



Guide to Reporting School Incidents

<u>Purpose of Incident Reports</u>	2
<u>Applicable Regulations</u>	3
<u>Incident Report Details</u>	5
<u>Requests for Incident Reports by Parents and Others</u>	9
<u>Subpoenas for Incident Reports</u>	12

Purpose of Incident Reports

This Guide to Reporting School Incidents (“guideline”) outlines the purpose of school incident reports and the responsibilities of principals and school staff in relation to the completion, storage and use of such reports. It also addresses the provision of information concerning school incident reports and witness statements to parents, students and others.

Incident reports are prepared to document incidents of harm, either to persons or property, that occur on school property or in the course of school activities. These reports are also key pieces of information which assist claim representatives and legal counsel to assess and, if appropriate, defend claims made against a District as a result of injury to persons or property. Attorney-client and work product privilege may apply to incident reports. All incident reports, witness statements, and any associated documentation and evidence should be marked “Confidential” and maintained in a secure server and/or file.

Persons who are injured or who have had property lost or destroyed on school sites or during the course of school activities may wish to assert claims for compensation against a District. These claims may involve litigation. Sometimes there is a considerable period of time between the date of the incident and the date of a claim being made. The District’s ability to properly consider and/or defend claims depends to a significant degree on the information contained in incident reports.

Applicable Regulations

What is the California Government Claims Act?

California's Government Claims Act (Govt. Code §§ 810-996.6) establishes strict time limits and procedures with regard to presenting claims against school districts (and other public agencies). Before a school district may be sued for money damages, the claimant must first present a claim meeting the requirements of the California Government Claims Act. Generally speaking, no lawsuit for money damages as a result of personal injury (i.e. death, physical injury, or damage to personal property) may be brought against a governmental entity unless a valid written claim has been properly presented with that entity within six months after the incident giving rise to the claim occurred. A case may be rejected if the student (or claimant) did not timely present a claim with the District. A case may also be rejected if the student (or claimant) failed to timely file his or her lawsuit in court after the claim filing process was complete.

In the event a Government Claim is presented against the District, General Counsel, other counsel or claims representatives assigned to handle the matter will request copies of the incident report, witness statements, and all other related documentation. Under these circumstances, it is important that all pertinent information relating to the incident be provided as soon as possible so that the District can properly evaluate how to respond to the claim. This guideline is intended to assist school staff with establishing processes and procedures for gathering all information pertinent to an incident, so that this information is readily available in the event a claim is filed.

What part does the California Public Records Act play with respect to incident reports?

The California Public Records Act ("PRA") (Govt. Code §§ 6250-6276.48) is designed to give the public access to certain information in possessions of public agencies: "public records are open to inspection at all times during the office hours of the...agency and every person has a right to inspect any public record, except as...provided, [and to receive] an exact copy" of an identifiable record unless impracticable. (Govt. Code § 6253). The PRA also provides that, in certain defined circumstances, access to records of a public agency can be denied. One of these defined circumstances is when the requested materials are exempt or prohibited as a result of a legal privilege. Since legal privilege may apply to incident reports and related documents, requests for access must be denied and persons making such requests should instead be directed to make a request to the District under the PRA. The only exception to this policy is that, upon request by a witness (or his/her parent/guardian or legal representative), designated District staff may provide that witness (or his/her parent/guardian or legal representative) with a copy of the witness's own witness statement.

Several state and federal laws govern the way schools, collect, use, disclose, store and maintain personal information about students. The Family Educational Rights and Privacy Act of 1974 (FERPA) is a federal law that protects the privacy of education records. FERPA applies to educational agencies and institutions, such as community colleges and school districts that receive federal funds under any program administered by the U.S. Department of Education. Under this law, all agencies which receive federal funds (including school districts) must provide parents and legal guardians with access to educational records. Educational records is defined broadly and includes records that are directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution. (34 C.F.R. Section 99.3.) California's Education Code section 49069 also gives parents the right to inspect and copy student records.

Under this federal law, all agencies which receive federal funds must protect the confidentiality of pupil records. Under most circumstances, parental consent is required to disclose student records to third parties, including law enforcement. School districts may disclose student records to comply with a judicial order or lawfully issued subpoena, or in connection with a health or safety emergency. (34 C.F.R. Sections 99.30- 99.31.)

