



Trusting Your Instincts and Understanding Reasonable Suspicion

Courtesy in2vate, LLC and the SELF Resource Center

As a mandated reporter, you may understand that you are required by law to report child abuse and neglect. Yet, there are some blurry lines that may cause you to hesitate reporting. Is physical evidence necessary before reporting? Do you have to witness the act? Are you afraid to wrongfully accuse someone? The answer to all of these scenarios is: NO! REPORT even if you just have a suspicion of abuse or neglect. This article will help to clarify reasonable suspicion and when to report.

There are three types of suspicion: “reasonable suspicion,” “reasonable belief,” and “reasonable certainty.” The highest of these standards is reasonable certainty—evidence or suspicion beyond a reasonable doubt. Reasonable certainty is commonly proof needed to convict someone of criminal activity in the court of law. Reasonable belief is a lower standard than reasonable certainty, but it is enough evidence to arrest someone. Finally, reasonable suspicion is the suspicion of something based on reason. As a mandated reporter, you are required to report abuse or neglect when there is reasonable suspicion.

It is understandable that you do not want to wrongfully accuse a person. You may even feel that your suspicion may only be just that—suspicion and nothing more. As a professional, you have experience, education, and training that allow you to objectively justify reasonable suspicion. If there comes a time when you are unsure, consult a supervisor or colleague. Consulting a colleague will allow you to see from another professional’s perspective whether these suspicions are more than just “a hunch.” If your colleague does not agree but you still believe your suspicions are valid, then report. There is no need for certainty or medical indication.

So, how should you go about reporting reasonable suspicion? Telling a supervisor of your suspicion is not considered reporting. A supervisor or manager may not impede on your obligation to report. You must contact the appropriate child welfare or child protective services. If a young person is in immediate danger, contact your local law enforcement agency, such as the police or sheriff’s department. Some states require completion of a form after a report is made. These forms may be time sensitive, so be sure you understand the requirements in your local jurisdiction when reporting. Remember, not all reports will be investigated publicly. You may not be informed that a report is being or has been investigated. It is not your job to investigate or prove that a child has been abused or neglected. The law protects your confidentiality as a mandated reporter. You are also protected against retaliation in the workplace for making a report.

Failure to report your suspicions could jeopardize the safety, even the life, of a young person, and it is punishable under the law. Mandated reporters may be prosecuted,

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Conferences & Events

SEPTEMBER

CAJPA Fall Conference

South Lake Tahoe – September 13-16

OCTOBER

Good Schools Webinars

“Critical Incident Recovery”

Oct. 18, 10 – 11:30 am

Oct. 27, 1:30 – 3 pm

ACBO Fall Conference

Rancho Mirage – October 23-26

Annual Legislative Update Webinar

October 28, 10 am

NOVEMBER

ACSA Leadership Conference

San Diego – Nov. 9-11

About Us

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Our Mission

SELF is a member-owned, statewide partnership of public educational agencies providing quality pooled programs for excess coverage that benefit our students.

By the Numbers

SELF is the leading statewide excess liability provider for California’s public schools and colleges, serving nearly 3 million students.

SELF Awareness

Comments should be sent to the above address or info@selfjpa.org.

Board

Area II Adam Hillman

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Community Colleges

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Teresa Scott, Kevin McElroy

A Message from Eric Lucas



rea·son·a·ble ('rēz-nə-bəl) adj.

1. Capable of reasoning; rational; a reasonable person.
2. Governed by or being in accordance with reason or sound thinking; a reasonable solution to the problem.
3. Being within the bounds of common sense: arrive home at a reasonable hour.
4. Not excessive or extreme; fair: reasonable prices.

Definitions: American Heritage Dictionary, 5th Edition.

When you see and hear of jury verdicts and case settlements in California recently, you wonder whether this adjective even comes into the discussion; be it between the parties involved during settlement talks or during a trial by a jury while deliberating a potential verdict.

What is driving these recent results is the number for noneconomic losses, or general damages, sought by a plaintiff. As we know, these are the damages sought for pain and suffering, emotional distress, loss of consortium or companionship, and other intangible injuries. This damage category involves no direct economic loss and is without any precise value. The task of a jury is a difficult one as they are called upon to assign a dollar value to these losses and are given minimal guidance from the court. As a result, these awards tend to be erratic and, because of the highly charged environment of personal injury trials, excessive.

The broad and basically unguided discretion given juries in awarding damages for noneconomic loss is the single greatest contributor to the inequities and inefficiencies of the tort liability system. It is a difficult issue to address objectively because of the emotions involved in cases of serious injury and because of the financial interests of plaintiffs' lawyers.

