



# Reporting Requirements for Situations Involving Sexual Contact or Intercourse and Students: Suggested Procedures for School Employees

Updated June 2022

## Purpose of the Document

This document is intended to help school districts, in collaboration with their local child welfare and law enforcement agencies, develop policies and procedures to address situations where a school employee has reasonable cause to suspect that a minor student has been involved in sexual contact or intercourse. State statutes regarding the mandatory reporting of sexual activity with minor students are complex, with different directives that depend on various factors. This summary was developed by the Department of Public Instruction (DPI) in cooperation with the Department of Children and Families (DCF). Applicable definitions are included for reference.

## School Employees as Mandated Reporters

Wisconsin law requires all school employees to report suspected child abuse and neglect, Wis. Stat. § [48.981\(2\)\(a\)16m](#). In addition, school boards are to ensure every employee receives training provided by DPI within six months of initial hiring and at least every five years thereafter, Wis. Stat. § [118.07\(5\)](#). Employees are considered to be anyone who receives an annual statement of wages for tax purposes (W-2 form) from the school district. Training and resource materials can be found on the [DPI Child Abuse and Neglect Training website](#).

DPI encourages school employees to think of their duty in a way that would more appropriately be called “**mandated supporter**”. As described by the [U.S. Department of Health and Human Services](#), “To promote racial equity and increase awareness of alternative ways to provide support to children and families, mandated reporters are encouraged to become ‘mandated supporters,’ which entails working to connect families to resources that provide support for their needs so that they can support their children.” A mandated supporter’s responsibility toward students and families does not end with a report to local child welfare; but instead, a report helps initiate a possible collaboration to broaden the students’ support system.

## Instruction for Students

Schools must provide to elementary students, “Knowledge of effective means by which pupils may recognize, avoid, prevent and halt physically or psychologically intrusive or abusive situations which may be harmful to pupils, including child abuse, sexual abuse, and child enticement. Instruction shall be designed to help pupils develop positive psychological, emotional, and problem-solving responses to such situations and avoid relying on negative, fearful, or solely reactive methods of dealing with such situations. Instruction shall include information on available school and community prevention and intervention assistance or services, Wis. Stat. § [118.01\(2\)\(d\)\(8\)](#). Schools are encouraged to provide all students developmentally appropriate instruction related to child abuse, teen dating violence, consent, sex trafficking, and their rights under Wisconsin’s Pupil Non-Discrimination Law and Title IX.

## Legal Note

This information is not designed nor intended to be used as, or in place of, a school district policy. School districts are advised to consult with their attorney prior to finalizing and implementing any local policies and procedures.

**Questions** on this content may be directed to Julie Incitti, School Social Work Consultant, Student Services/Prevention and Wellness Team, Department of Public Instruction, at (608) 266-0963 or [julie.incitti@dpi.wi.gov](mailto:julie.incitti@dpi.wi.gov).



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## **Involuntary Sexual Contact or Intercourse between a Minor and Another Person**

- Illegal
- Mandated Reporters must report

Any school professional who, through the course of professional duties, has reasonable cause to suspect that a student under the age of 18 years has had *sexual contact* or *sexual intercourse* (see Definitions) with another person and has reason to **doubt** the student's participation in the sexual contact was voluntary, must immediately contact the local child welfare agency or local law enforcement agency and make a report to that effect. The school professional may inform the student in a confidential interview: 1) the report is being made and is required by law, and 2) what to expect concerning the investigation (e.g., investigation procedures, possible outcomes of the investigation).

**Parental Involvement** – As a mandated supporter, it can be helpful to consider how and when to connect with parents. The school professional may encourage the student to discuss this matter with the student's parents or caregivers if the parents or caregivers were in no way involved in the sexual contact nor contributed to nor condoned the sexual contact. Mandated supporters who have been trained and feel comfortable are encouraged to connect with the parent(s) after talking with the student about how, when, and why this communication will occur.

