LEGAL CORNER

By Michael I. Levin, Esq., PA Principals Association General Counsel

Mandatory Reporting for Principals Under the Child Protective Services Act and Title IX — Don't Become a Headline

As building leaders, principals are on the front line of student protection and play a critical role in ensuring compliance with both the **Child Protective Services Act (CPSA)** and **Title IX**. These laws are essential tools in safeguarding children from abuse, harassment and discrimination and the responsibilities they impose on school personnel, especially administrators, must be understood and consistently followed.

Noncompliance can expose individual employees and school districts to serious legal consequences, compromise student safety and erode community trust. Reputational damage resulting from the failure to do what should be done is incalculable. No principal should want to be named in a media article or a grand jury report that he or she did not do what should have been done regarding mandatory reporting. Examples of media headlines include:

"Principal accused of not reporting abuse by two teachers at St. Helens High resigns."

"5 school employees arrested for alleged failure to report student's sexual assault."

"Millsap ISD Superintendent Ousted for Failing to Report Teachers' Abuse of Autistic Student."

A Grand Jury investigated the Plum Borough School District and issued a scathing report. In 2015, two teachers were arrested for having been involved in multiple relationships with several female students at the school for several years. After the arrest, an investigation was conducted as to whether the members of the administration and staff had had reasonable cause to suspect such incidents and, if so, why no information about such activities had ever been reported. The investigation revealed that multiple administrators, over the course of several years, had heard numerous rumors of teachers having relationships with students. Despite having multiple meetings with both the suspected teachers and the students involved, no reports were ever made to ChildLine. Various excuses were made for these failures — no reporter had actually witnessed any misconduct, reports had only been made to a supervisor, and the employees did not believe they could report rumors. The Grand Jury found that the failure to report "thwarted the entire goal of making a ChildLine report, which is to ensure the protection of children." The Grand Jury also found that the superintendent and school resource officer's failures could constitute the crime of a failure to report (23 Pa.C.S. § 6319). Conversely, the Grand Jury found that the vice principal who at one point witnessed an interaction between a student and the arrested teachers that had left him "uncomfortable," despite no signs of misconduct, acted properly. In that instance, the vice principal reported that feeling to the school resource officer, who failed to report.

The Grand Jury Report makes it extremely clear: "ChildLine obviously intends, and is designed to accept, reports from sources that have no direct knowledge of suspected abuse. In fact, 'rumor' is an anticipated source of information." As such, mandated reporters should always err on the side of caution and make a ChildLine report if they suspect abuse.

The Child Protective Services Act (CPSA)

Enacted in 1975, the CPSA (23 Pa. C.S. §§ 6301–6388) governs the reporting of suspected child abuse in Pennsylvania. All public-school employees, including administrators, teachers, custodians and volunteers, are **mandatory reporters**. This obligation applies to all school personnel who, in the course of their duties, come into contact with a child under 18 years old.

As noted, the purpose of the CPSA is to report suspected child abuse. Under the CPSA, "child abuse" includes that infliction of bodily injury, any type of

sexual harassment or assault or placing a child in fear of imminent injury. 23 P.a.C.S § 6102. A "child" is defined as any individual under the age of 18; as such, the CPSA's provisions of the mandatory reporting of child abuse applies to nearly all students who attend schools or after-school activities.

The CPSA identifies numerous persons as mandatory reporters, including "school employees." A "school employee" is defined as "an individual who is employed by a school or who provides a program, activity or service sponsored by a school." 23 Pa.C.S. § 6303. The term does not apply to "administrative or other support personnel unless the administrative or other support personnel have direct contact with children." 23 Pa.C.S. § 6303. Notably, these requirements extend to the typical school employee (teachers, janitors, etc.), as well as any school volunteers.

The CPSA also addresses "confidential employees." A "confidential employee" is one that, due to statutory restrictions, is generally not permitted to share any information they learn about a child through the course of their professional duties. However, even such confidential employees are still mandated reporters and must make a report if they learn about or suspect any child abuse. A relevant excerpt of the Pennsylvania Judicial Code is as follows:

> (a) **General rule.** – No guidance counselor, school nurse, school psychologist or home and school visitor in the public schools or in private or parochial schools or other educational institutions providing elementary or secondary education, including any clerical worker of such schools and institutions, who, while in the course of his professional or clerical duties for a guidance counselor, home and school visitor, school nurse or school psychologist, has acquired information from a student in confidence shall be compelled or allowed:
>
> (1) without the consent of the student, if the student is 18 years of age or over; or
> (2) without the consent of his parent or guardian, if the student is under the age of 18 years.
>
> to disclose such information in any legal proceeding, trial or investigation before any government unit.
>
> (b) **Exemption.** – *Notwithstanding subsection (a), no such person shall be excused or prevented from complying with 23 Pa. C.S. Ch. 63 (relating to child protective services).*
>
> 42 Pa. C.S. § 5945. (emphasis added).

