School Safety
Legal reform in school safety is being driven by a combination of political advocacy, state and federal legislation as well as the decisions of the courts. The numerous court rulings handed down from year-to-year tend to suffer from lack of exposure until a high court ruling is handed down. However, these more frequent lower court opinions decide local disputes over school policies and are worthy of greater scrutiny. When one links together the lower court rulings with the high court decisions very often a clearer picture emerges about the course of reform in school safety.

It is important to remember that all courts rarely rule against educators in local policy disputes. The standard approach is to defer because; "[j]udicial interposition in the operation of the public school system of the Nation raises problems requiring care and restraint ... [b]y and large, public education in our Nation is committed to the control of state and local authorities." Epperson v. Arkansas, 393 U.S. 97, 104 (1968). This judicial deference has become so engrained among all courts that it is generally held 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 informality of the student-teacher relationship." New Jersey v. T.L.O, 469 U.S. 325, 340 (1985).

However, recently, judges are reconsidering this posture of deference in order to provide guidance and structure on the legal reform quickly taking place in education, particularly in the area of student rights. In the year 2013, courts handed down a spate of cases that reflect a more active curiosity about the rule of law, student rights, and school safety. The 2013 cases resolve important issues of law that will influence school officials going forward on important questions of student rights, the role of school resource officers and the liability of educators. Three cases arising out of California, Georgia, and Kentucky illustrate this trend of greater judicial supervision in school safety law reform.
The issue of student interrogations has become the center of much judicial concern about the roles of educators and law enforcement when students are questioned about matters that lead to either school discipline or juvenile justice adjudication.

Liability and the Immunity: Cuff v. Grossmont Union High School District

In Cuff v. Grossmont Union High School District [221 Cal.App.4th 582 164 Cal.Rptr.3d 487], educators filed a child abuse report based on observations of the middle school and high school children of Ms. Cuff. A high school counselor is deemed under California law a "mandated reporter" which means that filing reports of suspected child abuse or neglect is mandatory. The Grossmont counselor filed a report to Child Welfare Services who requested that the children be taken into protective custody. The SRO assigned to the school refused to take the children into custody and asked that another local agency pick up the students. Instead, the counselor released the students to their father. The parents had previously been divorced and sole custody was given to the mother. The father was given a copy of the child abuse report when he came to pick up the children. He used the report as the basis for going back to court seeking sole custody of the children and a protective order against the mother. Because California’s Child Abuse and Neglect Reporting Act (Pen. Code, § 11164 et seq.) requires that all reports be confidential the mother then filed a lawsuit against the school district. The case presented the question of whether sovereign immunity protects educators who violate confidentiality law. The trial court ruled that the school district and its employees were immune. On appeal, the judges ruled that immunity did not apply to shield the school or the educator from liability.

The appellate court ruling is a reminder of the thin line that separates school officials from liability. In California — as in all states — government officials are not subject to common law tort liability. Rather, any liability must be pursuant to a statutory formula. Under the law of California, a public official can be liable for their acts in two ways: (1) for breach of a mandatory statutory duty or (2) for the negligent acts. California law does provide an exception to liability for injuries that result from “the exercise of the discretion vested in [an official], whether or not such discretion be abused.” [California Government Code, section 820.2).

The court of appeal ruled that while the school counselor was a mandated reporter, the command to report was limited to state agencies with a common interest in child welfare: law enforcement, probation departments and social services. Immunity protected the school official only for reports to these agencies. The court ruled that state law does not immunize an educator when the child abuse disclosure goes beyond the limited scope. Finally, the court rejected the “discretionary act” defense; the command to report child welfare suspicions was a ministerial duty and not a discretionary task of making policy. In other words, school officials do not have discretion to disclose confidential child abuse reports to anyone beyond those identified in the disclosure statute. Liability fell on the school district as well under the doctrine of vicarious liability.

Juvenile Justice Collaboration: Fulton County Board of Education v. D.R. H.

