

CHILD ABUSE AND NEGLECT: REPORTING OBLIGATIONS

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1. What does the law require with regard to child abuse and neglect?

“Every person, including [not an exhaustive list] a licensed physician; a resident or an intern examining, attending or treating a child; a law enforcement officer; and judge presiding during a proceeding; a registered nurse; a visiting nurse; a schoolteacher; a school official; a social worker acting in an official capacity; or a member of the clergy who has information that is not privileged as a matter of law, who knows or has a reasonable suspicion that a child is an abused or neglected child shall report the matter immediately to:

- (1) a local law enforcement agency;
- (2) the department [‘department’ means the children, youth and families department (CYFD), unless otherwise specified]; or
- (3) a tribal law enforcement or social services agency for any Indian child residing in Indian country.”

NMSA 1978, §32A-4-3; see also NMSA 1978, §32A-1-4 F and 6.29.1.9 D(3) NMAC.

Let’s break this down.

2. What is child abuse?

Subsection B of the relevant portion of the New Mexico Children’s Code [NMSA 1978, §32A-4-2 B] defines “abused child” as follows:

B. “abused child” means a child:

- (1) who has suffered or who is at risk of suffering serious harm because of the action or inaction of the child’s parent, guardian or custodian;
- (2) who has suffered physical abuse, emotional abuse or psychological abuse inflicted or caused by the child’s parent, guardian or custodian;
- (3) who has suffered sexual abuse or sexual exploitation inflicted by the child’s parent, guardian or custodian;
- (4) whose parent, guardian or custodian has knowingly, intentionally or negligently placed the child in a situation that may endanger the child’s life or health; or
- (5) whose parent, guardian or custodian has knowingly or intentionally tortured, cruelly confined or cruelly punished the child;

3. What is child neglect?

Subsection E of the relevant portion of the New Mexico Children’s Code [NMSA 1978, §32A-4-2 (F)] defines “neglected child” as follows:

F. “neglected child” means a child:

- (1) who has been abandoned by the child’s parent, guardian or custodian;
- (2) who is without proper parental care and control or subsistence, education, medical or other care or control necessary for the child’s well-being because of the faults or habits of the child’s parent, guardian or custodian or the failure or refusal of the parent, guardian or custodian, when able to do so, to provide them;
- (3) who has been physically or sexually abused, when the child’s parent, guardian or custodian knew or should have known of the abuse and failed to take reasonable steps to protect the child from further harm;

- (4) whose parent, guardian or custodian is unable to discharge that person's responsibilities to and for the child because of incarceration, hospitalization or physical or mental disorder or incapacity; or
- (5) who has been placed for care or adoption in violation of the law; provided that nothing in the Children's Code shall be construed to imply that a child who is being provided with treatment by spiritual means alone through prayer, in accordance with the tenets and practices of a recognized church or religious denomination, by a duly accredited practitioner thereof is for that reason alone a neglected child within the meaning of the Children's Code; and further provided that no child shall be denied the protection afforded to all children under the Children's Code;

4. *Who is required to report child abuse and neglect?*

"Every person, including [not an exhaustive list] a licensed physician; a resident or an intern examining, attending or treating a child; a law enforcement officer; a judge presiding during a proceeding; a registered nurse; a visiting nurse; a schoolteacher; a school official; a social worker acting in an official capacity; or a member of the clergy who has information that is not privileged as a matter of law, who knows or has a reasonable suspicion that a child is an abused or neglected child shall report the matter. . . ." NMSA 1978, §32A-4-3; see also 6.29.1.9 D(3) NMAC.



5. *When am I required to report?*

Immediately, which has been construed by regulation to mean the same day.

**CYFD's Statewide Central Intake child abuse hotline
(1-855-333-SAFE [7233] or #SAFE from a cell phone)**

"[S]chool districts and charter schools shall include in their policies a requirement that all personnel shall ***immediately*** report suspected child abuse or neglect to either a law enforcement agency, the New Mexico children, youth and families department, or a tribal law enforcement or social services agency for any Indian child residing on tribal land[.]" (Emphasis added) 6.29.1.9 D(3)(b) NMAC.

"[S]chool personnel detecting suspected child abuse or neglect, including suspected crime of child abuse, shall ***immediately – i.e., the same day*** – report their observations to" law enforcement, CYFD, or a tribal enforcement or social services agency for any Indian child residing on tribal land. (Emphasis added) 6.29.1.9 D(3)(e).

6. *Do I have to confirm that a child is being abused or neglected before I report?*



No. As quoted in number 1, above, "Every person . . . who knows or has a ***reasonable suspicion*** that a child is an abused or neglected child shall report the matter . . ." (Emphasis added) NMSA 1978, §32A-4-3.

