



DISTRICT OF COLUMBIA
PUBLIC SCHOOLS

August 2016

DCPS Policies and Programs:
Mandated Reporting, Corporal
Punishment, Discourteous
Treatment, Retaliation, and
Mandatory Drug and Alcohol Testing

Labor Management & Employee Relations





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Understanding DCPS' Revised Policy on Mandated Reporting

Labor Management & Employee Relations



Agenda

- Background: Why We Report
- Who Must Report
- What Must Be Reported
- How to Report
- Considerations for Reporting

Background: Scrutiny on DCPS Employees

Relisha Rudd Case

- “Rudd Report” recommends additional Mandated Reporter training

Student Sexual Misconduct Case

- Sexual misconduct involving two students occurs in school
- Investigation finds Principal/Teacher did not appropriately report incident
- OAG alerts OGC that future failures to report will result in prosecution

Who Are Mandated Reporters?

All DCPS employees/contractors are Mandated Reporters

- School Administrators
- Teachers
- Substitute Teachers
- Counselors
- Mental Health Professionals
- Nurses
- Coaches
- Aides
- Custodians
- Central Office Employees

What Are We Mandated to Report?

- **Mental Injury:** Harm to a child's psychological or intellectual functioning
 - Examples: threats, verbal abuse, excessive demands on performance
 - Signs: continual self-deprecation, overreaction to mistakes

- **Physical Abuse:** Non-accidental physical harm or threatened harm

- **Physical Assault:** Physical contact without consent
 - Signs: recurring bruises, behavioral extremes, inappropriate clothing

- **Neglect:** Failure to provide food, shelter, clothing, medical care, education*
 - Examples: burns after playing with gas stove, injury not being treated
 - Signs: consistently poor hygiene, inappropriate dress for weather

**Educational Neglect and Truancy have a separate protocol.*

What Are We Mandated to Report? (Cont.)

- **Sexual Abuse:** Sexual contact or penetration
- **Sexual Exploitation:** Allowing for prostitution or depiction in a sexual act
- **Sexual Assault:** Illegal sexual contact on someone incapable of consenting
 - Examples: fondling genitals, penile/digital penetration, exposure to pornography, inadequate/inappropriate supervision of a child's voluntary sexual activities
 - Signs: sexualized behavior, mouth/genital lesions, missing certain classes
- **Exposure to Domestic Violence**
- **Exposure to Drug-Related Activity:** Ingestion of or exposure to illegal drugs
- **Injury by Bullet, Knife, or Other Sharp Object**

How to Make a Report

Report must be made **immediately** upon learning of abuse or neglect.

Each incident must be reported to ALL of the following:

- Child and Family Services Agency (CFSA) on its hotline (202-671-SAFE)
- Metropolitan Police Department (MPD) by notifying the School Resource Officer or by calling 911
- School Principal and Security Officer after CFSA and MPD are called

Notifying your supervisor does NOT satisfy your reporting obligation!

Addressing the Student Victim

DO:

- Provide for student's immediate medical needs (via school nurse or 911).
- Escort student to school-based crisis response team.
- Keep your concerns confidential from other students.

DO NOT:

- Ask detailed questions of the victim about the abuse.
- Question any suspected abusers or witnesses.

You risk compromising the investigation and could be seen as tampering.

This has become a major point of emphasis in recent cases.

Additional Considerations for Reporting

What if I believe someone else has already made a report about this case?

You still report.

Does this protocol apply to suspected Corporal Punishment by DCPS staff?

Yes. Corporal Punishment could constitute abuse.

Does this protocol apply if the suspected abuser is also a child?

Yes. Children can be perpetrators of abuse.

What if I'm not sure whether what I've learned constitutes abuse or neglect?

Report it! You cannot be punished for filing a report in good faith.

What About Truancy?

Truancy and Educational Neglect have their own reporting protocols.

Employees concerned about truancy or educational neglect should report their concerns to the school's attendance counselor (or designee).

The attendance counselor (or designee) will make a referral to CFSA using established protocols found on its website.