**Sexual Harassment Complaints and Investigations** - Depending on the circumstances of the involuntary sexual contact or intercourse, a school district may need to consider implications for requirements under Wisconsin's Pupil Non-Discrimination Law and Title IX of the Education Amendments of 1972. School staff must respond to allegations of sexual harassment consistent with Title IX's prohibition against sex discrimination **in addition** to any criminal investigation. Further, Wisconsin Administrative Code Chapter PI 9 also provides a complaint procedure if a student is subject to discrimination. It is important for schools to understand the various requirements of mandated reporting, Title IX, and pupil nondiscrimination and how they work together through local policies and procedures.

**Right to an Advocate** - School staff should keep in mind that students have the option and the right under WI law to connect with an advocate in cases of sexual assault, human trafficking, or child sexual abuse. An "advocate" is an individual who is an employee of or a volunteer for an organization, the purpose of which is to provide counseling, assistance, or support services free of charge to a victim. A listing of local Sexual Assault Service Providers can be found on the [Wisconsin Coalition Against Sexual Assault \(WCASA\) website](#).

References: Wis. Stat. §§ [48.02\(1\)](#) , [48.02\(2\)](#); [48.981\(2\)](#), (2m), (3)(a)1.; [50.378\(2\)](#); [905.045\(1\)\(e\)](#); [940.225](#); [948.02\(1\)](#), (2), (3); [948.025](#), [950.045](#); 20 U.S.C. § [1681-1688](#), 45 C.F.R. part [86](#); Wis. Stat. § [118.13](#), Wis. Admin. Code ch. [PI 9](#).



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### **Voluntary Sexual Contact or Intercourse between a Minor Student and Another Person**

Suggested procedures for school professionals who become aware that a student under the age of 18 years has had consensual *sexual contact* or *sexual intercourse* with another person differ dependent upon the student's age (see Definitions for "consent").

#### **Sexual Contact and Intercourse – Under 15 Years Old**

- Illegal
- Mandated Reporters must report

*Sexual contact* or *sexual intercourse* with a person under the age of 15 years is a felony (Wis. Stat. §§ 948.02[1] and [2]) and is sexual abuse (Wis. Stat. § 48.02[1][b]). School professionals who have reasonable cause to believe a student under the age of 15 years has had sexual contact or sexual intercourse with another person must report this behavior to the local child welfare agency or local law enforcement agency, even in situations where the student claims the sexual contact or sexual intercourse is consensual.

#### **Sexual Contact and Intercourse – 15 Years Old**

- Illegal
- Mandated Reporters must report, unless the sexual activity is between the 15-year-old and a 15, 16, 17, or 18-year-old

*Sexual contact* or *sexual intercourse* with a person who is 15 years old is a felony and is sexual abuse (Wis. Stat. § 48.02[1][b]) except under the circumstances provided in Wis. Stat. § 948.093 (as relating to relations between a 15-year-old and a 15, 16, 17, or 18-year-old and discussed below) (Wis. Stat. §§ 948.02[1] and [2]; 948.093). School professionals who have reasonable cause to believe a student who is 15 years old has had sexual contact or sexual intercourse with another person must report this behavior to the local child welfare agency or local law enforcement agency, even in situations where the student claims the sexual contact or sexual intercourse is consensual unless § 948.093 applies.

#### **Sexual Intercourse and Contact - Between a 15-Year-Old and a 15, 16, 17, or 18-Year-Old**

- Illegal
- Mandated Reporters are not required to report

Though a class A misdemeanor, sexual intercourse or contact between a 15-year-old and a 15, 16, 17, or 18-year-old is not considered sexual abuse if there is consent (Wis. Stat. §§ 48.02[1][b], 940.02[2], 940.225 & 948.093). Consequently, there is no requirement for a report to the local child welfare agency or local law enforcement for this behavior.



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### Sexual Contact – 16 and 17 Years Old

- Legal
- Mandated Reporters are not required to report

Other than as is set forth by Wis. Stat. § 948.095 relating to district staff and volunteers, it is not illegal for an individual to have voluntary *sexual contact* with a person 16 or 17 years old, and it is not sexual abuse (Wis. Stat. § 48.02[1][b]). Consequently, there is no requirement for a report of child abuse to the local child welfare agency or local law enforcement.

