

ABUSE OF STUDENTS BY SCHOOL DISTRICT EMPLOYEES REGULATION

An individual who has knowledge an employee has physically or sexually abused a student may immediately report it to the building principal who is the school district's Level 1 investigator. "Employee" means one who works for pay or as a volunteer under the direction and control of the school district. The report shall be written, signed and witnessed by a person of majority age. The witness may be the Level 1 investigator. The reporter is the individual filing the report.

The report shall contain the following:

- The full name, address, and telephone number of the person filing.
- The full name, age, address, and telephone number, and attendance center of the student.
- The name and place of employment of the employee who allegedly committed the abuse.
- A concise statement of the facts surrounding the incident, including date, time, and place of occurrence, if known.
- A list of possible witnesses by name, if known.
- Names and locations of persons who examined, counseled or treated the student for the alleged abuse, including the dates on which those services were provided, if known.

Upon request, the Level 1 investigator may assist the reporter in completing the report. An incomplete report shall not be rejected unless the missing information would render the investigation futile or impossible. An employee receiving a report of alleged abuse of a student by an employee shall pass the report to the investigator and shall keep the report confidential to the maximum extent possible. In performing the investigation, the investigator shall have access to the educational records of the alleged student victim as well as access to the student for interviewing purposes.

In order for the school district to have jurisdiction over the acts and to constitute a violation of the law, acts of the employee must be alleged to have occurred on school grounds, on school time, at a school-sponsored activity, or in a school-related context. However, the student need not be a student in the school district. The student can be from another school district. To be able to investigate, the written report must include basic information showing that the victim of the alleged abuse is or was a student at the time of the incident, that the alleged act of the employee resulted in injury or otherwise meets the definition of abuse in these rules, and that the person responsible for the act is currently an employee. If the report is not able to be investigated due to lack of jurisdiction, the investigator shall dismiss the complaint and inform the reporter of other options available. Other options available to the reporter include contacting the law enforcement authorities, private counsel, or the Board of Educational Examiners in the case of a licensed employee.

If the Level 1 investigator believes the student is in imminent danger if continued contact is permitted between the employee and the student, the Level 1 investigator may:

- Temporarily remove the student from contact with the employee;
- Temporarily remove the employee from service; or,
- Take other appropriate action to ensure the student's safety.

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The Level 1 investigator shall have access to the educational records of the student and access to the student for purposes of interviewing the student about the report.

Physical Abuse Allegations

When physical abuse is reported, the Level 1 investigator shall make copies of the report and give a copy to the person filing the report, the students' parents and the immediate supervisor of the employee named in the report. The employee named in the report shall not receive a copy of the report until the employee is initially interviewed.

The Level 1 investigator shall use discretion in handling the information received regarding an investigation of abuse by an employee, and those persons involved in the investigation shall not discuss information regarding the complaint outside of the investigation. The entire investigative procedure will be thoroughly explained, including the confidential nature of the proceedings, to the student and other persons involved in the investigation.

Within five days of receipt of an investigatory report, the Level 1 investigator shall complete an informal investigation. The informal investigation shall consist of interviews with the student, the employee and other who may have knowledge of the alleged incident. If the Level 1 investigator determines that the allegations in the report are founded and that immediate and professional investigation is necessary, the Level 1 investigator may defer further investigation and contact appropriate law enforcement officials, the student's parents and the person filing the report. Within fifteen days of receipt of the report, the Level 1 investigator shall complete a written investigative report, unless the investigation was temporarily deferred.

The written investigative report shall include:

1. The name, age, address and attendance center of the student named in the report.
2. The name and address of the student's parent or guardian and the name and address of the person filing the report, if different from the student's parent or guardian.
3. The name and work address of the employee named in the report as allegedly responsible for the abuse of the student.
4. An identification of the nature, extent and cause, if known, of any injuries or abuse to the student named in the report.
5. A general review of the investigation.
6. Any actions taken for the protection and safety of the student.
7. A statement that, in the investigator's opinion, the allegations in the report are either:
 - a. Unfounded. (It is not likely that an incident, as defined in these rules, took place), or
 - b. Founded. (It is likely that an incident took place.)
8. The disposition or current status of the investigation.
9. A listing of the options available to the parents or guardian of the student to pursue the allegations. These options include, but are not limited to:
 - a. Contacting law enforcement officials.
 - b. Contacting private counsel for the purpose of filing a civil suit or complaint.

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- c. Filing a complaint with the Board of Educational Examiners if the employee is a licensed employee.

The investigator shall retain the original and provide a copy of the written investigative report to the school employee named in the report, the employee's supervisor and the student's parent or guardian. The person filing the report, if not the student's parent or guardian shall be notified only that the Level 1 investigation has been concluded and of the disposition or anticipated disposition of the case.

