

**SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION - THIRD DEPARTMENT**

MARK DOLGAS,

Plaintiff-Appellant-Respondent : Docket No. 535688

-against-

**DONALD WALES, TRI-VALLEY : NOTICE OF MOTION TO
ELEMENTARY SCHOOL, TRI-VALLEY : FILE AN *AMICUS CURIAE*
CENTRAL SCHOOL DISTRICT, AND THE : BRIEF IN SUPPORT OF
BOARD OF EDUCATION OF THE TRI- : PLAINTIFF-APPELLANT-
VALLEY CENTRAL SCHOOL DISTRICT, : RESPONDENT**

Defendants-Respondent-Appellants.

JEFFREY CLOONAN, SEAN BOYLE

Plaintiffs-Appellants-Respondents : Docket No. 535689

-against-

**DONALD WALES, TRI-VALLEY : NOTICE OF MOTION TO
ELEMENTARY SCHOOL, TRI-VALLEY : FILE AN *AMICUS CURIAE*
CENTRAL SCHOOL DISTRICT, AND THE : BRIEF IN SUPPORT OF
BOARD OF EDUCATION OF THE TRI- : PLAINTIFFS-APPELLANTS-
VALLEY CENTRAL SCHOOL DISTRICT, : RESPONDENTS**

Defendants-Respondent-Appellants.

PLEASE TAKE NOTICE, that upon the annexed affirmation of James Marsh Esq., the annexed proposed brief, and all the pleadings, proceedings and

exhibits included herein, CHILD USA will move this Court at the Courthouse located at 27 Madison Ave, New York, New York 10010 on the day of May 26, 2023, at 6PM or as soon thereafter as counsel can be heard, for the following relief:

[a] An order permitting CHILD USA to file the accompanying proposed brief of amicus curiae; and

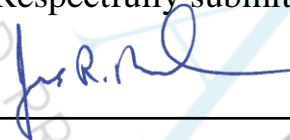
[b] Granting any other, further, or different relief that this Court may deem just, proper, and equitable.

PLEASE TAKE FURTHER NOTICE that answering affidavits, if any, are required to be served in accordance with the rules of this Court.

Dated: May 26, 2023

New York, New York

Respectfully submitted,



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TO:

CLERK OF THE COURT

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**SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION - THIRD DEPARTMENT**

MARK DOLGAS,

Plaintiff-Appellant-Respondent,

:

Docket No. 535688

-against-

**DONALD WALES, TRI-VALLEY
ELEMENTARY SCHOOL, TRI-VALLEY
CENTRAL SCHOOL DISTRICT, AND THE
BOARD OF EDUCATION OF THE TRI-
VALLEY CENTRAL SCHOOL DISTRICT,**

**:
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:
:**

**AFFIRMATION IN
SUPPORT OF MOTION
OF CHILD USA**

Defendants-Respondent-Appellants.

JEFFREY CLOONAN, SEAN BOYLE

Plaintiffs-Appellants-Respondents

:

Docket No. 535689

-against-

:

**AFFIRMATION IN
SUPPORT OF MOTION
OF CHILD USA**

**DONALD WALES, TRI-VALLEY
ELEMENTARY SCHOOL, TRI-VALLEY
CENTRAL SCHOOL DISTRICT, AND THE
BOARD OF EDUCATION OF THE TRI-
VALLEY CENTRAL SCHOOL DISTRICT,**

**:
:
:**

Defendants-Respondent-Appellants.

James Marsh, Esq., hereby affirms, under the penalties of perjury, the truth of the following statements:

1) I am an attorney admitted to practice law in the State of New York. I make this certification in support of the motion of CHILD USA to submit the annexed amicus curiae brief in the above-captioned appeal, which is annexed hereto as **Exhibit A.**

2) CHILD USA is the leading non-profit think tank fighting for the civil rights of children. CHILD USA's mission is to employ in-depth legal analysis and cutting-edge social science research to protect children, prevent future abuse and neglect, and bring justice to survivors. Distinct from an organization engaged in the direct delivery of services, CHILD USA produces evidence-based solutions and information needed by policymakers, youth-serving organizations, media, and the public to increase child protection and the common good. CHILD USA's Founder, Professor Marci A. Hamilton, is the leading constitutional law scholar on revival laws, and has advised state governors, legislatures, and judiciaries on the constitutionality of revival window laws for child sex abuse throughout the country, including in New York.

