

NEW YORK STATE
 DEPARTMENT OF SOCIAL SERVICES
 40 NORTH PEARL STREET, ALBANY, NEW YORK 12243

BARBARA B. BLUM
 Commissioner



[An Informational Letter informs local districts of potential developments in the Social Services field, or of actual or potential developments in collateral fields of interest.]

INFORMATIONAL LETTER

TRANSMITTAL NO.: 80 INF-25
 [Services]

TO: Commissioners of Social Services

SUBJECT: Child Protective Service Interviews on School Property

DATE: December 15, 1980

SUGGESTED DISTRIBUTION: Child Protective Service Staff

Attachments

CONTACT PERSON: Any questions concerning this release should be forwarded to Eric Brettschneider, Associate Commissioner for Program Planning, Division of Services, at 1-800-342-3715, extension 4-9436.

PURPOSE: The purpose of this letter is to inform Child Protective Service staff of amended guidelines issued by the New York State Education Department to superintendents of public and non-public schools, and district superintendents concerning the matter of interviews of children on school property.

BACKGROUND: As a result of a New York State Education Department memorandum entitled, "Child Abuse and Maltreatment: Suggestions for School Personnel (revised 12/77)" being issued to City, Village and District Superintendents, Supervising Principals, and Directors of Pupil Personnel Services, there has been a generalized, but not universally followed, statewide policy concerning child protective service interviews on school property. The memorandum recommended that school principals allow a child protective service worker, when necessary, to conduct an interview with a child on school property, when the school was the source of the reported abuse or maltreatment of said child. Not covered by the memorandum were situations warranting the interview of a child on school property, when the school was not the source of the report. The recently released attached guidelines now clearly provide the State Education Department's legal opinion that such interviews are permissible.

FILING REFERENCES

Previous INFs/ADMs	Dept. Regs.	Social Services Law and Other Legal References	Bulletin/Chapter Reference	Miscellaneous References
	432.3	SSL 417.1 SSL 424 FCA 1022 FCA 1024		State Education Department memoranda relating to CPS interviews on School property: 12/77 12/79 11/80

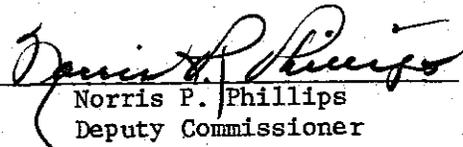
IMPLICATIONS: It should be understood that interviewing a child in school may have negative consequence. Such a procedure disrupts the child's school routine, calls very special attention to an allegation about a problem at home which in fact may not be a problem or not sufficiently significant to warrant such extraordinary attention, and may upset the parent to the extent that communication will be cut off. Nevertheless, in certain instances where time is a factor, where imminent danger to a child is perceived, or where there exists other identifiable justification for making use of this special interview setting it may be advisable that Child Protective Services interview a child at school.

The State Education memoranda clearly indicate a preference that interviews be conducted in the presence of a school official. The Department concurs that the presence of a school official during the interview will usually be justified from a casework point of view. Generally, it will serve to lessen the fear that a child may have in discussing a threatening home situation with a stranger. Additionally, it will involve the school in the initial formation of a plan of protection for the child and a treatment plan for the family.

The exception to this rule would be where it is determined by the Child Protective Service worker, and agreed upon by the school official, that the presence of a school official would be detrimental to the child's emotional condition or if the child expressly indicates that he/she would prefer a representative from the school not to be present. It is not expected that such circumstances will arise with any degree of frequency. If a situation did arise where it was not advisable that a school official be present, but that school official contended that he/she must be present, the interview should not take place at the school. An alternative arrangement would need to be found. An alternate plan might involve arranging for another interview site such as a community center or, where imminent danger is perceived, taking protective custody of the child under the authority of the Family Court Act.

RECOMMENDED

ACTION: Child Protective Services should initiate discussion with local public and private schools within its county concerning the implications and possible procedural questions which may arise from these memoranda.


