



State of Vermont
Vermont Department of Education
120 State Street
Montpelier, VT 05620-2501

MEMORANDUM

TO: Superintendents, Principals and Heads of School

FROM: Mark D. Oettinger, General Legal Counsel
Vermont Department of Education¹

CC: State Board of Education; Jeff Francis, VSA Executive Director; Ken Page, VPA Executive Director; John Nelson, Esq., VSBA Executive Director; Dwight Davis, VISA Executive Director; Martha Allen, Vermont-NEA President; Joel Cook, Esq., Vermont-NEA Executive Director; David Coriell, Governor's Education Liaison; Stephen Dale, DCF Commissioner; Joan Senecal, DAIL Commissioner

DATED: August 25, 2009

RE: (1) Educator Reporting Requirements (Child Abuse and Neglect; Vulnerable Adult Abuse, Neglect and Exploitation; and Educator Licensing); and
(2) Access to Child and Adult Abuse Registries

This is my annual reminder of the duties of educators to report abuse and neglect of children and vulnerable adults, and to report educator misconduct that could result in suspension or revocation of educator licenses. I have also included, at the end of this memorandum, information about gaining access to the child and adult abuse registries maintained within the Agency of Human Services for the purposes of your employment searches.

With respect to educator reporting requirements, there are essentially three categories: (1) reporting suspected abuse or neglect of children to the Department for Children and Families (hereinafter "DCF"), (2) reporting suspected abuse, neglect or exploitation of vulnerable adults to the Department of Disabilities, Aging and Independent Living, and (3) reporting educator misconduct to the Commissioner of Education for the purposes of initiating a licensing investigation. Each will be explained below. Please remember that some of the conduct that falls within these categories might also fall within other policies you have adopted (sexual harassment under 16 V.S.A. §565, "conduct unbecoming a teacher" under 16 V.S.A. §1752(c), *etc.*). While you should not ignore these other policies if such situations arise, this reminder is exclusively about the above three categories of educator reporting requirements.

¹ Contact Information: Mark Oettinger - (802) 828-3135, mark.oettinger@state.vt.us;
Gregory Glennon - (802) 828-5100, gregory.glennon@state.vt.us

Reports of Child Abuse and Neglect

33 V.S.A. §4913(a) requires abuse and neglect reporting by, among other professionals, psychologists, school teachers, nurses, school superintendents, school librarians, school principals, school guidance counselors, mental health professionals and social worker, any other individual who is regularly employed by a school district, or who is contracted and paid by a school district to provide student services for five or more hours per week during the school year.

The specific statutory requirement is that any one of the above-enumerated professionals "who has reasonable cause to believe that any child has been abused or neglected shall report [to DCF] or cause a report to be made [to DCF] in accordance with the provisions of section 4914 of this title within 24 hours." 33 V.S.A. §4913(a). Persons who are not mandatory reporters may report or cause a report to be made. 33 V.S.A. §4913(b). Whether or not one is a mandatory reporter, a person who files such a report in good faith has immunity from any criminal or civil liability. 33 V.S.A. §4913(c). Failure of a mandatory reporter to report can result in prosecution and a fine of \$500.00. 33 V.S.A. §4913(e)(1). "A person may not refuse to make a report...on the grounds that making the report would violate a privilege or disclose a confidential communication." 33 V.S.A. §4913(f).

As we have strongly recommended in the past, reporters should not delay in fulfilling their responsibilities under the above statute. It is not the job of the reporter to conduct a thorough investigation, or to come to a conclusion that abuse or neglect occurred, or to weigh the consequences to the educator or the students of reporting. As stated in a model policy issued in 1993 by Commissioner Mills, SRS Commissioner Young, and Attorney General Amestoy, "it is the role of school district employees to be faithful and timely reporters of abuse or neglect so that allegations can be brought to the attention of objective, trained and experienced investigators." The 1993 model policy further explained that the concept of "reasonable cause to believe that any child has been abused or neglected" does not mean that the reporter must be convinced that abuse or neglect occurred. Rather, the reporter need only suspect that abuse or neglect "might have occurred. Any doubts the employee may have shall be resolved in favor of reporting the suspicion."

