

## MEMORANDUM

TO: Joint Legislative Child Protection Oversight Committee  
FROM: Jeff Fannon, Vermont-NEA General Counsel *J.F.*  
DATE: November 4, 2015  
RE: Act 60 (2015) – Section 23 (c)(1)(A)(v)

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Thank you for allowing Vermont-NEA to weigh-in on the topic of the mandatory reporting requirements, specifically Act 60, section 23 (c)(1)(A)(v)'s "evaluati[on of] whether licensed mandatory reporters should be required to certify that they completed training on the requirements set forth under 33 V.S.A. § 4913." A threshold question, however, should be asked and answered: Why would we hold licensees to a higher standard than other mandatory reporters merely because they are licensees? Vermont-NEA does not think any licensee who happens to be a mandatory reporter should be required to get training on his/her reporting obligations but a non-licensee mandatory reporter should not get trained. Instead, Vermont-NEA believes all mandatory reporters should receive high quality training.

The concept is that all mandatory reporters need to be trained about their reporting requirements so that we protect kids. We do not think, however, mandatory reporters who are licensees should get punished by the state for the state or school's failure to train licensees. We at Vermont-NEA try our best to train our folks in this area, and I'm attaching a document, for your perusal, that we distribute to our members when we train them. That said, we have not and cannot get to everyone, and, therefore, teacher licensees shouldn't suffer because of the lack of trainers.

Our more basic questions about training are "when" and "whom." That is, does a teacher not get his/her license before receiving the training? Do all nearly 16,000 already licensed teachers now have to get trained to keep a license? In accordance with what schedule? And, who is going to pay for the new component of the state's bureaucracy to develop and provide the training? Will the state contract with providers? According to what standards? "We" (the state) should not impose obligations on people to learn something from other people without making sure those other people are there and that they are qualified themselves to teach the learning.

Then there's the question of secondary liability. Teacher A gets her license after being "trained" by organization B. Child C is abused. Teacher A fails to fulfill her obligation, but it turns out she can demonstrate organization B misinformed her about some aspect of that obligation. What happens there?

Vermont-NEA's questions are in no way intended to stifle the requirement that mandatory reporters get the necessary training so they are well aware of their obligations. We are, however, suggesting that merely because a mandatory reporter, who is also licensed by the state (for example, doctors, plumbers, and teachers), should not lose his/her ability to earn a living merely because the state lacks sufficient numbers of high quality trainers.

Vermont-NEA wants to ensure that every child is safe and, therefore, we believe all mandatory reporters should be properly trained, regardless of their licensing status.

Finally, with regards to another child safety matter, Vermont-NEA wants the Committee to be aware of the related issue of school staff and student safety. Vermont's student population and school staff are facing increased levels of violence in schools committed by students against both other students and against school staff. The intensity of that violence has increased dramatically in recent years and it appears to correspond with the increase in the opiate addiction problem in the state. The violence is being perpetrated by very young students and often times it is inflicted on very young student peers and school staff members.

We welcome the opportunity to further discuss the issue of mandatory reporter training and school safety. Thank you.

*News about your changed legal obligation about*

## **\*\* Child Abuse Reporting \*\***

### **IMPORTANT NOTICE FROM VERMONT-NEA**

**August, 2015**

The law requiring school employees (and others) to report child abuse was changed as of this summer.

Vermont law now says that, if you have reasonable cause to believe a child has been abused, you MUST report it directly to the Department for Children and Families (DCF).

Vermont law no longer gives you the option of "causing a report" about child abuse to be made by someone else.

Any school policy attempting to require you to report to DCF only through the school administration is unlawful. Any attempt to discipline you for failure to report only through the school administration is unlawful. You should report any such attempt to your local Association.

The attached information provides much more detail about your legal obligation when it comes to reporting suspected abuse of a child or vulnerable adult.

## Vermont-NEA

### Information about reporting suspected abuse of a child or "vulnerable adult"

Summer, 2015

*The obligation to report suspected abuse to state authorities is serious and absolute. We are providing this information to help our members understand what the law requires them to do, and what the consequences of failure to do so may be. In short, if you are a mandatory reporter and have any doubt about whether to make a report, you should err on the side of making a report.*

#### 1. Why are there "mandatory reporters?"

Generally, mandatory reporter laws are designed to help protect children and vulnerable adults from abuse, or continuing abuse, by family members. Indeed, no "family member" is ever listed as a mandatory reporter. Rather, adults who typically have contact with children and vulnerable adults in other settings are. These laws also address abuse by non-family members.

