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TO: Amphi Employee*

FROM: Michelle H. Tong, J.D.

DATE: July 1, 2021

SUBJECT: Mandatory Reporting of Crimes Against Children

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This memo will assist employees of the Amphitheater District to understand their legal responsibilities as a school personnel to mandatory report potential harms to children.

The State of Arizona has specific laws that mandate school personnel make an immediate report to law enforcement or DCS when they become aware of a potential harm to a minor. This memo contains important information about these laws.

Employees are strongly encouraged to read the entire memo to fully understand their responsibilities in this very important respect.

Summary of the Mandatory Report Law

1. Any school district staff member who has reasonable grounds to believe that a crime against a child (see discussion of the specified crimes below) has been committed must immediately report their suspicion to law enforcement or the Department of Child Safety (DCS).
2. The report must be made electronically (on the DCS website) or by calling 911.
3. “Reasonable suspicion” is a very low standard; you do not need “proof” of a crime for the reporting obligation to arise.

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4. If the person who allegedly committed the crime against a child is a person who holds a certificate (teaching or otherwise) from the Arizona Department of Education (AZDOE), a written report of the allegations must also be made to the AZDOE within 72 hours of making the report to law enforcement or DCS.
5. If in doubt, make a report. The District will provide legal defense for anyone accused of “false reporting” when a good faith effort to comply with the law is being made.
6. Employees do not need to consult a supervisor or anyone else before making the report. If you believe a mandatory report is appropriate, go ahead and make the report and then notify your supervisor **after** you have completed the report.

Important Information about the Mandatory Report Law

The “first law” (A.R.S. § 13-3620) requires school personnel who, through their employment, have reasonable grounds to believe that any of several crimes against children have occurred to immediately report (or cause to be reported) the matter to law enforcement or the Arizona Department of Child Safety (DCS, formerly Child Protective Services). The report must be made electronically or by telephone.

The “second law” (A.R.S. § 15-514) requires persons certificated by the Arizona Department of Education (ADE) and school board members to make a written report to the ADE if they reasonably suspect or receive a reasonable allegation that a certificated person has engaged in conduct that is subject to reporting under the first statute. This ADE report must be made as soon as practicable, but no later than three business days following the report made pursuant to the first statute.

Now that you know the general rules, let us consider some specifics using FAQ’s.

To whom do these laws apply?

All school personnel, not just teachers, counselors or administrators, have a duty under the first law (§ 13-3620) to report child abuse or the other crimes against a child which are listed in the statute. Under the second law (§ 15-514) only certificated persons and governing board members are required to report suspected conduct of certificated persons to the ADE.

How do I make a required report?

A required report can be made to either DCS **or** a police officer. The statute does not require both. Notably, however, if the report concerns a suspected perpetrator who does not have care and custody of the child involved, the statute directs that the report is to be made to law enforcement (**not** DCS).

Not sure which to call when you have a choice?

A report can often be conveniently made to a school’s resource officer, although because the law requires the report be made by telephone or electronically, any report made in person to the school resource officer should be followed by an email to satisfy the requirements of the law. In practice, however,

whenever a child's immediate safety or any emergency is at issue, it is best to contact "911". Response through the 911 system is typically fastest, which is exactly what you want where safety is paramount.

And remember: if you are a certificated employee and you have reasonable grounds to believe that a certificated person committed a listed crime against a child, you also have to contact the ADE, in writing, to advise them of your suspicions.

The DCS has an online reporting feature for **non-emergency reports**¹ which is available 24 hours per day at: <https://dcs.az.gov/services/suspect-abuse-report-it-now>. If you have never reported through the on-line system before, you will need to first register to obtain a reporting account. Directions for how to do the same are provided on the website and are easy and straightforward. All reports made via the online website will **require the person making the report (reporting source) to provide contact information**. A representative from the Child Abuse Hotline may contact the source for additional information, if necessary. This process will make it more convenient to meet the mandated reporting requirements and help ensure child safety.

Non-emergency concerns for the safety of a child due to abuse, neglect or abandonment, may also be reported, by calling 1-888-SOS-CHILD (1-888-767-2445) or TDD: 602-530-1831 (1-800-530-1831).

All emergency situations where a child faces an immediate risk of abuse or neglect that could result in serious harm must still be reported by calling 911 or 1-888-SOS-CHILD (1-888-767-2445). If a reporting source is unsure as to whether or not the report is an emergency situation, the reporting source should call the Child Abuse Hotline to make a report.

Pursuant to A.R.S. 13-3620, mandatory reports shall contain, if known:

- The names and addresses of the minor, the parents, or the person or persons having custody of such minor.
- The minor's age and the nature and extent of the minor's abuse, child abuse, or physical injuries or neglect, including any evidence of previous abuse, child abuse, physical injury or neglect.
- Any other information that such person believes might be helpful in establishing the cause of the abuse, child abuse, physical injury or neglect.