The Georgia court in DRH [2013 WL 6085242 (2013)], speaks with great clarity of the autonomy of the juvenile justice system and the independence of school officials when involved in collaborative efforts to keep students safe. Such collaboration is unavoidable when it arises out of the discipline of a student whose conduct violates both the school rules and state law. The rationale of the case is a welcome reminder of the authority and the roles of each agency of the safe schools team at time when collaboration is subject to criticism by those who do not understand school safety law.

DRH was expelled from school for violating the rules of the school and then directing physical violence, obscene language and disrespectful behavior at school employees. The misconduct occurred on campus when DRH was found in the hallways during class. The student was arrested by school resource officers...
and placed in the local youth detention center for four days. Later DRH was expelled from school. However, under the Georgia Education Code, school discipline must include a disciplinary hearing, held no later than ten school days after the beginning of the suspension. [Georgia OCGA § 20-2-753]. The lower court ordered school board to vacate the expulsion of DRH because the hearing took place after ten days.

The issue in the case was whether the decisions made by the juvenile justice system to arrest and detain DRH in a youth detention center were attributable to the school for purposes of the 10-day hearing requirement. The school officials maintained that DRH was never suspended from school. The educators argued that DRH was not suspended for the incident and that he was eligible to return to school after he was released from his incarceration. Despite this, the lower court held that a suspension did occur when the decision to detain DRH was implemented such that the school officials violated DRH’s rights when the disciplinary hearing was held more than 10 school days after his suspension began. Under this rationale, a suspension would be deemed to automatically occur whenever educators initiate contact with the juvenile justice system that results in the removal and detention of the student.

The appellate court reversed the lower court, ruling that DRH’s detention at a youth detention center did not constitute a suspension by school officials triggering the 10-day hearing rule. The school officials, opined the appellate court, did nothing more than exercise their discretion under the law to report alleged criminal misconduct. The juvenile justice system is a distinct entity as is the school board. The court ruled that the authority of each entity to act is governed by statute, and is independent of the other. Therefore, in the absence of evidence that school officials were involved in the decision to admit DRH into the youth detention center, such a decision was made by juvenile justice system officials, and any resulting absence from school was not attributable to school officials.

“Neither the superior court nor D.R.H. cited authority that supports the position that when school employees initiate contact with officials authorized to determine the placement of a child alleged to have committed a delinquent act, and the child misses educational time, a suspension from school occurs. … Under the statutes providing for the discipline of students in elementary and secondary education school administration may, when any alleged criminal action by a student occurs, report the incident to the appropriate law enforcement agency or officer for investigation to determine if criminal charges or delinquent proceedings should be initiated. … We found no authority permitting local boards of education or school officials to interfere with decisions made by juvenile justice officials as to the placement of a child alleged to have committed a delinquent act.” 2013 WL 6085242 at pages 6-7.

**Student Interrogation:  N.C. v. Commonwealth**

The issue of student interrogations has become the center of much judicial concern about the roles of educators and law enforcement when students are questioned about matters that lead to either school discipline or juvenile justice adjudication. The core of this concern arise from the well-settled law that the jurisprudence of the Fifth Amendment; (“No person… shall be compelled in any criminal case to be a witness against himself”) does not apply to school officials. See, In re D.E.M., 727 A.2d 570 (Pa. 1999), State v. C.G., 2000 Wash.App. LEXIS 1304 (Wash. Ct. App. 2000). However, the law has always been intended to apply to police of all kinds when they conduct student interrogations. See, In re K.D.L., 700 S.E.2d 766 (N.C. Ct.App. 2010), In re C.E., 2011 WL 2581921 (Cal. Ct.App. 2011), Kalmakoff v. State, 2011 WL 3241860 (Alaska 2011), In re Welfare of G.S.P., 610 N.W.2d 651 (Minn. Ct.App. 2000), In re I.J., 906 A.2d 249, 263-64 (D.C.App. 2006), In re D.A.R., 73 S.W.3d 505, 512 (Tex.App. 2002).
In N.C. [396 S.W.3d 852; 2013 Ky. LEXIS 95; 2013 WL 1776928], the Supreme Court of Kentucky was understandably suspicious when a 16 year-old student was not given Miranda warnings before being questioned by an assistant principal and a law enforcement officer at school. A teacher at Nelson County High School found an empty prescription pill bottle for hydrocodone with N.C.’s name on it on the floor in the boy’s bathroom. N.C. was taken into the office by the assistant principal and the SRO, and the door was closed. The assistant principal first questioned the student. Then the law enforcement officer spoke to N.C. This type of joint interrogation was a routine for the educator and SRO. N.C. was charged with possessing and dispensing a controlled substance, a Class D felony in Kentucky.

