

**PRACTICE AND PROCEDURE FOR THE IDENTIFICATION, INVESTIGATION  
AND REPORTING OF EDUCATIONAL NEGLECT**

PURPOSE:

To set forth practice and procedure clarifying the roles of the Department of Social Services and the District on the identification, investigation and reporting of cases of Educational Neglect, as required by Chapter 543 of the Laws of 2006 (S.8183/A 11571-A). Section 1012 (f) of the Family Court Act (FCA) identifies a "neglected" child as a child less than eighteen years of age:

(i) 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 the provisions of part one of article sixty-five of the educational law, or medical, dental, optometric or surgical care, though financially able to do so or offered financial or other reasonable means to do so;

The term "parent or other person legally responsible for his care" refers to the parent, custodian, legal guardian or other person legally responsible for the child. References in this Policy and Procedure to the "parent" should be understood to also include custodians, legal guardians and other persons legally responsible for a child.

BACKGROUND:

The Department of Social Services and local school districts are mandated to develop policies and procedures for the identification, investigation and reporting of Educational Neglect based on model policies and practices that have been developed by the Office of Children and Family Services (OCFS) and the State Educational Department (SED). It is imperative that this policy be implemented in conjunction with the District's Comprehensive Attendance Policy, as the nature of Educational Neglect is a student's excessive absences from school. Therefore, the District's Comprehensive Attendance Policy No. 5100 is hereby incorporated and made a part of this Policy and Procedure.

## EDUCATIONAL NEGLECT:

According to Part One of Article 65 of the New York State Educational Law, Section 3205(1)(c), the following age requirements apply:

- A child must attend full time school instruction in September if he/she turns six years old on or before the first day of December of that school year.  
Please note: The school year begins on July 1<sup>st</sup> and runs through June 30<sup>th</sup>.
- A child who becomes six years old after the first of December must attend full time school instruction from the first day of session in the following September.
- A child must attend full time school instruction until the last day of session in the school year in which the minor becomes 16 years of age. New York State Educational Law, Section 3205(3), provides that the board of educational in a school district may require minors from 16 to 17 years of age, who are not employed, to attend full time day instruction until the last day of the session in the school year in which the student becomes 17 years old.
- A child who has completed a four year high-school course of study is not required to attend school regardless of age.
- A child who has applied and is eligible for a full-time employment certificate may be permitted to attend school part-time not less than 20 hours per week.

## REPORTING:

Educational Neglect is considered to be the failure of a parent to ensure their child's prompt and regular attendance in school or the keeping of a child out of school for impermissible reasons resulting in an adverse affect on the child's educational progress or an imminent danger of such an adverse affect.

***\*This Policy and Procedure should never be interpreted to preclude a mandated reporter in the District from making a report to the New York Statewide Central Register for Child Abuse and Maltreatment (SCR) if the mandated reporter believes that he/she has reasonable cause to suspect child abuse or maltreatment, even if the conditions set forth in this policy and procedure have not been met. See Board Policy No. 5460 and its implementing Regulation 5460-R for the applicable procedures for reporting child abuse and maltreatment.***

Attendance - There are both excused and unexcused absences from school. Such absences may occur for either a portion of the day or the entire school day. It is the responsibility of the parent to establish the legitimate nature of the absence to the satisfaction of the school district. The District has included in its Comprehensive Attendance Policy its determination of which pupil absences, tardiness and early departures will be excused and which will not be excused and has provided an illustrative list of what will be considered excused and unexcused absences and tardiness. As set forth above, the District's Comprehensive Attendance Policy No. 5100 is incorporated and cross-referenced to this Policy, so that there is a clear understanding between Child Protective Services (CPS) and the District of what constitutes excused and unexcused absences.

The three (3) elements identified by the SCR as necessary for acceptance of a report of Educational Neglect based on absenteeism are:

1. Excessive absence from school by the child. Confirmation that the absences are unexcused is an issue for the CPS investigation and a decision on this issue is not required at the point of making a report. However, any information the District has as to whether the absences are excused or unexcused should be provided to the SCR; **AND**
2. Reasonable cause to suspect that the parent is aware or should have been aware of the excessive absenteeism and that the parent has contributed to the problem or is failing to take steps to effectively address the problem (i.e., failure to provide a minimum degree of care); **AND**
3. Reasonable cause to suspect educational impairment or harm to the child or imminent danger of such impairment or harm.