It is the responsibility of the Level 1 investigator to determine whether it is more likely than not that an incident of abuse as defined in the rules took place between the student and employee. The Level 1 investigator does not make the determination of whether the use of physical contact was appropriate or whether any of the exceptions apply. That is the responsibility of the Level 2 investigator. Upon completion of the report, if the Level 1 investigator determines the allegations of physical abuse are founded and serious, the Level 1 investigator shall notify law enforcement authorities. If the allegations are founded but the physical abuse is not of a serious nature, the Level 1 investigator shall refer the case on to the Dubuque Police Department, the Level 2 investigator.

The Level 2 investigator shall review the Level 1 investigator's final investigative report and conduct further investigation. The Level 2 investigative report shall state the conclusion as to the occurrence of the alleged incident, the applicability of exceptions, the reason or the contact or force used, and recommendations regarding the need for further investigation. In determining the applicability of the exceptions or the reasonableness of the contract or force used, the Level 2 investigator will use the following definitions:

Physical abuse is non-accidental physical injury to the student as a result of the action of an employee. Injury occurs when evidence of it is still apparent at least twenty-four hours after its occurrence. The following do not constitute physical abuse, and no employee is prohibited from:

1. Using reasonable and necessary force, not designed or intended to cause pain:
 - a. To quell a disturbance or prevent an act that threatens physical harm to any person.
 - b. To obtain possession of a weapon or other dangerous object within a pupil's control.
 - c. For the purposes of self-defense or defense of others as provided for in Iowa Code §§704.3.
 - d. For the protection of property as provided for in Iowa Code §§704.4, .5.
 - e. To remove a disruptive pupil from class, or any area of school premises or from school-sponsored activities off school premises.
 - f. To prevent a student from the self-inflection of harm.
 - g. To protect the safety of others.
2. Using incidental, minor, or reasonable physical contact to maintain order and control. In determining the reasonableness of the contact or force used, the following factors shall be considered:
 - a. The nature of the misconduct of the student, if any, precipitating the physical contact by the school employee.
 - b. The size and physical condition of the student.

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- c. The instrumentality used in making the physical contact.
- d. The motivation of the school employee in initiating the physical contact.
- e. The extent of injury to the student resulting from the physical contact.

“Reasonable force” is that force and no more which a reasonable person, in like circumstances, would judge to be necessary to prevent an injury or loss and can include deadly force if it is reasonable to believe that such force is necessary to avoid injury or risk to one’s life or safety or the life or safety of another, or it is reasonable to believe that such force is necessary to resist a like force or threat.

Upon completion of the Level 2 investigation, the Level 1 investigator shall forward copies of the Level 2 investigative report to the employee, the employee’s immediate supervisor and the student’s parent. The Level 1 investigator shall notify the person filing the report of the current status of the case.

If the Level 2 investigator’s report or law enforcement officials conclude abuse occurred, or the employee admits the violation, or the employee has surrendered the employee’s certificate or license, the Level 1 investigator shall file a complaint with the State Board of Educational Examiners. The Level 1 investigator shall also arrange for counseling services for the student if the student or student’s parents request counseling services.

Sexual Abuse

Sexual abuse is defined as including sexual acts involving a student, acts that encourage the student to engage in prostitution, as well as inappropriate, intentional sexual behavior or sexual harassment by the employee toward a student. “Sexual harassment” is defined as unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature when:

1. Submission to the conduct is made either implicitly or explicitly a term or condition of the student’s education or benefits;
2. Submission to or rejection of the conduct is used as the basis for academic decisions affecting that student; or
3. The conduct has the purpose or effect of substantially interfering with a student’s academic performance by creating an intimidating, hostile or offensive education environment.

When sexual abuse is reported, the Level 1 investigator shall make copies of the report and give a copy to the person filing the report, the student’s parents and the immediate supervisor of the employee named in the report. The employee named in the report shall not receive a copy of the report until the employee is initially interviewed. The designated investigator shall not interview the school employee named in a report of sexual abuse until after a determination is made that jurisdiction exists, the alleged victim has been interviewed and a determination made that the investigation will not be deferred.

The investigator shall notify the parent, guardian or legal custodian of a student in pre-kindergarten through grade six, of the date and time of the interview and of the right to be present or to see and hear

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the interview or send a representative in the parent's place. The Level 1 investigator shall interview the student as soon as possible, but in no case later than five days from the receipt of a report or notice of the allegation of sexual abuse. The Level 1 investigator may record the interview electronically.

The Level 1 investigator shall exercise discretion in the investigative process to preserve the privacy interests of the individuals involved. To the maximum extent possible, the investigator shall maintain the confidentiality of the report.

