

**GUIDANCE ON REPORTING OF SEXUAL ABUSE
BY PERSONS WORKING OR VOLUNTEERING
IN EDUCATIONAL PROGRAMS**



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INTRODUCTION

In 2016, the Rhode Island General Assembly enacted Section 40-11-3.3 of the General Laws. This statute requires any person who has reasonable cause to know or suspect that any child has been the victim of sexual abuse by an employee, agent, contractor, or volunteer of an educational program, as defined in § 40-11-2 to report this information to the department of children, youth and families, (“DCYF”) or its agent, within twenty-four (24) hours. In 2018, this statute was amended to create a separate reporting protocol to be followed when the mandated reporter is an employee, agent, contractor, or volunteer of an educational program. The 2018 amendment also requires that the Commissioner of Elementary and Secondary Education “promulgate policies and procedures” for the creation and handling of reports made by¹ persons in charge of educational programs to provide guidance and consistency in reporting among the many diverse educational programs in the state. This Guidance thus contains information on the reporting protocols to be followed **only** in those situations in which the mandated reporter works or volunteers in an educational program. All other persons making mandatory reports of their reasonable suspicion that any child has been the victim of sexual abuse by an employee, agent, contractor, or volunteer of an educational program must transfer this information directly to DCYF, in accordance with the statute.

A separate Guidance document, entitled “A Guide To Identifying and Reporting Child Abuse in the Schools,” revised in 2018, has been developed to assist education personnel in fulfilling their separate and distinct roles as mandatory reporters of child abuse and neglect under § 40-11-3. Under this statute, enacted in 1976, whenever any person has reasonable cause to know or suspect that any child has been “abused or neglected” as defined in §40-11-2, or has been the victim of sexual abuse by another child, they must transfer this information to DCYF directly and within twenty-four hours. It is important to note that a child is “abused and/or neglected” when the child’s physical or mental health or welfare is harmed, or threatened with harm, by his or her parent “or other person responsible for his or her welfare.” A “person responsible for the child’s welfare” is defined in §40-11-2. This definition includes parents, foster parents, guardians, persons residing in the child’s home, employees of residential facilities, and those providing out-of-home care in child day care settings. The definition does **not** include an employee, agent, contractor, or volunteer of an educational program. For this reason, reporting of child sexual abuse suspected of being perpetrated by a parent or caregiver² is required in all cases to be reported directly to DCYF under §40-11-3 whereas reporting of child sexual abuse suspected of being

¹ The language of §40-11-3.3(b) indicates that the Commissioner is to issue guidance for the creation and handling of reports “made by” the principal, headmaster, executive director, or other person in charge of the educational program, or his or her designated agent. We have inferred that in order to achieve consistency across all educational programs, the General Assembly intended the issuance of guidance for reports made both by and to the person in charge of educational program.

² or when a child is suspected of being the victim of sexual abuse by another child. Such reports also fall within the scope of reports made to DCYF under §40-11-3.

perpetrated by those working or volunteering in educational programs is required to be reported according to the procedures set forth under §40-11-3.3. The General Assembly's enactment of §40-11-3.3 in 2016 specifically addressed child sexual abuse in the school setting. It followed a number of incidents in which allegations of child sexual abuse perpetrated by persons working in educational programs shed light on the absence of reporting protocols and the need for mandatory reporting of sexual abuse occurring in the school environment.

RIGL §40-11-3.3 requires reporting by **any person** with a reasonable suspicion of child sexual abuse perpetrated by an employee, agent, contractor, or volunteer of an educational program. The required report must be made regardless of whether the child attends or at any time attended the educational program and whether or not the alleged sexual abuse occurred on school premises. **Reports are to be made directly to DCYF,³ except when the mandated reporter is an employee, agent, contractor or volunteer of an educational program. For this subgroup of mandated reporters, the reporting protocol is described in this Guidance.**

Reporting of child sexual abuse pursuant to §40-11-3.3 is a Legal Responsibility:

While educators have recognized their legal, moral and professional responsibility for reporting child abuse and neglect under §40-11-3, **Rhode Island law now requires prompt reporting of any suspicion of child sexual abuse perpetrated by a person who works in or volunteers in an educational program.** The failure to report such child sexual abuse, like the failure to report child abuse or neglect, could result in criminal and civil liability for an individual teacher, school administrator, and the school district. The failure of an educator to comply with the legal responsibility to report such suspicion could also have an impact on retention of his/her professional certificate.

