

RELATIONS WITH OTHER GOVERNMENTAL ENTITIES

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(LEGAL)

Child Abuse and Neglect

Duty to Report

Any person who has cause to believe that a child's physical or mental health or welfare has been adversely affected by abuse or neglect by any person shall make such reports as are required by law. *Family Code 261.101(a)*

By a Professional

If a professional has cause to believe that a child has been or may be abused or neglected or is a victim of indecency with a child, as described in Penal Code Section 21.11, and the professional has cause to believe that the child has been abused as defined by Family Code 261.001, that person shall make a report as prescribed above not later than 48 hours after the hour the person first suspects that the child has been or may be abused or neglected or is a victim of indecency with a child, as described in Penal Code Section 21.11.

A "professional" is a person who is licensed or certified by the state or who is an employee of a facility licensed, certified, or operated by the state and who, in the normal course of official duties or duties for which a license or certification is required, has direct contact with children. The term includes teachers, nurses, doctors, day-care employees, and juvenile detention or correctional officers.

A person may not delegate to or rely on another person to make the report.

Family Code 261.101(b)

Adult Victims of Abuse

A person or professional shall make a report in the manner required above if the person or professional has cause to believe that an adult was a victim of abuse or neglect as a child and the person or professional determines in good faith that disclosure of the information is necessary to protect the health and safety of another child or an elderly person or person with a disability. *Family Code 261.101(b-1)*

Psychotropic Drug

An employee may not use or threaten to use the refusal of a parent, guardian, or managing or possessory conservator of a child to administer or consent to the administration of a psychotropic drug to the child, or to consent to any other psychiatric or psychological testing or treatment of the child, as the sole basis for making a report of neglect of the child under Subchapter B, Chapter 261, Family Code, unless the employee has cause to believe that the refusal:

1. Presents a substantial risk of death, disfigurement, or bodily injury to the child; or
2. Has resulted in an observable and material impairment to the growth, development, or functioning of the child.

Education Code 26.0091

Contents of Report	<p>“Psychotropic drug” means a substance that is used in the diagnosis, treatment, or prevention of a disease or as a component of a medication and intended to have an altering effect on perception, emotion, or behavior. <i>Family Code 261.111(a)</i></p> <p>The report should reflect the reporter’s belief that a child has been or may be abused or neglected or has died of abuse or neglect. The person making the report shall identify, if known:</p> <ol style="list-style-type: none">1. The name and address of the child;2. The name and address of the person responsible for the care, custody, or welfare of the child; and3. Any other pertinent information concerning the alleged or suspected abuse or neglect.
Immunity from Liability	<p><i>Family Code 261.102, .104</i></p> <p>A person acting in good faith who reports or assists in the investigation of a report of child abuse or neglect or who testifies or otherwise participates in a judicial proceeding arising from a report, petition, or investigation of alleged child abuse or neglect is immune from any civil or criminal liability that might otherwise be incurred or imposed. A person reporting his or her own conduct or reporting in bad faith or with malice is not immune from civil or criminal liability. <i>Family Code 261.106</i></p> <p>An ESC may not suspend or terminate the employment of, or otherwise discriminate against, or take any other adverse employment action against a professional who makes a good faith report of abuse or neglect. [See DG] <i>Family Code 261.110(b)</i></p>
To Whom Reported	<p>If the alleged or suspected abuse or neglect involves a person responsible for the care, custody, or welfare of the child, the report must be made to the Department of Family and Protective Services (DFPS), unless the report is made under item 3, below, or the report involves a juvenile justice program or facility [see Juvenile Justice Alternative Education Program, below].</p> <p>All other reports shall be made to:</p> <ol style="list-style-type: none">1. Any local or state law enforcement agency;2. DFPS; and3. The state agency that operates, licenses, certifies, or registers the facility in which the alleged abuse or neglect occurred. <p><i>Family Code 261.103</i></p>

