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**SAMPLE POLICY ON IDENTIFYING AND  
REPORTING CHILD ABUSE**

**And**

**SAMPLE POLICY AND RULES ON  
PROCEDURES FOR INVESTIGATING  
ALLEGATIONS OF ABUSE OF STUDENTS  
BY SCHOOL EMPLOYEES**

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**Iowa Department of Education  
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## Introduction

In 1965, the Iowa General Assembly enacted a law requiring health practitioners to report suspected child abuse. In 1974, the legislature expanded the category of mandatory reporters to include certificated school employees, among other specified professionals. In 1985, another modification was made to the law to require direct reporting by mandatory reporters to the Department of Human Services (DHS) rather than (indirectly) to a superior.

Thereafter, employers of those persons required by law to report child abuse were required to train their employees who are mandatory reporters in identifying and reporting. The two-hour training is to be given within six months of initial employment and every five years thereafter. (Iowa Code § 232.69)

A school employee is not deemed to be a “person responsible for the care of a child” under the child abuse laws. Therefore, with one exception, an employee of a school who causes physical injury or otherwise abuses a student is not subject to investigation by the Department of Human Services. (That employee is, of course, subject to civil, criminal, and other administrative actions against them, including potential employment and licensure consequences.)

The exception is this: A mandatory reporter is required to report to DHS at any time the reporter has a reasonable belief that a child under the age of 12 has been sexually abused by *anyone*. The abuser need not be a “person responsible for the care of a child” or in a caretaker role. Thus, if a school employee has a reasonable belief that a child under the age of 12 has been sexually abused by a school employee, the reporter must contact DHS. (If the child is 12 or older, the reporter *may* contact DHS but is not required to do so.) It is likely DHS would contact law enforcement under the circumstances, but the mandatory reporter must contact DHS initially.

To deal with general allegations that a school employee may have abused a child in the course of that individual’s employment, the Iowa legislature, in 1989, required all schools in the state to adopt a uniform procedure for investigating such allegations. The law is found at Iowa Code § 280.17 (see page B-40). The State Board of Education adopted administrative rules, and the Department of Education formulated a sample policy for adoption by school boards of both public and private schools.

One sample policy herein deals with the mandatory duty to report suspected child abuse under Iowa Code § 232.69. The other sample policy contained in this publication covers the duty under Iowa Code § 280.17 to investigate allegations that a school employee has physically or sexually abused a student.

**It is extremely important that school employees understand the difference between the two laws and procedures.**

Neither policy deals with employment consequences for either the failure to report suspected child abuse or for committing physical or sexual abuse of a student. Iowa Code § 232.75 establishes criminal and civil liability for a mandatory reporter's failure to report suspected child abuse. The issue of employment consequences is left to the policy makers at the school or school district level.

In cases of founded abuse of students by licensed school employees, the rules do require the filing of a complaint with the State Board of Educational Examiners, the licensing and ethics board for educators, and they will do their own investigation for purposes of possible licensure consequences.

The sample policy on Identifying and Reporting Child Abuse is only a sample. It contains ethical, educational, and legal judgments. Therefore, it should not be accepted in whole or in part without sufficient consideration. It is wise, as well, to have local policies and rules reviewed by legal counsel before adoption by the local school board.

The Policy and Procedures for Charging and Investigating Allegations of Abuse of Students by School Employees is required by Iowa Code § 280.17 to be adopted by all schools. It is based on administrative rules adopted by the State Board of Education and found at 281— Iowa Administrative Code chapter 102, available on-line at <http://www.legis.state.ia.us/asp/ACODocs/agencyList.aspx>. Click on the link to Department of Education's Chapter 102; those links are updated biweekly, so it is not practical to print the precise link here.

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# **IMPORTANT: THIS IS A SAMPLE ONLY**

**Do not accept any portion of this sample as local policy or rules until after full and sufficient consideration. It is always wise to have proposed local policies and regulations reviewed by legal counsel.**

## **SAMPLE POLICY IDENTIFYING AND REPORTING CHILD ABUSE**

It is Iowa state law and the policy of the \_\_\_\_\_ School (District) that any licensed employee, certified para-educator, instructor employed by a community college, or holder of a coaching authorization, who has a reasonable belief that a child under the age of 18 has been abused, as defined by law, by a person responsible for the care of that child, as defined by law, shall report the suspected abuse verbally to the Department of Human Services (DHS) within twenty-four hours, and follow the verbal report with a written report on appropriate forms. In addition, any licensed employee, certified para-educator, instructor employed by a community college, or holder of a coaching authorization, who has a reasonable belief that a child under the age of 12 has been sexually abused by anyone, shall contact the Department of Human Services and report that suspicion as well.

The reporting of suspected abuse by non-licensed employees is encouraged.

The failure on the part of an employee who is a mandatory reporter to make a report as required by law may subject the employee to disciplinary sanctions up to and including discharge.

It is also the policy of the \_\_\_\_\_ School (District) that reports of child abuse remain confidential as required by law.

The \_\_\_\_\_ School (District) will provide the training for employees as required by law in the identification and reporting of child abuse within six months of initial employment. Within one month of initial employment, the school shall also provide each new employee who is a mandatory reporter with the legal requirements of child abuse reporting.

The \_\_\_\_\_ School (District) administration and staff will cooperate fully with DHS personnel in conducting a child abuse investigation by providing confidential access to the child named in the report, and to other children alleged to have relevant information, for the purpose of interviews. The \_\_\_\_\_ School (District) recognizes that it has no obligation to contact the parents or guardians of a child suspected to have been abused.

Date of Adoption: \_\_\_\_\_

Legal References: Iowa Code §§ 232.68, .69, .70, .71; OAG ## 82-5-2, 82-4-8

## Reporting Procedures

(To be disseminated to all licensed employees within one month of initial employment)

Any licensed staff member, certificated para-educator, instructor employed by a community college, or holder of a coaching authorization who has a reasonable belief that a child enrolled in the \_\_\_\_\_ School (District) has suffered abuse by a person responsible for the care of a child, or that a child under twelve so enrolled has suffered sexual abuse by anyone, shall observe the following procedures:

- a. Contact the Department of Human Services (DHS) by telephone or in person to make an oral report of suspected abuse within twenty-four (24) hours of the suspected abuse. The local number is \_\_\_\_\_.  
Note: The statewide Child Abuse Hotline number is 1-800-362-2178 (available 24 hours a day, 7 days a week).
- b. Follow the oral report with a written report, on forms provided by DHS, within forty-eight (48) hours of the oral report.  
Note: A copy of the reporting form is included as part of this sample policy or may be downloaded from the DHS Website at [http://www.dhs.state.ia.us/policyanalysis/PolicyManualPages/Manual\\_Documents/Forms/470-0665.pdf](http://www.dhs.state.ia.us/policyanalysis/PolicyManualPages/Manual_Documents/Forms/470-0665.pdf).
- c. Cooperate with DHS personnel in conducting their investigation.
- d. Maintain a copy of the school employee's written report in the employee's personal file at home, for the sole purpose of documenting the fact that the employee reported the suspected abuse. If a written report is received by the employee from the DHS following the investigation, such report shall be also filed with the employee's copy of the suspected abuse, or destroyed. Employees should take precautions to keep these documents confidential, even from family members.
- e. The employee shall maintain the confidentiality of the report at all stages following the oral report of suspected abuse.

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Comment: The law [Iowa Code § 232.69(3)] requires employers to notify employees of the reporting procedure even before the training is implemented. This information is to be disseminated to all new employees who are mandatory reporters "within one month of initial employment." (The training is required within six months of initial employment and every five years thereafter.)

The training for mandatory reporters is to be two hours in length. The Website for the Board of Educational Examiners contains a link to more information about this training at [http://www.idph.state.ia.us/bhpl/abuse\\_ed\\_review.asp](http://www.idph.state.ia.us/bhpl/abuse_ed_review.asp).

**REPORT OF SUSPECTED CHILD ABUSE**

This form may be used as the written report which the law requires all mandated reporters to file with the Department of Human Services following an oral report of suspected child abuse. If your agency has a report form or letter format which includes all of the information requested on this form, you may use the agency format in place of this form.

Fill in as much information under each category as is known. Submit the completed form within 48 hours of making the oral report to the Centralized Intake Unit, 401 SW 7<sup>th</sup> Street, Suite G, Des Moines, Iowa 50309-3574.

<b>FAMILY INFORMATION</b>			
Name of child		Age	Date of birth
Address		City	State
Phone	School		Grade Level
Name of parent or guardian			Phone <i>(if different from child's)</i>
Address <i>(if different from child's)</i>			
<b>OTHER CHILDREN IN THE HOME</b>			
NAME		BIRTHDATE	CONDITION
<b>INFORMATION ABOUT SUSPECTED ABUSE</b>			
<p>In this section, indicate the date of suspected abuse; the nature, extent and cause of the suspected abuse; the persons thought to be responsible for the suspected abuse; evidence of previous abuse; and other pertinent information needed to conduct the assessment. Use the back of this form if necessary to complete the information requested above and to identify individuals who have been informed of the child abuse report, such as building administrator, supervisor, etc.</p>			
<b>REPORTER INFORMATION</b>			
Name and title or position			
Office address			
Phone		Relationship to child	
Names of other mandatory reporters who have knowledge of the abuse			
Signature of reporter			Date

## Frequently Asked Questions by Mandatory Reporters Regarding Child Abuse

### Definitions

**Q1:** What constitutes abuse?

**A1:** There are nine different categories of abuse in the law; they are as follows:

- (a) **Physical abuse** is any nonaccidental (i.e., purposeful) physical injury, or injury which is at variance with the history given of it, suffered by a child as a result of the acts or omissions of a care giver. [NOTE: The DHS uses a definition of "injury" that requires that evidence of the injury must still exist twenty-four (24) hours after the abuse occurs. Thus, a mark that disappears within 24 hours would not be an "injury" and thus not reportable. Presumably this accounts for the 24 hour period allotted by law before an abuse report is required to be made.]
- (b) Any **mental injury** to a child's intellectual or psychological capacity as evidenced by observable and substantial impairment in the child's ability to function within the child's normal range of performance and behavior as the result of the acts or omissions of a person responsible for the care of a child, if the impairment is diagnosed and confirmed by a licensed physician or qualified mental health professional as defined in Iowa Code § 622.10.
- (c) **Sexual abuse** includes any sexual offense "with or to a child as a result of the acts or omissions of" the caretaker.
- (d) **Denial of critical care** (formerly "neglect") is "the failure on the part of a person responsible for the care of a child to provide for the adequate food, shelter, clothing, or other care necessary for the child's health and welfare when financially able to do so or when offered financial or other reasonable means to do so."
- (e) **Encouraging prostitution** by the child means "the acts or omissions of a person responsible for the care of a child which allow, permit, or encourage the child to engage in acts prohibited pursuant to Iowa Code § 725.1."
- (f) It is reportable child abuse if an **illegal drug is present in a child's body** as a direct and foreseeable consequence of the acts or omissions of the person responsible for the care of a child.
- (g) If the caretaker has **manufactured or possesses a dangerous substance in the presence of the child**, it is child abuse.
- (h) "The commission of **bestiality in the presence of a minor** . . . by a person who resides in the home with a child, as a result of the acts or omissions of a person responsible for the care of a child" constitutes child abuse.
- (i) The newest category (as of 2009) is **knowingly allowing a person who is a sex offender to have unsupervised access** to a child.

**Q2:** What is the definition of a "child" for purposes of reporting child abuse?

**A2:** The law defines "child" to be "any person under the age of 18 years." Therefore, an 18 year-old student cannot be abused under the child abuse laws, but may be a "dependent adult" for purposes of Iowa Code Chapter 235B.

- Q3:** What constitutes an “omission” under the child abuse laws?
- A3:** If a person responsible for the care of a child fails to take action to protect the child from foreseeable harm when a reasonable person would do so under the same circumstances, that failure to act constitutes an omission.
- Q4:** Who can be investigated by DHS as an alleged perpetrator of suspected child abuse?
- A4:** Only a “person responsible for the care of a child” (a “caretaker”) can be the subject of a DHS child abuse investigation. With one exception (noted in Q5), the law states that that term includes the following persons:
- A parent, guardian, or foster parent;
  - A relative or any other person with whom the child resides, without reference to the length of time or continuity of such residence;
  - An employee or agent of any public or private facility providing care for a child, including an institution, hospital, health care facility, group home, mental health center, residential treatment center, shelter care facility, detention center, or child care facility (this does not include schools);
  - A babysitter.
- Q5:** What if a mandatory reporter suspects that a child has been abused by someone *other than* a caretaker?
- A5:** If the alleged abuse is sexual and the child is under twelve years old, the mandatory reporter must report to the DHS. In all other cases the matter is one for law enforcement. There is no legal obligation to report to DHS or law enforcement physical or non-sexual abuse that occurs by someone other than a caretaker as defined above. There is a special procedure for schools to follow if a complaint is made that a child has been abused by a school employee. This procedure does not involve the DHS because that agency only has jurisdiction of complaints that meet the legal definitions of “child,” “child abuse,” and “person responsible for the care of a child.”
- Q6:** Is psychological or verbal abuse by a caretaker included?
- A6:** If it’s serious enough it could fall under “mental abuse,” but only if it is actually diagnosed by a licensed physician or a qualified mental health professional (this term does not include school social workers or guidance counselors).
- Q7:** Is it abuse if a parent or other caretaker fails to supervise or obtain supervision for a child, or leaves a child unattended for considerable periods of time?
- A7:** This can be reported as “denial of critical care,” but may also be the basis of a Child in Need of Assistance (CINA) petition alleging “the failure of the child’s parent, guardian, custodian, or other member of the household in which the child resides to exercise a reasonable degree of care in supervising the child.” A concerned employee may wish to contact the local county attorney’s office for a complete discussion of CINA petitions, but recognize that there is no mandatory filing of a CINA petition by a mandatory child abuse reporter.