It should be noted that the absence of a legal duty to report other types of misconduct and/or criminal conduct committed by persons working or volunteering in educational programs does not mean that such conduct should go unreported. Every school and school district in Rhode Island should have a clear policy and protocol in place for reporting, documenting, and follow up on reports of other types of misconduct (both criminal and non-criminal) and a clear course of action prescribed, so that when credible reports of misconduct are received, immediate steps can be taken to protect the health, safety and welfare of students and staff pending an appropriate investigation by school officials, the school district and/or law enforcement.

In addition, reports of certain types of misconduct committed by certified educators are required to be made to RIDE by their "employing agencies" under Section 1.4 B. 5 and 1.4 B.6 of the Regulations Governing the Certification of Educators in Rhode Island (2018).

³The statute requires DCYF to immediately forward the report to state police and local law enforcement. DCYF initiates an investigation of the allegations if it determines that the report meets the criteria for a child protective services investigation. See §40-11-3.3 (c)

Such reports are required to be filed with RIDE’s Office of Educator Excellence and Certification Services.

The Law:

It is important that all school employees, agents, contractors, and volunteers be made aware of the law concerning reporting suspicions of child sexual abuse and how it might affect them. Sections of Rhode Island law pertaining to mandatory reporting of child sexual abuse perpetrated by a school employee, agent, contractor or volunteer include:

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|----------------------|--|
| Section 40-11-3.3(a) | Duty to Report |
| Section 40-11-4 | Immunity from Liability |
| Section 40-11-6.1 | Penalty for failure to Report |
| Section 40-11-3.3(c) | Duty of DCYF to initiate an investigation and forward report to state police and local law enforcement |
| Section 40-11-13 | Confidentiality of Reports and Records ⁴ |

DEFINITIONS:

“**sexual abuse**” is not defined in §40-11-3.3; it is also not defined in §40-11-2;

Sexual abuse is commonly considered to include:

- non-consensual sexual contact of any kind; or
- sexual offenses against a child as such sexual offenses are defined by Title 11, chapter 37, entitled “Sexual Assault,” as amended; or
- an act committed against a child involving sexual penetration or sexual contact if the child is under fifteen (15) years of age; or if the child is fifteen (15) years or older and (1) force or coercion is used by the perpetrator, or (2) the perpetrator knows, or has reason to know, that the victim is a severely impaired person as defined by the provisions of §11-5-11, or physically helpless as defined by the provisions of §11-37-1(6).
- use of the child for sexual stimulation
- sexual exploitation, such as using the child for pornography or prostitution

“**Reasonable cause to know or suspect**” means that it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing, when appropriate, on the person’s training and experience, to

⁴ Confidentiality under this section extends to records concerning reports of child abuse and neglect, including reports made to DCYF. An interpretation of this provision could be made to include records concerning reports of child sexual abuse under §40-11-3.3, but no such interpretation has been made as of the time of issuance of this Guidance.

suspect child sexual abuse.⁵ “Reasonable cause to know or suspect” does not require certainty that child sexual abuse has occurred nor does it require a specific medical indication of child sexual abuse; any “reasonable cause to know or suspect” is sufficient.

“**educational program**” means any public or private school, including boarding schools, or any home-schooling program.

THE PROTOCOL:

Who is required to report:

- I. Any employee, agent, contractor, or volunteer of an educational program who has reasonable cause to know or suspect that any child has been the victim of sexual abuse by an employee, agent, contractor, or volunteer of an educational program must immediately transfer that information to the principal, headmaster, executive director, or other person in charge of the educational program, or his or her designated agent.

The duty to report rests with the person who has reasonable cause to know or suspect that any child has been the victim of such sexual abuse. In a school setting, the person with the duty to report includes teachers, aides, principals, custodians, school bus drivers, substitute teachers, secretaries, persons working as consultants, persons working as independent contractors and volunteers. Reasonable cause may result from personal observation, admission or response from a child or any communication (even if secondhand or hearsay) which would suggest to a reasonable person that a child has been the victim of sexual abuse by any of the persons described above. The victimized child need not be a current student or have been a student at the school at any time and the sexual abuse need not have occurred during the school day or have taken place on school premises. Certainty is not required- only “reasonable cause to know or suspect” that a child has been the victim of sexual abuse perpetrated by an employee, agent, contractor, or volunteer of the educational program. The report must be made to the principal, headmaster, executive director, or other person in charge of the educational program, or his or her designated agent.

