named as the perpetrator of an indicated or founded report of child abuse or named as an individual responsible for injury or abuse in an indicated or founded report for a school employe under 23 Pa.C.S. Ch. 63.

The mandatory report form can be accessed at:

www.pspc.education.pa.gov/mandatoryreport

All reports must include an inventory of all information or evidence in possession of the school entity, which you must provide to the PDE upon request.

Frequently Asked Questions

WHO IS INCLUDED AS A “CHIEF SCHOOL ADMINISTRATOR” UNDER THE ACT?

The term “chief school administrator” includes the superintendent or chief executive officer of a school district, the executive director of an intermediate unit, the director of an Area Vocational Technical School, the chief administrator of a charter or cyber charter school, the director of a private academic school, and the chief administrator of a contracted educational provider.

AM I ONLY REQUIRED TO REPORT EDUCATORS WHO ARE CURRENTLY IN THE EMPLOY OF MY SCHOOL ENTITY?

No, the Act does not limit reporting to *employees*. Rather, the mandate applies to all educators, which includes anyone who holds a certificate, is a charter or cyber charter school staff member or who is a contracted educational provider staff member, regardless of any

employment relationship. Thus, if you have information regarding an educator outside of your school entity that would trigger a mandatory report if the educator worked for you, you are required to file a mandatory report. It is not even necessary that the educator be employed in the education field to trigger your reporting requirements. While student teachers do not constitute “educators” for purposes of mandatory reporting, you are also encouraged to report professional misconduct by student teachers. Such reporting will ensure that if the student teacher later seeks licensure, PDE will have access to information that may be relevant to its good moral character determination.

WHAT HAPPENS AFTER I FILE A MANDATORY REPORT WITH PDE?

All mandatory reports are reviewed by PDE to determine if the conduct reported warrants the filing of an educator misconduct complaint. If PDE determines that the conduct falls within the proscriptions of the Act and may warrant the imposition of state level discipline, PDE will file a complaint. It is the complaint that initiates the discipline process against an educator.

IS A MANDATORY REPORT CONFIDENTIAL?

While the Act does not clearly address this question, it is the policy of PDE to treat mandatory reports as confidential. An educator is only notified by PDE when it files or receives a complaint against the educator, not upon receipt of a mandatory report.

DOES THE ACT PROVIDE ANY PROTECTION FOR CHIEF SCHOOL ADMINISTRATORS WHO FILE MANDATORY REPORTS?

Yes, the Act protects you from civil liability if you make a mandatory or permissive report or file an educator misconduct complaint, cooperate in an investigation or provide testimony at a hearing. School entities that provide information about the conduct of a former or current employee to a prospective employer are also immune from liability for disclosing the information. The law protects you even if your suspicions are not confirmed. However, the Act does not protect individuals or school entities who knowingly provide false information.

DOES THE NOTICE TO DISMISS, NON-RENEW OR DISCHARGE HAVE TO BE IN WRITING TO TRIGGER THE REPORTING REQUIREMENT?

No, the intent can be communicated either verbally or in writing. The obligation to report is not dependent on formal notices having been provided to the educator.

DOES THE OBLIGATION TO REPORT EXTEND TO NON-TENURED EDUCATORS OR SUBSTITUTES WHO THE SCHOOL ENTITY DECIDES NOT TO EMPLOY IN THE FUTURE?

Yes, if you determine that the educator has engaged in conduct that would cause you to move for dismissal if he or she were a tenured professional, you should file a Mandatory Report. In contrast, if your decision not to reemploy is based on factors unrelated to misconduct or conduct

that would constitute just cause to dismiss, then mandatory reporting is not required. For example, if you decide not to reemploy an educator because he or she is not a good fit or does not meet your school entity's particular standards, no report is required.

MUST AN EDUCATOR WHO HAS BEEN CHARGED WITH A DUI BE REPORTED?

Yes, you must report all **arrests, charges or convictions** for crimes that are graded as a misdemeanor or felony, including Driving Under the Influence.

