

PROCEDURES EXHIBIT: 400.10

ABUSE OF STUDENTS BY DISTRICT EMPLOYEES

When an employee of the District (including volunteers) is directly made aware of an allegation that abuse (physical or sexual) of a student by another District employee has occurred, the employee is expected to assist the alleged victim in getting a District-provided report form to complete. Confidentiality is expected by the person made aware of the allegation. The procedures below are to be followed for processing the allegations.

Who May File An Allegation Report Any person who has knowledge of an incident of abuse of a student committed by a school employee may file a report on the District-provided form. Anonymous complaints are not required to be investigated.

Receipt Of Allegation Report Any school employee receiving an Allegation Report shall immediately contact the District's Level One Investigator (by telephone or in person). The employee shall not reveal the existence or content of the report to any other person.

Content of the Allegation Report The report shall be in writing, signed, and witnessed (witness to the signature of the person filing) by a person of majority age, given to the Level One Investigator, and shall contain the following information:

- a. the full name, address, and telephone number of the person filing.
- b. the full name, age, address, telephone number, and attendance center of the student.
- c. the name and place of employment of the school employee(s) who allegedly committed the abuse.
- d. a concise statement of the facts surrounding the incident, including date, time, and place of occurrence, if known.
- e. a list of possible witnesses by name, if known.
- f. the names and locations of any and all persons who examined, counseled, or treated the student for the alleged abuse, including the dates on which those services were provided, if known. If the person reporting does not read or write or is not fluent in English, the Level One Investigator shall assist the reporter.

Important Warning—when, in the opinion of the Level One Investigator, the student would be placed in imminent danger if continued contact is permitted between the school employee and the student, the following options are available: 1) temporary removal of the student from contact with the school employee; 2) temporary removal of the school employee from service; and/or 3) any other appropriate action permissible under Iowa law to ensure the student’s safety.

A Level One Investigator shall aid those who request assistance in completing the report. An incomplete report shall not be rejected unless a reasonable person would conclude that the missing information would render an investigation futile or impossible. An unsigned (anonymous) or unwitnessed report may be investigated, but the Level One Investigator has no duty to report the findings and conclusions.

Rights of A Level One Investigator Investigators shall have access to any educational records of a student who is the named victim of alleged abuse and access to the student for purposes of interviewing and investigating the allegation.

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 investigable, 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 investigable due to lack of jurisdiction, the investigator will dismiss the complaint and inform the reporter of other options available. Other options available to the reporter include contacting law enforcement authorities, private counsel, or the Board of Educational Examiners in the case of a licensed employee.

Duties of Level One Investigator Regarding A Physical Abuse Allegation

- (1) Upon receipt of an Allegation Report, the Investigator shall make and provide a copy of the report to the person filing, to the student’s parent/guardian if different from the person filing, and to the supervisor of the employee

named in the report. The school employee named in the report shall receive a copy of the report at the time the employee is initially interviewed by the Investigator. However, if this action would conflict with the terms of a contractual agreement between the District and employee, the terms of the contract shall be followed.

The Level I investigator will use discretion in handling the information received regarding an investigation of abuse by an employee, and those persons involved in the investigation will not discuss information regarding the complaint outside 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.

(1) Within five (5) school days of receipt of the Allegation Report, the Investigator shall conduct and complete an informal investigation after reviewing the report to determine that the allegations, if true, support the

exercise of jurisdiction (rule 102.3). *Special Note: If the Investigator believes the magnitude of the allegations in the report suggest immediate and professional investigation, the Investigator may temporarily defer the*

investigation and contact the appropriate law enforcement officials, the

student's parent or guardian, and the person filing the report, if the person is

different from the student's parents or guardian. This action shall be

documented in writing.

(2) The Investigator shall interview the alleged victim, the school employee named in the report, and any collateral sources who may have knowledge of the circumstance contained in the report. The interview shall be conducted in absence of parents/guardians and it may be recorded. The Investigator shall exercise prudent 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. When a student has been examined by a doctor or other professional, the Investigator will need to obtain the consent of the student or parent/guardian to talk with the doctor.

