

Model Policy on Educational Neglect

Introduction

In August of 2006, §34-a of Social Services Law (SSL) was amended to require the Commissioner of the Office of Children and Family Services (OCFS), in conjunction with the Commissioner of the State Education Department (SED), to develop model practices and procedures for local social services districts and school districts regarding the reporting and investigation of educational neglect. The law further requires the local social services districts, in conjunction with local school districts within in its district, to develop and submit written policies and procedures regarding the reporting of educational neglect by each school district and the investigation of educational neglect allegations by local Child Protective Services (CPS).

Reporting and investigation of suspected cases of educational neglect present a range of complex issues and challenges for local social services districts and school districts. It is in the best interest of these agencies, and the children they serve, to collaborate in addressing these concerns. The written policies and procedures will vary from locality to locality given the diversity that exists in our state. Within this document, both OCFS and SED have identified a common ground – the essential elements that should be evident in the local policies and procedures. It is important to recognize that from the process of reporting, which is primarily a school-based responsibility, and throughout the process of investigation, which is the purview of CPS, there will be numerous opportunities for timely intervention involving students, parents, school officials and CPS staff. Hopefully, this collaborative approach will lessen the need for Family Court referral and action.

Each local social services district should:

- Invite and encourage all school districts to identify at least one representative to participate in the development of the policy and procedures regarding the reporting and investigation of educational neglect.
- Develop a policy and procedure related to the identification and reporting of educational neglect in conjunction with local school districts.
- Develop a policy and procedure regarding investigating educational neglect in conjunction with local school districts.
- Develop a process for the review and update of policies and procedures regarding the reporting and investigation of educational neglect in conjunction with local school districts.

The local school districts should:

- Identify at least one representative from the school district to collaborate with local social services districts in the development of the policy and procedures regarding the reporting and investigation of educational neglect.
- Inform all school staff of the policy and procedures for reporting and investigating educational neglect.
- Develop a policy and procedure regarding the reporting of educational neglect by the school district and the investigation of educational neglect allegations by child protective services in conjunction with the local department of social services.

The statute permits the development of individual policies and procedures between each social services district and each school district. However, the statute does not preclude social services districts and school districts within a county from exploring the development of uniform countywide policies and procedures on reporting and investigation for educational neglect issues. It might, for example, be possible to develop uniform policies and procedures with addenda to address differences among different school districts on issues such as attendance policies (as discussed further below).

Please note that the initial policies and procedures must be submitted to OCFS for review and approval. Once the initial policies and procedures have been approved, substantive changes to such policies and procedures must also be reviewed and approved by OCFS.

Section 1012 (f) the Family Court Act (FCA) identifies a “neglected” child as a child less than eighteen years of age

- (i) whose physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as a result of the failure of his parent or other person legally responsible for his care to exercise a minimum degree of care
 - (A) in supplying the child with adequate food, clothing, shelter **or education in accordance with the provisions of part one of article sixty-five of the education law,** or medical, dental, optometrical or surgical care, though financially able to do so or offered financial or other reasonable means to do so; (emphasis added)

Please note that the term “parent or other person legally responsible for his care” as used in the FCA refers to the parent, custodian, legal guardian or other person legally responsible for the child. References in this document to the “parent” should be understood to also include custodians, legal guardians and other persons legally responsible for a child (See §1012(a) and (g) of the FCA).

Per Part One of Article 65 of the New York State Education Law, Section 3205(1)(c), the following age requirements apply:

- A child must attend full time instruction from the first day school is in session in September if he/she turns six years old on or before the first day of December of that school year. Please note: The school year begins on July 1st and runs through June 30th.¹
- A child who becomes six years old after the first of December must attend full time instruction from the first day school is in session in the following September.
- A child must attend full time instruction until the last day of session in the school year in which the minor becomes 16 years of age. New York State Education Law, §3205(3), provides that the board of education in a school district may require minors from 16 to 17 years of age, who are not employed, to attend full time day instruction until the last day of the session in the school year in which the student becomes 17 years old.
- A child who has completed a four year high-school course of study is not required to attend school regardless of age.
- A child who has applied and is eligible for a full-time employment certificate may be permitted to attend school part-time not less than 20 hours per week.

Reporting

For purposes of this document, Educational Neglect is considered to be the failure of a parent to ensure that child's prompt and regular attendance in school or the keeping of a child out of school for impermissible reasons resulting in an adverse affect on the child's educational progress or imminent danger of such an adverse affect.

