Child Abuse: Helping Kids Who Are Hurting

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CHILD ABUSE: HELPING KIDS WHO ARE HURTING

Almost all fifty states have mandatory reporting laws that require certain individuals to report suspected child abuse or neglect. The laws uniformly require teachers and other school employees, among others, to report suspected child abuse and neglect to appropriate child protection agencies. Educators are particularly well positioned to discover abuse due to their day-to-day interaction with students. Despite mandatory reporting


2. The statutes mandate that certain classes of professionals report suspected cases of child abuse, although who they require to report suspected abuse and neglect varies. "All fifty states currently have laws or regulations that implicitly or explicitly mandate that teachers must act on their suspicions." Robert J. Shoop & Lynn M. Firestone, Mandatory Reporting of Suspected Child Abuse: Do Teachers Obey the Law?, 46 EDUC. L. REP. 1115 (1988). Educators as mandatory reporters is the primary focus of this article.
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requirements, studies show that educators report a low percentage of the child abuse cases they observe.  

Many reasons are suggested for educators' hesitance in reporting child abuse and neglect. For instance, some educators may feel that they do not have the expertise to identify abuse or neglect. Others are unaware of the appropriate procedures for making a report. There are those who feel that the responsibility of child abuse reporting falls on medical professionals and the court system. Other educators fear that they will be sued or harassed if they make a report. Some educators do not realize that they are required to report abuse occurring outside as well as inside the school. Finally, some hesitate to report abuse because of their concern for the safety of the child involved. This article will address these concerns. It will also discuss preventive measures, and offer insight to attorneys advising school boards and educators on how to help "kids who are hurting."

I. THE RESPONSIBILITY OF REPORTING

Victims of child abuse and neglect exhibit devastating consequences as adults. Statistically, these individuals have lower IQs, a higher frequency of suicide attempts, and more alcohol-related problems. Furthermore, they are significantly more prone to become abusers themselves. Early detection and reporting of child abuse and neglect by educators can help eliminate its long-term consequences, and help prevent the continuing cycle of abuse. Alfred Alschuler, a clinical psychologist and Professor of Education at the University of Massachusetts, who works with adult victims of abuse and neglect, states: "[H]elping to stop child abuse and neglect simultaneously contains the long term human costs, like spotting and stopping a contagious disease before it becomes an epidemic." Schools are the only societal institutions that have continual daily access to children. Outside of


the family, schools can be considered one of the most important influences in a child’s life. Teachers must use this source of information wisely, and make reports of suspected abuse.

Reporting can also prevent cases from becoming so severe that they require medical or court involvement. Often by the time a case reaches the medical profession or the courts, the abuse has become excessive. Educators must intervene as soon as abuse is suspected, and prevent extensive harm from occurring.

A. Identifying Abuse

Many resources are available to assist school districts in educating school personnel to recognize signs of physical abuse, physical neglect, emotional maltreatment, and sexual abuse. Lists containing indicators of abuse in children and families can be obtained from both national and local organizations. Information is also available that suggests certain groups of children are more susceptible to abuse. For example, children with special needs tend to be more vulnerable to abuse. Additional information offers insight as to when children may be more susceptible to abuse; one such moment is report card time, when parents’ expectations are high.

B. Reporting Abuse

Wisconsin requires that a mandatory reporter have:

reasonable cause to suspect that a child seen in the course of professional duties has been abused or neglected or having reason to be-

8. Literature is available from many organizations such as the National Committee for Prevention of Child Abuse in Chicago, Illinois, the Wisconsin Committee for Prevention of Child Abuse in Madison, Wisconsin, the Department of Child Abuse and Sexual Assault Prevention and Intervention at the Department of Public Instruction in Madison, Wisconsin, the National School Board Association in Alexandria, Virginia, and the National Education Association in Washington, D.C.