What's the solution? How about what 33 other states have done to ensure reasonable results— institute state tort caps. Since 1975, California has had a tort cap in place for noneconomic damages in the medical malpractice world. Among other things, the Medical Injury Compensation Reform Act (MICRA) places a \$250,000 cap on pain and suffering damage awards.

You may ask what tort reform will possibly bring to California. As I began this column, I will also end it:

san·i·ty ('san-ət-ē) n.

1. The quality or condition of being sane; soundness of mind.
2. Soundness of judgment or reason.

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fined, and even jailed. You may even be held personally and financially liable for damages. Finally, you may be terminated from your position and lose any licenses and/or professional credentials.

Remember, you are obligated by law to report child abuse or neglect as soon as you have reasonable suspicion. As a mandated reporter, you are serving an important role in protecting young people, families, and the community. Trust your instincts and professional expertise.

An AB1432 Mandated Reporter Training online module can be found in the SELF Resource Center and is free to all active members and their employees. California law requires annual training of all school district employees who are mandated reporters and requires that any new employees receive the training within six weeks of employment.



Decreasing the Boundary Litigation Wars

By Glenn Lipson and Steve Sonnich

Districts in California are keenly aware of the increasing reserves as well as the escalating premiums stemming from the tide of employee misconduct cases. Some insurers are pulling out of the market in California altogether and those who remain are increasing their rates. Decades ago the same phenomenon occurred with other professions, stemming from the inappropriate relationships that occurred between those providing treatment and those in need of their services. If you believe that the past is prologue to the present, as Shakespeare first alluded, then let's learn from the actions that assisted other professions in escaping their own proverbial round of "whack-a-mole" under the court gavel.

This problem was successfully addressed by other professions through the emphasis of ethics and by shifting part of the burden back to the profession and the practitioner. Ethics and standards of practice for health care professionals is a separate course in most universities and has been adopted as part of most state certification examinations. Mastery of this material involves acknowledging the potential challenges in the workplace, incorporating these discussions in supervision, and finally applying ethics as a tool when deciding the actions to be taken. Continuing education in the area of ethics in California for psychologists is mandated for certification or license renewal.

As a population, students are at a higher risk for dispositional entanglements as they spend more time with educators than most other "clients" spend with other professions. For parents, sending their children to school is mandatory and they expect them to be safe—an expectation that is shared by most juries. This daily access to students creates

opportunities for learning, role modeling and also for boundary setting or crossing.

A little over a year ago in June of 2015, the National Association of State Directors of Teacher Education and Certification (NASDTEC) announced the creation of a Model Code of Educator Ethics (MCEE). The MCEE is now publicly available at no cost. Eventually over time this code will become part of teacher preparation and thus the fabric of education in the United States. In education, one of the prominent dispositions is caring about students. A code of ethics, is different from the existing codes of conduct, it assists educators in balancing the competing tensions that exist in our schools. The code of ethics was created for teachers by teachers involving the participation of unions.

For school communities, the best practice discussions facilitated by the MCEE creates safe opportunities to share and examine the dilemmas faced every day in our classrooms. Assisting in supporting this massive undertaking of creating the MCEE were numerous organizations including Educational Testing Services (ETS). ETS has launched an MCEE online course using scenarios from real life that promote well considered and ethically balanced choices and ETS believes it would be useful to require new teachers to take this course as they enter the profession. More about this prevention approach may be found at: www.ets.org/proethica

NASDTEC, in acknowledging its public responsibility as a nonprofit under the leadership of Phil Rodgers, has decided to provide access to their certification actions to districts. This required changes to their database and software and the plan is to make this available for a nominal fee to districts starting in 2017-2018. It will enable a district in determining whether or not there has been a finding from a state regulatory board relative to a prospective teacher's certification. This can address some of the cases where the practice of "passing the trash" has been an issue. Currently this is being test-piloted in about eight districts nationally, including the nation's fourth largest district, Miami-Dade County Public Schools in Florida.

In summary, the new ethics code is a tool that can be used by districts and educators alike to clearly define boundaries, reducing the likelihood of violations. The clearinghouse for the listing of state actions will assist human resources in determining if further inquiry is necessary to ascertain if someone has proclivities for or if they may be at risk of engaging in inappropriate behavior. These tools and others developed by NASDTEC could help to turn the tide of misconduct. It is important for educators to know when they are crossing boundaries, and this type of education empowers them with a rubric for decision making. It is one of several ways that will create the changes that are necessary to address the sky rocketing cost of litigation risk through decreasing incidents of misconduct.

