

Effective Date: 4/17/12	Policy 500-23 Maltreatment of Minors/Mandatory Reporting
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I. PURPOSE

The purpose of this policy is to make clear the statutory requirements of school personnel to report suspected child neglect or physical or sexual abuse.

II. GENERAL STATEMENT OF POLICY

A. The policy of Duluth Public Schools Academy (DPSA) is to fully comply with Minn. Stat. Ch. 260E requiring school personnel to report suspected child neglect or physical or sexual abuse.

B. It shall be a violation of this policy for any school personnel to fail to immediately report instances of child neglect, or physical or sexual abuse when the school personnel knows or has reason to believe a child is being neglected or physically or sexually abused or has been neglected or physically or sexually abused within the preceding three years.

III. DEFINITIONS

A. "Accidental" means a sudden, not reasonably foreseeable, and unexpected occurrence or event which:

1. is not likely to occur and could not have been prevented by exercise of due care; and
2. if occurring while a child is receiving services from a facility, happens when the facility and the employee or person providing services in the facility are in compliance with the laws and rules relevant to the occurrence or event.

B. "Child" means one under age 18.

C. "Immediately" means as soon as possible but in no event longer than 24 hours.

D. "Mandated Reporter" means any school personnel who knows or has reason to believe a child is being neglected or physically or sexually abused, or has been neglected or physically or sexually abused within the preceding three years.

E. "Neglect" means the commission or omission of any of the acts specified below, other than by accidental means:

1. failure by a person responsible for a child's care to supply a child with necessary food, clothing, shelter, health, medical, or other care required for the child's physical or mental health when reasonably able to do so;
2. failure to protect a child from conditions or actions that seriously endanger the child's physical or mental health when reasonably able to do so, including a growth delay, which may be referred to as a failure to thrive, that has been diagnosed by a physician and is due to parental neglect;
3. failure to provide for necessary supervision or child care arrangements appropriate for a child after considering factors such as the child's age, mental ability, physical condition, length of absence, or environment, when the child is unable to care for the child's own basic needs or safety, or the basic needs or safety of another child in their care;
4. failure to ensure that a child is educated in accordance with state law, which does not include a parent's refusal to provide the parent's child with sympathomimetic medications unless Minn. Stat. § 144.344 applies;
5. prenatal exposure to a controlled substance used by the mother for a nonmedical purpose, as evidenced by withdrawal symptoms in the child at birth, results of a toxicology test performed on the mother at delivery or the child's birth, medical effects or developmental delays during the child's first year of life that medically indicate prenatal exposure to a controlled substance, or the presence of a fetal alcohol spectrum disorder;
6. medical neglect as defined by Minn. Stat. §260C.007, Subd. 4, Clause (5);
7. chronic and severe use of alcohol or a controlled substance by a parent or person responsible for the child's care that adversely affects the child's basic needs and safety; or
8. emotional harm from a pattern of behavior which contributes to impaired emotional functioning of the child which may be demonstrated by a substantial and observable effect in the child's behavior, emotional response, or cognition that is not within the normal range for the child's age and stage of development, with due regard to the child's culture.
9. Neglect does not include spiritual means or prayer for treatment or care of disease or remedial care where the person responsible for the

child's care in good faith has selected and depended on those means in lieu of medical care, except where the lack of medical care may cause serious danger to the child's health.

F. "Physical Abuse" means any physical injury, mental injury, or threatened injury, inflicted by a person responsible for the child's care other than by accidental means; or any physical or mental injury that cannot reasonably be explained by the child's history of injuries, or any aversive or deprivation procedures, or regulated interventions, that have not been authorized by Minn. Stat. § 121A.0942 or § 245.825.

1. Abuse does not include reasonable and moderate physical discipline of a child administered by a parent or legal guardian which does not result in an injury. Abuse does not include the use of reasonable force by a teacher, principal, or school employee as allowed by Minn. Stat. § 121A.582.

2. Actions which are not reasonable and moderate include, but are not limited to, any of the following:

- a. throwing, kicking, burning, biting, or cutting a child;
- b. striking a child with a closed fist;
- c. shaking a child under age three;
- d. striking or other actions which result in any non-accidental injury to a child under 18 months of age;
- e. unreasonable interference with a child's breathing;
- f. threatening a child with a weapon, as defined in Minn. Stat. §609.02, Subd. 6;
- g. striking a child under age one on the face or head;
- h. striking a child who is at least age one but under age four on the face or head, which results in an injury;
- i. purposely giving a child poison, alcohol, or dangerous, harmful, or controlled substances which were not prescribed for the child by a practitioner in order to control or punish the child;
- j. purposely giving a child other substances that substantially affect the child's behavior, motor coordination, or judgment; that result in sickness or internal injury; or subject the child to medical procedures that would be unnecessary if the child were not exposed to the substances;

k. unreasonable physical confinement or restraint not permitted under Minn. Stat. § 609.379, including but not limited to, tying, caging, or chaining; or

l. in a school facility or school zone, an act by a person responsible for the child's care that is a violation under Minn. Stat. § 121A.58.