3) CHILD USA's interests in this case are directly correlated with its mission to eliminate barriers to justice for child sex abuse victims who have been harmed by individuals and institutions. This case will have immediate and broad implications on the ability of victims of child sex abuse to hold perpetrators and their enabling institutions accountable in the state of New York. The Child Victims Act enables

victims of sexual abuse whose claims were previously time-barred to bring their claims and in turn will expose hidden perpetrators to the public, shift the cost of abuse from victims to those who perpetrated and enabled the abuse, and it will ultimately educate the public and help prevent future abuse.

4) CHILD USA has legal and social science expertise that can help the court determine the questions at issue in this case. CHILD USA is uniquely positioned to provide this Court with current research and analysis regarding educator sexual misconduct, institutional abuse, and the science of trauma as well as the compelling public interests served by The Child Victim's Act.

5) No counsel to the parties authored this brief in whole or in part nor has any person contributed money that was intended to fund in the preparation or submission of this brief.

WHEREFORE, for the foregoing reasons, it is respectfully submitted that the within application should be granted in all respects.

Dated: May 26, 2023
New York, New York



James Marsh, Esq.
Marsh Law Firm PLLC
Counsel of Record for Amicus Curiae

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EXHIBIT A



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New York Supreme Court

Appellate Division – Third Department

Docket No: 535688

MARK DOLGAS,

Plaintiff-Appellant-Respondent,

-against-

DONALD WALES, TRI-VALLEY ELEMENTARY SCHOOL, TRI-VALLEY CENTER SCHOOL DISTRICT, AND THE BOARD OF EDUCATION OF THE TRI-VALLEY CENTRAL SCHOOL DISTRICT

Defendants-Respondents-Appellants.

**BRIEF OF AMICUS CURIAE CHILD USA
IN SUPPORT OF PLAINTIFFS-APPELLANTS-RESPONDENTS**

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Sullivan County Clerk's Index No. E2019-2255

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Docket No: 535689

JEFFREY CLOONAN, SEAN BOYLE,

Plaintiffs-Appellants-Respondents,

-against-

DONALD WALES, TRI-VALLEY ELEMENTARY SCHOOL, TRI-VALLEY CENTER
SCHOOL DISTRICT, AND THE BOARD OF EDUCATION OF THE TRI-VALLEY CENTRAL
SCHOOL DISTRICT

Defendants-Respondents-Appellants.

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AMICUS CURIAE STATEMENT OF INTEREST

CHILD USA is the leading non-profit think tank fighting for the civil rights of children. Our mission is to employ in-depth legal analysis and cutting-edge social science research to protect children, prevent future abuse and neglect, and bring justice to survivors. CHILD USA's interests in this case are directly correlated with its mission to eliminate barriers to justice for child sex abuse ("CSA") victims who have been harmed by individuals and institutions.

CHILD USA is uniquely positioned to provide this Court with current research on the unique challenges involved in CSA cases, including the realities of trauma that can impact the timing of disclosure. The Child Victims Act's ("CVA") revival window enabled victims of child sexual abuse whose claims had been barred by New York's previously too-short statute of limitations (SOL) to seek justice in court. N.Y.C.P.L.R. § 214-g. In turn, claim revival for child sexual abuse in New York has exposed hidden predators and enabling institutions to the public, shifted the cost of abuse from victims to those who perpetrated and enabled the abuse, and ultimately educated the public and helped prevent future abuse. CHILD USA's contribution will aid the Court's analysis beyond that which the parties' lawyers provide.