Retaliation for Reporting Harassment

- DCMR 5-E 1401.2(z): “Retaliation for Reporting Harassment and Sexual Harassment”
 - “An employee commits an offense...when he/she retaliates against any person who reports alleged harassment or sexual harassment, or any person who testifies, assists, or participates in an investigation, or who testifies, assists, or participates in a proceeding or hearing relating to such harassment or sexual harassment. An employee retaliates against a person if, as a result of (such) action taken by the employee... 1) such person is reasonably intimidated by verbal threats or physical conduct of the employee, or 2) such person is denied an opportunity, right, or privilege to which he/she would otherwise be entitled, or 3) such person is subjected to detrimental treatment to which he/she would not otherwise be subjected.”

Retaliation for Reporting Misconduct

- DC Government employees are bound and protected by the Office of Government Ethics' Ethics Manual:
 - "...District employees must be free to report waste, fraud, abuse of authority, violations of law, or threats to public health or safety without fear of retaliation or reprisal." (p. 76)
 - "District officials are prohibited from retaliating against any employee who makes a protected disclosure or refuses to comply with an illegal order." (p. 79)



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FAQs on Corporal Punishment

Labor Management & Employee Relations



Agenda

- Definition of Corporal Punishment
- Defenses to Corporal Punishment Charge
- Resources for Dealing with Student Behavior

Definition (5-E DCMR 2403)

- Corporal Punishment is the use or attempted use of physical force upon, or against, a student, either intentionally or with reckless disregard for the student's safety, as a punishment, or discipline.
- An employee also commits Corporal Punishment when s/he directs another to use force against a student.

Definition (continued)

- Elements:
 - Use or attempted use of physical force
 - Upon or against a student
 - Intentionally or with reckless disregard for the student's safety
 - As punishment or discipline

- Examples of Corporal Punishment include:
 - Pushing, grabbing, hitting, and unreasonable restraint

Definition (continued)

- Are all attempts by an employee to use physical force against a student Corporal Punishment?
 - **No. Force that is not used for the purpose of discipline or punishment does not fall within the definition of Corporal Punishment.**
 - **But such conduct may be Discourteous Treatment or criminal.**
- Can I use Corporal Punishment if a parent gives me permission?
 - **No. The use of Corporal Punishment by DCPS staff is strictly prohibited even if authorized by a parent.**

Defenses

1. Self-defense
2. Defense of others
3. Maintaining or regaining order
4. Safety of the educational environment

Defenses (continued)

- If action was in self-defense or defense of others, consider:
 - Was the action proportionate to the student's conduct?
 - Was action the least intrusive means of controlling the situation?

- Relevant questions include:
 - What was the student's conduct?
 - How hard was any physical contact?
 - What other options did staff member have to control situation?

Defenses (continued)

- If action was for the safety of the educational environment or to regain or maintain order, consider:
 - Was the action taken as a last resort after all other reasonable means had been exhausted?
 - Was action the least intrusive means of controlling the situation?

- Relevant questions include:
 - What steps did the staff member take prior to physical contact?
 - What other options did the staff member have to control the situation?

Resources

- Where can I turn for guidance on the appropriate means of using force to defend myself or others?
 - **The Office of the State Superintendent of Education offers monthly training on Nonviolent Crisis Intervention.**
- Where should I go if I'm feeling overwhelmed by student behavior?
 - **Principal, Dean of Students, Student Discipline and School Climate team in the Office of Youth Engagement**
 - **COPE at 202.628.5100**

What is Discourteous Treatment?

- DCMR 5-E 1401.2(n): “Discourteous treatment of the public, supervisor, or other employees”
 - “Public” includes students
- Examples of Discourteous Treatment:
 - Excessive/unnecessary contact with students that is not CP
 - Profanity/threats/insults directed at others
 - Inappropriate conversation/comments/correspondence
 - Throwing objects
 - Destruction of others’ property



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Office of the Chancellor

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Guide to Understanding the Mandatory Drug and Alcohol Testing (MDAT) Program



Content

- Rationale for the Mandatory Drug and Alcohol Testing (MDAT) Program
- Individuals Subject to Testing
- Substances Tested
- Circumstances for Testing
- Prohibited Conduct
- Consequences for Violating the MDAT Policy
- Impact of Initiative 71
- Resources

Rationale for MDAT Program

- Drug and alcohol testing are legal requirements.
 - The Child and Youth, Safety and Health Omnibus Amendment Act of 2004 (CYSHA) requires that all DC agencies that employ individuals in “safety-sensitive” positions implement a drug and alcohol testing program.

- Drug and alcohol testing will help us maintain safe and productive schools.
 - Substance abusers are more likely to miss work, are less productive, and are 3.6 times more likely to contribute to an on-the-job accident.

