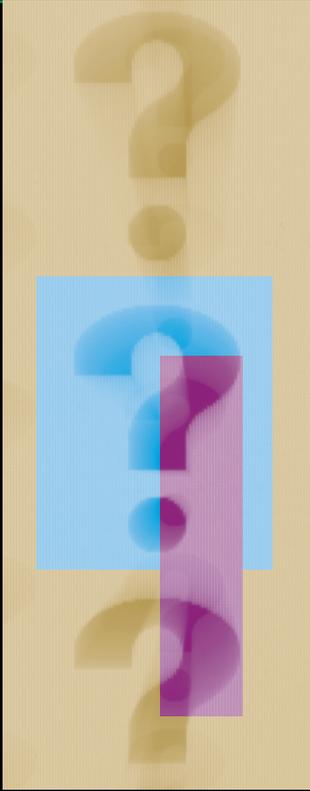
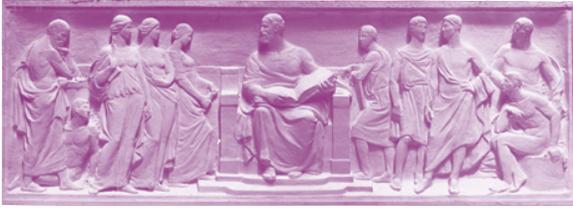


Child Abuse and Neglect Allegations Against School System Personnel

What every school system employee needs to know about
one of the most common problems in today's workplace





As you read through the balance of this pamphlet, it would be useful to remember that any allegation against a school system employee that he or she has abused or neglected a student will typically result in one or more of three different kinds of investigations being conducted:

- 1. Criminal** – Depending upon the seriousness of the allegation, an investigation may immediately be commenced by a local police agency, or by a combined unit from the police and prosecutor’s office (typically called a “Child Abuse/Sexual Assault”, or “CASA”, unit).
- 2. Department of Social Services** – If an allegation of suspected child abuse or neglect is called into a local office of the Department of Social Services (“DSS”) and is accepted for investigation, then a caseworker will immediately be assigned to investigate the allegation. Typically, this investigation is performed jointly with the local police agency if that agency has also decided to investigate the case.
- 3. School System** – In Maryland, as a result of a 1991 opinion from the Office of the Attorney General, even though a school system has been made aware of an allegation of child abuse or neglect against an employee of the system, it cannot commence its investigation until after the investigations by the local police agency and DSS are completed. Once those investigations are concluded, however, the school system will commence its own investigation and decide what if any disciplinary action is warranted.

The conduct of these investigations can be extraordinarily stressful on a school system employee, especially if the employee doesn’t know what is going to happen during the course of the investigative process. MSTA’s Center for Legal Affairs has the answers to some of the most common questions we have received over the years. We hope this will help in alleviating some of the stress associated with these difficult cases.

What is “child abuse” under Maryland law?

Child abuse can take three basic forms:

- 1. Physical abuse** – This means a physical injury that occurs under circumstances that indicate that the child's health or welfare is harmed or at substantial risk of harm. Usually, there must be some physical evidence of an injury, such as a mark, scratch, bruise, etc. However, application of this standard varies widely from county to county: in some locales, for example, a mere allegation by a child that their arm “hurts” is accepted for investigation as a “soft tissue injury” case, whereas in other locales, such an allegation would be categorically rejected for investigation.
- 2. Sexual abuse** – This means any act that involves sexual molestation or exploitation of a child whether physical injuries are sustained or not. This includes, but is not limited to, incest, rape, sexual offense in any degree, sodomy, and unnatural or perverted sexual practices.
- 3. Mental injury** – This means the observable, identifiable and substantial impairment of a child's mental or psychological ability to function. No doubt due to its extraordinarily vague nature, instances of this type of allegation are very rare in the school setting.

What is “child neglect” under Maryland law?

Child neglect” means the leaving of a child unattended or other failure to give proper care and attention to a child under circumstances that indicate that either the child's health or welfare is harmed or placed at substantial risk of harm, or that there has been a mental injury to the child or a substantial risk of mental injury.

