



# POMS

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New Mexico  
Public Schools  
Insurance  
Authority

## DUTY TO REPORT

*WHO?*

*WHAT?*

*WHERE?*

***AND WHY?***



# Duty to Report

## *Who, What, Where, & WHY*

### *Two Laws:*

1. NM Children's Code (Chapter 32A)
2. Public School Code (Chapter 22)

# NM Children's Code

## *Report What?*

### Abused Child

- Serious harm because of the action or inaction of the **child's parent, guardian or custodian;**
- Physical abuse, emotional abuse, or psychological abuse inflicted or caused by the child's **parent, guardian, or custodian;**
- Suffered sexual abuse or sexual exploitation inflicted by the **child's parent, guardian or custodian;**
- Knowingly, intentionally or negligently placed the child in a situation that may endanger the child's life or health; or
- Knowingly or intentionally tortured, cruelly confined or cruelly punished the child;

# NM Children's Code

## *Report What?*

### **Neglect**

- “Abandoned by the child's parent, guardian or custodian;
- Who is without proper parental care and control or subsistence, education, medical or other care or control necessary for the child's well-being because of the faults or habits of the child's **parent, guardian or custodian;**
- Physically or sexually abused, when the child's parent, guardian or custodian knew or should have known of the abuse and failed to take reasonable steps to protect the child from further harm;
- Unable to discharge that person's responsibilities to and for the child because of incarceration, hospitalization or physical or mental disorder or incapacity.

# NM Children's Code

## *Report What?*

### Physical Abuse

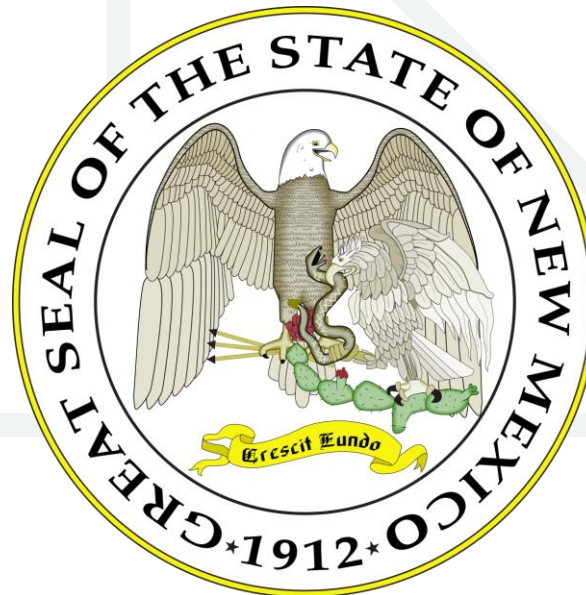
- Strangulation or suffocation and any case in which the child exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling or death and:
  - ❖ there is not a justifiable explanation for the condition or death;
  - ❖ the explanation given for the condition is at variance with the degree or nature of the condition;
  - ❖ the explanation given for the death is at variance with the nature of the death; or
  - ❖ circumstances indicate that the condition or death may not be the product of an accidental occurrence;

# NM Children's Code

## *Report What?*

### Sexual Abuse

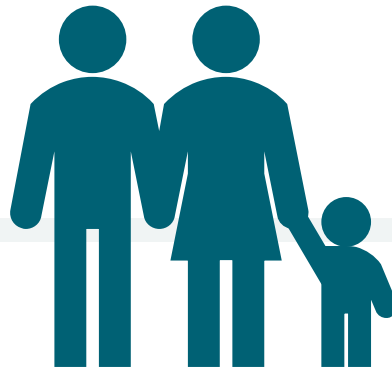
- Criminal sexual contact, incest or criminal sexual penetration, as those acts are defined by state law;



# In Loco Parentis

*“in the place of a parent”*

- Basically – ***They look after children***
  - ***Teachers, School Employees, Nurses, etc.***



# NM Children's Code

## *Duty to Report*

### Who?

- Every person, including a licensed physician; a resident or an intern examining, attending or treating a child; a law enforcement officer; a judge presiding during a proceeding; a registered nurse; **a visiting nurse; a school employee**; a social worker acting in an official capacity; or a member of the clergy who has information that is not privileged as a matter of law who ***knows or has a reasonable suspicion*** that a child is an abused or a neglected.



