

**PROCEDURES FOR INVESTIGATING ALLEGATIONS OF ABUSE OF STUDENTS BY
SCHOOL PERSONNEL** **NO. 507.9R1**

- A. Designation of Level One Investigators.** The superintendent shall recommend to the Board of Directors, and the Board shall appoint, each year at least one person to serve as the District's Level One investigator and at least one person to serve as an alternate. The names and/or positions and telephone numbers of the investigators and alternates will then be posted in each school building and communicated through student handbooks or a newspaper to District parents.
- B. Designation of Level Two Investigators.** The District will refer complaints to the Burlington Police Department or to other law enforcement agencies for a second level of investigation, if necessary.
- C. General.** The Level One investigator, upon receipt of a report alleging abuse, should refer to the Iowa Department of Education rules at 281 Iowa Administrative Code Chapter 102 and to the Department of Education booklet entitled "Model Policy on Identifying and Reporting Child Abuse and Model Policy and Rules on Procedures for Investigating Allegations of Abuse of Students by School Employees." The Level One investigator should consult with the District's legal counsel to ascertain if any changes have been made to the procedures.
- D. Jurisdiction.** These procedures only cover situations where **all** of conditions 1-4 are met:
1. The alleged perpetrator is an employee of the District at the time of the making of the report. ("Employee" includes persons actually employed by the District, persons serving as volunteers for the District, and persons employed by an agency to provide services to District students, such as AEA personnel working at the District.)
 2. The alleged victim must have been a student of the District at the time of the alleged abuse.
 3. The alleged abuse must have occurred on school grounds, during school time, on a school-sponsored activity, or in another school-related context. For example, a teacher who abuses a student from his/her class while tutoring the student at the teacher's home would be in a school-related context. However, abuse by a bus driver to a student the driver does not transport and knows primarily through the neighborhood is not covered by these procedures.
 4. The alleged abuse must be physical or sexual abuse as defined in Department of Education rules and these procedures. Mental or verbal abuse is not covered by these procedures.
 5. Note: Allegations of abuse of students by school employees which are **not** covered by these rules shall be investigated by the responsible building principal or other District-designated person, but the requirements of these procedures need not be followed. For example, an allegation that a student was inappropriately physically disciplined by an employee, but which did not lead to physical injury visible for at least 24 hours, should be investigated and appropriate remedial action taken, if necessary.

E. Filing of Reports of Abuse of Students by School Employees.

1. Any person may file a written report of abuse of a student by a school employee. (The District requires that **any** District employee who is aware of, or reasonably suspects, that an employee has abused a student must report this to the Level One investigator in writing.) The person must sign the report. A witness to the signing of the complaint who is at least 18 years of age, must also sign the report. Any employee receiving a report shall immediately give the report to the designated Level One investigator or alternate and shall not reveal the existence or extent of the report to any other person.
2. The report shall be filed on the form prepared by the Iowa Department of Education. If a written report is submitted in other form, the person shall be asked to complete the official form. If a verbal report is made, the person shall have these procedures explained or shall be given a copy of these procedures and asked if he/she wishes to initiate the procedures by filing a written report.
3. If the person does not complete the form in its entirety, it shall still be accepted and investigated, as long as the form is signed and witnessed, gives the name of the student and of the employee and a description of the alleged abuse. The Level One investigator should assist in completing the form, if necessary.

F. Physical Abuse Allegations.

1. "Physical abuse" is defined in Department rules to mean **nonaccidental physical injury** to the student as a result of the actions of a school employee. "Injury" occurs when evidence of it is still apparent at least 24 hours after the occurrence. If there is evidence, although slight (e.g. a scratch, bruise, lump, etc.), 24 hours after the incident, the investigator should treat it as an "injury." If there is no evidence of injury 24 hours after the incident, the investigator should dismiss the report for lack of jurisdiction. However, the investigator should refer the matter to the employee's supervisor for investigation and follow-up. [See D(5) above.]
2. Upon receipt of the report, the Level One investigator shall make and provide copies of the report to the person filing, to the student's parent or guardian if different from the person filing, and to the employee's supervisor. These copies should be provided within one school day. In addition, a copy of the report shall be given to the employee at the time the employee is interviewed.
3. The Level One investigator shall immediately review the report and determine if jurisdiction exists. (See D above.) If jurisdiction does not exist, the person filing the report and the student's parent or guardian, if different from the reporter, shall be notified. The parents or guardians shall also be notified that they may contact law enforcement, contact private counsel, or file a report with the Board of Educational Examiners if the employee is licensed. [Also, the matter may still be investigated by the District. See D(5) above.]
4. If, in the Level One investigator's opinion, the magnitude of the allegations in the report suggests immediate and professional investigation is necessary, the Level One investigator may temporarily defer the Level One investigation. In cases of deferred investigation, the Level One investigator shall contact law enforcement personnel and shall notify in writing the person who filed the report, the parents or guardians, if different from the reporter, the employee's immediate supervisor and the Superintendent of Schools, that the matter has been referred to law enforcement officials.