10. See June B. Mullins, The Relationship Between Child Abuse and Handicapping Conditions, 56 J. SCH. HEALTH 134 (1986); see, e.g., Jane Doe “A” v. Special Sch. Dist. of St. Louis County, 901 F.2d 642 (8th Cir. 1990) (civil rights action against a school bus driver and school district for allegedly abusing handicapped students).

lieve that a child seen in the course of professional duties has been threatened with abuse or neglect and that abuse or neglect of the child will occur.12

"Reasonable cause to suspect" exists when a person of ordinary intelligence would decide that "there is a reasonable basis to suspect that child abuse has occurred."13 Once abuse is suspected, a mandatory reporter must initiate a report.14

Issues may arise when an educator gathers information to legitimize a report. Such issues may concern whether a teacher can confer with other teachers, whether parents must be informed before their child is interviewed about suspected abuse, and whether the examination of a child's body, in order to substantiate suspicions and provide a reasonable basis to make a report, constitutes an illegal search.

C. Conferring with Others

A teacher may wish to confer with other professionals before reporting suspected child abuse to the appropriate authorities. A second opinion may provide the potential reporter with additional information supporting a reasonable suspicion that abuse or neglect is occurring. However, it is the initial reporter who must follow through, and ensure a report is made. He or she is the responsible party. Since Wisconsin law is directed toward the "individual" teacher, the reporting of a suspicion of child abuse to a principal or co-worker may not fulfill a teacher's statutory duty.15

Educators want to feel confident that a report is legitimate. The laws that mandate reporting generally require a report when there is "suspicion" or "reason to believe."16 However, there is no law that requires the reporter to have proof that child abuse has occurred. Waiting for proof may involve grave risk to the child because proof may be long in coming. A report of suspected child abuse and neglect states that a child may be an abused child. Proof is to be left to the proper authorities who are specially trained in handling these sensitive situations.

13. State v. Hurd, 135 Wis. 2d at 272-73, 400 N.W.2d at 45.
14. In Wisconsin a mandatory reporter "shall immediately inform, by telephone or personally, the county department or the sheriff or city police department of the facts and circumstances contributing to a suspicion of child abuse or neglect or to a belief that abuse or neglect will occur." Wis. Stat. § 48.981(3)(a) (1990).
15. Id.
D. Interviewing Children

In Wisconsin, the County Department of Social Services or the Human Services Department has the authority to interview a child outside the child’s home or living quarters, without the permission of the child’s parent, guardian, or legal custodian, if there has been a report of abuse, neglect, or threatened abuse or neglect. The Wisconsin Attorney General has opined that public school personnel are not required to notify a child’s parents before permitting the child to be interviewed on school property. In *Landstrom v. Illinois Department of Children and Family Services*, the school’s principal, a social worker, a nurse, and a teacher interviewed two children suspected of being abused without contacting the parents. In fact, they interviewed one of the children a second time even after the parents made their objections known. The parents filed a Section 1983 action and accused the school personnel of violating the student’s right to be free from unreasonable questioning. The court decided that in this case, the school and its employees were protected from the Section 1983 claim through qualified immunity.

In Wisconsin, a person investigating a claim of suspected child abuse may choose to interview the child without the educator present. A county Department of Social Services staff member can insist upon a private interview if including school personnel would prevent disclosure, or frustrate the ability to obtain useful information. On the other hand, if a county department staff member wanted to include school personnel, that action would not be prohibited. The cooperation of a school teacher, counselor, or other person with whom the child is familiar, may assist the interviewing process and provide support to a frightened child.

E. Physical Searches of Children

The Seventh Circuit also dealt with Fourth Amendment issues in *Landstrom v. Illinois Department of Children and Family Services*. In addition to questioning the student, school personnel examined unexposed parts of a first grader’s body after she complained of soreness. The court acknowledged that “nude physical examination is a significant intrusion into the

20. Id. at 680.
22. Id.
23. Landstrom, 892 F.2d 670.
24. Id. at 671-72.
child's privacy," and that such inspections implicate "the closely related legitimate expectations of the parents . . ., protected by the Fourteenth Amendment, that their familial relationship will not be subject to unwarranted state intrusion." The court also noted that the state has "extraordinarily weighty" interests in protecting children who are suspected of being abused. Thus, the implications of Fourth and Fourteenth Amendment interests must be balanced against the "extraordinarily weighty" interests of the state.

