Sec. 1. ANTIVICTIMIZATION PROGRAM

Midland Academy Charter shall provide child abuse antivictimization programs in elementary and secondary schools. *Education Code 38.004*.

Sec. 2. DUTY TO REPORT

a) *Definition of Abuse*

"Abuse" includes the following acts or omissions by a person:

(A) Mental or emotional injury to a child that results in an observable and material impairment in the child's growth, development, or psychological functioning;
(B) Causing or permitting the child to be in a situation in which the child sustains a mental or emotional injury that results in an observable and material impairment in the child's growth, development, or psychological functioning;
(C) Physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child, including an injury that is at variance with the history or explanation given and excluding an accident or reasonable discipline by a parent, guardian, or managing or possessory conservator that does not expose the child to a substantial risk of harm;
(D) Failure to make a reasonable effort to prevent an action by another person that results in physical injury that results in substantial harm to the child;
(E) Sexual conduct harmful to a child's mental, emotional, or physical welfare, including conduct that constitutes the offense of continuous sexual abuse of young child or children under Section 21.02, Penal Code, indecency with a child under Section 21.11, Penal Code, sexual assault under Section 22.011, Penal Code, or aggravated sexual assault under Section 22.021, Penal Code;
(F) Failure to make a reasonable effort to prevent sexual conduct harmful to a child;
(G) Compelling or encouraging the child to engage in sexual conduct as defined by Section 43.01, Penal Code, including compelling or encouraging the child in a manner that constitutes an offense of trafficking of persons under Section 20A.02(a)(7) or (8), Penal Code, prostitution under Section 43.02(b), Penal Code, or compelling prostitution under Section 43.05(a)(2), Penal Code;
(H) Causing, permitting, encouraging, engaging in, or allowing the photographing, filming, or depicting of the child if the person knew or should have known that the resulting photograph, film, or depiction of the child is obscene as defined by Section 43.21, Penal Code, or pornographic;
(I) The current use by a person of a controlled substance as defined by Chapter 481, Health and Safety Code, in a manner or to the extent that the use results in physical, mental, or emotional injury to a child;
(J) Causing, expressly permitting, or encouraging a child to use a controlled substance as defined by Chapter 481, Health and Safety Code;

© 2020 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.
SLHA Schulman, Lopez, Hoffer & Adelstein, LLP

(K) Cusing, permitting, encouraging, engaging in, or allowing a sexual performance by a child as defined by Section 43.25, Penal Code;
(L) Knowingly causing, permitting, encouraging, engaging in, or allowing a child to be trafficked in a manner punishable as an offense under Section 20A.02(a)(5), (6), (7), or (8), Penal Code, or the failure to make a reasonable effort to prevent a child from being trafficked in a manner punishable as an offense under any of those sections; or
(M) Forcing or coercing a child to enter into a marriage.

Family Code 261.001(1).

b) ***Definition of Neglect***

"Neglect" means an act or failure to act by a person responsible for a child's care, custody, or welfare evidencing the person's blatant disregard for the consequences of the act or failure to act that results in harm to the child or that creates an immediate danger to the child's physical health or safety. *Family Code 261.001(4).*

Neglect includes the leaving of a child in a situation where the child would be exposed to an immediate danger of physical or mental harm, without arranging for necessary care for the child, and the demonstration of an intent not to return by a parent, guardian, or managing or possessory conservator of the child. *Family Code 261.001(4)(A)(i).*

Neglect includes the following acts or omissions by a person:

(a) Placing a child in, or failing to remove a child from, a situation that a reasonable person would realize requires judgment or actions beyond the child's level of maturity, physical condition, or mental abilities and that results in bodily injury or an immediate danger of harm to the child;
(b) Failing to seek, obtain, or follow through with medical care for a child, with the failure resulting in or presenting an immediate danger of death, disfigurement, or bodily injury or with the failure resulting in an observable and material impairment to the growth, development, or functioning of the child;
(c) The failure to provide a child with food, clothing, or shelter necessary to sustain the life or health of the child, excluding failure caused primarily by financial inability unless relief services had been offered and refused;
(d) Placing a child in, or failing to remove the child from, a situation in which the child would be exposed to an immediate danger of sexual conduct harmful to the child; or
(e) placing a child in or failing to remove the child from a situation in which the child would be exposed to acts or omissions that constitute abuse under Subdivision (E), (F), (G), (H), or (K), above, committed against another child.

Family Code 261.001(4)(A)(ii).

© 2020 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.
SLHA Schulman, Lopez, Hoffer & Adelstein, LLP

Neglect includes the failure by the person responsible for a child's care, custody, or welfare to permit the child to return to the child's home without arranging for the necessary care for the child after the child has been absent from the home for any reason, including having been in residential placement or having run away. *Family Code 261.001(4)(A)(iii).*

Neglect includes a negligent act or omission by an employee, volunteer, or other individual working under the auspices of a facility or program, including failure to comply with an individual treatment plan, plan of care, or individualized service plan, that causes or may cause substantial emotional harm or physical injury to, or the death of, a child served by the facility or program as further described by rule or policy. *Family Code 261.001(4)(A)(iv).*

Neglect does not include the refusal by a person responsible for a child's care, custody, or welfare to permit the child to remain in or return to the child's home resulting in the placement of the child in the conservatorship of the department if:

(a) the child has a severe emotional disturbance;
(b) the person's refusal is based solely on the person's inability to obtain mental health services necessary to protect the safety and well-being of the child; and
(c) the person has exhausted all reasonable means available to the person to obtain the mental health services described by subparagraph (b), above.