#### 2. Who within public schools are mandatory reporters?

Generally, all school employees and certain other adults who work in schools for other employers.

*Note: The reporting obligation extends beyond the workplace. A mandatory reporter aware of suspected abuse is obligated to report it whether the suspicion arises at work or elsewhere.*

#### 3. May anyone else make a report?

Anyone else may make a report.

#### 4. What triggers a mandatory report?

Children. A mandatory reporter must report to the Department for Children and Families (DCF) if [s]he "has reasonable cause to believe that any child has been abused or neglected."

***IMPORTANT: Vermont law (as of July, 2015) no longer permits a mandatory reporter to "cause a report" of child abuse to be made. The obligation the mandatory reporter now has is limited to reporting directly to DCF.***

Vulnerable adults. A mandatory reporter must report or cause a report to be made to the Department of Disabilities, Aging, and Independent Living (DAIL) if [s]he knows of or has received information of abuse, neglect or exploitation of a vulnerable adult or has reason to suspect that a vulnerable adult has been abused, neglected or exploited. (Regarding vulnerable adults, this law continues to allow a reporter the option to cause a report to be made.)

#### 5. What is the meaning of "child?"

A "child" is "an individual under the age of majority." The age of majority is 18.

#### 6. What is the meaning of "vulnerable adult?"

In schools, a "vulnerable adult" is a person at least age 18 who is "impaired due to brain damage...or disability" that impairs the ability to care for oneself or protect oneself from abuse, neglect, or exploitation.

#### 7. When must a mandatory reporter report to DCF or report or cause a report to be made to DAIL?

Children. Within 24 hours of first having reasonable cause to believe a child has been abused or neglected.

Vulnerable adults: Within 48 hours of first having reason to suspect a vulnerable adult has been abused, neglected, or exploited.

#### 8. How is a report of suspected abuse to be made?

Call 1-800-649-5285 regarding children or vulnerable adults.

DAIL (for vulnerable adults) lists an additional work-hours number: 1-800-564-1612.

**9. What should a mandatory reporter do if [s]he isn't sure that abuse (or neglect or exploitation) has occurred and wants to find out – to make sure [s]he has a good enough reason to report?**

Call to report anyway. The obligation a mandatory reporter has is to report. Conducting an investigation, however limited, to make any deeper determination is not part of the obligation. *In fact, attempting to conduct an investigation, however limited, may very well hurt the capacity of DCF, DAIL, or law enforcement authorities to do their job,* and it may cause the reporter to fail to report in timely fashion.

**10. What if a school policy requires that a mandatory reporter report to an administrator?**

You must follow a school's policy, BUT that may not be enough to meet your legal obligation. A policy stating a mandatory reporter fulfills his or her legal obligation by reporting to a school administrator is not correct. Regarding child abuse, the mandatory reporter's obligation is to report directly to DCF. Regarding vulnerable adult abuse, the mandatory reporter's obligation is to report or to be certain the school administrator reports to DAIL. *Vermont-NEA recommends that a mandatory reporter first report to DCF or DAIL and then follow school policy.*

**11. What if a school policy requires that a mandatory reporter not report directly to DCF or DAIL?**

That policy violates state law if about a child, and it violates state law if about a vulnerable adult unless in every instance a report to an administrator is followed by the administrator's timely report to DAIL.

**12. Won't my employer attempt to discipline me for failing to follow school policy?**

The law protects from retaliation individuals who make reports in good faith, and it actually enables them to sue their employer for retaliation.

**13. What if the general experience of reporting to DCF or DAIL is slow or inadequate response?**

That experience is irrelevant to the mandatory reporter's obligation to report.

**14. What happens if a mandatory reporter fails to report to DCF or to report or cause a report to be made to DAIL?**

Children. It is a criminal offense punishable by a fine of up to \$500. A mandatory reporter who fails to report and intends to conceal abuse or neglect may face imprisonment up to 6 months and a fine up to \$1000.

Vulnerable adults. A willful violation is a civil offense punishable by a fine of up to \$500 for every 24-hour period a report is not made beyond 48 hours, up to a maximum of \$5000.

**15. Are there other potential consequences of a mandatory reporter's failure to report or cause a report to be made?**

Licensed professionals who violate the mandatory reporting laws may also face licensing discipline.

**16. What should I do if my employer attempts to discipline me for reporting under this law?**

Contact your local Association if your principal, superintendent, or school board attempts to discipline you for reporting under this law.