# NM Children's Code Duty to Report To Where?

- **Shall** report the matter immediately to:
  - a local law enforcement agency;
  - the department (CYFD); or
  - a tribal law enforcement or social services agency for any Indian child residing in Indian country.

# NM Children's Code

## Report

### Why?

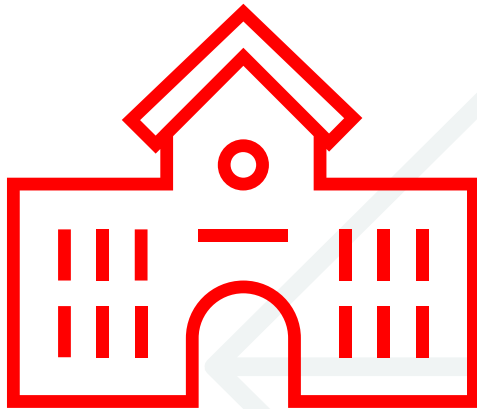
- A person who violates the provisions is guilty of a misdemeanor and shall be sentenced
- Where the defendant has been convicted of a crime constituting a misdemeanor, the judge shall sentence ***the person to be imprisoned in the county jail for a definite term less than one year or to the payment of a fine of not more than one thousand dollars (\$1,000) or to both such imprisonment and fine in the discretion of the judge.***



# Other Consequences of a Failure to Report

- A permanent criminal record – Registration for life.
- Modification of custody and parenting time rights, which may involve supervised or restricted access to children.
- Termination of parental rights.
- Mandatory counseling for mental health, alcohol, or substance abuse.
- Continual involvement with a child protective services agency.
- A ruined reputation.

# Public School Code - Chapter 22



# Public School Code

## *Report What?*

### Child Abuse

- Is at risk of suffering serious harm because of the action or inaction of the child's parent, guardian, custodian or other adult;
- Physical abuse, emotional abuse or psychological abuse inflicted or caused by the child's parent, **guardian, custodian or other adult**;
- Sexual abuse or sexual exploitation inflicted by the child's parent, **guardian, custodian or other adult**;
- Parent, **guardian, custodian or other adult** has knowingly, intentionally or negligently placed the child in a situation that may endanger the child's life or health; or
- Parent, **guardian, custodian or other adult** has knowingly or intentionally tortured, cruelly confined or cruelly punished the child;

# Public School Code

## *Report What?*

### Ethical Misconduct

- Behavior or conduct by **school district personnel, school employees, school volunteers, contractors or contractors' employees.**
- Discriminatory practice based on race, age, color, national origin, ethnicity, sex, pregnancy, sexual orientation, gender identity, mental or physical disability, marital status, religion, citizenship, domestic abuse reporting status or serious medical condition;
- Sexual misconduct or any sexual offense prohibited law involving an adult or child, regardless of a child's enrollment status;
- Fondling a child or student, including touching private body parts, such as breasts, buttocks, genitals, inner thighs, groin or anus; or
- Any other behavior, **including licentious, enticing or solicitous behavior, that is reasonably apparent to result** in inappropriate sexual contact with a child or student or to induce a child or student into engaging in illegal, immoral or other prohibited behavior.