## **Mandatory Reporters**

- Q8:** How sure does a mandatory reporter have to be that abuse occurred before making a report?
- A8:** When a mandatory reporter has a good faith, reasonable belief that abuse has occurred, the reporter has an absolute DUTY to make the report. While many of these FAQs attempt to further define “abuse,” the job of the mandatory reporter is to report suspected abuse, leaving the ultimate findings to DHS to make.
- Q9:** Will the mandatory reporter find out the results of the investigation?
- A9:** Yes. You should get notice within 24 hours of reporting from the DHS indicating whether or not they have commenced an assessment of the allegation in the report. After an assessment is made, the reporter is in the category of individuals who has access to the report, so it would be made available to you upon request.
- Q10:** What are some “danger signs” to look for if one suspects child abuse?
- A10:** The training required of all mandatory reporters is designed to provide guidance and instruction in identifying child abuse, but some general indicia of abuse include the following:
- a. A child tells several conflicting stories as to the cause of the same injury.
  - b. A child seems to be injured frequently.
  - c. A child expresses reluctance to tell how the injury occurred.
  - d. A child is afraid to go home.
  - e. A child tells the teacher or a playmate that someone responsible for the child inflicted the injury.
  - f. A child relates a story about the injury that seems inconsistent with the injury.
- Q11:** How far can a mandatory reporter go in physically checking a child for signs of abuse?
- A11:** The law is not specific as to what actions a mandatory reporter can take to determine a child’s injury except to state that a mandatory reporter “may” take or cause to be taken, at public expense, photographs or x-rays of the areas of trauma visible on a child.” There are limitations in the law as to what extent DHS investigators can go in viewing the child’s body, but those limitations do not appear to be applicable to others. Clearly, a mandatory reporter in the education field should exercise sound judgment in viewing a child’s body and should not insist, over the child’s objections, on viewing covered or clothed areas. If the child allows a mandatory reporter to view clothed areas, the viewing should be done by a mandatory reporter of the same gender as the child. Also, remember that one can have a “reasonable belief” that abuse has occurred without asking the child to expose him- or herself. (For instance, if the child winces in pain when sitting or leaning back in her chair, it is not necessary to remove her shirt to see that there is an injury. It would be wise for the reporter to ask the child, privately, how she hurt her back or her “bottom.”)
- Q12:** Are school bus drivers mandatory reporters?
- A12:** No. Therefore, school bus drivers do not have to have the training required of

those who are mandatory reporters. The list of mandatory reporters (in the school setting) is as follows:

- Anyone licensed by the Board of Educational Examiners
  - Includes the holder of a coaching authorization
  - Includes a certified para-educator
- An instructor employed by a community college

### **Confidentiality**

**Q13:** Is a mandatory reporter prohibited from discussing the child's condition with other school employees?

**A13:** The confidentiality provision attaches at the time the oral report is made, and the law provides that the reporter is, from that time forward, prohibited from discussing the fact of abuse or the report made with anyone except DHS personnel. Therefore, if a mandatory reporter wishes to discuss the child's condition, any conversation with others should take place prior to the oral reporting but within the 24-hour period.

The one exception to the confidentiality law is when the mandatory reporter believes that photographs or x-rays "need to be taken" of the child's trauma. In that case, the mandatory reporter is permitted by Iowa Code § 232.77 to tell the person's supervisory (building principal or superintendent) of the need to take pictures or to have pictures taken. (There is no statutory explanation of when "need" arises, but the law allows photographs or x-rays to be taken at public expense. In most cases the decision to take photographs or x-rays should probably be made by DHS.)

**Q14:** Does this mean that a school administrator who is the supervisor of a mandatory reporter cannot insist that the mandatory reporter share information with the administrator about a mandatory report of child abuse?

**A14:** Absolutely. If a mandatory reporter feels pressured by a school administrator to share information that s/he cannot share with non-DHS personnel, the mandatory reporter may file a complaint with the BoEE.

No person should dissuade or discourage a mandatory reporter from filing a report of suspected abuse. When that other person reasonably believes that the situation does not constitute child abuse, or believes the mandatory reporter is overreacting or is unreasonable in his/her belief, those thoughts should not be conveyed in such a way as to lead the mandatory reporter to the conclusion that he or she is prohibited from filing the report under threat of consequences. This is particularly important if a mandatory reporter chooses to talk with his or her supervisor about a concern for a child. The law was changed (from indirect reporting of suspected child abuse to one's supervisor to direct reporting to DHS) to eliminate the possibility that the mandatory reporter's suspicions were being overridden by someone in a supervisory position.

**Q15:** Because school guidance counselors, school psychologists, and school social workers have a statutory privilege of communication, what happens if one of those people learns from a student that the student has been abused? Can that professional break the confidence? Must s/he?

**A15:** Iowa Code § 232.74 specifically exempts “mental health professionals” and specified others from the requirement to maintain confidentiality for the purpose of reporting child abuse. This means that the professional is required to report the suspected abuse in situations where s/he has a reasonable belief that the child is the target or perpetrator of abuse. Ethically, the professional should explain to the student that as a professional, s/he has to report suspected abuse and cannot keep it secret, despite the child’s wishes.

### **Penalties, Immunities**

**Q16:** What is the penalty for failure to report suspected child abuse?

**A16:** Iowa Code § 232.75 states as follows:

1. Any person, official, agency or institution, required to report a suspected case of child abuse who knowingly and willfully fails to do so is guilty of a simple misdemeanor.
2. Any person, official, agency or institution, required to report a suspected case of child abuse who knowingly fails to do so is civilly liable for the damages proximately caused by such failure. [This means that the mandatory reporter can be sued in civil court for money damages for failure to report. The school district’s insurer may *not* be obligated to defend the mandatory reporter in that litigation.]

**Q17:** What is the penalty for filing a false report?

**A17:** Again, from Iowa Code § 232.75: “A person who reports or causes to be reported to the [DHS] false information regarding an alleged act of child abuse, knowing that the information is false or that the act did not occur, commits a simple misdemeanor.

**Q18:** Is a person who “reasonably believes” a child has suffered from abuse subject to being sued by anyone if it turns out the child was not abused?

**A18:** The legislature has given criminal and civil immunity to any person who participates in good faith in the making of a report. The opposite of “good faith” is willfully filing a false report with the knowledge or reasonable belief that the information is untrue. It would be highly unlikely that anyone would actually sue a mandatory reporter for reporting, but if it occurs and if the court or jury determines that the report or other assistance was made “in good faith,” the reporter is not going to be held civilly or criminally liable. Public employees are guaranteed legal representation by statute if they are sued “in the course of” their employment. The local school board is required to defend, indemnify, and hold harmless any employee sued for an action taken during the course of employment. This law covers mandatory reporters who develop a suspicion of child abuse at work.

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## SAMPLE POLICY PROCEDURES FOR INVESTIGATING ALLEGATIONS OF ABUSE OF STUDENTS BY SCHOOL EMPLOYEES

It is the policy of the \_\_\_\_\_ School (District) that school employees not commit acts of physical or sexual abuse, including inappropriate and intentional sexual behavior, toward students. Any school employee who commits such acts is subject to disciplinary sanctions up to and including discharge.

It is the policy of the \_\_\_\_\_ School (District) to respond promptly to allegations of abuse of students by school employees by investigating or arranging for full investigation of any allegation, and to do so in a reasonably prudent manner. The processing of a complaint or allegation will be handled confidentially to the maximum extent possible. All employees are required to assist in the investigation when requested to provide information, and to maintain the confidentiality of the reporting and investigating process.

The \_\_\_\_\_ School (District) has appointed a level-one investigator(s) and alternate(s), and has arranged for or contracted with a trained, experienced professional to serve as the level-two investigator. The level-one investigator(s) and alternate(s) will be provided training in the conducting of an investigation, at the expense of the \_\_\_\_\_ School (District).

The superintendent or designee shall prescribe rules in accordance with the rules adopted by the State Board of Education (chapter 102) to carry out this policy.

Date of Adoption: \_\_\_\_\_

Legal References: Iowa Code § 280.17  
281—IAC chapter 102

## Chapter 102 Rules

### PROCEDURES FOR CHARGING AND INVESTIGATING INCIDENTS OF ABUSE OF STUDENTS BY SCHOOL EMPLOYEES

(These are the administrative rules adopted by the State Board of Education; the commentary in the boxes is not in the rules themselves, but is included in an attempt to explain the rule language.)

**102.1 Statement of intent and purpose.** It is the purpose and intent of these rules to create a uniform procedure for the reporting, investigation, and disposition of allegations of abuse of students directly resulting from the actions of school employees or their agents. The scope of this policy is limited to protecting children in prekindergarten and K–12 educational programs.

**COMMENT:** Unlike suspected child abuse, there is no mandatory reporting of suspected abuse of students by school employees. The procedures under these rules are initiated only when a report or complaint alleging abuse of a student by a school employee is made to the school or school district.

#### 102.2 Definitions.

“Abuse” may fall into either of the following categories:

1. “Physical abuse” means nonaccidental physical injury to the student as a result of the actions of a school employee.

**COMMENTS:** The definition of “physical abuse” has three key words:

1. Nonaccidental: the conduct of the school employee must have been on purpose or intentional.
2. Physical: the injury alleged to have occurred must be to the person, to the student’s body. Mental or verbal abuse is not covered by these rules.
3. Injury: injury occurs when evidence of it is still apparent 24 hours after the incident.

The definition of physical abuse does not include omissions (negligence) by school employees. However, a physical injury to a student may result without the school employee having touched the student.

Consider this example:

A student who is to be belted securely into a seat in all classes suffers bruising to his back because the student slides from his seat to the floor. If this injury is the result of mere negligence (the teacher and aide honestly forgot to secure the student), this is not investigable under chapter 102. However, if the teacher or aide deliberately chose to not secure the student, this is a nonaccidental physical injury and must be investigated.

2. “*Sexual abuse*” means any sexual offense as defined by Iowa Code chapter 709 or Iowa Code section 728.12(1). The term also encompasses acts of the school employee that encourage the student to engage in prostitution as defined by Iowa law, as well as inappropriate, intentional sexual behavior, or sexual harassment by the school employee toward a student.

**COMMENTS:** Although the definition of “*sexual abuse*” is deliberately broad, it does not include omissions (negligence) by school employees. It includes sex crimes. See pages B-36 – B-39 for a list of sex crimes. It also includes inappropriate conduct between a school employee and a student, such as sexual language and innuendo or behaviors with suggestive sexual overtones, as well as sexual social behaviors such as kissing, dating, etc. It certainly includes sexual harassment or the promise of favorable treatment in return for sexual favors or activities.

“*Board of educational examiners*” means the state board as created in Iowa Code chapter 272.

“*Designated investigator*” means the person or persons appointed by the board of directors of a public school district, or the authorities in control of a private school, at level one, to investigate allegations or reports of abuse of students by school employees and shall also refer to the appointed alternate.

**COMMENT:** Remember that “designated investigator” includes only the level one investigator, not the level two investigator. The designated investigator (level one) may be anyone, including a school employee. We recommend that if the designated investigator is male, the alternate be female. A person making a

report may report to the alternate rather than the designated investigator, and the alternate should proceed with the investigation. One purpose for the requirement that an alternate(s) be appointed is to give the person reporting a choice. Another purpose is to assure availability. Finally, if the reporter files a report naming the designated investigator as the employee responsible for the alleged abuse, someone else obviously must conduct the investigation.

*“Incident”* means an occurrence of behavior that meets the definition of physical or sexual abuse in these rules.

*“Injury”* occurs when evidence of it is still apparent at least 24 hours after the occurrence.

*“Nonpublic school”* means any school in which education is provided to a student, other than in a public school or in the home of the student.

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

**COMMENT:** The “preponderance of evidence” standard means the greater weight of the evidence, or over 50% of the total evidence. Evidence includes consideration of witness’ credibility (believability) as well as physical and testimonial types of evidence.

*“Public school”* means any school directly supported in whole or in part by taxation.

*“Reasonable force”* is that force and no more which a reasonable person, in like circumstances, would judge to be necessary to prevent an injury or loss and can include deadly force if it is reasonable to believe that such force is necessary to avoid injury or risk to one’s life or safety or the life or safety of another, or it is reasonable to believe that such force is necessary to resist a like force or threat.

*“School employee”* means a person who works for pay or as a volunteer under the direction and control of:

1. The board of directors or any administrator of a public school district.
2. The board or authorities in control of a nonpublic school.
3. The board of directors or administrator of an agency called upon by a school official to provide services in an educational capacity to students.
4. A residential institution, not currently covered by Iowa Code chapter 232, providing educational services.

School employees are of two classes: certificated (licensed) and noncertificated (unlicensed). A certificated employee holds an Iowa teacher's certificate issued by the department of education or a license issued by the state board of educational examiners.

**COMMENTS:** The term "school employee" includes all persons who serve students in a school or instructional setting. It covers volunteers who act on behalf of the school at the direction of the school board or authorities in charge. The only school employees who would not be covered by the definition are those persons who are caretakers, who are subject to DHS rules. For example, a school employee who abuses her own child – even at school – would be investigated by DHS and NOT under Chapter 102 rules.

An AEA employee who provides direct services to students is a "school employee" under number 3. Staff employed as daycare workers by schools that offer daycare to preschool children are also governed by these rules. However, if a school merely houses a daycare program that the school itself does not run (such a program would have to be licensed by DHS), those daycare workers are subject to DHS rules and not Chapter 102 rules.

