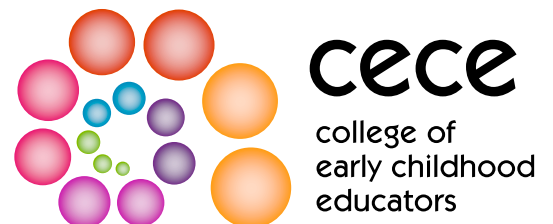


Professional Advisory

Duty to Report

The intent of this advisory is to address the requirement to report child abuse, the suspicions of harm or the risk of harm to children, under section 125 of the **Child, Youth and Family Services Act, 2017** (CYFSA). This is part of the College of Early Childhood Educators' (College) ongoing commitment to advise Registered Early Childhood Educators (RECEs) on their roles and responsibilities set out through legislation. As RECEs have a responsibility to protect children from harm, it is essential that they are knowledgeable about their duty to report to a Children's Aid Society (CAS) under the CYFSA. This professional advisory is designed to explain the duty to report section of the CYFSA and to emphasize the responsibilities of the early childhood educators, outlined in the CYFSA and the **Code of Ethics and Standards of Practice**. It is not intended to provide specific legal advice.

Updated January 2019



Introduction

RECEs are expected to be accountable for their actions as regulated professionals. They are required to abide by the College's **Code of Ethics and Standards of Practice** as well as all applicable legislation, regulations, by-laws and policies that are relevant to their professional practice.

Registered Early Childhood Educators should familiarize themselves with reporting requirements under the CYFSA and abide by them, as the failure to do so is contrary to the law and, in addition, may constitute professional misconduct.

RECEs work with a vulnerable population and it is among their responsibilities to build positive, trusting relationships with families and children. As such, they are in a unique position to recognize possible signs of child abuse, neglect and family violence. It is important that RECEs are aware of, and prepared to act on, their legislated duty to report suspicions of harm or abuse towards children.

The CYFSA and the Children's Aid Society

The primary purpose of the CYFSA is to promote the best interests, protection and well-being of children.¹

In pursuit of that purpose, section 125 of the CYFSA focuses on the duty to report suspicions of harm and the risk of harm to a child. Section 125(1) outlines suspicions that must be reported and are described within this advisory.

A Children's Aid Society (CAS) is a non-profit agency established under section 34 of the CYFSA to provide help and support to children and families. Services that a CAS provides include investigating allegations of abuse, caring for children who come under their supervision, providing guidance and counselling to families as it relates to child protection and adoption services.² CAS may also be known as Family and Children's Services, or other names depending on the region or if it is a faith-based agency.

Who is a Child in Need of Protection?

The CYFSA defines a child in need of protection as a child who has suffered or is at risk of suffering certain defined types of harm, or falls within certain circumstances.³

What are Reasonable Grounds?

It is not necessary for a person to be certain that a child is or may be in need of protection in order to make a report to a CAS. Reasonable grounds refers to the information that an average person, using normal and honest judgement, would need in order to decide to report.⁴ If a person, including a professional, has reasonable grounds to suspect that one of the harms, risks or other listed circumstances exist, they have a duty to immediately report it to a CAS. RECEs do not require certainty or probability that a child is in need of protection before they report to a CAS.

Section 125 of the CYFSA

Reportable Harms, Risks and Circumstances

Section 125 of the CYFSA imposes a duty to report for everyone, including RECEs, where there are reasonable grounds to suspect one or more of the following with respect to a child:

Physical Harm

The child has suffered physical harm or there is a risk that a child is likely to suffer physical harm inflicted by the person having charge of the child or as a result of that person's neglect of, or failure to adequately care for, provide for, supervise or protect the child.⁵

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, or refuses or is unavailable or unable to consent to, the treatment.⁶

Sexual Harm

The child has been sexually molested or sexually exploited, or there is a risk that the child is likely to be sexually molested 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 molestation or sexual exploitation and fails to protect the child.⁷

Emotional Harm

The child has suffered emotional harm, or there is a risk that the child is likely to suffer emotional harm demonstrated by serious:

- anxiety
- depression
- withdrawal
- self-destructive or aggressive behaviour, or
- delayed development

and 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.⁸

The child has suffered emotional harm of the type described above, or there is a risk that the child is likely to suffer such emotional harm, and the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the harm.⁹

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, or refuses or is unavailable or unable to consent to, treatment to remedy or alleviate the condition.¹⁰

Abandonment

The child's parent has died or is unavailable to exercise his or her 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.¹¹

Acts of a Criminal Nature

The child is less than 12 years old 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, or refuses or is unavailable or unable to consent to, those services or treatment.¹²

The child is less than 12 years old 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.¹³

Duty to Report to a CAS

The CYFSA clearly states that a person who has a duty to report shall make the report directly to a CAS and shall not rely on any other person to report on his or her behalf.¹⁵

Further, a person who has additional reasonable grounds to suspect a child is in need of protection is required to make another report even if he or she has made previous reports with respect to the same child.¹⁶

Family Violence

Children may also be exposed to family violence, which can take the form of physical, sexual, emotional or financial harm as well as neglect. Children may experience family violence in different ways, including directly seeing or hearing violence, being manipulated by the perpetrator, and experiencing the repercussions of violence, such as an injured family member or police intervention. Family violence can create a toxic home environment for children and have an impact on their well-being and development.¹⁴ Although there is no specific reference in the CYFSA to reporting children exposed to family violence, if an RECE has a concern that a child is at risk of harm due to exposure to family violence, the College's position is that they have a duty to report to a CAS.

