

Regulation 18(1)(b) states that teachers must furnish a member with a copy in writing of an adverse report. In all cases where teachers report their suspicions of abuse of a child by a member of the Ontario Teachers' Federation, they are advised to contact the provincial or local OECTA office for advice and direction in regard to compliance to 18(1)(b), as well as other issues.

Are There Any Exceptions to the 18(1)(b) Obligation?

Yes. The *Student Protection Act*, 2002 added a new subsection (2) to s.12 of the *Teaching Profession Act* ... a member who makes an adverse report about another member regarding suspected sexual abuse of a student by that other member need NOT provide him or her with a copy of the report or with any information about the report. This is now referred to as Regulation 18 1(c) of the *Teaching Profession Act*. Therefore, if the suspected abuse is sexual in nature, the 18 (1)(b) no longer exists.

What happens if a report of suspected abuse proves to be untrue?

No legal action can be taken against any person who reports his/her concerns to the CAS as long as there are reasonable grounds to believe the child is in need of protection and the person making the report is not acting maliciously.

What happens if a teacher does not report a suspected abuse case?

Under the CFSA, failure of a teacher to report suspected abuse is an offense and the conviction for such offense could result in a fine of up to \$1,000.00. Additionally, under the Professional Misconduct Regulation passed by the Ontario College of Teachers, failure to report may lead to a finding of professional misconduct by the college.

What happens once a report has been made to the CAS?

The CAS will investigate. The exact process will depend on the protocol of the particular Children's Aid Society. The police may be called. The school board may initiate their own investigation. If you are not a suspect and are being questioned by a school board representative remember that you do have a duty to abide by 18(1)(b). Any negative comment made about a colleague to board officials must be copied to that colleague within three days.

As a teacher, if you are the subject of a CAS investigation:

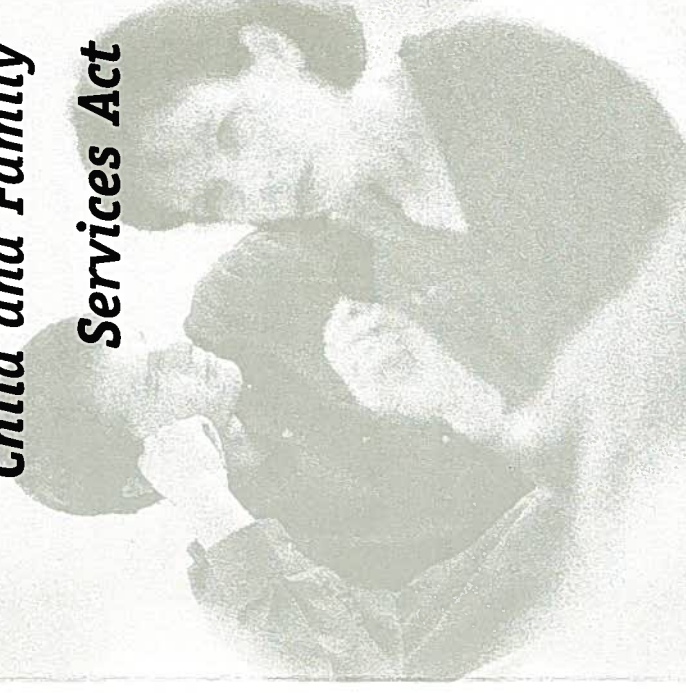
1. CONTACT provincial or local OECTA office immediately.
2. DON'T provide any information or make any statements without first consulting with OECTA staff or legal counsel.
3. The only statement you should make is the following: "I am willing to cooperate but I am unable to comment until I contact OECTA or my legal representative."

For further assistance, refer to the OECTA booklet "Be Wary, Be Wise" and DVD.

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Counselling and
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ONTARIO ENGLISH
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What is the Child and Family Services Act?

The *Child and Family Services Act* (CFSA) governs the protection of children in our society. It defines “abuse” and outlines procedures for dealing with abuse. The Act identifies the responsibilities of individuals and institutions that might encounter abuse. The prime goal of the CFSA is to “promote the best interests, protection and well being of children.”

Child Protection Agencies

Children’s Aid Societies (CAS) are established regionally across the province. Although these societies are independent agencies, they are regulated by the Ministry of Children and Youth Services. There are a variety of different names that may be used in various regions of the province such as: Catholic Children’s Aid Society (CCAS), or Family and Children Services (F&CS).

What are teachers’ responsibilities under the CFSA?

A teacher must report concerns directly to the Children’s Aid Society when there are reasonable grounds to suspect a child has suffered abuse or is at risk of suffering abuse. (Section 72.1) The obligation to report is a personal one and cannot be delegated to another person. Teachers must report their concerns immediately upon ascertaining that there are **reasonable grounds** to suspect abuse. Furthermore, the duty to report is an ongoing duty. Where additional reasonable grounds arise to suspect abuse, teachers must report their suspicions in addition to any previous reports. In many school boards there are protocols that have been established with the local child protection agencies. You should consult your board policies and procedures regarding a further obligation to inform your principal that you are making a report.

What are “reasonable grounds”?

There are few absolutes. Obviously, physical injuries or a child coming forward with a complaint of abuse must be reported. However, with cases that are not obvious, the assessment of “reasonable grounds” rests in the mind of the beholder.

Important questions to ask:

Do you think it is probable that there is abuse? Is there some discernible or tangible evidence based on factors observed during contact with the pupil?

Intuition or supposition are not reasonable grounds. While it is not necessary to conduct your own investigation, you remain obligated to determine whether there are reasonable grounds to suspect abuse or that a child is at risk. The Children’s Aid Society conducts the investigation. It has the authority to determine whether abuse has occurred. In cases where you are unsure, discussions with a professional colleague and/or administration may assist in making your decision to report. Use your professional judgment, do not overreact. It is always best to err on the side of caution.

What is abuse according to the CFSA?

In addition to circumstances where there is a pattern of neglect in caring for, providing for, supervising or protecting the child, a child suffers abuse in any of the following circumstances;

- the child has suffered physical harm either inflicted by the person having charge of the child or caused by the person’s failure to adequately care, provide, supervise or protect the child.
- the child has been sexually molested or sexually exploited by another person where the person having charge knows, should have known of the possibility of the harm, or fails to protect the child.

- the child requires medical 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, refuses to provide, is unavailable to provide, or is unable to provide services or treatment to remedy or alleviate the harm.

■ the child has suffered emotional harm demonstrated by serious anxiety, serious depression, serious withdrawal, serious self-destruction, aggressive behaviour or delayed development.

■ the parent or person having charge of the child does not provide, refuses to provide, is unavailable to provide, or is unable to provide services or treatment to remedy or alleviate the harm.

■ the child suffers from mental, emotional or developmental conditions that, if not remedied, could seriously impair the child’s development and the child’s parent or person having charge of the child does not provide, refuses to provide, is unavailable to provide, or is unable to provide services or treatment to remedy or alleviate the harm.

Are there exceptions to the duty to report?

There are no exceptions. This includes any adults suspected of abuse (parents, guardians, school staff, community etc.). Teachers have a professional duty to report all suspected cases of abuse even when information is supposed to be confidential or privileged, or if the information was overheard and not obtained directly. Teachers should be aware that the only exception to privileged information is the relationship between a solicitor and client.

What if I suspect a colleague of abuse?

The *Child and Family Services Act* takes precedence over other legislation including the *Teaching Profession Act* and its regulations.