"School districts and charter schools shall include in their policies a requirement that all personnel shall immediately report ***suspected*** child abuse or neglect to either a law enforcement agency, the New Mexico children, youth and families department, or a tribal law enforcement or social services agency for any Indian child residing on tribal land[.]" (Emphasis added) 6.29.1.9 D(3)(b) NMAC.

“School district and charter schools shall **not** require their personnel to first report to or notify designated school personnel or go through their chain of command before making the mandatory report described[.]” (Emphasis added) 6.29.1.9 D(3)(c) NMAC.

7. To whom do I report?



Law enforcement, CYFD, tribal law enforcement or social services agency.

“School districts and charter schools shall include in their policies a requirement that all personnel shall immediately report suspected child abuse or neglect to either a **law enforcement agency, the New Mexico children, youth and families department, or a tribal law enforcement or social services agency for any Indian child residing on tribal land**[.]” (Emphasis added) 6.29.1.9 D(3)(b) NMAC.

8. Do I have to let the administration know before I report to law enforcement, CYFD, or a tribal law enforcement or social services agency?

No. “School districts and charter schools shall **not** require their personnel to first report to or notify designated school personnel or go through their chain of command before making the mandatory report described[.]” (Emphasis added) 6.29.1.9 D(3)(c) NMAC.

9. What if I was wrong or made a mistake?

You will be presumed to have acted in good faith and will be immune from liability.

“Anyone reporting an instance of alleged child neglect or abuse or participating in a judicial proceeding brought as a result of a report required by Section 32A-4-3 NMSA 1978 is **presumed to be acting in good faith and shall be immune from liability**, civil or criminal, that might otherwise be incurred or imposed by the law, unless the person acted in bad faith or with malicious purpose.” (emphasis added) NMSA 1978, §32A-4-5(B).

10. Can the District, by policy, excuse me from my reporting obligation?

No. “[N]o school district or charter school shall adopt a policy that relieves any personnel of their duty to report suspected child abuse or neglect[.]” 6.29.1.9 D(3)(d) NMAC.

11. What does the law specifically require of school districts and school personnel?

The New Mexico Administrative Code clearly delineates the school district’s and school employee’s responsibilities with regard to reporting suspected child abuse or neglect. See 6.29.1.9 D(3)(a) through (i).

(3) The detection and reporting of child abuse or neglect is required by both the Children's Code (Section 32A-4-3 NMSA 1978) and the Public School Code (Section 22-5-4.2 NMSA 1978). Abuse of a child under the Children's Code refers to the physical, sexual, emotional or psychological abuse of a child by a parent, guardian or custodian. According to the Children's Code, failure to report abuse or neglect of a child is a misdemeanor. The terms “abuse” and “neglect” are defined in detail in Section 32A-4-2 NMSA 1978 of the Children's Code. There is also the crime of child abuse, which consists of anyone who knowingly, intentionally, negligently or without cause, causes or permits a child to be placed in a situation

of endangerment to the child's life or health, torturing or cruelly confining a child, or exposing a child to the inclemency of weather. To address the detection and reporting of child abuse or neglect in public schools:

- (a) school districts and charter schools shall adopt written policies that establish a process for the coordination and internal tracking of child abuse or neglect reports made by district personnel;
- (b) school districts and charter schools shall include in their policies a requirement that all personnel shall immediately report suspected child abuse or neglect to either a law enforcement agency, the New Mexico children, youth and families department, or a tribal law enforcement or social services agency for any Indian child residing on tribal land;
- (c) school districts and charter schools shall not require their personnel to first report to or notify designated school personnel or go through their chain of command before making the mandatory report described in Subparagraph (c) of Paragraph (3) of Subsection D of 6.29.1.9 NMAC;
- (d) no school district or charter school shall adopt a policy that relieves any personnel of their duty to report suspected child abuse or neglect;
- (e) school personnel detecting suspected child abuse or neglect, including the suspected crime of child abuse, shall immediately – i.e., the same day – report their observations to one of the offices designated in Subparagraph (e) of Paragraph (3) of Subsection D of 6.29.1.9 NMAC;

Subsections (f) through (i), omitted in this handout, address mandatory annual training.



PRACTICE POINTERS

- **Report.**
 - It's the law.
 - Rely on the presumption of good faith and immunity.
 - Err to the side of protecting the child.
- **Document your observations.**
 - Record your observations; facts without commentary, interpretation, speculation.
 - Turn your documentation over to the proper authority, i.e., the entity to whom you reported or who, upon show of proper identification, responds to the call.
- **Cooperate with the authority who is investigating the report.**
- **Maintain strict confidentiality.**



The information in this handout was created by Walsh Gallegos Treviño Russo & Kyle P.C. It is intended to be used for general information only and is not to be considered specific legal advice. If specific legal advice is sought, consult an attorney.