If you should have any questions about the interpretation of the above law, or whether particular circumstances might fall within its ambit, please contact the DCF Centralized Intake unit at 1-800-649-5285. If you would like training on this subject for yourself or your faculty and staff, please contact the Chief of the Special Investigations Unit at DCF at (802) 241-2131.

Reports of Abuse, Neglect and Exploitation of Vulnerable Adults

There is an additional statutory requirement for reporting abuse and neglect, in this case dealing with abuse and neglect of "vulnerable adults." See 33 V.S.A. §§6901-6904. A "vulnerable adult" is a person over the age of 18 with some form of disability as described in §6902(14). The list of mandatory reporters is expanded to include, in addition to those professionals enumerated above in the child abuse reporting requirements, school bus drivers, school aides, and school employees or contractors who work regularly with students. The report must be made within 48 hours of when the mandatory reporter "knows of or has received information of abuse, neglect or exploitation of a vulnerable adult or [when the mandatory reporter] has reason to suspect that any

vulnerable adult has been abused, neglected or exploited." 33 V.S.A. §6903(a). The report is to be made to the Commissioner of the Department of Disabilities, Aging and Independent Living (the toll-free number is 1-800-564-1612, the regular number is 802-241-2345). Because high schools invariably serve students with disabilities over the age of 18, please keep this reporting requirement in mind as well.

Reports of Educator Misconduct to the Commissioner of Education

Educator misconduct is a relatively rare occurrence here in Vermont. However, when it does occur, it can have a devastating impact on students, their families, the school community, and the reputation of all educators and schools in general. Title 16 V.S.A. §1699 allows "an individual who has reasonable cause to believe a licensee has engaged in unprofessional conduct or is incompetent may, and a superintendent who has reasonable cause to believe a licensee has engaged in unprofessional conduct or is incompetent **shall** submit a written report to the commissioner concerning allegations of unprofessional conduct or incompetence about a licensee." This section also requires principals to submit reports under this section to superintendents and they may also submit it to the commissioner.

Causes for licensing action are listed in 16 V.S.A. §1698 and include the following:

(1) Unprofessional conduct which means:

(A) Grossly negligent conduct or greater, on or off duty, that places a student or students in meaningful physical or emotional jeopardy, or conduct that evidences moral unfitness to practice as an educator.

(B) Conviction for a criminal offense in which the underlying circumstances, conduct, or behavior, by gross negligence or greater, places a student or students in meaningful physical or emotional jeopardy, or conviction of a crime that evidences moral unfitness to practice as an educator.

(C) Conviction of grand larceny under 13 V.S.A. § 2501 or embezzlement as defined in subchapter 2 of chapter 57 of Title 13, provided charges were brought after July 1, 2006.

(D) Conviction of a crime charged after July 1, 2006, which involves fraudulent misrepresentation, dishonesty, or deceit, including conviction for any of the following: 13 V.S.A. §§ 1101, 1102, 1103, 1104, 1106, 1107, 1108, 3006, or 3016, provided that conviction under 13 V.S.A. §§ 2002, 2502, 2561, 2575, 2582, and 2591, if the value or amount involved is \$500.00 or less, shall not be considered a conviction under this subdivision unless it is part of a larger pattern of dishonesty, deceit, or fraud.

(E) A pattern of willful misconduct or a single egregious act of willful misconduct in violation of duties and obligations of the position.

(F) Falsification, misrepresentation, or misstatement of material information provided in connection with the application for or renewal or reinstatement of a license or endorsement.

(G) With respect to a superintendent, the failure to maintain the confidentiality and privileged status of information provided pursuant to subsection 1700(c) and subdivision 1708(f)(3) of this title.

(2) Incompetence, which means the inability or incapacity to perform the duties and competencies required by the license.