Can anyone be found responsible for “child abuse” or “child neglect” under Maryland law?

“Child abuse” or “child neglect” can be committed only by certain categories of individuals:

- 1.** parents
- 2.** any other person who has permanent or temporary care or custody or responsibility for the supervision of a child (e.g., babysitter, daycare worker, teacher, instructional assistant, etc.) or
- 3.** any household or family member (including siblings, live-in relatives/boyfriends/girlfriends, etc.)



Is there any statute of limitations applicable to child abuse or neglect allegations?

For purposes of the three types of investigations mentioned above, there is no statute of limitations applicable to accusations of child abuse or neglect by a school system employee. In fact, over the years, MSTAs Center for Legal Affairs has encountered numerous situations in which accusations were made of abuse or neglect that allegedly occurred twenty or more years in the past. Although difficult to investigate, such allegations are generally treated by the authorities with the same seriousness as are allegations of much more recent conduct.

How does the child abuse law apply to relationships with former students?

The answer depends upon a number of factors, especially the amount of time that has passed since the student/teacher relationship ended.

For example, it would always be considered inappropriate to have a physical relationship with someone who is still a student in the school system. And that would be true even if the student was 18 years of age or more: while such a relationship would not be criminal, it would still be considered grossly improper by the school system administration and would likely result in termination of employment.

On the other hand, if a number of years had passed since the end of the student/teacher relationship, and the former student is now an adult no longer in the school system, there would be no prohibition against the commencement of a personal relationship at that time.

How would I typically find out that I have been accused of child abuse or neglect?

In most circumstances, you will first be advised of the allegation when an administrator in your school advises you of it. Sometimes, however, you may first learn of it when you receive a call or a visit at home from a police officer or DSS investigator asking to talk to you about such an allegation.

What happens next?

Once a case of alleged abuse or neglect of a student by a teacher has been reported to DSS and/or the police, the school administration will take no further action at all until both the police and DSS advise them that their respective investigations have been concluded.

Will the Association provide me with an attorney to represent me during the DSS investigation and any necessary appeals?

If the DSS investigation involves an allegation that you committed abuse or neglect during, or as a result of, the performance of your duties as a school system employee, and, as long as you were a member of your Local Association/MSTA/NEA on the date the incident is alleged to have occurred, then MSTTA will provide an attorney to represent you in connection with the DSS investigation and any necessary appeals. If you decide to utilize the services of the attorney assigned to you by MSTTA, then MSTTA will pay all of that attorney's fees in your case, regardless of the outcome.

Can I select my own attorney to represent me in the DSS investigation?

Yes. However, if you select your own attorney, MSTTA will only reimburse you for the fees charged by that attorney if those fees qualify for reimbursement under the NEA Educators Employment Liability Insurance policy that was in effect at the time of the alleged incident. Among other things, this policy provides reimbursement only if the police are involved in the investigation as well as DSS, and the investigation must result in a finding that does not implicate you in any alleged maltreatment; e.g., the finding must be "ruled out", or "unsubstantiated" coupled with a lack of identification as an alleged maltreater.

How much information should I disclose to my attorney about the allegations?

It cannot be emphasized enough that you should disclose to your attorney everything about the incident or incidents giving rise to the accusations against you, and you should do so immediately — certainly prior to any investigative interviews with DSS, the police, or the school administration. In addition, you should also disclose to your attorney any prior allegations that have been made against you of alleged abuse or neglect of a student or any other minor, since DSS and the police will certainly be aware of them before they interview you, and you and your attorney will need to discuss how best to address any such prior allegations.

If my administrator advises me of an allegation that I abused or neglected a student, and then asks me for a written statement concerning the allegation, should I comply?

In any situation in which you are advised by your administrator that you have been accused of abusing or neglecting a student, you should immediately contact your Local Association and ask to be put in touch with one of the Association attorneys. Generally, you will be advised not to submit a written statement if there is an ongoing police and/or DSS investigation. In such a situation, the administration cannot (and definitely should not) force you to submit a written statement — remember, the administrative investigation cannot commence under Maryland law until after the police and DSS conclude their investigation — and asking you for a written statement is certainly part of an “investigation.”