*"Sexual harassment"* means unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature when:

1. Submission to the conduct is made either implicitly or explicitly a term or condition of the student's education or benefits;
2. Submission to or rejection of the conduct is used as the basis for academic decisions affecting that student; or
3. The conduct has the purpose or effect of substantially interfering with a student's academic performance by creating an objectively intimidating, hostile, or offensive education environment.

**COMMENT:** Recognizing behaviors and conduct that constitute sexual harassment is not an exact science. If an investigator has a question about a particular situation, the investigator may wish to review the training tape (available at all AEAs) that covers this subject.

*"Student"* means a person enrolled in a public or nonpublic school or a prekindergarten program in a public or nonpublic school established under Iowa law, a child enrolled in a day care program operated by a public school or merged area school under Iowa Code section 279.49, or is a resident between the ages of 5 and 21 of a state facility providing incidental formal education.

**COMMENTS:** The definition of “student” under these rules is broader than the juvenile code definition of a child. **All** students in PK-12 educational programs are covered, regardless of age.

Children in daycare programs and preschools run by schools may be covered as “students” under these rules.

If an allegation involves a child in a statewide voluntary preschool program or in a “state facility providing incidental formal education,” ask DHS if the accused employee is considered to be a “caretaker.” If the answer is “no,” the intent of the law is that the allegation be investigated under chapter 102 rules.

**102.3 Jurisdiction.** To constitute a violation of these rules, acts of the school employee must be alleged to have occurred on school grounds, on school time, on a school-sponsored activity, or in a school-related context. To be investigable, the written report must include basic information showing that the student allegedly abused is or was a student at the time of the incident, that the alleged act of the school employee resulted in injury or otherwise meets the definition of abuse in these rules, and that the person responsible for the act is currently a school employee.

If the report is not investigable due to the absence of any of the jurisdictional facts, the level-one investigator shall dismiss the complaint as lacking jurisdiction and notify the person filing the report of the options remaining as listed in subrule 102.10(9). The dismissal of a report of abuse for lack of jurisdiction does not bar school officials from further forms of investigation and disciplinary action against an employee.

**COMMENTS:**

There is no “statute of limitations” in these rules. Of course, the more remote in time the occurrence, the more difficult the investigation due to normal memory loss, absence of witnesses, etc. But if a report is received regarding a person who was a student at the time, alleging abuse at school by a person still employed by the school, it must be investigated.

The “school-related” context is the most difficult item to be determined as part of establishing jurisdiction. When truly in doubt, investigate.

Here are two examples where a Chapter 102 investigation is NOT required:

1. A teacher who is also a Scout leader is alleged to have abused a student on an overnight Scouting trip. The teacher has no school-related connection to the child, and only knows the child through Scouting. (But just because there is no formal Chapter 102 investigation does not mean that the district should not conduct a personnel investigation!)
2. A bus driver is alleged to have abused a child who lives near the driver. Living in the same neighborhood is the only connection between the child and the school employee; the child does not ride the driver's bus. (Again, this does not mean that the school does not follow up with its own personnel investigation.)

**COMMENT:** This comment stresses a new requirement, as of 2010. There is another time when a level one investigator must be involved, as follows:

If a school employee is being investigated for a violation of the rules (in Chapter 103) that govern restraint and physical detention of students, the matter must also be investigated under Chapter 102. The level one investigator does not determine whether there was a violation of the Chapter 103 rules (unless the level one investigator is also the school employee who investigates violations of Chapter 103). Rather, the level one investigator proceeds with the normal 102 investigation, using the same timelines and same procedures in Chapter 102 for any investigation under Chapter 102 and its rules.

#### **102.4 Exceptions.**

**102.4(1)** The following do not constitute physical abuse, and no school employee is prohibited from:

a. Using reasonable and necessary force, not designed or intended to cause pain:

(1) To quell a disturbance or prevent an act that threatens physical harm to any person.

(2) To obtain possession of a weapon or other dangerous object within a pupil's control.

(3) For the purposes of self-defense or defense of others as provided for in Iowa Code section 704.3.

(4) For the protection of property as provided for in Iowa Code section 704.4 or 704.5.

(5) To remove a disruptive pupil from class, or any area of school premises or from school-sponsored activities off school premises.

(6) To prevent a student from the self-infliction of harm.

(7) To protect the safety of others.

b. Using incidental, minor, or reasonable physical contact to maintain order and control.

**102.4(2)** In determining the reasonableness of the contact or force used, the following factors shall be considered:

a. The nature of the misconduct of the student, if any, precipitating the physical contact by the school employee.

b. The size and physical condition of the student.

c. The instrumentality used in making the physical contact.

d. The motivation of the school employee in initiating the physical contact.

e. The extent of injury to the student resulting from the physical contact.

**COMMENT:** The applicability of these exceptions is determined only by the level two investigator. The essence of the exceptions is to acknowledge limited circumstances where an employee may exercise physical force, even force that results in injury to the student.

**102.5 Duties of school authorities.** The board of directors of a public school district and the authorities in control of a nonpublic school shall:

**102.5(1)** Annually identify at least one designated investigator and alternate investigator at an open public meeting.

**102.5(2)** Adopt written procedures that establish persons to whom the school authorities will delegate a second level of investigation beyond the level-one procedures specifically described in these rules, including law enforcement authorities or the county attorney's office, personnel of the local office of the department of human services, or private parties experienced and knowledgeable in the area of abuse investigation. The second-level investigator shall not be a school employee, and shall be considered an independent contractor if remunerated for services rendered.

The adopted procedures shall conform to these rules and shall include provisions for the safety of a student when, in the opinion of the investigator, the student would be placed in imminent danger if continued contact is permitted between the school employee and the student. These provisions shall include the options of:

a. Temporary removal of the student from contact with the school employee.

b. Temporary removal of the school employee from service.

c. Any other appropriate action permissible under Iowa law to ensure the student's safety.

The adopted written procedures shall include a statement that the investigators appointed and retained under this chapter shall have access to any educational records of the allegedly abused student, and access to the student for purposes of interviewing and investigating the allegation.

**COMMENT:** More than one alternate may be identified. Note that the sample policy on page B-1 herein does NOT use individual names. (To do so would require revision of the policy every time the school changed investigators.) The minutes of the board meeting will reflect the identifies of the investigators.

**102.5(3)** Annually publish the names or positions and telephone numbers or other contact information of the designated investigator and alternate:

- a. In the student handbook,
- b. In a local newspaper of general circulation, and
- c. Prominently post the same information in all buildings operated by the school authorities.

**COMMENT:** The level one investigator and alternate(s) must be identified by names or positions and phone numbers or other contact information in the student handbook, which is revised annually, and in a local newspaper. That information must also be posted prominently in each attendance center. The point is that students, families, and school staff have an easy means of accessing a level one investigator.

There is no requirement and no need to publish the name and contact information for the level two investigator. A school or school district should select the level two investigator based on the nature of the allegation at hand; different investigators have different areas of expertise. Also, unlike a level one investigator, the public is not to initiate contact with a level two investigator.

**102.5(4)** Arrange for in-service training for the designated investigator and alternate. Initial training should be undertaken within six months of appointing a level-one investigator or alternate. Follow-up training should be undertaken at least once every five years.

**COMMENTS:** The level two investigator need not be trained by the school because s/he must have a background, training and experience in investigating physical and sexual abuse. Level two investigators are welcome to attend training of level one investigators, however.

**All level two investigators must be given a copy of these rules by the school that employs them.** Part C of this Handbook is now designed to include all of the information that a level two investigator should need.

## **102.6 Filing of a report.**

**102.6(1) *Who may file.*** Any person who has knowledge of an incident of abuse of a student committed by a school employee may file a report with the designated investigator.

**102.6(2) *Content of report.*** The report shall be in writing, signed, and, if signed by a minor, witnessed by a person of majority age, and shall contain the following information:

- a. The full name, address, and telephone number of the person filing.
- b. The full name, age, address, telephone number, and attendance center of the student.
- c. The name and place of employment of the school employee(s) or agents who allegedly committed the abuse.
- d. A concise statement of the facts surrounding the incident, including date, time, and place of occurrence, if known.
- e. A list of possible witnesses by name, if known.
- f. Names and locations of any and all persons who examined, counseled or treated the student for the alleged abuse, including the dates on which those services were provided, if known.

**102.6(3) *Incomplete reports.*** The designated investigator shall aid parties requesting assistance in completing the report. An incomplete report shall not be rejected unless a reasonable person would conclude that the missing information which is unable to be provided by the reporter would render investigation futile or impossible. An unsigned (anonymous) or unwitnessed report may be investigated, but the designated investigator then has no duty to report findings and conclusions to the reporter.

**COMMENTS:** A report under these rules does not have to be filed by the allegedly abused student. A report may be filed by anyone with knowledge of the alleged incident.

Anonymous reports are not required to be investigated under these rules, but the school may do so as a personnel matter.)

The level one investigator has much discretion in determining whether s/he can proceed with investigating information supplied in an "incomplete report." However, if the person making the report is not literate or is not fluent in English, the level one investigator is to provide assistance and is to do nothing to discourage the making of the report.

**102.7 Receipt of report.** Any school employee receiving a report of alleged abuse of a student by a school employee shall immediately give the report to the designated investigator or alternate and shall not reveal the existence or content of the report to any other person.

**COMMENT:** Any school employee can receive a written report of alleged abuse, but must give it to a level one investigator. It cannot be emphasized enough that **ALL** staff must be advised of this duty.

**102.8 Duties of designated investigator—physical abuse allegations.**

**102.8(1)** Upon receipt of the report, the designated investigator shall make and provide a copy of the report to the person filing, to the student’s parent or guardian if different from the person filing and to the supervisor of the employee named in the report. The school employee named in the report shall receive a copy of the report at the time the employee is initially interviewed by any investigator. However, if this action would conflict with the terms of a contractual agreement between the employer and employee, the terms of the contract shall control.

**COMMENTS:** Yes, making copies of the report decreases the likelihood of maintaining confidentiality. However, the persons entitled to receive copies must have them.

The accused school employee gets a copy at the time the level one investigator interviews the employee. We suggest that the copy be given at the end of the interview, but the investigator cannot wait if the district's master contract requires that a school employee be notified immediately if a complaint is filed against the employee. (If this is the case, we recommend that the investigator go ahead and also immediately interview the employee, even if it means interviewing the employee before the student.)

**102.8(2)** Within five school days of receipt of a report of physical abuse, the designated investigator shall conduct and complete an informal investigation after reviewing the report to determine that the allegations, if true, support the exercise of jurisdiction pursuant to rule 102.3.

**COMMENTS:** Both level one and level two investigators must be given access to all necessary students and employees and to an allegedly abused student's educational records. The purpose behind the records access is to provide the investigator with background on the student, to know whether s/he has a disability, or other relevant facts that the investigator should know of before talking with the child. (Prior permission from the parent or from an adult student is not necessary because the investigator has a legitimate educational purpose in accessing the record.)

**102.8(3)** If, in the investigator's opinion, the magnitude of the allegations in the report suggests immediate and professional investigation is necessary, the designated investigator may temporarily defer the level-one investigation. In cases of deferred investigation, the investigator shall contact appropriate law enforcement officials, the student's parent or guardian and the person filing the report, if different from the student's parent or guardian, documenting in writing the action taken.

**COMMENTS:** If the level one investigator believes that the alleged incident is a crime, the investigator should defer the level-one investigation, contact a member of law enforcement with jurisdiction to investigate the suspected crime, notify the student's parent or guardian of this, notify the person who filed the report (if not the student or student's parent or guardian), and document these actions.

**102.8(4)** The investigator shall interview the allegedly abused student, any witnesses or persons who may have knowledge of the circumstances contained in the report, and the school employee named in the report. 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.

**COMMENTS:** The school employee has the right to have an association representative present during the interview, but there is no duty on the part of the investigator to inform the school employee of this right. There is also no duty on the part of the level one investigator to inform the employee of his/her "*Miranda* rights." *Miranda* rights attach only when the school employee is questioned by law enforcement subsequent to arrest.

If the student has been examined by a doctor or other professional, the investigator must have the consent of the parent or adult student to talk to the doctor or other professional.

In cases where the school employee resigns because of the allegation of abusive conduct, the resignation should be effective during the contract year, and the most serious incidents warrant immediate resignation. In cases where an employee resigns but declines to admit the violation or to surrender his/her license or certificate, the level one investigator has discretion to file a licensure complaint against the employee under rule 102.11. The decision should be based on whether the investigator has a good faith belief that abuse occurred.

**102.8(5)** The designated investigator's role is not to determine the guilt or innocence of the school employee, the applicability of the exceptions or reasonableness of the contact or force listed in rule 102.4(280). The designated investigator shall determine, by a preponderance of the evidence, whether it is likely that an incident took place between the student and the school employee. However, if the complaint has been withdrawn, the allegation recanted, or the employee has resigned, admitted the violation, or agreed to relinquish the employee's teacher's certificate or license, the designated investigator may conclude the investigation at level one. The designated investigator shall follow the applicable provisions of 102.11"2" and 102.11"3" when resolution occurs at level one.

The level-two investigator appointed, contracted, requested or retained under subrule 102.5(2), when called upon for further investigation, shall consider the applicability of the exceptions listed in rule 102.4(280) and the reasonableness of the contact or force used under subrule 102.4(2) in reaching conclusions as to the occurrence of physical abuse as defined by these rules.

**102.8(6)** Within 15 calendar days of receipt of the report, the designated investigator shall complete a written investigative report, unless investigation was temporarily deferred.

