Mandatory Reporting Laws & Schools: Making Sense Out of Disorder

By David Wolowitz

Recent highly publicized events involving child abuse in the Catholic Church, the Boy Scouts of America, and Penn State have focused public awareness on the importance of compliance with mandatory reporting laws. In New Hampshire, schools are subject to a variety of state mandatory reporting laws. Administrators and staff throughout the state are being told how important it is that they comply with laws. Compliance, however, is not easy because the reporting laws are inconsistent and often confusing. This article provides an organized way to understand the laws to make it easier for schools and others to comply.

There are four reporting laws that are most likely to impact K – 12 public and private schools: child abuse; hazing; criminal acts in a safe school zone; and bullying. When reviewing these reporting laws, it is helpful to compare their key common elements so that similarities and differences become apparent. This article will therefore review and compare these common elements: who are mandated reporters; what triggers the duty to report; how the duty to report is discharged; the legal protections for reporting; and the penalties for failing to report.

Finally, school employees should be careful to evaluate whether an incident triggers more than one reporting obligation, as the same conduct may trigger multiple obligations to report. Reporters should be careful to fulfill all obligations to be sure that they get the full protections available under the law. For example, reports of hazing are not given immunity, but reports of child abuse are. Since hazing is likely to also be child abuse, a reporter can gain immunity by reporting both.

Reports of Child Abuse RSA 169-C:29

Who are mandated reporters: The statute lists over 20 professions including “teacher[s], school official[s], school nurse[s], [and] school counselor[s]” and finishes its list by including “any other person.” N.H. R.S.A. §169-C:32 (2013). So, all persons are mandated reporters. Indeed, questions have come up from time to time whether this definition extends to those who may be protected or exempted in other areas of the law, such as mature minors or those holding a privilege. Though no court has ruled on the issue, it would appear from that the statute that mature minors are mandated reporters. Furthermore, the statute specifically abrogates the spousal privilege and any professional privilege except for the attorney-client privilege. Id. §169-C:32. There also are limited exceptions for domestic violence or sexual assault counselors, exceptions not likely to apply in school settings. Id. §173-C:10.

What triggers the duty to report: The reporting duty is triggered when a mandated reporter has “reason to suspect that a child has been abused or neglected.” N.H. R.S.A. §169-C:29 (2013). The mere suspicion standard is often referred to as a “hair trigger” obligation to report. Teachers and school officials have no obligation to investigate suspected neglect or abuse; they should simply report any suspicions of abuse. If teachers and school officials have any doubt about whether to report, it is likely that they have a suspicion and should err on the side of reporting. This is particularly prudent given the protections for good-faith reporting as described below.

School employees should be educated on the definitions of “abused child” and “neglected child.” “Child” is defined as a person under the age of 18. Id. §169-C:3(V). An “abused” child is one who has been either sexually abused, physically injured, or psychologically injured. Id. §169-C:3(II). The definition of “sexual abuse” is complex, but includes submitting a child to “any sexually explicit conduct” and “molestation,” which is not defined. Id. §169-C:3(XXVII)(a). School employees who discover electronic data of a sexual nature which appear to involve children, such as so-called “sexting,” should report to DCYF and to the police rather than attempt to investigate themselves to avoid the risk of being accused of possessing or transmitting child pornography.

A “neglected” child is one who has either been abandoned by his or her parents, is without the level of control or subsistence as required by law or by the child’s needs, or whose parents are unable to properly provide care as a result of their incapacity. Id. §169-C:3(XIX). However, a child is not to be considered neglected if the child is “in
good faith, under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof.” *Id.*

**How the duty to report is discharged:** An oral report to DCYF must be made “immediately” by telephone or in person. *Id.* § 169-C:30. It must contain the following: the names and the addresses of both the suspected victim and the person responsible for the child’s welfare, the “specific information indicating neglect or the nature and extent of the injuries (including any evidence of previous injuries),” the identity of the suspects and any other information that might be of assistance in proving neglect or abuse. *Id.* The oral report must be followed within 48 hours by a written report, if requested by DCYF. *Id.*

