FINE-TUNING THE EDUCATOR/SRO

Most court decisions on school safety and student rights now clearly favor educators. School officials currently enjoy an extraordinary degree of goodwill from courts and judges on the issue of safe schools. Indeed, safe schools policies are presumed to represent a good-faith attempt by educators to maintain safety and discipline. Supreme Court decisions going as far back as New Jersey v. TLO, (469 U.S. 325 (1985)), explain the reasoning behind this presumption as well as the judicial deference to educators that it produces.

Maintaining order in the classroom has never been easy, but in recent years, school disorder has often taken particularly ugly forms: drug use and violent crime in the schools have become major social problems. Even in schools that have been spared the most severe disciplinary problems, the preservation of order and a proper educational environment requires close supervision of schoolchildren, as well as the enforcement of rules against conduct that would be perfectly permissible if undertaken by an adult. Events calling for discipline are frequent occurrences and sometimes require immediate, effective action. Accordingly, we have recognized that maintaining security and order in the schools requires a certain degree of flexibility in school disciplinary procedures, and we have respected the value of preserving the formality of the student-teacher relationship. 469 U.S. 339-340.

What is not yet clear is how the trend toward greater collaboration with law enforcement will affect future case decisions. Does the presence of the SRO on campus change the legal analysis? The first wave of educator/SRO cases suggest that courts will continue to resolve doubts in favor of educators when it is clear that the SRO is primarily assisting school officials in maintaining a safe and proper educational environment in response to school-related incidents. This deference will be lost when the focus of the team shifts toward law enforcement activities unrelated to school safety.

Student rights will become more important and the collaboration itself called into question as to who is leading and who is following.

The interrogation cases provide an excellent context for fine-tuning these aspects of the educator/SRO relationship. Test your "Interrogation IQ" on the following scenarios:

1. A middle school principal discovers drugs on Student A. When questioning the student the principal does not advise Student A of his Miranda rights. Student A confesses and names Student B as the seller. The principal brings Student B into the office and questions him. The principal does not advise Student B of her Miranda rights. Student B admits selling the drugs. The police are called to arrest both students. Should the incriminating statements of either student be suppressed?

2. A plainclothes police officer comes onto campus to question a 13-year-old student about a rape that occurred in the community. The student brought to the principal's office. The officer shows the student his badge and asked if he could talk with him. The officer told the child he was not under arrest, could leave if he wanted to and did not have to answer questions. Miranda warnings are not given. The child agrees to talk. Should the court suppress any incriminating statements made to the police officer?

3. A student is asked to come to the principal's office. She is told by the principal that she has been implicated in a home burglary in the community. An armed, uniformed police officer questions her in the presence of the school principal. No Miranda warnings are given and the student is not told that she has the right to leave. The next day at school the officer questions her again. Should any incriminating statements made by the student be suppressed?

4. A student's backpack is found on campus with a gun inside. The student who owns the backpack is brought to the principal's office where the principal and a SRO question him. Neither the SRO nor the principal give Miranda warnings. The principal tells the student that he will ask a few questions that they allow the SRO to conduct a taped interview, adding, "You have no choice but to answer our questions." Should Miranda warnings have been given to the student?

5. Local police receive an anonymous tip about a student with a gun on campus. An officer goes to the school to tell the principal. The principal says that he will investigate the tip. The officer then leaves the campus. The principal removes the student from class and questions him. Miranda warnings are not given. The principal asks the student if he has a gun in school. The student admits that he does and says that it is in the pocket of his jacket, which is located in the locker of another student. After retrieving the gun, the police are called to arrest both students. Should Miranda warnings have been given before the questioning?

The rules of interrogation are called "Miranda warnings" in reference to the seminal case of Miranda v. Arizona where the "right to remain silent..." warnings were first required. See Miranda v. Arizona, 384 U.S. 436 (1966). The Miranda warnings are a part of the jurisprudence of the Fifth Amendment; "No person... shall be compelled in any criminal case to be a witness against himself." The rules apply to both juveniles and adults alike; a Miranda warning is required whenever a police officer conducts a custodial interrogation of a person, including a student on campus. When there is uncertainty over whether or not a person is "in custody," courts typically use a reasonableness test measured from the point of view of the person being interrogated. Thus, when Miranda warnings must be given when a person reasonably believes his freedom to leave has been curtailed. It is irrelevant whether the police have probable cause to arrest the person, or whether the
RELATIONSHIP

Part 1: Lessons Learned From The Interrogation Cases

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police officer subjectively believes that the person is not in custody.

Educators enjoy a general exemption from the Miranda warnings. Courts are reluctant to view school officials as government officials falling within the requirements of Miranda based on the reasoning quoted above from Tinker. In addition, educators act in loco parentis in their relationship with students, effectively becoming both guardians and tutors on campus. Students have neither a right to remain silent nor the option to refuse to cooperate with an educator. Such behavior is inappropriate, punishable under the codes of conduct as insubordination.

Therefore, it should come as no surprise that courts expect school officials to act as guardians when it comes to on-campus interrogations by police officers. This duty effectively changes the usual cooperative nature of the educator/SRO relationship. If not in custody, then educators must ensure that the student understands that he is not under arrest, can leave if he wants to, and does not have to answer questions from the SRO. This is essential when SROs are working to investigate incidents unrelated to campus safety and discipline. It is also required when the SRO seeks to question a student while assisting school officials in maintaining a safe and proper educational environment in response to school-related incidents. This is not a routine task for the educator. Courts are wary that students who are younger and who also have no prior experience with questioning by police or school officials may reasonably believe that they are in custody and thus more likely to make incriminating statements. Therefore, educators should make sure that students fully understand what it is they are being asked to do. When incidents are school-related, the best practice is for educators to conduct the questioning; no warnings of any kind are required.

In the I.Q. test, the answer is "No" to fact patterns One, Two, and Five, Miranda warnings are not required. The answer is "Yes" to scenarios Three and Four; Miranda warnings are required. Question One involves an educator conducting the questioning and Miranda does not apply. See State v. C.G., 2000 Wash. App. LEXIS 1304 (Wash. Ct. App. July 21, 2000).

Question Two describes questioning by a law enforcement official, but Miranda does not apply because precautions were taken to eliminate any impression that the student was in custody. See In re Loredo, 125 Ore. App. 390, 865 P.2d 1312 (1993). Questions Three and Four both involve a failure to inform the juvenile that he was free to leave and that he was not under arrest. See In re Killitz, 59 Ore. App. 720, 651 P.2d 1382 (1982) and In re Welfare of G.S.P., 610 N.W.2d 651 (2000). Question Five is an illustration of the collaborative best practice between educators and law enforcement. The principal is not an agent of law enforcement subject to Miranda. The need to question students to determine whether rules have been violated or crimes committed do not turn an educator’s questioning into a custodial interrogation. See In re D.E.M., 1999 PA Super 59, 727 A.2d 570 (Pa. Super. Ct. 1999).