



Excessive Force & SRO Liability

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The notion of physicality is neither assumed nor desired as an essential part of school safety policy. Indeed, an increasing number of school districts prefer that faculty and staff refrain from touching students at all when an intervention is necessary. The most desirable policy involves directives to students as the primary method of resolving incidents on campus. However, a spate of court decisions are beginning to tell the story of a growing trend of educators relying on the school resource officer to be the “go to” response when an intervention is necessary. While delegations of this sort fall within the core competency of the tasks of the SRO, police academy training on use of force for street enforcement may not always translate into a workable approach on campuses. These court decisions on use of force in public schools provide great insight on the evolving standard on the range of physicality that is acceptable by a school resource officer. The line between reasonable use of force and unlawful physicality is becoming clearer. Two 2014 court cases highlight the emerging line and suggest best practices.

Hawker v. Sandy City Schools
___ Fed.Appx. ___, 2014 WL 6844928 (10th Cir. 2014)
December 5, 2014

The Hawker case involves an allegation against the Sandy City, Utah school system for excessive force in arresting a student for stealing school property. The student, a nine-year-old boy, stole an iPad from an elementary school. The principal caught the student with the device and attempted to reclaim it. The student began to resist the administrator. The struggle would escalate to involve three staff members. These educators were only able to restrain the child when one held the boy's body while the other two held his legs.

When the student's grandparents and guardians arrived, the boy calmed down and sat upon the floor in the school hallway. The principal, school psychologist, and a grandparent sat on the floor across from the student. When the school resource officer arrived, the principal told him that she wanted to file theft charges against the boy. The officer, also female, found the boy to be uncooperative and uncommunicative. She grabbed the boy, pulling him up off the floor. The student grabbed the officer's arm. The officer put the student in a twist-lock, pushed him

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against the wall, handcuffed him, took him to the principal's office and issued a citation for theft. The following day, the boy was taken to the doctor and treated for an injury to his collarbone, anxiety and post-traumatic stress.

Curran v. Aleshire
Eastern District Louisiana 2014
December 15, 2014

The Curran case comes out of the Tammany Parish, Louisiana School Board. There a high school student attempted to use her cell phone while on school grounds. This violated the school code of conduct. A teacher, observing this behav-

ior and seeking to enforce the rule, approached the student to confiscate her cellphone. After the student refused to comply, the teacher requested assistance from the school resource officer. The student assaulted the officer (an act for which she was convicted in state court). In response, the officer grabbed the student, slammed her against a wall, forced her arms behind her back and handcuffed her. While walking the student to the assistant principal's office, the school resource officer once again shoved the student against a wall of lockers. As the practical matter, the excessive force claim centered on the second act by the SRO; the first response was largely immunized from liability by the state court assault conviction. (See *Heck v. Humphrey*, 512 U.S. 477 (1994). Under the “Heck Doctrine, a damages lawsuit is not allowed if it would undermine the validity of the state court criminal conviction).

Excessive Force Liability: The Basics

The rules on excessive force have been consistently applied across a long line of cases brought against police officers. While the facts in the cases are often disputed between the parties, the law is clearly established.

- A citizen whose injuries occur while being arrested is protected under the 4th Amendment's search and seizure standard. The standard requires that the police officer's use of force be “objectively reasonable.”

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■ A citizen who is being detained for trial is protected under the 14th Amendment's right to substantive due process. The standard requires the government official's use of force not be "conscience-shocking."

■ An incarcerated convict is protected under the 8th Amendment's cruel and unusual punishment clause. The standard requires the government official's use of force avoid being "malicious and sadistic with the very purpose of causing harm."

The typical school excessive force claim arises out of the 4th Amendment. The student will prevail if the facts show that the school resource officer intentionally, rather than negligently, used excessive force for the purpose of causing harm. See, *Graham v. Connor*, 490 U.S. 386 (1989). The injuries to the student need not be severe; almost any injury will establish the claim. If the school resource officer's use of force is reasonable then there is no violation of the 4th Amendment.

