The Educator-SRO Relationship: When is the Educator an Agent of Law Enforcement?

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The course of school safety legal reform will continue along the road of collaboration between school officials and other local agencies that share the responsibility for protecting and educating children. A large body of research proves that child welfare and school safety require a comprehensive approach. Moreover, recent research on the role of school resource officers confirms that the triad approach is compatible with the wide range of collaborative school safety programs, including restorative justice models, and emerging evidence-based child welfare policies. Educators are generally aware of these facts. It is the single biggest reason the pursuit for effective local partnerships continues at a brisk rate.

This collaborative outreach by school officials is eagerly returned by other local agencies, who are aware of the favor given educators as a matter of law. Educators enjoy an extraordinary degree of goodwill from courts and judges. The U.S. Supreme Court in New Jersey v. TLO, explained the reasoning behind this presumption and 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 informality of the student-teacher relationship.

School officials standing in loco parentis find the path to better outcomes for children less encumbered and therefore represent a valuable resource to the work of other agencies. However, there is persistent and sincere confusion over the law of agency in these collaborative relationships. The principles of the law of agency holds that when Person A acts in a manner that would lead an observer to believe that he is an agent of Person B, then the law will attribute the acts of Person A to Person B for purposes of liabilities. Similarly, when the acts of Person B create the appearance of authority, the law assumes that Person A has knowledge of and acquiesces to this authority in their relationship. The outcome is that Person A is no longer acting in his independent character. The nature of the collaboration effective changes his legal status for purposes of liability.

In education law, one obstacle to better collaboration is a misunderstanding of how the rules of agency apply to safe school programs. On one side of the line is a school official standing in loco parentis and acting independently of the police when resolving a school disciplinary incident that may or may not involve criminal activity. The other side of the line is a school official whose actions are coerced, dominated, or directed by police for law enforcement purposes, not for school disciplinary purposes. The principle questions are straightforward. When does the educator become an agent of law enforcement? Does the implementation of a school resource officer program create a great risk that the tasks performed by educators will be measured by the rules that apply to police? The agency cases provide an excellent context for fine tuning these aspects of the Educator-SRO relationship. Test your "Agency IQ" on the following scenarios:

1. A high school principal received a tip that two students were in possession of drugs on campus. One student was brought to the office and asked to empty his pockets. Drugs were found. The police were called, who advised the student of his Miranda rights and further questioned the student. His answers implicated Student B, who was brought to the office. The principal asked the officer to leave while he questioned Student B without giving Miranda warnings and obtained a confession. The police arrested the student. Did the educator become an agent of law enforcement?

2. A police officer was assigned as SRO for a high school. The MOU agreement specifically limited the duties of the SRO to investigate criminal activity and not "as a school disciplinarian." School officials agreed to contact the SRO when disruptions involved criminal activity. Within the first year, the SRO could not handle the high number of potential criminal matters requiring investigation. The school, therefore, agreed to investigate the less serious potential criminal matters, including searches. Did the educators become an agent of law enforcement?

3. A special needs student received medication daily from the school nurse. On the last day of school, the nurse gave the few remaining pills to the student to take home. The student gave one of the pills to Student B and was observed doing so by a teacher. The assistant principal obtained a written statement from both students and suspended them from school for a day beginning the next school year. The statements were given to the school resource officer who charged the students with a crime. Did the educator become an agent of law enforcement?

4. A search turned up the drugs on Student B. Student B said that Student A was the supplier of the drugs. School officials contacted local police to ask for assistance "in a drug investigation." The next day, two educators questioned Student A several times while in constant communication with local law enforcement. Student A admitted to bringing drugs to school and said that drugs were in his home. Police officers obtained a search warrant for Student A's home, where drugs were found. Student A was expelled. Did the educators become an agent of law enforcement?

5. Administrators at a school received a report that two students had been robbed in the campus bathroom. One student, suspected of committing the offense, was interviewed by an assistant principal. The student admitted that he took money from the victims. The school resource officer was present for the interview for safety purposes. He asked no questions but the assistant principal did actively discuss with the SRO (1) which questions she should ask and (2) whether the student could be charged with a crime. Did the educator become an agent of law enforcement?

