

STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL

<p>ATTORNEY GENERAL OPINION</p> <p>by</p> <p>TERRY GODDARD ATTORNEY GENERAL</p> <p>December 20, 2005</p>	<p>No. I05-007 (R05-006)</p> <p>Re: Reporting Responsibilities of Teachers and School Volunteers under A.R.S. § 13-3620</p>
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To: The Honorable Ted Downing
Arizona House of Representatives

Questions Presented

Section 13-3620, Arizona Revised Statutes (“A.R.S.”), imposes a duty on specified categories of individuals to report suspected child abuse. School personnel are among those required to report to a peace officer or to child protective services if there is reason to believe that a child is the victim of abuse, neglect, physical injuries, or specified sexual offenses. You have asked the following questions relating to school teachers’ and school volunteers’ duties under this statute.

1. Does a teacher satisfy the duty to report under Arizona Revised Statutes (“A.R.S.”) § 13-3620(A) if the teacher reports or causes a report to be made to the teacher’s

supervisor without independently ensuring that the suspected abuse is reported to a peace officer or child protective services?

2. Are school volunteers included in the class of persons required to report under A.R.S. § 13-3620(A)?

3. If a school volunteer is subject to the duty to report under A.R.S. § 13-3620(A), does it make a difference if the person is volunteering to work directly with students to assist them with their lessons or to accompany students on field trips as opposed to volunteering to perform administrative tasks, such as clerical tasks or copying?

4. If a volunteer is subject to the duty to report under A.R.S. § 13-3620(A), does the volunteer satisfy the duty to report under A.R.S. § 13-3620(A) if the volunteer reports or causes a report to be made to the responsible teacher or the responsible teacher's supervisor or must the volunteer also report or cause a report to be made independently to a peace officer or child protective services?

Summary Answer

1. Teachers must immediately and independently ensure that the information regarding suspected abuse is reported to a peace officer or child protective services. Section 13-3620(A), A.R.S., (the Reporting Statute) requires all school personnel who reasonably believe that a minor is or has been a victim of child abuse or neglect to "immediately report or cause reports to be made of [the] information to a peace officer or to child protective services." Although informing a principal or other supervisor is advisable, this does not necessarily satisfy the teacher's duty to ensure that the information regarding the suspected abuse is conveyed to a peace officer or child protective services.

2. A school volunteer is required to report suspected abuse under the Reporting Statute if the volunteer is responsible for the care or treatment of a child.

3. Whether a particular volunteer has a duty to report child abuse depends on the facts and circumstances. School volunteers who perform administrative tasks or assist teachers are generally not responsible for the care or treatment of children; however, there may be volunteers who, for example, accompany children on field trips or perform other functions in which, based on the facts and circumstances, they are responsible for the care of children.

4. A volunteer who has a duty to report does not necessarily satisfy this responsibility by reporting the matter to a teacher or other school employee. The volunteer must ensure the information is conveyed to a peace officer or child protective services.

Background

Mandatory child abuse reporting statutes began appearing in the United States in the 1950s. In 1974, Congress passed the Child Abuse Prevention and Treatment Act, 42 U.S.C. §§ 5101 to 5107, requiring states to pass specific legislation targeted at child abuse. States were not eligible for federal funds to combat child abuse if they did not have a reporting statute in place. Currently, all fifty states have child abuse reporting legislation modeled after federal guidelines. The state statutes typically require mandatory child abuse reporting, grant immunity to people who report suspected child abuse in good faith, and provide either civil or criminal penalties for failure to file a mandatory report with the specified agency. *See, e.g.*, Wyo. Stat. § 14-3-205; Ky. Rev. Stat. Ann. § 620.030.

Arizona passed its first reporting statute in 1964.¹ The current Reporting Statute mandates that people subject to the statute who “reasonably believe[]” that abuse has occurred report the suspected abuse to a peace officer or to child protective services:

Any person who reasonably believes that a minor is or has been the victim of physical injury, abuse, child abuse, a reportable offense or neglect that appears to have been inflicted on the minor by other than accidental means or that is not explained by the available medical history as being accidental in nature or who reasonably believes there has been a denial or deprivation of necessary medical treatment or surgical care or nourishment with the intent to cause or allow the death of an infant who is protected under §36-2281 shall immediately report or cause reports to be made of this information to a peace officer or to child protective services in the department of economic security

A.R.S. § 13-3620(A) (Emphasis added.)