Excessive Absence: The law is not specific as to the number of absences that would provide reasonable cause to suspect that a child may be educationally neglected. However, the District provides the following guidelines to assist in determining when absences are excessive:

Absence from 30% of required school days or for 7 consecutive days may be indications of Educational Neglect. For example, in 30 school days, if a child is absent for 7 consecutive or 10 non-consecutive days, the appropriate District staff should "look into" why the student has been absent and, if indicated, initiate this protocol regarding Educational Neglect.

Role of Parent: The role of the parent must be considered. The appropriate District staff should contact the parent in accordance with its Comprehensive Attendance Policy (see Policy No. 5100) to determine the parent's awareness of

the excessive absences and to offer assistance as appropriate. The District recommends that at least one (1) attempt to contact the parent be made verbally and at least one (1) attempt be made in writing. In cases where the District has been unable to contact a parent, a parent has been uncooperative with District officials, or the parent cannot provide an explanation for their child's absences and the other criteria for Educational Neglect can be met, this would establish reasonable cause to suspect that a parent is aware of the absence and has not taken reasonable steps to address the problem.

Educational Impairment or Harm: There must also be a concern that the absences have had an adverse effect on the child's educational progress or are creating a danger of such an adverse effect. Certainty of an adverse effect or the risk of an adverse effect is not required for a report to be accepted by the SCR; there only needs to be reasonable cause to suspect an adverse effect or risk thereof. Whether there is actually such impairment or risk is an issue for investigation by CPS.

Other Considerations: The reporting of Educational Neglect by the District may also result in the reporting of other forms of abuse or maltreatment. Student absenteeism, whether excessive, unexcused or not, may be an indicator of other forms of underlying abuse or maltreatment in the home. As in all calls received by the SCR, the interviewer will ask a series of open-ended questions to determine whether the caller/reporter/source has concerns that would result in ANY reasonable suspicion of abuse or maltreatment. With respect to the reporting of other forms of abuse and neglect, please refer to Board Policy No. 5460 and its implementing Regulation 5460-R.

Home Schooling: Volume 8 of the Regulations of the New York State Commissioner of Education §100.10 set forth requirements applicable to home instruction of children, including procedures for resolving disagreements between a school district and parent as to whether the parent's plan for home instruction (the "individualized home instruction plan" or "IHIP") meets the requirements of the Education Law and regulations. These regulations should be consulted before considering whether an Educational Neglect report to the SCR is warranted in cases where the student is home schooled. Failure to comply with these regulations coupled with the child not attending school could be a basis for a report to the SCR.

#### Procedure for Making a Report to the SCR

The mandated reporter phone number (SCR) is **1-800-635-1522**.

Pursuant to changes in the Mandated Reporter Law in 2007, the report to the SCR must be made by a mandated reporter who has reasonable cause to suspect abuse or maltreatment. A mandated reporter includes but is not limited to a school teacher, school guidance counselor, school psychologist,

school social worker, school nurse, school administrator, or other school personnel required to hold a teaching or administrative license or certificate. However, once the report has been made, the mandated reporter who made the report must advise the administrator in charge of the school that the report was made and of the information that was reported to the SCR, including the names and contact information of other persons in the school believed by the reporter to have direct knowledge of the alleged abuse or maltreatment. The administrator in charge or his/her designee then becomes responsible for all subsequent administration involving the report, including completing and submitting the written report. [See Attached Form LDSS-2221-A] This responsibility may also involve making an additional call to the SCR if there is additional information concerning the report to be submitted.

The Office of Children and Family Services (OCFS) has provided the following guidance, which is not intended to be exclusive criteria, to assist District staff in determining whether a report of Educational Neglect is warranted.

