

11165.4

As used in this article, "unlawful corporal punishment or injury" means a situation where any person willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition. It does not include an amount of force that is reasonable and necessary for a person employed by or engaged in a public school to quell a disturbance threatening physical injury to person or damage to property, for purposes of self-defense, or to obtain possession of weapons or other dangerous objects within the control of the pupil, as authorized by Section 49001 of the Education Code. It also does not include the exercise of the degree of physical control authorized by Section 44807 of the Education Code. It also does not include an injury caused by reasonable and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer.

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- (a) As used in this article, "mandated reporter" is defined as any of the following:
- (1) A teacher.
  - (2) An instructional aide.
  - (3) A teacher's aide or teacher's assistant employed by any public or private school.
  - (4) A classified employee of any public school.
  - (5) An administrative officer or supervisor of child welfare and attendance, or a certificated pupil personnel employee of any public or private school.
  - (6) An administrator of a public or private day camp.
  - (7) An administrator or employee of a public or private youth center, youth recreation program, or youth organization.
  - (9) Any employee of a county office of education or the California Department of Education, whose duties bring the employee into contact with children on a regular basis.
  - (10) A licensee, an administrator, or an employee of a licensed community care or child day care facility.
  - (11) A headstart teacher.
  - (17) Any person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in any public or private school.
- (b) Volunteers of public or private organizations whose duties require direct contact and supervision of children are encouraged to obtain training in the identification and reporting of child abuse.
- (c) Training in the duties imposed by this article shall include training in child abuse identification and training in child abuse reporting. As part of that training, school districts shall provide to all employees being trained a written copy of the reporting requirements and a written disclosure of the employees' confidentiality rights.
- (d) School districts that do not train their employees specified in subdivision (a) in the duties of mandated reporters under the child abuse reporting laws shall report to the State Department of Education the reasons why this training is not provided.

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- (g) (1) The reporting duties under this section are individual, and no supervisor or administrator may impede or inhibit the reporting duties, and no person making a report

shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established provided that they are not inconsistent with this article.

(2) The internal procedures shall not require any employee required to make reports pursuant to this article to disclose his or her identity to the employer.

(3) Reporting the information regarding a case of possible child abuse or neglect to an employer, supervisor, school principal, school counselor, coworker, or other person shall not be a substitute for making a mandated report to an agency specified in Section 11165.9.

#### 11174.3

(a) Whenever a representative of a government agency investigating suspected child abuse or neglect or the State Department of Social Services deems it necessary, a suspected victim of child abuse or neglect may be interviewed during school hours, on school premises, concerning a report of suspected child abuse or neglect that occurred within the child's home or out-of-home care facility. The child shall be afforded the option of being interviewed in private or selecting any adult who is a member of the staff of the school, including any certificated or classified employee or volunteer aide, to be present at the interview. A representative of the agency investigating suspected child abuse or neglect or the State Department of Social Services shall inform the child of that right prior to the interview. The purpose of the staff person's presence at the interview is to lend support to the child and enable him or her to be as comfortable as possible. However, the member of the staff so elected shall not participate in the interview. The member of the staff so present shall not discuss the facts or circumstances of the case with the child. The member of the staff so present, including, but not limited to, a volunteer aide, is subject to the confidentiality requirements of this article, a violation of which is punishable as specified in Section 11167.5. A representative of the school shall inform a member of the staff so selected by a child of the requirements of this section prior to the interview. A staff member selected by a child may decline the request to be present at the interview. If the staff person selected agrees to be present, the interview shall be held at a time during school hours when it does not involve an expense to the school. Failure to comply with the requirements of this section does not affect the admissibility of evidence in a criminal or civil proceeding.

(b) The Superintendent of Public Instruction shall notify each school district and each agency specified in Section 11165.9 to receive mandated reports, and the State Department of Social Services shall notify each of its employees who participate in the investigation of reports of child abuse or neglect, of the requirements of this section.

That is why educators are mandated by law to report suspected child abuse, and why the Education Code stipulates further penalties: an educator's failure to report abuse may result in the loss of their license or credential. "The Commission for Teacher Preparation and Licensing shall privately admonish, publicly reprove, revoke, or suspend (a credential) for immoral or unprofessional conduct, or for persistent

defiance of, and refusal to obey the laws regulating the duties of persons serving in the public school system" (Ed. Code, § 44421). Also, a failure to report may result in personal civil liability (Landeros v. Flood [1975] 17Cal.3d 399).

Failure to report suspected child abuse constitutes a breach of contract for any agency working for the Department of Education (Ed Code 8406.7).

### **Educators: Talking With Students**

As an educator, you may become aware that one of the children in your care is a victim of abuse by observing physical evidence, by the child's behavior, or by the child's verbal disclosure.

If you observe physical evidence of abuse, employ only open-ended questions in asking the child about it. For example, if a child displays unusual bruising, ask "How did you get hurt?" not "Did your father do that? or "Who hit you?"

If it is the child's behavior that makes you conclude that the child is troubled, ask the child privately whether there is anything going on at home or at school that is making the child angry or unhappy.

Among younger school-age children, verbal disclosure often occurs by an accidental remark. Or, the child may tell another child, who tells you. However it is disclosed, don't be dissuaded from reporting the situation because the child recants his or her statements. It is very common for a child who discloses abuse to then deny it out of fear of reprisal or of breaking up the family

Homeless children have special school protections under the McKinney-Vento Amendments. Homeless liaisons must help unaccompanied youth (youth who are not in the physical custody of a parent or guardian) choose and enroll in school, and provide youth with notice of their right to appeal an enrollment choice that goes against their wishes. If your school does not have a homeless liaison, consult a homeless advocacy agency. Schools must immediately enroll homeless students, even if they do not have required documentation, such as immunization records. They must address guardianship issues, and make a report if child abuse is suspected.

Many foster children qualify as homeless since they do not have a permanent placement.