The CPSA mandates reports of suspected child abuse. Therefore a mandated reporter must make a report of any suspected abuse if said reporter (1) comes into contact with such a child in the routine course of employment; (2) the mandated reporter is responsible for that child or is affiliated with a school responsible for the care of that child; (3) a person makes a disclosure to the mandated reporter that such child is the victim of child abuse, or (4) an individual, 14 years or older, reveals to the mandated reporter that the individual has committed child abuse. 23 Pa.C.S. § 6311. The "routine course of employment" is when an employee has "regular and repeated contact that is integral to a person's employment or volunteer responsibilities." 23 Pa.C.S. § 6303. In a broader sense, a mandatory reporter is required to report any cases of "reasonably suspected" child abuse. Courts have noted that reasonable suspicion can be based on the medical, professional or other training or experience of the mandated reporter. *T.D. v. Dep't of Pub. Welfare*, 54 A.3d 437, *n.3* (Pa. Cmwlth Ct. 2012).

In terms of process, the CPSA requires that mandated reporters must "immediately" report abuse via phone call to the Department of Human Services' Child Welfare Portal, more commonly known as "Childline." 23 Pa.C.S. § 6313(a)(1). Then, within 48 hours of making the oral report, the mandated reporter must also make a written report, submitted electronically through the Child Welfare Portal. A failure to make a Childline report can result in anything from a misdemeanor of the second degree to a felony of the second degree, so it is vital that proper reports are made. These reports must contain as much known and detailed information as possible, as outlined in § 6313: the name and address of the child and any parents or guardians responsible for the child, where the suspected abuse occurred, the age and sex of each person/child involved, the nature and extent of the suspected abuse (including any evidence of prior abuse), the name and relationship of each individual responsible for causing the suspected abuse, the family composition, the source of the report, the name and information of the person making the

report, any actions taken by the person making the report and any other information required by whatever department/agency taking the report. 23 Pa.C.S. § 6313(b). In simpler terms, a report of child abuse must be comprehensive and include as much information as possible.

Best Practice for Principals

Principals should cultivate a building culture that encourages prompt reporting of all concerns — even those based only on rumor. The 2015 Grand Jury Report involving the Plum Borough School District is a powerful reminder: Failure to act on rumors or suspicions allowed abuse to continue unchecked. Administrators who failed to report were scrutinized, while those who acted on "gut feelings" were commended.

Title IX Overview

The Department of Education issued revised regulations in 2020. Under the regulations, Title IX is designed to eliminate "discrimination on the basis of sex in any education program or activity receiving federal financial assistance, whether or not such program or activity is offered or sponsored by an educational institution[.]" 34 CFR § 106.1. "Discrimination" under Title IX also includes sexual harassment, and Title IX defines such harassment as to include any of three types of misconduct on the basis of sex that jeopardize the equal access to education Title IX is designed to protect: any instance of *quid pro quo* harassment by a school's employee, any unwelcome conduct that a "reasonable person" would find so "severe, pervasive and objectively offensive that it denies a person equal education access," and any instance of sexual assault, dating violence, domestic violence or stalking. 20 U.S.C. § 106.30.

> "Principals should cultivate a building culture that encourages reporting of all concerns — even those based on rumor."

Title IX is intended to protect the students and employees of a school district. Part of this protection is the establishment of mandatory reporting requirements. While not explicitly stated, the language of the Title IX regulations presupposes that all employees of a school district respond "promptly" in a manner that is not "deliberately indifferent" to instances of sexual harassment. 34 § 106.44(a). It also presupposes that such responses be made to the Title IX coordinator. Such responses can be made "in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX coordinator, or by any other means that result in the Title IX Coordinator receiving the reporter's verbal or written report." 34 § 106.8(a). Similar to the CPSA, failure to properly report a Title IX violation will have legal implications. However, unlike the CPSA, there are legal ramifications for the school district itself as opposed to the mandatory reporter. As such, *all* employees must be trained in Title IX reporting requirements.