**SUMMARY:** The following are the level one investigator's duties after receiving a written report of physical abuse:

1. Make and distribute required copies of the report;
2. Determine jurisdiction per rule 102.3;

3. Decide whether the allegation is serious enough to justify deferral of the investigation (if so, defer, document action taken, and notify proper persons);

[If deferred, when law enforcement is done with the case, the level one investigator may then resume the investigation.]

4. If not deferred, investigate within 5 school days;

5. Determine whether the report is founded or groundless;

**FOUNDED** = a decision by the investigator that it is likely that the incident took place

**GROUNDLESS** = no evidence or lack of a preponderance of the evidence to support a conclusion that the incident took place

6. Complete investigative report within 15 calendar days of receipt of written report;

7. Maintain original report, giving copies to student's parent or guardian and to accused school employee and his/her supervisor. If the report was made by someone other than the student or student's parent or guardian, the reporter does not receive a copy of the investigative report, but may be notified of the investigator's conclusions and next steps.

It is not a breach of confidentiality to file a complaint with the Board of Educational Examiners. It is also not a breach of confidentiality to acknowledge, if contacted in the future as a reference for the named school employee, that a complaint was filed against the employee.

### **102.9 Duties of designated investigator—sexual abuse allegations.**

**102.9(1)** Upon receipt of the report, the designated investigator shall make and provide a copy of the report to the person filing the report, to the student's parent or guardian if different from the person filing the report, and to the supervisor of the employee named in the report. The school employee named in the report shall receive a copy of the report at the time the employee is initially interviewed by any investigator. However, if this action would conflict with the terms of a

contractual agreement between the employer and employee, the terms of the contract shall control. The designated investigator shall not interview the school employee named in a report of sexual abuse until after a determination that jurisdiction exists is made, the allegedly abused student has been interviewed, and a determination is made that the investigation will not be deferred under subrule 102.9(5).

**102.9(2)** Upon receipt of a report of sexual abuse or other notice of an allegation of sexual abuse, the designated investigator shall review the facts alleged to determine that the allegations, if true, support the exercise of jurisdiction pursuant to 102.3(280) of these rules.

**102.9(3)** The investigator shall notify the parent, guardian, or legal custodian of a child, in prekindergarten 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, guardian's, or legal custodian's place. The investigator shall interview the allegedly abused student as soon as possible, but in no case later than five days from the receipt of a report or notice of the allegation of sexual abuse. The investigator may record the interview electronically. 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.

**102.9(4)** The designated investigator's role is not to determine the guilt or innocence of the school employee. The designated investigator shall determine, by a preponderance of the evidence and based upon the investigator's training and experience and the credibility of the student, whether it is likely that an incident took place between the student and the school employee. However, if the complaint has been withdrawn, the allegation recanted, or the employee has resigned, admitted the violation, or agreed to relinquish the employee's teacher's certificate or license, the designated investigator may conclude the investigation at level one. The designated investigator shall follow the applicable provisions of 102.11"2" and 102.11"3" when resolution occurs at level one.

**102.9(5)** If, in the investigator's opinion, it is likely that an incident in the nature of sexual abuse as defined by Iowa Code chapter 709 or section 728.12(1) took place, the investigator shall temporarily defer further level-one investigation. In cases of deferred investigation, the investigator shall immediately contact appropriate law enforcement officials, notifying the student's parent or guardian, and the person filing the report, if different from the student's parent or guardian, of the action taken.

If, in the investigator's opinion, an incident occurred that would not constitute sexual abuse as defined in Iowa Code chapter 709 or sexual exploitation as defined by Iowa Code section 728.12(1), but that was in the nature of inappropriate, intentional sexual behavior by the school employee, further investigation is warranted. The investigator may proceed to interview the school

employee named in the report. Prior to interviewing any collateral sources who may have knowledge of the circumstance contained in the report, the investigator shall provide notice of the impending interview of student witnesses who are in prekindergarten through grade six, to their parent, guardian, or legal custodian, and may provide notice to the parent or guardian of older students, prior to interviewing those students.

If, in the investigator's opinion, the allegation of sexual abuse is unfounded either because the conduct did not occur or the conduct did not meet the definition of abuse in these rules, further investigation is not warranted. The investigator shall notify the student's parent or guardian, the person filing the report, if different from the student's parent or guardian, and the school employee named in the report of this conclusion in a written investigative report.

**102.9(6)** Within 15 calendar days of receipt of the report or notice of alleged sexual abuse, the designated investigator shall complete a written investigation report unless the investigation was temporarily deferred.

**COMMENTS:** Many of the level one investigator's duties regarding a sexual abuse allegation are the same as those outlined above for physical abuse allegations. The following are the level one investigator's duties after receiving a written report of sexual abuse (where these duties differ from the duties after receiving a written report of physical abuse, the differences are in **bold print**):

1. Make and distribute required copies of the report;
2. Determine jurisdiction per rule 102.3;
3. **Notify parents/guardians of allegedly abused student who is in 6<sup>th</sup> grade or below of the date, time, and place of the interview of the child;**
4. **Interview allegedly abused student as soon as possible and in no case later than 5 days from receipt of written report;**
5. **Decide whether it is likely (by a preponderance of the evidence) that the incident occurred and that it constitutes a crime, and if so, defer by contacting law enforcement and DO NOT notify accused school employee of the complaint (unless a provision in the master contract requires immediate notification of any complaint);**

(If the investigation supports the elements of a sex crime, the investigation is immediately turned over to law enforcement. If the allegation is in the nature of intentional inappropriate sexual behavior or comments, and is not a sex crime, the investigation is not deferred. The level one investigator completes his/her duties.)

6. If not deferred, complete investigation by interviewing other witnesses and named school employee **(if other witnesses include students in the 6<sup>th</sup> grade or below, their parents/guardians must be given prior notice that the student is to be interviewed and allowed to witness the interview);**

7. Determine whether the report is founded or groundless;

8. Complete investigative report within 15 calendar days of receipt of written report, maintaining original report and giving copies to proper persons.

**102.10 Content of investigative report.** The written investigative report shall include:

1. The name, age, address, and attendance center of the student named in the report.
2. The name and address of the student's parent or guardian and the name and address of the person filing the report, if different from the student's parent or guardian.
3. The name and work address of the school employee named in the report as allegedly responsible for the abuse of the student.
4. An identification of the nature, extent, and cause, if known, of any injuries or abuse to the student named in the report.
5. A general review of the investigation.
6. Any actions taken for the protection and safety of the student.
7. A statement that, in the investigator's opinion, the allegations in the report are either:
  - Unfounded. (It is not likely that an incident, as defined in these rules, took place), or
  - Founded. (It is likely that an incident took place.)
8. The disposition or current status of the investigation.
9. A listing of the options available to the parents or guardian of the student to pursue the allegations. These options include, but are not limited to:
  - Contacting law enforcement.
  - Contacting private counsel for the purpose of filing a civil suit or complaint.
  - Filing a complaint with the board of educational examiners if the school employee is certificated.

The investigator shall retain the original and provide a copy of the investigative report to the school employee named in the report, the school employee's supervisor and the named student's parent or guardian. The person filing the report, if not the student's parent or guardian, shall be notified only that the level-one investigation has been concluded and of the disposition or anticipated disposition of the case.

<p><b>COMMENT:</b> Any of the forms provided in this manual may be reproduced for use by the school or school district.</p>
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**102.11 Founded reports—designated investigator's duties.**

**102.11(1)** The investigator shall notify law enforcement authorities in founded cases of serious physical abuse and in any founded case of sexual abuse under Iowa Code chapter 709 or sexual exploitation under Iowa Code § 728.12(1).

In founded cases of less serious physical incidents or sexual incidents not in the nature of statutory sexual abuse or exploitation as defined by Iowa law, the investigator shall arrange for the level-two investigator to carry out a professional investigation unless the level-one investigation has resulted in a final disposition of the investigation. In addition, the designated investigator shall give a copy of the investigative report to the employee's supervisor and document all action taken.

**102.11(2)** Upon receipt of the level-two investigator's report under rule 281—102.12(280) or upon resolution of the investigation at level one, the designated investigator shall:

a. Forward copies of the level-two investigator's report to the student's parent or guardian, the school employee named in the complaint, and the school employee's supervisor; notify the person filing the report, if different from the student's parent or guardian, of the disposition of the case or current status of the investigation;

b. File a complaint against the school employee who has been found to have physically or sexually abused a student, if that employee holds a teaching certificate, coaching authorization, or practitioner license, with the board on behalf of the school or district by obtaining the superintendent's signature on the complaint in cases where the level-two investigator or law enforcement officials have concluded abuse occurred as defined in these rules or where the employee has admitted the violation or agreed to surrender the employee's certificate or license. The designated investigator has discretion to file a complaint with the board in situations where the employee has resigned as a result of the allegation or investigation but has not admitted that a violation occurred. In the event an employee holding a school bus driver permit has been found to have physically or sexually abused a student, the designated investigator shall file a written

complaint with the school transportation consultant at the department of education; the designated investigator shall file a written complaint with the local school board in founded cases involving other nonlicensed school employees; and

c. Arrange for counseling services for the student on request of the student, or the student's parent or guardian.

**COMMENTS:**

**Physical abuse:** If the level one investigator makes a founded report of an incident of physical abuse occurred and the resulting injury was serious (e.g., broken bone, internal injuries), the level one investigator has a duty to notify law enforcement or the county attorney. Even if the abused student's parent/guardian has indicated that s/he has contacted law enforcement, we recommend that the level one investigator do so also, and document the contact. This notification makes it unnecessary to refer the case to the level two investigator unless law enforcement declines to take any action; in that event, the level two investigator must conduct his/her investigation.

In all "usual" situations of physical abuse investigations, the level two investigator is called upon in founded cases of less serious incidents not otherwise resolved at level one. (The other resolutions that preclude referral to level two include withdrawal of the complaint, recanting of the allegation, admission by the school employee of the violation.)

**Sexual abuse:** As discussed earlier, most reports of alleged sexual abuse will be deferred to law enforcement before the level one investigator completes his/her investigation. The most notable exception is an allegation of sexual improprieties where no sex crime has been alleged. REMEMBER: It is now a crime for a licensed school employee to have a romantic relationship with a student, regardless of the student's age. See Iowa Code section 709.15 (sexual exploitation by a school employee) on pages B-43 and B-44 herein.

**All cases, duties of level one investigator after receiving report of level two investigator:**

1. Give copies of the level two investigator's report to the student's parent/guardian, the named school employee, and the employee's supervisor.

2. Notify person who made the report (if not the student or student's parent/guardian) of the disposition or status of the case.

3. In all cases of founded abuse, file a complaint with either the BoEE or the DE's transportation consultant (if the school employee is a bus driver). The only time that filing a complaint is discretionary is when the employee has voluntarily resigned without admitting the truth of the allegation and without agreeing to surrender his/her license or certificate. Although the rule does not so state, if the founded report is against a school nurse, a complaint should be filed with the Board of Nursing. (If the nurse is also licensed to teach by the BoEE, file a contemporaneous complaint with the BoEE.) A complaint is to be filed with the local school board regarding nonlicensed school employees. A complaint to the BoEE is to be signed by the superintendent.

4. Counseling for the abused student only becomes mandatory upon parental or student request. The rule contemplates that school or AEA counseling services are to be used, although a school may, but is not required to, offer community-based or other professional counseling at the school's expense. An example of providing outside counseling for the student would be if a school does believe in good faith that its counselors are not qualified to provide the necessary counseling services.

**102.12 Level-two investigator's duties.** Upon referral by the designated investigator, the level-two investigator appointed, contracted, requested or retained under subrule 102.5(2) shall review the report of abuse and the designated investigator's report, if any, promptly conduct further investigation and create a written narrative report. The level-two investigator's report shall state:

1. Conclusions as to the occurrence of the alleged incident; and
2. Conclusions as to the applicability of the exceptions to physical abuse listed in 102.4(280); or
3. Conclusions as to the nature of the sexual abuse, if any; and
4. Recommendations regarding the need for further investigation.

The written report shall be delivered to the designated investigator as soon as practicable. The level-two investigator shall exercise prudent discretion in the investigative process to preserve the privacy interests of the individuals involved. To the maximum extent possible, the level-two investigator shall maintain the confidentiality of the report.

**COMMENTS:** There is no “boilerplate” form provided for the use of the level two investigator, but that investigator should be given a copy of these rules by the level one investigator.

There are no specific time constraints placed on the level two investigator other than “as soon as practicable.” Inasmuch as time is nearly always of the essence in these situations, a school should seriously consider not engaging the services of a consistently slow level two investigator. Also, there is nothing to prevent a school from adding timelines to its contract with a level two investigator.

**102.13 Retention of records.** Any record created by an investigation shall be handled according to formally adopted or bargained policies on the maintenance of personnel or other confidential records. Notes, tapes, memoranda, and related materials compiled in the investigation shall be retained by the public or nonpublic school for a minimum of two years. Unfounded reports shall not be placed in an employee’s personnel file. If a report is founded at level one and unfounded at level two, the founded report from the level-one investigator shall be removed immediately upon receipt of an unfounded report from the level-two investigator.

**COMMENTS:** Investigators should retain personal copies of their notes and related materials, as well as the originals of their reports, for at least two years beyond the allegedly abused student attaining age 18. The school’s copies of notes and tapes, as well as its copies of reports should be maintained by the custodian of school records for a minimum of two years.

There is no requirement to place any record in a school employee’s personnel file, even where a founded report was made because the disciplinary report or other employment consequences resulting from a founded report may be sufficient. Parents, of course, are not entitled to know what is in the school employee’s personnel file.

