



SISC

Self-Insured Schools of California
Schools Helping Schools

Property & Liability Division

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Quarterly Update

MANDATORY DUTIES UNDER CANRA AND TITLE IX

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.

This article 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 article we will focus on the two most common and aforementioned triggers.

CANRA

Within the educational setting, individuals employed by a school district or county office of education are “mandated reporters” as defined under the **Child Abuse and Neglect Reporting Act “CANRA”**. (See Penal Code §11166.) 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.

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. **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”** 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

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By the Numbers

SISC member districts are reporting claims for catalytic converter thefts. We know all thefts are not reported by the districts because the claim is under the deductible. We thought it might be helpful to see the numbers to understand how large of an issue this is for the community at large and the SISC pool.

The National Insurance Crime Bureau (NICB) reports the average number of monthly thefts have been increasing. In 2018 NICB reports 1,298 thefts. The number of thefts increased substantially in 2020 to 14,433, with December of 2020 accounting for 16% of the yearly total. From July 1, 2020 to December 31, 2021, SISC received 37 claims for 99 catalytic converter thefts. At an average price of \$2,000 to replace on a standard vehicle, this represents almost \$200,000. This does not include the cost of the lost use of the vehicle or bus during the process to replace the converters.



CATALYTIC CONVERTER THEFT

A number of our districts are reporting catalytic converter thefts. This is a problem for many communities nationwide. Suspects target these parts as they are often quick and easy to remove and contain the precious metals platinum, palladium and rhodium, which can be more precious than gold. Some insurers indicate hybrid vehicles, trucks and SUV's are an increased target. Hybrid vehicles contain more of the precious metals and trucks and SUV's sit higher off the ground and therefore provide easier access. Some vehicles also have more than one catalytic converter which can increase these vehicles as targets for theft. Below are some risk mitigation efforts your district could consider to reduce the incidents of theft:

- ◆ Install a metal strap, shield or cage over the catalytic converters. These devices are more difficult to cut and remove. A mechanic or perhaps your vehicle services department can install one of these devices.
- ◆ Property enhancements such as secured fencing, lighting, security cameras and motion sensor lighting or alarms with appropriate signage.
- ◆ Evaluate other property enhancements such as higher fencing or fencing that is more difficult to scale. Districts must work with your local municipalities and/or legal service. The city and/or county may have codes that regulate heights and other preventive measures, including alarms, barb wire, electric fencing etc. Permits may also be needed. These efforts can also reduce the likelihood of gasoline theft.
- ◆ Etch the VIN number and/or license plate on the catalytic converter. Suspects may move on to an easier target where fewer questions will be asked when trying to redeem the metals.
- ◆ Work with your local police or sheriff's office so they are aware of your issues. They may be willing to increase patrols in your area or increase identification and prosecution of these types of theft markets.

While the above efforts are not a guaranteed deterrent to these types of theft, it may slow down the suspects and make the district sites less attractive for this type of theft.

2022-23 RATE LETTER INFORMATION

The Property & Liability Preliminary Rate letters will be going out shortly. As we all know the COVID-19 Pandemic has impacted our member districts as well as all of us here at SISC. We commend all who have endured one of the most challenging episodes in our program's history. The SISC staff has remained intact and focused on providing the best service possible.

The 2022-23 rates are being impacted by claims remaining open for longer periods of time due to the slower litigation process resulting from closed court rooms and delayed litigation processes. This has resulted in increased reserves which translates into a large increase in our total assets. In addition, and in order for our pool to be better prepared for the potential impacts of the AB 218 legislation that became effective on January 1, 2020, premiums are being adjusted accordingly. This phenomenon is not unique to the SISC Property & Liability pool, as we know many other pools throughout the state are being impacted in the same manner.

We encourage all of our district's chief business officials and anyone else assigned the review of the preliminary rate letters, to do so carefully. Please notify Robert Kretzmer, Director, of any corrections to the information being provided in the preliminary rate letters. The deadline for reporting any such changes is June 30, 2022.