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PRELIMINARY STATEMENT

CHILD USA respectfully submits this brief as *amicus curiae* pursuant to 22 NYCRR 1250.4(f). Plaintiffs-Appellants-Respondents seek reargument on their claims for negligent hiring, negligent supervision, and negligent retention and on their claims against Defendants-Appellees-Respondents Tri-Valley Elementary School, Tri-Valley Central School District, and The Board of Education of the Tri-Valley Central School District (“Tri-Valley”) for failure to report pursuant to New York Social Services Law §413 or, in the alternative, seek leave to appeal this Court’s Opinion and Order issued on April 6, 2023 (NYSCEF Doc. No. 29).. CHILD USA asks that this Court grant Plaintiffs-Appellants-Respondents’ request for reargument and find that Tri-Valley breached their common law and statutory duties to Plaintiffs-Appellants-Respondents by failing to prevent, and indeed affirmatively creating, a foreseeable risk of sexual abuse and by failing to report known or suspected incidents of sexual abuse arising from the same.

As the plain language of the statute and legislative history indicates, N.Y.C.P.L.R § 214-g revives all civil claims and causes of action for injuries suffered as a result of CSA that would have otherwise been time-barred by New York’s prior SOL. This Court’s decision will affect victims of child sexual abuse throughout New York who are now embracing the revival window to bring previously expired claims that were blocked by unfairly short SOLs. If Plaintiffs-

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Appellants-Respondents' claims are prematurely dismissed, institutions stand to be unaccountable for all but the most egregious breaches of their duties. Such a ruling would jeopardize the important public policies of justice, public safety, and preventing future child sexual abuse that the New York Legislature sought to uphold and improve when it passed the CVA.

ARGUMENT

I. THE PREVALENCE AND TRAUMATIC IMPACT OF EDUCATOR SEXUAL ABUSE UNSCORES THE IMPORTANCE OF CIVIL ACCOUNTABILITY WHEN SCHOOLS FAIL TO KEEP STUDENTS SAFE

Sexual abuse in educational institutions is a public health concern for children, adolescents, and young adults that can have significant, negative lifelong effects for victims. According to the U.S. Department of Education, **more than 4.5 million students, or 10% of school-aged children, are subject to sexual misconduct by a school employee sometime between kindergarten and 12th grade.**¹ This alarming number tracks a history of school officials sweeping educator sexual misconduct under the rug by permitting predatory teachers to quietly resign and find employment in other schools or districts—a practice known as “passing the trash”

¹ U.S. DEP'T OF ED., Office of the Under Secretary, *Educator Sexual Misconduct: A Synthesis of Existing Literature*, Washington, D.C., (2004), available at <https://www2.ed.gov/rschstat/research/pubs/misconductreview/report.pdf>.



—without ever having to admit wrongdoing or revealing any misconduct to the public.² On average, an educator that has been alleged to have engaged in sexual abuse or misconduct will be transferred to **three different schools** before they are reported to the police.³ Tragically, it is estimated that a single teacher sexually abusing students can have up to **73 student victims**.⁴ Considering that victims of sexual abuse may not report their experiences for various reasons, the true rate of occurrence is likely much higher than statistics suggest.

The trauma stemming from child sexual abuse is complex and individualized, and it impacts victims throughout their lifetimes. Educator sexual abuse can disrupt students' social, emotional, and cognitive development and place them at a significantly higher risk for psychological problems including, but not limited to, substance abuse, suicidality, and Post Traumatic Stress Disorder.⁵ The trauma

² Grant BJ, Wilkerson S, & Henschel M., *Passing the Trash: Absence of State Laws Allows for Continued Sexual Abuse of K-12 Students by School Employees*, 28(1) J. CHILD SEX ABUSE 84 (2019).

³ U.S. GOVERNMENT ACCOUNTABILITY OFFICE, GAO-11-200, SELECTED CASES OF PUBLIC AND PRIVATE SCHOOLS THAT HIRED OR RETAINED INDIVIDUALS WITH HISTORIES OF SEXUAL MISCONDUCT 17, 26 (2010)

⁴ ID.