Norris P. Phillips
Deputy Commissioner
Division of Services

THE UNIVERSITY OF THE STATE OF NEW YORK
THE STATE EDUCATION DEPARTMENT
ALBANY, NEW YORK 12234

ASSISTANT COMMISSIONER FOR EDUCATIONAL FINANCE,
MANAGEMENT AND SCHOOL SERVICES

TO: Superintendents of Public and Nonpublic Schools and
District Superintendents

FROM: James J. O'Connell *(Signature)*

SUBJECT: Child Abuse and Maltreatment: Interviews on School
Property

Two previous communications have dealt with the topic.
These are annotated below:

1. Child Abuse and Maltreatment: Suggestions for School
Personnel. Dr. Leo A. Soucy. December 1977.

Child Protective Service (CPS) workers may
interview pupils on school property if school
personnel made the initial report of suspected
abuse or maltreatment. Principal must be
present during interview.

2. Child Abuse and Maltreatment: Interviews on
School Property. Dr. James J. O'Connell. December 1979.

CPS workers may interview any pupil concerning
whom a report of suspected abuse or maltreatment
has been made, regardless of the source of the
report. School official must be present during
interview.

At the request of the State Department of Social Services, the
State Education Department has reconsidered its position that
school officials must be present during all interviews. As a
result, the following policy has been adopted:

A school official may decide to be absent during
the interview when the school official and the
CPS worker agree that the presence of the school
official is not essential to protect the interests
of the pupil and that the absence of the school
official may increase the likelihood that the CPS
worker can accomplish the purposes of the interview.



THE UNIVERSITY OF THE STATE OF NEW YORK
THE STATE EDUCATION DEPARTMENT
ALBANY, NEW YORK 12230

ASSISTANT COMMISSIONER FOR
EDUCATIONAL FINANCE, MANAGEMENT
AND SCHOOL SERVICES

December 1979

TO: Superintendents of Public and Non-Public Schools, and
District Superintendents

FROM: James J. O'Connell *J. O'Connell*

SUBJECT: Child Abuse and Maltreatment: Interviews on School
Property

The purpose of this memorandum is to amend the guidelines relative to interviews on school property contained in the December 1977 memorandum, "Child Abuse and Maltreatment: Suggestions for School Personnel".

The guideline in the December 1977 memorandum stated:

**"CHILD PROTECTIVE SERVICES: INTERVIEWS ON SCHOOL
PROPERTY**

School principals should assist the staff of the Child Protective Services to fulfill their responsibilities. In those cases where the school has reported the suspected abuse or maltreatment, it is recommended that the school permit the child to be interviewed, on school property, by the Child Protective Services (CPS) worker. Such interviews should be conducted in the presence of a school principal.

In those cases where the Child Protective Services (CPS) determines that the child is in imminent danger, they have the authority to take the child into protective custody without the consent of the child's parent or guardian."

That guideline presented some problems for some school districts and local child protective services agencies since it was frequently interpreted to mean that CPS workers should not interview, on school property, children

reported by other than school personnel. In many cases the school provided the only non-threatening environment in which CPS workers might interview the child.

The State Education Department Office of Counsel has indicated that Section 425 of New York State Social Service law provides a legal basis for school districts to permit in-school interviews by CPS workers of youngsters involved in cases of suspected child abuse or maltreatment.

The law states that:

"To effectuate the purposes of this title, the commissioner may request and shall receive from departments, boards, bureaus, or other agencies of the state, or any of its political subdivisions ... such assistance and data as will enable the department and local child protective services to fulfill their responsibilities properly."

In keeping with the Office of Counsel's decision, the State Education Department recommends that local school districts adapt a policy of permitting CPS workers to interview, on school property, children who have been reported as abused or neglected, regardless of the reporting source. School district policy and procedure statements should be amended to show this change.

The identity of the Protective Services worker should be verified prior to permitting an in-school interview. All interviews should be conducted in the presence of a school official.

School districts should collaborate with local Child Protective Services on the procedures to be adopted. Such cooperation will allow smooth functioning of in-school interviews and result in the greatest benefit to the child.

The New York State Department of Social Services will notify local child protective services of this change.