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Juvenile Justice Alternative Education Program	Any report of alleged abuse, neglect, or exploitation, as those terms are defined in Family Code 261.405, in a juvenile justice program or facility shall be made to the Texas Juvenile Justice Department and a local law enforcement agency for investigation. The term “juvenile justice program” includes a juvenile justice alternative education program (JJAEP). <i>Family Code 261.405(a)(4)(A), (b)</i>
Criminal Offenses	
Failure to Report	A person commits an offense if he or she is required to make a report under Family Code 261.101(a) [see Duty to Report, above] and knowingly fails to make a report as provided by law. <i>Family Code 261.109</i> A person who is a professional commits an offense if the person is required to make a report under Family Code 261.101(b) [see Duty to Report] and knowingly fails to make a report as provided by law. <i>Family Code 261.109</i>
False Report	A person commits an offense if, with the intent to deceive, the person knowingly makes a report of abuse and neglect that is false. <i>Family Code 261.107(a)</i>
Coercion	A public servant, including a school administrator, who coerces another into suppressing or failing to report child abuse or neglect to a law enforcement agency commits an offense. <i>Penal Code 39.06</i>
Confidentiality of Report	A report of alleged or suspected abuse or neglect and the identity of the person making the report is confidential and not subject to release under Government Code Chapter 552 (Public Information Act), and may be disclosed only for purposes consistent with the Family Code and applicable federal or state law or under rules adopted by an investigating agency. <i>Family Code 261.201(a)(1)</i> Unless waived in writing by the person making the report, the identity of an individual making a report under this chapter is confidential and may be disclosed only to a law enforcement officer for the purposes of a criminal investigation of the report, or as ordered by a court under Family Code 261.201. <i>Family Code 261.101(d)</i>
SBEC Disciplinary Action	The State Board for Educator Certification (SBEC) may take any of the actions listed in 19 Administrative Code 249.15(a) (impositions, including revocation of a certificate and administrative penalties) based on satisfactory evidence that the person has failed to report or has hindered the reporting of child abuse pursuant to Family Code 261.001, or has failed to notify SBEC, the commissioner of education, or the executive director under the circumstances and in the manner required by Education Code 21.006, 21.0062, 22.093, and 19 Administrative Code 249.14(d)–(f). <i>19 TAC 249.15(b)(4)</i>

**Abuse of Elderly or
Persons with
Disabilities**

A person having cause to believe that an elderly or disabled person is in the state of abuse, neglect, or exploitation shall report the information immediately to DFPS.

A person commits a class A misdemeanor if the person has cause to believe that an elderly or disabled person has been abused, neglected, or exploited or is in the state of abuse, neglect, or exploitation and knowingly fails to report.

A person filing a report or testifying or otherwise participating in any judicial proceeding arising from a petition, report, or investigation is immune from civil or criminal liability on account of his or her petition, report, testimony, or participation, unless the person acted in bad faith or with a malicious purpose.

Human Resources Code 48.051, 48.052, 48.054

CPS Investigations

A Texas Department of Family and Protective Services (DFPS) investigation of a report of child abuse or neglect under Family Code Chapter 261 may include an interview and examination of the subject child, which may be conducted at any reasonable time and place, including the child's school. An ESC official may not deny the request of an investigator, investigating a report of suspected child abuse or neglect, to interview at the ESC a student who is an alleged victim. An ESC official may not condition granting the request on a requirement that ESC personnel, such as a counselor, attend the interview. *Family Code 261.302((a), (b)); Atty. Gen. Op. DM-476 (1998)*

A person who has confidential locating or identifying information regarding a family that is the subject of an investigation under Family Code Chapter 261 shall release that information to DFPS on request. The release of information to DFPS by a person as required by this subsection is not subject to Government Code 552.352 or any other law providing liability for the release of confidential information. *Family Code 261.303(e)*

**Special
Investigations**

On receipt of a report of alleged or suspected child abuse or neglect in an ESC, DFPS shall perform an investigation as provided by Family Code Chapter 261 and the rules adopted thereunder.

The Special Investigations program (SI) of the Child Protective Investigations division (CPI) of DFPS investigates allegations of abuse or neglect of a child by school personnel or volunteers in a school setting.

Family Code 261.406(a); 40 TAC 707.597-.625

Definitions

"School personnel and volunteers" means persons who have access to children in a school setting and are providing services to or

caring for the children. School personnel include but are not limited to school employees, contractors, school volunteers, school bus drivers, school cafeteria staff, and school custodians.

“School setting” means the physical location of a child's school or of an event sponsored or approved by the child's school, or any other location where the child is in the care, custody, or control of school personnel in their official capacity, including transportation services. This does not include:

1. School settings involving only children in facilities regulated by the Texas Health and Human Services Commission (HHSC) when HHSC contracts with the ESC to provide education services; or
2. School settings that are a part of child care operations regulated by the Child Care Licensing division of HHSC.

40 TAC 707.605(6)–(7)

Notice to School Personnel

Prior to conducting an investigation of school personnel or volunteers, SI shall notify the school principal (or the principal's supervisor if the school principal is an alleged perpetrator) of the fact that a report has been assigned for investigation, the nature of the allegations contained in the report, and the date and time SI plans to visit the school campus to begin the investigation.