THE BASICS OF AGENCY LAW

When a civilian acts as an agent of the state, evidence and statements obtained from his conduct must be suppressed. The rule exists to prevent police from cheating by having a private individual do something that would be unlawful or more difficult if done by the police. But a private actor is not an agent of the government if he has an independent reason for his actions separate and apart from assisting law enforcement and if he is not act-
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ing at the direction or command of the government. Most agency disputes involve criminal prosecutions in which an accusation is made that a private citizen’s investigation, search, or questioning of another person should be attributable to government, triggering the appropriate constitutional safeguards. But the standard of proof is very high.

While the question of agency must be determined from the totality of the circumstances, there is a presumption against finding an agency relationship unless evidence exists that the private actor lacked a separate motive to act or was persuaded to act by the government. One court describes the test in the following manner:

First, courts should look for information about the relationship between the police and the potential police agent. Did the police know the interviewer was going to speak with the defendant? Did the police arrange the meeting? Were the police present during the interview? Did they provide the interviewer with the questions to ask? Did they give the interviewer implicit or explicit instructions to get certain information from the defendant? Was there a “calculated practice” between the police and the interviewer that was likely to evoke an incriminating response from defendant during the interview? And finally, does the record show that the police were using the agent’s interview to accomplish what they could not lawfully accomplish themselves? In sum, was law enforcement attempting to use the interviewer as its appointed agent?

Second, courts should examine the record concerning the interviewer’s actions and perceptions: What was the interviewer’s primary reason for questioning the person? Were the questions aimed at gaining information and evidence for a criminal prosecution, or were they related to some other goal? How did the interviewer become involved in the case? Did the interviewer help “build a case” that led to the person’s arrest, or was the interviewer pursuing some other goal or performing some other duty? At whose request did the interviewer question the arrestee? In sum, did the interviewer believe that he was acting as an agent of law enforcement?

Finally, courts should examine the record for evidence of the defendant’s perceptions of the encounter. When the defendant was interviewed, did he believe that he was speaking with a law-enforcement agent, someone cloaked with the actual or apparent authority of the police? What gave him this impression? Alternatively, would a reasonable person in defendant’s position believe that the interviewer was an agent of law enforcement?

For example, courts consistently hold that insurance investigators, loss-prevention managers, and other assessors are not agents of the government for Fourth and Fifth Amendment purposes because they have an independent reason to investigate an incident for their private employers, not law enforcement. When this principle is applied to the conduct of government employees who are neither sworn nor hired to enforce criminal law, the results are the same. This best explains why civil servants who have not been given police powers are under no obligation to comply with the rules that govern law enforcement under the Fourth and Fifth Amendments.

APPLICATION OF THE AGENCY RULE IN SCHOOL SAFETY CASES

The courts have uniformly held that a school principal or other school official who questions a student about a possible violation of law or school regulation does not, absent other circumstances, act as a law enforcement officer or agent of the police. School officials have a duty to maintain order and discipline. The faithful discharge of this duty does not alone make educators agents of the police. The rule has been broadly applied to deny agent status even when facts show that the school official intended to turn over evidence of criminal conduct to police or notified police that he was going to question a student. The rule has been extended to prevent non-sworn school security officers from being agents of law enforcement despite the fact that their duties specifically include investigating and preventing disruptions that may be violations of the law. However, conduct by school resource officers and other sworn school police are “law enforcement officers” for Fourth and Fifth Amendment purposes. This is so even when the SRO is considered an employee of the school district. And where police have a “silent understanding” with school officials designed to delegate investigations over to educators where constitutional restraints would make certain evidence inaccessible to police, the courts will find the educators to be police agents. One court describes the school environment for purposes of the agency analysis in the following manner:

A school official must have leeway to question students regarding activities that constitute either a violation of the law or a violation of school rules. This latitude is necessary to maintain discipline, to determine whether a student should be excluded from the school, and to decide whether further protection is needed for the student being questioned or for others. School officials are neither trained nor equipped to conduct police investigations. However, as a matter of necessity, they must regularly conduct inquiries concerning both violations of school rules and violations of law. While the police may eventually be summoned, the need to question students to determine the existence of weapons, drugs, or potential violence in the school requires that latitude be given to school officials.