Attendance - There are both excused and unexcused absences from school. Such absences may occur for either a portion of the day or the entire school day. It is the responsibility of the parent to establish the legitimate nature of the absence to the satisfaction of the school principal or person designated by the principal to oversee school attendance. Each local school district must include in its comprehensive attendance policy its determination of which pupil absences, tardiness and early departures will be excused and which will not be excused and provide an illustrative list of what will be considered excused and unexcused absences and tardiness, as required in the SED regulations at 8 NYCRR §104.1(i)(2)(iii). The school district policy on excused and unexcused absences should be incorporated into the local policy on reporting and

¹ Syracuse exception regarding kindergarten instruction: Section 3205(2)(c) of the Education Law provides that the Board of Education of the Syracuse City School District may require minors who are five years old on or before December 1st to attend kindergarten instruction. However, these provisions do not apply to children whose parents chose not to enroll them in school until the following September, who are enrolled in non-public schools, or who receive home instruction.

investigation of educational neglect so that there will be a common understanding between CPS and the school district of what constitutes excused and unexcused absences.

There are three elements necessary for acceptance of a report of educational neglect based on absenteeism, as identified in guidance established at the Statewide Central Register for Child Abuse and Maltreatment (SCR):

1. Excessive absence from school by the child. Confirmation that the absences are unexcused is an issue for the CPS investigation and a decision on this issue is not required at the point of making a report. However, any information the school has as to whether the absences are excused or unexcused should be provided to the SCR; **and**
2. Reasonable cause to suspect that the parent is aware or should have been aware of the excessive absenteeism and that the parent has contributed to the problem or is failing to take steps to effectively address the problem (in other words, failure to provide a minimum degree of care); **and**
3. Reasonable cause to suspect educational impairment or harm to the child or imminent danger of such impairment or harm.

Excessive Absence: What constitutes excessive absence from school is a determination to be made by the school district. Guidelines for making that determination should be included in the policy or procedure for reporting and investigating educational neglect. The law is not specific as to the number of absences that would provide reasonable cause to suspect that a child may be educationally neglected. School districts may decide on a number of absences that would trigger a report to the SCR or a number of absences that would trigger further inquiry by the school district to determine if a report to the SCR is warranted. The number does not have to be absolute; the number of absences that is potentially problematic may vary among different children, and the policy may take this into consideration. As one example, the New York City (NYC) Board of Education has adopted an internal protocol regarding educational neglect. If a student misses ten consecutive days of school or twenty days of school within a four month period, the school is required to “look into” why the student has been absent.

The policy should also specify that any guidelines established in the policy are meant for guidance and should never be interpreted to preclude a mandated reporter in the school from making a report to the SCR if the mandated reporter believes that he or she has reasonable cause to suspect child abuse or maltreatment, even if the conditions set forth in the guidelines have not been met.

Role of Parent: The role of the parent must be considered. School officials should contact the parent in accordance with its district attendance policy (see 8 NYCRR §104.1(i)(2)(vii)) to determine the parent’s awareness of the excessive absences and to offer assistance as appropriate. It is recommended that the attempts to contact the parent be made both verbally and in writing. In cases where the school advises that a parent has been unable to be contacted, has been uncooperative with school officials, or cannot provide an explanation for a child’s absences and other criteria for educational neglect

can be met, that would establish reasonable cause to suspect that a parent is aware of the absence and has not taken reasonable steps to address the problem.

Educational impairment or harm: There must be concern that the absences have had an adverse effect on the child's educational progress or are creating a danger of such an adverse effect. Certainty of an adverse effect or risk of an adverse effect is not required for a report to be accepted by the SCR; there only needs to be reasonable cause to suspect an adverse effect or risk thereof. Whether there is actually such impairment or risk is an issue for investigation by CPS.

Other considerations: The reporting of educational neglect by schools may also result in the reporting of other forms of abuse or maltreatment. Student absenteeism, whether excessive, unexcused or not, may be an indicator of other forms of underlying abuse or maltreatment in the home. As in all calls received by the SCR, the interviewer will be asking a series of open-ended questions to determine whether the caller/reporter/source has concerns that would result in ANY reasonable suspicion of abuse or maltreatment. With respect to the reporting of other forms of abuse and neglect, school district staff must follow their district's policies and procedures regarding the same as adopted in accordance with Education Law §3209-a.

