SROS & CAMPUS CODES of CONDUCT
A Message on Safe Schools from the Courts

By Bernard James, Professor of Constitutional Law, Pepperdine University
he legality of the presence of the school resource officer (SRO) on campus is, by now, firmly established. Court decisions and state statutes make the SRO an essential element in maintaining a safe, effective campus. Clearly, the SRO exists to protect and serve the educational community by enforcing state, federal and local laws. In this role, the SRO protects both the education mission as well as the interest of the juvenile justice system in identifying and responding to the needs of delinquent children and at-risk youth.

In what other capacities can the SRO serve as a resource for school officials? Does the law require that the SRO act only for purposes of law enforcement? Or, may the SRO go beyond law enforcement and assist school officials with other administrative rules that govern student conduct?

This topic is now a timely one. Many SROs now enforce educational codes of conduct as a natural result of becoming more comfortable with administrators, students and campus life. Other SROs refuse to handle disciplinary problems on campus because of uncertainty over the law and because their commanders will not allow it.

Test your "Code of Conduct IQ" on the following scenarios:

1. A high school principal receives reports from three students of the theft of clothing, wallets, a purse and money from their lockers. Theft is an expellable offense under the code of conduct. The principal asked the SRO to help her investigate the thefts. Suspicion fell on four students who were seen around the lockers. Together, the principal and the SRO search one of the students, who was found possessing contraband from the theft. Does the law allow the educator to use the SRO in this manner?
   
   Y  N

2. A school staff member at a high school notifies the principal that he observed a student smoking in a car in the school parking lot. Smoking on campus is a violation of the code of conduct. The principal went to the parking lot, encountered the student and took him to come to the administrative office. The principal asked a police officer assigned to the high school to search the student. Marijuana was found on the student. Can the educator use the SRO in this way?
   
   Y  N

3. An SRO walking the campus observes a student standing alone in the hallway displaying a red bandanna from the back pocket of his pants. Possession of a bandanna on campus is a violation of school rules because colored bandannas commonly indicate gang affiliation. The SRO approaches the student and asks him to remove the bandanna. The SRO decides to take the student to the principal's office for the violation. Before doing so, the officer conducted a patsearch for weapons. The SRO discovered a knife. Does the law allow the SRO to do this?
   
   Y  N

4. An SRO encounters a student walking the halls of the school during a class period. The juvenile did not have the required identification card or a hall pass to be out of class. The SRO intercepted the student and took him to the office for this violation of the campus code of conduct. The SRO has been asked to search students found wandering the halls and bring them to the Principal's office. Does the law allow the SRO to do this?
   
   Y  N

5. An SRO brought a student to the dean's office because he couldn't produce his school program card upon entering the building. He was also wearing clothing that indicated a gang affiliation. Both are violations of the school code of conduct. School policy requires the SRO to conduct a search and then take the student to the Principal's office. The SRO conducted a pat down, and felt a hard bulge in the student’s jacket pocket. The officer then reached into the pocket and pulled out a gun. Does the law allow the educator to use the SRO in this manner?
   
   Y  N

The 'easy' cases involving use of the SRO in enforcing the code of conduct have always been fact patterns in which the misconduct is both a violation of the law as well as school rules. As to these cases, the actions of the SRO make the school discipline possible although law enforcement officials usually ignore the reality that the school also disciplines the student for violating school rules. The hard cases involve enforcement of the code of conduct independent of any violation of the law.

The starting point for understanding the legality on the use of SROs in enforcing codes of conduct is the broad authority of school officials to keep campuses safe. The public school campus is a unique place, "in which serious and dangerous wrongdoing is intolerable. The state, having compelled students to attend school and thus associate with the criminal few—or perhaps merely the immature and unwise few—not infrequently, and thereby owing those students a safe and secure environment."* 4 W. LaFave, Search & Seizure § 10.11(a), at 802-06 (3d ed. 1996). This mandate is of a constitutional dimension. In New Jersey v. TLO, (469 U.S. 325 (1985)) the Court ruled that because of this responsibility

[A] search of a student by a teacher or other school official will be "justified at its inception" when there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school. TLO, 469 U.S. at 341-42 (emphasis added).