5. If jurisdiction is found to exist and subject to paragraph F(4) above, the Level One investigator shall interview the alleged victim, the school employee and any collateral sources who may have knowledge of the incident. The employee shall be given a copy of the report at the time of questioning. If the employee requests representation, questioning should stop until the representative is present. However, the informal investigation must be completed within five school days of receipt of the report. The Level One investigator should ask to receive records and/or to communicate with any treating physician or other professional. It is suggested that written consent be obtained from the parent or guardian to receive the records. Photographs may be taken of an injury, but if this requires the removal of clothing, consent should be asked of the parents or guardians.

The investigator shall exercise prudent discretion in the investigative process to preserve the privacy interests of the individuals involved. To the maximum extent possible, the investigator shall maintain the confidentiality of the report. However, it is recommended that the following individuals be apprised of the nature of the allegations and of the pendency of the investigation: the employee's immediate supervisor and the Superintendent of Schools, and if assistance is desirable, the District's legal counsel (particularly to confirm procedural requirements). The investigator should ask each person interviewed to maintain the confidentiality of the investigation.

6. The Level One investigator is to determine if jurisdiction exists and to determine by a preponderance of the evidence, whether it is likely that an incident took place between the student and the employee. The Level One investigator is **not** to determine whether the force used was reasonable and necessary. So, for example, if there is an injury evident 24 hours after the incident inflicted by an employee upon a student in the course of quelling a disturbance, the Level One investigator must refer the matter to Level Two. "Preponderance of evidence" means reliable, credible evidence that is of greater weight than evidence offered in opposition to it.
7. Unless the investigation is deferred, within 15 calendar days of receipt of the report, the Level One investigator shall complete a written investigative report on the form provided by the Department of Education, and shall give a copy to the employee's immediate supervisor and to the superintendent, to the named employee, and to the student's parent or guardian. The person filing the report, if not the student's parent or guardian, shall not be given a copy of the investigative report, but shall **only** be notified that the investigation has been concluded and of the disposition or anticipated disposition of the case. The investigative report shall give a general review of the investigation, but witness statements and interview notes need not be attached and all witnesses need not be listed by name. The Level One investigator shall retain the original investigative report and supporting documentation. The investigative report should not be placed in the employee's personnel file unless the Level Two investigator's report confirms the abuse, the employee admits the abuse, or the employee surrenders his/her license.
8. If the complaint has been withdrawn, the allegation recanted, the employee has resigned, the employee has admitted the violation, or the employee has agreed to relinquish his/her license, the Level One investigator may conclude his/her investigation. Note: If the investigation is concluded in this manner, it should be noted on the Investigative Report and copies distributed as specified in paragraph F(7). If a licensed employee has admitted abusing the student or has agreed to surrender the employee's license, the Level One investigator shall file a complaint with the Board of Educational Examiners on behalf of the District and signed by the superintendent. If the licensed employee has resigned without admitting a violation, the Level One investigator shall discuss with the superintendent whether a complaint should be filed with the Board of Educational Examiners. The Level One investigator shall contact the District's legal counsel for assistance in filing the complaint.

9. If the Level One investigator determines that it was likely an incident occurred, and the employee has **not** admitted the violation, resigned, or agreed to surrender his/her license, the Level One investigator shall refer the matter to the Level Two investigator.
10. Upon receipt of the Level Two investigator's report, the Level One investigator shall forward copies of the Level Two report to the student's parent or guardian, to the employee, to the employee's immediate supervisor, and to the superintendent. The person filing the initial report, if not the student's parent or guardian, shall be notified of the disposition of the case, but shall not be provided a copy of the Level Two investigator's report.
11. If the Level Two investigator concludes that abuse occurred by a licensed employee, the Level One investigator shall file a complaint with the Board of Educational Examiners on behalf of the District and signed by the superintendent. The Level One investigator should contact the District's legal counsel for assistance in filing the complaint.
12. The Level One investigator shall arrange, upon request, for counseling services for the student through the District's or the AEA's counseling services, or by referral (at parent expense) to community resources.

G. Sexual Abuse Allegations.

1. "*Sexual abuse*" is defined in Department of Education rules to mean (a) any sexual offense as defined by Iowa Code chapter 709 or Iowa Code section 728.12(1), (b) encouraging the student to engage in prostitution, (c) inappropriate, intentional sexual behavior, or (d) sexual harassment. This covers a wide variety of behaviors.

