

The Department of Children and Families (DCF)- Mandated Reporting and the Disciplinary Process for Employees

September 2023
Pembroke Public Schools

What is DCF?

- Under Massachusetts law, the Department of Children and Families (DCF) is the state agency that receives all reports of suspected abuse and/or neglect of children under the age of 18.
- State law requires professionals whose work brings them in contact with children to notify DCF if they suspect that a child is being abused and/or neglected. (Mandated Reporter)

Who is a Mandated Reporter?

- Public or private school teachers/administrators/support staff/mental health staff
- Medical/Mental Health Providers
- Child care or after school program staff, including any person paid to care for, or work with, a child in any public or private facility, home or program funded or licensed by the Commonwealth, which provides child care or residential services.
- Social workers, foster parents, probation officers, clerks magistrate of the district courts parole officers;
- Firefighters and police officers
- Clergy members, including ordained or licensed leaders of any church or religious body, persons performing official duties on behalf of a church or religious body, or persons employed by a religious body to supervise, educate, coach, train or counsel a child on a regular basis

What are my obligations as a Mandated Reporter?

- You are required to immediately make an oral report to DCF when, in your professional capacity, you have reasonable cause to believe that a child under the age of 18 years is suffering from abuse and/or neglect. A written report must be submitted within 48 hours.
- You are required to report any physical or emotional injury resulting from abuse; any indication of neglect, including malnutrition; any instance in which a child is determined to be physically dependent upon an addictive drug at birth; any suspicion of child sexual exploitation or human trafficking; or death as a result of abuse and/or neglect.

What are my obligations as a Mandated Reporter (cont)?

- **Mandated Reporters who are employees must either notify the Department directly or notify the person in charge of the institution, school or facility, or his/her designee, who then becomes responsible for filing the report. Should the person in charge/designee advise against filing, the staff member retains the right to contact DCF directly . Under the law, mandated reporters are protected from liability in any civil or criminal action and from any discriminatory or retaliatory actions by an employer.**
- **Any person defined by law as a mandated reporter is required to assist DCF in its response, even if they are not the filer of the 51A report.**

How does DCF define abuse/neglect?

Abuse means: The non-accidental commission of any act by a caregiver which causes, or creates a substantial risk of, physical or emotional injury or sexual abuse to a child; or the victimization of a child through sexual abuse or human trafficking, regardless if the person responsible is a caregiver. This definition is not dependent upon location (i.e., abuse can occur while the child is in an out-of-home or in-home setting). DCF defines “sexual abuse” as any non-accidental act by a caregiver upon a child that constitutes a sexual offense under the laws of the Commonwealth or any sexual contact between a caregiver and a child for whom the caregiver is responsible.

Neglect means: Failure by a caregiver, either deliberately or through negligence or inability, to take those actions necessary to provide a child with minimally adequate food, clothing, shelter, medical care, supervision, emotional stability and growth, or other essential care, including malnutrition or failure to thrive; provided, however, that such inability is not due solely to inadequate economic resources or solely to the existence of a handicapping condition.

Who is a caregiver?

A “caregiver” can be a child’s parent, step-parent, guardian, or any household member entrusted with the responsibility for a child’s health or welfare. In addition, any other person entrusted with the responsibility for a child’s health or welfare, both in and out of the child’s home, regardless of age, is considered a caregiver. Examples may include: relatives from outside the home, teachers or staff in a school setting, workers at an early education, child care or afterschool program, a babysitter, foster parents, staff at a group care facility, or persons charged with caring for children in any other comparable setting.

What steps does DCF take once a 51A report is filed?

- **Screening**: Begins immediately for all reports.
- **Emergency Response**: Must begin within two hours and be completed within five business days of the report.
- **Non-Emergency Response**: Must begin within two business days and be completed within 15 business days of the report.
- **Family Assessment**: May take up to 60 business days.

“Screening In”

If a report is “Screened-In” it is assigned for a Child Protective Services (CPS) Response to determine whether there is reasonable cause to believe that a child has been abused and/or neglected. “Reasonable cause to believe” means a collection of facts, knowledge or observations which tend to support or are consistent with the allegations and when viewed in light of the surrounding circumstances and the credibility of the persons providing the information, would lead a reasonable person to conclude that a child has been abused or neglected. The response includes an investigation of the validity of the allegation(s) received, a determination of current danger and future risk to the child and an assessment of the capacity of the parent(s)/caregiver(s) to provide for the safety, permanency and well-being of their child.