The Court ruled that although questioning by school officials is relevant and necessary to student discipline and safety, and are ordinarily beyond Miranda when a school official is working with and SRO on a case involving a criminal offense, the failure to give Miranda warnings is a violation of Kentucky law and the Fifth Amendment of the U.S. Constitution. Two facts controlled the rationale of the Supreme Court of Kentucky. First, N.C. was in custody, seated in the assistant principal’s office with the door shut and the SRO sitting down right beside him across from the assistant principal. At no time was N.C. told he was free to leave. This holding of the Kentucky court is consistent with rulings in all other states on the expectation that if police are involved in the questioning of a student, then the police must insist 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 police. See, In re Loredo, 865 P.2d 1312 (Or. Ct.App. 1993), In re Killitz, 651 P.2d 1382 (Or. Ct.App. 1982), In re Welfare of G.S.P., 610 N.W.2d 651 (Minn. Ct.App. 2000), Kalmakoff v. State, 2011 WL 3241860 (Alaska 2011), J.D.B. v. North Carolina, 131 S.Ct. 2394, 180 L. Ed. 2d 310 (2011).

The second factor influencing the ruling of the court was the appearance of trickery by the interrogators in their approach to questioning N.C. The court noted that “This was on its face a school discipline proceeding. The student had no reason to believe that he was facing criminal charges. The medicine he brought to school was his legal prescription, and he was apparently aware that this violated school rules. There is no indication he sold or tried to sell the pills he gave the other student, and though it was legally sufficient to constitute possession and distribution charges by giving the pills to the other student, there is nothing to indicate that he knew this. In fact, the assistant principal addressed only expulsion proceedings. It was not until the questioning was over and the confession made that the law enforcement officer told N.C. that he was placing felony criminal charges against him. The assistant principal admitted that this was a process that he and the officer had done in tandem several times before. ... It is clear that N.C. was not informed that he did not have to admit to anything, or even say anything. He was not told in a timely manner that he faced criminal charges. He was not told that any statement he made would be used against him in proceeding with the criminal charges. ... Yet it was, in fact, N.C.’s admissions that were the sole basis of any finding of criminal action by N.C. All relevant factors indicate that N.C. was in custody, he was interrogated without being informed of his rights, and he confessed without full knowledge of the consequences for so doing.” 396 S.W.3d 852, at page 862.

The landmark nature of the ruling in N.C. followed on the heels of the decision by the Supreme Court of Kentucky to suppress N.C.’s confession. “This case presents the Court with the opportunity to balance the important public policy concerns of educators and parents to provide an appropriate and safe school environment while still protecting the individual rights of a child when the child is embroiled in the juvenile justice system. ... Consequently, a proper balance is struck if school officials may question freely for school discipline and safety purposes, but any statement obtained may not be used against a student as a basis for a criminal charge when law enforcement is involved or if the principal is working in concert with law enforcement in obtaining incriminating statements, unless the student is given the Miranda warnings and makes a knowing, voluntary statement after the warnings have been given.” 396 S.W.3d 852, at pages 864-65.

The U.S. Supreme Court has refused to review the ruling in N.C. See Kentucky v. N.C., 2013 U.S. LEXIS 6927 (U.S., Oct. 7, 2013). After N.C., educators should make sure that students fully understand what it is they are being asked to do in interrogations. When incidents are school-related, the best practice is for educators to conduct the questioning; no warnings of any kind are required. Any confusion over the role of age in a police interrogation will be resolved in favor of the student, especially as the age of the juvenile decreases.

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