



Ministry of Education

Policy/Program  
Memorandum  
No. 9

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<b>Date of Issue:</b>	January 7, 2019
<b>Effective:</b>	Until revoked or modified
<b>Subject:</b>	<b>Duty to Report Children in Need of Protection</b>
<b>Application:</b>	Directors of Education Supervisory Officers and Secretary-Treasurers of School Authorities Principals of Elementary Schools Principals of Secondary Schools Principals of Provincial and Demonstration Schools
<b>Reference:</b>	This memorandum replaces Policy/Program Memorandum No. 9, "Reporting of Children in Need of Protection", August 10, 2001.

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**Note:** This memorandum reflects the Child, Youth and Family Services Act,<sup>1</sup> which came into force on April 30, 2018.

## Requirements for Reporting

The Child, Youth and Family Services Act contains provisions under Part V, Child Protection, for reporting a child<sup>2</sup> who is or may be in need of protection. If any person – “including a person who performs professional or official duties with respect to children” – has reasonable grounds to suspect that a child is or may be in need of protection, the act requires that the person report their suspicions “immediately” to a children’s aid society and provide the information on which the suspicions are based. Therefore, teachers, principals, and other professionals who, in the course of performing their professional or official duties, suspect that a child is or may be in need of protection must report this information without delay to a children’s aid society. Details are given in subsection 125(1), which is quoted below in its entirety:

**125(1)** Despite the provisions of any other Act, if a person, including a person who performs professional or official duties with respect to children, has reasonable

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1. The Child, Youth and Family Services Act, 2017, S.O. 2017, c. 14, Sched. 1. Referred to hereafter as the Child, Youth and Family Services Act, or the act. This legislation replaces the Child and Family Services Act, R.S.O. 1990.

2. As per the act, “child” means a person under 18 years of age.

grounds to suspect one of the following, the person shall immediately report the suspicion and the information on which it is based to a society:

1. The child has suffered physical harm inflicted by the person having charge of the child or caused by or resulting from that person's,
  - i. failure to adequately care for, provide for, supervise or protect the child, or
  - ii. pattern of neglect in caring for, providing for, supervising or protecting the child.
2. There is a risk that the child is likely to suffer physical harm inflicted by the person having charge of the child or caused by or resulting from that person's,
  - i. failure to adequately care for, provide for, supervise or protect the child, or
  - ii. pattern of neglect in caring for, providing for, supervising or protecting the child.
3. The child has been sexually abused or sexually exploited by the person having charge of the child or by another person where the person having charge of the child knows or should know of the possibility of sexual abuse or sexual exploitation and fails to protect the child.
4. There is a risk that the child is likely to be sexually abused or sexually exploited as described in paragraph 3.
5. The child requires treatment to cure, prevent or alleviate physical harm or suffering and the child's parent or the person having charge of the child does not provide the treatment or access to the treatment, or, where the child is incapable of consenting to the treatment under the *Health Care Consent Act, 1996*, refuses or is unavailable or unable to consent to, the treatment on the child's behalf.
6. The child has suffered emotional harm, demonstrated by serious,
  - i. anxiety,
  - ii. depression,
  - iii. withdrawal,
  - iv. self-destructive or aggressive behaviour, or
  - v. delayed developmentand there are reasonable grounds to believe that the emotional harm suffered by the child results from the actions, failure to act or pattern of neglect on the part of the child's parent or the person having charge of the child.
7. The child has suffered emotional harm of the kind described in subparagraph 6 i, ii, iii, iv or v and the child's parent or the person having charge of the child does not provide services or treatment or access to services or treatment, or, where the child is incapable of consenting to treatment under the *Health Care Consent Act, 1996*, refuses or is unavailable or unable to consent to, treatment to remedy or alleviate the harm.