In the I.Q. test, the answer is “No” to fact patterns One, Three, and Four. The answer is “Yes” to scenarios Two and Five.

In Question One, the court held that school officials are charged with maintaining order and discipline in their schools, and though sometimes these responsibilities entail the investigation of conduct that is not only disruptive but also criminal, this does not alone make those officials agents of the police absent evidence of any affirmative act by a police officer inducing the educator to question the student, or orders by police to take a particular course of action. A school official must have leeway to question students regarding activities that constitute either a violation of the law or a violation of school rules. People v. Pankhurst, 365 Ill.3d 248 (2006).

In Question Two, the court held that the principal and the SRO had an agreement that the officer would turn an investigation over to school officials from time-to-time. The interagency agreement did not create a team in which both the educators and the SRO were unified for every purpose. Instead, the agreement made it clear that the law enforcement
and school safety functions were to be kept separate. The court held that when school officials tacitly agreed to take on the mantle of criminal investigation and enforcement, they became agents of law enforcement. State v. Heitzler, 147 N.H. 344, 789 A.2d 634 (2001).

In Question Three, the court held that the educator did not talk to the SRO prior to collecting the students’ statements. Therefore, the educator was not acting at behove of law enforcement when he asked the student to write a statement, or her “side of the story,” concerning events which occurred on last day of school. The court held that the sharing of the results of school violation investigations with law enforcement did not make the school officials agents of law enforcement. S.E. v. Grant Co. Bd. of Educ., 544 F.3d 633, 641–43 (6th Cir.2008).

In Question Four, the court held that in order to establish school officials as agents of law enforcement, a plaintiff must sufficiently plead that the school officials acted as instruments or agents of the state, i.e., that the police coerced, dominated, or directed the actions of the school officials. However, if the school officials’ conduct was for disciplinary purposes, and not law enforcement purposes, under the federal constitution students facing disciplinary action in public schools are not entitled to Miranda warnings. The court held that the mere allegation that one or more of the defendants may have spoken to police is insufficient to create a reasonable inference of an attempt on the police officers’ part to coerce or dominate the school officials, or, for that matter, to direct the school officials’ actions” in any way. K.A. ex rel. J.A. v. Abington Heights Sch. Dist., 28 F.Supp.3d 356, 365 (M.D. Penn. 2014).

Question Five is best explained by the unique quality of the law of the State of Georgia. The SRO is not a school official for purposes of assisting educators in any way in maintaining a safe campus. Also, under Georgia law, probable cause is needed whenever police assist educators in searches. In Georgia, school officials more easily become agents of law enforcement when given assistance by police on campus. In the Interest of T.A.G., 292 Ga.App. 48, 50, 663 S.E.2d 392 (2008).

REFERENCES


5. 469 U.S. 339-40.


9. See 2 W.L. Faiveley, J. Israel & N. King, Criminal Procedure § 6.10(c) (5th ed.2009). (“Government employees not primarily charged with enforcement of the criminal law are under no obligation to comply with Miranda. Thus, at least where the official has not been given police powers, Miranda has been held inapplicable to questioning by school officials, welfare investigators, medical personnel, judges, prison counselors, and parole or probation officers.”). See, State v. Pearson, 804 N.W.2d 260, 265 n.1 (Iowa 2011) (social worker’s interview of juvenile at youth home); State v. Nations, 319 N.C. 329, 354 S.E.2d 516 (1987) (social worker); Saranchak v. Beard, 616 F.3d 292 (3d Cir.2010) (child welfare caseworker); United States v. Morales, 834 F.3d 35 (3d Cir.1987) (physician’s assistant at correctional center); United States v. Rossenber, 949 F.2d 905 (7th Cir.1991) (probation officer).