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not the school resource officer acted reasonably, not whether he/she had less intrusive alternatives available. See *Schulz v. Long*, 44 F.3d 643, 649 (8th Cir. 2005). The most important factors will often be the following:

- 1 The nature of the injury suffered;
- 2 The need for the application of force in light of the behavior of the student;
- 3 The threat reasonably perceived by the school resource officer; and
- 4 Efforts made, if any, by the school resource officer to lessen the severity of a forceful response.

The Lessons Learned from the Cases

In *Hawker v. Sandy City Schools*, both the district court and the appellate court found that the officer's use of the twist-lock did not constitute excessive force in violation of the Fourth Amendment. The court held that despite the fact that the incident involved a young child and a minor offense (class B misdemeanor theft) the twist-lock use of force was reasonable. The most important fact for this result was the threat created by the student and reasonably perceived by the school resource officer -- the physicality of the student toward the officer just prior to the application of the twist-lock. The court held that the act of grabbing the officer's arm could reasonably be viewed as resisting the intervention and escalating the incident. The court made it clear that the result would have been different if the officer made use of the twist-lock immediately upon confronting the student. Nevertheless, the court offers several ways in which school resource officers can avoid liability when physicality is necessary.

- 1 As the age of the student decreases the amount of force used should be reduced accordingly.
- 2 When the offense involves only a school code of conduct violation or a petty misdemeanor the amount of force should be reduced accordingly.
- 3 Increased use of force is justified when the conduct of the student escalates a tense situation. The response of the officer is then seen as a reasonable attempt to deescalate the situation, protecting the safety of others as well as the safety of the officer.



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 USE OF FORCE SIMULATOR

In *Curran v. Aleshire*, the U.S. District Court in Louisiana ruled that the SRO used excessive force in violation of the 4th Amendment. As to the use of force by the SRO while escorting the student to the principal's office, the court notes that "there is no evidence ... that [the student] was attempting to flee, evade arrest by flight, or resist arrest." The court went on to note the following:

"While walking [the student] to the principal's office, [the SRO] also 'slammed' her against a locker or hallway wall at one point as well, contributing to the bruising and psychological injuries. ... the Court finds [the student] posed a minimal threat to [the SRO] or to others. ... [I]t is a clearly established right that an individual has the right to be free from the use of excessive force during a detainment. ... and thus [the SRO] should have known, that when one is not resisting arrest, attempting to escape, or otherwise posing a threat at the time of the alleged use of force, 'slamming' one into walls and thereby causing injuries constitutes an excessive use of force."

The Lessons Learned from the Cases

The issues surrounding the effective use of force in public schools are dynamic. The Office of Community Oriented Policing Services of the U.S. Department of Justice has issued a report on "Emerging Use of Force Issues: Balancing Public and Officer Safety." It compiles a set of best practices and suggested policies for departments that desire to remain proactive and transparent on use of force issues. The Report is available at: www.theiacp.org/portals/0/pdfs/emerginguseofforceissues041612.pdf.

Of particular interest to school resource officers and educators are the recommendations designed to improve the coordination of all aspects of use of force policy. These recommendations have been revised to focus on collaboration between school officials and police in the campus context:

- Hold regular briefings at both the administrative and officer level to fully understand how to think about force issues involving students, including students' perceptions about

the use of force, as well as the officer's perceptions about student use of force against the SRO. These discussions will have a direct impact on the expectations of all personnel on a day-to-day basis.

- Conduct a regular review of use of force incidents to ensure transparency and consistency of officer performance reviews and public comment, if any, that become necessary after incidents that generate the public interest. Revise and enhance all policies as needed after each incident. Make sure all use of force training reinforces any lessons learned from these reviews.
- The best insurance against liability are leaders in both the police department and school district who are aware of the use of force culture on the school campuses and who frequently encourage all officers and educators to use the full range of resources when intervening in a campus incident prior to and as a substitute for physicality.



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