1. Use the District's definition of what constitutes excessive absence from school, as set forth in the Comprehensive Attendance Policy No. 5100. Unexcused absenteeism that reaches or exceeds this level would be considered excessive absence.
2. Identify the impact or potential harm on the child. Does the extent of unexcused absenteeism place the child in jeopardy of:
  - Failing a course?
  - Failing the grading period?
  - Failing the semester?
  - Failing the school year?
  - Failing to acquire basic skills commensurate with the grade level?
  - An inability to make up past work that is essential to passing the course or being promoted to the next level?
  - Receiving a grade that reflects a significant decrease in performance from one marking period to the next?
  - Not meeting the goals identified in the child's Individualized Educational Program (IEP)?
3. Identify the vulnerability of the child in relation to potential harm.
  - Is this a child with special needs for whom excessive unexcused absences may place the child in potential harm?
  - Is this child of an age whereby the educational foundation necessary for the child to progress in school is jeopardized by the unexcused absenteeism?

- Does the child have past experience of criminal behavior that has occurred during the time of unexcused absenteeism?
4. Has the parent contributed to the problem or failed to provide a minimum degree of care?
- Has the District been provided with notes from the parent identifying the reason for all absenteeism?
  - Are the reasons provided reasonable and consistent with the District's Comprehensive Attendance policy?
  - Has the District been provided with notes from the physician or other health care provider in accordance with the Comprehensive Attendance Policy?
  - Has the District obtained information from reliable sources that the parent is complicit or encouraging unexcused absences?
5. What effort has the District made to apprise the parent of the absenteeism?
- It is recommended that the District make a minimum of one (1) phone call (where possible) to the parent advising them of the absenteeism.
  - It is also recommended that the District have documentation of a minimum of one (1) written letter sent to the parent(s) advising them of the absenteeism.
  - Note: The District's Comprehensive Attendance Policy No. 5100 includes a description of the notice to be provided to the parent where the children are absent, tardy or depart early without proper excuse.

It is important that calls to the SCR be made as early in the day as possible. This will facilitate contact by the CPS investigator with school personnel.

Mandated reporters making reports to the SCR should, to the extent possible, confirm necessary demographic information about the child and family prior to making the report to the SCR, as well as any other information the source may have that would indicate that there may be other forms of abuse or neglect present in the household in addition to Educational Neglect. The Reporter should also provide appropriate contact information, including contact information for after-school hours. If the mandated reporter making the report is unable to do so, it would become the responsibility of the administrator in charge of the school or designee to obtain this information and provide it to the SCR.

The Child Abuse Specialist at the SCR will ask the reporter/source the following questions for all reports made to the SCR:

- Name(s), dates of birth, address(es) for all children and parents in the household.
- Name, title and contact information for the reporter of the information.
- Name, title and contact information for any other persons in the District who may have direct knowledge of the alleged Educational Neglect or other alleged child abuse or maltreatment.
- Whether the child attends school at the caller/reporter's location. This information will be included to assist the CPS investigator in assessing the safety of the child within 24 hours.
- If the child is not in attendance at the same location as the caller/reporter, it is important for that to be identified. The caller/reporter should have the correct street address of the school the child attends, as well as the mailing address for the school if different.
- Alternative contact information (hours of contact, phone number, cell phone number) for the reporter (or alternative contact person) to assist CPS in gathering critical information necessary to assess the safety and ongoing risk of the child and any other children in the household. (CPS is responsible to assess the safety of every child in the household, not just children reported as abused or maltreated.)

The Child Abuse Specialist at the SCR will ask the reporter/source the following additional questions for reports made to the SCR involving possible Educational Neglect:

- Information related to any allegation of Educational Neglect and/or other allegations of abuse or maltreatment for any child in the family or child residing in the household to the knowledge of the reporter.
- Information on the number of absences from school, whether the absences are excused or unexcused (if known) and the suspected effect on the child's educational progress.

- Information related to the awareness of parent of the absenteeism and any efforts taken by the school to provide notification of the excessive absenteeism.