MUST I REPORT AN EDUCATOR WHO HAS BEEN ARRESTED FOR, CHARGED WITH OR CONVICTED OF A SUMMARY OFFENSE?

No, you do not have to report arrests, charges or convictions for summary offenses, including minor traffic offenses.

WHAT IS SEXUAL MISCONDUCT UNDER THE ACT?

Sexual misconduct in the context of a school environment is a broad term encompassing any behavior on the part of an educator designed to establish an inappropriate relationship with a child or student, ranging from inappropriate comments or jokes to sexual intercourse.

Sexual misconduct, as defined in the Act, is any act, including, but not limited to, any verbal, nonverbal, written, or electronic communication or physical activity, directed toward or with a child or a student regardless of the age of the child or student that is designed to establish a romantic or sexual relationship with the child or student. Such prohibited acts include, but are not limited to, the following: (1) sexual or romantic invitations; (2) dating or soliciting dates; (3) engaging in sexualized or romantic dialogue; (4) making sexually suggestive comments; (5) self-disclosure or physical exposure of a sexual, romantic or erotic nature; or (6) any sexual, indecent, romantic, or erotic contact with the child or student.

Under the Act, consent is never a defense or mitigating factor in cases involving sexual misconduct, regardless of the age of the student.

IS SEXUAL MISCONDUCT THE SAME AS SEXUAL ABUSE?

It is important not to confuse sexual misconduct with sexual abuse. While the definition of sexual misconduct covers all forms of sexual contact and what is commonly referred to as sexual abuse, it also includes the larger set of inappropriate, unacceptable and unprofessional behaviors that may lead to sexual contact. In addition, while sexual misconduct may involve criminal behavior, the term also captures conduct that, although not illegal, is designed to groom the student for future sexual contact.

WHAT IS THE DEFINITION OF SEXUAL ABUSE OR EXPLOITATION?

Sexual abuse or exploitation is defined in the Child Protective Services Law and is an extreme form of sexual misconduct. See Section 6301 (Definitions), Child Protective Services Law. It includes any physical, verbal, or visual sexual behavior between an educator and a child or student, as well as a number of sex-related crimes committed against a child.

IS A RUMOR THE SAME AS AN ALLEGATION?

The Act does not require that you have actual or first-hand knowledge of the alleged misconduct before you report. Thus, you should report every rumor or suspicion of sexual misconduct. Any uncertainty should be resolved in favor of reporting.

SHOULD I WAIT UNTIL AN INVESTIGATION IS COMPLETED BY THE LOCAL SCHOOL ENTITY OR THE POLICE, WHERE RELEVANT, BEFORE REPORTING?

No, the obligation to report under the Act is independent of the local school entity's responsibility to investigate or the police investigation. All reports must be made within 15 calendar days of the reporting trigger.

DO I NEED TO REPORT AN ALLEGATION THAT I BELIEVE IS UNTRUE OR THAT THE POLICE OR CHILD PROTECTIVE SERVICES HAVE DECIDED NOT TO PURSUE?

Yes, the Act does not entitle you to weigh the evidence and make a determination of whether or not the alleged misconduct occurred before reporting. While you are free to decide that the allegations are untrue for purposes of making an employment decision, you are not free to foreclose the possibility of an investigation by PDE. You must file a report even if you do not believe the allegations, the allegations are recanted, or an investigation by the school entity and/or an outside agency determines that the allegations are unsubstantiated.

IF I HAVE REPORTED AN ALLEGATION OF SEXUAL ABUSE OR EXPLOITATION TO CHILD PROTECTIVE SERVICES, DO I STILL NEED TO REPORT TO PDE?

Yes, the reporting requirement to PDE is separate and distinct from your duty to report under the Child Protective Services Law. The confidentiality provisions in the Child Protective Services Law prevent the Department of Human Services from sharing information in reports with PDE.

DOES AN ACT BY AN EDUCATOR THAT RESULTS IN PHYSICAL INJURY NEED TO BE INTENTIONAL TO TRIGGER MY REPORTING DUTY?

No, while the reporting provision does mandate a report for acts such as corporal punishment or physical abuse, it includes injuries caused by negligence as well.