Home Schooling: The SED regulations at 8 NYCRR §100.10 set forth requirements applicable to home instruction of children, including procedures for resolving disagreements between a school district and a parent as to whether the parent's plan for home instruction (the "individualized home instruction plan" or "IHIP") meets the requirements of the Education Law and regulations. These regulations should be consulted before considering whether an educational neglect report to the SCR is warranted. Failure to comply with these regulations coupled with the child not attending school could be a basis for a report to the SCR.

Procedure for making reports.

Pursuant to changes in the mandated reporter law in 2007, the report to the SCR must be made by a mandated reporter who him or herself has reasonable cause to suspect abuse or maltreatment. The ability to make reports to the SCR by designating a person in the school to make all such reports on behalf of the school no longer exists. However, once the report has been made, the mandated reporter who made the report must advise the person in charge of the school or that person's designee that the report was made and of the information that was reported to the SCR, including the names and contact information of other persons in the school believed by the reporter to have direct knowledge of the alleged abuse or maltreatment. The person in charge or designee then becomes responsible for all subsequent administration involving the report, including completing and submitting the written report (form LDSS 2221A). This responsibility may also involve making an additional call to the SCR if there is additional information concerning the report to be submitted.

Mandated reporters making reports to the SCR should, to the extent possible, confirm necessary demographic information prior to making the report to the SCR, as well as any other information the source may have that would indicate that there may be other forms of abuse or neglect present in the household in addition to educational neglect. If the mandated reporter making the report is unable to do so, it would become the responsibility of the person in charge of the school or designee to obtain this information and provide it to the SCR.

The mandated reporter phone number is 1-800-635-1522.

The Child Abuse Specialist at the SCR will ask the reporter/source the following questions for all reports made to the SCR:

- Name(s), dates of birth, address(es) for all children and parents in the household.
- Name, title and contact information for the reporter of the information.
- Name, title and contact information for any other persons in the school who may have direct knowledge of the alleged educational neglect or other alleged child abuse or maltreatment.
- If the child attends school at the caller/reporter's location. This information will be included to assist the CPS investigator in assessing the safety of the child within 24 hours.
- If the child is not in attendance at the same location as the caller/reporter, it is important for that to be identified. The caller/reporter should have the correct street address of the school the child attends, as well as the mailing address for the school if different.
- Alternative contact information (hours of contact, phone number or alternative contact person) for the reporter to assist local CPS in gathering critical information necessary to assess the safety and ongoing risk of the child and any other children in the household. (CPS is responsible to assess the safety of every child in the household, not just children reported as abused or maltreated.)

The Child Abuse Specialist at the SCR will ask the reporter/source the following additional questions for reports made to the SCR involving possible educational neglect:

- Information related to any allegation of educational neglect and/or other allegations of abuse or maltreatment for any child in the family or child residing in the household to the knowledge of the reporter.
- Information on the number of absences from school, whether the absences are excused or unexcused (if known) and the suspected effect on the child's educational progress.
- Information related to the awareness of parent of the absenteeism and any efforts taken by the school to provide notification of the excessive absenteeism.

Investigation Considerations

Educational Impairment/Harm to the Child

Educational impairment or harm or imminent danger of harm may be difficult to prove until the harm has actually occurred. Harm may be presumed if another child in similar circumstances has already experienced harm, or would be likely to experience harm under similar circumstances, or there is a reasonable belief that the child would be harmed if the circumstances continued. The most important aspect of preventing potential harm of educational neglect is early intervention. The reporting of educational neglect at the time of the initial identification of potential harm is critical to be able to address the issue with the family and to take necessary actions that will ensure satisfactory completion of the child's grade level and successful school experience. The investigation is where the CPS investigator will address the issues with the parent with the objective of resolving any problems that exist so the problems do not recur. The school should also be involved in the resolution of issues related to educational neglect.

To put into practice the definition of educational impairment or harm is a difficult task. Each child is different and the potential for educational harm is different according to the age, developmental abilities and intellectual capacity of the child, as well as the knowledge of, or potential encouragement by the parent of the absenteeism. Each instance of absenteeism must be evaluated in relation to the standards noted above: the parent's awareness of the excessive absenteeism, the steps taken and efforts made by the parent to address the absenteeism, and the actual or potential harm to the child.