THE UNIVERSITY OF THE STATE OF NEW YORK
THE STATE EDUCATION DEPARTMENT
ALBANY, NEW YORK 12234

COORDINATOR FOR
DISTRICT ORGANIZATION,
HEALTH EDUCATION AND
PUPIL SERVICES

TO: City, Village and District Superintendents,
Supervising Principals, Directors of Pupil Personnel Services

FROM: Leo A. Soucy

SUBJECT: Child Abuse and Maltreatment: Suggestions for School Personnel (Revised 12/77)

Chapter 1039, Laws of 1973, added a new Title 6 to the Social Services Law. Its purpose is as follows:

"Abused and maltreated children in this state are in urgent need of an effective child protective service to prevent them from suffering further injury and impairment. It is the purpose of this title to encourage more complete reporting of suspected child abuse and maltreatment and to establish in each county of the state a child protective service capable of investigating such reports swiftly and completely and capable of providing protection for the child or children from further abuse or maltreatment and rehabilitative services for the child or children and parents involved."

Section 411
Child Protective Services Act

To effectuate the purpose of this Act, the law mandates certain groups of professionals, including school personnel, to report suspected cases of child abuse to the New York State Central Register of Child Abuse and Maltreatment. The purpose of this memorandum is to provide school districts with information on what constitutes reportable abuse and maltreatment, the responsibilities of persons mandated to report, and to offer suggestions for intra-school procedures.

GENERAL CONSIDERATIONS

REPORTABLE CONDITIONS

The following definitions are taken from the Child Protective Services Act and the Family Court Act. They determine the conditions which constitute reportable circumstances and provide the framework for assessing whether a child is abused or neglected.

Section 412 of Title 6 of the Social Services Law states that an abused child is a child under 18 years of age who is defined as an abused child by the Family Court Act. Section 1012 of the Family Court Act defines an abused child as follows:

- (e) "Abused child" means a child less than 18 years of age whose parent or other person legally responsible for his care

- (i) inflicts or allows to be inflicted upon such child physical injury by other than accidental means which causes or creates a substantial risk of death, or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ, or
- (ii) creates or allows to be created a substantial risk of physical injury to such a child by other than accidental means which would be likely to cause death or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ or
- (iii) commits, or allows to be committed, a sex offense against such child, as defined in the penal law, provided, however, that the corroboration requirements contained therein shall not apply to proceedings under this article.

Section 412 of Title 6 of the Social Services Law defines a maltreated child as a child under 18 years of age defined as a neglected child by the Family Court Act or one who has had serious physical injury inflicted upon him by other than accidental means. Section 1012 of the Family Court Act defines a neglected child as follows:

- (f) "Neglected child" means a child less than 18 years of age
 - (1) 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 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; or
 - (B) in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or a substantial risk thereof, including the infliction of excessive corporal punishment; or by using a drug or drugs; or by using alcoholic beverages to the extent that he loses self-control of his actions; or by any other acts of a similarly serious nature requiring the aid of the court; or
 - (ii) who has been abandoned by his parents or other person legally responsible for his care
- (g) "Person legally responsible" includes the child's custodian, guardian, or any other person responsible for the child's care at the relevant time. Custodian may include any person continually or at regular intervals found in the same household as the child when the conduct of such persons causes or contributes to the abuse of the child.

- (h) "Impairment of emotional health" and "impairment of mental or emotional condition" includes a state of substantially diminished psychological or intellectual functioning in relation to, but not limited to such factors as failure to thrive, control of aggression or self-destructive impulses, ability to think and reason, or acting out and misbehavior, including incorrigibility, ungovernability or habitual truancy; provided, however, that such impairment must be clearly attributable to the unwillingness or inability of the respondent to exercise a minimum degree of care toward the child.

PERSONS REQUIRED TO REPORT CASES OF SUSPECTED CHILD ABUSE OR MALTREATMENT

Under Section 413 of the Child Protective Services Act, school officials are required to report when they have reasonable cause to suspect that a child coming before them in their professional or official capacity is an abused or maltreated child.