To comply with the statute and gain its immunity protections, reports should be made when the suspicion arises even if DCYF is closed. At a minimum, the reporter should leave a voicemail with DCYF. The DCYF website advises reporters to “call your local police department with urgent child abuse or neglect reports during DCYF non-work hours (between 4:30 p.m. and 8:00 a.m. or on weekends and holidays).” New Hampshire Department of Health and Human Services, Child Protection Services, “Stop Abuse and Neglect,” (2010), www.dhhs.nh.gov/dcyf/cps/stop.htm. Whether the report is “urgent” is left to the discretion of the caller. If in doubt, call the police. Also, be aware that certain types of suspected abuse, including sexual molestation, sexual exploitation, and intentional physical injury causing serious bodily injury will be referred to local law enforcement where the acts are believed to have occurred. N.H. R.S.A. § 169-C:38 (2013). Educators who suspect such acts would be well advised to leave a voice message with DCYF and immediately notify the local police. *Id.*

**Legal protections for reporting:** Anyone who makes a good faith report is “immune from any liability, civil or criminal, that might otherwise be incurred or imposed.” *Id.* § 169-C:31. This immunity extends to participation in any investigation or judicial proceeding that results from the report. *Id.* Reporters should be careful to follow the mandates of the statute. For example, if a divorced or separated parent living in a neighboring state is suspected of abuse, the report should be made to New Hampshire DCYF rather than to child protective services in the neighboring state to gain the protections of the statute.

**Penalties for failing to report:** Knowingly failing to report is a misdemeanor. *Id.* § 169-C:39; but see Marquay v. Eno, 139 N.H. 708 (1995) (holding that this statute does not create a civil cause of action for failure to report).

REPORTS OF STUDENT HAZING RSA 631:7

**Who are mandated reporters:** Students, employees, and educational institutions are all potential mandated reporters of hazing. “Students” include any person regularly enrolled, full- or part-time, in an educational institution. *Id.* §631:7(1)(c) “Educational institution” includes public and private high schools, colleges, and other secondary and postsecondary educational establishments. *Id.* §631:7(1)(a). Based on this definition, it appears that there is no duty to report hazing that occurs in middle or primary schools.

**What triggers the duty to report:** For students, knowingly submitting to or being present at student hazing triggers the duty to report to law enforcement or educational institution authorities. *Id.* §631:7(11)(a)(2)–(3). For any person, being present at, or otherwise having “direct knowledge” of any student hazing triggers a duty to report. *Id.* For an “educational institution or an organization operating at or in conjunction with an educational institution,” having “knowledge” of hazing by a report or otherwise triggers the duty to report. *Id.* §631:7(11)(b)(3). It is unclear whether there is a distinction between “direct knowledge” and “knowledge.” The safest course would be to report any knowledge of hazing.

Unfortunately, what constitutes hazing is not easily understood. According to the statute, “student hazing” is:

“any act directed toward a student, or any coercion or intimidation of a student to act or to participate in or submit to any act, when: (1) such act is likely or would be perceived by a reasonable person as likely to cause physical or psychological injury to any person; and (2) such act is a condition of initiation into, admission into, continued membership in or association with any organization.” N.H. R.S.A. §631:7(1)(d) (2013).

Both conditions must be met for the conduct to constitute hazing, and both conditions are difficult to interpret. The first condition requires an evaluation of what reasonably might be considered to cause physical or psychological injury. Particularly with regard to potential psychological injury, reasonable people may disagree. The second condition requires that the act be a part of an initiation or continued membership in an organization. The definition of “organization” raises a number of potential issues. The statute defines “organization” as “a fraternity, sorority, association, corporation, order, society, corps, athletic group, cooperative, club, or service, social or similar group, whose members are or include students, operating at or in conjunction with an educational institution.” *Id.* §631:7(1)(b). Historically, hazing concerns have focused on fraternities, sororities and athletic groups. The definition, however, is so broad that it may include social networks or other groups that exist primarily in cyberspace.
How the duty to report is discharged: A student or other person who is mandated to report must report to law enforcement or educational institution authorities. Id. §631:7(II)(a)(2)-(3). An educational institution or related organization that is mandated to report must report to law enforcement authorities. Id. §631:7(II)(b)(3). Unlike other reporting statutes, there is no requirement that the report be immediate. Schools should educate students and teachers on how to identify and report hazing.

Legal protections for reporting: Unlike other reporting statutes, the hazing statute provides no legal protection for good faith reports. As hazing is likely to trigger other reporting obligations that do provide immunity for filing good faith reports, such as child abuse or a criminal act in a safe school zone, mandated reporters of hazing would benefit from filing multiple reports to gain such protection.

