



IMPORTANT INFORMATION REGARDING REPORTING OBLIGATIONS

The following reporting guidelines have been prepared by the PSEA Legal Division and are current as of June 5, 2015. Please review the information in this critical alert to ensure you are properly following the reporting guidelines for the following four laws:

- **Child Protective Services**, 23 Pa.C.S. § 6301 - § 6386
- **Educator Discipline Act**, 24 P.S. § 2070.1a - § 2070.18a
- **Criminal Conduct**, 24 P.S. § 1-111.1(e), (f.1)
- **Employment History Review Act** (Act 168 of 2014), 24 P.S. § 1-111.1

Each of the guidelines includes a description of the law and definitions of terms appearing within the reporting obligations to ensure complete understanding. If you have any questions about a reporting obligation, please call your PSEA UniServ representative, who will refer you to the appropriate PSEA attorney.

Under Section 6311 of the Law, mandated reporters (including “school employees”) must report if the mandated reporter has reasonable cause to suspect that a child is a victim of child abuse under any of the following circumstances:

- (i) the mandated reporter comes into contact with the child in the course of employment, occupation and practice of a profession or through a regularly scheduled program, activity or service;
- (ii) the mandated reporter is directly responsible for the care, supervision, guidance or training of the child, or is affiliated with an agency, institution, organization, school, regularly established church or religious organization or other entity that is directly responsible for the care, supervision, guidance or training of the child;
- (iii) a person makes a specific disclosure to the mandated reporter that an identifiable child is the victim of child abuse; or
- (iv) an individual 14 years of age or older makes a specific disclosure to the mandated reporter that the individual has committed child abuse.

DEFINITIONS (from Section 6303(b.1))

Child abuse means intentionally, knowingly or recklessly* doing any of the following:

- (1) Causing bodily injury to a child through any recent act or failure to act.
- (2) Fabricating, feigning or intentionally exaggerating or inducing a medical symptom or disease which results in a potentially harmful medical evaluation or treatment to the child through any recent act.
- (3) Causing or substantially contributing to serious mental injury to a child through any act or failure to act or a series of such acts or failures to act.
- (4) Causing sexual abuse or exploitation of a child through any act or failure to act.
- (5) Creating a reasonable likelihood of bodily injury to a child through any recent act or failure to act.
- (6) Creating a likelihood of sexual abuse or exploitation of a child through any recent act or failure to act.
- (7) Causing serious physical neglect of a child.
- (8) Engaging in any of the following recent acts:
 - (i) Kicking, biting, throwing, burning, stabbing or cutting a child in a manner that endangers the child.
 - (ii) Unreasonably restraining or confining a child, based on consideration of the method, location or the duration of the restraint or confinement.
 - (iii) Forcefully shaking a child under one year of age.
 - (iv) Forcefully slapping or otherwise striking a child under one year of age.
 - (v) Interfering with the breathing of a child.
 - (vi) Causing a child to be present at a location while a violation of 18 Pa.C.S. § 7508.2 (relating to operation of methamphetamine laboratory) is occurring, provided that the violation is being investigated by law enforcement.
 - (vii) Leaving a child unsupervised with an individual, other than the child’s parent, who the actor knows or reasonably should have known:
 - (A) Is required to register as a Tier II or Tier III sexual offender under 42 Pa.C.S. Ch. 97 Subch. H (relating to registration of sexual offenders), where the victim of the sexual offense was under 18 years of age when the crime was committed.
 - (B) Has been determined to be a sexually violent predator under 42 Pa.C.S. § 9799.24 (relating to assessments) or any of its predecessors.
 - (C) Has been determined to be a sexually violent delinquent child as defined in 42 Pa.C.S. § 9799.12 (relating to definitions).
- (9) Causing the death of the child through any act or failure to act.

*Intentionally, recklessly, and knowingly have the same definition as the definitions of those terms found in 18 Pa.C.S. § 302

Under Section 2070.9a(d) of the Act, educators must report when they know of any action, inaction, or conduct of another educator that constitutes sexual abuse or exploitation or sexual misconduct under the Act.

