



## Understanding the duty to report child abuse and neglect

October 12, 2016

According to the [United States Department of Health & Human Services](#), in 2014, there were 169,808 reports of suspected abuse or neglect in Ohio alone. Forty-six percent of these reports were “screened-in” for further investigation. Nationally, there were 702,000 victims of child abuse and neglect, or 9.4 children per 1,000. It is imperative that educators understand their obligation under Ohio law to report child abuse and neglect — not only to protect children but also to avoid potential civil liability for the district and civil and criminal liability for themselves.

What is the statutory duty to report?

Pursuant to Ohio law — specifically, [Ohio Revised Code 2151.421](#) — school employees who are acting in their official capacity are required to immediately report their knowledge of, or a reasonable suspicion of, abuse or neglect. This duty applies to a school employee who knows or has a reasonable suspicion that a child has suffered, or faces a threat of suffering, any physical or mental wound, injury, disability or condition of a nature that reasonably indicates abuse or neglect.

This statutory duty extends to children under the age of 18 and to disabled children under the age of 21. Children services agencies have different practices regarding reports of abuse and neglect depending on the county in which the report is made. Whether the children services agency takes a report may depend on the age and relationship of the perpetrator. For example, agency reactions to student-on-student abuse when the students are under the age of eighteen varies. Some agencies will not take these calls, so law enforcement may need to be contacted instead.

By statute, reports of abuse and neglect must be made immediately. While there is no statutory definition of what it means to immediately report, considering the significance of child safety, reports need to be a priority. Waiting hours, days or weeks may be detrimental to the child and may create potential liability for the school employee or the district.

The duty to report abuse and neglect is a non-delegable duty. This means that it is



**Nicole M. Donovan**

Partner  
Columbus  
614.227.4866  
[ndonovsky@bricker.com](mailto:ndonovsky@bricker.com)

not sufficient for a school employee to report the suspicion of abuse or neglect to a school administrator, even if the school employee has an expectation that the school administrator will report the abuse or neglect to the appropriate agency. In addition, administrators do not want to attempt to assume this duty on behalf of your staff. While he/she may participate in a call to children services, the best practice is to have all individuals with knowledge of the suspected abuse or neglect in the same room during the report. This way, all mandated reporters discharge their duty, and children services is provided a first-hand and thorough report.

District policies may indicate that the employee must inform an administrator of the fact that a report was made. However, a school employee cannot be required to report abuse or neglect to a school administrator before a report is made to the appropriate authorities. Such a requirement may expose the employee and district to liability in the event additional abuse or neglect occurs in the interim. Rather, a district may require that administrators be informed of a report as soon as possible but should not predicate a report on the approval or notification of an administrator. Boards of education have a policy emphasizing and reiterating the statutory duty to report. Administrators should familiarize themselves, as well as their staff members, with district policies on reporting abuse and neglect. Failure to properly report according to the policy, and failure to enforce the policy, may result in adverse employment action.

Who to report to?

When a duty to report arises, the school employee may report it to either the public children services agency or to the local law enforcement agency in which the child resides or where the abuse or neglect has occurred. A report to either agency satisfies the statutory duty to report under the statute. The Ohio Department of Job and Family Services created an automated telephone directory that links callers directly to the child welfare agency or local law enforcement in the reporter's county. The hotline number is 855-O-H-CHILD (855-642-4453). In certain cases, abuse or neglect may rise to the level of a felony. In that case, an additional obligation to report the potential felony to law enforcement exists. Children services agencies and law enforcement agencies have interagency agreements resulting in collaboration between the agencies in taking and investigating reports of abuse and neglect, so that the appropriate agency is involved in the investigation.

How is the report made?

A report of abuse or neglect is initially made by telephone and is followed by a written report, if requested. A school employee should expect the report to be recorded either through notes taken by the intake operator or via audio recording. When a school employee reports abuse or neglect, the employee should be prepared with certain information. Written reports should include the names and addresses of the child and the child's parents or custodian(s), the child's age and the

nature and extent of the child's injuries, abuse or neglect that is known or reasonably suspected. In addition, any evidence of previous injuries, abuse or neglect must be provided. The reporter must also provide any additional information that might be helpful in establishing the cause of the injury, abuse or neglect that is known or suspected. Any school employee who is required to report abuse or neglect may take, or cause to be taken, color photographs of visible trauma and, if medically indicated, may cause radiological examination of the child. However, if abuse or neglect is known or suspected, a report should be made even in the event of the absence of any of this information.

Mandated reporters should be cautioned to provide factual information. Providing opinions about the victim and perpetrator, or whether the allegations of abuse and neglect or substantiated, should be avoided. As a mandated reporter, the only responsibility is to report the knowledge or suspicion. It is the role of the children services agency or law enforcement to investigate the report. If a mandated reporter offers other than factual information, the reporter or district may be subject to allegations of defamation or retaliation by the alleged perpetrator.

#### Confidentiality of reports

Under Ohio law, a report of abuse or neglect is confidential. In addition, no person shall permit or encourage the unauthorized dissemination of the contents of any report of abuse or neglect. This means that a record of the report should never be placed in a student file or otherwise revealed. The report is neither a public record nor an education record. It is a confidential record. State law indicates that the information provided in a report and the name of the person who made the report shall not be released for use, and shall not be used, as evidence in any civil action or proceeding brought against the person who made the report. It is not uncommon for parents to inquire of school administrators who made a report of abuse or neglect. Under state law, the identity and content of the report must be protected as confidential. Mandated reporters should understand, however, that in the event a lawsuit is filed by a parent against school employees or the district, courts may order the otherwise confidential records to be produced.

#### Immunity and potential liability

School employees who make a report of abuse or neglect in good faith or who participates in good faith in a judicial proceeding resulting from the reports, are immune from civil or criminal liability under state law for injury, death or other loss that results from the report or participation in the judicial proceeding. In the event an employee was not acting in good faith, a court may award attorney's fees and costs against the school employee. In addition, an employee who fails to make a report of abuse or neglect may be subject to civil liability in the form of monetary damages as well as criminal liability.

In the event federal claims are asserted against an employee for making a report in

retaliation against the alleged perpetrator, qualified immunity may apply. However, in at least two cases, the Sixth Circuit Court (the federal court jurisdiction covering Ohio) found that qualified immunity did not apply. In [Jenkins v. Rock Hill Local School District](#) and [Wenk v. O'Reilly](#), parents sued school employees and districts alleging that the reports of abuse and/or neglect were made in retaliation for the parent's protected activity. In both cases, the Sixth Circuit found that qualified immunity did not apply.

In conclusion, it is imperative that building administrators and all school employees understand their mandatory duty to report knowledge or suspicions of abuse and neglect. Mandated reporters should report immediately to either the local children services agency or local law enforcement. Reports should be factually based, and all school employees with knowledge should participate in the report. Reports are confidential and should not be discussed with anyone, especially parents when the parent is an alleged perpetrator. By following these simple steps, districts and school employees act to protect children and, in most instances, will avoid civil and criminal liability.