When do I need to make the report?

If there are reasonable grounds to believe a listed offense or act has occurred, you must make the report immediately. **This is a matter of minutes, not hours and certainly not days.** An easy error to make is to obtain information providing reasonable grounds on a late Friday afternoon and then wait until Monday to make the report, perhaps because more personnel or the student will then be available to meet with police. **If you know you need to call, do it right then.** Do not wait until Monday!

¹ Non-emergency reports are those in which a child is not at immediate risk of abuse or neglect that could result in serious harm.

Make notes of your conversation when you make the report verbally. Include the name and badge or identification number of the person to whom you made the report, the date and time of the report, a report or call number if available, a summary of the allegations you reported, and a summary of what the person receiving the report said to you in response. Such notes can be of great assistance should there be any question about your actions in the future, regardless of whether your memory remains fresh.

If the matter concerns a certificated person, you must also send a written report to ADE within 72 hours of making the verbal report to law enforcement or DCS.

Can I ask our school counselor, the principal or someone else to make the report for me?

The first statute expressly states that school personnel having reasonable grounds must make the report or cause the report to be made. The statute therefore allows for having someone make the call for you. The Arizona Attorney General has also affirmed this, but has indicated that you must ensure the report is made if you have someone make it for you. A violation of the statute will arise where the report is not immediately made either by you or by someone you cause to make the report. It may be difficult for you to ensure this is done unless you do so yourself.

What if several staff members have knowledge? Who reports?

Each school staff member has an *independent* duty to report. Assuming that someone else who knows about a situation will make the report runs the risk that they will also assume you or someone other than them is doing so. If several staff members are involved, it is recommended they make a joint report, using a speakerphone or conference call, and then jointly signing the follow up written report(s). At a minimum, the individual who reports should ensure that he or she indicates that he or she is making the report on behalf of other identified persons. Again, care should be taken to ensure the assignment of the reporting task to one person who does not delay the report.

Should I tell my administrator before I report?

If you believe a mandatory report is appropriate, make the report. Do not wait to tell your supervisor or another employee. The law requires that the mandatory report be made immediately.

Employees do not need permission from a supervisor to make a mandatory report. If you believe a mandatory report is needed, please make the mandatory report and then tell your supervisor **AFTER** you have completed the report.

Am I allowed to investigate a situation before making a report?

The first statute requires that you provide certain information when you make your report, if known:

- names and addresses of the minor and parents or custodian;
- minor's age;
- nature and extent of the abuse or neglect; and

- other information that might be helpful in establishing the cause of the abuse or neglect.

Providing this kind of information or even knowing whether to make a report naturally takes *some* degree of inquiry or investigation. Yet, controversies frequently arise as to whether school personnel “investigated too much”. Semantics and definitions can often be the issue here, because the requirements of the statute and the questions asked of staff by DCS or law enforcement personnel clearly necessitate that staff ask some questions of a child, witness, or others in order to be able to make a report. Such inquiry should be kept to a minimum, recognizing all that is required is “reasonable grounds”. I suggest trying to keep the inquiry to the following lines of inquiry:

1. What happened?/How were you hurt?
2. Who did it?
3. Where did it happen?
4. When did it happen?

What offenses or acts are we required to report?

This can be one of the most complicated aspects of the statutes to understand. It requires understanding of the names of specified offenses and sometimes specific legal meanings. Therefore, the specifics – and there are a lot of them – are provided below. Key words are in bold for your convenience, however.

The first statute requires that you report any of the following **if they appear to have been inflicted on a minor by other than accidental means or if they are not explained by the available medical history as being accidental in nature**:

1. “Physical injury” (non-accidental).

We often just think of child abuse in terms of it being injuries perpetrated by an adult against a child. But the plain language of the law requires the reporting of non-accidental physical injuries to a child, which are caused by anyone, including another child, such as where a fight occurred. An Attorney General’s opinion makes this clear. We typically would report non-accidental injuries caused by someone other than a parent or guardian to the police.