Section 413 further mandates that whenever an individual is required to report in his capacity as a member of the staff of a school that he shall immediately notify the person in charge of the school, or his designated agent, who then also shall become responsible to report or cause a report to be made. However, nothing in the law is intended to require more than one report from the school.

This Section of the law basically provides that any professional staff member of the school must report any situation in which they suspect that a child may be abused or maltreated. The law does not require certainty or proof prior to reporting. It is also important to note that although this Section provides for a report to be made to the administrator, it does not give the administrator the power to prohibit reports from being made to the Central Register, nor does it relieve the original source from insuring that a report is made.

REPORTING PROCEDURE

All cases of suspected child abuse or neglect should be orally reported to the New York State Central Register of Child Abuse and Maltreatment. The Central Register is maintained by the New York State Department of Social Services. Staff is available to receive reports twenty-four hours a day, seven days a week. Reports are made by calling the toll-free telephone number: 1-(800)-342-3720; or in New York City (212)-431-4680; or in Onondaga County (315)-422-9701; or in Monroe County (716)-461-5690.

At the time of the oral report, the following information, if known, should be given:

- name and address of the child and his parents or legally responsible guardian
- the child's age, sex, and race
- the nature and extent of the child's injuries, abuse, or maltreatment
(including any evidence of prior injuries, abuse, or maltreatment to the child or
or his siblings)
- the name of the person or persons responsible for causing the injury, abuse, or
maltreatment
- family composition
- source of the report
- person making the report and where he can be reached
- any action taken by the reporting source
- any additional information which may be helpful

Within 48 hours of the oral report, a written report (DSS-2221-A, Report of Suspected Child Abuse or Maltreatment) must be filed with the local county Department of Social Services Child Protective Services Unit. School districts may request a supply of these forms from the local Department of Social Services.

CONFIDENTIALITY OF REPORTS

Reports of suspected child abuse and maltreatment are confidential and may only be made available to those individuals or groups specified by law.

The subjects of a report are among those entitled, upon request, to a copy of all of the information contained in the Central Register. However, the Commissioner of Social Services is authorized to prohibit the release of data that would identify the person who made the report or who cooperated in the subsequent investigation, if the Commissioner finds that the release of such information will be detrimental to the safety or interests of the reporter.

LEGAL IMPLICATIONS FOR MANDATED REPORTERS

- A. Immunity: Mandated reporters (school personnel) who, in good faith, make a report or take photographs of injury and bruises are immune from any liability, either civil or criminal that might otherwise result from such action. The good faith of any person required to report cases of suspected abuse or maltreatment is presumed.
- B. Liability: Any person required to report who willfully fails to do so is guilty of a Class A misdemeanor; and, civilly liable for the proximate damages caused by the failure to report.

CHILD PROTECTIVE SERVICES AND SCHOOL DISTRICTS

In 1976, 65% of the children found to be abused and neglected in New York State were between five and eighteen years of age. Of the initial reports of suspected child abuse or neglect 10% came from school officials. In order for school personnel to fulfill their responsibilities toward abused and neglected children, they must know what constitutes abuse or neglect, how to identify it, and what to do following identification. The following guidelines are offered to assist school districts in the implementation of the Child Protective Services Act.

SCHOOL DISTRICT POLICY AND PROCEDURES

It is recommended that each school district develop a written Child Abuse and Neglect Policy to present to the School Board. Such a policy should, at a minimum, contain the legal rationale for involving school personnel in reporting cases of suspected abuse or neglect. The adoption of a policy signifies that the School Board and the administration are committed to protecting abused and neglected children.

Intra-school procedures should be developed and disseminated. They should provide school staff with all of the information necessary to enable them to appropriately carry out their reporting responsibility.