Chapter 709 prohibits the following sexual offenses:

- §709.1(1) Any sex act between persons when the act is done by force or against the will of the other (including threats of violence, while the victim is under the influence of a drug inducing sleep or otherwise in a state of unconsciousness).
- §709.1(2) Any sex act between persons when the act is performed with a participant suffering from a mental defect or incapacity which precludes giving consent or lacks the mental capacity to know right and wrong in sexual matters.
- §709.1(3) Any sex act with a person under 14 years of age.
- §709.7 Using force, intimidation, or false pretenses to entice a person who is not a prostitute to enter a brothel with intent to cause such person to become an inmate there or to detain a person in a brothel against the person's will.
- §709.8 For any person 18 years of age or older to perform any of the following acts with a person under age 14, unless married to the person, for the purpose of arousing or satisfying the sexual desires of either of them: fondle or touch the pubes or genitals of the child, permit or cause a child to fondle or touch the person's genitals or pubes, solicit the child to engage in a sex act, inflict pain or discomfort upon the child or permit the child to inflict pain or discomfort on the person.
- §709.9 Exposing the person's genitals or pubes or committing a sex act in the presence of or view of a third person if done to arouse or satisfy the sexual desires of either party and the person reasonably should know that the act is offensive to the viewer.

- §709.12 For any person 18 years of age or older to commit any of the following acts with a person under age 14, not the person's spouse, for the purpose of arousing or satisfying the sexual desires of either: fondle or touch the inner thigh, groin, buttock, anus, or breast of the child, touch the clothing covering the immediate area of the inner thigh, groin, buttock, anus, or breast of the child; solicit or permit a child to fondle or touch the inner thigh, groin, buttock, anus or breast of the child, or solicit a child to do any of such acts.
 - §709.14 For any person 18 years of age or older who is in a position of authority over the minor to force, persuade, or coerce the minor, with or without consent, to disrobe or partially disrobe for the purpose of arousing or satisfying the sexual desires of either of them.
- §709.15 For any nurse, counselor, psychologist, social worker or mental health provider to engage in any sexual conduct with an emotionally dependent client for the purpose of arousing or satisfying the sexual desires of the counselor or therapist or the client, including, but not limited to, kissing, touching the clothed or unclothed inner thigh, breast, groin, buttock, anus, pedes or genitals.

Section 728.12 prohibits the following:

- §728.12(1) persons from employing, using, persuading, inducing, enticing, coercing, permitting, or otherwise causing a child to engage in a prohibited sexual act or in the simulation of a prohibited sexual act if the person has reason to know or intends that the act may be photographed, filmed, or otherwise preserved.

"*Sexual harassment*" is defined in Department rules and in Board policy as unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature when:

- a. Submission to such conduct is made either explicitly or implicitly a term or condition of the student's educational opportunities or benefits; or
- b. Submission to or rejection of such conduct by a student is used as the basis for educational decisions affecting that student; or
- c. Such conduct has the purpose or effect of substantially interfering with a student's education by creating an intimidating, hostile, or offensive educational environment.

"*Inappropriate intentional sexual behavior*" is not defined in the Department rules and the Level One investigator will have to use his/her discretion. It would include sexual language, inappropriate inquiries into the student's sexual activities, sexual innuendo, sexual social behaviors such as kissing or dating.

2. Upon receipt of the report, the Level One investigator shall make and provide copies of the report to the person filing, to the student's parent or guardian if different from the person filing, and to the employee's supervisor. These copies should be provided within one school day. In addition, a copy of the report shall be given to the employee at the time the employee is interviewed. Caution: See paragraph G(4) below regarding interviewing the employee.