Penalties for failing to report: Students who knowingly submit to, are present at, or have direct knowledge of hazing and fail to report the event to law enforcement or educational institution authorities are guilty of a Class B misdemeanor. Id. §631:7(II)(a)(2), (3). A “natural person” who is present at or who has direct knowledge of hazing and fails to report is similarly guilty. Id. §631:7(II)(a)(3). Educational institutions are guilty of a misdemeanor if they fail to report to law enforcement any reported incident or incidents of which they have direct knowledge. Id. §631:7(II)(b)(3). It should be noted that express or implied consent of any person who is subjected to hazing excuses neither the hazing nor the duty to report. Id. §631:7(III). Schools should remember that hazing is likely to trigger other reporting obligations that also have penalties for failure to report. Consequently, mandated reporters should report knowledge of hazing immediately.

Criminal acts in a safe school zone

Who are mandated reporters: Any public or private “school employee.” N.H. R.S.A. §193-D:4(I) (2013). “School employee” is defined broadly to include “any school administrator, teacher, or other employee of any public or private school, school district, school department, or school administrative unit, or any person providing or performing continuing contract services for any public or private school, school district, school department, or school administrative unit.” Id. §193-D:1(IV). Unlike the hazing reporting statute which applies to secondary schools and colleges, this statute applies to any public or private elementary or secondary school. Id. §193-D:1(III).

What triggers the duty to report: The duty to report is triggered when a school “employee” “has witnessed” or “has information from the victim of” an “act of theft, destruction, or violence” in a “safe school zone.” Id. §193-D:4(I)(a). Due to its complexity, this statutory mandate requires close attention to detail. Note that the duty to report is triggered by four conditions. The first condition is that the witness or person with information is an “employee,” as discussed above. Schools should remember that the term encompasses persons performing continuing contract services, such as school bus drivers.

The second condition is witnessing a reportable act or having information from the victim of the reportable act. Id. Information from the perpetrator does not trigger a duty to report under the statute. However, as stated above, events can trigger multiple reporting obligations. Mandated reporters should therefore be careful to determine whether knowledge from a perpetrator of a covered act triggers some other reporting obligation.

The third condition is that the event is an “act of theft, destruction, or violence.” Id. “Act of theft, destruction, or violence” is a defined term and is somewhat misleading in that not all of the listed crimes are crimes of theft, destruction or violence. See id. §193-D:1(I). In order to comply, school officials should keep a list of the included crimes along with statutory definitions. The list includes the following crimes: homicide; first or second degree assault; simple assault; felonious or aggravated felonious sexual assault; criminal mischief; unlawful possession or sale of a firearm or other dangerous weapon; arson; burglary; robbery; theft; illegal sale or possession of a controlled drug; and criminal threatening. There is an exception for reporting simple assault “if the local school board has adopted a discipline policy which sets forth circumstances under which parents shall be notified of simple assaults.” Id. §193-D:4 (I)(b). Also, each “school district” must establish a memorandum of understanding (MOU) with the local police for administering reporting. Id. §193-D:4(1)(c). As the statute, by its terms, applies to private as well as public schools, presumably private schools can also take advantage of the simple assault reporting exemption, even though they are not part of a local board or school.
REPORTS OF BULLYING RSA 193-F:4

Who are mandated reporters: The statute mandates that the school board of each school district and the boards of trustees of chartered public schools must adopt a written policy prohibiting bullying and cyberbullying that includes components that reference certain reporting requirements. Id. §193-F:4(II). For example, there must be a policy for reporting bullying by students or others within the school. Id. §193-F:4(II)(f). There must also be a procedure outlining “the internal reporting requirements” within the school, school district or chartered public school. Id. §193-F:4(II)(g). Whether someone is a mandated reporter of suspected bullying to the school or the school district will therefore depend on the particular school policy.9

Though there is some discretion left to schools and school districts in constructing this policy, it must provide for notification of parents or guardians of the of the victim and the perpetrator within 48 hours of the “incident report.” Id. §193-F:4(II)(h). It is likely, but not required, that the mandated reporter to the parents will be “the principal or designee” as there is a notification waiver provision that refers to them. Id. §193-F:4(II)(i). The “principal or designee” must report all “substantiated incidents” of bullying to the superintendent or designee. Id. There must be procedure for communicating to the parents of the victim and the perpetrator about “the school’s remedies and assistance” within 10 school days of the completion of the mandated investigation. Id. §193-F:4(II)(m).