⁵ See, e.g., U.S. DEP'T HEALTH & HUMAN SERVICES, The Adverse Childhood Experiences (ACEs) Study, Centers for Disease Control & Prevention, available at <https://www.cdc.gov/violenceprevention/childabuseandneglect/acestudy/>; see also, Felitti, et al., *Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults: The Adverse Childhood Experiences (ACE) Study*, 14(4) AM. J. PREV. MED. 245-58 (1998); S.R. Dube et al.,

attendant to educator sexual misconduct may also impact students' ability to participate and succeed in school. For example, **approximately 40% of students who report sexual violence to their schools experience a substantial disruption in their educations.**⁶ Nearly 10% drop out of school entirely.⁷ For those victims who remain enrolled, the vast majority experience adverse academic effects which, in turn, negatively impact their financial wellbeing.⁸

Not only does sexual abuse generate enormous costs to victims, but it also creates staggering costs to society that impact the nation's health care, education, criminal justice, and welfare systems.⁹ **The estimated lifetime cost to society of child sexual abuse cases occurring in the U.S. in 2015 is \$9.3 billion, and the**

Childhood Abuse, Household Dysfunction, and the Risk of Attempted Suicide Throughout the Life Span: Findings from the Adverse Childhood Experiences Study, 286 JAMA 24, 3089-96 (Dec. 2001) (explaining that childhood trauma can lead to negative health outcomes).

⁶ See generally, Know Your IX, *The Cost of Reporting: Perpetrator Retaliation, Institutional Betrayal, and Student Survivor Pushout* 17-22 (Mar. 2021), available at <https://www.knowyourix.org/wp-content/uploads/2021/03/KnowYour-IX-2021-Report-Final-Copy.pdf>

⁷ *Id.*

⁸ *Id.*

⁹ Elizabeth J. Letourneau et al., *The Economic Burden of Child Sexual Abuse in the United States*, 79 Child Abuse Negl. 413 (2018) (Average cost estimates per victim include, in part, \$14,357 in child medical costs, \$9,882 in adult medical costs, \$223,581 in lost productivity, \$8,333 in child welfare costs, \$2,434 in costs associated with crime, and \$3,760 in special education costs. Costs associated with suicide deaths are estimated at \$20,387 for female victims.)

average cost of non-fatal per female victim was estimated at \$282,734.¹⁰ Despite its prevalence and damaging impact, sexual abuse remains one of the most underreported crimes in the United States, among any age group. Indeed, many victims of child sex abuse suffer in silence for decades before they speak to anyone about their traumatic experiences. As children, sex abuse victims often fear the negative repercussions of disclosure, such as disruptions in family stability, loss of close relationships, or involvement with the authorities.¹¹ This is a crime that typically occurs in secret, and many child victims of sexual violence assume no one will believe them.¹² Additionally, child sex abuse survivors may struggle to disclose their abuse because of psychological barriers such as shame and self-blame, as well as social factors like gender-based stereotypes or the stigma of sexual victimization.¹³ Victims may also develop a variety of coping strategies—such as

¹⁰ Id.

¹¹ Delphine Collin-Vézina et al., *A Preliminary Mapping of Individual, Relational, and Social Factors that Impede Disclosure of Childhood Sexual Abuse*, 43 CHILD ABUSE NEGL. 123 (2015), <https://pubmed.ncbi.nlm.nih.gov/25846196/>.

¹² See *Myths and Facts About Sexual Assault*, CAL. DEP'T OF JUST., https://www.meganslaw.ca.gov/mobile/Education_MythsAndFacts.aspx (last visited Aug. 17, 2022); National Child Traumatic Stress Network Child Sexual Abuse Committee, *Caring for Kids: What Parents Need to Know about Sexual Abuse*, NAT'L CTR. FOR CHILD TRAUMATIC STRESS 7 (2009), https://www.nctsn.org/sites/default/files/resources/fact-sheet/caring_for_kids_what_parents_need_know_about_sexual_abuse.pdf.