The court's review of the case law confirmed that a clear legal norm did not exist for deciding cases involving searches where child abuse is suspected. However, other courts have concluded that public employees involved in child abuse investigations were entitled to qualified immunity from Section 1983 actions, even when the intrusion was substantially greater than the search involved Landstrom.

The court in Landstrom concluded that the parents had failed to "place the actions taken as to either child outside any "clearly established" constitutional norm," and the lower court was correct in dismissing the action.

II. INHIBITORS TO REPORTING

Even when mandatory reporters are aware of their responsibilities, and are knowledgeable about the proper procedures for making a report, many still fail to file reports of suspected abuse.

A. Fear of Retaliation

School personnel may hesitate in making child abuse reports because they fear that parents may retaliate by bringing law suits against them. However, mandatory child abuse reporting statutes provide immunity for "mandatory reporters" who report suspected cases of child abuse in "good

25. Id. at 676 (quoting Darryl H. v. Coler, 801 F.2d 893, 900-01 (7th Cir. 1986)).
26. Id.
27. Id. at 678. The court cited the following case law: Doe v. Hennepin County, 858 F.2d 1325, 1329-30 (8th Cir. 1988), cert. denied, 490 U.S. 1108 (1989) (unless "malice or improper motives" can be shown, public employees were entitled to qualified immunity for removing children from their homes due to suspected abuse); Hodorowski v. Ray, 844 F.2d 1210, 1217-18 (5th Cir. 1988) (public employees were entitled to immunity when they removed children from their homes due to suspected abuse); Robison v. Via, 821 F.2d 913, 921 (2d Cir. 1987) (public employees were entitled to immunity when they took children into custody due to suspected abuse).
faith." Furthermore, a school district was not held liable for defamation based solely upon a school official's report of suspected child abuse.

Other concerns of educators who make a report pertain to its confidentiality. Some worry that if they make a report, they or their family members may be harassed. In Wisconsin, the name of the initial reporter is to be kept confidential in all cases. Breach of confidentiality carries a fine of up to $1,000, imprisonment up to six months, or both. It is important to note that reporting is not restricted to mandatory reporters. In Wisconsin, any person "having reason to suspect that a child has been abused or neglected or reason to believe that a child has been threatened with abuse or neglect and that abuse or neglect of the child will occur" may also make a report to the proper authorities. Neither mandatory nor permissive reporters can be discharged from employment for making a report.


Any person or institution participating in good faith in the making of a report, conducting an investigation, ordering or taking of photographs or ordering or performing medical examinations of a child under this section shall have immunity from any liability, civil or criminal, that results by reason of the action. For the purpose of any proceeding, civil or criminal, the good faith of any person reporting under this section shall be presumed.


34. Id.
B. Abuse in School

Another situation where school personnel may hesitate reporting abuse is when a co-worker is suspected of abusing students in school. While every state prohibits excessive corporal punishment, only twenty states have regulations or statutes outlawing all corporal punishment.\textsuperscript{35}

Nonetheless, through collected data, a horrifying picture of brutality has emerged. In 1988, the U.S. Department of Education reported that one million school children were hit by teachers, coaches, or principals each year.\textsuperscript{36} Litigation has centered on situations where teachers or administrators have applied unreasonable or excessive use of force, and on situations when corporal punishment was used in states or districts where it is prohibited.\textsuperscript{37} Injuries due to excessive corporal punishment are not confined to injured buttocks. Excessive corporal punishment has also resulted in "a cerebral concussion and sprained neck, impaired hearing, a perforated eardrum, a sprained arm and facial abrasions, chipped teeth, and fractures of

