



March 12, 2022

TO: Superintendents and CBOs
SISC District Members

From: Ty Taylor
Coordinator, Property & Liability

SUBJECT: **Mandatory Duties (CANRA/CA Penal Code §11164) and Title IX/Federal Civil Rights**

Equal access to a free and appropriate public education is a “civil right” students are entitled to receive. School districts have several duties and responsibilities they must satisfy in order to deliver the educational services to those students placed on their campuses and in their care. When a “mandatory duty” is not met, there are negative consequences that may occur. Students can be subjected to harm, school districts can be sued in civil court or targeted for an investigation by the Office of Civil Rights. Educators can face criminal prosecution and civil liability.

The balance of this memorandum will focus on those State and Federal laws that create a legal duty for educators and school personnel to take action. The call for duty presents itself in various ways. It can occur when a mandated reporter has a “reasonable suspicion” that a child is being neglected or abused. It can also occur when the district has actual notice or receives a complaint from a student or parent that a student has been the victim of sexual harassment, sexual assault or discrimination.

There are multiple scenarios that might trigger action from the district, however for the purpose of this memo we will focus on the two most common and aforementioned triggers.

State of California - Mandated Reporting Laws (CANRA/CA Penal Code §11166)

Within the educational setting, people employed by a school district or county office of education are “mandated reporters” as defined under the **Child Abuse and Neglect Reporting Act “CANRA”**. This legislative enactment we refer to as “CANRA” can be found within the California Penal Code as opposed to the California Education Code. The reason that CANRA was codified in the California Penal Code is because a violation of CANRA by a mandated reporter can lead to an arrest and criminal prosecution.

A Mandated Report is a “TWO-STEP” process

California Penal Code Section § 11166 is very clear and very detailed on what is required of a mandatory reporter. It must be emphasized that the reporting duty is **a two-step process**. A single phone call to the authorities does not suffice.

The criminal statute found at California Penal Code Section § 11166 reads as follows:

*“ a mandated reporter shall make a report to an agency specified in Section 11165.9 whenever the mandated reporter, in the mandated reporter’s professional capacity or within the scope of the mandated reporter’s 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.*

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A Joint Powers Authority administered by the Kern County Superintendent of Schools Office, Mary C. Barlow, Superintendent

The mandated reporter shall make an initial report by telephone to the agency immediately or as soon as is practicably possible, and shall prepare and send, fax or electronically transmit a written follow up report within 36 hours of receiving the information concerning the incident....”

It is extremely important that the mandated reporter makes their telephonic report by calling the proper authority **and** that they complete the **second step** of the process. They **MUST** complete the **[Suspected Child Abuse Report “SCAR”](#)** (←follow this hyperlink to the interactive form also located on our forms page) and then send, fax or electronically transmits the completed report to the:

- City Police Department;
- County Sheriff Department; or
- County Department of Children’s Service / Children’s Protective Services aka “CPS”.

It is also important that the mandatory reporter preserve the evidence that documents having successfully submitted the **SCAR** via facsimile or email. Print and preserve the successful fax transmission or email that was sent. If a mandated reporter is accused or charged with a crime for failing to satisfy their duty as a mandated reporter, the mandated reporter will want to have their documentation as evidence to support their defense against any criminal action or civil lawsuit.

California Penal Code § 11166 (c) *“A mandated reporter who fails to report an incident of known or reasonably suspected child abuse or neglect as required by this section is **guilty of a misdemeanor punishable by up to six months confinement in a county jail or by a fine of one thousand dollars (\$1,000) or by both that imprisonment and fine. If a mandated reporter intentionally conceals the mandated reporter’s failure to report an incident known by the mandated reporter to be abuse or severe neglect under this section, the failure to report is a continuing offense until an agency specified in Section 11165.9 discovers the offense.”***

Evidence of the SCAR report having been successfully transmitted to the appropriate government agency protects both the child and the mandated reporter from a phone call “falling through the cracks” if the law enforcement officer or CPS worker becomes distracted or fails to follow through. The agencies responsible to receive SCAR reports have a mandated process to ensure follow up upon receipt of the SCAR reports. They must share these reports with additional agencies and meet certain time deadlines. These laws governing mandated procedures have a purpose with the intent to protect children.