Individuals Subject to Testing

- At DCPS, all school-based positions are considered “safety-sensitive,” and employees occupying those positions are subject to testing.

- A “safety-sensitive” position is one in which:
 - The employee has direct contact with children or youth;
 - The employee is entrusted with the direct care and custody of children or youth; and
 - The performance of the employee’s duties in the normal course of employment may affect the health, welfare, or safety of children or youth.

Substances Tested

- Employees are tested for the following substances:
 - Marijuana
 - Cocaine
 - Opiates
 - Amphetamines
 - Phencyclidine (PCP)

- Employees are tested for the presence of alcohol.

Circumstances for Testing

- Testing is required in the following circumstances:
 - Upon **Reasonable Suspicion** of intoxication or impairment in ability to perform duties due to the use of any substance or alcohol.
 - **Post-Accident**, when the cause of the accident could reasonably be believed to have been due to the use of a substance or alcohol.
 - Before an employee is permitted to **Return-to-Duty** after seeking treatment.
 - As a series of **Follow-Up** tests upon successful completion of a substance or alcohol treatment program.

- When an employee is required to complete a drug or alcohol test, he/she will be placed on paid administrative leave until the results of the tests are confirmed.

Prohibited Conduct: General Rules

- The following actions are prohibited under the MDAT Policy:
 - Possessing a container of alcohol while on duty.
 - Having an alcohol concentration of 0.38 micrograms or more per milliliter of breath while on duty. This amount is roughly equivalent to 0.08% blood alcohol concentration (BAC), which is the legal limit for driving under the influence in DC.
 - Possessing or using, while on duty, any controlled substance or related paraphernalia, with the exception of medication approved by a licensed physician.
 - Tampering with the testing process in any way.
 - Failing to comply with the recommendations of any drug or alcohol treatment program, following the disclosure of a drug or alcohol problem.
 - Refusing to submit to drug or alcohol testing when directed by DCPS to do so.

Prohibited Conduct: Refusing to Submit to Testing

- Refusing to submit to testing is prohibited and defined as:
 - Failing to appear for a required drug or alcohol test;
 - Failing to remain at the collection site for a required drug or alcohol test;
 - Failing to provide a specimen for a required drug or alcohol test;
 - Failing to permit direct observation when required by DCPS or the collector;
 - Failing to provide sufficient urine for drug test or adequate breath for alcohol testing without valid medical evidence and explanation of the inability;
 - Failing to take a second drug or alcohol test when required;
 - Failing to undergo a medical exam when required; or
 - Failing to cooperate with any part of the testing process.

Consequences

- DCPS shall have the right to terminate any employee who engages in conduct prohibited by the MDAT Policy.
- Employees who test positive for drugs or above the permissible limit for alcohol shall be terminated from employment with DCPS and barred from employment in a safety-sensitive position for a period of 3 years.
- Employees who refuse to test shall be terminated and barred from employment in a safety-sensitive position for a period of 3 years.

Impact of Initiative 71

- Although Initiative 71 decriminalizes limited recreational, off-duty use of marijuana, it does not change DCPS' obligations under CYSHA
- Reporting to work under the influence of marijuana remains strictly prohibited for employees who occupy a safety-sensitive position at DCPS
- Applicants and employees who test positive for marijuana will be subject to the consequences of the MDAT Policy, regardless of when they used such substance

Resources: How to Obtain Assistance

- If you are currently experiencing a drug or alcohol problem, see page 7 of the Policy for instructions on how to disclose such a problem prior to being subject to drug and alcohol testing.

- Contact the **Employee Assistance Program (COPE, Inc.)** to seek confidential counseling regarding drug and alcohol treatment.
 - Phone: 202.628.5240
 - Email: eap@cope-inc.com
 - Website: www.cope-inc.com/dc-eap

Resources: MDAT Contact Information

- Mandatory Drug and Alcohol Testing Program
 - Phone: 202.442.5373
 - Email: dcps.mdat@dc.gov
 - Website: www.dcps.dc.gov/DCPS/MDATProgram

- QuickBase application to acknowledge receipt of the MDAT Policy
 - <https://octo.quickbase.com/db/bh4cmzmk5>
You must log-in with your QuickBase user id and password.

LMER Contact Information

202-442-5373

DCPS.LMER@dc.gov