SI must also orally notify the executive director about the investigation.

SI must request that the school personnel notified of the investigation not alert the alleged perpetrator or others regarding the report until SI has had an opportunity to interview the alleged perpetrator.

Family Code 261.105(d); 40 TAC 707.615

No Interference with Investigation

School officials or other persons related to the school setting may not interfere with an investigation of a report of child abuse or neglect conducted by DFPS.

Interviews on School Premises

Interviews and examinations in a school investigation may take place on or off the school premises, as deemed appropriate by SI, pursuant to all applicable standards. SI will notify appropriate school personnel prior to conducting an interview or visual inspection on school premises.

Presence of School Personnel

SI may request that school personnel or volunteers not be present during the interview or visual inspection of an alleged victim, an alleged perpetrator, an adult or child witness, or any other person who may have information relevant to the investigation if the investigator determines that:

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	<ol style="list-style-type: none">1. The presence of school personnel or volunteers would compromise the integrity of the investigation; or2. A better interview or examination of the child would result without school personnel or volunteers being present.
	<p><i>Family Code 261.303(a); 40 TAC 707.619(a)</i></p>
Report of Findings	<p>After the completion of an investigation, SI must provide a report of the investigation, redacted to remove the identity of the reporter, to the Texas Education Agency (Director of Education Investigations) for an investigation concerning an employee of a public or charter school. On request, SI shall provide a redacted copy of the report to the following:</p> <ol style="list-style-type: none">1. State Board for Educator Certification;2. The president of the local governing body for the school;3. The executive director; and4. The school principal, unless the principal is the alleged perpetrator. <p>SI is not required to provide notice to a school official if it administratively closes a report of abuse or neglect prior to notifying school officials that DFPS received a report of abuse or neglect in the school setting.</p> <p><i>Family Code 261.406(b); 40 TAC 707.623</i></p>
Missing Children	<p>A law enforcement agency that receives a report that a child under 11 years of age is missing shall immediately notify each ESC school or day care facility that the child attended or in which the child was enrolled that the child is missing. <i>Code of Criminal Procedure 63.020</i></p>
Duty to Flag Records	<p>Upon receipt of notification from a law enforcement agency or the missing children and missing persons information clearinghouse that a child under 11 years of age who attended or who is enrolled in the school or day care facility is missing, the school or day care facility shall flag the child's records and maintain the records in its possession so that on receipt of a request regarding the child, the school or day care facility will be able to notify law enforcement or the missing children and missing persons information clearinghouse that a request for a flagged record has been made. <i>Code of Criminal Procedure 63.020(c), .021</i></p>
Request in Person	<p>When a request for a flagged record is made in person, the school or day care facility may not advise the requesting party that the request concerns a missing child and shall:</p>

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1. Require the person requesting the flagged record to complete a form stating the person's name, address, telephone number, and relationship to the child for whom a request is made, and the name, address, and birth date of the child;
2. Obtain a copy of the requesting party's driver's license or other photographic identification, if possible;
3. If the request is for a birth certificate, inform the requesting party that a copy of a certificate will be sent by mail; and
4. Immediately notify the appropriate law enforcement agency that a request has been made concerning a flagged record and include a physical description of the requesting party, the identity and address of the requesting party, and a copy of the requesting party's driver's license or other photographic identification.

After providing the information listed above, the school or day care facility shall mail a copy of the requested record to the requesting party on or after the 21st day after the date of the request.

Request in Writing

When a request for a flagged record is made in writing, the school or day care facility may not advise the requesting party that the request concerns a missing child and shall immediately notify the appropriate law enforcement agency that a request has been made concerning a flagged record and provide to the law enforcement agency a copy of the written request. After providing the notification, the school or day care facility shall mail a copy of the requested record to the requesting party on or after the 21st day after the date of the request.

Code of Criminal Procedure 63.021(d)

Removal of Flag

On the return of a missing child under 11 years of age, the law enforcement agency shall notify each school or day care facility that has maintained flagged records for the child that the child is no longer missing. On receipt of this notification, the school or day care facility shall remove the flag from the records.

A school or day care facility that has reason to believe that a missing child has been recovered may request confirmation that the missing child has been recovered from the appropriate law enforcement agency or the missing children and missing persons information clearinghouse. If a response is not received after the 45th day after the date of the request for confirmation, the school or day care facility may remove the flag from the record and shall inform the law enforcement agency or the missing children and

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missing persons information clearinghouse that the flag has been removed.

Code of Criminal Procedure 63.022