School privacy laws are complex, and, barring some immediate threat to the health or safety of a student or other individual, school staff should never disclose any incident report, witness statements, or related documentation to any person. The only exception to this policy is that, upon request by a witness (or his/her parent/guardian or legal representative), designated District staff may provide that witness (or his/her parent/guardian or legal representative) with a copy of the witnesses own witness statement.

Consistent with these laws, all students and/or parents/guardians should be made aware that, in relation to incidents:

- witness statements may be obtained from students, and
- that all such statements are collected so that the District can properly assess and or defend any claims made against it as a result of an incident, and
- that copies of any statements obtained may be provided to the District's legal advisors or other relevant officers for that purpose, and
- upon request, witnesses (or their parents/guardians or legal representatives) will provided with a copy of any statement made by themselves.

Incident Report Details

When should a school incident report be completed?

A school incident report should be prepared for any event or mishap which results or is likely to result in injury to a person or damage to or loss of property that occurs on school premises or during school activities *that is not minor*. "School activities" includes, but is not limited to, school-provided transportation, excursions and events conducted by Boosters and organized school sports events, and use of a school facility by a community group.

A commonsense approach should be taken to determining whether or not an incident is minor.

As a guide, an incident is not minor, and a report *should* generally be prepared when:

- there is an observed or reported incident which involves death, injury or hospitalization; or
- a person sustains injury to the head or loses consciousness; or
- a person sustains an injury to the eyes or where teeth are broken or dislodged; or
- a person sustains broken bones or lacerations requiring sutures; or
- it is necessary to transport an injured person to hospital; (Please see ASCIP's Guide: "Student Emergency Transport Guidelines"); or
- medical attention is provided on site by an ambulance officer or health care professional; or
- a student has to leave school early as a consequence of an incident; or
- a parent, care-giver or relative is summoned to the school as a consequence of an incident; or
- parents or caregivers are advised to take a student to a doctor for precautionary reasons; or
- any person observes or reports inappropriate contact or conduct by or between staff, students or persons, such as, but not limited to, inappropriate touching, harassment, fighting, bullying or similar incidents;
- when emergency services (i.e. 9-1-1-), the police, the fire department, child protective services, or any other such professionals are called to respond to or investigate an incident; or
- the principal or his or her delegate has determined, at his or her own discretion, that there is any potential for legal proceedings (whether civil or criminal) to result from the incident/injury.

The school incident report should be prepared as close as possible to the time of the incident - preferably on the same day. In the event any non-minor incident is reported by the student, visitor, or parent after the event has occurred, a report should be still be prepared as soon as possible.

Who should prepare the documentation?

The nature and gravity of the incident should be considered before determining who is best to investigate and prepare the report. A serious event should be immediately

reported to District risk management or legal counsel for guidance, while at the same time identifying witnesses and preserving all evidence (including campus video), as necessary. For a routine incident, the school incident report should be prepared by the principal, administrator or other delegated school staff. It is preferable, wherever possible, that the collation of school incident reports and related witness statement or other documentation should be undertaken by a senior member of staff who is not a witness and who has not been directly involved in the incident.

Students participate in a variety of sporting and other activities endorsed by the District which are not arranged or supervised by a particular school. In these situations, the senior District officer appointed to manage or coordinate the activity should prepare the school incident report and forward it to the school principal of the student concerned.

A template for preparing school incident reports is attached.

In relation to incidents arising out of community use of school facilities, all relevant information should be prepared and collated in accordance with the terms of the District's [use of school facilities policy](#).

What information should be provided in the school incident report?

When completing the school incident report, details identifying the person who was injured or property which was damaged or lost, should be provided together with the date and location of the incident, a description of the injuries sustained and a brief factual account of how the incident occurred. Sample forms for witness statements are attached.

Witness statements should be obtained from any person, including a student or affected individual, who has direct knowledge of the incident. Where there are large numbers of witnesses to an event, witness statements may be obtained from a representative sample of witnesses, and the names and contact details of all remaining witnesses should be recorded.

The report should include the inquiry, identification and preservation of any evidence related to the incident. This includes physical evidence and electronic evidence such as surveillance video, cell phone video, social media posts, etc. Such evidence must be preserved in a way such that it cannot be inadvertently overwritten, deleted or destroyed. Assistance from the District IT department is useful.

It is easy today to use a cell phone to video and/or photograph a scene or injury. Do it and download the data into a secure server.