It is important to note that peer on peer sexual abuse, assault or exploitation between minors must be treated in the same manner as if an adult is the person suspected of abusing the child. We have noticed a common misunderstanding that if the accused perpetrator is under the age of 18 that mandated reporting duties do not apply. This is false! If you suspect that a child has been abused or neglected, you must report. Generally, if the perpetrator does not live in the home with the abused minor, then you must call law enforcement. If the perpetrator lives in the same home as the abused minor, you must call CPS, as they are the only agency that can remove a child from a home or parent where the child is being abused. If you are unsure, send the SCAR report to both agencies and let them decide which agency will take the lead.

Federal Civil Rights / Title IX

Title IX, which has been in effect since June 23, 1972, states that “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance” (20 U.S.C. § 1681 et seq.)

Title IX covers:

1. Education Programs or Activities
2. Sports
3. Employment
4. Equal Access to Facilities
5. Admissions and Recruitment
6. **Sexual Harassment**

Federal law requires that school districts are required to have a **Title IX Coordinator**. The district must also have **policies that are published and posted on the district webpage** that advises how a student, parent, employee or other complainant can file a complaint and how the district will respond to that complaint.

For the purpose of this memo we will focus our attention on sexual harassment.

Identify it. Investigate it. Address it.

School districts have a legal duty to identify and promptly investigate and address allegations of sexual harassment.

34 CFR § 106.30 provides the definition of “**sexual harassment**”.

Sexual Harassment means conduct on the basis of sex that satisfies one or more of the following:

- (1) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
- (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or
- (3) “Sexual assault” as defined in 20 U.S.C. 1092(f)(6)(A)(v), “dating violence” as defined in 34 U.S.C. 12291(a)(10), “domestic violence” as defined in 34 U.S.C. 12291(a)(8), or “stalking” as defined in 34 U.S.C. 12291(a)(30).

Important Fact: A sexual assault is a crime that must be investigated by law enforcement. “Sexual Assault” is also a form of “Sexual Harassment” under Title IX. A police department or sheriff department criminal investigation does not relieve the school district from its legal duty to comply with Title IX legislation. School districts must still identify it, investigate it and address it.

Potential consequences for failure to satisfy obligations under Title IX

- Civil litigation seeking money damages alleging civil rights violations
- Attorney fees that are incurred by the victim to file a civil suit against the school district must be paid by the school district. (In civil rights cases, a judge will order the defendant to pay the plaintiff attorney all of his/her fees connected to the lawsuit if they prevail. This would be monies in addition to the money judgment a jury awards to the plaintiff)
- Loss or reduction of federal funding
- Your district can also be investigated by the Federal Office of Civil Rights and subjected to a resolution agreement that imposes terms the school must satisfy or face a loss of funding.
- Negative media attention that may impact the tenure of a superintendent or elected board members.

Administrative legal counsel

Title IX investigations can be complex and time consuming. These investigations require the assignment of specific individuals to assume specific roles as part of the Title IX investigation process.

You must have the following roles:

- Title IX Coordinator,
- Informal Resolution Facilitator
- Investigator
- Decision Maker
- Appeal Decision Maker

Each of these roles must undergo specific training and there are various timelines and reporting requirements that must be followed. For this reason, we strongly recommend that our member school districts seek the guidance and direction of their retained administrative legal counsel when conducting these investigations.

In the event you have any questions regarding this memo and/or your districts policies relative to CANRA and/or Title IX, please contact Ty Taylor, Coordinator, SISC Property & Liability at telephone number 661-636-4601.



SUSPECTED CHILD ABUSE REPORT (Pursuant to Penal Code section 11166)