¹³ Ramona Alaggia et al., *Facilitators and Barriers to Child Sexual Abuse (CSA) Disclosures: A Research Update (2000-2016)*, 20 TRAUMA VIOLENCE ABUSE 260, 279 (2019), <https://pubmed.ncbi.nlm.nih.gov/29333973/>.

denial, repression, and dissociation—to avoid recognizing or addressing the harm they suffered.¹⁴ These mechanisms may persist well into adulthood, long past the date of the abuse. In fact, one study found that 44.9% of male victims and 25.4% of female child sex abuse victims delayed disclosure by *more than twenty years*.¹⁵ Remarkably, it is estimated that 70–95% of child sex abuse victims never report their abuse.¹⁶

Rates of disclosure among victims of school-based sexual abuse may be even lower than that of the general victim population. Reporting sexual abuse to school officials can become a distinctively damaging part of the abuse experience for victims—a phenomenon known as “betrayal trauma” or “institutional trauma” — when the institutions they depend upon fail to prevent or respond supportively to

¹⁴ G.S. Goodman et. al., *A prospective study of memory for child sexual abuse: New findings relevant to the repressed-memory controversy*, 14 PSYCHOL. SCI. 113–8 (2003), <https://pubmed.ncbi.nlm.nih.gov/12661671/>.

¹⁵ Patrick J. O’Leary & James Barber, *Gender Differences in Silencing following Childhood Sexual Abuse*, 17 J. CHILD SEX. ABUSE 133 (2008).

¹⁶ D. Finkelhor et al., *Sexually Assaulted Children: National Estimates and Characteristics*, US Dept. of Justice, Office of Justice Programs (2008), <https://www.ojp.gov/pdffiles1/ojdp/214383.pdf>.

their reports of sexual abuse.¹⁷ The effects of institutional betrayal exacerbate and often exceed those associated with victims' primary abusive experience.¹⁸

Accordingly, children and young adults who experience school-based sexual abuse must be able to hold their schools and districts accountable and seek redress for the myriad of harms that can flow from a school or district's actions and inactions. When the judicial system denies the opportunity for such accountability, institutions may feel entitled to continue their abuse with impunity. The broader implications of shutting the courthouse doors have dire consequences—they chill reports of sexual abuse because many victims choose not to come forward if they see no avenue to justice. This is the precise harm that the New York Legislature sought to redress in passing the CVA.

¹⁷ Carly Parnitzke Smith & Jennifer J. Freyd, *Dangerous Safe Havens: Institutional Betrayal Exacerbates Sexual Trauma*, 26 J. TRAUMATIC STRESS 1 (2013); see also, JENNIFER J. FREYD, INSTITUTIONAL BETRAYAL AND INSTITUTIONAL COURAGE, <https://dynamic.uoregon.edu/jjf/institutionalbetrayal/index.html> (last visited Jan. 8, 2021).

¹⁸ Linsey L. Monteith et al., *Perceptions of Institutional Betrayal Predict Suicidal Self-Directed Violence Among Veterans Exposed to Military Sexual Trauma*, 72 J. CLINICAL PSYCHOL. 743, 750 (2016); see also Rebecca Campbell et al., *An Ecological Model of the Impact of Sexual Assault on Women's Mental Health*, 10 TRAUMA, VIOLENCE & ABUSE 225, 234 (2009); see also, Carly Parnitzke Smith & Jennifer J. Freyd, *Institutional Betrayal*, 69 AM. PSYCHOLOGIST 575, 577-78 (2014); Marina N. Rosenthal et al., *Still Second Class: Sexual Harassment of Graduate Students*, 40 PSYCHOL. OF WOMEN Q. 364, 374 (2016).

II. CONSIDERATIONS OF FORESEEABILITY AND PUBLIC POLICY DEMAND A DUTY BE IMPOSED ON EDUCATIONAL INSTITUTIONS TO COMPEL THEM TO ACT IN FURTHERANCE OF THEIR CHILD PROTECTION RESPONSIBILITIES

The existence of a duty, beyond a moral obligation to prevent harm, is informed by broader laws and public policy considerations. In passing the CVA, the New York Legislature sought to provide victims of child sexual abuse a meaningful opportunity to recover for past harms and ensure that perpetrators and their enabling institutions were finally brought to justice and prevented from hurting more children. Remedial statutes such as the CVA “should be construed broadly so as to effectuate their purpose” and in light of the harms sought to be eliminated. Matter of Scanlan v. Buffalo Pub. School Sys., 90 N.Y.2d 662, 676 (1997). But this Court took the opposite approach. By dismissing Plaintiffs-Appellants-Respondents’ claims, the door to meaningful recovery for many institutional victims is now closed as most will be unable to successfully carry their burden on negligence claims under the knowledge standard manufactured by this Court. The legislature did not intend to cabin the Act in this way.