When witness statements are being obtained please note:

- the form should be completed in pen not pencil;
- the witness should write about the incident in his or her own words and sign and date the form when finished. In no circumstances is the witness to consult with another witness before preparing his or her witness statement;

- if the witness is too young or otherwise unable to write about what he or she has seen, an adult who has not been involved in the incident can assist. In such circumstances the adult should read back to the student what has been written and seek confirmation that that is what they saw. The fact that this step has been taken should be noted on the form by the adult. Any statement from the adult should also confirm that this step has been taken;
- if the witness is from a non-English speaking background the witness should be given the option of writing his or her account in the witness' preferred language. This account is to be kept together with the subsequent translation of the witness statement into English;
- if completed by a minor or any student, the age of the student should be written on the form;
- if possible, ask the witness to draw a sketch of the location where the incident occurred to accompany his or her statement. The location of the witness and all persons who were involved in the incident should be noted on the sketch;
- if a staff member is completing the form, the staff member should write his or her staff serial number on the form. This is so the staff member can be more easily located if legal proceedings are initiated several years after the incident; and
- the attention of the person completing the form should be drawn to the privacy notice that appears on each form.

Should any other documentation be collected at the time of the incident?

In circumstances where a school incident report is completed, copies of the following documentation, where relevant, should be kept with the report:

- All releases and permission slips related to the incident;
- class, field trip, excursion, transportation rosters, or sports rosters of the relevant participating students;
- student and staff list and rosters (for example a playground duty roster where an incident occurs on a school playground);
- if school property or equipment contributed to the cause of the incident, make sure that the equipment is secured, not disturbed and available for inspection;
- first aid register or its equivalent;
- supervision rosters;
- community use agreements;
- photographs/video of incident scene;
- screen shots of social media posts, text messages, etc., pertaining to the incident which are accessible to school staff;
- details of any previous incidents of a similar nature;
- internal and external correspondence in relation to the incident; and
- school welfare and/or discipline policies (where appropriate). In cases of incidents arising from conflict between students, a copy of welfare reports,

discipline notices and/or the punishment register or any equivalent documents maintained by the school, as well as the student records of the students involved should be retained.

If as a result of an incident at school or during school activities, the school counselor subsequently offers counselling to any student, a note that such support has been provided should be included with the relevant incident documentation.

While it is acknowledged that collecting this information may be time consuming at the time of the incident, it is less onerous than collecting it months or years after the incident.

Where should school incident reports and other documentation be stored?

School incident reports, witness statements, and other relevant incident documentation should be forwarded to the Risk Management and/or other District designated recipient as soon as possible after they are completed. Risk Management and/or other District designated recipient should develop protocols for storage of school incident reports and related documentation in a confidential school incident report file. Protocols should be developed to ensure that access to documentation located the confidential school incident report file remains consistent with this guideline. It is not recommended that incident reports and other documentation be maintained in student files, as these documents are confidential and potentially subject to legal privilege.

How long school incident reports and other documentation should be retained?

As a general rule, school incident reports should be retained in accordance with the District's record retention policy. However, in the event that litigation could be anticipated or any claim for damages has been asserted or lawsuit has been filed, a **litigation hold** is required. In that case, **the District must retain and not destroy or otherwise dispose of school incident reports and any related documentation and evidence, even if destruction is planned as part of the District's routine retention policies.** In the event any claim is brought or lawsuit is filed in connection with any school incident, designated staff should promptly locate all documentation or evidence pertaining to that incident and ensure those materials are held through the duration of the claim or lawsuit. The District should consult with the District's legal counsel before disposing of any reports, documentation, or other potential evidence in the District's possession related to any pending claim or lawsuit.

Do schools need to develop their own formal procedures in relation to the preparation of school incident reports?

There is no requirement for schools to develop their own formal procedures. If individual schools believe it is useful to so, principals will need to ensure that:

- any such procedures are consistent with District policies and this guideline;
- any such procedures include a statement indicating why the reports are prepared (refer to section of this guideline) and that legal professional privilege may apply to them; and
- that a privacy notice similar to that contained in the pro-forma witness statements attached to this guideline are incorporated into any pro-forma witness statements developed to meet the individual needs of the school.

Relevant school incident report and witness statement documents are attached to this guideline for the information and assistance of staff.

Requests for Incident Reports by Parents and Others

What information can be given to parents and caregivers?

Principals must ensure that parents and caregivers are notified of any incident involving a student. The notification should be made as soon as possible after the incident occurs. Notification to parents or caregivers, either by telephone or in writing, should include the following:

- Confirmation that the student was involved in an incident together with a description of the nature of the incident
- A description of any injury or loss of property sustained by the student
- A description of any action taken following the incident (e.g. first aid, calling of a doctor or ambulance, calling the police).