8. There is a risk that the child is likely to suffer emotional harm of the kind described in subparagraph 6 i, ii, iii, iv or v resulting from the actions, failure to act or pattern of neglect on the part of the child's parent or the person having charge of the child.
9. There is a risk that the child is likely to suffer emotional harm of the kind described in subparagraph 6 i, ii, iii, iv or v and the child's parent or the person having charge of the child does not provide services or treatment or access to services or treatment, or, where the child is incapable of consenting to treatment under the *Health Care Consent Act, 1996*, refuses or is unavailable or unable to consent to, treatment to prevent the harm.
10. The child suffers from a mental, emotional or developmental condition that, if not remedied, could seriously impair the child's development and the child's parent or the person having charge of the child does not provide the treatment or access to the treatment, or where the child is incapable of consenting to the treatment under the *Health Care Consent Act, 1996*, refuses or is unavailable or unable to consent to, treatment to remedy or alleviate the condition.
11. The child's parent has died or is unavailable to exercise custodial rights over the child and has not made adequate provision for the child's care and custody, or the child is in a residential placement and the parent refuses or is unable or unwilling to resume the child's care and custody.
12. The child is younger than 12 and has killed or seriously injured another person or caused serious damage to another person's property, services or treatment are necessary to prevent a recurrence and the child's parent or the person having charge of the child does not provide services or treatment or access to services or treatment, or, where the child is incapable of consenting to treatment under the *Health Care Consent Act, 1996*, refuses or is unavailable or unable to consent to treatment.
13. The child is younger than 12 and has on more than one occasion injured another person or caused loss or damage to another person's property, with the encouragement of the person having charge of the child or because of that person's failure or inability to supervise the child adequately.

In addition to the above-mentioned details, further details concerning the requirements for reporting are provided in subsections 125 (2), (3), and (4) of the act, as summarized below.



### Duty to report is ongoing

Subsection 125(2) of the act states that the duty to report is an *ongoing obligation*. If a person has made a report about a child to a children's aid society and has additional reasonable grounds to suspect that the child is or may be in need of protection, that person must make a further report to the children's aid society.

### Report(s) must be made directly to a children's aid society

Subsection 125(3) of the act requires every person who has reasonable grounds to suspect that a child is or may be in need of protection to make a report *directly* to a children's aid society and *not rely on anyone else* to report on their behalf.

### Duty to report does not apply to older children

Subsection 125(4) of the act clarifies that, if the child is 16 or 17 years old, there is no duty to make a report, but a person may make a report concerning older children if either a circumstance or condition described in paragraphs 1 to 11 of subsection 125(1) or a prescribed<sup>3</sup> circumstance or condition exists.

Note that the requirements for reporting stated in the act and outlined above do not prevent a school board from establishing additional policies on internal reporting procedures, but the school board's policies must not conflict with the reporting requirements of the act.

## Consequences of Failure to Report

Subsection 125(5) of the act makes it an offence for every person performing professional or official duties with respect to children to fail to report a child who, they suspect, is or may be in need of protection. Subsection 125(6) expressly identifies teachers, designated early childhood educators,<sup>4</sup> and school principals as such persons. If such professionals obtain information, *in the course of performing their professional or official duties*, that leads them to suspect that a child is or may be in need of protection, they must report this suspicion. If they do not report the suspicion, they are liable, upon conviction of the offence, to a fine of up to \$5000.

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3. As per the act, “prescribed” means “prescribed by regulations”.

4. In this memorandum, *designated early childhood educator* refers to a “person appointed to a position designated by a board of education as requiring an early childhood educator”, as used in the Child, Youth and Family Services Act.

## **Protection for Persons Making Reports**

Under section 125 of the Child, Youth and Family Services Act, the duty of a professional or official to make a report overrides the provisions of any other provincial statute, including those legislative provisions that would otherwise prohibit the professional or official from disclosing confidential or privileged information. In other words, school principals, teachers, and designated early childhood educators must report that they suspect that a child is or may be in need of protection even if they believe that the information to be used to support the report is supposed to be confidential or privileged.

Subsection 125(10) provides that no action for making a report will be instituted against a person who acts in accordance with the duty to report in section 125, unless the person acts maliciously or without reasonable grounds for the suspicion.

## **Investigation**

Under clause 35(1)(a), it is the responsibility of the children's aid society to investigate allegations or evidence that a child is or may be in need of protection. In addition, it is the responsibility of the children's aid society that receives a report under section 125 to, as soon as possible, carry out an assessment and verify the reported information, or ensure that the information is assessed and verified by another children's aid society.

## **Directors of Education**

Directors of education should ensure that:

- all staff members are aware of, and understand, the relevant sections of the Child, Youth and Family Services Act, particularly the requirement to report suspected cases of children in need of protection;
- school board policies and procedures on reporting suspected cases of children in need of protection conform with the provisions of the Child, Youth and Family Services Act.

For further details, please see the Child, Youth and Family Services Act.