- II. The principal, headmaster, executive director, or other person in charge of the educational program, or his or her designated agent must, within twenty-four (24) hours transfer that information to DCYF, or its agent.
- III. If the report made above is to a person in charge of a **public** educational program, or his or her designated agent, that person shall also notify the superintendent of the public educational program.

If you suspect that a child has been the victim of sexual abuse and you do not know or have a reasonable suspicion as to the identity of the perpetrator, you

⁵ The statutory definition in §40-11-3.3 (e) omits the word “sexual” here, however, the word “sexual” is used in the next sentence of the definition.

must report your suspicion directly to DCYF within twenty-four (24) hours by calling the Child Abuse Hotline at 1-800-742-4453 (1-800-R.I.CHILD). Reports are taken at the Child Abuse Hotline twenty-four (24) hours a day, seven (7) days a week.

When to report:

- I. The report made by the person⁶ who has reasonable cause to know or suspect that any child has been the victim of sexual abuse by an employee, agent, contractor, or volunteer of an educational program **is required to be made immediately** to the principal, headmaster, executive director, or other person in charge of the educational program or his or her designated agent.
- II. The report of the principal, headmaster, executive director, or other person in charge of the educational program, or his or her designated agent, to DCYF **is required to be made within twenty-four (24) hours of his/her receipt of the information.**
- III. The report of the person in charge of a **public** educational program, or his or her designated agent, to the superintendent of the public educational program, **is required to be made immediately after⁷ the principal, headmaster, executive director or other person in charge of the educational program, or his or her designated agent, has notified DCYF, i.e. within twenty-four (24) hours of his/her receipt of the information.**

Although the law does not require that notice be provided to the parent(s) or guardian of a child for whom a report has been made to DCYF under §40-11-3.3, the parent(s) of the child should also be notified by the person in charge of the educational program immediately after his or her report has been made to DCYF, i.e. within twenty-four (24) hours of his/her receipt of the information.

How to report:

- I. The report made by the person who has reasonable cause to know or suspect that any child has been the victim of sexual abuse by an employee, agent, contractor, or volunteer of an educational program must be made by transferring that information verbally or in writing to the principal, headmaster, executive director or other person in charge of the educational program, or his or her designated agent. The name of the child, the name and position title (if

⁶ Again, for purposes of this Guidance, the person reporting is an employee, agent, contractor, or volunteer of an educational program as defined in §40-11-2. For all other persons, mandatory reporting is directly to DCYF in accordance with §40-11-3.3 and is not covered by this Guidance.

⁷The statute does not provide a timeframe for the notice to the Superintendent, but from the sequencing of the required notices in the statute and the fact that the Superintendent of a public educational program in Rhode Island is responsible for the “care and supervision” of the public schools of the district, “immediately after” the notice to DCYF is a fair interpretation of this notice requirement.

known) of the suspected perpetrator and the reason for the suspicion must be provided by the person making the report. The report must also include the name, title, and contact information of the person making the report and of every employee, agent, contractor, or volunteer of the educational program who is believed to have direct knowledge of the allegation.

- II. Upon receipt of this information, the principal, headmaster, executive director or other person in charge of the educational program, or his or her designated agent, must immediately gather additional information for the DCYF report. The report to DCYF should include the school name, address and telephone number, contact information for the principal, headmaster, executive director or other person in charge of the educational program, or his or her designated agent; the name, title, address, and telephone number of the suspected perpetrator; and, if the child is or has been enrolled in the educational program, the full name, age and grade of the child, contact information on file at school for the child's family, including the name, address and telephone number of the child's parent(s). The principal, headmaster, executive director, or other person in charge of the educational program, or his or her designated agent, must transfer all of the information received or obtained under Sections I and II to DCYF by calling the Child Abuse Hotline, 1-800-742-4453 (1-800-R.I.CHILD).⁸ Reports are taken on the Child Abuse Hotline twenty-four (24) hours a day, seven (7) days a week.
- III. The principal, headmaster, executive director, or other person in charge of a **public** educational program, or his or her designated agent, must transfer all of the information required under Sections I and II to the superintendent of the public educational program. The transfer of this information must be done verbally or in writing.