What triggers the duty to report: The receipt of an “incident report” triggers a duty for a school to notify parents or guardians

The fourth condition is that the event occur in a “safe school zone.” Id. §193-D-4(1)(a). This is defined broadly to include any school property and school buses. Id. §193-D-1(11). It is therefore important to train bus drivers, coaches and others to identify reportable offenses and how to comply with this complicated reporting statute.

How the duty to report is discharged: When the duty to report has been triggered, the school employee must provide a written report “immediately” to a supervisor. N.H. R.S.A. §193-D-4(1)(a) (2013). The supervisor must “immediately” forward the information to the “school principal,” who must verbally notify the local police “immediately” and in writing within 48 hours. Id. The written report must contain certain specified information, including names and addresses of suspects and witnesses, as well as the allegedly committed act. Id. §193-D-4(II)(2013).8 The obligation to file a written report must be waived by the police when there is a police response at the time of the incident which results in a written police report. Id. §193-D-5. If the alleged victim is a student, the principal must also notify the student’s parents “immediately” that a report was made to the police. Id. §193-D-4(1)(a).

Legal protections for reporting: School employees who make good faith reports under this statute “shall not be subject to liability for making the report.” Id. §193-D-9.9

Penalties for failing to report: Failure to report is a violation. Id. §193-D-6.

Summary of the Key Reporting Statutes:

CHILD ABUSE REPORTS:

Mandated Reporters: Any person.

Reporting Trigger: “Reason to suspect” that child has been abused or neglected.

Discharging the Duty: Report orally “immediately” to DCYF; followed by a written report within 48 hours, if requested.

Protection for Reporting: “Good faith” reports are “immune from any liability, civil or criminal.”

Penalty for Non-Compliance: Failing to report is a misdemeanor.

HAVING REPORTS:

Mandated Reporters: Public or private high school or college students, others, any public or private high school or college, or any related organization.

Reporting Triggers: For students, knowingly submitting to hazing. For students or others, being present at, or having “direct knowledge” of, hazing. For an educational or related organization, having “knowledge” of hazing.

Discharging the Duty: Students and others must report to law enforcement or educational institution authorities. Educational institutions or related organizations must report to law enforcement authorities.

Protection for Reporting: None.

Penalty for Non-Compliance: Failing to report is a misdemeanor.

SAFE SCHOOL ZONE REPORTS:

Mandated Reporters: Any public or private elementary or secondary “school employee.”

Reporting Triggers: Witnessing a listed crime of theft, destruction or violence in a safe school zone, or having information from a victim of a listed crime in a safe school zone.

Discharging the Duty: The employee must provide a written report “immediately” to a supervisor. The supervisor must “immediately” forward the information to the “school principal” who must “immediately” notify the local police verbally and in writing within 48 hours. If the alleged victim is a student, the principal must also “immediately” notify the student’s parents of the report.

Protection for Reporting: Good faith reports are “not . . . subject to liability.”

Penalty for Non-Compliance: Failing to report is a violation.

BULLYING REPORTS:

Mandated Reporters: Public school students and others who may be required by a school’s policy to report internally. The principal or designee who must notify parents of an “incident report” and the school’s “remedies and assistance”, and must notify the superintendent and the NH DOE of “substantiated incidents.”

Reporting Triggers: The receipt of an “incident report” alleging “bullying” or “cyberbullying” and the completion of an investigation which makes the finding of a “substantiated incident.”

Protection for Reporting: Good faith reports are immune from civil liability.

Penalty for Non-Compliance: None.
of the victim and the perpetrator. N.H. R.S.A. §193‑F:4(II)(h) (2012). When an incident is “substantiated” following an investigation, it must be reported by the principal or designee to the superintendent or designee. Id. §193‑F:4(II)(l). On an annual basis, “substantiated incidents” of bullying and cyberbullying must be reported by each school district and chartered public school to the New Hampshire Department of Education. Id. §193‑F:6.