### Sexual Intercourse - 16 and 17 Years Old

- Illegal
- Mandated Reporters are not required to report

*Consensual sexual intercourse* (see Definitions) with someone 16 or 17 years old could result in a conviction of a class A misdemeanor, pursuant to Wis. Stat §§ 948.09 and 948.093. However, this behavior does not constitute sexual abuse under Wis. Stat. § 48.02(1)(b) and therefore does not fall under the mandated reporting requirement in Wis. Stat. § 48.981 if the school professional feels, in their professional opinion, the sexual intercourse is voluntary and Wis. Stat. § 948.095 does not apply (see below). A 1983 Wisconsin Attorney General opinion states, “Sexual contact or intercourse with a sixteen- or seventeen-year-old is not sexual assault unless it is nonconsensual. Therefore, it should be reported as abuse only if there is reasonable cause to suspect that the sixteen- or seventeen-year-old did not consent.” 72 Wis. Atty. Gen. 93, 95. The DOJ reiterated this legal interpretation in a memorandum dated 4/14/05.

### Additional Penalties for District Staff and Volunteers – Wis. Stat. § 948.095

In addition to any school district policies prohibiting such behavior, pursuant to Wis. Stat. § 948.095, any school staff member that has *sexual contact* or *sexual intercourse* with a 16 or 17-year-old that attends the school or school district that employs the staff member is guilty of a Class H felony if the staff member is not the child’s spouse. The same penalty applies to an individual age 21 or over who engages in an occupation or participates in a volunteer position that requires them to work or interact directly with children. Individuals with reasonable cause to suspect this behavior should contact the school administration immediately and must report any suspected child abuse to the local child welfare agency or local law enforcement.

School employees who hold a certificate or license from the Department of Safety and Professional Services (DSPS) (e.g., nurses, social workers, and others) may have their license terminated based on an ethical violation, convicted felony, misdemeanor, or other offense, including ordinances, the circumstances of which substantially relate to the circumstances of the particular licensed activity, Wis. Stat. § 111.335(3). To learn more about filing a complaint against a license holder, visit the [DSPS website](#).

For additional information relating to reporting requirements when a school employee is involved, including information on a school district administrator’s requirement to report to the state superintendent the name of any person employed by the educational agency who meets the statutorily-defined criteria under educator misconduct (Wis. Stat. § 115.31), see [The School’s Role in Preventing Child Abuse and Neglect](#).



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### Sex Trafficking

- Illegal
- Mandated Reporters must report

Child Sex Trafficking is included in the definition of child abuse and must be reported, even if the perpetrator is unrelated to the child (Wis. Stat. § 48.02[1][cm]). Whoever knowingly recruits, entices, provides, obtains, harbors, transports, patronizes, or solicits or knowingly attempts to recruit, entice, provide, obtain, harbor, transport, patronize, or solicit any child for the purpose of commercial sex acts, or whoever benefits in any manner from these activities if the person knows that the benefits come from an act described above, as defined in s. 940.302 (1) (a), is guilty of a Class C felony (Wis. Stat. §§ 948.051[1] and [2]). For more information, see [DPI's online training modules and written guidance](#) on the *Mandatory Reporting of Child Abuse and Neglect and Reporting Child Sex Trafficking Using the Indicator and Response Guide*.

### When a Report is Not Warranted

When a school professional comes into contact with a sexually active student and a report is not warranted, the school professional may wish to 1) take steps to ensure the student is fully cognizant of the potential adverse consequences of being sexually active, 2) ask whether the student has talked to the student's parents or some other responsible adult family member about being sexually active, and if not, provide the student with strategies and encouragement to do so, including offering to help the student speak with parents or caregivers, and 3) ask the student whether appropriate health care services have been accessed necessary to prevent pregnancy and sexually transmitted infections (STIs) and, if not, provide the student with the necessary information to make a self-referral.