ALLOW US TO INTRODUCE ELSA LARA



Elsa Lara is a Claims Examiner with SISC. In this position, she provides assistance, counsel and information to member districts regarding the Student Insurance, the Supplemental Student Accident program, Tackle Football coverage, excess coverage, and provides updates on claim status inquiries. She also serves as a liaison between the Safety & Loss Specialists, parents of injured students, providers and the Student Insurance programs. Her years of experience and as lead in the department, she also is the trainer of current, new and/or temporary Student Insurance personnel and oversees the work and assignments of Student Insurance staff in the absence of the Coordinator. Elsa maintains the primary database and tracks applications and premium collection for both, Tackle Football and Supplemental Student Accident Coverage Program.

Elsa joined the Kern County Superintendent of Schools Office in the Business Office in 1999. She joined SISC-Workers Compensation in 2001 and was later promoted to Claims Examiner in the Property & Liability-Student Insurance department. Upon taking this role, she has continually demonstrated her skill and ability to successfully work with claimants, districts, and providers in processing student insurance claims. She is currently serving as the only bilingual claims examiner in this department, which has helped bridge the gap between non-English speaking parents during the accident claim processing of injured students.

Elsa served on the Superintendent of Schools Classified Association Board for 9 years as Director of Grievance. Her role was to hear representations by the people directly involved in grievances; to provide them with a mechanism to resolve issues of concern by mediating voluntary adjustments by the parties involved; and to advise adjustment by the administration when appropriate. These analytical skills served her well not only as the Director of Grievance, but also in her role as a Claims Examiner.

Elsa graduated in 1987 from the Universidad Autónoma de Nuevo León, in Mexico and moved to California that same year. Outside of the office, Elsa enjoys taking short road trips, spending time with her daughter and family. One of her favorite pastimes is singing, which has opened up the opportunity to record her own music, with two released singles that can be found on all digital platforms. Elsa looks forward to continuing enjoying life singing and spending time with her family.

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MANDATORY DUTIES (CONTINUED)

FROM THE DIRECTOR

On January 1, 2020, legislation extending the statute of limitations for childhood sexual assault was put into effect. AB 218 amended section 340.1 of the Code of Civil Procedure in the State of California. The most significant change in the new law is that it allows actions for the recovery of damages suffered because of childhood sexual assault, to be commenced within 22 years of the date the plaintiff attains the age of majority.

In addition to the impact of AB 218, school districts as well as all other public entities experienced the commencement of the novel coronavirus pandemic that began in March of 2020. This collision of legislation and the public health crisis created the “perfect storm” with respect to its impact on litigation. As a result of the pandemic courts throughout the state either closed or delayed hearing dates, settlement conference dates and trial dates, creating a major backlog of litigation. This backlog had the effect of slowing the normal progress of litigation and thereby lessening the pressure on litigants to resolve their claims and suits by way of common alternative dispute resolutions. As we sit here today, in March of 2022, the courts remain backlogged with some jurisdictions re-setting trial dates that were to have been calendared in 2020 or 2021 out until 2023.

SISC’s Property & Liability division has been impacted. Since the effective date of the amendment to section 340.1 SISC has incurred reserves on childhood sexual assault cases well above the norm. Cases involving allegations of sexual assault and/or molestation have increased our reserves substantially over the course of the last two years. As noted above, these cases are moving slowly through the court system creating a backlog of reserves, which is unprecedented for the SISC Property & Liability program.

We anticipate that several of our sexual assault and molestation cases will resolve between now and the end of fiscal year 2022-23. However, there are those in the JPA community who also believe that a new wave of AB 218 suit filings could be coming as the courts begin to open and calendar new cases on a regular basis. The future remains uncertain and we will continue to monitor these types of cases closely.

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.

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.

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: Education Programs or Activities, Sports, Employment, Equal Access to Facilities, Admissions and Recruitment and **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. 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;
- (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).

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.

There are potential consequences for failure to satisfy obligations under Title IX, which include but are not limited to, civil litigation seeking money damages alleging civil rights violations and the loss or reduction of federal funding

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 and an 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.

A complete copy of this memorandum can be located on the SISC Property & Liability website at sisc.kern.org/pl/informational-memos. 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.