Implications of Reporting and Not Reporting

In some instances a person may be required to provide privileged or confidential information when making a report to a CAS. Section 125(10) of the CYFSA states that no action shall be instituted against a person who makes a report including confidential information unless the person acts maliciously or without reasonable grounds for the suspicion.

Consequences of Not Reporting under the CYFSA

The duty to report under the CYFSA is of such importance that there can be legal consequences for failing to uphold this duty. The CYFSA states that a person who performs professional or official duties with respect to children, including an early childhood educator, is guilty of an offence if he or she does not report a reasonable suspicion that a child may be in need of protection (i.e. that one of the harms, risks or circumstances listed in section 125(1) may exist), and the information on which it was based was obtained in the course of his or her professional or official duties.¹⁷ If a person, such as an RECE, fails to report when they are obligated to do so, they may be liable of a fine up to \$5,000.¹⁸

There are also implications for employers if they or their employees fail to report under the CYFSA. Section 125(8) states that a director, officer or employee of a corporation who authorizes, permits or concurs in a contravention of an offence by an employee of the corporation is guilty of an offence. They may also be liable of a fine up to \$5,000.¹⁹

Consequences of Not Reporting under the ECE Act

Failure to report under the CYFSA may also have consequences for members of the College under the ECE Act and the regulations of the College.

Section 2(21) of Ontario Regulation 223/08 on Professional Misconduct (Misconduct Regulation) indicates that “contravening a law, if the contravention has caused or may cause a child who is under the member’s professional supervision to be put at or remain at risk,” may constitute professional misconduct. There are several other provisions under the Misconduct Regulation that could also apply such as failing to maintain the standards of the profession, and acting or failing to act in a manner that, having regard to the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

If a complaint is made against a member for failure to report under the CYFSA, or the Registrar believes on reasonable and probable grounds that a member has failed to report as required under the CYFSA, the matter will be investigated and considered by the College’s Complaints Committee. The Complaints Committee may refer the matter to the Discipline Committee for a hearing. A discipline hearing may result in a finding of professional misconduct against a member, in which case the College’s Discipline Committee may make various orders, the most serious of which is an order directing that a member’s Certificate of Registration be revoked.

Roles and Responsibilities of the Registered Early Childhood Educator

In order to effectively protect children, it is important that RECEs, employers and families communicate openly. They should each know their own roles and responsibilities in a situation where it is suspected that a child may be in need of protection, as well as the roles and responsibilities of each other. RECEs should also familiarize themselves with the sections of the College’s *Code of Ethics and Standards of Practice* that are relevant to the duty to report under the CYFSA, including, but not limited to, Standard VI: Confidentiality, Release of Information and Duty to Report.

RECEs have a responsibility to children, families, colleagues, the community, the public and the profession. The Code and Standards states:

IV: B.1 – states that RECEs have a responsibility to be knowledgeable about current legislation, policies and procedures that are relevant to their professional practice and to the care and education of children.

RECEs must know the procedure for reporting and documenting a suspicion that a child is in need of protection, should they witness or otherwise become aware of any of the harms, risks or circumstances listed in section 125 of the CYFSA. RECEs should be familiar with their employer’s policy on reporting child abuse, which is expected to be in agreement with the CYFSA reporting requirements under section 125.

VI: B.5 – RECEs need to understand that the CYFSA provisions about reporting suspected abuse or neglect take precedence over an organization’s policies and procedures.

VI: B. 4 – RECEs understand that they are recognized by the CYFSA as being in a unique position to recognize the signs of child abuse, neglect and family violence, and have a particular duty to report their suspicions.

I: A – that RECEs understand that maintaining caring and responsive relationships with children and families is fundamental to their practice.

When RECEs engage in supportive and respectful interactions with children, and ensure they feel a sense of security and belonging, they create a welcoming program where families and children may feel comfortable approaching an RECE with concerns.

V: C.2 – RECEs do not use their professional position to coerce, improperly influence, harass, abuse or exploit a child who is under their professional supervision.

IV: C.11 – If an RECE has a concern about the conduct of a colleague, which could create a risk to the health or well-being of children, they must report to the appropriate authorities. This includes reporting to a CAS. If the concern relates to colleague who is an RECE, a report must also be made to the College.