### Health Care Services Exemption

A health care provider (such as a school nurse, see Definitions) is not required to report abuse, sexual contact, or sexual intercourse of a child (subject to exceptions in the circumstances listed below) if they are providing, or have provided, health care services to the child, Wis. Stat. § 48.981(2m). The stated purpose of this exception in state statute "is to allow children to obtain confidential health care services," Wis. Stat. § 48.981(2m)(a). Some health care services (as defined in the statute to include family planning services) may be within the scope of a school nurse's responsibilities (i.e., counseling, distribution of information, and referral).

An additional exemption exists under this section, again, for the purpose of allowing children to obtain confidential health care services. A person is not required to report as abuse sexual contact or sexual intercourse involving a child (subject to exceptions in the circumstances listed below) if they obtain information about a child who is receiving or has received health care services from a health care provider, Wis. Stat. § 48.981(2m)(c)4. The statute does not define who that "person" may be or how the "person" obtains the information that the child has received or is receiving health care services. It is not uncommon for minors to disclose to others that they have received health care services. For example, a student might tell a teacher that they use birth control. Consequently, in order to maintain a minor's right to confidential health care services, mandated reporters may not be required to report under these circumstances, Wis. Stat. § 48.981(2m)(c)4.



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However, there are several circumstances under which a report to the local child welfare agency or local law enforcement agency must still be made by a health care provider providing services or by a person who learns the child has accessed health care services:

1. the sexual intercourse or sexual contact occurred or is likely to occur with a caregiver;
2. the child suffered or suffers from a mental illness or mental deficiency that rendered or renders the child temporarily or permanently incapable of understanding or evaluating the consequences of their action;
3. the child, because of their age or immaturity, was or is incapable of understanding the nature or consequences of sexual intercourse or sexual contact;
4. the child was unconscious at the time of the act or for any other reason was physically unable to communicate unwillingness to engage in sexual intercourse or sexual contact;
5. another participant in the sexual contact or sexual intercourse was or is exploiting the child; or
6. the school professional has any reasonable doubt as to the voluntariness of the child's participation in the sexual contact or sexual intercourse.

Wis. Stat. §§ [48.981\(2m\)\(d\)](#) and [\(e\)](#).

As above, the school professional may inform the student in a confidential interview: 1) the report is being made and is required by law, and 2) what to expect concerning the local child welfare or law enforcement investigation (e.g., investigation procedures, likely outcomes of the investigation). The school professional may encourage the student to discuss this matter with parents or caregivers as long as the parents or caregivers were in no way involved in the sexual contact nor contributed to nor condoned it in any way.

References: Wis. Stat. §§ [48.981\(2\)](#), [\(2m\)](#), and [\(3\)\(a\)1.](#); [253.07\(1\)\(b\)](#), 1995 stats.; [940.225](#); [948.02](#); [948.025](#); [948.085](#); [948.09](#); DHFS Office of Legal Counsel letter dated 3/15/94; Opinion of the Attorney General, 72 Wis. Atty. Gen. 93 (1983); and DOJ Memorandum dated 4/14/05.

### **Suggested Disclaimer to Be Used by Pupil Services Staff Members Prior to Providing Counseling to Adolescent Students**

Prior to beginning a counseling relationship, pupil services staff typically notify students that everything discussed will be confidential unless there is reason to believe someone has been or will be hurt in some way. Similarly, it may be appropriate to notify students that any information shared about having sexual contact with another person may also have to be reported to the appropriate authorities, dependent upon the age of the student and the circumstances of the sexual contact. Using this disclaimer can avoid students later feeling that their confidence has been violated. Typically, the only professional working in a school who meets the statutory definition of a health care provider as defined in Wis. Stat. § [48.981\(2m\)\(b\)1](#) is a school nurse.

### **Parental Notification**

In situations involving peer-involved, sexually active students and in which the parents or caregivers are not suspect, schools and local child welfare and law enforcement agencies may meet and proactively discuss guidelines for determining how, when, and if parents or caregivers are to be notified in a timely manner about their children being sexually active.