**102.14 Substantial compliance.** Because investigative procedures seldom allow for rigid observance of the protocol, substantial compliance with the rules is required with the overriding goal of reaching a fair and unbiased resolution of the complaint.

**COMMENT:** While these rules are mandatory, abuse situations seldom allow for rigid adherence to procedures. **DO THE BEST YOU CAN.**

## Frequently Asked Questions Regarding Chapter 102

### Definitions

- Q1:** If an incident is alleged to have occurred on a Friday, but is not reported until Monday when the complaint is filed, and by Monday there is no red mark or bruise on the student, should the level one investigator accept photographs taken by the parents of the allegedly abused student as proof that there was an injury?
- A1:** Yes. The definition of injury (“still apparent at least 24 hours” after incident) does not require that the level one investigator see the injury, just that there was evidence of the injury. Any photograph taken by medical personnel or parents or others, or any documentation by medical personnel that the injury occurred, may be accepted by the level one investigator. Give the student the benefit of any doubt when unsure about whether a mark or other indication of injury was still present 24 hours after an alleged incident.
- Q2:** Does the law relate only to actions of the school employee? What about "omissions"?
- A2:** Although the child abuse laws on which these rules were based [Iowa Code sections 232.68(2)(a), (c), and (e)] include omissions, the Chapter 102 rules do not cover omissions. Thus, if a child is injured or abused because a school employee is alleged to have failed to adequately supervise the child, there is no Chapter 102 jurisdiction or responsibility to go forward with an investigation. However, as in all instances when the level one investigator does not have jurisdiction to proceed under Chapter 102, the level one investigator may refer the matter to school administrators as a personnel matter.
- Q3:** Does “student” include a CPI (home schooled) student who is dual enrolled or enrolled in a Home School Assistance Program (HSAP)?
- A3:** Yes, if the alleged incident involves an employee of the school district and occurred at school or in a school context.

### Complaint Form, Process

- Q4:** What if the complainant refuses to make a written report or refuses to sign a complaint?
- A4:** There is no legal responsibility under these rules to investigate in the absence of a signed and witnessed complaint. However, because potential liability attaches if a person “knew or should have known” that abuse was occurring but did nothing to prevent it, the wise school officials will follow up with some form of investigation.
- Q5:** Does a parent or other complaining person have to use this process?
- A5:** The Chapter 102 process is triggered only when a complaint is made to the designated investigator or other school employee. If a parent wants this process to be used, the parent must file a Chapter 102 Complaint.

- Q6:** If a parent or other complaining person uses this process, are they then prohibited from going to the police, the media, a private attorney, or the State Board of Educational Examiners?
- A6:** No. There is no way to prevent a complaining party from exercising the right to use any other process, even after he or she has filed a complaint with the designated investigator. Our hope is that this process will be unbiased and professional, so that people will trust it and believe it works. If they are not satisfied, of course they can pursue other investigative avenues.

### **Immunity, Liability**

- Q7:** Is there any immunity from liability or suit for the level one investigator?
- A7:** Not specifically in these rules. However, Iowa Code Chapter 670 provides three protections for public employees (includes school district employees) who are sued because of some act or omission undertaken as part of the employee's job. So if a lawsuit is filed against a level one investigator arising from an investigation under these rules, the investigator (if a public employee) has the following protections:
1. Legal representation (this does not mean, however, that the employee gets to choose his/her own attorney)
  2. Payment of any settlement/verdict by the employer
  3. Protection from disciplinary action by the employer
- For all investigators, regardless of employer, the legal expectation is that the investigator does his or her job in a "reasonably prudent manner." The rules and forms herein are designed to make sure the investigator does an effective job and can prove it by documenting the investigative process.
- Q8:** What recourse exists for school employees who have a false complaint filed against them? Is there anything a wrongfully accused person can do?
- A8:** The rules are designed to eliminate totally false or vexatious complaints. Notice that there is no provision for anonymous reporting and there is a requirement that an adult witness the making of a written report. If a complaint is filed in bad faith, the named school employee may wish to seek legal counsel regarding libel (written defamation), slander (verbal defamation), or other grounds for suit.

### **Rights of Person Accused of Abuse**

- Q9:** May an accused school employee who is a member of a bargaining unit have a union representative present during the interview process?
- A9:** Yes. In fact, they cannot be denied that right.
- Q10:** May an accused school employee have his/her attorney present during the interview process?
- A10:** Yes, but as stated in the sample policy, the best interview is one that takes place as soon as possible after the employee has learned of the complaint. Therefore, if a school employee asks not to answer questions until he or she can contact an attorney, and the attorney will not be available for several days, the investigation may have to continue in the absence of an interview with the employee.

## **Responsibilities of Level One Investigator**

**Q11:** Who has the responsibility to notify a student's parent or guardian if someone else filed the complaint?

**A11:** This is one of the responsibilities of the level one investigator.

**Q12:** When does the five school days timeline for investigation begin?

**A12:** Technically the time to conduct and complete the level one investigation begins to run on the day a completed written report is received by the designated investigator (Day 1).

**Q13:** Does the five school days timeline also apply to sexual abuse investigations?

**A13:** The five-day timeline specifically applies to physical abuse allegations. A level-one investigation of sexual abuse does not have the five-day timeline for investigation. Both physical and sexual abuse investigative reports must be completed within 15 calendar (not school) days of receipt of a report.

**Q14:** When the level one investigator concludes that serious physical abuse or statutory sexual abuse is alleged, who are "appropriate law enforcement officials"? Is this different from the level two investigator?

**A14:** Law enforcement includes personnel in a county attorney's office, city or county police or sheriff's office. This is different from the level two investigator. If a referral is made to law enforcement officials, that defers or temporarily halts the school's Chapter 102 investigation. If the investigation goes to level two, that is a continuation of the Chapter 102 process.

**Q15:** Regarding the requirement that before a level one investigator can interview a student in pre-school through grade six the investigator must contact the child's parent, what if the parent doesn't consent to the interview?

**A15:** The requirement (which applies only to students allegedly sexually abused and witnesses to sexual abuse) is a *notice* requirement; it is not a *consent* requirement. The parent or guardian has the right to be present at the interview or to send a representative if the parent cannot come. Several points bear mentioning.

- First, if the parent does not wish to or cannot come to the designated time and place when the level one investigator plans to meet with the allegedly abused student or witness, the interview can still take place. (If it is possible to find a mutually convenient time and place for the interview that would allow the parent to take advantage of his or her rights, the investigator is encouraged to agree to reasonable requests. Lengthy delays or in-home interview requests or evening hours requests need not be agreed to unless the designated investigator wishes to do so.) In lieu of attending the interview, the parent can send a relative, friend, etc. as a substitute, or the level one investigator can offer to share an audiotape of the interview.

- Second, the parent/guardian exercising this right should be advised in advance to remain quiet and not to interrupt the interview process or prompt the child in any way. It is best if the parent is placed behind the child so eye contact is not made between them. (This can intimidate the child.)
- If the parent does disrupt the interview or if the child seems more uncommunicative than one would expect, you may wish to stop the interview temporarily, give the student a bathroom break or a drink of water, and chat with the parent, guardian, or substitute representative about your concern that his, her or their presence may be hindering or impeding the student's willingness to communicate. Offer to tape the remainder of the interview, or place the adult outside the door leaving it open a crack if they insist on hearing.

The important thing is the interview; gaining the student's trust will help ensure that you get the facts. If that means excluding the parent because of disruption or intimidation for the student, it should be done.

**Q16:** Can other students be interviewed as collateral sources or witnesses, and if so, must notice be given to the parent/guardian?

**A16:** Students may be interviewed in physical abuse cases as witnesses or persons with information to share without parental notification and without the school's obtaining consent to talk with them. Older (seventh grade or older) students may be interviewed in sexual abuse cases without parental notification or consent. Parental notification that the student was interviewed would be considerate, particularly in sensitive cases, but the contact must be made without breaching the confidentiality provisions of the rules. For example, "We are conducting an investigation into an incident at school and spoke with your son/daughter to see if he/she had any information to share that would help us in our investigation. Your child is not being accused of anything. I'm sorry but I am unable to give you any more information than that, but I did want you to know in case he/she mentions it to you."

**Q17:** Does the level one investigator only have two options (founded or unfounded)? Is it possible to have an "undetermined" category?

**A17:** The level one investigator's duty is to decide only "if it is likely that an incident took place between the student and the school employee." (Note that the rules define "incident" as "occurrence of behavior that meets the definition of physical or sexual abuse in these rules.") If there is no preponderance of the evidence indicating something happened, then the report is unfounded -- not "undetermined."

**Q18:** Is every allegation of abuse investigable?

**A18:** No. The first thing the designated investigator does upon receiving a report (after making copies) is to determine whether he or she has jurisdiction of the complaint.

That involves establishing the following:

- (1) The allegedly abused student is or was a student at the time of the incident;
- (2) The accused is currently a school employee;

- (3) The alleged incident occurred on school grounds on school time, on a school-sponsored activity, or in a school-related context; and
- (4) The alleged act meets the definition of physical abuse (including the definition of injury) or sexual abuse in the rules.

Other facts that can cause the complaint to be rejected include the signature and witnessing requirements or insufficient facts to conduct an investigation.

**Q19:** Must the level one investigator file a complaint with the State Board of Educational Examiners in every case of founded student abuse?

**A19:** Yes, although the superintendent signs as the actual complaint. Note that bus drivers who are the subjects of founded complaints should be reported to the Department of Education for possible hearing. In addition, the local school board should be notified of all founded complaints.

**Q20:** Should the level one investigator's report be attached to a complaint filed with the Board of Educational Examiners (BoEE)?

**A20:** The BoEE's investigator prefers that it be attached with the complaint. The school employee against whom the report is founded will already have his/her copy of the level one investigation report (as required by rule 102.10), so there is no reason not to give it to the BoEE at the outset. (As a practical matter, if it is not attached, the BoEE investigator will ask for a copy and is entitled to the same.) The BoEE's rules require that the complaint and all attachments are kept confidential until such time, if ever, probable cause is found for that Board to proceed with prosecution against the employee's license or certificate.

**Q21:** To summarize, what are the duties of the level one investigator?

**A21:** The duties are summarized as follows:

1. Make copies of the complaint and give to complainant, supervisor of named employee, and (now or later) the named employee.
2. Establish jurisdiction.
  - a. Student a current or former student at time of alleged incident?
  - b. Accused employee an employee at time of alleged incident and still an employee?
  - c. Alleged incident occur at school, during school time, school-sponsored activity, or school-related context?
  - d. Injury apparent at least 24 hours after alleged incident?
3. Conduct preliminary investigation.
  - a. Physical abuse
    - i. If serious injury resulted, defer temporarily to law enforcement for their investigation
    - ii. If less-than-serious injury alleged, proceed to interview allegedly abused student, witnesses (anyone with knowledge), and named school employee
  - b. Sexual abuse
    - i. If allegation could constitute a sex crime, interview only the allegedly abused student and only for credibility; if credible, defer investigation to law enforcement
    - ii. If no sex crime is alleged, proceed to interview allegedly abused student, witnesses, and named school employee

4. Investigative report.
  - a. Complete investigation in 5 school days (unless deferred to law enforcement)
  - b. Complete report in 15 calendar days

### **Level Two Investigator**

**Q22:** Why is no training provided specifically to level two investigators?

**A22:** Level two investigators are welcome to participate in the annual training offered to level one investigators, but the point of having a level two investigator is that this is a person already trained in interviewing and investigation techniques.

**Q23:** Is there a specified form to be used by level two investigators in making their reports?

**A23:** No. The level two investigator has discretion to make his/her report in any written format desired, as long as the report covers the following points:

- Conclusions as to the occurrence of the alleged incident;
- If physical abuse is alleged, conclusions as to whether any of the exceptions in rule 102.4 apply;
- If sexual abuse is alleged, conclusions as to the nature of the sexual abuse; and
- Recommendations regarding whether further investigation is needed.

**Q24:** May the level two investigator be an AEA employee?

**A24:** No. The level two investigator cannot be a school or an AEA employee. There are two reasons for this: (1) the person at level two needs to have the additional experience and training in investigations that a school employee cannot reasonably be expected to have and (2) having an "outside" person conduct the next level of investigation gives the public confidence that educators are not trying to protect their own against allegations of abuse.

**Q25:** To summarize, what are the duties of the level two investigator?

**A25:** The duties are summarized as follows:

1. Conduct a full investigation (*more than reviewing the level one report*)
2. In physical abuse complaints, determine whether any of the exceptions in rule 102.4 apply
3. Complete investigation and give a written report to the level one investigator

### **Miscellaneous**

**Q26:** Do the confidentiality provisions apply to a complaining party?

**A26:** No, but it would be helpful to the investigator if the complainant were urged to respect the student's and school employee's privacy rights by maintaining a degree of silence while the investigation proceeds. Potential witnesses who hear about accusations before they are interviewed as witnesses could be tainted by what they've heard.

**Q27:** How does the crime of sexual exploitation by a school employee (new as of 2003) impact chapter 102 investigations?

**A27:** The new crime greatly broadens the scope of these investigations. Prior to the creation of this crime, unethical or improper behavior of an employee toward a student was not have been a crime if consensual. The new crime recognizes that a sexual or romantic relationship between a student and a teacher, coach, or administrator is never truly “consensual” because of the disparity in the level of authority. Therefore, it is now a crime for a school employee who is licensed by the Board of Educational Examiners to engage in any sexual conduct with a student. “Sexual conduct” includes kissing, “petting,” and any act that common sense dictates is a sex act. “Student” includes any student, regardless of age, currently enrolled or enrolled within 30 days of a violation of the law. See Iowa Code section 709.15 on page B-38 herein.