Investigating Educational Neglect

SSL §424 and 18 NYCRR Part 432 identify the specific responsibilities and duties of CPS concerning reports of suspected child abuse or maltreatment. These duties include the requirement to be able to receive all reports 24 hours a day, seven days a week and to initiate an investigation within 24 hours of the receipt of a report of suspected abuse or maltreatment to assess the immediate safety to the child(ren). This applies to all reports of suspected child abuse and maltreatment, including educational neglect reports.

Determination of Some Credible Evidence

CPS must have "some credible evidence" that the child has been harmed or is in imminent danger of being harmed as a result of the parent's failure to exercise a minimum degree of care in regard to the child in order to determine a report of child abuse or maltreatment as "Indicated". (See §412(12) of the SSL and §1012 of the FCA) An "Indicated" determination must include identification of the specific harm or impact on the child and confirmation that the parent, by acting or failing to act, was responsible for the harm or imminent danger of harm of the child.

Making a determination that there is, or is not some credible evidence that educational neglect exists is a process that includes multiple steps on the part of the CPS worker. The school must provide the CPS worker with all documentation that will assist the CPS worker in completing the investigation and making the determination of “Unfounded” or “Indicated”. (Pursuant to §412(11) and (12) of the SSL, an “unfounded” report is one for which some credible evidence cannot be found to substantiate the allegations of abuse or maltreatment. An “indicated” report is one for which some credible evidence can be found to substantiate the allegations.) For this reason, it is important to document not only the child’s educational progress but also efforts made to contact the parent, advise the parent of the absenteeism and to engage the parent in addressing the issue. These records must be made available to the CPS worker during the course of the investigation.

OCFS offers the following guidance, which is not intended to be exclusive criteria, to assist in determining if a report of educational neglect should be indicated.

1. Consider the school district’s definition of what constitutes excessive absence from school. Unexcused absenteeism that reaches or exceeds that level would be considered excessive absence.

2. Identify the impact or potential harm on the child. Does the extent of unexcused absenteeism place the child in jeopardy of:

- Failing a course?
- Failing the grading period?
- Failing the semester?
- Failing the school year?
- Failing to acquire basic skills commensurate with the grade level?
- An inability to make up past work that is essential to passing the course or being promoted to the next level?
- Receiving a grade that reflects a significant decrease in performance from one marking period to the next?
- Not meeting the goals identified in the child’s Individualized Education Program (IEP)?

3. Identify the vulnerability of the child in relation to potential harm:

- Is this a child with special needs for whom excessive unexcused absences may place the child in potential harm?
- Is this child of an age whereby the educational foundation necessary for the child to progress in school is jeopardized by the unexcused absenteeism?
- Does the child have past experience of criminal behavior that has occurred during the time of unexcused absenteeism?

4. Has the parent contributed to the problem or failed to provide a minimum degree of care:

Has the school been provided with notes from the parent identifying the reason for all absenteeism?

- Are the reasons provided reasonable and consistent with the school district's attendance policy?
- Has the school been provided with notes from the physician or other health care provider in accordance with school policy?
- Has the school obtained information from reliable sources that the parent is complicit or encouraging unexcused absences?

5. What effort has the school made to apprise the parent of the absenteeism:

- It is recommended that schools maintain documentation of their verbal and written attempts to contact the parent advising them of the absenteeism (i.e. phone logs and copies of letters).
- Note: The local school district attendance policy must include a description of the notice to be provided to the parent where a child is absent, tardy or departs early without proper excuse, as require by 8NYCRR §104.1(i)(2)(vii).

Interviewing the Child at School

When allegations or circumstances included in a report or factors that arise during an investigation make it advisable to interview the child(ren) apart from the family, the school should cooperate with CPS in the investigative process. Social Services Law, §425(1) provides that school districts, as political subdivisions of the State, must provide OCFS and local CPS with such assistance and data as are necessary to enable them to fulfill their CPS responsibilities.

The circumstances or allegations which may, but do not necessarily, prompt a decision by CPS to interview a child at school, include but are not limited to:

- bruises inflicted by parents;
- unusual punishments;
- unattended illness;
- child fearful of returning home; and
- sexual abuse.

Interviewing a child in his/her school setting is predicated upon ongoing cooperation and dialogue with school authorities so that both the CPS caseworker and the school authorities understand each other's policies, responsibilities and procedures. The school district and social services district may want to develop procedures setting forth how and when interviews of children will be conducted at school.

In general, circumstances where a child may be in imminent danger, where time is a factor, or where other considerations exist (for example, the child expresses a need to speak privately with the CPS caseworker) may make it advisable for CPS to interview a child at school. This could occur prior to or following CPS interviewing the parents.