If the police investigation results in the filing of criminal charges, then you should not submit any written statements to the administration until after there has been a final resolution of those criminal charges. If the police and/or DSS investigations have concluded and there are no criminal charges being brought, or the administration has been advised that such investigations will not be undertaken in the first place, then the administration is free to commence its own investigation, including a request that you submit a written statement concerning your actions during the incident. While you are required to comply with such a request, we would urge you to have your proposed statement reviewed in advance by your local UniServ Director or, preferably, by one of the Association attorneys.



What should I do if a police officer and/or DSS caseworker appears at my door and asks to talk to me about an allegation that I abused or neglected a student?



Since you haven't done anything wrong, your immediate instinct will be to cooperate fully with them by sitting down and telling them the entire story. However, we cannot urge you strongly enough to resist that temptation and, instead, tell them that you will be happy to cooperate with them at a later time when you can have an Association attorney present to represent you. Don't discuss the matter with them at all, since anything you say to them can be used against you in a variety of civil, criminal, and administrative proceedings. Remember, these are extremely serious accusations that can result in lengthy jail sentences and/or loss of your career. So do not assume that you can handle this on your own. The authorities may be mildly annoyed that they have to delay their investigation, but they'll get over it. Your interests come first! Obtain the names and phone numbers of the authorities then immediately contact your Local Association with that information. The Local Association will contact the MSTA attorneys who will handle the case from that point forward.

How long will these investigations take?

Obviously, the answer depends on the nature and circumstances of the accusations. Simple accusations that allegedly occurred in front of a number of credible adult witnesses generally are over in a matter of days. But more serious accusations, or ones that allegedly occurred in front of only minor student witnesses, can take much longer — many times weeks, and sometimes even months. Under Maryland law, child abuse and neglect investigations by local departments of social services and local police agencies are supposed to be concluded within 60 days after first notice of the alleged abuse or neglect; however, this deadline is widely ignored, especially by local law enforcement agencies. With respect to investigations by the school system, there is no limit on the duration of the investigation — other than that imposed by the practical fact that you will likely be paid your regular salary during a time when you may be out of your regular assignment (see page 7) and the administration will clearly want to conclude the investigation as rapidly as possible to lessen the cost impact on the school system as a result of having to hire a substitute for you pending the completion of the investigation.



Will I be told what is happening during the course of the investigation?

Unfortunately, child abuse and neglect investigations by all involved agencies are conducted in such a manner as to keep the employee largely in the dark about the results of the investigation until the investigation is finally concluded. Obviously, if a police agency decides to file criminal charges against the employee as a result of the investigation, your attorney will typically be called and advised of that fact so the employee can turn themselves in for processing. But if the police agency decides not to pursue criminal charges against a school system employee, your attorney may get the courtesy of a phone call from the investigating officer advising them of that fact — but your attorney will almost never receive any written confirmation, which would, of course, go a long way in easing your nerves.

What will likely happen to me while the investigation is being conducted?

The answer typically depends upon the seriousness of the allegation, as well as the particular jurisdiction involved. If it is quite minor in nature, in most counties you will likely remain in your present position for the entire duration of all investigations; in other counties, any referral to DSS or the police will result in your removal from your present assignment. On the other hand, if it is a more serious accusation, you will likely be removed from your present position (especially if it requires direct contact with students, such as with teachers or instructional assistants) and placed in a position that does not involve student contact (such as a position at a board of education office handling transportation issues, library/media cataloguing, etc.).

Will my salary be affected by this change in assignment?

In ordinary circumstances, your salary will not be affected by such a change in assignment. You will continue to receive your normal salary for the entire duration of the alternate assignment. The only circumstances in which your salary might be discontinued is if, at the outset of the investigative process, you admitted to the police, DSS, and/or the administration that you had in fact committed a serious offense of child abuse. In such a case, it would be normal for you to be suspended without pay pending the resolution of criminal and/or administrative charges against you.



What are the possible outcomes of the investigation by the Department of Social Services?

