

# CLIENT NEWS BRIEF

## Recent Cases Emphasize Need for Education and Training Regarding the Mandatory Reporting of Suspected Child Abuse

At the recent California School Board's Association (CSBA) Annual Education Conference in San Diego, Lozano Smith attorneys, school district representatives, and the Contra Costa County Child Abuse Prevention Council presented on "The Board and Mandatory Child Abuse Reporting." One of the panel's themes was the need for school districts to provide adequate training and education to their staff and their student and parent populations regarding mandatory child abuse reporting. Several recent cases have made that need all the more apparent, each emphasizing that statutory duties must be carried out, and that there is very little room for mandatory reporters to exercise their own discretion in reporting child abuse.

Pursuant to The Child Abuse and Neglect Reporting Act (the "Act", Penal Code §§ 11164, et seq.), most school district employees are "mandatory" reporters, meaning that they must report suspected child abuse to appropriate authorities. **Failure to report constitutes a crime under California law and carries civil liability.** While school district employees often attempt to use their own discretion to determine whether abuse is truly occurring or whether to report it, a series of court cases make clear that employees have very little discretion. For this reason, it is critical that staff be well educated on their responsibilities under California's mandatory reporting laws.

### *Administrator Criminally Convicted for Failure to Report*

In 2012, a public school principal was convicted in a Santa Clara County Superior Court of a criminal misdemeanor for failing to report an incident involving an allegation against a teacher. The jury found that the facts known to the principal amounted to a reasonable suspicion of sexual misconduct by the teacher against a student. Although the judge could have imposed both jail time and a monetary fine, the principal was sentenced to two years of probation and a public service requirement of 100 hours. The principal will have a criminal record as a result of the conviction. Significantly, evidence at the trial suggested that neither the principal nor the school district's human resources director had ever received training on the duties of mandatory reporters.

### *Court Holds that Employee Has No Discretion Regarding To Whom A Report is Made or Released*

The importance of strict compliance with the reporting statutes was again spelled out in a recent case involving to whom the report must be made, and to whom it may be released. In *Cuff v. Grossmont Union High School District* (2013) 221 Cal.App.4th 582, a divorced father took his two sons to a school counselor, where the boys reported abuse by their mother. The counselor reported the suspected abuse to the local Child Welfare Services (CWS). CWS instructed the counselor to contact a law enforcement officer who would take the boys into protective custody. The school counselor contacted the school resource officer as well as other governmental agencies. The counselor later claimed that one of the agencies to whom she spoke suggested that she allow the father to

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accompany the boys to the sheriff's department along with a copy of the suspected child abuse report, so that the authorities could take the boys into custody. The counselor gave the father a copy of the report and directed him to a local law enforcement agency. Instead of bringing the boys there, the father, who did not have legal custody, went to court to seek a protective order against his ex-wife, and filed paperwork seeking custody of the boys, with the report attached as an exhibit. Ultimately, the court denied the father's requests, and the mother retained custody.

The mother thereafter sued the counselor and the school district for, among other things, unlawfully disclosing the report to the father. The school district sought dismissal of the lawsuit. While the trial court granted the school district's request, the court of appeal reversed that decision, allowing the suit to proceed against both the district and its employee. The appellate court noted that the relevant portion of the Act required reporting to "any police department or sheriff's department, not including a school district police or security department . . . or (to) the county welfare department," and not to any other persons. The counselor violated the statutory requirement that the report be kept confidential by releasing it to the father. The court further emphasized that because the statute did not afford the school employee the discretion as to whether and how to report, the employee could be personally liable, either or both in a civil lawsuit or in a criminal prosecution. The court rejected the school district's argument that the abuse report was a "student record," which could be released as necessary to protect the health and safety of the students under the Education Code. This case will now return to the trial court for further proceedings, presumably including a determination of the liability of the school district and the counselor.

This case again emphasizes the need for school districts to train their employees regarding reporting obligations. Such training is both for the safety of the employees, so they are not needlessly exposed to liability, and of the students, so they receive the intended protection from abuse.

## *Liability Related to Knowingly False Accusations*

At Lozano Smith's recent CSBA presentation, a question was raised as to what happens in the instance of a false report. As discussed by the panel, it is generally not up to the school district's employees to make a final or determinative decision as to whether abuse has occurred. Rather, they must report whenever there is "reasonable suspicion." This was likened by the presenters to a fire alarm: it is the job of such a device to sound the alarm, not to determine whether there definitely is a fire. Similarly, school district employees must notify appropriate social welfare and/or police agencies when they have a reasonable suspicion, and allow those agencies to conduct the investigation and determine whether there is only smoke, or there is actually fire.

Another recent case sheds light on the potential consequences of false reporting. In November 2013, in Santa Clara County Superior Court, a private school teacher falsely accused of sexual misconduct by several students and their parents won a defamation case against the families, and received a verdict in his favor of \$362,000, in addition to punitive damages that are still to be determined. It is noteworthy that the suit and verdict were against the false accusers, and not the private school.

When questions arise as to the consequences of false reporting, and how to balance the tension between the desire to protect children and the possibility of untrue accusations against employees, this case serves as a good reminder that the employee does have potential redress against the accusers if she or he can prove that the accusations were knowingly false.

The CSBA presentation included discussion by the panelists on the importance of educating not only school district employees, but also the students and the public. Public understanding of the district's obligations, and also of the consequences of false reporting, may help create greater awareness both of what must be done and also what should not be done when it comes to reporting suspected abuse. During the panel presentation, a participant shared a story of an elementary school student who recently received training from her school district about child

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abuse detection and reporting, and used this information to avoid a potentially abusive situation. The training gave the student the tools to rescue both herself and her mother from harm's way.

To receive a copy of the materials from Lozano Smith's recent CSBA presentation, please contact either [Harold Freiman](#) or [Manuel Martinez](#). For assistance with mandated reporting issues, please feel free to contact one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#), or download our [Client News Brief App](#).