## **INVESTIGATION CONSIDERATIONS**

### Educational Impairment/Harm to the Child

Educational impairment or harm or imminent danger of harm may be difficult to prove until the harm has actually occurred. Harm may be presumed if another child in similar circumstances has already experienced harm, or would be likely to experience harm under similar circumstances or there is a reasonable belief that the child would be harmed if the circumstances continues. The most important aspect of preventing potential harm of Educational Neglect is early intervention. The reporting of Educational Neglect at the time of the initial identification of potential harm is critical to be able to address the issue with the family and to take necessary actions that will ensure satisfactory completion of the child's grade level and a successful school experience. The investigation is where the CPS investigator will address the issues with the parent with the objective of resolving any problems that exist so the problems do not recur. The District should also be involved in the resolution of issues related to Educational Neglect.

To put into practice the definition of educational impairment or harm is a difficult task. Each child is different and the potential for educational harm is different according to the age, developmental abilities and intellectual capacity of the child, as well as the knowledge of, or potential encouragement by the parent of the absenteeism. Each instance of absenteeism must be evaluated in relation to the standards noted above: the parent's awareness of the excessive absenteeism, the steps taken and efforts made by the parent to address the absenteeism, and the actual or potential harm to the child.

### Investigating Educational Neglect

Social Services Law (SSL) Section 424 and 18 NYCRR Part 432 identifies the specific responsibilities and duties of CPS concerning reports of suspected child abuse or maltreatment. These duties include the requirement to be able to receive all reports 24 hours a day, seven days a week and to initiate an investigation within 24 hours of the receipt of a report of suspected abuse or maltreatment to assess the immediate safety to the child(ren). This applies to all reports of suspected child abuse and maltreatment, including Educational Neglect reports.



### Determination of Some Credible Evidence

CPS must have "some credible evidence" that the child has been harmed or is in imminent danger of being harmed as a result of the parent's failure to exercise a minimum degree of care in regard to the child in order to determine a report of child abuse or maltreatment as "Indicated". An "Indicated" determination must include identification of the specific harm or impact on the child and confirmation that the parent, by acting or failing to act, was responsible for the harm or imminent danger of harm of the child.

Making a determination that there is, or is not some credible evidence that Educational Neglect exists is a process that includes multiple steps on the part of the CPS worker. The District must provide the CPS worker with all documentation that will assist the CPS worker in completing the investigation and making the determination of "Unfounded" or "Indicated". An "Unfounded" report is one for which some credible evidence cannot be found to substantiate the allegations of abuse or maltreatment. An "Indicated" report is one for which some credible evidence can be found to substantiate the allegations. For this reason, it is important to document not only the child's educational progress but also efforts made to contact the parent, advise the parents of the absenteeism and to engage the parent in addressing the issue. These records must be made available to the CPS worker during the course of the investigation.

### Interviewing the Child at School

When allegations or circumstances included in a report or factors arise during an investigation make it advisable to interview the child(ren) apart from the family, the District shall cooperate with CPS in the investigative process. The District must provide OCFS and local CPS with such assistance and data as are necessary to enable them to fulfill their CPS responsibilities.

Interviewing a child in his/her school setting is predicated upon ongoing cooperation and dialogue with school authorities so that both the CPS Caseworker and the school authorities understand each other's policies, responsibilities and procedures.

Procedures for CPS interviews of child(ren) at school:

- Case assigned to CPS Caseworker
- CPS Caseworker will contact Source for information
- If appropriate, Caseworker will set up an interview at school
- If necessary, Caseworker will set up an interview at home

The circumstances or allegations which may, but do not necessarily, prompt a decision by CPS to interview a child at school, include but are not limited to:

- bruises inflicted by parents;
- unusual punishments;
- unattended illness;
- child fearful of returning home; and
- sexual abuse.

In general, circumstances where a child may be in imminent danger, where time is a factor or where other considerations exist (for example, the child expresses a need to speak privately with the CPS Caseworker) may make it advisable for CPS to interview a child at school. This could occur prior to or following CPS interviewing the parents.

In making the decision whether to interview the child at school, it should be kept in mind also that interviewing a child in school may have negative consequences such as:

- disrupting the child's school routine;
- calling special attention to an allegation about a problem at home which in fact may not be a problem or may not be sufficiently significant to warrant such extraordinary attention; and
- upsetting the parent to the extent that the parent's communication will become extremely guarded out of suspicion or fear, or completely cut off.