2. “Abuse”, meaning the infliction of or permitting of:

- a. **physical injury**, impairment of bodily function or disfigurement;
- b. **serious emotional damage**, evidenced by severe anxiety, depression, withdrawal or untoward aggressive behavior, and where such emotional damage is diagnosed by a medical doctor or psychologist and is caused by the acts or omissions of an individual having care, custody and control of a child;
- c. **sexual abuse**, meaning intentionally or knowingly engaging in sexual contact with any person fifteen or more years of age without consent of that person or with any person who is under fifteen years of age if the sexual contact involves only the female breast (“sexual contact” here means any direct or indirect touching, fondling or manipulating of any part of the genitals, anus or female breast by any part of the body or by any object or causing a person to engage in such contact);

- d. **sexual conduct with a minor**, meaning intentionally or knowingly engaging in sexual intercourse or oral sexual contact with any person who is under eighteen years of age;
- e. **sexual assault**, meaning intentionally or knowingly engaging in sexual intercourse or oral sexual contact with any person without consent of such person;
- f. **molestation of a child**, meaning intentionally or knowingly engaging in or causing a person to engage in sexual contact, except sexual contact with the female breast, with a child under fifteen years of age;
- g. **commercial sexual exploitation of a minor**, which is knowingly:
 - i. using, employing, persuading, enticing, inducing or coercing a minor to engage in or assist others to engage in exploitive exhibition or other sexual conduct for the purpose of producing any visual depiction or live act depicting such conduct.
 - ii. using, employing, persuading, enticing, **inducing or coercing a minor to expose** the genitals or anus or the areola or nipple of the female breast for financial or commercial gain;
 - iii. **permitting a minor** under one's custody or control to engage in or assist others **to engage in exploitive exhibition or other sexual conduct** for the purpose of producing any visual depiction or live act depicting such conduct; or
 - iv. **transporting** or financing the transportation of **any minor through or across Arizona with the intent** that the **minor engage in** prostitution, exploitive exhibition or other **sexual conduct** for the purpose of producing a visual depiction or live act depicting such conduct.
- h. **sexual exploitation of a minor**, meaning knowingly:
 - i. recording, filming, photographing, developing or duplicating any visual depiction in which a minor is engaged in exploitive exhibition or other sexual conduct; or
 - ii. distributing, transporting, exhibiting, receiving, selling, purchasing, electronically transmitting, possessing or exchanging any visual depiction in which a minor is engaged in exploitive exhibition or other sexual conduct.
- i. **incest**, specifically meaning fornication or adultery between parents and children, including grandparents and grandchildren of every degree, between brothers and sisters of the one-half as well as the whole blood, and between uncles and nieces, aunts and nephews and between first cousins; or
- j. **child prostitution**, by knowingly:
 - i. causing any minor to engage in prostitution;
 - ii. using any minor for purposes of prostitution;
 - iii. permitting a minor under such person's custody or control to engage in prostitution;
 - iv. receiving any benefit from or on account of procuring or placing a minor in any place or in the charge or custody of any person for the purpose of prostitution;
 - v. receiving any benefit pursuant to an agreement to participate in the proceeds of prostitution of a minor;
 - vi. financing, managing, supervising, controlling or owning, either alone or in association with others, prostitution activity involving a minor; or
 - vii. transporting or financing the transportation of any minor through or across this state with the intent that such minor engage in prostitution.

3. “**Child Abuse**”, which means causing a child to suffer physical injury or abuse or, when having the care or custody of a child, causing or permitting the person or health of the child to be injured or causing or permitting a child to be placed in a situation where the person or health of the child is endangered. This includes but is not limited to permitting a child to enter any structure or vehicle in which volatile, toxic or flammable chemicals are found or in which equipment is possessed by any person for the purpose of manufacturing a dangerous drug.
4. “**Reportable Offenses**”, a seemingly circular term, which includes:
 - a. any **drug crime in which a minor is a victim or participant** (too numerous and complex to completely list here, but found at A.R.S. § 13-3401, *et seq.*;
 - b. intentionally or knowingly transmitting or **sending a minor**, by means of electronic mail, personal messaging or any other direct internet **communication**, an item **that is harmful** to minors, when the person knows or believes at the time of the transmission that a minor will receive the item and with knowledge of the character of the item transmitted or sent;
 - c. knowingly photographing, videotaping, filming, digitally **recording**, or by any other means or device, secretly **viewing** or recording **a minor** without that person's consent under both of the following circumstances:
 - i. in a restroom, bathroom, locker room, bedroom or other location where the person has a reasonable expectation of privacy; and
 - ii. while the person is urinating, defecating, dressing, undressing, nude or involved in sexual intercourse or sexual contact,excluding the use of child monitoring devices by parents with their children in their residence, recordings for security purposes where notice of the same is clearly posted in the location, or recordings made by law enforcement officers which are otherwise lawful;
 - d. **incest**, as defined under 2(i) above; or
 - e. **child prostitution**.
5. “**Neglect**”, meaning inability or unwillingness of a parent, guardian or custodian of a child to provide that child with supervision, food, clothing, shelter or medical care if that inability or unwillingness causes substantial risk of harm to the child's health or welfare, except if the inability of a parent or guardian to provide services to meet the needs of a child with a disability or chronic illness is solely the result of the unavailability of reasonable services.
6. “**Denial or deprivation of necessary medical treatment or surgical care or nourishment** with the intent to cause or allow the death of an infant”. While parents may argue that they are entitled by law to reject medical services on constitutional, religious or other grounds, it has been ruled that such claims are without legal merit where a child's health is in imminent danger or is being damaged by the lack of appropriate medical care. Ariz. Atty. Gen. Op. No. I91-034.