New York’s strong public policy dictates that a duty should be owed by educational institutions, requiring them to take reasonable steps to protect the physical and emotional well-being of the children in their care. See Timothy Mc. v. Beacon City Sch. Dist., 127 A.D.3d 826, 827 (2d Dept. 2015)..A broad application

of duty in circumstances involving foreseeable sexual abuse is paramount to realizing that goal.

In the context of the CVA, the foreseeability analysis requires careful examination of the relationship between the defendant and the victim(s) as well as the unique circumstances surrounding the abuse to ensure an outcome that aligns with the statute's underlying public policy purpose. See Lapidus v. State of New York, 866 N.Y.S.2d 711 (2d Dept. 2008) (explaining that courts should consider the plaintiff's mental and physical condition at the time the crime was committed in determining whether an outcome was foreseeable and noting that because these issues are fact specific they should not be determined by summary judgement);

Any organization that requires adults to regularly interact with children, particularly in positions of power and trust, should appreciate the risks inherent in such a power differential and implement policies, practices, and procedures to mitigate those risks. Before these standards were mandated as a matter of law, ethical and other community practices established the standard of care against which the actions of professionals could be judged.¹⁹ Even in the 1970's, the public was aware of the risks of child abuse in institutions and New York schools sought to combat

¹⁹ Myers, J., *A Short History of Child Protection in America*, 42(3) FAMILY LAW QUARTERLY 449 (2008); DEFRANCIS & LUCHT, CHILD ABUSE LEGISLATION IN THE 1970'S, revised edition,p.8,(1974).

these risks in part by adopting certain hiring practices for example contacting candidates past employers and inquiring as to their criminal histories.²⁰ Indeed, had Tri-Valley acted in accordance with the standard of care they presumably would have learned of Wales' criminal past and refused to hire him thereby saving scores of elementary school children from his predations. But Tri-Valley failed to do so.

A school's role in preventing sexual abuse is critical when it has knowledge that an individual poses a risk to the students that they serve; this is especially true when that knowledge is exclusively within the school's control—as it was here. Although Wales ultimately perpetrated the abuse, Tri-Valley officials made it possible. They ignored countless red flags, and later actively concealed their knowledge regarding prior complaints of sexual thus allowing Wales to continue abusing a stream of unwitting students. This Courts excusal of Tri-valley's actions and its myopic focus on Wales' reference letters as a vehicle to avoid a finding that Defendants were negligent ignores the legal and ethical obligations of Tri-Valley to consider existing public policy and to at all times take appropriate steps to protect the children in their care.

The tragic reality is that child sexual abuse has been rampant in youth-serving organizations, in no small part because our educational institutions have historically

²⁰ ID. Do not use without permission of CHILD USA.

overlooked or minimized the risks of sexual abuse to their students. In fact, the failure of school officials to properly screen employee applicants and their willingness to bury their heads in the sand when allegations of abuse arise has made sexual abuse a feature of our nation's schools.²¹ History has proven that schools cannot be trusted to self-police, particularly when there are financial, reputational, and other incentives to avoid addressing allegations of abuse. Therefore, victims must turn to the judicial system to access the law's protections so that they may hold institutions liable for their misdeeds and seek redress for the resultant harms. By prematurely dismissing Plaintiffs-Appellants-Respondents claims, this Court will make it easier for institutions in the state of New York to escape liability and it will send a message to our children that they must accept the risk of sexual abuse if they want to obtain an education. This is, as a matter of public policy, is a message that is wholly inconsistent with the legislative intent in passing the CVA and a slap in the face to victims who are forced to bear physical, emotional, and financial burdens of these culpable institutions. The CVA's legislative promise demands a duty be imposed upon Defendants like Tri-Valley to compel them to act reasonably to protect students from the foreseeable sexual abuse that is known to plague such institutions.