If the notification is in writing, a copy of the letter must be kept with the school incident report. If the notification is verbal, a file memorandum should be prepared which states the basic details of the notification, including the date, who was notified, and the key points of the discussion.

UNDER NO CIRCUMSTANCES SHOULD LIABILITY FOR ANY INCIDENT BE ADMITTED, NOR ANY OPINIONS AS TO LEGAL RESPONSIBILITY FOR THE INCIDENT BE EXPRESSED

Can school staff apologize for the incident to the individual affected or his or her parents?

An apology could be construed as an admission of liability and must be carefully given, if at all. While an apology could be of significant value in maintaining an appropriately caring educational environment and for comforting aggrieved persons, doing so in a significant incident should be done in consultation with risk managers or legal counsel.

If an apology is given, wording of an apology will be dependent on the individual circumstances of the particular incident. As a guide, any apology offered should include the following:

- A general description of the incident for which the apology is being given;
- An acknowledgement that the person has suffered some form of injury;
- An expression of sorrow, sympathy or regret for the incident and any injuries suffered; and
- Periodic follow-up with the injured person regarding their recovery.

UNDER NO CIRCUMSTANCES SHOULD LIABILITY FOR ANY INCIDENT BE ADMITTED, NOR ANY OPINIONS AS TO LEGAL RESPONSIBILITY FOR THE INCIDENT BE EXPRESSED

Can parents or students be provided with copies of school incident reports?

A request (other than a subpoena-see below) by any person, except the District's own legal representatives or relevant District officers, for access to or copies of any school incident report and related documentation, including witness statements, **must be refused**. This denial of access arises because of the attorney-client privilege or attorney work product privilege, which may apply to the school incident report.

Any person seeking a copy of a school incident report or any related documentation must be advised that they will need to make a request to the District via the *California Public Records Act (PRA)*. District staff should immediately forward any PRA request to their general counsel for review and advice on how to respond to the request.

The *only* exception to this policy is that, upon request, a copy of a witness statement may be provided to the witness who made the statement. Parents/guardians may also be provided with a copy of any statement made by *their* child. A lawyer who is representing an individual is entitled to the same level of access as the person he or she represents. For example an attorney who represents a student may be given a copy of a witness statement made by *that* student. Otherwise, an attorney should also be referred to make a PRA request and notify risk management that a lawyer request was made.

Subpoenas for Incident Reports

What happens if the school incident report is subpoenaed?

A subpoena is a formal court order requiring the attendance of a person at court to give evidence, to produce documents or to do both. If served with a subpoena, the person to whom the subpoena is directed must comply with it unless otherwise excused by the party issuing the subpoena or a motion to quash the subpoena has been filed. Any subpoena received by school staff should be forwarded immediately to the District's general counsel or other legal representative for review.

When custodian of record for an entity is served with a subpoena to produce documents, that person is entitled to be paid for the reasonable costs incurred to prepare the documents. Generally, this includes the custodian's clerical expenses for locating the records and making them available (billed at a maximum rate of \$24 per hour per person, computed at \$6 per quarter hour or fraction thereof), actual costs charged by a third party for retrieving the records and returning them to storage, copying costs (computed at \$.10 per page or \$.20 from microfilm), and actual postal charges. (Evid. C. § 1563.) Payment may be demanded simultaneously with delivery of the records. (CCP § 2020.430(c).)

If a school receives a subpoena relating to an incident at school and a claim for compensation has been made in connection with that incident/injury, the following action should be taken:

- Immediately provide a copy of the subpoena to the District's risk manager, general counsel or other legal representative;
- Locate and photocopy all relevant documents which are responsive to the subpoena; and
- Document all clerical time spent and costs incurred in connection with responding to the subpoena and report that information to the District's legal counsel or legal representative so that the payment demand can be made; and
- Once all responsive documents are located and photocopied, the documents should be sent to the District's general counsel or other attorneys who are handling the litigation on the District's behalf.

School reports are likely to be subject to legal professional privilege.

Principals, or any other person preparing documentation in response to a subpoena, should draw the attention of their general counsel or other legal counsel who is representing the District in any related legal proceedings, to any school incident reports and all other documentation (including electronic files) which are potentially responsive to any subpoena. While school incident reports are likely to be subject to legal privilege, the District's counsel will assist with a determination of what records are and are not privileged, and whether any action is necessary to ensure that any privileged records are not disclosed.