To Be Completed by Mandated Child Abuse Reporters

CASE NAME: _____

PLEASE PRINT OR TYPE

CASE NUMBER: _____

A. REPORTING PARTY	NAME OF MANDATED REPORTER			TITLE			MANDATED REPORTER CATEGORY		
	REPORTER'S BUSINESS/AGENCY NAME AND ADDRESS						DID MANDATED REPORTER WITNESS THE INCIDENT?		
	REPORTER'S TELEPHONE (DAYTIME)		SIGNATURE				TODAY'S DATE		
B. REPORT NOTIFICATION	<input type="checkbox"/> LAW ENFORCEMENT <input type="checkbox"/> COUNTY PROBATION			AGENCY					
	<input type="checkbox"/> COUNTY WELFARE / CPS (Child Protective Services)			ADDRESS			DATE/TIME OF PHONE CALL		
	OFFICIAL CONTACTED - NAME AND TITLE			TELEPHONE					
C. VICTIM One report per victim	NAME (LAST, FIRST, MIDDLE)				BIRTHDATE OR APPROX. AGE		SEX	ETHNICITY	
	ADDRESS			TELEPHONE					
	PRESENT LOCATION OF VICTIM				SCHOOL		CLASS		GRADE
	<input type="checkbox"/> PHYSICALLY DISABLED?		<input type="checkbox"/> DEVELOPMENTALLY DISABLED?		OTHER DISABILITY (SPECIFY)			PRIMARY LANGUAGE SPOKEN IN HOME	
	<input type="checkbox"/> YES <input type="checkbox"/> NO		<input type="checkbox"/> YES <input type="checkbox"/> NO						
	IN FOSTER CARE?		IF VICTIM WAS IN OUT-OF-HOME CARE AT TIME OF INCIDENT, CHECK TYPE OF CARE:				TYPE OF ABUSE (CHECK ONE OR MORE):		
	<input type="checkbox"/> YES <input type="checkbox"/> NO		<input type="checkbox"/> DAY CARE		<input type="checkbox"/> CHILD CARE CENTER		<input type="checkbox"/> FOSTER FAMILY HOME		<input type="checkbox"/> PHYSICAL <input type="checkbox"/> MENTAL <input type="checkbox"/> SEXUAL <input type="checkbox"/> NEGLECT <input type="checkbox"/> OTHER (SPECIFY) _____
RELATIONSHIP TO SUSPECT				PHOTOS TAKEN?		DID THE INCIDENT RESULT IN THIS VICTIM'S DEATH?			
				<input type="checkbox"/> YES <input type="checkbox"/> NO		<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNK			
VICTIM'S SIBLINGS	NAME		BIRTHDATE		SEX	ETHNICITY		NAME	
	1. _____		_____		_____	_____		3. _____	
2. _____		_____		_____	_____		4. _____		
D. INVOLVED PARTIES PARENTS/GUARDIANS	NAME (LAST, FIRST, MIDDLE)				BIRTHDATE OR APPROX. AGE		SEX	ETHNICITY	
	ADDRESS			HOME PHONE			BUSINESS PHONE		
	NAME (LAST, FIRST, MIDDLE)				BIRTHDATE OR APPROX. AGE		SEX	ETHNICITY	
	ADDRESS			HOME PHONE			BUSINESS PHONE		
SUSPECT	SUSPECT'S NAME (LAST, FIRST, MIDDLE)				BIRTHDATE OR APPROX. AGE		SEX	ETHNICITY	
	ADDRESS			TELEPHONE					
	OTHER RELEVANT INFORMATION								
E. INCIDENT INFORMATION	IF NECESSARY, ATTACH EXTRA SHEET(S) OR OTHER FORM(S) AND CHECK THIS BOX <input type="checkbox"/> IF MULTIPLE VICTIMS, INDICATE NUMBER: _____								
	DATE/TIME OF INCIDENT				PLACE OF INCIDENT				
	NARRATIVE DESCRIPTION (What victim(s) said/what the mandated reporter observed/what person accompanying the victim(s) said/similar or past incident's involving the victim(s) or suspect)								

DO NOT submit a copy of this form to the Department of Justice (DOJ). The investigating agency is required under Penal Code section 11169 to submit to DOJ a Child Abuse or Severe Neglect Indexing Form BCIA 8583 if (1) an active investigation was conducted and (2) the incident was determined to be substantiated.



SUSPECTED CHILD ABUSE REPORT (Pursuant to Penal Code section 11166)

DEFINITIONS AND GENERAL INSTRUCTIONS FOR COMPLETION OF FORM BCIA 8572

All Penal Code (PC) references are located in Article 2.5 of the California PC. This article is known as the Child Abuse and Neglect Reporting Act (CANRA). The provisions of CANRA may be viewed at: <http://leginfo.legislature.ca.gov/faces/codes.xhtml> (specify "Penal Code" and search for sections 11164-11174.3). A mandated reporter must complete and submit form BCIA 8572 even if some of the requested information is not known. (PC section 11167(a).)