**Q28:** If the school employee admits the incident, is the matter founded and sent to the level two investigator?

**A28:** That depends. The purpose of the investigation is to get at the truth. If the employee admits to the alleged conduct and admits that the conduct was not justified, there is no need to go to level two. Stated conversely, if the employee believes his/her actions were justified (in physical abuse only), the case has to go to level two to see if the exceptions apply. Only the level two investigator can determine the applicability of the exceptions or whether "reasonable force" was used. The tougher question is in the area of sexual abuse, particularly sexual harassment. The employee may admit saying or doing the things alleged, but may deny that the actions or words constituted "intentional inappropriate sexual behavior, including sexual harassment." In such cases, the investigation is not concluded by this “admission” and the investigation goes forward until a determination is made of a violation or no violation.

**Q29:** Are counseling services for the student given at school expense?

**A29:** The rule requires counseling only in cases of founded abuse and only when requested by the student or his or her parent or guardian. As the comment section to rule 102.11 states, the school has no obligation to obtain outside counseling unless the school officials conclude that staff counselors are not qualified to provide those services. This is a decision that should probably be made after consultation with the school’s insurer also. The duration of counseling services is up to the school, considering the recommendation of the counselor, the seriousness of the abuse, and the input from the insurer for the school.

**Q30:** Where can a level one investigator learn more about physical restraint or detention rules?

**A31:** The Department has a Web page of resources about physical restraint or detention at

[http://www.iowa.gov/educate/index.php?option=com\\_content&view=article&id=1002:timeout-seclusion-and-restraint-&catid=460:learning-supports&Itemid=1299](http://www.iowa.gov/educate/index.php?option=com_content&view=article&id=1002:timeout-seclusion-and-restraint-&catid=460:learning-supports&Itemid=1299).

# **COMPLAINT FORM**

“Complaint of Injury to or Abuse of a Student”

**COMPLAINT OF INJURY TO OR ABUSE OF A STUDENT BY A SCHOOL EMPLOYEE**

Complete the following as fully as possible. If you need assistance, contact your school's Level One Investigator.

Student's name: \_\_\_\_\_

Student's address: \_\_\_\_\_

Student's phone number: \_\_\_\_\_ Student's school: \_\_\_\_\_

Name of school employee accused of abusing the student: \_\_\_\_\_

School at which named employee works: \_\_\_\_\_

Allegation is of \_\_\_\_\_ physical abuse \_\_\_\_\_ sexual abuse\*

Describe what happened. Include date, time, specific location of incident, and the nature of the student's injury, if physical abuse is alleged (attach additional pages if necessary):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Were there any witnesses to the incident or are there any persons who may have information about this incident?

\_\_\_\_\_ Yes \_\_\_\_\_ No If yes, list names of individuals (if known) or categories (e.g., "3rd grade class"):

\_\_\_\_\_  
\_\_\_\_\_

Has a doctor or other professional examined or treated the student as a result of the incident? \_\_\_\_\_ No  
\_\_\_\_\_ Yes If yes, provide the name and address of the professional and the date of examination/treatment (if known):

\_\_\_\_\_  
\_\_\_\_\_

Has anyone contacted law enforcement about this incident? \_\_\_\_\_ Yes \_\_\_\_\_ No

\*Parents/guardians of children who are in Pre-K through 6<sup>th</sup> grade have the right to be notified in advance of any interview of their child either as the allegedly abused student or as a witness if sexual abuse is alleged. These parents/guardians also have the right to see and hear any interviews of their children in this investigation. Please indicate if the parent/guardian wishes to exercise this right:

\_\_\_\_\_ Yes \_\_\_\_\_ No Telephone #: \_\_\_\_\_

Provide any additional information that would be helpful to the investigator, attaching additional pages as needed:

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Your name, address, and telephone number: \_\_\_\_\_

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Your relationship to the student: \_\_\_\_\_

\_\_\_\_\_  
Complainant Signature

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name of Witness

\_\_\_\_\_  
Witness Address

Be advised that you have the right to contact law enforcement, the county attorney, a private attorney, or the State Board of Educational Examiners (if the accused school employee is a licensee of the BoEE) for separate investigation of this incident. The filing of this report does not deny you that opportunity.

If you are the parent/guardian of the named student, you will receive a copy of this report, and a copy of the Investigator's Report within 15 calendar days of filing this report unless the investigation is turned over to law enforcement by the school.

# **REPORT**

**to be completed by Level One Investigator**

# REPORT OF LEVEL ONE INVESTIGATION

Student's name: \_\_\_\_\_

Student's age: \_\_\_\_ Student's grade: \_\_\_\_ Student's School: \_\_\_\_\_

Student's address: \_\_\_\_\_

Name of accused school employee: \_\_\_\_\_

Employee's position/assignment with school: \_\_\_\_\_

Name, address of complainant: \_\_\_\_\_

\_\_\_\_\_

Name, address of student's parent/guardian, if different from complainant: \_\_\_\_\_

\_\_\_\_\_

Date report of abuse filed: \_\_\_\_\_ Type of abuse alleged: \_\_\_\_\_Physical \_\_\_\_\_Sexual

Describe the nature, extent, and cause of the student's injury, if any and if known: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Summarize your investigation, attaching additional pages as needed. DO NOT use the full names of student witnesses.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Were audiotapes made of any interviews? \_\_\_Yes \_\_\_No Videotapes? \_\_\_Yes \_\_\_No

Were parents/guardians of PreK – 6<sup>th</sup> grade students who were interviewed as allegedly abused students or witnesses in a sexual abuse investigation advised of their right to see and hear such interviews?

\_\_\_\_Yes \_\_\_\_No Was this right exercised? \_\_\_\_Yes \_\_\_\_No

Was any action taken to protect the allegedly abused student during or as a result of the investigation?

\_\_\_\_Yes \_\_\_\_No If yes, check all that apply:

\_\_\_\_Student excused from school

\_\_\_\_School employee placed on leave

\_\_\_\_Student assigned to different class

\_\_\_\_Other (Specify) \_\_\_\_\_

\_\_\_\_\_

**LEVEL ONE INVESTIGATOR’S CONCLUSIONS:**

**The Complaint is being dismissed for lack of jurisdiction.**

- Physical abuse alleged, but no evidence of physical injury exists.
- Allegedly abused student was not a student at the time of the incident.
- Physical abuse alleged, but nature of alleged incident makes it unlikely an injury as defined in the chapter 102 rules occurred.
- Accused school employee is not currently employed by this school district or was not a school employee at the time of the alleged incident.
- Sexual abuse alleged, but the alleged actions of the school employee, even if true, would not meet the definition of sexual abuse in the rules.
- Alleged incident did not occur on school grounds, on school time, on a school-sponsored activity, nor in a school-related context.

**The Complaint has been investigated and concluded at Level One as unfounded.**

- Complaint was withdrawn or recanted.
- Insufficient evidence exists that an incident of abuse, as defined by the rules, took place.

**The Complaint has been investigated at Level One and is founded.**

- The investigation is founded at Level One and is being turned over to Level Two for further investigation.
- The investigation is concluded at Level One because the accused school employee has admitted the violation, resigned, or agreed to relinquish any teaching license held.

**CURRENT STATUS OF THE INVESTIGATION:**

- Closed. No further investigation is warranted.
- Deferred temporarily to law enforcement.
- Closed and referred to school officials for further investigation as a personnel matter.
- Turned over to Level Two investigator.

Other Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I have given a copy of the complaint of abuse and of this investigation report to the person filing the report (if he or she is the student’s parent or guardian) and informed the person filing the report of the options of contacting law enforcement, private counsel, the State Board of Educational Examiners, if the accused school employee holds an Iowa practitioner’s certificate or license, the Department of Education’s transportation consultant if the accused employee holds a bus driver’s authorization, or the local school board if the accused is an other non-licensed employee.

\_\_\_\_\_  
Name of Level One Investigator (Print)

\_\_\_\_\_  
Signature of Level One Investigator

\_\_\_\_\_  
Date

## **Board of Educational Examiners COMPLAINT FORM**

The BoEE's Complaint Form (revised July 2010) is found toward the end of the Licensure Handbook on the BoEE's Web site at <http://www.boee.iowa.gov/> (see tab in middle of web page) or at <http://www.boee.iowa.gov/forms/handbook.pdf>.

Before filing a complaint, the BoEE asks that practitioners call the BoEE first to be "walked through" the complaint process.

Contact information for the BoEE's investigator/attorney, Beth Myers, is:  
515/242-6506 (direct line)  
[beth.myers@iowa.gov](mailto:beth.myers@iowa.gov) (email)

515/281-5849 is the BoEE's general phone number.

## SEX CRIMES

### Selected provisions from Iowa Code Chapter 709 (SEXUAL ABUSE), and Iowa Code Section 728.12 (SEXUAL EXPLOITATION OF A MINOR)

#### **709.1 Sexual abuse defined.**

Any sex act between persons is sexual abuse by either of the persons when the act is performed with the other person in any of the following circumstances:

1. The act is done by force or against the will of the other. If the consent or acquiescence of the other is procured by threats of violence toward any person or if the act is done while the other is under the influence of a drug inducing sleep or is otherwise in a state of unconsciousness, the act is done against the will of the other.
2. Such other person is suffering from a mental defect or incapacity which precludes giving consent, or lacks the mental capacity to know the right and wrong of conduct in sexual matters.
3. Such other person is a child.

#### **709.2 Sexual abuse in the first degree.**

A person commits sexual abuse in the first degree when in the course of committing sexual abuse the person causes another serious injury.

Sexual abuse in the first degree is a class "A" felony.

#### **709.3 Sexual abuse in the second degree.**

A person commits sexual abuse in the second degree when the person commits sexual abuse under any of the following circumstances:

1. During the commission of sexual abuse the person displays in a threatening manner a dangerous weapon, or uses or threatens to use force creating a substantial risk of death or serious injury to any person.
  2. The other person is under the age of twelve.
  3. The person is aided or abetted by one or more persons and the sex act is committed by force or against the will of the other person against whom the sex act is committed.
- Sexual abuse in the second degree is a class "B" felony.

#### **709.4 Sexual abuse in the third degree.**

A person commits sexual abuse in the third degree when the person performs a sex act under any of the following circumstances:

1. The act is done by force or against the will of the other person, whether or not the other person is the person's spouse or is cohabiting with the person.
2. The act is between persons who are not at the time cohabiting as husband and wife and if any of the following are true:
  - a. The other person is suffering from a mental defect or incapacity which precludes giving consent.
  - b. The other person is twelve or thirteen years of age.
  - c. The other person is fourteen or fifteen years of age and any of the following are true:
    - (1) The person is a member of the same household as the other person.
    - (2) The person is related to the other person by blood or affinity to the fourth degree.

(3) The person is in a position of authority over the other person and uses that authority to coerce the other person to submit.

(4) The person is four or more years older than the other person.

3. The act is performed while the other person is under the influence of a controlled substance, which may include but is not limited to flunitrazepam, and all of the following are true:

a. The controlled substance, which may include but is not limited to flunitrazepam, prevents the other person from consenting to the act.

b. The person performing the act knows or reasonably should have known that the other person was under the influence of the controlled substance, which may include but is not limited to flunitrazepam.

4. The act is performed while the other person is mentally incapacitated, physically incapacitated, or physically helpless.

Sexual abuse in the third degree is a class "C" felony.

### **709.8 Lascivious acts with a child.**

It is unlawful for any person sixteen years of age or older to perform any of the following acts with a child with or without the child's consent unless married to each other, for the purpose of arousing or satisfying the sexual desires of either of them:

1. Fondle or touch the pubes or genitals of a child.

2. Permit or cause a child to fondle or touch the person's genitals or pubes.

3. Solicit a child to engage in a sex act or solicit a person to arrange a sex act with a child.

4. Inflict pain or discomfort upon a child or permit a child to inflict pain or discomfort on the person.

Any person who violates a provision of this section involving an act included in subsection 1 or 2 shall, upon conviction, be guilty of a class "C" felony. Any person who violates a provision of this section involving an act included in subsection 3 or 4 shall, upon conviction, be guilty of a class "D" felony.

### **709.9 Indecent exposure.**

A person who exposes the person's genitals or pubes to another not the person's spouse, or who commits a sex act in the presence of or view of a third person, commits a serious misdemeanor, if:

1. The person does so to arouse or satisfy the sexual desires of either party; and

2. The person knows or reasonably should know that the act is offensive to the viewer.

### **709.11 Assault with intent to commit sexual abuse.**

Any person who commits an assault, as defined in section 708.1, with the intent to commit sexual abuse is guilty of a class "C" felony if the person thereby causes serious injury to any person and guilty of a class "D" felony if the person thereby causes any person a bodily injury other than a serious injury. The person is guilty of an aggravated misdemeanor if no injury results.

**709.12 Indecent contact with a child.**

A person eighteen years of age or older is upon conviction guilty of an aggravated misdemeanor if the person commits any of the following acts with a child, not the person's spouse, with or without the child's consent, for the purpose of arousing or satisfying the sexual desires of either of them:

1. Fondle or touch the inner thigh, groin, buttock, anus, or breast of the child.
2. Touch the clothing covering the immediate area of the inner thigh, groin, buttock, anus, or breast of the child.
3. Solicit or permit a child to fondle or touch the inner thigh, groin, buttock, anus, or breast of the person.
4. Solicit a child to engage in any act prohibited under section 709.8, subsection 1, 2, or 4.

The provisions of this section shall also apply to a person sixteen or seventeen years of age who commits any of the enumerated acts with a child who is at least five years the person's junior, in which case the juvenile court shall have jurisdiction under chapter 232.