More recently, in Board of Educ. v. Earls, (536 U.S. 822 (2002)), the Court ruled that [The interest to keep children safe] is sufficiently compelling to justify the intrusion on privacy entailed by conducting such searches without any measure of individualized suspicion. Earls, 536 U.S. at 829 (emphasis added).

The main reason the United States Supreme Court in TLO and Earls lowered the fourth amendment standard applicable to searches of students at school was to protect and maintain a proper educational environment for all students. This goal is equally important when criminal laws are enforced (TLO) as well as administrative regulations (Earls).

Following the lead of the Supreme Court, lower courts ignore the distinction between criminal law and codes of conduct and instead focus on whether “school officials” are furthering legitimate educational interests when regulating student activity. The SRO has been
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District of Columbia law provide that, “[t]he [SRO] curriculum shall include training in... District of Columbia laws and regulations, including Board of Education regulations; and... constitutional standards for searches and seizures conducted by school security personnel on school grounds.” D.C. Code § 5-132.04 (2008).

The message from the courts to policymakers on this matter is both encouraging and challenging. The Courts have decided not to micromanage this aspect of the SRO-Educator relationship. Instead, the courts have left it up to educators and law enforcement officials to work out the details of the collaboration in a way that maximizes school safety. Both sides should take care to respect and protect this unique relationship by giving constant attention to the following:

- **The Interagency agreement:** This is an essential working agreement and partnership guide. It provides structure to, and contact persons for, the activities of the SRO and gives both agencies an opportunity to find comfort in the partnership in the language of the document. Its contents should identify the key players, define tasks and fix responsibilities for the safe school plan.

- **The Incident History of the Campus:** The message from the courts is quite clear on the importance of this factor. When school officials and SROs use the incident history of a campus to prioritize the work of the SRO with...
With respect to the code of conduct, the SRO is seen as a part of a team focused on assisting the educators in maintaining a safe and effective learning environment.

The Training Factor: School officials need to understand that SROs remain peace officers to whom ordinary legal standards apply when enforcing criminal laws on campus. SROs need to understand that different rules apply when assisting educators, particularly with non-criminal code of conduct violations. When properly trained, the SRO and educator will quickly adjust to the challenge that the SRO is, in fact, wearing two hats (at a minimum) on campus and in doing so must recognize WHEN TO LEAD (performing the essential “routine” function) and WHEN TO FOLLOW (performing a supportive role).

The answers to the questions in the I.Q. test are all “yes”.

Questions 1 and 2 involve the comparatively easy teamwork involved when the student misconduct is both a violation of the law and the code of conduct. See Cason v. Cook, 810 F.2d 188 (8th Cir. Iowa 1987), cert. den., 482 U.S. 930 (1987) and Russell v. State, 74 S.W.3d 887 (Tex. App. Waco 2002).

Questions 3, 4 and 5 each involve enforcement of the code of conduct that, like TLO, evolve into discovery of a crime. In such cases, the violation of the school rule justifies the actions of the SRO. “When SROs are acting to further school-related safety ends, the reasonable suspicion they acquire can be used to determine whether a search or other action is necessary to ‘turn up evidence that [a student] had violated or was violating either the law or the rules of the school.’” Russell v. State, 74 S.W.3d 887, 892-893 (Tex. App. Waco 2002). See In re William V., 4 Cal. Rptr. 3d 695 (2003), cert. den., 541 U.S. 1051 (2004) and D.L. v. State, 877 N.E.2d 500 (Ind. Ct. App. 2007) and People v. Butler, 188 Misc. 2d 48, 725 N.Y.S.2d 534, 2001 N.Y. Misc. LEXIS 129 (N.Y. Sup. Ct. 2001).

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This update summarizes the presentation made by Prof. James at the 18th Annual NASRO School Safety Conference in Phoenix, Arizona on July 31, 2008.

Bernard James is Professor of Constitutional Law at Pepperdine University. Professor James is a nationally recognized expert on civil rights and education reform.