The Investigator's role is not to determine the guilt or innocence of the school employee or the applicability of the exceptions listed in rule 102.4. The Investigator shall determine, by a preponderance of the evidence, whether it is likely that an incident took place between the student and the school employee, and whether or not it rises to the level of "abuse" as defined by law.

If the complaint is withdrawn; the allegation recanted; or the employee resigns, admits the truth of the allegations or agrees to relinquish one's certificate or license; the Investigator may conclude the investigation at Level One. The Investigator shall follow the provisions of 102.11 (2 and 3) when resolution occurs at Level One.

4) Within fifteen (15) calendar days of receipt of the report, the Investigator shall produce a written investigative report unless the investigation was temporarily deferred. The written report shall include:

- a. the name, age, address, and attendance center of the named student.
- b. the name and address of the student's parent/guardian and the name and address of the person filing the report, if the person is different from the student's parent/guardian.
- c. the name and work address of the school employee allegedly responsible for the abuse.
- d. an identification of the nature, extent, and cause, if known, of any injuries or abuse to the named student.
- e. a general review of the investigation.
- f. any action(s) taken for the protection and safety of the student.
- g. a statement that the allegation(s) in the report are either: 1) unfounded (It is not likely that an incident, as defined in these rules, took place) or 2) founded (It is likely that an incident took place).
- h. the disposition or current status of the investigation.
- i. a listing of the options available to the parents or guardians of the student to pursue regarding the allegations.

These options include, but are not limited to:

(A) contacting law enforcement; (B) contacting private counsel for the purpose of filing a civil suite or complaint; or (C) filing a complaint with the Iowa Board of Educational Examiners when the employee is certificated.

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

5) Allegations of Physical Abuse That Are Founded. The Investigator's duty is to notify law enforcement authorities in founded cases of serious physical abuse. In founded cases of less serious physical incidents, the Investigator shall arrange for the Level Two Investigator to carry out a professional investigation unless the Level One Investigation has resulted in a final disposition of the investigation. In addition, the Investigator shall give a copy of the investigative report to the employee's supervisor and document all action taken.

The Level II investigator will review the Level I investigator's final investigative report and conduct further investigations. The Level II investigative report will state the conclusion as to the occurrence of the alleged incident, the applicability of exceptions, the reason for 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 contact or force used, the Level II 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 To quell a disturbance or prevent an act that threatens physical harm to any person.

To obtain possession of a weapon or other dangerous object within a pupil's control.

(2) For the purpose of self-defense or defense of others as provided for in Iowa Code § 704.3.

(3) For the protection of property as provided for in Iowa Code §§ 704.4, .5.

(4) To remove a disruptive pupil from class, or any area of school premises or from school-sponsored activities off school premises.

(5) To prevent a student from the self-infliction of harm.

(6) To protect the safety of others.

b. 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 are 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.
- 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 receipt of the Level Two Investigator’s report under rule 102.12 or upon resolution of the investigation at Level One, the Level One Investigator shall:

- a) Forward copies of the Level Two Investigator’s report to the student’s parent or guardian, to the school employee named in the complaint, and to the school employee’s supervisor; and notify the person filing the report, if different from the student’s parent or guardian, about the disposition of the case or current status of the investigation;
- b) File a complaint with the Iowa Board of Educational Examiners in cases where the Level Two Investigator or law enforcement officials have concluded abuse occurred as defined in these rules, or where the employee has admitted the truth of the allegation or agreed to surrender the employee’s certificate or license. The Investigator has discretion to file a complaint with the Iowa Board of Educational Examiners in situations where the employee has resigned as a result of the allegation or investigation but has not admitted the truth of the allegations;
- c) Arrange for counseling services for the named student, on request by the student or the student’s parent/guardian.

Duties of Level One Investigator Regarding A Sexual Abuse Allegation

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.