**709.14 Lascivious conduct with a minor.**

It is unlawful for a person over eighteen years of age who is in a position of authority over a minor to force, persuade, or coerce a minor, with or without consent, to disrobe or partially disrobe for the purpose of arousing or satisfying the sexual desires of either of them. Lascivious conduct with a minor is a serious misdemeanor.

**709.15 Sexual exploitation by a counselor, therapist, or school employee.**

1. As used in this section:

...

- f. "School employee" means a practitioner as defined in section 272.1.
- g. "Student" means a person who is currently enrolled in or attending a public or nonpublic elementary or secondary school, or who was a student enrolled in or attended a public or nonpublic elementary or secondary school within thirty days of any violation of subsection 3.

...

3. Sexual exploitation by a school employee occurs when any of the following are found:
  - a. A pattern or practice or scheme of conduct to engage in any of the conduct described in paragraph "b".
  - b. Any sexual conduct with a student for the purpose of arousing or satisfying the sexual desires of the school employee or the student. Sexual conduct includes but is not limited to the following: kissing; touching of the clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes, or genitals; or a sex act as defined in section 702.17. ...

...

5.
  - a. A school employee who commits sexual exploitation in violation of subsection 3, paragraph "a", commits a class "D" felony.
  - b. A school employee who commits sexual exploitation in violation of subsection 3, paragraph "b", commits an aggravated misdemeanor.

## **728.12 Sexual exploitation of a minor.**

1. It shall be unlawful to employ, use, persuade, induce, entice, coerce, solicit, knowingly permit, or otherwise cause or attempt to cause a minor to engage in a prohibited sexual act or in the simulation of a prohibited sexual act. A person must know, or have reason to know, or intend that the act or simulated act may be photographed, filmed, or otherwise preserved in a negative, slide, book, magazine, computer, computer disk, or other print or visual medium, or be preserved in an electronic, magnetic, or optical storage system, or in any other type of storage system. A person who commits a violation of this subsection commits a class "C" felony. Notwithstanding section 902.9, the court may assess a fine of not more than fifty thousand dollars for each offense under this subsection in addition to imposing any other authorized sentence.

2. It shall be unlawful to knowingly promote any material visually depicting a live performance of a minor engaging in a prohibited sexual act or in the simulation of a prohibited sexual act. A person who commits a violation of this subsection commits a class "D" felony. Notwithstanding section 902.9, the court may assess a fine of not more than twenty-five thousand dollars for each offense under this subsection in addition to imposing any other authorized sentence.

3. It shall be unlawful to knowingly purchase or possess a negative, slide, book, magazine, computer, computer disk, or other print or visual medium, or an electronic, magnetic, or optical storage system, or any other type of storage system which depicts a minor engaging in a prohibited sexual act or the simulation of a prohibited sexual act. A person who commits a violation of this subsection commits an aggravated misdemeanor for a first offense and a class "D" felony for a second or subsequent offense. For purposes of this subsection, an offense is considered a second or subsequent offense if, prior to the person's having been convicted under this subsection, any of the following apply:

a. The person has a prior conviction or deferred judgment under this subsection.

b. The person has a prior conviction, deferred judgment, or the equivalent of a deferred judgment in another jurisdiction for an offense substantially similar to the offense defined in this subsection. The court shall judicially notice the statutes of other states that define offenses substantially similar to the offense defined in this subsection and that therefore can be considered corresponding statutes.

4. This section does not apply to law enforcement officers, court personnel, licensed physicians, licensed psychologists, or attorneys in the performance of their official duties.

### **Iowa Code section 280.21, Corporal Punishment**

1. An employee of an accredited public school district, accredited nonpublic school, or area education agency shall not inflict, or cause to be inflicted, corporal punishment upon a student. For purposes of this section, "corporal punishment" means the intentional physical punishment of a student. An employee's physical contact with the body of a student shall not be considered corporal punishment if it is reasonable and necessary under the circumstances and is not designed or intended to cause pain or if the employee uses reasonable force, as defined under section 704.1, for the protection of the employee, the student, or other students; to obtain the possession of a weapon or other dangerous object within a student's control; or for the protection of property. The department of education shall adopt rules to implement this section.

2. A school employee who, in the reasonable course of the employee's employment responsibilities, comes into physical contact with a student shall be granted immunity from any civil or criminal liability which might otherwise be incurred or imposed as a result of such physical contact, if the physical contact is reasonable under the circumstances and involves the following:

- a. Encouraging, supporting, or disciplining the student.
- b. Protecting the employee, the student, or other students.
- c. Obtaining possession of a weapon or other dangerous object within a student's control.
- d. Protecting employee, student, or school property.
- e. Quelling a disturbance or preventing an act threatening physical harm to any person.
- f. Removing a disruptive student from class or any area of the school premises, or from school-sponsored activities off school premises.
- g. Preventing a student from the self-infliction of harm.
- h. Self-defense.
- i. Any other legitimate educational activity.

3. To prevail in a civil action alleging a violation of this section the party bringing the action shall prove the violation by clear and convincing evidence. Any school employee determined in a civil action to have been wrongfully accused under this section shall be awarded reasonable monetary damages, in light of the circumstances involved, against the party bringing the action.

### **280.17 Procedures for handling child abuse reports.**

The board of directors of a public school and the authorities in control of a nonpublic school shall prescribe procedures, in accordance with the guidelines contained in the model policy developed by the department of education in consultation with the department of human services, and adopted by the department of education pursuant to chapter 17A, for the handling of reports of child abuse, as defined in section 232.68, subsection 2, paragraph "a", "c", or "e", alleged to have been committed by an employee or agent of the public or nonpublic school.

## Board of Educational Examiners Code of Ethical Conduct:

### 282—Iowa Administrative Code Chapter 25

**282—25.3(272) Standards of professional conduct and ethics.** Licensees are required to abide by all federal, state, and local laws applicable to the fulfillment of professional obligations. Violation of federal, state, or local laws in the fulfillment of professional obligations constitutes unprofessional and unethical conduct which can result in disciplinary action by the board. In addition, it is hereby deemed unprofessional and unethical for any licensee to violate any of the following standards of professional conduct and ethics:

**25.3(1) Standard I—conviction of crimes, sexual or other immoral conduct with or toward a student, and child and dependent adult abuse.** Violation of this standard includes:

...

*e. Student abuse.* Licensees shall maintain professional relationships with all students, both inside and outside the classroom. The following acts or behavior constitutes unethical conduct without regard to the existence of a criminal charge or conviction:

- (1) Committing any act of physical abuse of a student;
- (2) Committing any act of dependent adult abuse on a dependent adult student;
- (3) Committing or soliciting any sexual or otherwise indecent act with a student or any minor;
- (4) Soliciting, encouraging, or consummating a romantic or otherwise inappropriate relationship with a student;
- (5) Furnishing alcohol or illegal or unauthorized drugs or drug paraphernalia to any student or knowingly allowing a student to consume alcohol or illegal or unauthorized drugs in the presence of the licensee; or
- (6) Failing to report any suspected act of child or dependent adult abuse as required by state law.

...

**25.3(6) Standard VI—unethical practice toward other members of the profession, parents, students, and the community.** Violation of this standard includes:

- ....
- c.* Failing to make reasonable effort to protect the health and safety of the student or creating conditions harmful to student learning.
  - d.* Conducting professional business in such a way that the practitioner repeatedly exposes students or other practitioners to unnecessary embarrassment or disparagement.

# QUESTIONS??

## Contact Information (as of January 2011):

*Carol Greta*, general counsel for Iowa Department of Education  
515/281-8661  
[carol.greta@iowa.gov](mailto:carol.greta@iowa.gov)

Contact Carol when you have questions about:

- Whether you have jurisdiction to conduct a Chapter 102 investigation
- Basic “how to” information when conducting a level one investigation
- Anything else regarding Chapter 102

*Thomas Mayes*, special education legal consultant for Iowa Department of Education

515/242-5614  
[thomas.mayes@iowa.gov](mailto:thomas.mayes@iowa.gov)

Contact Thomas when you have questions about:

- Application and interpretation of laws that regulate restraint or physical detention of students (See also the information about this topic on the DE’s Web site at [http://www.iowa.gov/educate/index.php?option=com\\_content&view=article&id=1002:timeout-seclusion-and-restraint-&catid=460:learning-supports&Itemid=1299](http://www.iowa.gov/educate/index.php?option=com_content&view=article&id=1002:timeout-seclusion-and-restraint-&catid=460:learning-supports&Itemid=1299).)
- Special education law

*Max Christensen*, transportation executive officer to Iowa Department of Education  
515/281-4749  
[max.christensen@iowa.gov](mailto:max.christensen@iowa.gov)

Contact Max when you need to file a notification with the Department of Education that a school bus driver has a founded complaint under Chapter 102

*Beth Myers*, investigator and attorney for Iowa Board of Educational Examiners  
515/242-6506  
[beth.myers@iowa.gov](mailto:beth.myers@iowa.gov)

Contact Beth when you have questions about:

- How to fill out the BoEE’s complaint form
- What to expect regarding a BoEE investigation

# PART C

## (Section to be Copied\* and Provided to Level Two Investigator)

### ***Note to Level Two Investigators:***

First, *thank you* for helping the school with its investigation. In the late 1980s the Iowa Attorney General issued an Opinion that school employees are not “caretakers” of students; thus, DHS cannot investigate allegations that a school employee abused a student. So the Iowa Legislature directed the State Board of Education to create a procedure for the investigation of such allegations. Here is where you, as a Level Two investigator, come in.

The Level One investigator, who is usually a school employee, has made an initial finding that the following are true:

- The allegation involved a current school employee and a student
- The alleged abuse took place at school or a school function
- A preponderance of the evidence indicates that the allegation is true

The Level One investigator is now obligated to hand off the investigation to the Level Two investigator. The Level Two investigator is to do the following:

- Review the notes of the Level One investigator to get the “lay of the land”
- Conduct a complete investigation of your own
- Prepare a report that includes the following:
  - Your conclusions as to the occurrence of the alleged incident
  - Your conclusions as to the applicability of the exceptions to physical abuse listed in 102.4(280); or
  - Your conclusions as to the nature of the sexual abuse, if any; and
  - Your recommendations regarding the need for further investigation.
- Deliver your written report to the school’s Level One investigator as soon as practicable.

Please keep in mind that this is not a criminal investigation. *You have been retained as the Level Two investigator because you have special training in interviewing and investigating, not because this is now a criminal investigation.* (A criminal investigation of any given situation is not precluded, but it is important to distinguish the duties of a Level Two investigator from a criminal investigation.)

What follows are excerpts from the rules – with commentary, frequently asked questions, and resources – for your benefit to use as you see fit. Thanks again. Please feel free to contact me (Carol Greta, attorney for the Iowa Department of Education) at 515/281-8661 or [carol.greta@iowa.gov](mailto:carol.greta@iowa.gov) with any questions.

\*Attention *Level One Investigators*: You have permission of the Iowa Department of Education to copy this section to give to the Level Two Investigator.

## Selected Chapter 102 Rules and Comments

(These are a few of the administrative rules adopted by the State Board of Education to set out the procedure to be followed when a student is allegedly abused by a school employee; if you want to read all of Chapter 102, you may find it online at <http://www.legis.state.ia.us/asp/ACODocs/agencyList.aspx>. Click on the link to Department of Education's Chapter 102; those links are updated biweekly, so it is not practical to print the precise link here.

The commentary in the boxes is not in the rules themselves, but is included in an attempt to explain the rule language.)

### 102.2 Definitions.

*"Abuse"* may fall into either of the following categories:

*"Physical abuse"* means nonaccidental physical injury to the student as a result of the actions of a school employee.

**COMMENTS:** The key elements are as follows:

1. The conduct of the school employee must have been intentional.
2. The alleged injury must be bodily injury; mental or verbal abuse is not covered by these rule.
3. The alleged injury must be apparent 24 hours after the incident.

The definition of physical abuse does not include omissions (negligence) by school employees. However, a physical injury to a student may result without the school employee having touched the student. Consider this example:

A student who is to be belted securely into a seat in all classes suffers bruising to his back because the student slides from his seat to the floor. If this injury is the result of mere negligence (the teacher and aide honestly forgot to secure the student), this is not investigable under chapter 102. However, if the teacher or aide deliberately chose to not secure the student, this is a nonaccidental physical injury and must be investigated.

*"Sexual abuse"* means any sexual offense as defined by Iowa Code chapter 709 or Iowa Code section 728.12(1). The term also encompasses acts of the school employee that encourage the student to engage in prostitution as defined by Iowa law, as well as inappropriate, intentional sexual behavior, or sexual harassment by the school employee toward a student.

**COMMENTS:** Although the definition of “sexual abuse” is broad, it does not include omissions (negligence) by school employees. It includes sex crimes. **It also includes non-criminal acts, such as sexual harassment or the promise of favorable treatment in return for sexual favors or activities or unwanted touching that does not rise to the level of being a crime.** Level Two investigators are not always accustomed to dealing with sexual harassment, but you are called upon at times to investigate this behavior because of your expertise in interviewing and investigating.

“Reasonable force” is that force and no more which a reasonable person, in like circumstances, would judge to be necessary to prevent an injury or loss and can include deadly force if it is reasonable to believe that such force is necessary to avoid injury or risk to one’s life or safety or the life or safety of another, or it is reasonable to believe that such force is necessary to resist a like force or threat.

**COMMENT:** Only level two investigators can determine whether an accused school employee acted with “reasonable force.” **Thus, this is a crucial aspect of the level two investigation.** See more in rule 102.4, below.