Once the local DSS office concludes its investigation, it is required to issue a written finding that will take one of three possible forms:

- 1. Indicated** – This is a finding by DSS that there is credible evidence, which has not been satisfactorily refuted, that abuse or neglect occurred
- 2. Unsubstantiated** – This is a finding by DSS that there is insufficient evidence to support a finding of indicated or ruled out
- 3. Ruled Out** – This is a finding by DSS that abuse or neglect did not occur.

If a finding of either “indicated” or “unsubstantiated” is issued, the local DSS office then has to decide whether or not to “identify” someone as the alleged abuser or neglector. If the circumstances of the case do not allow it to make such an identification (e.g., where a child clearly had sustained an injury, but DSS could not determine by a preponderance of the evidence who had inflicted the injury), then no one is “identified” in that case — with the result that there are no appeal rights (discussed below) even if you were the one who was originally being investigated as an alleged abuser.

If I am investigated by DSS for alleged child abuse or neglect, will my name appear on a Central Registry?

Under Maryland law, the Central Registry (also known within DSS as the “Client Information System” or CIS) is that part of the Department of Human Resources’ confidential computer database that contains information about child abuse and neglect investigations done by local departments of social services. Once a case is accepted by DSS for investigation, the names of all individuals connected with that investigation are entered in the CIS, including the names of alleged victims, alleged perpetrators, witnesses, etc. If DSS concludes its investigation and enters a finding of “indicated” child abuse or neglect against you, and “identifies” you as an alleged maltreater (or if you have been found guilty of any criminal charges arising out of the alleged abuse), then it will place a marker, code, flag or other symbol by your name in its database. And it is this collection of “markers”, and the names associated with them, that constitutes what is referred to in Maryland as the “Central Registry.” This “marker” will remain next to your name for seven (7) years (or longer if there is a subsequent similar finding against you).



How long will DSS keep its records in connection with its investigation of me?

The answer depends on the nature of the finding issued by DSS in your case. If the finding was:

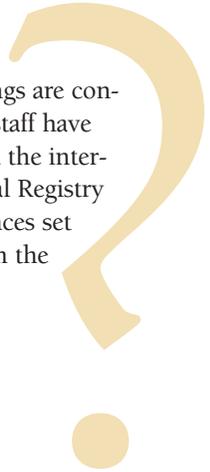
1. **Indicated** – The records will be kept indefinitely
2. **Unsubstantiated** – The records (including all entries in the CIS) will be expunged five (5) years after receiving the report that led to the unsubstantiated finding (or longer if there is a subsequent similar report against you)
3. **Ruled out** – The records will be expunged within 120 days of receiving the report (or longer if there is a subsequent similar report against you)

Who has access to the records of DSS while they are still in existence?

The records of DSS concerning child abuse and neglect findings are confidential under Maryland law. Only designated department staff have access to the Central Registry, and the Central Registry is not on the internet. Maryland does not provide the information from the Central Registry to any national database. And, except in very limited circumstances set forth below, it is a crime for anyone to give out information from the Central Registry.

DSS is permitted to give out information about a child abuse or neglect investigation to the following individuals:

1. a court or administrative law judge ordering the release of information for a specific purpose
2. law enforcement or other officials investigating a report of abuse or neglect
3. DSS staff approving foster parents, adoptive parents, or day care providers
4. a health care professional who needs the information to treat a victim
5. a victim's parent or guardian
6. an individual found responsible for the abuse or neglect; or
7. a public school superintendent or day care center director if the person found responsible for the abuse or neglect works or has contact with children, or works with children in that public school system or day care center.





Suppose I am looking for a new job years from now. Can a prospective employer lawfully ask me to authorize DSS to release information to them from the Central Registry?

Yes. DSS will respond to notarized requests to have it check the Central Registry, and it will advise the prospective employer if the individual has been found responsible for “indicated” child abuse or neglect. No information will be provided concerning “unsubstantiated” or “ruled out” findings.

If I disagree with the finding by DSS in my case, what appeal rights do I have?

The finding of DSS in your case will be set forth on the form they send you which is called a “Notice of Action/Opportunity to Appeal” form. Your appeal rights vary depending upon the nature of the finding.