Again, while it is understandable that you, as administrators, would want to investigate any of the allegations in the above three categories of reporting requirements, it is vital that you fulfill your legally-required reporting duties as soon as possible so that objective, trained investigators can become involved immediately. Not only does this protect children, but it also can protect educators or others in cases where false reports are made (which can be very damaging to educators, parents or others against whom false reports of abuse or misconduct are sometimes made). The sooner the information is reported, and appropriate investigations are commenced by personnel affiliated with law enforcement or DCF, the value of the evidence gathered will be sustainable. It also cannot be stressed enough that fulfilling one of the reporting requirements mentioned above does not fulfill all of them. For example, reporting to the Commissioner of Education suspected sexual activity between a teacher and a minor student does not relieve you of reporting such allegations to DCF. And, in any case where you believe a crime has been committed, you can, and should call the law enforcement authorities immediately.

Access to Child and Adult Abuse Registries

Employers who work with vulnerable populations may gain access to the abuse registries maintained by the Department for Children and Families and the Department of Aging and Independent Living. 33 V.S.A. §4919(a)(3) permits the Commissioner of DCF to disclose child abuse registry information to:

an employer if such information is used to determine whether to hire or retain a specific individual providing care, custody, treatment, or supervision of children or vulnerable adults. The employer may submit a request concerning a current employee, volunteer, or contractor or an individual to whom the employer has given a conditional offer of a contract, volunteer position, or employment. The request shall be accompanied by a release signed by the current or prospective employee, volunteer, or contractor. If that individual has a record, the commissioner shall provide the registry information to the employer.

33 V.S.A. §4919(b)(3). See also 33 V.S.A. §6911(c)(3) with respect to the adult abuse registry. I have enclosed a copy of a form to be used for this purpose in connection with the child abuse registry. This form may also be accessed at the following Web address:
<http://www.dcf.state.vt.us/sites/dcf/files/pdf/RequestfromtheRegistry.pdf>

Because the safety of our students is paramount to all of us, please make sure you are familiar with, and carry out, the above reporting requirements and take advantage of the new abuse registry services from DCF and DAIL. If you have any questions at all, please let us, or one of the other agencies mentioned above, know.

Thank you for your ongoing efforts on behalf of Vermont's children.

Enclosure

REQUEST FOR INFORMATION FROM THE VERMONT CHILD ABUSE & NEGLECT REGISTRY

Instructions:

All sections must be completed and signed by both parties. Please print clearly.

Section I: Employer Requesting a Child Abuse/Neglect Registry Check.

Employer's Name _____

Employer's Mailing Address _____

Employer's Area Code & Phone Number _____

Employer's Fax Number _____ Email Address _____

Section II: Employee, Volunteer, Grantee, or Contractor.

Full Name & Middle Initial _____

Gender _____ Social Security Number _____ - _____ - _____

Date of Birth _____ Place of Birth _____

Other Names used, including Maiden Names _____

Current Mailing Address _____

Job Duties _____

Section III: Authorization of Employee, Volunteer, Grantee, or Contractor.

I hereby authorize the Department for Children and Families to disclose whether I have a Child Abuse and Neglect Registry record to the above-named employer and, if so, the details of that record.

Signature

Date



Section IV: Certification by Employer.

I hereby request information from the Vermont Child Abuse and Neglect Registry, which is maintained by the Department for Children and Families. I certify that I employ or contract with one or more individual who provides care, custody, treatment, transportation, or supervision of children or vulnerable adults—on either a paid or volunteer basis. I either currently employ the individual listed above or have made a conditional offer to the individual. I will only use the requested information to determine whether to hire or retain the individual to provide care, custody, treatment, transportation, or supervision of children or vulnerable adults.

Print Name

Title

Signature

Date

Section V: For Office Use Only:

This form was submitted incomplete and returned to the employer on _____.
Please see attached sheet for explanation.

Results of registry check as of _____:

Employee's name not found in the registry Initials: _____

Employee's name found in the registry

Substantiation Date(s) _____

Nature of Substantiation(s) _____

Initials: _____

Approved: _____



DEPARTMENT FOR CHILDREN AND FAMILIES

Child Abuse Registry Unit

103 S. Main Street, Waterbury, Vermont 05671-2401

(802) 241-2131

Note: if you are a regulated childcare provider in Vermont, this process does not apply to you. Please contact the Child Development Division at (802) 241-3110 for more information.