Unlike the CPSA, which requires reporting by a confidential employee, confidential employees are not permitted to disclose any information received in their professional capacity in any investigation, hearing or legal proceeding before a governmental unit under Title IX. 42 Pa. C.S. § 5949. Making a Title IX report, or participating in a Title IX investigation, would require a confidential employee to disclose information gained in their professional capacity, and as such confidential employees are not permitted to directly make a Title IX report. All confidential employees should be aware of their duty of confidentiality. However, while unable to make a report, a confidential employee must inform the victim of this lack of permission to report such discrimination and provide both the contact information for the Title IX coordinator and instructions on how to make a Title IX report. This, of course, is based on the presumption that a Title IX violation is discovered in the scope of a confidential employee's duties; if any such violation is discovered outside of that scope, that employee *must* make a Title IX report.

When Both Laws Apply

Many situations may involve conduct that is both child abuse under the CPSA and sexual harassment under Title IX. In these cases, dual reporting is required. Even if an employee is exempt from reporting under one law, they may still be required to report under the other.

As a principal, you are responsible not only for making your own reports but also for:

- **Training your staff** in their reporting obligations.
- **Creating an environment** where concerns are elevated promptly.

CONTINUED ON PAGE 44

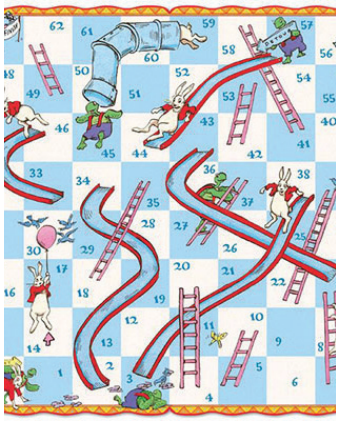
WOW! THAT'S WHY I BECAME A PRINCIPAL

Chutes and Ladders: Being a Principal

By Dr. Diane Pauli, Principal/Special Education Director at Montessori Regional Charter School

Chutes and Ladders is a board game that many children play with their parents and friends; but what do this board game and being a principal have in common? The goal of the game is to get to the end of the board by landing on the ladders, while avoiding the chutes. The goal of being a principal is to get to the end of the day in one piece (both physically and emotionally). After two years of being a school principal, I have learned to embrace the chutes as well as the ladders.

In the day-to-day operations of being a principal, it is not always possible to avoid the chutes. In the beginning, any situation that came my way caused me emotional stress. Whether it was a fight between two seventh graders, an escalating student whom I had to restrain, an irate parent screaming in my face or a staff member ready to quit, I took on each of these incidents as if my life depended on it. I thought I had to solve the situation immediately. Realizing that it could take some time to get to the bottom is part of the experience of going down a chute. Before long, I came to discover that before reacting, I needed to pause, reflect and analyze each situation. This takes discipline as well as the ability to seek advice when a challenging situation arises. A saying that I try to live by is "Wise people know what they don't know and go to those who know." I have sought counsel from other principals and experts at the state level to help me address difficult situations and decisions. As a principal, you will encounter difficult situations on a daily basis. How you deal with them is entirely up to you.



Embracing the ladders is essential to surviving in the principalship. The most challenging aspect of working as a principal has been this. My day seems to revolve around challenging circumstances and problems — every day brings with it a ladder or two. I have learned to focus on the positive when it arises, so it can fuel me for the day. These are the ladders that are often overlooked but are essential for one's mental health: a successful phone conversation home, a tear wiped away when a student becomes injured on the playground, a "thank you" from a staff member or a simple high five from an eighth grader.

As principals, every day is a game of Chutes and Ladders. One cannot avoid the chutes or the ladders; dealing with each one is an essential skill that takes time to develop. A principal's job is not easy, and statistics show the burnout rate is significant. As a new principal, I have discovered writing down each chute and ladder daily allows me to leave each day behind. *Look for that ladder the next time you feel like your day is full of chutes!*

Dr. Pauli can be reached at **dpauli@mrcserie.org**. ■

Legal Corner

CONTINUED FROM PAGE 43

- **Ensuring documentation** and follow-through of all reports.
- **Consulting with** district administrators or counsel when in doubt.

Final Considerations

The laws governing mandatory reporting reflect a clear and unwavering policy: **protect the child and act immediately**. Courts and administrative agencies have made it clear that the threshold for reporting is **reasonable suspicion**, not certainty.

Erring on the side of caution is always the right decision. Encourage your team to do the same and never hesitate to make a ChildLine or Title IX report when concerns arise. ■