The procedures should include:

- reportable conditions under New York State Law
- who must report
- the immunity afforded to mandated reporters
- the liability imposed for failure to report
- the method to be followed within the school

- *who will receive staff reports, the administrator or a designee
- *the information required of the reporter (this should reflect the information needed to complete the Department of Social Services Form DSS-2221-A, Report of Suspected Child Abuse or Maltreatment)
- *who will make the oral report to the State Central Register and submit the written report (DSS-2221-A) to the local county Child Protective Services Unit
- *the availability of the school physician
- *the access to a camera for photographs or method of referral to local clinics or hospital for examinations and photographs
- *instructions concerning interviewing of students at school by Child Protective Services staff members

Additionally, the procedures may include:

- instructions for providing further information on the child's condition subsequent to report
- whether a formal summary report will be requested for each case
- whether the parents will be notified that a report is going to be made.

CHILD PROTECTIVE SERVICES: ACCESS TO SCHOOL RECORDS

The Federal Family Educational Rights and Privacy Act of 1974 contains several exceptions to the rule that parental consent is needed prior to the disclosure of information from school records.

One such exception is "in a health or safety emergency".

"An educational agency or institution may disclose personally identifiable information from the education records of a student to appropriate parties in connection with emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals."

45 CFR 99.36(a)

The following factors must be considered in determining whether an emergency exists:

1. the seriousness of the threat to the health or safety of the student or other individuals
2. the need for the information to meet the emergency
3. whether the parties to whom the information is disclosed are in a position to deal with the emergency, and
4. the extent to which time is of the essence in dealing with the emergency.

While the determination of whether a "health or safety emergency" situation exists must be made on a case-by-case basis, it is generally agreed that child abuse and neglect situations fall within the above exception. This position is adopted because:

1. reporting a case of suspected child abuse and neglect involves providing Child Protective Services with information to protect the child;
2. the information is essential because without it measures cannot be taken to protect the child; and,
3. time is of the essence in reporting suspected child abuse because delay can create the threat of future harm or result in the family leaving the jurisdiction involved.

Another exception to the requirement for prior written consent exists under 45 CFR 99.31(a) (5) which permits the disclosure to State and local officials to whom such information is specifically required to be disclosed pursuant to State statute adopted prior to November 19, 1974.

The New York State Child Protective Services Act which mandates that school officials report cases of suspected abuse and neglect was passed in 1973.

It should be further noted that the Family Educational Rights and Privacy Act establishes rules governing school records, thus it has no impact on a teacher or school official who makes a report based on his or her personal knowledge.

However, even though a report may be based on personal observation, or the situation may render the need for consent moot, a record or reference to such a report that is maintained by the school will be available, upon request, to the parent. It is, therefore, recommended that any records relating to suspected child abuse or maltreatment be maintained on a strictly factual basis (i.e. the condition of the child) without any value statements appended.

*The above information has been extracted from guidelines jointly issued by the Fair Information Practice Staff (DHEW) and the National Center on Child Abuse and Neglect (9/77).

CHILD PROTECTIVE SERVICES: INTERVIEWS ON SCHOOL PROPERTY

School principals should assist the staff of the Child Protective Services to fulfill their responsibilities. In those cases where the school has reported the suspected abuse or maltreatment, it is recommended that the school permit the child to be interviewed, on school property, by the Child Protective Services worker. Such interviews should be conducted in the presence of a school principal.

In those cases where the Child Protective Services determines that the child is in imminent danger, they have the authority to take the child into protective custody without the consent of the child's parent or guardian.

SCHOOL DISTRICT LIAISON WITH CHILD PROTECTIVE SERVICES

School districts are encouraged to assign a staff member liaison responsibility with the local Child Protective Services.

The liaison person could be the administrator's designee with the responsibilities to: receive staff reports on suspected cases of abuse or maltreatment; make the oral report to the State Central Register; file the written report with the local Child Protective Services; provide any additional information obtained subsequent to the formal report; and receive feedback from Child Protective Services.

Additionally, the liaison person may conduct inservice training on identification and reporting responsibilities for the district staff.

The institution of a liaison relationship between the school and Child Protective Services is suggested to minimize the problems relating to a report of suggested child abuse and neglect. It is most appropriate that the person assigned liaison responsibilities come from the pupil services staff and be accessible to other school personnel.

Leo A. Soucy