How do I determine if I have reasonable grounds to report something?

There is not a great deal of authoritative guidance on what constitutes “reasonable grounds” so as to trigger the obligation to make a report. We do know, however, that it is a low standard to meet. The Arizona Court of Appeals has simply concluded that “reasonable grounds” means *any facts* from which one could *reasonably conclude* that a reportable crime has occurred. *L.A.R. v. Ludwig*, 170 Ariz. 24, 821 P.2d 291 (Ariz.

App. 1991). Not very helpful, right? Think of it in this way: if you are unsure, report it. We would rather err by making a report that turned out to be groundless than by failing to make a report that leads to further harm to a child.

What about consensual sexual behavior between kids?

You need not report (but may report) consensual sexual conduct between two or more minors who were all 14 to 17 at the time of the act. The exception to this rule is incest, which must always be reported. Conversely, if any of the students involved were younger than 14 or older than 17, a report must be made.

Can't I be sued if I report an allegation of abuse that turns out to have no merit?

School personnel making a report with reasonable grounds are immune from civil suit for doing so. And again, if such a suit is filed, liability insurance provided by the District will cover defense.

What if a student reports something to me in confidence?

A crime against a child cannot be held "in confidence", whether we learn of it from a victim or a perpetrator. Arizona law does not recognize any form of privilege or confidential relationship between school employees and students, including counselors and psychologists, which would apply here.

Are there any special obligations for supervisors or administrators?

These same mandatory report obligations applies to supervisors and administrators when they develop a reasonable belief in the course of their employment that a minor child is the subject of one of the reportable offenses listed above. See A.R.S. § 13-3620(A)(6). That reasonable belief can occur through information provided either ***directly*** to the supervisor by the minor child or ***indirectly*** through information provided by another employee. In other words, if an employee tells a supervisor something that would warrant a mandatory report, and the supervisor knows that the employee has not yet made a mandatory report, then the supervisor is obligated to make the mandatory report immediately on behalf of the supervisor and the employee.

However, this should not be unexpected since that same rule applies to every school employee. In other words, if an employee tells another employee that a minor child is the subject of one of the offenses listed above and no mandatory report has been made yet, then *both* employees have an obligation to make the mandatory report

Since supervisors and administrators are specifically mentioned in the statute, it is advised that they be proactive about confirming that a mandatory report has been made as soon as they become aware that an employee wants to notify them about a potential harm to a minor child. The only time that a supervisor or administrator with knowledge of a reportable offense does not have to take immediate action to report is when the supervisor/administrator "reasonably believes that the report has been made by a person who is required to report."

Conclusion

It is very clear that school personnel generally act with the best intentions in matters concerning crimes against children. Publicity about anecdotal situations that might suggest to the contrary has typically involved an honest misunderstanding of the law by the school personnel involved. Thus, understanding these laws protects both students and you.

Please retain this memorandum as guidance, but do not hesitate to contact the Legal Department for advice when necessary. Remember, however, that if you already feel that you have reasonable grounds to believe a listed crime has occurred, do not even delay your mandatory report by calling me. Simply contact DCS or law enforcement to make your report, and feel free to contact me afterward.

SOME LEGAL ADVICE FOR EMPLOYEES: Even if they suspect you may have violated the laws on reporting (by failing to make a timely report, for example), law enforcement personnel do not have to advise you of your rights (a.k.a. Miranda warnings) until they have arrested you for a crime. Thus, always consider whether statements you might make to law enforcement personnel might incriminate you.

Consciously decide whether you want to speak to a lawyer prior to being interviewed by the police. Do not feel embarrassed or intimidated about requesting to speak to an attorney prior to being interviewed by law enforcement personnel. It is your right to consult with legal counsel and does not imply guilt. You may certainly contact my office for assistance.

Let me also emphasize this earlier point: when you make a verbal report, make a record of that report. Immediately write a dated and time-referenced memo (an e-mail to yourself and your supervisor is a good way to create dated verification) which describes the circumstances of your report. Always send a copy of your memo to your site administrator. Documenting to your file can be crucial, not just to protect yourself, but also because the memories can change (degrade) over time. Include the name and badge or identification number of the person to whom you made the verbal report, the date and time of the report, a report or call number if available, a summary of the allegations you reported, and a summary of what the person receiving the report said to you in response.