

COMPLAINTS CONCERNING DISTRICT EMPLOYEES

Information for Parents on Reporting Child Abuse

What is Child Abuse and What is not Child Abuse

The following information, taken from Penal Code 273a, 273d, and 1165.6, will assist parents/guardians in reaching the decision whether to file a complaint of suspected child abuse.

Child Abuse is a physical injury which is inflicted by other than accidental means on a child by another person.

It also means the sexual abuse of a child.

It also means willful cruelty or unjustifiable punishment of a child, or willfully inflicting unjustifiable physical pain or mental suffering, or failure to safeguard a child from these injuries when the child is under a person's care or custody.

It also means unlawful corporal punishment or injury resulting in a traumatic condition.

Child abuse also mean neglect of a child or abuse in out-of-home care. (Out-of-home care is defined in Penal Code 11165.5 as a situation where the person responsible for the child's welfare is a licensee, administrator, or employee of any facility licensed to care for children, or an administrator or employee of a public or private school or other institution or agency.)

Child abuse does not mean a mutual affray or fight between minors.

It also does not include an injury caused by the actions of a peace officer using reasonable and necessary force:

1. To quell a disturbance threatening physical injury to person or damage to property;
2. To prevent physical injury to person or damage to property;
3. For purposes of self-defense;
4. To obtain possession of weapons or other dangerous objects within the control of a child; or
5. To apprehend an escapee.

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In addition, child abuse does not include injury caused by any force that is reasonable and necessary for person employed by or engaged in a public school:

1. To stop a disturbance threatening physical injury to people or damage to property;
2. For purposes of self-defense; or
3. To obtain possession of weapons or other dangerous objects within control of a pupil (Education Code 44807, 49001)

Pursuant to Penal Code 11165.12, child protective agencies may find complaints from parents/guardians or the public to be either false or improbably, or the complained-of actions may be found to be accidental or not within the definition of child abuse.

How to File a Complaint of Child Abuse by School District Employees or Others at School Sites

The parent/guardian of a student has the right to file a complaint against a school district employee or other person that they suspect has engaged in abuse of a child at a school site. In addition, if the child is also disabled and enrolled in special education, a separate complaint may be filed with the California Department of Education (CDE) under Title 5 of the California Code of Regulations, Section 4650(a)(viii)(C). This state regulation requires the CDE to investigate allegations that the child may be in immediate physical danger or that the health, safety, or welfare of the child is threatened.

To ensure that an appropriate investigation takes place, the parent/guardian must file a verbal or written complaint with the local child protective agency, school district, or county office of education.

As defined in the Child Abuse and Neglect Reporting Act of 1987, a child protective agency is:

1. A police or sheriff's department;
2. A county probation department; or
3. A county welfare department/child protective services.

These agencies are listed in local telephone directories under government listings. Police will be found under city government listings; sheriffs, probation, welfare departments and child protective services will be found under county government listings.

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The local child protective agency shall investigate the complaint. (Penal Code 11165.14) If the complaint is substantiated, the local child protective agency is required to forward a copy of the investigation report to the Board of Trustees of the local school district or county office of education. (Penal Code 11165.14)

Child protective agencies are also required to report every known or suspected instance of child abuse to the law enforcement agency having jurisdiction over the case and to the district attorney. (Penal Code 11166(g))

Pursuant to Penal Code 11172, persons who are not mandated by law to report child abuse are liable for any damages caused when they make a report of child abuse known to be false or with reckless disregard for truth or falsity.

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The Board of Trustees of a school district or county office of education shall upon request disseminate the guidelines adopted by the State Department of Education pursuant to Section 33308.1 of the Education Code to parents or guardians in the primary language of the parent or guardian that desires to file a complaint against a school employee or other person that commits an act of child abuse as defined in Section 11165.6 of the Penal Code against a student at a school site of the procedures for filing that complaint with the local child protective agencies pursuant to the Child Abuse and Neglect Reporting Act, established pursuant to Chapter 1444 of the Statutes of 1987. In the case of oral communications with the parent or guardian whose primary language is other than English, concerning that guideline or the procedures for filing child abuse complaints, the Board shall provide an interpreter for that parent or guardian.