Family Code 261.001(4)(B)(i). Neglect also does not include allowing the child to engage in independent activities that are appropriate and typical for the child's level of maturity, physical condition, developmental abilities, or culture. *Family Code 261.001(4)(B)(ii).*

c) *General Duty to Report*

Any person who has reasonable cause to believe that a child's physical or mental health or welfare has been adversely affected by abuse or neglect by any person shall immediately make a report as required by law. *Family Code 261.101(a)*. Midland Academy Charter may not require that school personnel report suspicions of child abuse or neglect to a school administrator prior to making a report to one of the agencies identified in Sec. 4 below. *19 TAC 61.1051(b)(5)*.

d) *Reporting Abuse or Neglect of Persons with Disabilities*

Any person who has cause to believe that a person with a disability who is over the age of 18 or who has had the disabilities of minority removed is in a state of abuse, neglect, or exploitation shall report the information immediately to the Texas Department of Family and Protective Services ("DFPS").

A person filing a report or testifying or otherwise participating in any judicial proceeding arising from a petition, report, or investigation is immune from civil or criminal liability on account of his

© 2020 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.

or her petition, report, testimony, or participation, unless the person acted in bad faith or with a malicious purpose. *Human Resources Code 48.051, .054*.

e) ***Reporting Abuse or Neglect By A Professional***

Any professional who has reasonable cause to believe that a child has been or may be abused or neglected shall make a report as required by law. The report must be made within 48 hours after the professional first has reasonable cause to believe abuse or neglect. A professional may not delegate to or rely on another person to make the report.

A "professional" is a person who is licensed or certified by the state or who is an employee of a facility licensed, certified, or operated by the state and who, in the normal course of official duties or duties for which a license or certification is required, has direct contact with children. The term includes teachers, nurses, doctors, day-care employees, employees of a clinic or health care facility that provides reproductive services, and juvenile probation, detention or correctional officers. *Family Code 261.101(b).*

f) ***Reporting Adult Victims of Abuse***

A person or professional shall make a report in the manner required above if the person or professional has reasonable cause to believe that an adult was a victim of abuse or neglect as a child and the person or professional determines in good faith that disclosure of the information is necessary to protect the health and safety of another child or an elderly person or person with a disability. *Family Code 261.101(b-1).*

g) ***Refusal of Psychiatric or Psychological Treatment of a Child***

An employee may not use the refusal of a parent, guardian, or managing or possessory conservator of a child to administer or consent to the administration of a psychotropic medication to a child, or to consent to any other psychiatric or psychological treatment of a child, as the sole basis for making a report of neglect of the child unless the refusal to consent:

1. Presents a substantial risk of death, disfigurement, or bodily injury to the child; or
2. Has resulted in an observable and material impairment to the growth, development, or functioning of the child.

Education Code 26.0091; *Family Code 261.111*.

Sec. 3. <u>CONTENTS OF REPORT</u>

The report should reflect the reporter's belief that a child has been or may be abused or neglected or has died of abuse or neglect. The person making the report shall identify, if known:

© 2020 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.

1. The name and address of the child;
2. The name and address of the person responsible for the care, custody, or welfare of the child; and
3. Any other pertinent information concerning the alleged or suspected abuse or neglect.

Family Code 261.102, .104.

Sec. 4. ENTITIES TO WHOM REPORTS MUST BE MADE REPORTED

If the alleged or suspected abuse or neglect involves a person responsible for the care, custody, or welfare of the child, the report must be made to the DFPS, unless the report is made under item 3, below, or the report involves a juvenile justice program or facility.

All other reports shall be made to:

1. Any local or state law enforcement agency;
2. The DFPS, including a local office where available;
3. The state agency that operates, licenses, certifies, or registers the facility in which the alleged abuse or neglect occurred; or
4. The agency designated by the court to be responsible for the protection of children.