G. "School Personnel" means a professional of DPSSA or a professional of DPSSA's delegate who provides health, educational, social, psychological or psychiatric, law enforcement, or child care services.

H. "Sexual Abuse" means the subjection of a child by a person responsible for the child's care, by a person who has a significant relationship to the child, or by a person in a current or recent position of authority to any act which constitutes a violation of Minnesota statutes prohibiting criminal sexual conduct. Such acts include sexual penetration as well as sexual contact. Sexual abuse also includes any act involving a minor which constitutes a violation of Minnesota statutes prohibiting prostitution, or use of a minor in a sexual performance. Sexual abuse includes threatened sexual abuse.

I. "Significant relationship" means a situation in which the alleged offender is:

1. the child's parent, stepparent, or guardian;
2. any of the following persons related to the child by blood, marriage, or adoption: brother, sister, stepbrother, stepsister, first cousin, aunt, uncle, nephew, niece, grandparent, great-grandparent, great-uncle, great-aunt;" or
3. an adult who jointly resides intermittently or regularly in the same dwelling as the child and who is not the child's spouse.

J. "Mental Injury" means an injury to the psychological capacity or emotional stability of a child as evidenced by an observable or substantial impairment in the child's ability to function within a normal range of performance and behavior with due regard to the child's culture.

K. "Person in a current or recent position of authority" means an individual in a position of authority over a child and includes but is not limited to any person who is a parent or acting in the place of a parent and charged with any of a parent's rights, duties, or responsibilities to a child, or a person who is charged with any duty or responsibility for the health, welfare, or supervision of a child, either independently or through another, no matter how brief, within 120 days immediately preceding the act. Person in a position of authority includes a psychotherapist.

L. "Person responsible for the child's care" means (1) an individual functioning within the family unit and having responsibilities for the care of the child such as a parent, guardian, or other person having similar care responsibilities, or (2) an individual functioning outside the family unit and having responsibilities for the care of the child such as a teacher, school administrator, other school employee or agent, or other lawful custodian of a child having either full-time or short-term care responsibilities including, but not limited to, day care, babysitting whether paid or unpaid, counseling, teaching, and coaching.

M. "Threatened injury" means a statement, overt act, condition, or status that represents a substantial risk of physical or sexual abuse or mental injury. Threatened injury includes, but is not limited to, exposing a child to a person responsible for the child's care who has:

1. subjected a child to, or failed to protect a child from, an overt act or condition that constitutes egregious harm;
2. been found to be palpably unfit;
3. committed an act that resulted in an involuntary termination of parental rights; or
4. committed an act that resulted in the involuntary transfer of permanent legal and physical custody of a child to a relative under Minnesota law.

IV. REPORTING PROCEDURES

A. A mandated reporter as defined herein shall immediately report orally by telephone or otherwise the neglect or physical or sexual abuse, which he or she knows or has reason to believe is happening or has happened within the preceding three years to the local welfare agency, agency responsible for assessing or investigating the report, police department, county sheriff, tribal social services agency, or tribal police department.

1. Alleged abuse or neglect that occurred outside of a public school facility should be reported to the local welfare agency, police department, or county sheriff.
2. Alleged abuse or neglect that occurred in a public school facility or at a school activity should be reported to the Minnesota Department of Education (MDE). Reports may be made to MDE 24 hours per day by calling (651) 582-8546.
3. The immediate report only has to be to one agency.

B. The oral report shall be followed within 72 hours (exclusive of weekends and holidays) by a written report to the appropriate police department, the county sheriff, agency responsible for assisting or investigating maltreatment, or the local welfare agency. The written report shall identify the child, any person believed to be responsible for the abuse or neglect of the child if the person is known, the nature and extent of the abuse or neglect, and the name and address of the reporter.

C. A mandated reporter who knows or has reason to know of the deprivation of parental rights or the kidnapping of a child shall report the information to the local police department or the county sheriff.

D. With the exception of a health care professional or a social service professional who is providing a woman with prenatal care or other health care services and knows or has reason to believe that the woman is using or consuming tetrahydrocannabinol or alcoholic beverages during the pregnancy, a mandated reporter shall immediately report to the local welfare agency if the person knows or has reason to believe that a woman is pregnant and has used a controlled substance for a nonmedical purpose during the pregnancy, including, but not limited to, tetrahydrocannabinol, or has consumed alcoholic beverages during the pregnancy in any way that is habitual or excessive.

E. A person mandated by Minnesota law and this policy to report who fails to report may be subject to criminal penalties and/or discipline, up to and including termination of employment.

F. Submission of a good faith report under Minnesota law and this policy will not adversely affect the reporter's employment, or the child's access to school.

G. Any person who knowingly or recklessly makes a false report under the provisions of applicable Minnesota law or this policy shall be liable in a civil suit for any actual damages suffered by the person or persons so reported and for any punitive damages set by the court or jury, and the reckless making of a false report may result in discipline. The court may also award attorney's fees.

[Note: The Minnesota Department of Education (MDE) is responsible for assessing or investigating allegations of child maltreatment in schools. Although a report may be made to any of the agencies listed in Section IV.A., above, and there is no requirement to file more than one report, if the initial report is not made to MDE, it would be helpful to MDE if schools also report to MDE.]