(1) Upon receipt of an Allegation Report, the Investigator shall make and provide a copy of the report to the person filing, to the student's parent/guardian if different from the person filing, and to the supervisor of the employee named in the report. The employee named in the report shall receive a copy of the report at the time the employee is initially interviewed by the Investigator. However, if this action would conflict with the terms of a contractual agreement between the employer and employee, the terms of the contract shall be followed.

(2) Within five (5) school days of receipt of the Allegation Report, the Investigator shall conduct and complete an informal investigation after reviewing the report to determine that the allegations, if true, support the exercise of jurisdiction (rule 102.3).

Special Note: If the Investigator believes the magnitude of the allegations in the report suggest immediate and professional investigation, the Investigator may temporarily defer the investigation and contact the appropriate law enforcement officials, the student's parent or guardian, and the person filing the report, if the person is different from the student's parents or guardian. This action shall be documented in writing.

The investigator will 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 the interview or send a representative in the parent's place. The Level I investigator will 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 I investigator may record the interview electronically. When a student has been examined by a doctor or other professional, the Investigator will need to obtain

the consent of the student or parent/guardian to talk with the doctor. The Investigator's role is not to determine the guilt or innocence of the school employee. The Investigator shall determine, by a preponderance of the evidence, whether it is likely that an incident took place between the student and the school employee, and whether or not it rises to the level of "abuse" as defined by law. If the complaint is withdrawn; the allegation recanted; or the employee resigns, admits the truth of the allegations or agrees to relinquish one's certificate or license; the Investigator may conclude the investigation at Level One. The Investigator shall follow the provisions of 102.11 (2 and 3) when resolution occurs at Level One.

If the Investigator believes it is likely that an incident in the nature of sexual abuse, as defined by Iowa Code chapter 709 or section 728.12 (1) took place, the Investigator shall temporarily defer further the Level One investigation and shall: immediately contact appropriate law enforcement officials; and notify the student's parent or guardian, and the person filing the report, if different from the student's parent or guardian, of the action taken.

If the Investigator believes an incident occurred that would not constitute sexual abuse as defined in Iowa Code chapter 709 or sexual exploitation as defined by Iowa Code section 728.12(1), but that the incident was in the nature of inappropriate, intentional sexual behavior by the school employee, more investigation is warranted. The Investigator may interview the employee named in the report and any collateral sources who may have knowledge of the circumstances contained in the report, or may arrange for the Level Two Investigator to carry out a professional investigation.

If the Investigator believes the allegation of sexual abuse is unfounded and further investigation is not warranted, the Investigator shall notify the student's parent or guardian, the person filing the report, if different from the student's parent or guardian, and the employee named in the report of this conclusion and record action(s) taken in a written investigative report.

4) Within 15 calendar days of receipt of the report, the Investigator shall produce a written investigative report unless the investigation was temporarily deferred. The written report shall include:

- a. the name, age, address, and attendance center of the named student;
- b. the name and address of the student's parent/guardian and the name and address of the person filing the report, if the person is different from the student's parent/guardian;
- c. the name and work address of the school employee allegedly responsible for the abuse;

d. an identification of the nature, extent, and cause, if known, of any injuries or abuse to the named student;

e. a general review of the investigation;

any action(s) taken for the protection and safety of the student;

g. a statement that the allegation(s) in the report are either:

1) unfounded, or 2) founded;

h. the disposition or current status of the investigation;

i. a listing of the options available to the parents or guardians of the student to pursue regarding the allegations.

These options include, but are not limited to: (1) contacting law enforcement; (2) contacting private counsel for the purpose of filing a civil suite or complaint; (3) filing a complaint with the Iowa Board of Educational Examiners when the employee is certified.

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

(5) Allegations of Sexual Abuse that are Founded . . . The Investigator's Duty.