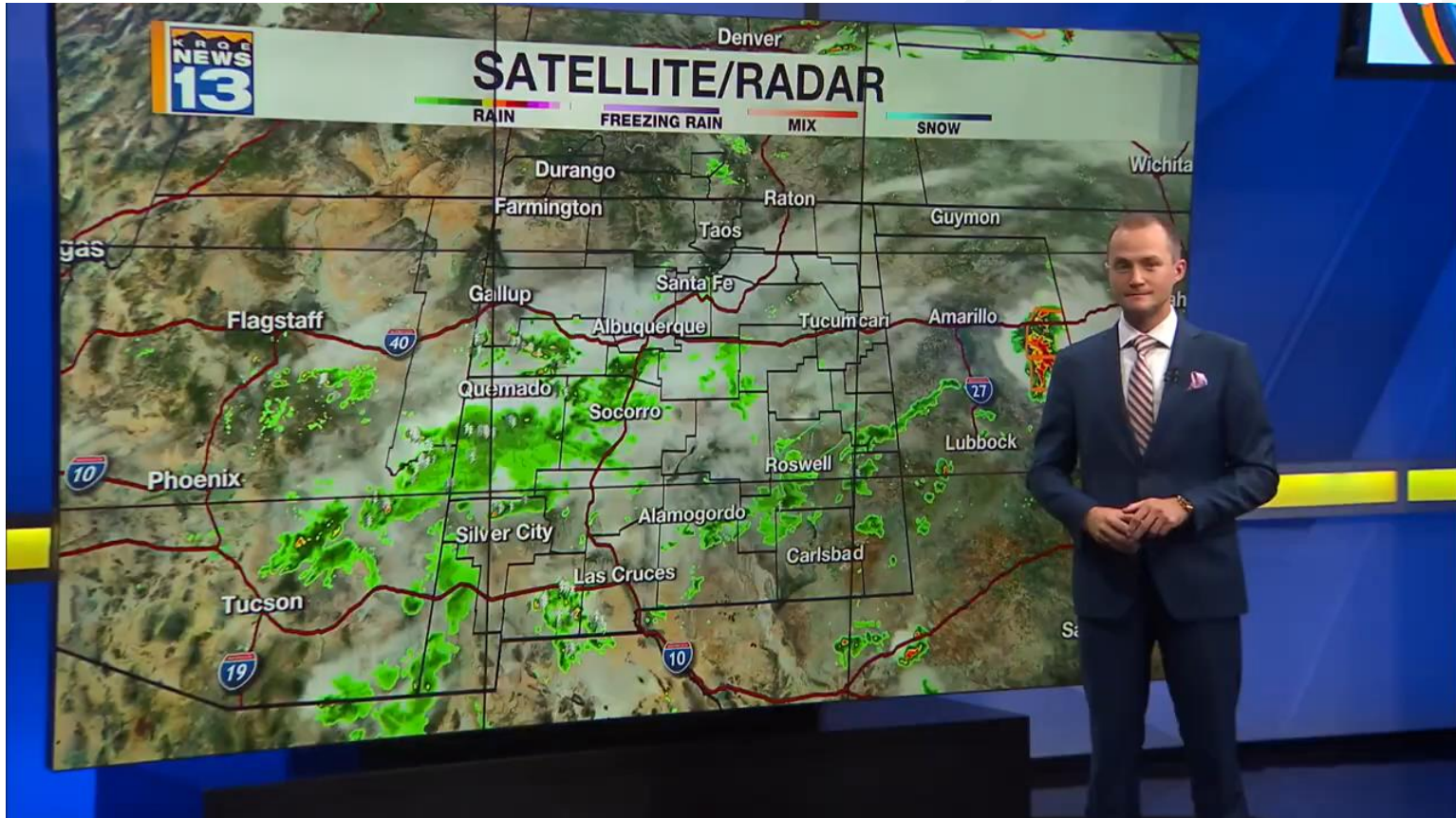
# Public School Code

## *Duty to Report*

### To Where?

- School ***district personnel, a school employee, a contractor or a contractor's employee*** who **knows or has a reasonable suspicion** that a child or student has been subject to ethical misconduct by ***school district personnel, a school employee, a school volunteer, a contractor or a contractor's employee*** shall report the matter immediately to:
  - the superintendent; or
  - the department- PED
- The recipient of a report (SUPT OR PED) shall take **immediate steps** to ensure prompt investigation of the report. The investigation shall ensure that immediate steps are taken to protect the health or welfare of a student or child who is the subject of a report A school shall take immediate steps to ensure the safety of enrolled students.





# Public School Code

## *Duty to Report*

### WHY?

The secretary (PED) may initiate action to **suspend, revoke or refuse to renew the license of:**

- **a superintendent who fails to report** as required
- any licensed school district personnel or licensed school employee who fails to report child abuse or neglect, or
- any licensed school district personnel or school employee who fails to report ethical misconduct

# Scope of issue



# Internet Crimes

- For predators, the Internet is a new, effective, and more anonymous way to seek out and groom children for criminal purposes such as producing and distributing child pornography, contacting and stalking children for the purpose of engaging in sexual acts, and exploiting children for sexual tourism.

# Sting Operation in NM Sept – Oct 2024

- **Operation Overwatch**, an undercover online chat investigation targeting child predators. The operation led to the arrest of more than eight individuals, all charged with crimes including child solicitation via electronic devices, attempted criminal sexual penetration, and other related offenses. Each defendant had sought to engage in sexual activity with a minor.
  - At least two were NM School employees.
  - A previous operation arrested a school principal for distribution of child pornography.