1. If the finding is “Ruled Out”, there are, of course, no appeal rights since the ruling is entirely in your favor;
2. If the finding is “Unsubstantiated”, and you have not been “identified” as an alleged maltreater, there are similarly no appeal rights;
3. If the finding is “Unsubstantiated” and you have been “identified” as an alleged maltreater, you may, within 60 days of the date of the notice, request a conference with a supervisor at DSS. At this conference, you and your attorney will have an opportunity to review the DSS records of the investigation and you may attempt to convince the supervisor to modify the finding in your case. If the conference does not result in any change to the finding, you will be provided with an additional 60 days to request a hearing before an administrative law judge at the Office of Administrative Hearings (see #4 below);
4. If the finding is “Indicated”, you may, within 60 days of the date of the notice, request a hearing before an administrative law judge of the Office of Administrative Hearings. At this hearing, DSS has the burden of establishing the correctness of its finding. Generally, DSS will present to the judge a copy of its investigative file, and will typically offer the testimony of the investigating caseworker. You and your counsel can present additional testimony and/or documentary evidence to the judge. After reviewing all the evidence, the judge will issue a written decision affirming, reversing or modifying the finding of DSS. This decision is subject to further appeal to the Circuit Court on limited grounds.



Will I automatically lose my job if DSS finds me responsible for abuse or neglect?

No. Maryland law does not require a local board of education to take any action against an employee merely as a result of a finding by DSS of alleged abuse or neglect. Rather, local boards of education are aware that DSS utilizes its own unique standards and methods to investigate these accusations, and they are further aware that DSS is looking at such cases from their own unique perspective, one which may or may not reflect the perspective of the local board of education in such a situation. Local boards of education review each case on its own merits and decide what if any action to take based upon their own investigation of the underlying facts, not just upon the findings of DSS.

When the DSS investigation is completed, will I be returned to my former assignment?

As soon as the DSS investigation (as well as any related police investigation) is completed, the school system will promptly determine whether to return you to your former assignment or permanently reassign you to another location. Generally, if the allegations were minor in nature, you will be returned to your former assignment.

Suppose I feel uncomfortable returning to my prior assignment because I feel embarrassed by being accused of child abuse or neglect. Can I request that I be transferred to another position?

You can always request a different assignment. However, the school system is under no legal obligation to honor that request. Your Local Association will do everything within its powers to convince the school system to honor your request if at all possible.

Can criminal charges be filed against me if all I have been accused of is child neglect?

Criminal charges are possible in such a case, but are highly unlikely given the nature of such cases in the school context.



What types of criminal charges could be filed against me as a result of an allegation of child abuse?

The most common criminal charges filed against school system employees in such cases are as follows:

- 1. Child abuse** – This is a felony under Maryland law, punishable by up to 15 years in prison (or 30 years if death resulted from the abuse)
- 2. Assault and battery** – This can be either a felony (first degree assault) or a misdemeanor (second degree assault), with imprisonment penalties ranging from up to 10 years for second degree assault, and up to 25 years for first degree assault
- 3. Sexual offense** – There are a number of degrees of sexual offenses under Maryland law, with some being felonies and others being misdemeanors, and with the imprisonment penalties ranging from up to one year to a maximum of life in prison without the possibility of parole.

If criminal charges are filed against me, will I be arrested?

Depending on the nature of the charges filed, and the jurisdiction in which they are filed, it is possible that you may be arrested by the local law enforcement agency. If the criminal charges are minor in nature, you most likely would not be arrested; instead, the courts will usually issue a written summons directing you to appear for trial at a particular time. If the charges are more serious, a warrant may be issued for your arrest. Ordinarily, though, you would not be arrested on school grounds. Typically, the local law enforcement agency would notify you or your attorney by phone that a warrant had been issued for your arrest, and you would be allowed to turn yourself in to the authorities.

If I am arrested, how do I get out of jail?