How the duty to report is discharged: Parents or guardians of the victim and the perpetrator must be notified within 48 hours of an “incident report.” Id. §193‑F:4(II)(h). Following an investigation which concludes that an incident is “substantiated,” it must be reported by the principal or designee to the superintendent or designee. Id. §193‑F:4(II)(l). The statute does not specify a time period. Parents or guardians of the victim and the perpetrator must be notified of the school’s “remedies and assistance” within 10 school days of completing the investigation. Id. §193‑F:4(II)(m). Each school district and chartered public school must report “substantiated incidents” on an annual basis to the New Hampshire Department of Education. RSA 193‑F:6.

Legal protections for reporting: Employees of public and chartered public schools, school administrative units and contracting companies, and “regular” school volunteers, pupils, parents and legal guardians are granted immunity from civil liability for good faith conduct arising from the reporting of, investigation of, findings of, or recommended response to an incident of bullying pursuant to the statute. Id. §193‑F:7. Unlike the child abuse reporting statute, there is no provision for criminal immunity. The statute specifically provides that it does not create a private right of action for enforcement “against any school district, chartered public school or the state.” Id. §193‑F:9

Penalties for failing to report: The statute provides no legal penalties for failing to report.

A MODEST PROPOSAL

The safety and well-being of students in their care is the highest priority of our schools. The reporting laws that impact those schools were intended to promote the protection of children in their care. But the various statutes, which were written at different times in reaction to specific concerns, are often difficult to understand and to implement, as demonstrated by the above analysis.

Everyone affected by the reporting laws would benefit if the statutes were rewritten to follow a standardized format. The statutes should clearly address the key issues that teachers and administrators need to know when confronted with an event of concern in a school setting. They want to know whether they are mandated reporters. They want to know whether the event triggers a duty to report. And they want to know how to fulfill their obligation to report. Compliance would be enhanced if there was clarity and consistency among the reporting statutes that apply to schools. Additionally, the penalties and protections relating to mandated reporting should be consistent.

Teachers and administrators have to make quick decisions every day relating to student conduct. They do not have the time or resources to do statutory analysis or to consult with an attorney. They should not have to struggle to understand their legal obligations when it comes to protecting students. Bringing clarity and consistency to the reporting laws that impact schools is a small but important step that will help our schools protect the students in their care.

ENDNOTES

1 Robert J. Lamberti, Jr., currently a third year student at the University of New Hampshire School of Law and an spring extern with McLane, Graf, Raulerson & Middleton, P.A., assisted in preparing this article.

2 It is important to note that other statutes have reporting requirements which can impact school personnel. For example, it is a misdemeanor for any person—not just medical personnel—to fail to immediately notify law enforcement after “having knowingly treated or assisted another for a gunshot wound or for any other injury he believes to have been caused by a criminal act.” N.H. R.S.A. §631:6 (2013). The language of this mandatory reporting obligation would apply, for example, to any school employee who assisted a student injured in a fight with another student which the employee believed to be a criminal assault. This article, however, will focus on another reporting statute, RSA 193-D:4, which specifically addresses reporting criminal acts in a safe school zone.

3 The statute contains no time limitation with regard to when the abuse occurred. It appears to apply even if the victim is no longer a child and even if the abuse was long ago. It is better to err on the side of reporting than to risk being accused of failure to report.

4 “Sexting” raises complex and evolving legal issues that can impact reporting. For example, if a seventeen year old poses in a sexual photo or participates in a sexual video, he or she may be a “victim” of child sexual abuse because eighteen is the civil age of majority. Such activity must therefore be reported. However, if the same seventeen year old knowingly participated in the making of the photo of video, he or she could be subject to prosecution for producing or possessing child pornography, as seventeen is the civil age of majority.


6 Note that reports can be made confidentially. However, confidentiality cannot be guaranteed. Child Protection Services, “Stop Abuse and Neglect,” supra.

7 Even though the statute does not provide for any other reporting exemptions, many MOU’s contain a provision exempting reports of thefts under a specified dollar limit set by the local police. This avoids having the police inundated with reports of minor thefts in schools.

8 The New Hampshire Department of Education has a useful form for reporting pursuant to the statute, Form EdS317, on its website. (available at http://www.education.nh.gov/safety.htm).

9 Unlike the child abuse reporting statute, there is no reference to immunity with respect to participating in investigations or judicial proceedings resulting from that report.

10 Note that the statute references school districts and the boards of public chartered schools. Private schools are not therefore mandated to prepare such a policy under the statute.

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