DO I HAVE TO REPORT EVERY RESIGNATION OR SEPARATION FROM EMPLOYMENT?

No, you need report only when the educator resigns, retires or otherwise separates from employment after actual or alleged misconduct under the Act. You must file a report even if you have not conducted or completed an internal investigation and even if you have no evidence that the educator actually engaged in misconduct. Your obligation to report is triggered as soon as the educator resigns or separates from employment after the school entity has received information of alleged misconduct.

DO I HAVE TO FILE A SEPARATE REPORT WITH PDE IF I REPORTED AN EDUCATOR FOR SUSPECTED CHILD ABUSE OR RECEIVED INFORMATION THAT AN EDUCATOR HAS BEEN REPORTED FOR CHILD ABUSE UNDER THE CHILD PROTECTIVE SERVICES LAW?

Yes, your duty to report under the Act is independent of any other mandatory reporting duty. This report is required regardless of the identity of the alleged victim or the outcome of the child abuse report. Similarly, you must file a mandatory report whenever you learn that an educator has been named in an indicated or founded child abuse report as a perpetrator of abuse or a person responsible for abuse. A report under the Act is required even if the child abuse report was filed by someone outside the school entity.

DO I HAVE TO FILE A REPORT IF I KNOW THAT PDE IS ALREADY AWARE OF THE ALLEGED MISCONDUCT?

Yes.

MAY THE LOCAL SCHOOL ENTITY ENTER INTO AN AGREEMENT WITH AN EDUCATOR TO FACILITATE SEPARATION FROM EMPLOYMENT OR TO AVOID LITIGATION IF THE AGREEMENT PROVIDES THAT A REPORT TO PDE WILL NOT BE MADE?

Chief school administrators cannot avoid their reporting responsibilities by entering into a confidentiality agreement, or any other agreement, that restricts their responsibility to report misconduct to PDE or to comply with other duties outlined in the Act. It bears repeating that a chief school administrator who fails to file a mandatory report under section 9a of the Act is subject to disciplinary action.

IF I HAVE QUESTIONS ABOUT REPORTING, WHO CAN I CONTACT?

Questions about your mandatory reporting duties or educator misconduct should be directed to the Office of Chief Counsel, PDE, (717-787-5500) or to the Commission (717-787-6576).

Mandatory Reporting Duty for All Educators

Under the amendments to the Act effective in February of 2014, **all educators** are now mandated reporters to PDE if they know of any action, inaction or conduct by an educator which

constitutes sexual abuse or exploitation or sexual misconduct under the Act. In addition to filing a written mandatory report with PDE, the educator is obligated to report such misconduct to his or her chief school administrator and immediate supervisor. As chief school administrators, it is your responsibility to ensure that your educator staff is fully aware of their reporting responsibility under the Act. The reporting responsibility of all educators is independent and distinct from the reporting mandate under the Child Protective Services Law.

Permissive Reporting to PDE

While mandatory reporting is more expansive under the 2014 amendments to the Act, it is the Commission's belief, that as educational leaders your *ethical* responsibility to report misconduct extends beyond the specified mandated reports. Specifically, whenever you believe that an educator is involved in misconduct that implicates his or her fitness to serve children in the schools of Pennsylvania, you should report the misconduct to PDE on either a mandatory report form or on an educator misconduct complaint form.

www.pspc.education.pa.gov/educatorcomplaintform

Available Resources

More information on recognizing, investigating and reporting misconduct can be found on the Commission's website: www.pspc.education.pa.gov In addition, the Commission can work with your staff to offer in-service programs for teachers and/or administrators on educator discipline, the challenges posed by new technology and reporting responsibilities.

For assistance or if you have any questions, please contact:

SHANE CROSBY, EXECUTIVE DIRECTOR/LEGAL COUNSEL
PROFESSIONAL STANDARDS AND PRACTICES COMMISSION
333 MARKET STREET
HARRISBURG, PA 17126-0333
717 787- 6576
TTY: 717-783-8445
shcrosby@pa.gov