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\textsuperscript{35} Deborah Daro et al., \textit{Reducing Child Abuse 20\% by 1990: Our Accomplishments} (The National Committee for Prevention of Child Abuse, 1990). Wisconsin is one of the states that prohibit corporal punishment by state statute. Some types of physical contact are appropriate however. For example, in Wisconsin, the law permits physical contact in certain situations which include:

\begin{itemize}
  \item \textit{(a)} Using reasonable and necessary force to quell a disturbance or prevent an act that threatens physical injury to any person.
  \item \textit{(b)} Using reasonable and necessary force to obtain possession of a weapon or other dangerous object within a pupil's control.
  \item \textit{(c)} Using reasonable and necessary force for the purpose of self-defense or the defense of others under § 939.48.
  \item \textit{(d)} Using reasonable and necessary force for the protection of property under § 939.49.
  \item \textit{(e)} Using reasonable and necessary force to remove a disruptive pupil from the school premises or motor vehicle . . . or from school-sponsored activities.
  \item \textit{(f)} Using reasonable and necessary force to prevent a pupil from inflicting harm on himself or herself.
  \item \textit{(g)} Using reasonable and necessary force to protect the safety of others.
  \item \textit{(h)} Using incidental, minor or reasonable physical contact designed to maintain order and control.
\end{itemize}

\textsc{Wis. Stat.} § 118.31(3) (1990).

To determine whether the educator acted within the exceptions listed above, the court will give deference to reasonable, good faith judgments made by an official, employee, or agent of a school board. \textsc{Wis. Stat.} § 118.31(4) (1990).


various bones throughout the body." Paddles, straps, straight pins, and lye rinses have been used to re-establish discipline.

Mistreatment of children in schools may take forms other than excessive corporal punishment. There is increasing evidence that sexual abuse is occurring in the schools. Child abuse in schools also extends into the emotional and mental realms. The result of these experiences often involves maladaptive deficiencies in physical, psychological, and social functioning. Therefore, it is critical that educators are alert for abusive situations in their own schools, and, are prepared to report them.

C. Concern for the Child’s Safety

School personnel may hesitate in making a report for fear of the child’s safety, concern that their report will break up the family unit or both. A person who reports child abuse or neglect in Wisconsin, with reason to suspect that a child’s health or safety is in danger, may request an immediate sheriff or police department investigation. However, the federal Adoption Assistance and Child Welfare Act of 1980 and Wisconsin Statute § 48.355 require that reasonable efforts be made to prevent removal of the child from his or her home. Thus, the county department will strive to assure the safety of the child, while at the same time work toward keeping the child in the home.

38. Id. at 59.
39. Id.
41. Psychological maltreatment can be associated with “rejecting, degrading, terrorizing, isolating, corrupting, exploiting, and denying emotional responsiveness.” See generally BROADHURST, supra note 9. Wisconsin defines emotional damage as harm to a child’s psychological or intellectual functioning which is exhibited by severe anxiety, depression, withdrawal or outward aggressive behavior, or a combination of those behaviors, which is caused by the child’s parent, guardian, legal custodian or other person exercising temporary or permanent control over the child and for which the child’s parent, guardian or legal custodian has failed to obtain the treatment necessary to remedy the harm. “Emotional damage” may be demonstrated by a substantial and observable change in behavior, emotional response or cognition that is not within the normal range for the child’s age and state of development. Wis. Stat. § 48.981(1)(cm) (1990).
Teachers may complain that even when they make a report, nothing is done about the problem.45 Social services operate under a legal mandate from the state. They are required to offer information about abuse before they can act. If facts are not available, the case may go no further. If this happens, and the teacher notes further abuse, another report should be filed. A second report of suspected abuse will help build a case for social services. Educators must be encouraged to document what they observe because good documentation gives social workers the information necessary to intervene.