Once the local law enforcement agency completes your processing (fingerprinting, etc.), you will be taken in front of a commissioner who will determine whether to set bail or release you on your own recognizance. If bail is set, you will be required to post a bond (usually 10% of the amount of bail). You can utilize cash, personal or family assets, or a bail bondsman to post this bond. If you pay a bail bondsman to post the bond for you, make sure you send a copy of the receipt to the MSTA attorney assigned to your case, since you may be entitled to reimbursement by the NEA insurance carrier for up to \$1000 of the premium paid for the bond.



Will the Association provide me with an attorney to represent me in the criminal case?

If the criminal charges allege that you committed a criminal act during, or as a result of, the performance of your duties as a school system employee, and, as long as you were a member of your Local Association/MSTA/NEA on the date the incident is alleged to have occurred, then MSTa will provide an attorney to represent you in connection with the criminal charges. If you decide to utilize the services of the attorney assigned to you by MSTa, then MSTa will pay all of that attorney's fees in your case, regardless of the outcome.

Can I select my own attorney to represent me in the criminal case?

Yes. However, if you select your own attorney, MSTa will only reimburse you for the fees charged by that attorney if those fees qualify for reimbursement under the NEA Educators Employment Liability Insurance policy that was in effect at the time of the alleged incident. Among other things, this policy provides reimbursement only if you are exonerated by a court of law of all charges, or all charges are withdrawn or dismissed.

If I am acquitted of all criminal charges, can I have the records of those proceedings expunged?

Yes. Procedures exist under Maryland law to expunge all records related to proceedings which result in your acquittal. The attorney assigned to your case will prepare and file on your behalf the documents necessary to accomplish the expungement.

Once the police and DSS investigations are concluded, who will conduct the school system investigation?

Investigative practices by local school systems vary throughout Maryland. Usually, the investigations will be conducted by either a school security officer, or by someone in the personnel or human resources department. In situations where the allegations are minor in nature, the "investigation" by the school system may consist of not much more than a principal or assistant principal gathering statements from student and adult witnesses. Obviously, the more serious the allegation, the more formalized the investigative process is likely to become.



What types of disciplinary action can be imposed in cases of alleged child abuse or neglect by a school system employee?

Obviously, the severity of the disciplinary action will depend on the nature of the alleged offense. Disciplinary penalties can range from an oral reprimand, to a written reprimand, to a short-term suspension without pay, or a long-term suspension without pay, or even discharge in the most severe cases.

When during this process will disciplinary action likely be initiated?

Normally, disciplinary action will not be initiated by your employer until after the police and DSS have concluded their investigations. However, in unusual situations, and in certain counties, it is possible that the employer may initiate the disciplinary action prior to completion of the investigations by the other agencies.

Can disciplinary action be imposed upon me by the school system even if there were no criminal charges filed against me and DSS did not find me responsible for alleged child abuse or neglect?

Certain conduct by a school system employee might not constitute a violation of either the criminal laws of Maryland or the child abuse or neglect laws and regulations administered by DSS, yet that same conduct could still subject the employee to disciplinary action by the local school system. For example, if an employee had a sexual affair with a student who happened to be 18 years of age or more, it would not constitute a violation of any criminal law or any child abuse law or regulation administered by DSS; nevertheless, the employee would still be subject to discipline by the local school system, since such conduct would not be considered administratively appropriate.

What appeal rights do I have if the school system attempts to impose disciplinary action against me for alleged child abuse or neglect?

For noncertificated personnel, you may be able to file a grievance under the “just cause” clause in the applicable collective bargaining agreement. Such a grievance may be pursued to arbitration before a neutral arbitrator, whose decision would be final and binding.



If such a provision is not present in your local agreement for noncertificated personnel, you can file an administrative appeal under Maryland law, pursuant to which your appeal would first be heard by the local superintendent, and then, if necessary, by the local board of education, and ultimately by the Maryland State Board of Education. However, due to the absence of any tenure rights in noncertificated positions, these appeals might not be treated as formal due process hearings, but rather may just be conducted by means of a review of documents. And at all times in such hearings, the burden of proof is on the employee to demonstrate that the disciplinary action that was imposed was in some way improper or illegal.

For professionally certificated personnel, reprimands may be subject to a grievance under the “just cause” clause in any applicable grievance procedure in your local collective bargaining contract. If none is available in your locale, you can still utilize the administrative appeal procedure discussed above.