Legislative Update

By Ron Bennett & Nancy LaCasse, School Services of California, Inc.



The Capitol was buzzing earlier this month as legislators returned from their Summer Recess to a month-long sprint to the end of session. About 600 bills entered into the Appropriations Committees, most of them being sent directly to the Suspense File, their fate to be determined on Aug. 12.

Accountability Taking Center Stage Outside the Legislature

While most of the attention in Sacramento in early August was focused on the work undertaken by the Legislature upon their return from Summer Recess, a large contingent of the education community continues to monitor, and engage in, the state and federal accountability discussions. The State Board of Education (SBE) is poised to adopt the Local Control Funding Formula's Evaluation Rubrics, which, among other things, are intended to assist local educational agencies (LEAs) develop their strategic educational plans, in September. Moreover, many stakeholders, including the state as represented by State Superintendent of Public Instruction Tom Torlakson and SBE President Michael Kirst, submitted formal public comment on proposed federal regulations intended to govern the Every Student Succeeds Act's accountability provisions.

Both the state and federal efforts to build an accountability system are drawing controversy and attention. This is understandable given the sensitivity of reverting to the compliance-driven system of the No Child Left Behind Act and the single-metric Academic Performance Index.

September's SBE meeting will likely help bring the discussions into focus with a need to continue the work of evolving the accountability system and providing the necessary training on the Evaluation Rubrics to LEAs across the state—work that is under the jurisdiction of the California Collaborative for Educational Excellence (CCEE), which unveiled its plan at the CCEE Board meeting on August 4.

This update has been abridged. To read the full update visit our website at www.selfjpa.org/resources/legislation.php

SELF Board Chair Retires, New Chair Appointed

The SELF Board reluctantly accepted the resignation of long-time Board member and current Board Chair John Didion at its June 27 meeting.



Didion, who served on the Board for 25 years, submitted his resignation following his retirement as Executive Vice Chancellor of Human Resources & Education Services for Rancho Santiago Community College District.

He joined the SELF Board in 1991 as a Southern California Community College Alternate.

During his tenure, he served as a member of the Liability Claims & Coverage Committee, SELF Board Comptroller and Vice Chair and since 2014 as Board Chair. His valuable contributions to SELF and the education community will be greatly missed.

Southern California Community College Alternate Peter Hardash was appointed to fulfill Didion's term as SCC Representative. That term expires in 2017. Hardash has been on the SELF Board since 1989, serving as both K-12 and community college representation over the years.

The Board appointed Vice Chair Adam Hillman, Area II Representative, to fill the remainder of Didion's term as Chair. Hillman joined the SELF Board in 2008 as an alternate and became the representative for Area II in 2011. He then served as Board Comptroller and Vice Chair prior to his appointment in June.

Board Secretary Karla Rhay was appointed as the new Vice Chair and David George, Area V Representative, filled Rhay's position as Secretary. All other Board Officer positions remained the same. Officers are up for election from within the SELF Board every two years, with the next election coming in 2017.



SELF Office

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Getting Started with Self Resource Center

One of the benefits of SELF membership is access to the SELF Resource Center, a computer-based risk management resource that can be used to train your staff and learn about timely topics affecting school districts.

Logging in

- Please visit www.selfjpa.org.
- Click on "SELF Resource Center" under the Resources menu.
- In the fields provided, enter your user ID and password and click "Login".
- You may also visit www.in2vate.com/self to log in.
- If you have forgotten your user ID and/or password, please contact the in2vate Helpdesk at 800.205.5262 or helpdesk@in2vate.com.

Creating Your User ID and Password for the First Time

- Please visit www.selfjpa.org.
- Click on "SELF Resource Center" under the Resources Menu.
- In the left bottom corner, click the "Create My Account" link
- Using the drop down menu provided to the left, please find and click on your district or agency name, and then click the "Select" button. If your district name is not shown, contact the SELF office.
- Enter your first name, last name, email address, and a password (at least four characters long) and click the "Continue" button.
- On the following page the profile "Member-SASC" should be selected for you, please click the "Continue" button.
- Please make a note of your user ID and password for SELF Resource Center at this time.

- You may now log in, print your user account information, or exit the program by selecting the appropriate button.
- You may also visit www.in2vate.com/self to create a user account for the first time.
- **Please do not create more than one user account for yourself.** Please contact the helpdesk (800.205.5262 or helpdesk@in2vate.com) if you have forgotten your user information or experience complications during the user registration process.