III. CONSEQUENCES OF FAILING TO REPORT

Under Wisconsin law, a mandatory reporter who fails to report may be fined not more than $1,000, incarcerated up to six months, or both.46 Although most laws do not address the question of civil liability when child abuse is not reported, a few statutes do expressly state that civil liability applies when a failure to report is the proximate cause of further abuse.47

Section 1983 creates a type of tort liability for those acting on behalf of the state.48 Under section 1983, liability may be applied to school districts and public school officials when they violate constitutional or federal statutory rights of students.49 Liability may be imposed if a district’s supervi-

45. BROADHURST, supra note 9, at 39.
46. WIS. STAT. § 48.981(6) (1990). Penalties in other states range from a five day jail sentence to one year in jail. Fines can vary from ten dollars to one thousand dollars. See LOUIS FISHER, ET AL., TEACHERS AND THE LAW 66-68 (2d ed. 1987).
 Every person who, under color of any statute, ordinance, regulation, custom, or usage, State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.
49. See Carey v. Piphus, 435 U.S. 247 (1978); Ingraham v. Wright, 430 U.S. 651 (1977). Qualified or good faith immunity affords limited protection to certain individuals from civil rights liability. However, the Supreme Court has stated that qualified immunity is limited because if it were not, boards would not be deterred from promulgating unconstitutional policies. See Kentuckv v. Graham, 473 U.S. 159 (1985), on remand sub nom. Graham v. Wilson, 791 F.2d 932 (6th
sory officials “knew or should have known” that (1) abuse was taking place within a school, yet they failed to take remedial action, or (2) if training or supervision was grossly inadequate, and represented deliberate indifference or tacit authorization of the offensive acts.50

There is some question as to whether a special relationship exists between students and their school district which creates an affirmative duty to protect students. In DeShaney v. Winnebago County Department of Social Services,51 the U.S. Supreme Court concluded that a duty to protect may arise in “special relationships” created by the government.52 Some courts have found that this duty may exist on the part of school because the school places the child in the hands of its employees, and has the power to either leave them with the employee or to remove them.53 Failure to protect students from employees could result in Section 1983 liability for a school district.

IV. OTHER MEASURES TO PREVENT ABUSE

Several measures are discussed below that may assist in stopping the cycle of abuse and neglect in Wisconsin schools.

A. Mandatory Revocation

The Wisconsin Legislature has taken a strong stand to stop abuse and neglect. A recently created statute requires the state superintendent to revoke a teacher’s license if the educator is convicted of a felony involving a crime against children, a crime against life and bodily security, or an equivalent crime in another state or country.54 A revoked license can be reinstated six years after the conviction only “if the person establishes by


52. Id. at 197. The Court stated: “The affirmative duty to protect arises not from the State's knowledge of the individual's predicament or from its expressions of intent to help him, but from the limitation which it has imposed on his freedom to act on his own behalf.” Id. at 200. However, in DeShaney, the Court found that no duty to protect existed because the Department of Social Services had not placed the child in the position of peril. Id. at 200-01.

53. In Stoneking, the court stated that “There is thus an adequate basis from the Pennsylvania child abuse reporting and in loco parentis statutes, coupled with the broad common law duty owed by school officials to students, to conclude there was a desire on the part of the state to provide affirmative protection to students.” Stoneking, 857 F.2d at 603. See also Pagano v. Massapequa Public Sch., 714 F. Supp. 641 (E.D.N.Y. 1989).

clear and convincing evidence that he or she is entitled to [the license]."\(^5\)

The superintendent may only grant reinstatement of a license prior to the six year period if the conviction is reversed, set aside, or vacated.\(^6\)

The same statute requires an administrator of a school district, or a Co-operative Educational Service Agency ("CESA"), or the presiding officer of a governing board, to report to the state superintendent, the name of any person employed by the school district or agency, and licensed by the state superintendent if one of the following occurs:

1. The person is charged with a crime under ch. 948, including a crime specified under § 948.015, a felony with a maximum term of imprisonment of at least 5 years or a crime in which the victim was a child;
2. The person is convicted of a crime described under subd. 1 or of 4th degree sexual assault under § 940.225(3m);
3. The person is dismissed, or his or her contract is not renewed, by the employer based in whole or in part on evidence that the person engaged in immoral conduct;
4. The person resigns and the administrator has a reasonable suspicion that the resignation relates to the person having engaged in immoral conduct.\(^7\)

Furthermore, the statute requires an administrator to report any unlicensed person employed by the educational agency, if the person is convicted of a crime against children, a felony with a maximum prison term of at least five years, or a crime in which the victim was a child.\(^8\)