I. MANDATED CHILD ABUSE REPORTERS

Mandated child abuse reporters include all those individuals and entities listed in PC section 11165.7.

II. TO WHOM REPORTS ARE TO BE MADE ("DESIGNATED AGENCIES")

Reports of suspected child abuse or neglect shall be made by mandated reporters to any police department or sheriff's department (not including a school district police or security department), the county probation department (if designated by the county to receive mandated reports), or the county welfare department. (PC section 11165.9.)

III. REPORTING RESPONSIBILITIES

Any mandated reporter who has knowledge of or observes a child, in his or her professional capacity or within the scope of his or her employment, whom he or she knows or reasonably suspects has been the victim of child abuse or neglect shall report such suspected incident of abuse or neglect to a designated agency immediately or as soon as practically possible by telephone and shall prepare and send a written report thereof **within 36 hours** of receiving the information concerning the incident. (PC section 11166(a).)

No mandated reporter who reports a suspected incident of child abuse or neglect shall be held civilly or criminally liable for any report required or authorized by CANRA. Any other person reporting a known or suspected incident of child abuse or neglect shall not incur civil or criminal liability as a result of any report authorized by CANRA unless it can be proven the report was false and the person knew it was false or made the report with reckless disregard of its truth or falsity. (PC section 11172(a).)

IV. INSTRUCTIONS

SECTION A – REPORTING PARTY: Enter the mandated reporter's name, title, category (from PC section 11165.7), business/agency name and address, daytime telephone number, and today's date. Check yes/no whether the mandated reporter witnessed the incident. The signature area is for either the mandated reporter or, if the report is telephoned in by the mandated reporter, the person taking the telephoned report.

IV. INSTRUCTIONS (*continued*)

SECTION B – REPORT NOTIFICATION: Complete the name and address of the designated agency notified, the date/time of the phone call, and the name, title, and telephone number of the official contacted.

SECTION C – VICTIM (One Report per Victim): Enter the victim's name, birthdate or approximate age, sex, ethnicity, address, telephone number, present location, and, where applicable, enter the school, class (indicate the teacher's name or room number), and grade. List the primary language spoken in the victim's home. Check the appropriate yes/no box to indicate whether the victim may have a developmental disability or physical disability and specify any other apparent disability. Check the appropriate yes/no box to indicate whether the victim is in foster care, and check the appropriate box to indicate the type of care if the victim was in out-of-home care. Check the appropriate box to indicate the type of abuse. List the victim's relationship to the suspect. Check the appropriate yes/no box to indicate whether photos of the injuries were taken. Check the appropriate box to indicate whether the incident resulted in the victim's death.

SECTION D – INVOLVED PARTIES: Enter the requested information for Victim's Siblings, Victim's Parents/Guardians, and Suspect. Attach extra sheet(s) if needed (provide the requested information for each individual on the attached sheet(s)).

SECTION E – INCIDENT INFORMATION: If multiple victims, indicate the number and submit a form for each victim. Enter date/time and place of the incident. Provide a narrative of the incident. Attach extra sheet(s) if needed.

V. DISTRIBUTION

Reporting Party: After completing form BCIA 8572, retain a copy for your records and submit copies to the designated agency.

Designated Agency: **Within 36 hours** of receipt of form BCIA 8572, the initial designated agency will send a copy of the completed form to the district attorney and any additional designated agencies in compliance with PC sections 11166(j) and 11166(k).

ETHNICITY CODES

1 Alaskan Native	6 Caribbean	11 Guamanian	16 Korean	22 Polynesian	27 White-Armenian
2 American Indian	7 Central American	12 Hawaiian	17 Laotian	23 Samoan	28 White-Central American
3 Asian Indian	8 Chinese	13 Hispanic	18 Mexican	24 South American	29 White-European
4 Black	9 Ethiopian	14 Hmong	19 Other Asian	25 Vietnamese	30 White-Middle Eastern
5 Cambodian	10 Filipino	15 Japanese	21 Other Pacific Islander	26 White	31 White-Romanian