V. INVESTIGATION

A. The responsibility for investigating reports of suspected neglect or physical or sexual abuse rests with the appropriate county, state, or local agency or agencies. The agency responsible for assessing or investigating reports of child maltreatment has the authority to interview the child, the person or persons responsible for the child's care, the alleged offender, and any other person with knowledge of the abuse or neglect for the purpose of gathering facts, assessing safety and risk to the child, and formulating a plan. The investigating agency may interview the child at school. The interview may take place outside the presence of a school official. The investigating agency, not the school, is responsible for either notifying or withholding notification of the interview to the parent, guardian or person responsible for the child's care. School officials may not disclose to the parent, legal custodian, or guardian the contents of the notification or any other related information regarding the interview until notified in writing by the local welfare or law enforcement agency that the investigation or assessment has been concluded, unless a school employee or agent is alleged to have maltreated the child. Regarding an incident that may constitute maltreatment of a child in a school facility, as soon as practicable after a school receives information, the school shall inform the parent, legal guardian, or custodian of the child that an incident occurred that may constitute maltreatment of the child, when the incident occurred, and the nature of the conduct that may constitute maltreatment.

B. When the investigating agency determines that an interview should take place on school property, written notification of intent to interview the child on school property will be received by school officials prior to the interview. The notification shall include the name of the child to be interviewed, the purpose of the interview, and a reference to the statutory authority to conduct an interview on school property.

C. Except where the alleged perpetrator is believed to be a school official or employee, the time and place, and manner of the interview on school premises shall be within the discretion of school officials, but the local welfare or law enforcement agency shall have the exclusive authority to determine who may attend the interview. The conditions as to time, place, and manner of the interview set by the school officials shall be reasonable, and the interview shall be conducted not more than 24 hours after the receipt of the notification unless another time is considered necessary by agreement between the school officials and the local welfare or law enforcement agency. Every effort must be made to reduce the disruption of the educational program of the child, other students, or school employees when an interview is conducted on school premises.

D. Where the alleged perpetrator is believed to be a school official or employee, the school district shall conduct its own investigation independent of MDE and, if involved, the local welfare or law enforcement agency. The school district may delay this investigation or choose not to conduct it if to do so would impede the agencies' investigation or if the agencies make a determination that is available to the school district.

E. The school district shall provide all requested data that are relevant to a report of maltreatment and are in the possession of a school facility upon request by MDE pursuant to an assessment or investigation of a maltreatment report of a student in school. The school district shall provide the requested data in accordance with the requirements of the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, and the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g.

VI. MAINTENANCE OF SCHOOL RECORDS CONCERNING ABUSE OR POTENTIAL ABUSE

A. When a local welfare or local law enforcement agency determines that a potentially abused or abused child should be interviewed on school property, written notification of the agency's intent to interview on school property must be received by school officials prior to the interview. The notification shall include the name of the child to be interviewed, the purpose of the interview, and a reference to the statutory authority to conduct the interview. The notification shall be private data. School officials may not disclose to the parent, legal custodian, or guardian the contents of the notice or any other related information regarding the interview until notified in writing by the local welfare or law enforcement agency that the investigation has been concluded, unless a school employee or agent is alleged to have maltreated the child.

B. All records regarding a report of maltreatment, including any notification of intent to interview which was received by the school as described above in Paragraph A., shall be destroyed by the school when ordered to do so by the agency conducting the investigation.

C. When a report of suspected abuse at a school is received by MDE, it must advise the parent, guardian, or legal custodian of a child within ten days of receipt of the report upon whether MDE will investigate.

VII. PHYSICAL OR SEXUAL ABUSE AS SEXUAL HARASSMENT OR VIOLENCE

Under certain circumstances, alleged physical or sexual abuse may also be sexual harassment or violence under Minnesota law. If so, the duties relating to the reporting and investigation of such harassment or violence may be applicable.

VIII. DISSEMINATION OF POLICY AND TRAINING

A. This policy shall appear in school personnel handbooks.

B. The school district will develop a method of discussing this policy with school personnel.

C. This policy shall be reviewed at least annually for compliance with state law.

Legal References: Minn. Stat. Ch. 13 (Minnesota Government Data Practices Act)
Minn. Stat. § 121A.58 (Corporal Punishment)
Minn. Stat. § 121A.582 (Student Discipline; Reasonable Force)
Minn. Stat. § 125A.0942 (Standards for Restrictive Procedures)
Minn. Stat. § 245.825 (Use of Aversive or Deprivation Procedures)
Minn. Stat. § 260C.007, Subd.4, Clause (5) (Child in Need of Protection)
Minn. Stat. § 609.02, Subd.6 (Definitions – Dangerous Weapon)
Minn. Stat. 609.26 (Depriving Another of Custodial or Parental Rights)
Minn. Stat. § 609.379 (Reasonable Force)
Minn. Stat. Ch. 260E (Reporting of Maltreatment of Minors)
20 U.S.C. § 1232g (Family Educational Rights and Privacy Act)