²¹ Grant BJ, Wilkerson S, & Henschel M., *Passing the Trash: Absence of State Laws Allows for Continued Sexual Abuse of K-12 Students by School Employees*, 28(1) J. CHILD SEX ABUSE 84 (2019).

III. A MANDATED REPORTER BREACHES THEIR DUTY UNDER SOCIAL SERVICES LAW § 413 WHEN THEY FAIL TO IMMEDIATELY REPORT SUSPECTED CHILD ABUSE

Beginning in the early 1960s and through the 1970s, growing awareness of the prevalence of child sexual abuse in institutions led to a wave of state and federal child welfare reforms.²² In 1973, New York joined states across the country in enacting a statewide mandatory reporting law which required certain individuals to report child abuse. Under the law, school officials, including teachers, are required “to report or cause a report to be made” when they have “reasonable cause to suspect that a child coming before them in their professional or official capacity is an abused or maltreated child.” N.Y. Social Services Law § 413; *see also*, N.Y. Social Services Law § 415; *see also* Kempster v. Child Prot. Servs. of Dep’t of Soc. Servs. of Suffolk Cty., 130 A.D.2d 623, 625 (2d Dept 1987) (explaining that the reporting requirement is predicated upon reasonable suspicion of abuse and not “actual or conclusive proof”). Importantly, a school employee’s obligation to report is triggered “immediately” upon such reasonable suspicion irrespective of their knowledge as to the identity of the abuser. See N.Y. Social Services Law § 415. Simply put, it is not the duty of the mandated reporter to analyze whether the report would be founded under the New York Family Court Act, § 1011, the duty to investigate belongs to



the child protection agency alone. See Catherine G. v. Cnty. of Essex, 307 A.D.2d 446, 449 (3d Dept. 2003) (quoting Kimberly, 226 A.D. 2d at 90 (emphasis added), aff'd as modified, 3 N.Y.3d 175 (2004)). Accordingly, “[m]andated reporters need not await conclusive evidence of abuse” before causing a report to be made since “the law allows them a degree of latitude to err on the side of protecting children who may be suffering from abuse.” Isabelle V. v. City of New York, 150 AD2d 312, 313 (1st Dept 1989); *see also*, N.Y. Social Services Law § 415. Indeed, the legislative history and statutory language make clear that the law was written to encourage the earliest and fullest possible reporting which would allow for the best chances of protecting the child. *See* NY Family Court Act, § 1011; NY Social Services Law, § 411. Indeed, the wording of New York’s Social Services Law § 411 states that Title 6, which includes § 413, is intended to broaden reporting of suspected abuse particularly by those individuals presumed to be in the best position to recognize and report the same abuse: “It is the purpose of this title to encourage more complete reporting of suspected child abuse and maltreatment....” *Id*; *see also*, Kimberly SM v. Bradford Cent., 226 A.D.2d 85, 90 (N.Y. App. Div. 1996)(“The purpose and intent of the statutory scheme is to encourage the prompt reporting of all suspected cases of child abuse”). Consistent with this purpose, mandated reporters

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To that end, the legislature also enacted an immunity provision that shields a mandated reporter acting in “good faith” in the scope of their duties from “any civil and criminal liability” that might otherwise result from causing a report to be made.” *See* N.Y. Social Services Law § 419. The Appellate Court explains the public policy behind this provision as follows:

“Blanketing mandated reporters with a presumption of good faith and imposing civil liability for a breach of the mandated duty to report further encourage the prompt reporting of suspected abuse. A determination that liability for a failure to report is dependent upon whether the charges are founded or whether the child abuse petition is ultimately sustained would contravene the statutory purpose of encouraging prompt reporting, and we decline to follow that approach.”

Kimberly, 226 A.D.2d at 90. . Nothing in the statutory language suggests that a school employee who learns that a child may be abused need engage in further analysis regarding whether the case would ultimately be founded. before deciding to report it. Had the legislature intended for these professionals to undertake an independent investigation prior to making a report, it would have stated as much.


CONCLUSION

For the foregoing reasons, *amicus curiae* request this Court grant Plaintiffs-Appellants-Respondents’ request for rehearing and reverse its dismissal of their
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negligence claims and claim for failure to report pursuant to Social Services Law § 413.

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