Under Section 2070.9a(a) of the Act, chief school administrators must report:

- (1) any educator against whom allegations have been made that the educator has committed sexual abuse or exploitation involving a child or student; or engaged in sexual misconduct with a child or student;
- (2) 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;
- (3) any educator who has resigned, retired, or otherwise separated from employment after a school entity has received information of alleged misconduct under this act;
- (4) any educator who is the subject of a report filed by the school entity under the reporting requirements of the Child Protective Services Law; and
- (5) 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 employer under [the Child Protective Services Law].

DEFINITIONS (from Section 2070.1b)

Chief school administrator shall mean 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 or the chief administrator of a contracted educational provider.

Educator shall mean a person who holds a certificate, who is a charter or cyber charter school staff member or who is a contracted educational provider staff member.

Sexual abuse or exploitation shall have the meaning given to the term by 23 Pa.C.S. Ch. 63 (relating to child protective services).

Sexual misconduct shall mean 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.

CRIMINAL CONDUCT, 24 P.S. § 1-111.1(e), (f.1)

Under these sections of the School Code, all current and prospective employees of public and private schools must report (to an administrator, on the specific form provided by the Department of Education) within 72 hours of being arrested for, or convicted of, the crimes summarized below:

- (1) Crimes defined in certain enumerated provisions of Title 18 of the PA Consolidated Statutes, which includes: criminal homicide, aggravated assault, stalking, kidnapping, unlawful restraint, luring a child into a motor vehicle or structure, rape, statutory sexual assault, involuntary deviate sexual intercourse, sexual assault, institutional sexual assault, aggravated indecent assault, indecent assault, indecent exposure, sexual intercourse with an animal, incest, concealing the death of a child, endangering the welfare of children, dealing in infant children, felony prostitution offenses, obscene and other sexual materials and performances, corruption of minors, sexual abuse of children, unlawful contact with a minor, solicitation of minors to traffic drugs, and sexual exploitation of children.
- (2) Any felony defined under Pennsylvania's Controlled Substance, Drug, Device and Cosmetic Act.
- (3) Any crime similar to the above-listed crimes under other jurisdictions.
- (4) Any other crime that is graded as a felony offense of the first, second, or third degree.
- (5) Any other crime that is graded as a misdemeanor of the first degree.
- (6) Any DUI where the individual has been convicted more than once and the offense is graded as a misdemeanor of the first degree, except where the DUI relates to the operation of a commercial or school vehicle in which case any first degree misdemeanor must be reported.¹

¹PSEA interprets the law to require that, with respect to personal vehicles, an employee only report a first degree misdemeanor offense for DUI if it is the employee's second first degree misdemeanor offense for DUI. In other words, there is no obligation to report an initial first degree misdemeanor for DUI, or any initial or later lower DUI offense. If the DUI relates to the use of a commercial or school vehicle, then any initial first degree DUI offense must be reported. Whenever a member is charged with DUI, regardless of the grading, the member should consult with a PSEA region attorney regarding reporting requirements and options.

Under this section of the School Code, applicants seeking employment with public and private school entities, and independent contractors of such entities, must disclose if they have ever:

- (1) been the subject of an abuse or sexual misconduct investigation by any employer, state licensing agency, law enforcement agency or child protective services agency (unless the investigation resulted in a finding that the allegations were false);
- (2) been disciplined, discharged, non-renewed, asked to resign from employment, resigned or otherwise separated from employment while allegations of abuse or sexual misconduct were pending or under investigation or due to adjudication or findings of abuse or sexual misconduct; or
- (3) had a license, professional license or certificate suspended, surrendered or revoked while allegations of abuse or sexual misconduct were pending or under investigation or due to an adjudication or findings of abuse or sexual misconduct.

Current/former employers must disclose the same information.

DEFINITIONS (from Section 1-111.1(n))

Sexual Misconduct has the same definition as the definition of that term found in Educator Discipline Act.

Abuse is defined as “conduct that falls under the purview and reporting requirements of [the Child Protective Services Law] is [sic] directed toward or against a child or a student, regardless of the age of the child or student.”