The people required to report include:

1. Any physician, physician’s assistant, optometrist, dentist, osteopath, chiropractor, podiatrist, behavior health professional, nurse, psychologist, counselor or social worker who develops the reasonable belief in the course of treating a patient.
2. Any peace officer, member of the clergy, priest or Christian Science practitioner.
3. The parent, stepparent or guardian of the minor.
4. School personnel or domestic violence victim advocate who develop the reasonable belief in the course of their employment.
5. Any other person who has responsibility for the care or treatment of the minor.

A.R.S. § 13-3620(A)(1)-(5).

¹ The original Reporting Statute was codified as A.R.S. § 13-843.01. It is currently found at A.R.S. § 13-3620.

If the report concerns a person who does not have care, custody or control of the child, the report is made to a peace officer only, not to child protective services. A.R.S. § 13-3620(A). The reports are to be “made immediately by telephone or in person and . . . be followed by a written report within 72 hours.” A.R.S. § 13-3620(D). A violation of the Reporting Statute is a class 1 misdemeanor or a class 6 felony, depending on the nature of the offense. A.R.S. § 13-3620(O).

Analysis

A. Under A.R.S. § 13-3620(A), Teachers Are Required to Report Suspected Abuse to a Peace Officer or Child Protective Services.

The best indication of the intent of a statute is its language. *State v. Givens*, 206 Ariz. 186, 188, 76 P.3d 457, 459 (2003). The Reporting Statute’s language explicitly mandates that a person subject to the statute who “reasonably believes” that abuse has occurred “*immediately report or cause reports to be made* of this information to a peace officer or to child protective services in the department of economic security.” A.R.S. § 13-3620(A) (emphasis added).

Based on this statutory language, a person satisfies his or her obligation by directly reporting the suspected abuse, or ensuring that a report is made to a peace officer or child protective services. Although reporting the suspected abuse to a principal or other supervisor may be advisable, this does not necessarily satisfy the statute. To comply with the statute, school personnel must ensure that the information is conveyed to the proper authorities (a peace officer or child protective services).

School personnel can ensure that the information is conveyed to the proper state investigating authority by either directly reporting the suspected abuse, or confirming that a report made to a supervisor, or principal or other person is immediately conveyed to a peace

officer or child protective services. Moreover, a school employee who receives a report of child abuse is also statutorily responsible for reporting the information to a peace officer or child protective services. This may result in multiple reports concerning the same incident, but that is neither prohibited nor discouraged by the statutory language. *See Commonwealth v. Allen*, 980 S.W.2d 278, 280 (Ky. 1998) (“it is not illogical or inefficient for the legislature to require every individual entrusted with the care and supervision of children to be required to report crimes against those children.”)²

B. School Volunteers Are Required to Report Suspected Abuse Under A.R.S. § 13-3620(A) if They Are Responsible for the Care or Treatment of Children.

The Reporting Statute does not specifically require school volunteers to report suspected abuse. The issue, therefore, is whether volunteers fall within the other categories of people required to report.

Arizona’s Reporting Statute requires “school personnel . . . who develop the reasonable belief in the course of their employment” that a child has been abused to report the suspected abuse. A.R.S. § 13-3620(4). This provision does not extend to volunteers. Although Title 15, A.R.S., uses the phrase “school personnel” to describe various groups of education personnel, *see* A.R.S. §§ 15-511, -730, -788, -1331, the term is never defined. Generally, these statutes do not contemplate volunteers as school employees or personnel. *Cf.* A.R.S. § 15-502 (“Employment of school district personnel; payment of wages of discharged employee”).

² In *Allen*, a teacher and school counselor were charged with misdemeanor offenses for failing to report suspected child abuse to the proper state authorities. Students had reported separately to the teacher and the school’s counselor that another teacher in the school had engaged in sexual activities with students. *Id.* at 279. Following the school district’s reporting procedures, both the teacher and the counselor repeated the allegations to the school’s principal, but failed to report the allegations to local law enforcement. The Kentucky Supreme Court rejected the arguments of the teacher and counselor that they had satisfied the reporting requirement by telling their supervisor of the suspected abuse. *Id.* at 279-80.