Although written reports and records are not required under the statute, a sample "Child Sexual Abuse Reporting Form" has been provided in Appendix A. This form summarizes information required to be transferred by §40-11-3.3 as well as additional information that DCYF will request.

Legal counsel for the educational program or district may recommend that the "Child Sexual Abuse Reporting Form"- or some other record- be maintained by the educational program to document that a report of child sexual abuse has been received from an employee, agent, contractor, or volunteer of the educational program, that the required information has been transferred to the principal, headmaster, executive director or other person in charge of the educational program, or his or her designated agent, transferred to DCYF within twenty-four (24) hours and also transferred to the superintendent, if the educational program is public.

⁸ DCYF has indicated that reports of child sexual abuse under R.I. Gen. Laws §40-11-3.3 will be taken in the same manner as reports of child abuse and neglect under R.I. Gen. Laws §40-11-3.

Investigation of Reports:

DCYF will immediately forward the report to state police and local law enforcement. If DCYF determines that the report meets the criteria for a child protective services investigation, it will initiate its own investigation of the allegations of sexual abuse. The child will be referred to appropriate services and support systems. In the event DCYF substantiates the allegations of sexual abuse against an employee, agent, contractor, or volunteer of an educational program, it will immediately notify the state police; the local law enforcement agency; RIDE; the educational program; the person who is the subject of the investigation; and the parent, or parents, of the child who is alleged to be the victim of the sexual abuse, of its findings.

All school personnel should make every effort to cooperate with the Child Protective Investigator during the course of DCYF's investigation and with law enforcement personnel who may also be conducting an investigation.

Immunity:

Any person participating in good faith in making a report pursuant to §40-11-3.3 shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed. Any participant shall have the same immunity with respect to participation in any judicial proceeding resulting from the report. (§40-11-4)

If at any time, questions should arise with respect to the responsibility to report or the protocol for reporting, you should contact RIDE's legal office at 401-222-8979 or the DCYF Child Protective Investigator's office at 401-528-3465.

APPENDIX A
CHILD SEXUAL ABUSE REPORTING FORM

(To be used for reports by employees, agents, contractors, or volunteers of educational programs when they have reasonable cause to know or suspect that any child has been the victim of sexual abuse by an employee, agent, contractor, or volunteer of an educational program. This form should be completed by the principal, headmaster, executive director or other person in charge of the educational program, or his or her designated agent)

Date and Time of report: _____ at _____ (a.m. - p.m.)

Manner in which report was made: _____ Verbal _____ Written

If report was in writing, attach a copy of the report to this form.

Name of Child _____

Name and position of the suspected perpetrator _____

Reason for the suspicion _____

Name, title and contact information of every employee, agent, contractor, or volunteer of the educational program who is believed to have direct knowledge of the allegation

Name, title and contact information of person making the report ⁹

Name, title and contact information of the principal, headmaster, executive director, or other person in charge of the educational program, or his or her designated agent, taking the report:

⁹ DCYF has indicated that it will follow up on anonymous reports, but reporters are encouraged to identify themselves as a means of confirming that they have satisfied their reporting responsibilities and of providing DCYF and/or law enforcement with sufficient information upon which to move forward with an investigation.

Additional Information to be included in the report to DCYF:

Name, address and telephone number of the educational program:

Full name, title, address, and telephone number of the suspected perpetrator

If the child is enrolled or has been enrolled in the educational program, the child's full name, address and telephone number and the contact information on file at school for the child's family, including the name, address and telephone number of the child's parent(s)

Date of Report to DCYF CHILD ABUSE HOTLINE: _____

Time of Report to DCYF CHILD ABUSE HOTLINE: _____

Identity of the DCYF Person Taking the Report:

If a public educational program: _____

Date of Report to superintendent: _____

Time of Report to superintendent: _____

Manner in which report to superintendent was made: _____ Verbal _____ Written

If report to superintendent was in writing, attach a copy of the report to this form.

Name of the Person in Charge of the Educational Program (or his or her designated agent)

Signature

Date: _____