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## Definitions

**Abuse** - in the context of sexual abuse and assault, means sexual intercourse or sexual contact under Wis. Stat. §§ [940.225](#) (Sexual assault), [948.02](#) (Sexual assault of a child), [948.025](#) (Engaging in repeated acts of sexual assault of the same child) or [948.085](#) (Sexual assault of a child placed in substitute care), [948.05](#) (Sexual exploitation of a child), [948.051](#) (Trafficking of a child), [944.30\(1m\)](#) (Prostitution), [948.055](#) (Causing a child to view or listen to sexual activity), and [948.10](#) (Exposing genitals, pubic area, or intimate parts), Wis. Stat. § [48.02\(1\)\(b\)](#). (Note: Sexual assault of a child by a school staff person or a person who works or volunteers with children is a felony; a violation of Wis. Stat. § [948.095](#) .)

**Child** - when used without further qualification, means a person who is less than 18 years of age, except that for purposes of investigating or prosecuting a person who is alleged to have violated a state or federal criminal law or any civil law or municipal ordinance, “child” does not include a person who has attained 17 years of age. Wis. Stat. § [48.02\(2\)](#).

**Consent** - with regard to sexual assault, means words or overt actions by a person who is competent to give informed consent indicating a freely given agreement to have sexual intercourse or sexual contact. Wis. Stat. § [940.225\(4\)](#).

**Family planning services** - means counseling by trained personnel regarding family planning; distribution of information relating to family planning; and referral to licensed physicians or local health departments for consultation, examination, medical treatment, and prescriptions for the purpose of family planning but does not include the performance of voluntary termination of pregnancy. Wis. Stat. § [253.07\(1\)\(b\)](#).

**Health care provider** - for the purposes of providing a “health care service” as defined in Wis. Stat. § [48.981\(2m\)\(b\)2.](#), means a physician, as defined under Wis. Stat. § [448.01\(5\)](#), a naturopathic doctor, as defined under Wis. Stat. § [466.01\(5\)](#), a physician assistant, as defined under Wis. Stat. § [448.971\(2\)](#), or a nurse holding a license under Wis. Stat. § [441.06\(1\)](#) or a license under Wis. Stat. § [441.10](#). Wis. Stat. § [48.981\(2m\)\(b\)1](#).

**Health care service** - means family planning services, as defined in Wis. Stat. § [253.07\(1\)\(b\)](#), [1995 stats](#), pregnancy testing, obstetrical health care or screening, and diagnosis and treatment for a sexually transmitted disease. Wis. Stat. § [48.981\(2m\)\(b\)2](#).

**School Staff** - means any person who provides services to a school or a school board, including an employee of a school or a school board and a person who provides services to a school or a school board under a contract. Wis. Stat. § [948.095\(1\)\(b\)](#)

**Sexual contact** - means any of the following types of intentional touching, whether direct or through clothing, if that intentional touching is either for the purpose of sexually degrading or sexually humiliating the complainant or sexually arousing or gratifying the defendant: 1) intentional touching by the defendant or, upon the defendant's instruction, by another person, by the use of any body part or object, of the complainant's intimate parts; or 2) intentional



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touching by the complainant, by the use of any body part or object, of the defendant's intimate parts or, if done upon the defendant's instructions, the intimate parts of another person. Wis. Stat. § 948.01(5)(a); See also Wis. Stat. §§ 948.01(5)(b) and (c).

**Sexual intercourse** - means vulvar penetration as well as cunnilingus, fellatio, or anal intercourse between persons or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal opening either by the defendant or upon the defendant's instruction. The emission of semen is not required. Wis. Stat. § 948.01(6).

### Some Available Resources

More information on child maltreatment is available from the Department of Children and Families at <https://dcf.wisconsin.gov/reportabuse>.

More information on mandated reporting of child abuse and neglect, including sex trafficking, for school staff is available from the Department of Public Instruction at <https://dpi.wi.gov/sspw/pupil-services/school-social-work/contents/child-abuse/child-abuse-and-neglect>.

*The School's Role in Preventing Child Abuse and Neglect* publication can be obtained at <https://dpi.wi.gov/sspw/pupil-services/school-social-work/contents/child-abuse/child-abuse-and-neglect>.