However, if the penalty sought to be imposed against a professionally certificated employee is suspension without pay or termination, then such a proposed penalty implicates extensive formal due process rights under Maryland law. A local superintendent of schools can merely recommend to your employer (the local board of education) that you be suspended without pay or discharged as a result of alleged child abuse or neglect. Once such a recommendation is issued, you have ten (10) days to request a hearing before the local board of education (or a hearing examiner appointed by the board). Upon making a request for such a hearing, your appeal will be referred either to the local board or one of its hearing examiners for the conduct of a formal due process hearing. At such a hearing, the burden of proof rests on the Superintendent of Schools to establish the propriety of the disciplinary action. The Superintendent will call witnesses and introduce documents into evidence against you. You have a right to confront and cross-examine those witnesses, and to be represented by legal counsel throughout the proceedings. Once the Superintendent has presented his or her case, then you have the right to present witnesses and documentary evidence in your defense. Once all the evidence has been presented, the local board of education will decide whether to accept or reject the recommendation of the Superintendent. If the decision by the local board is against you, there is a right of appeal to the Maryland State Board of Education. And if the decision of the State Board is against you, there exists a limited right of appeal from that decision to the Circuit Court, and then on up through the appellate court system.



It should also be noted that in most counties if the recommended disciplinary action is termination, it is likely that the Superintendent of Schools will place you in a status of suspension without pay pending the outcome of any appeal proceedings. If you are successful in convincing the employer not to terminate you, then you may be entitled to reimbursement for any lost wages during the period of suspension without pay.



Can my teaching certificate be affected by an allegation of child abuse or neglect?

The regulations of the Maryland State Board of Education provide for a variety of potential impacts upon professional teaching certificates as a result of certain findings or actions stemming from an allegation that a school system employee committed child abuse or neglect:

1. a certificate may be suspended or revoked if the certificate holder:
 - a. pleads guilty or nolo contendere with respect to, receives probation before judgment with respect to, or is convicted of a crime involving, among other things, contributing to the delinquency of a minor or moral turpitude if the offense bears directly on the individual's fitness to teach; or
 - b. is dismissed or resigns after notice of allegation of misconduct involving a student in any school system or any minor.
2. a certificate may be revoked if the certificate holder:
 - a. pleads guilty or nolo contendere with respect to, receives probation before judgment with respect to, or is convicted of a crime involving, among other things, child abuse or neglect; or
 - b. is dismissed or resigns after notice of allegations of sexual child abuse.

Can allegations of child abuse or neglect arising from private life activities have any impact on my job with the local board of education?

Yes. Depending on the severity of the allegation, events that occur in your private life can certainly result in serious implications for your job. Such accusations generally result in personnel actions very similar in nature to situations involving accusations made by students.



Will the Local Association represent me in connection with child abuse or neglect accusations arising out of my personal life?

Any investigations by either the police or DSS that concern allegations of child abuse or neglect not connected with your duties as a school system employee are beyond the scope of representation provided by your Local Association. However, the Local Association will represent you in connection with any employment repercussions that flow from such private life allegations.

Can a civil suit be filed against me as a result of allegations of child abuse or neglect?

Yes, and you may be at risk of such a suit being filed for many years. While Maryland has a three-year statute of limitations for most civil actions, you should be aware that this deadline can be much longer depending on the age of the child at the time of the alleged incident. The three-year period does not commence until the child reaches 18 years of age. Thus, while a parent's claim for losses stemming from the alleged incident would have to be filed within three years of the event, in most circumstances the child's claim does not have to be filed until his or her 21st birthday.

If I am served with a civil suit concerning an alleged incident of child abuse or neglect, what should I do?

There are very specific deadlines for filing a response to a civil suit, and there are very serious potential penalties for you if that deadline is missed. Therefore, if you are served with a civil suit in such a situation, you should do two things immediately:

- 1.** take a copy of the suit papers to your Local Association. The Local Association will forward the papers to the MSTA attorneys for processing to the NEA Educators Employment Liability insurance company for a determination of coverage. You will then be contacted by the insurance company
- 2.** give a copy of the suit papers to your principal (or direct superior if you are not school-based) and ask the principal to see that they are promptly sent to the office of the attorney for the local board of education.