If an RECE suspects that a child is in need of protection, they are required to promptly report it to a CAS. Although RECEs may choose to speak with their employer before contacting a CAS, they are not required to do so. If an RECE does speak with their employer about the matter, this does not remove the RECE’s responsibility to contact a CAS to make a report.

Expectations of RECEs Employed as Supervisors

RECEs employed as supervisors in early learning and child care settings should be aware that they may have duties under the CYFSA in addition to their own direct duty to report. They should ensure that employer policies outlining the duty to report are in line with CYFSA requirements and that all staff members are familiar with these policies.

RECEs employed as supervisors should not prevent or discourage staff members from contacting a CAS. If an RECE comes to a supervisor with concerns of suspected child abuse, the RECE should expect to be provided with support and encouragement in carrying out the duty to report.

As previously noted in this advisory, a person who performs professional or official duties with respect to children is guilty of an offence if he or she does not report a reasonable suspicion that a child may be in need of protection. In addition, employers are also guilty of an offence if they impede or prevent the exercise of this duty.

Communication between RECEs and Families

Ethic B, Responsibilities to Families states that "RECEs build and maintain responsive and collaborative relationships with families. These relationships are based on mutual trust, openness and respect for confidentiality". However, regarding the duty to report, RECEs are not required to consult with a family prior to contacting a CAS, nor are they required to notify a family that a call to a CAS has been made. In fact, it is best practice to consult with a CAS child protection worker about whether and how the parent or caregiver should be informed.

It can be challenging for RECEs to balance their ethical responsibility to families with their duty to report to CAS. RECEs can maintain and encourage communication and collaboration with families in the following ways:

- Informing families that their child's educator should be notified of any injuries the child may have sustained outside of the early learning and child care setting and how these injuries occurred.
- Notifying families of the incident reporting procedure, so they can be aware of what to expect if an injury occurs to a child while in the child care setting.
- Informing families in a clear manner of an RECE's duty to report under the CYFSA and how families can also report, if they have concerns that a child may be in need of protection.

Contact Information

If you have questions about the information presented in this professional advisory please contact the College at:

College of Early Childhood Educators
438 University Avenue, Suite 1900
Toronto ON M5G 2K8

Telephone: 416 961-8558
Toll free: 1 888 961-8558
Email: practice@college-ece.ca
Website: college-ece.ca

If you have questions about the Child, Youth and Family Services Act, 2017, please contact the Ministry of Children, Community and Social Services:

Telephone: 1 866 821-7770
Email: mcsinfo@mcys.gov.on.ca
Website: children.gov.on.ca

To locate the Children's Aid Society in your area, please contact the Ontario Association of Children's Aid Societies at:

Ontario Association of Children's Aid Societies
Telephone: 416 987-7725
Toll free: 1 800 718-1797
Website: oacas.org

References

- ¹ CYFSA Section 1 (1)
- ² “Children’s aid societies,” Ministry of Children and Youth Services. <http://www.children.gov.on.ca/htdocs/English/childrensaid/index.aspx>
- ³ CYFSA section 74(2) and section 125(1)
- ⁴ “Reporting Child Abuse and Neglect: It’s Your Duty,” Ministry of Children and Youth Services. <http://www.children.gov.on.ca/htdocs/English/childrensaid/reportingabuse/abuseandneglect.aspx>
- ⁵ CYFSA section 125(1) paragraphs 1 and 2
- ⁶ CYFSA section 125(1) paragraph 5
- ⁷ CYFSA section 125(1) paragraphs 3 and 4
- ⁸ CYFSA section 125(1) paragraphs 6 and 8
- ⁹ CYFSA section 125 (1) paragraphs 7 and 9
- ¹⁰ CYFSA section 125(1) paragraph 10
- ¹¹ CYFSA section 125(1) paragraph 11
- ¹² CYFSA section 125(1) paragraph 12
- ¹³ CYFSA section 125(1) paragraph 13
- ¹⁴ Boost Child and Youth Advocacy Centre. “Children exposed to family violence.” Information sheet #14 <https://boostforkids.org/wp-content/uploads/2016/06/INFO-SHEET-14-CHILDREN-EXPOSED-TO-FAMILY-VIOLENCE.pdf>
- ¹⁵ CYFSA section 125(3)
- ¹⁶ CYFSA section 125(2)
- ¹⁷ CYFSA sections 125(5) and 125(6)
- ¹⁸ CYFSA section 125(5) and 125(9)
- ¹⁹ CYFSA section 125(8) and 125(9)

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438 University Avenue, Suite 1900

Toronto ON M5G 2K8

Telephone: 416 961-8558

Toll free: 1 888 961-8558

Email: practice@college-ece.ca
college-ece.ca

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1 888 961-8558 communications@college-ece.ca.