In making the decision whether to interview the child at school, it should be kept in mind also that interviewing a child in school may have negative consequences such as:

- disrupting the child's school routine
- calling special attention to an allegation about a problem at home which in fact may not be a problem or may not be sufficiently significant to warrant such extraordinary attention; and
- upsetting the parent to the extent that the parent's communication will become extremely guarded out of suspicion or fear, or completely cut off.

SED and OCFS agree that interviews with children both when the school is and is not the source of the report are permissible. SED and OCFS agree that a school official should generally be present during the interview. However, the school official and CPS may decide the school official could be absent during the interview when the school official and the CPS caseworker agree that the presence of the school official is not essential to protect the interests of the pupil, and the absence of the school official may increase the likelihood that the caseworker can accomplish the purposes of the interview.

Other Considerations

In developing local school district and local social services district policies regarding the reporting of suspected child abuse and maltreatment, including educational neglect, the following statutory requirements must be considered.

Mandated reporting - Chapter 193 of the Laws of 2007 clarified the identification of a school official within the context of who is a mandated reporter. The definition of a school official now **“includes, but is not limited to school teacher, school guidance counselor, school psychologist, school social worker, school nurse, school administrator, or other school personnel required to hold a teaching or administrative license or certificate”**. (emphasis added)

That law also amended §413(1) (b) of the SSL to provide that a school may not take any retaliatory personnel action, as such term is defined in §740(1)(e) of the Labor Law, against an employee because such employee believes that he or she has reasonable cause to suspect that a child is an abused or maltreated child and that employee therefore makes a report to the SCR. No school or school official may impose any conditions, including prior approval or prior notification, upon a member of their staff who is a mandated reporter.

Section 3209-a of the Education Law addresses child abuse prevention in schools and provides that each school district shall develop, maintain and disseminate written policies and procedures regarding the mandatory reporting of child abuse or neglect, including reporting procedures and obligations of persons required to report.

Section 419 of the SSL provides that persons who in good faith make reports to the SCR and/or cooperate in CPS investigations have civil and criminal immunity from any liability that might otherwise result from such actions. The statute further provides that good faith is presumed where the person was acting in the discharge of his or her duties and within the scope of his or her employment, and that the actions did not result from willful misconduct or gross negligence.

Section 420 of the SSL provides that a mandated reporter who willfully fails to fulfill the mandated reporter responsibility is guilty of a class A misdemeanor (punishable by up to a year in jail, a fine of up to \$1,000, or both). The statute further provides that a mandated reporter who knowingly and willfully fails to fulfill the mandated reporter responsibility is civilly liable for the damages proximately caused by such failure.

Confidentiality – Section 422(4)(A) of the SSL provides that records or reports made to the SCR and CPS are confidential and are available only as provided for in that statute. This applies to records in the possession of CPS and does not apply to school records, as such. However, if the school obtained copies of any CPS records (for example, as a service provider to the child), the confidentiality provisions of §422(4)(A) of the SSL would apply and the school would be prohibited from redisclosing the CPS records. Information that would identify the source of a report to the SCR is subject to a heightened level of confidentiality

and is available to only a few of the list of those who otherwise have access to SCR and CPS records (for example, law enforcement agencies and courts). The subject of the report to the SCR and other persons named in the report have access to the report made to the SCR but do not have access to source information from such report absent permission from the source to reveal the source's identity or a court order giving them such access.

Child Abuse Prevention and Treatment Act (CAPTA) (42 U.S.C. §5106a) - The Federal Child Abuse Prevention, Adoption and Family Services Act of 1988 amended CAPTA by providing that a State must enact laws that require the reporting of known instances of child abuse and neglect in order to receive grants for abuse prevention and treatment programs. The Director of the Family Policy Compliance Office in the United States Department of Education has determined that Congress intended to supersede the Family Educational Rights and Privacy Act (FERPA) to allow child abuse and neglect reports and investigations to take place, including disclosure of information from a student's education records, without parental consent. (See, letter from Rooker to Baise (November 29, 2004) at <http://www.ed.gov/policy/gen/guid/fpc/ferpa/library/baiseunmslc.html> and letter from Rooker to Jondahl (November 21, 2006). OCFS has verified that New York State's laws and regulations regarding child abuse and neglect comply with CAPTA and that CAPTA applies to educational neglect reports and investigations.

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