At least one Arizona statute, however, considers volunteers, in a specific circumstance, to be “personnel” for educational purposes. Section 15-512, A.R.S., requires certain “personnel who are not paid employees of the school district” to be fingerprinted. Although some volunteers are considered “personnel” for purposes of the fingerprinting requirement, there is no indication that the Legislature intended to include volunteers as school personnel for purposes of the Reporting Statute.

The Reporting Statute applies to “school personnel” who obtain information “in the course of their employment.” A.R.S. § 13-3620(A)(4). The terms “school personnel” and “in the course of their employment” indicate that this subsection of the Reporting Statute does not apply to volunteers.

The Reporting Statute also requires individuals “who [have] responsibility for the care or treatment of the minor” to report suspected abuse. A.R.S. § 13-3620(A)(5). The statute, however, does not define this phrase. In the context of A.R.S. § 13-3623,³ the child abuse statute, courts have noted that whether a person has assumed responsibility for a child’s care is a question of fact. *State v. Smith*, 188 Ariz. 263, 265, 935 P.2d 841, 843 (App. 1996). The word “care” in A.R.S. § 13-3623 “require[s] that the defendant accept responsibility for the child in some manner.” *State v. Jones*, 188 Ariz. 388, 394, 937 P.2d 310, 316 (1997). It also requires more than the general duty of care that is required to impose tort liability. *Id.* at 393, 937 P.2d at 315.

For example, in the context of A.R.S. § 13-3623, evidence that the defendant allowed two children to ride in his car was not sufficient to establish that he had assumed responsibility for the “care” of those children while they were in his car. *State v. Swanson*, 184 Ariz. 194, 196,

³ Section 13-3623 refers to a person who “having . . . care or custody of a child or vulnerable adult” engages in certain conduct.

908 P.2d 8, 10 (App. 1995). In contrast, where a child has been living in a defendant's residence for three months, and the defendant acted as the child's caregiver, the defendant had "care or custody" of the child for the purposes of A.R.S. § 13-3623. *State v. Jones*, 188 Ariz. at 394, 937 P.2d at 316.

School personnel, not volunteers, are generally responsible for the children's care at school. Nevertheless, whether a particular school volunteer has "responsibility for the care or treatment" of a minor is a fact-specific question and requires an analysis of the role of the particular volunteer. Therefore, some volunteers may be subject to the reporting obligation while others would not, depending on their roles at the school.

Your opinion request specifically mentioned volunteers who perform administrative tasks as opposed to helping students with their lessons or accompanying students on field trips. The volunteer who helps with administrative or clerical work is not subject to the Reporting Statute because that person is not responsible for the care or treatment of children. Similarly, although it is a closer question, the volunteer who helps in a classroom under a teacher's supervision is generally not responsible for the care or treatment of the children. In that situation, the teacher, rather than a volunteer who may assist the teacher, is responsible for the children's care. In contrast, on field trips volunteers may well be responsible for the care of children. In supervising children on a field trip, the volunteer may necessarily "accept responsibility for the child in some manner." *Id.* The role of the volunteer will determine whether he or she is subject to the reporting requirement.

Even if a particular school volunteer is not statutorily required to report, any person who reasonably believes that a child has been abused may, of course, report the suspected abuse. A.R.S. § 13-3620(F); *see also* A.R.S. § 13-3620(J) (immunity for reporting suspected abuse).

If a volunteer is subject to the Reporting Statute, the volunteer must “immediately report or cause reports to be made” to a peace officer or child protective services. For the same reasons that a teacher’s reporting responsibility is not necessarily satisfied by reporting the suspected abuse to the principal, a volunteer’s reporting responsibility is not necessarily satisfied by reporting the information to a teacher or other school employee. The volunteer must ensure that the report is made to the appropriate authorities.

Conclusion

To satisfy the Reporting Statute, teachers must immediately report suspected abuse to a peace officer or child protective services. Although informing a principal or other supervisor may be advisable, it does not necessarily satisfy the teacher’s duty to ensure that information regarding suspected abuse is reported to a peace officer or child protective services. School volunteers who are “responsible for the care or treatment” of children are also required to report suspected abuse.

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