

Mandated Reporting



Santa Ana Unified School District

Presented by:
Tony De Marco, Partner

aa/r
Atkinson, Andelson
Loya, Ruud & Romo
A Professional Law Corporation

Agenda



- Who is a Mandated Reporter?
- What is Required to be Reported?
- Confidentiality of Reports
- Consequences of Failure to Report
- Hypothetical Situations

Who is a Mandated Reporter?

- A teacher
- An instructional aide
- A teacher's aide or teacher's assistant employed by the school
- A classified employee
- An administrator

Who is a Mandated Reporter?

- A school psychologist
- A Head Start Program teacher
- An employee of a school district police or security department
- A counselor
- A licensed nurse

(California Penal Code section 11165.7)

When is a Mandated Reporter Required to Report?

A mandated reporter *shall* make a report when in his or her professional capacity, has knowledge of or observes a child whom he or she knows or *reasonably suspects* has been the victim of child abuse or neglect. (Penal Code section 11166(a).)

What is “Child Abuse or Neglect”?

- 1) Physical injury or death inflicted by non-accidental means
- 2) Sexual abuse
- 3) Neglect
- 4) Willful harming or injuring of a child
- 5) Endangering the person or health of a child
- 6) Unlawful corporal punishment or injury

Child abuse or neglect does not include a mutual fighting between minors. (Penal Code section 11165.6.)

What is “Neglect”?

The negligent treatment or maltreatment of a child by a person responsible for the child’s welfare under circumstances indicating harm or threatened harm to the child’s health or welfare.

- “Severe neglect” is the negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition or medically diagnosed nonorganic failure to thrive. It also encompasses situations where any person having care or custody of a child willfully causes or permits *endangerment* of the child’s person or health.
- “General neglect” is the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, medical care, or supervision *where no physical injury to the child has occurred*.

(Penal Code section 11165.2)

What is “Willful Harming or Injuring of a Child, or Endangering of the Person or Health of a Child”?

Any situation wherein a person:

- Willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering, or
- Having the care or custody of any child, willfully causes or permits the endangerment of the person or health of a child

(Penal Code section 11165.3)

What is “Unlawful Corporal Punishment or Injury”?

- When a person willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition. (Penal Code section 11165.4)
- Corporal punishment is expressly prohibited by the Education Code. Corporal punishment is defined as the willful infliction of, or willfully causing the infliction of, physical pain on a pupil. (Education Code section 49001(a).)

What is a “Reasonable Suspicion”?

“Reasonable suspicion” means it is 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.

Reasonable suspicion does not require:

- (1) Certainty child abuse or neglect has occurred, or
- (2) A specific medical indication of child abuse or neglect

(Penal Code section 11166(a)(1).)

Additionally...

Any mandated reporter who has knowledge of, or reasonably suspects, a child is suffering serious emotional damage or is at a substantial risk of suffering serious emotional damage, evidenced by states of being or behavior, including, but not limited to, severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, may make a report. (Penal Code section 11166.05.)

To Whom is a Mandated Reporter Required to Report?

- 1) A police department
- 2) A sheriff's department
- 3) A county probation department, or
- 4) A county welfare department.
(Penal Code section 11166(a).)

- The mandated report may not be made to a school district police or security department. (Penal Code section 11165.9(b).)

When Must a Mandated Report be Submitted?

- The report must be made *immediately or as soon as is practicably possible* by telephone.
- Within *36 hours* of receiving information concerning the incident, the mandated reporter must prepare and send, fax, or electronically submit a follow-up report. (Penal Code section 11166(a).)

What Information is Submitted in a Mandated Report?

- The mandated reporter's name, business address, and telephone number
- The mandated reporter's job title
- Information giving rise to the reasonable suspicion of child abuse or neglect and the source(s) of the information
- The child's name, address, present location, school, grade, and class
- The names, addresses, and telephone numbers of the child's parent(s) or guardian(s)
- The name, address, telephone number, and other relevant information regarding the person(s) who may have abused or neglected the child.