Family Code 261.103(a); *19 TAC 61.1051(a)(1).*

Sec. 5. IMMUNITIES

A person acting in good faith who reports or assists in the investigation of a report of alleged child abuse or neglect or who testifies or otherwise participates in a judicial proceeding arising from a report, petition, or investigation of alleged child abuse or neglect is immune from any civil or criminal liability that might otherwise be incurred or imposed. *Family Code 261.106(a).*

Midland Academy Charter may not suspend or terminate the employment of, or otherwise discriminate against, a professional who makes a good faith report of abuse or neglect. *Family Code 261.110(b).*

Sec. 6. CRIMINAL OFFENSES

a) ***Failure to Report***

A person commits a Class A misdemeanor if he or she has reasonable cause to believe that a child's physical or mental health or welfare has been or may be adversely affected by abuse or neglect and knowingly fails to report it as provided by law. Failure to report child abuse or neglect violates the Educator's Code of Ethics and may result in sanctions against an educator's certificate, as addressed in 19 TAC 249. *Family Code 261.109*; *19 TAC 61.1051(b)(2)(A).*

© 2020 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.

b) ***False Report***

A person commits an offense if, with the intent to deceive, the person knowingly makes a report of abuse and neglect that is false. The offense is a state jail felony, except that it is a felony of the third degree if the person has previously been convicted of the offense. *Family Code 261.107(a).*

c) ***Coercion***

A school employee who coerces another into suppressing or failing to report child abuse or neglect to a law enforcement agency may be subject to Class C misdemeanor penalties. *Penal Code 39.06*.

Sec. 7. POTENTIAL SBEC PENALTIES

The State Board for Educator Certification (SBEC) may take action as allowed under 19 TAC 249.15(a) based on satisfactory evidence that a person has failed to report or has hindered the reporting of child abuse as required under Family Code 261.001, or has failed to notify the SBEC or the Superintendent or designee under the circumstances and in the manner required by Education Code 21.006 and 19 TAC 249.14(d)-(f). *19 TAC 249.15(b)(4)*.

Sec. 8. CONFIDENTIALITY

A report of alleged or suspected abuse or neglect and the identity of the person making the report is confidential and not subject to release under Government Code Chapter 552 (Public Information Act). Such information may be disclosed only for purposes consistent with federal or state law or under rules adopted by an investigating agency. *Family Code 261.201*.

Unless waived in writing by the person making the report, the identity of an individual making a report under this chapter is confidential and may be disclosed only to a law enforcement officer for the purposes of a criminal investigation of the report, or as ordered by a court under Family Code 261.201. *Family Code 261.101(d).*

Sec. 9. INVESTIGATIONS

a) ***Reports to the School***

If the DFPS initiates an investigation and determines that the abuse or neglect involves a Midland Academy Charter employee, and that the child is a student at Midland Academy Charter, the department shall orally notify the Superintendent. *Family Code 261.105(d).*

The DFPS shall, upon request, send a written report of its investigation, as appropriate, to the Principal, unless the Principal is alleged to have committed the abuse or neglect, to the Board, and to the Superintendent. *Family Code 261.406(b).*

© 2020 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.
SLHA Schulman, Lopez, Hoffer & Adelstein, LLP

b) ***Interviewing Students***

The investigating agency shall be permitted to interview the child at any reasonable time and place, including the child's school. *Family Code 261.302(b)*.

c) ***Interfering with Investigation Confidentiality***

A person may not interfere with an investigation of a report of child abuse or neglect conducted by the DFPS. *Family Code 261.303(a)*.

A photograph, videotape, audiotape, or other audio or visual recording, depiction, or documentation of a child that is made by DFPS in the course of an inspection or investigation is confidential, is not subject to release under the Texas Public Information Act, and may be released only as required by state or federal law or rules adopted by the DFPS. *Human Resources Code 42.004*.

Sec. 10. ANNUAL REVIEW

The Board shall annually review policies for reporting child abuse and neglect. The policies shall follow the requirements of Family Code Chapter 261, 19 TAC 61.1051, and 40 TAC Chapter 700 with respect to investigations by DFPS.

Sec. 11. VIOLATIONS OF POLICY

Any Midland Academy Charter employee who violates the reporting requirements under Chapter 261, Family Code is subject to disciplinary action, up to and including termination of employment.

Sec. 12. ANNUAL DISTRIBUTION AND STAFF DEVELOPMENT

The Superintendent or designee shall develop additional guidelines concerning the reporting of suspected child abuse and neglect. Such guidelines shall be distributed to all personnel at the beginning of each school year and shall be addressed in staff development programs at regular intervals determined by the Board. *19 TAC 61.1051(c)*.

Each school year, Midland Academy Charter shall provide training as required by Education Code 38.0041 to all new school employees as part of new employee orientation. *Education Code 38.0041*; *19 TAC 61.1051(d)*.

Sec. 13. REQUIRED POSTER

© 2020 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.

Midland Academy Charter shall place a poster of the following specifications at every campus in at least one high-traffic, highly and clearly visible public area that is readily accessible to and widely used by students. The poster must:

1. Be in a format and language that is clear, simple, and understandable to students;
2. Be in English and in Spanish;
3. Be 11x17 inches or larger;
4. Be in large print;
5. Be placed at eye-level to the student for easy viewing; and
6. Include the following information:
   a. In bold print, the current toll-free DFPS abuse Hotline telephone number (1-800-252-5400);
   b. Instructions to call 911 for emergencies; and
   c. Directions for accessing the DFPS website (http://www.txabusehotline.org) for more information on reporting abuse, neglect, and exploitation.

Education Code 38.0042; *19 TAC 61.1051(e), (f)*.

© 2020 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.