



Education Law Update

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Any Reasonable Suspicion Triggers Mandated Reporting Duty

California Penal Code Section 11166 sets forth mandated reporting duties for specified persons, including teachers and most school personnel. Prior to Assembly Bill 2380 (AB 2380), chaptered July 19, 2010, mandated reporters were required to submit a report to law enforcement whenever in their professional capacity, or within the scope of their employment, they had knowledge of or observed a child known or reasonably suspected to have been the victim of child abuse or neglect.

The term "reasonable suspicion" was defined as meaning it was objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing on his or her training and experience, when appropriate, to suspect abuse or neglect. Concerns arose that mandated reporters failed to report cases where they were uncertain of child abuse or neglect or where there was no medical indication of abuse. AB 2380 was sponsored by Assemblywoman Bonnie Lowenthal to add language to existing law making it clear that the term "reasonable suspicion" does not require certainty of the suspected abuse or neglect.

Prior versions of AB 2380 contained language broadening the definition of reasonable suspicion by stating that it could be based upon any information considered credible by the reporter, including hearsay statements and statements from other individuals. The final version of the bill excluded the language which provided hearsay statements as a basis of forming reasonable suspicion of child abuse or neglect, and included language that "any reasonable suspicion" is a sufficient basis for a referral. There may be circumstances where hearsay and/or other types of information would lead to a reasonable suspicion of abuse or neglect.

The following example may help illustrate this information:

A yard duty aide hears Jenny ask Suzie: "Do you have any food for Sam because his parents left him and his little brother home alone all month and he doesn't have anything to eat." The statement from Jenny to Suzie would be hearsay but circumstances surrounding the conversation, such as Jenny showing genuine concern or Sam not eating at lunchtime, might lead the aide to reasonably believe neglect is occurring. As a mandated reporter with a reasonable suspicion of neglect, the yard duty aide would be required to report her suspicion, even without certainty or medical evidence supporting her suspicion.

Currently, the relevant portion of Penal Code Section 11166, as amended by AB 2380 (added language shown in shaded highlight below), reads as follows:

11166. (a) Except as provided in subdivision (d), and in Section 11166.05, a mandated reporter shall make a report to an agency specified in Section 11165.9 whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. The mandated reporter shall make an initial report to the agency immediately or as soon as is practicably possible by telephone and the mandated reporter shall prepare and send, fax, or electronically transmit a written followup report thereof within 36 hours of receiving the information concerning the incident. The mandated reporter may include with the report any nonprivileged documentary evidence the mandated reporter possesses relating to the incident. (1) For purposes of this article, "reasonable suspicion" means that 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 certainty that child abuse or neglect has occurred nor does it require a specific medical indication of child abuse or neglect; any "reasonable suspicion" is sufficient. For the purpose of this article, the pregnancy of a minor does not, in and of itself, constitute a basis for a reasonable suspicion of sexual abuse.

In light of the new language in Penal Code Section 11166, districts are urged to review their mandated reporting policies and emphasize to employees that certainty of abuse or neglect is not required. Districts are also urged to remind employees that their duty to report is triggered when they have "reasonable suspicion" of abuse or neglect.

If you have questions regarding the above information, please do not hesitate to contact our office.

– Kathleen R. LaMay

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