Accessing the Training on Self Resource Center

- During the online user registration process you will be automatically assigned six training courses:
 - Smarter Adults—Safer Children: Preventing Child Sexual Abuse
 - Smarter Adults—Safer Children: Bullying Prevention (Cyberbullying now included!)
 - Smarter Adults—Safer Children: Technology Safety & Security
 - California Sexual Harassment Prevention (AB 1825) Training
 - FACTA Identity Theft "Red Flag" Regulatory Compliance Training
 - Mandated Reporter Training (AB 1432)
- Plus you may choose one "member choice" course from the in2vate catalogue.
- These training topics are accessed by clicking on the "My Training" tab at the top of the screen followed by clicking on the "Online Training Modules" link to the left.
- To access stored, recorded webinars, click on the "Webinars" link at left.

KMTG Legal Alert

Attorney's Fee Award Upheld Against City Of San Diego in Public Records Act Case



San Diegans for Open Government (“SDOG”) sued the City of San Diego (“City”) for violations of the California Public Records Act (“Act”) after the City failed to produce emails in response to a request made pursuant to the Act.

Following the trial court proceedings, the court granted SDOG’s request for attorney’s fees after finding that the City improperly withheld the requested documents. On appeal, the Fourth District Court of Appeal reviewed the trial court’s decision for abuse of discretion and thereafter affirmed the order granting SDOG attorney’s fees.

Attorney’s Fees Under The Public Records Act

The Act states “ [p]ublic records’ “ include “any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.” (Gov. Code, § 6252, subd. (e).) Under the Act, a public agency must make “a reasonable effort to elicit additional clarifying information from the requester that will help identify the record or records.” (Gov. Code, § 6253.1, subd. (b).) As noted by the Fourth District, “[i]n a proceeding under the Act the court is required to award court costs and reasonable attorney fees to the plaintiff should the plaintiff prevail in litigation filed pursuant to this section.”

A plaintiff is a prevailing party pursuant to Section 6259 if it “files an action which results in defendant releasing a copy of a previously withheld document.” (*Los Angeles Times v. Alameda Corridor Transportation Authority* (2001) 88 Cal. App.4th 1381, 1391.)

Summary Of The Decision

SDOG submitted a public records request to the City for all e-mail communications pertaining to City’s official business sent to or from the City Attorney’s personal email account during a specific time period. The City initially refused to produce any emails, and stated that all such emails were contained on private servers, were not public records, and were not retained by the City. However, after reading SDOG’s complaint, the City produced over 900 pages of e-mails, claiming for the first time it realized SDOG sought e-mails were stored in the City’s computer system, rather than on private servers.

The Fourth District noted that four City attorneys had reviewed SDOG’s request and had concluded it sought only emails stored on the City Attorney’s private email account, rather than emails saved to City’s servers. In declarations submitted to the trial court, the City attorneys explained that they came to this conclusion based on their treatment of similar previous requests by SDOG’s counsel that sought emails regardless of whether the account was public or private. The Court noted that the “City attorneys conceded they were aware private emails stored on City servers are considered to be public records.”

The City argued that SDOG should have stated it sought private emails stored on the City’s servers and, “had SDOG done so, the City would have produced all non-privileged emails.” However, the Fourth District stated that the “City’s claim it did not understand the request sought emails stored in its computer system rings hollow.” The Court noted that “the City declined to produce any documents claiming it did not ‘retain’ them,” but failed to verify whether that assertion was true.

The City separately argued that it should not be subject to attorneys’ fees because the lawsuit did not cause it to disclose the 900 pages of emails, and, even after an in camera review of the other privileged records, the trial court only required the disclosure of “one insignificant e-mail.”

In ruling in SDOG’s favor, the Fourth District determined that SDOG’s action motivated City to actually look for and ultimately produce private emails stored on the City’s servers, and that the “City improperly narrowed the request rather than seek clarification as it was obligated to do.”

What This Means To You

This case serves as a reminder to broadly, rather than narrowly, consider Public Records Act Requests. Public agencies should check with requesting parties to obtain clarification when there are doubts about the scope of a request. Though no specific technique is required by statute, one way to ensure compliance with this obligation may be to notify requestor of how the agency is interpreting the request, perhaps by restating it, explaining what records are searched, and describing any manner in which the agency is construing the request narrowly, to allow the requesting party an opportunity to clarify the request.

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