It is the responsibility of the Level 1 investigator to determine whether it is more likely than not that an incident took place between the employee and the student. If the Level 1 investigator believes the employee committed a sex act with a student or sexually exploited a student, the Level 1 investigator shall defer the Level 1 investigation and immediately notify law enforcement officials, the student's parents and the person filing the report.

If the Level 1 investigator determines an incident occurred, while not an illegal sex act with a student or sexual exploitation of a student, but where the employee engaged in inappropriate, intentional sexual behavior, further investigation is warranted. If further investigation is warranted, the Level 1 investigator may proceed to interview the employee and other individuals who may have knowledge of the circumstances contained in the report. Prior to interviewing other individuals who may have knowledge of the circumstances contained in the report, the Level 1 investigator shall provide notice of the impending interview of student witnesses or the student who is in pre-kindergarten through grade six, to their parent, guardian, or legal custodian, and may provide notice to the parent or guardian of older students, prior to interviewing those students. The Level 1 investigator shall, if founded, arrange for the Level 2 investigator to further investigate the allegations.

Within fifteen days of receipt of the report or notice of alleged sexual abuse, the Level 1 investigator shall complete a written investigative report unless the investigation was temporarily deferred. The written investigative report shall include:

1. The name, age, address and attendance center of the student named in the report.
2. The name and address of the student's parent or guardian and the name and address of the person filing the report, if different from the student's parent or guardian.
3. The name and work address of the employee named in the report as allegedly responsible for the abuse of the student.
4. An identification of the nature, extent and cause, if known, of any injuries or abuse to the student named in the report.
5. A general review of the investigation.
6. Any actions taken for the protection and safety of the student.
7. A statement that, in the investigator's opinion, the allegations in the report are either:
 - a. Unfounded. (It is not likely that an incident, as defined in these rules, took place), or
 - b. Founded. (It is likely that an incident took place.)
8. The disposition or current status of the investigation.

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9. A listing of the options available to the parents or guardian of the student to pursue the allegations. These options include, but are not limited to:
 - a. Contacting law enforcement officials.
 - b. Contacting private counsel for the purpose of filing a civil suit or complaint.
 - c. Filing a complaint with the Board of Educational Examiners if the school employee is certificated.

The investigator shall retain the original and provide a copy of the investigative report to the school employee named in the report, the school employee's supervisor and the named student's parent or guardian. The person filing the report, if not the student's parent or guardian, shall be notified only that the Level 1 investigation has been concluded and the disposition or anticipated disposition of the case.

If the allegations are founded, the Level 1 investigation shall refer the case to the Level 2 investigator. The Level 2 investigator shall review the Level 1 investigator's final investigative report and conduct further investigation if necessary. The Level 2 investigative report shall state conclusively as to the occurrence of the alleged incident, conclusively as to the nature of the sexual abuse and recommendations regarding the need for further investigation. Upon completion of the Level 2 investigation, the Level 1 investigator shall forward copies of the Level 2 investigative report to the employee, the employee's immediate supervisor and the student's parent. The Level 1 investigator shall notify the person filing the report of the current status of the case.

If the Level 2 investigator's report or law enforcement officials conclude sexual abuse occurred, or the employee admits the violation, or the employee has surrendered the employee's certificate or license, the Level 1 investigator shall file a complaint on behalf of the district after obtaining the superintendent's signature with the State Board of Educational Examiners. The Level 1 investigator shall also arrange for counseling services for the student if the student or student's parents request counseling services.

In cases involving founded physical or sexual abuse by a licensed employee, the board shall notify the Board of Educational Examiners. Information of unfounded abuse at Level 1 or Level 2 shall not be kept in the employee's personnel file. If the Level 1 investigative report is founded by Level 2 is unfounded, then the Level 1 report shall be removed from the employee's permanent file.

It shall be the responsibility of the board to annually identify a Level 1 and Level 2 investigator. The board shall also designate annually an alternate Level 1 investigator, preferably of the opposite sex of the designated Level 1 investigator, to whom reports may also be made. The names and telephone numbers of the Level 1 investigator and the alternate Level 1 investigator shall be included in employee handbooks, student handbooks, annually published in the local newspaper, and prominently displayed in all school buildings.

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Legal Reference: Iowa Code §§ 232.67, .70, .73, .75; 235A; 272A; 280.17; 709; 728.12(1) (2013).
281 I.A.C. 12.3(6), 102; 103.
441 I.A.C. 155; 175.
1980 Op. Att’y Gen. 275.

Cross Reference: 106 Bullying/Harassment
402.2 Child Abuse Reporting
503.5 Corporal Punishment

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