The Investigator shall notify law enforcement authorities in founded cases of serious physical abuse and in any founded case of sexual abuse under chapter 709 or sexual exploitation under section 728.12 (1) of the Iowa Code. In founded cases of less serious sexual incidents not in the nature of statutory sexual abuse or exploitation as defined by Iowa law, the Investigator shall arrange for the Level Two Investigator to carry out a professional investigation unless the Level One investigation has resulted in a final disposition of the investigation. In addition, the Level One Investigator shall give a copy of the investigative report to the employee's supervisor and document all action taken.

Upon receipt of the Level Two Investigator's report under rule 102.12 or upon resolution of the investigation at Level One, the Level One Investigator shall:

a) forward copies of the Level Two Investigator's report to the student's parent or guardian, the school employee

named in the complaint, and the school employee's supervisor; and notify the person filing the report, if different from the student's parent or guardian, of the disposition of the case or current status of the investigation. B) file a complaint with the Iowa Board of Educational Examiners in cases where the Level Two Investigator or law enforcement officials have concluded abuse occurred as defined in these rules, or where the employee has admitted the truth of the allegation or agreed to surrender one's certificate or license. The Investigator has discretion to file a complaint with the Iowa Board of Educational Examiners in situations where the employee has resigned as a result of the allegation or investigation but has not admitted the truth of the allegations. C) arrange for counseling services for the named student on request by the student or the student's parent/guardian.

Special Note: Regarding Sexual Abuse Rule 102.9(5) establishes that the Investigator in sexual abuse reports is to interview the alleged victim, review the allegation, and immediately determine, without further investigation, whether the act charged, if true, would be a sex abuse crime and if so, refer the investigation to law enforcement. This means (unless there is a term in the master contract or other binding agreement requiring a school official to notify an employee immediately if a complaint is ever filed) that the Level One Investigator only does a partial investigation; he or she does not notify the accused employee of the complaint and does not attempt to contact witnesses if the accusation is of statutory sexual abuse (crimes).

Most reports of sexual abuse will be referred to law enforcement ("deferred investigation") before the Investigator has completed an investigation. The typical cases to be completely investigated by Level One will be those where sexual improprieties are charged, but no sex "crime" has been alleged.(e.g., teacher dating a 17 year-old student; a bus driver/janitor kissing a student (romantically, not paternally or maternally); a counselor making suggestive remarks to student; a coach patting a student on the buttocks/"fanny" in a sexual way).

However, it may happen that a report is made of sexual impropriety that, if true, would not be a sex crime and is therefore fully investigated, but after the investigation facts come to light to indicate that it may well be more serious than the original report indicated; in fact it would be criminal sexual abuse. The intent of the rule is that regardless of the stage of investigation at which a determination is made, a criminal sex abuse situation may have occurred. At that point, the investigation is to be turned over to law enforcement. This rule also addresses what the Designated Investigator does after receiving the Level Two Investigator's report. In addition to providing copies of the report to the appropriate people, the

Level One Investigator must file a complaint with the Iowa Board of Educational Examiners in cases of founded abuse as determined by the Level Two Investigator, law enforcement personnel, or the Level One Investigator under the circumstances in the rules allowing for conclusion of the investigation at Level One (i.e., employee has admitted the truth of the allegation or agreed to surrender his or her certificate/license). Resignation “agreements” cannot waive the mandatory filing of a complaint with the Iowa Board of Educational Examiners in cases of founded or admitted abuse.

The Iowa Board of Educational Examiners only has jurisdiction over certificated members of the profession. A school bus driver’s permit can be revoked by the Department of Education (DE) for criminal or otherwise abusive conduct, so the Investigator is encouraged to contact the DE in cases of founded abuse by holders of a school bus driver’s permit. School nurses may be reported to the Iowa Board of Nursing.

Retention of records. Any record created by an investigation shall be handled according to formally adopted or bargained policies on the maintenance of personnel or other confidential records. Notes, tapes, memoranda, and related materials compiled in an investigation shall be retained by the public or nonpublic school for a minimum of two years. Unfounded reports shall not be placed in an employee’s personnel file.

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