3. The Level One investigator shall immediately review the report and determine if jurisdiction exists. (See D above.) If jurisdiction does **not** exist, the person filing the report and the student's parent or guardian, if different from the reporter, shall be notified. The parents or guardians shall also be notified that they may contact law enforcement, contact private counsel, or file a report with the Board of Educational Examiners if the employee is licensed. [Also, the matter may still be investigated by the District. See D(5) above.]
4. The Level One investigator in cases of sexual abuse reports must determine whether the act, if true, would be a sex abuse crime. Therefore, there may need to be a **partial** investigation, consisting of interviewing the alleged victim to determine if there is a crime. The allegations made in the report may be sufficient to determine that, if true, a crime was committed. If the Level One investigator determines that the act would be a crime, if true, the Level One investigator shall **not** interview witnesses, or give a copy of the complaint to the employee, or interview the employee. Rather, the Level One investigator shall immediately notify law enforcement officials. The Level One investigator shall notify the student's parent or guardian, the person making the report, if different from the parent or guardian, the employee's immediate supervisor and the superintendent of the action taken in referring the matter to law enforcement officials.
5. If the Level One investigator determines that jurisdiction exists and that the act complained of is **not** a violation of the law, but constitutes either sexual harassment or inappropriate sexual behavior, the Level One investigator shall interview the alleged victim, the school employee and any collateral sources who may have knowledge of the incident. The alleged victim must be interviewed no later than five days from receipt of the report. The employee shall be given a copy of the report at the time of questioning. The Level One investigator shall not interview the employee until after a determination is made that jurisdiction exists, the alleged victim has been interviewed, and a determination made that the matter will not be deferred. If the employee requests representation, questioning should stop until the representative is present. The Level One investigator should ask to receive records and/or to communicate with any treating physician or other professional. It is suggested that written consent be obtained from the parent or guardian to receive the records. Before interviewing a child in pre-kindergarten through sixth grade, the parent, guardian or legal custodian shall be notified of the date and time of the interview and of the right to be present or to see and hear the interview or to send a representative in the parent's place.

The investigator shall exercise prudent discretion in the investigative process to preserve the privacy interests of the individuals involved. To the maximum extent possible, the investigator shall maintain the confidentiality of the report. However, it is recommended that the following individuals be apprised of the nature of the allegations and of the pendency of the investigation: the employee's immediate supervisor and the superintendent, and if assistance is desirable, the District's legal counsel (particularly to confirm procedural requirements). The investigator should ask each person interviewed to maintain the confidentiality of the investigation.

6. The Level One investigator is to determine if jurisdiction exists and to determine by a preponderance of the evidence whether it is likely that an incident took place between the student and the employee.

"Preponderance of evidence" means reliable, credible evidence that is of **greater weight** than evidence offered in opposition to it.

7. Unless the investigation is deferred, within 15 calendar days of receipt of the report, the Level One investigator shall complete a written investigative report on the form provided by the Department of Education, and shall give a copy to the employee's immediate supervisor and to the superintendent, to the named employee, and to the student's parent or guardian. The person filing the report, if not the student's parent or guardian, shall not be given a copy of the investigative report, but shall **only** be notified that the investigation has been concluded and of the disposition or anticipated disposition of the case. The investigative report shall give a general review of the investigation, but witness statements and interview notes need not be attached and all witnesses need not be listed by name. The Level One investigator shall retain the original investigative report and supporting documentation. The investigative report should not be placed in the employee's personnel file unless the Level Two investigator's report confirms the abuse, the employee admits the abuse, or the employee surrenders his/her license.
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9. If the Level One investigator determines that it was likely an incident occurred, and the employee has **not** admitted the violation, resigned, or agreed to surrender his/her license or certificate, the Level One investigator shall refer the matter to the Level Two investigator.
10. Upon receipt of the Level Two investigator's report, the Level One investigator shall forward copies of the Level Two report to the student's parent or guardian, to the employee, to the employee's immediate supervisor, and to the superintendent. The person filing the initial report, if not the student's parent or guardian, shall be notified of the disposition of the case, but shall not be provided a copy of the Level Two investigator's report.
11. If the Level Two investigator concludes that abuse occurred by a licensed employee, the Level One investigator shall file a complaint with the Board of Educational Examiners on behalf of the District and signed by the superintendent. The Level One investigator should contact the District's legal counsel for assistance in filing the complaint.
12. The Level One investigator shall arrange, upon request, for counseling services for the student through the District's or the AEA's counseling services, or by referral (at parent expense) to community resources.

H. Safety of Students. The Level One investigator may recommend, or the superintendent (or designee) on his/her own initiative may take, actions to protect the safety of the student(s) during the pendency of an investigation, including:

1. making arrangements so the student is not in direct contact with the employee.
2. removing the employee from service.

- I. Access to Records and Students.** The Level One investigator shall have access to educational records of the alleged victim. The Level Two investigator shall have access to the student's records if the parent or guardian consents (or if the student consents if the student is at least 18 years old or enrolled after graduation in a post-secondary institution). The Level One and Level Two investigators shall also have access to students and employees for purposes of investigating the allegations. In cases of investigation of allegations of sexual abuse, the investigator shall notify the parent, guardian, or legal custodian of a child in pre-kindergarten through grade six of the date and time of the interview and of the right to be present or to see and hear the interview or to send a representative in the parent's place.

Reviewed: ~~07/18/16~~
11/15/21

Revised: 02/27/06