SED and OCFS agree that interviews with children both when the school is and is not the source of the report are permissible. SED and OCFS agree that a school official should generally be present during the interview. However, the school official and CPS may decide the school official could be absent during the interview when the school official and the CPS Caseworker agree that the presence of the school official is not essential to protect the interests of the pupil, and the absence of the school official may increase the likelihood that the Caseworker can accomplish the purposes of the interview.

#### Other Considerations

Section 413(1)(b) of the SSL provides that a school may not take any retaliatory personnel action, as such term is defined in paragraph (e) of subdivision one of section seven hundred forty of the Labor Law, against an employee because such employee believes that he or she has reasonable cause to suspect that a child is an abused or maltreated child and that employee therefore makes a report to the SCR. No school or school official may impose any conditions,

including prior approval or prior notification, upon a member of their staff who is a mandated reporter.

Section 3209-a of the Educational Law addresses child abuse prevention in schools and provides that each school district shall develop, maintain and disseminate written policies and procedures pursuant to Title Six of Article Six of the SSL and applicable provisions of Article Ten of the Family Court Act regarding the mandatory reporting of child abuse or neglect, reporting procedures and obligations of persons required to report.

Section 419 of the SSL provides that persons who in good faith make reports to the SCR and/or cooperate in CPS investigations have civil and criminal immunity from any liability that might otherwise result from such actions. The statute further provides that good faith is presumed where the person was acting in the discharge of his or her duties and within the scope of his or her employment, and that the actions did not result from willful misconduct or gross negligence.

Section 420 of the SSL provides that a mandated reporter who willfully fails to fulfill the mandated reporter responsibility is guilty of a class A misdemeanor (punishable by up to a year in jail, a fine of up to \$1,000, or both). The statute further provides that a mandated reporter who knowingly and willfully fails to fulfill the mandated reporter responsibility is civilly liable for the damages proximately caused by such failure.

Confidentiality – Section 422(4)(A) of the SSL provides that records or reports made to the SCR and CPS records are confidential and are available only as provided for in that statute. This applies to records in the possession of CPS and does not apply to school records, as such. However, if the District obtained copies of any CPS records (for example, as a service provider to the child), the confidentiality provisions of Section 422(4)(A) of the SSL would apply and the school would be prohibited from re-disclosing the CPS records. Information that would identify the source of a report to the SCR is subject to a heightened level of confidentiality and is available to only a few of the list of those who otherwise have access to SCR and CPS records (for example, law enforcement agencies and courts). The subject of the report to the SCR and other persons named in the report have access to the report made to the SCR but do not have access to source information from such report absent permission from the source to reveal the source's identity or a court order giving them such access.

References:

Chapter 543 of the Laws of 2006 (S.8183/A 11571-A)  
Section 1012 of the Family Court Act  
New York State Education Law §§ 3205, 3209-a

2007 Session Laws of New York, Chapter 193 (S.3913-A)  
New York State Social Services Law §§ 413, 419, 420, 422, 424  
18 N.Y.C.R.R. Part 432  
8 N.Y.C.R.R. § 100.10  
8 N.Y.C.R.R. § 104.1

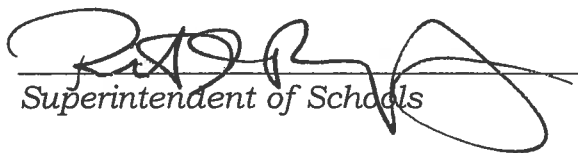
Model Policy on Educational Neglect, New York State Office of Children and Family Services

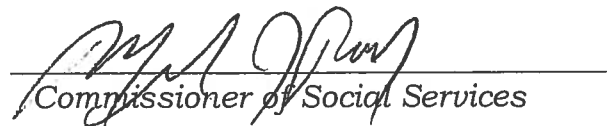
Cross Reference(s): Suspected Child Abuse and Maltreatment Policy No. 5460 and its implementing Regulation 5460-R.

Comprehensive Attendance Policy No. 5100.

Policy Adopted: *MAY 12, 2009*

AGREED TO BY:

  
\_\_\_\_\_  
Superintendent of Schools

  
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Commissioner of Social Services