There are five other states that have some mandatory teacher license revocation provisions as of the writing of this article. They include Utah,\(^9\) Oklahoma,\(^6\) New York,\(^6\) Oregon,\(^6\) and California.\(^6\)

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\(^7\) Id.
\(^8\) Id. Wisconsin also has legislation concerning school bus drivers. Under Wis. Stat. § 343.12, the Department of Transportation shall issue a school bus endorsement to a person only if the person has not been convicted of reckless driving or other offenses within the two-year period immediately preceding the date of application or, subject to the substantial relationship to licensed activity requirement of the Fair Employment Act, the person "has not been convicted of felony or offense against public morals" within the preceding five years. Wis. Stat. § 343.12(2)(d)(e) (1970). Furthermore, the secretary of the Department of Transportation shall deny the license of a person who falls into one of the classes of persons to whom the law prohibits issuance of a license or endorsement. Wis. Stat. § 343.25(4) (1989-90); Wis. Admin. Code Trans. § 110.03(1) (Dec. 1987).
\(^6\) N.Y. Educ. Law § 805.01 (McKinney 1985).
B. School District Policies

School districts should have a policy regarding child abuse. The policy should underline the board’s concern for abused children, require the reporting of abuse and neglect in accordance to state law, and provide for administrative penalties for failure to report. Procedures for reporting must be communicated to those required to report, as well as to those considered permissive reporters. In particular special education teachers need to be educated about the indicators of child abuse because abused children often have academic difficulty and emotional disturbances. School districts should be clear that reporting is not optional, and that it is a requirement mandated by law with penalties of imprisonment, a fine, or both.

To protect educators against false allegations of child abuse, policies must be developed and communicated to teachers concerning appropriate contact with students. School districts must inform their employees that not providing proper protection to students could be interpreted as abuse.

C. Protective Measures

In Wisconsin, school districts are required to design programs to educate children on protective measures. These programs are designed to provide pupils with knowledge of effective means to recognize, avoid, prevent, and halt physically or psychologically intrusive or abusive situations which may be harmful to them, including child abuse, sexual abuse, and child enticement. Instruction needs to be developed which will assist students to develop responses to these situations instead of relying on reactive measures.

67. For ideas on teaching children defensive methods, see Sheila K. Hollander, Coping with Child Sexual Abuse through Children’s Books, 23 ELEMENTARY SCH. GUIDANCE & COUNSELING 183 (1989). Comics featuring “Spiderman” on emotional abuse, sexual abuse, and physical abuse are available through the Wisconsin Committee for Prevention of Child Abuse in Madison, Wisconsin, and from the National Committee for Prevention of Child Abuse in Chicago, Illinois. The Chicago office has a variety of materials that can be ordered.
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Schools may wish to consider targeting particular groups of children for instruction on protective behaviors. For example, schools should provide programs for latchkey children or those identified as at-risk students.

D. Helping the Family

Although social service agencies are available to treat parents, the child’s school can offer help as well. Schools can provide programs and services which can directly benefit abusive parents, as well as others who are having difficulty raising their children. For example, parent education programs may be offered through the school. Such programs can emphasize parenting skills, assist parents in dealing with specific problems, and offer alternative ways to discipline children. Schools may also offer an early childhood program which emphasizes the process of child development. Such a program would offer parents insight as to realistic expectations of children, and how parents can enhance their child’s development. Adult education programs may be another option for schools to offer. These might include high school equivalency, occupational training, or recreation programs. All of the programs discussed above can help parents by providing them with an opportunity to learn, to meet new friends, and to pursue new interests - the kinds of things that are important to break the pattern of isolation that is commonplace in abusive and neglectful parents.

V. CONCLUSION

It is critical that educators appreciate how important their role is in making reports. Helping to stop child abuse and neglect is a courageous act. A report sets in motion the helping process for both the child and for the family. Educators can be the key to starting this healing process and “helping kids who are hurting.”

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68. See BROADHURST, supra note 9, at 43.

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