Do all these potential problems mean that I should try never to touch students while I am on the job?

Every employee must decide for themselves what their “risk tolerance” level is. You certainly do not want to become so plagued with fear of a child abuse allegation that you are afraid to hug an eager kindergarten student. Similarly, you do not want children to become so uneasy about being touched by a teacher or aide that they interpret a warm and innocent arm around the shoulder as being abusive.

But you must be conscious of the very real risks inherent in education jobs in today’s litigious society. Therefore, we have set forth below some general guidelines that you might want to consider.

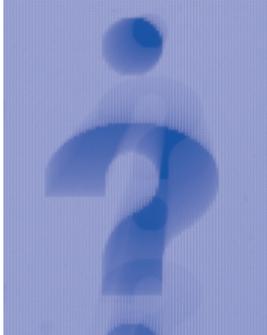
1. Try to limit physical contacts with students who are misbehaving. If at all possible, use oral commands instead of trying to physically redirect the student’s behavior
2. Recognize that as students mature the degree of acceptable physical contact is greatly lessened; e.g., while it might be acceptable to hug a kindergarten student, it probably is not a good idea to hug a middle school student and definitely not advisable to hug a high school student (especially one of the opposite sex)
3. There are situations in which physical contact may be necessary to avoid injury to a child (and, therefore, to avoid potential civil litigation for failing to act); e.g., restraining a child who is attacking another child, or who is having a severe physical or emotional episode, or who is about to injure themselves
4. Don’t tell students off-color jokes or jokes with sexual innuendoes, or participate in conversations among students where such things are being discussed
5. Don’t discuss students’ dating or sex lives with them unless you are doing so as a part of your regular duties for the school system (such as if you are a school psychologist or guidance counselor)
6. Certainly don’t discuss your dating or sex life with students under any circumstances
7. Try never to be alone with a student — and, if you must be alone with a student, keep your classroom door open at all times, and ask a colleague to stop by during that time as well



8. Remember that the children are your students, not your friends; and you are not their older brother or sister whose shoulder they can cry on. While you should certainly be willing to be a caring and considerate adult to whom they can turn for help, you should not view yourself as their “confidante”. You must remember that at all times you are the authority figure in the relationship with a student. It is expected that you will act at all times as a professional adult, even if the student is only a few years younger than you. Always maintain an arms’ length relationship with students — avoid personal relationships/friendships with them or their families. For example, it is unwise in today’s world to socialize with a student’s family, or go on vacation with them. Keep it a strictly teacher/student relationship.
9. Do not send cards, letters or gifts to students for any reason (other than a “get well” card to an ill or injured student), since any of those things can easily be misinterpreted.



In summary, if you employ sound professional judgment and use good, solid common sense in all your interactions with students, you will greatly reduce the risk of any child abuse or neglect accusations being made against you.



Maryland State Teachers Association
www.mstanea.org

National Education Association
www.nea.org

Maryland Department of Human Resources
Child Abuse and Neglect
www.dhr.state.md.us/how/abuse/childabs.htm

**Maryland Department of Human Resources
Social Services Administration
Child Protective Services**

COMAR Regulations on Investigations of Child Abuse and Neglect
(07.02.07)
www.dsd.state.md.us/comar/subtitle_chapters/07_Chapters.htm

COMAR Regulations on Child Abuse and Neglect Hearings
(07.02.26)
www.dsd.state.md.us/comar/subtitle_chapters/07_Chapters.htm



140 Main Street · Annapolis, Maryland 21401-2020
800/448-MSTA · fax 410/263-3605 · www.mstanea.org





OVERVIEW

In recent years, there has been a dramatic increase in the number of child abuse and neglect accusations against school system personnel. Because of the devastating personal and professional impact such allegations can have on an employee, the Maryland State Teachers Association's Center for Legal Affairs has prepared this pamphlet to answer the most common questions that arise in these types of cases.