“Sexual harassment” means unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature when:

1. Submission to the conduct is made either implicitly or explicitly a term or condition of the student’s education or benefits;
2. Submission to or rejection of the conduct is used as the basis for academic decisions affecting that student; or
3. The conduct has the purpose or effect of substantially interfering with a student’s academic performance by creating an objectively intimidating, hostile, or offensive education environment.

**COMMENT:** Recognizing behaviors and conduct that constitute sexual harassment is not an exact science. If an investigator has a question about a particular situation, the investigator may wish to review the training tape (available at all AEAs) that covers this subject. (Ask for the tape that includes the scenario involving an allegation of sexual harassment.) Remember that the word “objectively” is used in the third definition of sexual harassment above. You must find that a reasonable person would believe that the alleged conduct created an intimidating, hostile or offensive environment in the school.

**102.4 Exceptions.**

**102.4(1)** The following do not constitute physical abuse, and no school employee is prohibited from:

a. Using reasonable and necessary force, not designed or intended to cause pain:

(1) To quell a disturbance or prevent an act that threatens physical harm to any person.

(2) To obtain possession of a weapon or other dangerous object within a pupil's control.

(3) For the purposes of self-defense or defense of others as provided for in Iowa Code section 704.3.

(4) For the protection of property as provided for in Iowa Code section 704.4 or 704.5.

(5) To remove a disruptive pupil from class, or any area of school premises or from school-sponsored activities off school premises.

(6) To prevent a student from the self-infliction of harm.

(7) To protect the safety of others.

b. Using incidental, minor, or reasonable physical contact to maintain order and control.

**102.4(2)** In determining the reasonableness of the contact or force used, the following factors shall be considered:

a. The nature of the misconduct of the student, if any, precipitating the physical contact by the school employee.

b. The size and physical condition of the student.

c. The instrumentality used in making the physical contact.

d. The motivation of the school employee in initiating the physical contact.

e. The extent of injury to the student resulting from the physical contact.

**COMMENT:** *The applicability of these exceptions is determined only by the level two investigator. The essence of the exceptions is to acknowledge limited circumstances where an employee may exercise physical force, even force that results in injury to the student.*

**102.8 Duties of designated investigator—physical abuse allegations.**

**102.8(1)** Upon receipt of the report, the [level one] investigator shall make and provide a copy of the report to the person filing, to the student's parent or guardian if different from the person filing and to the supervisor of the employee named in the report. ...

**102.8(2)** Within five school days of receipt of a report of physical abuse, the designated investigator shall conduct and complete an informal investigation

after reviewing the report to determine that the allegations, if true, support the exercise of jurisdiction pursuant to rule 102.3.

**102.8(3)** If, in the [level one] investigator's opinion, the magnitude of the allegations in the report suggests immediate and professional investigation is necessary, the designated investigator may temporarily defer the level-one investigation. In cases of deferred investigation, the investigator shall contact appropriate law enforcement officials, the student's parent or guardian and the person filing the report, if different from the student's parent or guardian, documenting in writing the action taken.

**102.8(4)** The [level one] investigator shall interview the allegedly abused student, any witnesses or persons who may have knowledge of the circumstances contained in the report, and the school employee named in the report. ...

**102.8(5)** The designated investigator's role is not to determine the guilt or innocence of the school employee, the applicability of the exceptions or reasonableness of the contact or force listed in rule 102.4(280). The [level one] investigator shall determine, by a preponderance of the evidence, whether it is likely that an incident took place between the student and the school employee.

...

The level-two investigator appointed, contracted, requested or retained under subrule 102.5(2), when called upon for further investigation, shall consider the applicability of the exceptions listed in rule 102.4(280) and the reasonableness of the contact or force used under subrule 102.4(2) in reaching conclusions as to the occurrence of physical abuse as defined by these rules.

...

**COMMENTS:** This rule is included so the level two investigator has an idea of the duties of the level one investigator.

If the level one investigator believes that the alleged incident is a crime, s/he should defer the level-one investigation, contact a member of law enforcement with jurisdiction to investigate the suspected crime, notify the student's parent or guardian of this, notify the person who filed the report (if not the student or student's parent or guardian), and document these actions.

**NOTE:** Subrule 102.8(5) specifies that only the level two investigator determines whether the exceptions listed in rule 102.4 apply.

## **102.9 Duties of designated investigator—sexual abuse allegations.**

**102.9(1)** Upon receipt of the report, the [level one] investigator shall make and

provide a copy of the report to the person filing the report, to the student's parent or guardian if different from the person filing the report, and to the supervisor of the employee named in the report. ...

**COMMENTS:** Many of the level one investigator's duties regarding a sexual abuse allegation are the same as those outlined above for physical abuse allegations, so the entire rule 102.9 is not repeated above. The following are the level one investigator's duties after receiving a written report of sexual abuse (where these duties differ from the duties after receiving a written report of physical abuse, the differences are in **bold print**):

1. Make and distribute required copies of the report;
2. Determine jurisdiction per rule 102.3;
3. **Notify parents of allegedly abused student in 6<sup>th</sup> grade or below of the date, time, and place of the interview of the child;**
4. **Interview allegedly abused student as soon as possible and in no case later than 5 days from receipt of written report;**
5. **Decide whether by a preponderance of the evidence that the incident occurred and that it constitutes a crime, and if so, defer by contacting law enforcement and DO NOT notify accused school employee of the complaint (unless a provision in the master contract requires immediate notification of any complaint);**  
  
(If the investigation supports the elements of a sex crime, the investigation is immediately turned over to law enforcement. If the allegation is in the nature of intentional inappropriate sexual behavior or comments, and is not a sex crime, the investigation is not deferred. The level one investigator completes his/her duties.)
6. If not deferred, complete investigation by interviewing other witnesses and named school employee **(if other witnesses include students in the 6<sup>th</sup> grade or below, their parents must be given prior notice that the student is to be interviewed and allowed to witness the interview);**
7. Determine whether the report is founded;
8. Complete investigative report within 15 calendar days of receipt of written report, maintaining original report and giving copies to proper persons.

**102.11 Founded reports—designated investigator’s duties.**

**102.11(1)** The [level one] investigator shall notify law enforcement authorities in founded cases of serious physical abuse and in any founded case of sexual abuse under Iowa Code chapter 709 or sexual exploitation under Iowa Code § 728.12(1). In founded cases of less serious physical incidents or sexual incidents not in the nature of statutory sexual abuse or exploitation as defined by Iowa law, the investigator shall arrange for the level–two investigator to carry out a professional investigation unless the level–one investigation has resulted in a final disposition of the investigation. In addition, the designated investigator shall give a copy of the investigative report to the employee’s supervisor and document all action taken.

**102.11(2)** Upon receipt of the level–two investigator’s report under rule 281—102.12(280) or upon resolution of the investigation at level one, the designated investigator shall:

a. Forward copies of the level–two investigator’s report to the student’s parent or guardian, the school employee named in the complaint, and the school employee’s supervisor; notify the person filing the report, if different from the student’s parent or guardian, of the disposition of the case or current status of the investigation;

b. File a complaint against the school employee who has been found to have physically or sexually abused a student, if that employee holds a teaching certificate, coaching authorization, or practitioner license, with the board on behalf of the school or district by obtaining the superintendent’s signature on the complaint in cases where the level–two investigator or law enforcement officials have concluded abuse occurred as defined in these rules or where the employee has admitted the violation or agreed to surrender the employee’s certificate or license. ... In the event an employee holding a school bus driver permit has been found to have physically or sexually abused a student, the designated investigator shall file a written complaint with the school transportation consultant at the department of education; the designated investigator shall file a written complaint with the local school board in founded cases involving other nonlicensed school employees; and

c. Arrange for counseling services for the student on request of the student, or the student’s parent or guardian.

**COMMENTS:**

**Physical abuse:** If the level one investigator makes a founded report of an incident of physical abuse occurred and the resulting injury was serious (e.g., broken bone, internal injuries), the level one investigator has a duty to notify law enforcement or the county attorney. This notification makes it unnecessary to

refer the case to the level two investigator unless law enforcement declines to take any action; in that event, the level two investigator must conduct his/her investigation.

In all “usual” situations of physical abuse investigations, the level two investigator is called upon in founded cases of less serious incidents not otherwise resolved at level one. (The other resolutions that preclude referral to level two include withdrawal of the complaint, recanting of the allegation, admission by the school employee of the violation.)

**Sexual abuse:** As discussed earlier, most reports of alleged sexual abuse will be deferred to law enforcement before the level one investigator completes his/her investigation. The most notable exception is an allegation of sexual improprieties where no sex crime has been alleged. REMEMBER: It is now a crime for a licensed school employee to have a romantic relationship with a student, regardless of the student's age.

**102.12 Level–two investigator’s duties.** Upon referral by the designated investigator, the level–two investigator appointed, contracted, requested or retained under subrule 102.5(2) shall review the report of abuse and the designated investigator’s report, if any, promptly conduct further investigation and create a written narrative report. The level–two investigator’s report shall state:

1. Conclusions as to the occurrence of the alleged incident; and
2. Conclusions as to the applicability of the exceptions to physical abuse listed in 102.4(280); or
3. Conclusions as to the nature of the sexual abuse, if any; and
4. Recommendations regarding the need for further investigation.

The written report shall be delivered to the designated investigator as soon as practicable.

The level–two investigator shall exercise prudent discretion in the investigative process to preserve the privacy interests of the individuals involved. To the maximum extent possible, the level–two investigator shall maintain the confidentiality of the report.

**COMMENTS:** There is no “boilerplate” form provided for the use of the level two investigator.

There are no specific time constraints placed on the level two investigator other than “as soon as practicable.” Time is nearly always of the essence in these situations.

## Selected Frequently Asked Questions Regarding Chapter 102

- Q1:** When the level one investigator concludes that serious physical abuse or statutory sexual abuse is alleged, who are "appropriate law enforcement officials"? Is this different from the level two investigator?
- A1:** Law enforcement includes personnel in a county attorney's office, city or county police or sheriff's office. This is different from the level two investigator. If a referral is made to law enforcement officials, that defers or temporarily halts the school's Chapter 102 investigation. If the investigation goes to level two, that is a continuation of the Chapter 102 process.
- Q2:** How does the crime of sexual exploitation by a school employee (new as of July 1, 2003) impact chapter 102 investigations?
- A2:** The new crime greatly broadens the scope of these investigations. Prior to the creation of this crime, unethical or improper behavior of an employee toward a student may not have been a crime (if consensual). The new crime recognizes that a sexual or romantic relationship between a student and a teacher, coach, or administrator is never truly "consensual" because of the disparity in the level of authority. Therefore, it is now a crime for a school employee who is licensed by the Board of Educational Examiners to engage in any sexual conduct with a student. "Sexual conduct" includes kissing, "petting," and any act that common sense dictates is a sex act. "Student" includes any student, regardless of age, currently enrolled or enrolled within 30 days of a violation of the law. See Iowa Code section 709.15 on page B-46 herein.
- Q3:** If the school employee admits the incident, is the matter founded and sent to the level two investigator?
- A3:** That depends. The purpose of the investigation is to get at the truth. If the employee admits to the alleged conduct and admits that the conduct was not justified, there is no need to go to level two. Stated conversely, if the employee believes his/her actions were justified (in physical abuse only), the case has to go to level two to see if the exceptions apply. Only the level two investigator can determine the applicability of the exceptions or whether "reasonable force" was used. The tougher question is in the area of sexual abuse, particularly sexual harassment. The employee may admit saying or doing the things alleged, but may deny that the actions or words constituted "intentional inappropriate sexual behavior, including sexual harassment." In such cases, the investigation is not concluded by this "admission" and the investigation goes forward until a determination is made of a violation or no violation.
- Q4:** To summarize, what are the duties of the level two investigator?
- A4:** The duties are summarized as follows:
1. Conduct a full investigation (more than reviewing the level one report)
  2. In physical abuse complaints, determine whether any of the exceptions in rule 102.4 apply
  3. Complete investigation and give a written report to the level one investigator

(Shown for reference:)

**Q5:** To summarize, what are the duties of the level one investigator?

**A5:** The duties are summarized as follows:

1. Make copies of the complaint and give to complainant, supervisor of named employee, and (now or later) the named employee.
2. Establish jurisdiction.
  - c. Allegedly abused student a current or former student at time of alleged incident?
  - d. Accused employee an employee at time of alleged incident and still an employee?
  - e. Alleged incident occur at school, during school time, school-sponsored activity, or school-related context?  
Alleged incident meet definition of abuse?
3. Conduct preliminary investigation.
  - f. Physical abuse
    - i. If serious injury resulted, defer temporarily to law enforcement for their investigation
    - ii. If less-than-serious injury alleged, proceed to interview allegedly abused student, witnesses (anyone with knowledge), and named school employee
  - g. Sexual abuse
    - i. If allegation could constitute a sex crime, interview only the allegedly abused student and only for credibility; if credible, defer investigation to law enforcement
    - ii. If no sex crime is alleged, proceed to interview allegedly abused student, witnesses, and named school employee
4. Investigative report.
  - h. Complete investigation in 5 school days (unless deferred to law enforcement)
  - i. Complete report in 15 calendar days

(The full set of FAQs is in the Chapter 102 Handbook online at

[http://www.iowa.gov/educate/index.php?option=com\\_content&view=article&id=860:chapter-102-level-i-investigator-manual&catid=411:legal-lessons&Itemid=2656](http://www.iowa.gov/educate/index.php?option=com_content&view=article&id=860:chapter-102-level-i-investigator-manual&catid=411:legal-lessons&Itemid=2656).)

## QUESTIONS??

Contact *Carol Greta*, general counsel for Iowa Department of Education

515/281-8661

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