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LEGAL UPDATE

December 3, 2008

To: Superintendents, Member School Districts (K-12)

From: Marko Fong, Assistant General Counsel *MF*

Subject: Child Abuse Reporting Duties
Memo No 30-2008

A Southern California principal and assistant principal were both recently convicted (under Penal Code section 11166 (c)) of misdemeanor failure to report a sexual encounter between a substitute teacher and a student. In this case the administrators did not find out about the underlying incident until seven months after it allegedly happened.

Frequent mistakes made by staff happen when a mandated reporter believes that a matter has already been reported to or handled by the authorities or no longer presents a “danger” due to the passage of time or unavailability of the parties. Under Penal Code section 11166 (a) the mandated reporter shall both “make an initial report to the appropriate agency immediately or as soon as is practically possible by telephone” and “transmit a written follow-up report thereof within 36 hours of receiving the information concerning the incident.” The passage of time between the alleged event and knowledge does not release the reporter from the duty to make the report. Many individuals either fail to make their own report when other agencies appear to be involved or do not follow through with the written report.

The recent convictions are a reminder that the Penal Code allows little to no discretion when it come to the duty to make the report immediately. We advise all districts and community colleges to make certain that all employees are fully aware of their responsibilities as mandated reporters. Also, it is important to know that a District’s insurance coverage may not extend to staff depending on the individual circumstances. Such coverage is specifically not available for any criminal matter stemming from a failure to report.

We also point out that Penal Code 11166(h) provides that any mandated reporter is protected for all reports made in good faith.

Please contact us if you have further questions or if you require further assistance with training staff in this area.