Next Steps

A determination is made as to whether the report is:

- **Unsupported** – There is not reasonable cause to believe that the child was abused and/or neglected, or that the child's safety or well-being was compromised
- **Supported** – There is reasonable cause to believe the child was abused and/or neglected; the actions or inactions by the parent(s)/caregiver(s) place the child in danger or pose substantial risk to the child's safety or well-being, or the person was responsible for the child being a victim of sexual exploitation or human trafficking
- **Substantiated Concern** – There is reasonable cause to believe that the child was neglected and the actions or inactions by the parent(s)/caregiver(s) create the potential for abuse and/or neglect, but there is not immediate danger to the child's safety or well-being.

What if I fail to report?

- Any mandated reporter who fails to make required oral and written reports can be punished by a fine of up to \$1,000. Any mandated reporter who willfully fails to report child abuse and/or neglect that resulted in serious bodily injury or death can be punished by a fine of up to \$5,000 and up to 2½ years in jail, and be reported to the person's professional licensing authority.
- All mandated reporters who knowingly and willfully file a frivolous report of child abuse and/or neglect can be punished by a fine of up to \$2,000 for the first offense, up to 6 months in jail for a second offense, and up to 2½ years in jail for a third offense.

When is a school district required to file a 51A against an employee?

- **Employees are considered caregivers and, therefore, if the district has reasonable cause to believe that abuse or neglect occurred by a staff member towards a student, the district is mandated to file a 51A Report.**
- **This decision will be made by building administration in consultation with the Superintendent.**

What occurs in conjunction with the district filing a 51A against an employee?

- If the employee is currently in the presence of students, the employee would be immediately removed from the presence of students by the building level administration.
- The employee would then be sent home on paid administrative leave by a building administrator.
- DCF will follow their internal steps following the district's filing and conduct their own investigation (outlined in previous slides).
- The district would work collaboratively with DCF and any additional agencies involved (at times the district may need to contact the Pembroke Police Department) throughout the investigatory process.

What are the next steps following being placed on Paid Administrative Leave?

- The employee would receive further verbal and written communication from the Human Resources (HR) Manager, Natalie Vandermolen. This includes a formal letter outlining the employee has been placed on paid administrative leave. The paid leave may continue pending the results of the DCF investigation.
- Follow up written communication would occur from the HR Manager to set up an Investigatory Meeting and which includes outlining certain rights the employee has.
 - *Weingarten rights arise when the employer is investigating an incident or an allegation and the employee being questioned has a reasonable expectation that the investigation may result in discipline. An employee is entitled to union representation if the employer is investigating an employee's alleged misconduct or inadequate work performance and convenes a meeting to elicit facts or get the employee's "side of the story".*

Investigatory Process/Progress Discipline

Investigatory Meeting

Purpose: Present information regarding the alleged conduct and ask direct questions of the employee related to the conduct at hand; provide information regarding results of DCF investigation if applicable

Attendees: HR Manager, District Administration involved, Employee, Employee Representation

Findings

Based on the severity of conduct, disciplinary action may be taken as a result of the investigatory process.

Progressive discipline will be taken into consideration. Progressive discipline includes giving consideration the severity of the conduct and taking into consideration any previous discipline of the employee.

All findings will be shared with the employee in writing and through a Findings Meeting.

Taking into Consideration “Just Cause”

The employer must have a reason to act in disciplining an employee and the reason must be just and fair.

- Providing Notice
- Prior Enforcement of rule/regulation
- Given a Due Process Investigation
- Fair Investigation/Substantial Evidence
- Equal Treatment
- Appropriate Discipline based on conduct (progressive in nature as appropriate)

Property and Casualty Liability Insurance

- Employees covered through the Town of Pembroke
- If an employee is found to commit a serious offense (ex criminal), the agency may find an employee grossly negligent and thus an employee may lose this coverage

Letter of Advisory

-reminds employee of expectations that should have been known and those employee was not aware of

Discipline Letter

-placed in personnel file; outlines conduct and violations; reminds employee of expected conduct

Suspension Without Pay

-placed in personnel file; intent to suspend letter issued; follow up meeting to discuss possible suspension; suspension letter issued

Termination of Employment

-placed in personnel file; recommendation of termination letter issued; follow up meeting to discuss termination; termination letter issued

Department of Children and Families

Training Video on Filing as a Mandated Reporter

Mandated Reporter Guide

Filing-Forms and Online Portal