(Penal Code section 11167(a).)

Confidentiality of Reports

- “The identity of all mandated reporters shall be confidential and disclosed only among agencies receiving or investigating mandated reports.” (Penal Code section 11167(d)(1).)
- A District or school employee *may not* disclose the identity of a mandated reporter to a student’s parent or guardian.
- A District or school employee *may not* inform the employee against whom the report was made of the report or the identity of the reporter.

Consequences for Failure to Report

- Any mandated reporter who fails to report an incident of known or reasonably suspected child abuse or neglect is *guilty of a misdemeanor* punishable by up to *six months in county jail, by a fine of \$1000, or both*. (Penal Code section 11166(c).)
- Any mandated reporter who willfully fails to report abuse or neglect, and the abuse or neglect results in death or great bodily injury, shall be punished by not more than *one year in county jail, by a fine of not more than \$5000, or both*. (Penal Code section 11166.01.)

Consequences for Failure to Report

- *A mandated reporter's duties are individual.*
- No supervisor or administrator may impede or inhibit a mandated reporter from reporting. No person making a report shall be subject to any sanction for reporting. (Penal Code section 11166(i)(1).)
- A supervisor or administrator who impedes or inhibits a mandated reporter from reporting shall be punished by not more than *six months in county jail, by a fine not more than \$1000, or both.* (Penal Code section 11166.01(a).)

Immunity for Reporters

- *No mandated reporter shall be civilly or criminally liable for any report required or authorized by this article*, and this immunity shall apply even if the mandated reporter acquired the knowledge or reasonable suspicion of child abuse or neglect outside of his or her professional capacity or outside the scope of his or her employment.
- Any other person reporting a known or suspected instance of child abuse or neglect shall not incur civil or criminal liability as a result of any report authorized by this article unless *it can be proven that a false report was made and the person knew that the report was false or was made with reckless disregard of the truth or falsity of the report*, and any person who makes a report of child abuse or neglect known to be false or with reckless disregard of the truth or falsity of the report is liable for any damages caused.
- Any person, who, pursuant to a request from a government agency investigating a report of suspected child abuse or neglect, *provides the requesting agency with access to the victim of a known or suspected instance of child abuse or neglect* shall not incur civil or criminal liability as a result of providing that access.” (Penal Code section 11172.)

And Now, Some Hypothetical Situations...

A student tells his counselor he was the victim of abuse by a relative last year. The student informs the counselor the relative moved out of state last year, and he has not been subject to abuse since. The counselor comes to you and asks if she has an obligation to file a mandated report because the abuse happened over a year ago, and the relative no longer lives in the state. Does the counselor have an obligation to report?

Yes! The mandated reporting laws do not place a time limit on reporting suspected abuse or neglect. Whenever a mandated reporter has a reasonable suspicion of abuse or neglect, no matter how long ago it may have occurred, the reporter has a duty to file the report.

Hypotheticals

Continued

A student begins walking out of a classroom after the teacher directs the student to remain in the classroom. Out of frustration, the teacher grabs the hood on the student's sweatshirt and pulls so the student cannot leave the classroom. The student stumbles, but does not fall. Do you have a duty to file a mandated report?

Yes! The teacher may have willfully inflicted pain upon the student.

Hypotheticals

Continued

When a student's parent arrives to pick up her child, she drives erratically in the parking lot. A teacher walks the student to the car. The parent rolls down the front window to thank the teacher, but her words are slurred and the teacher smells alcohol. The parent leaves the site with the student. The teacher inquires whether she has an obligation to report her suspicion the student's parent may have been driving intoxicated.

Yes! The parent is willfully endangering the person or health of her child by driving while intoxicated.

Questions?

If in doubt, *immediately* contact Human Resources.

For questions or comments, please contact
Tony De Marco, Partner
(949) 453-4260
(562) 653-3200
ademarco@aalrr.com