

ADMINISTRATORS AND SCHOOL RESOURCE OFFICERS

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BACKGROUND

- In 2011, the U.S. Department of Justice and U.S. Department of Education jointly launched the Supportive School Discipline Initiative (SSDI) to assist in the development of safe, supportive learning environments.
- In 2014, the USDOE released a resource guide that includes suggestions for improving school climate and discipline practice, including 4 specific recommendations for school-based law enforcement programs:
 - SROs should focus on schools safety and not on daily discipline
 - Written agreements between school districts and school-based law enforcement agencies should clarify the roles of SROs
 - Trainings should include both school administrators and SROs
 - Data collection system should be created to ensure school-based law enforcement programs are meeting the school goals.

BACKGROUND, CONT.

- In 2015, these USDOE/USDOJ guidelines were used as a template in assessment of school-based law enforcement programs in Salt Lake County schools: Canyons, Granite, Jordan, and Salt Lake districts, along with Granite PD, Jordan PD, Salt Lake PC, Unified PD, and West Valley City PD all participated in the assessment.
- Assessment findings:
 - Lack of formal school-based law enforcement program training. No school administrators and less than half of SROs received training
 - Lack of written agreements (e.g., MOUs) between law enforcement agencies and school districts to provide guidance on school-based law enforcement programs
 - Lack of understanding roles and purposes of SRO
 - Lack of school participation in the SRO selection process

BACKGROUND, CONT.

- Based on these findings, the Utah legislature passed a law in 2016, (Utah Code 53G-8-702) which requires, among other things:
 - Develop MOUs between school districts and law enforcement agencies that include a detailed description of job duties of SROs
 - The school district and law enforcement agency jointly discuss SRO applicants and that the law enforcement agency allow the school district to provide feedback with regard about an SROs performance.
 - Required training for school-based law enforcement training for both administrators and SROs



TRAINING—UTAH CODE 53G-8-702(3)

- The training program described in Subsection (1) may include training on the following:
 - childhood and adolescent development;
 - responding age-appropriately to students;
 - working with disabled students;
 - techniques to de-escalate and resolve conflict;
 - cultural awareness;
 - restorative justice practices;
 - identifying a student exposed to violence or trauma and referring the student to appropriate resources;
 - student privacy rights;
 - negative consequences associated with youth involvement in the juvenile and criminal justice systems;
 - strategies to reduce juvenile justice involvement; and
 - roles of and distinctions between a school resource officer and other school staff who help keep a school secure.

TRAINING FOCUS TODAY

- Title IX
- Student rights
 - Privacy rights (FERPA)
 - Searches and Interrogations
- Cultural awareness



**TOPIC I: WHAT SRO'S NEED TO
KNOW ABOUT TITLE IX**

TITLE IX STATES:

“No person in the United States on the basis of sex shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”

**LEGAL HISTORY AND BACKGROUND
ON TITLE IX AS IT RELATES TO SEXUAL
HARASSMENT**



FRANKLIN V. GWINNETT COUNTY PUBLIC
SCHOOLS
503 U.S. 60 (1992)

- Sexual harassment constitutes sex discrimination under title IX
- Title IX not only provides equitable remedies to require fair treatment, it also provides for damages awards (i.e., District can be sued for money)



GEBSER V. LAGO VISTA INDEPENDENT
SCHOOL DIST.
524 U.S. 274 (1998)

A school is not liable for monetary damages for teacher-student sexual harassment unless a school district official who “at a minimum has authority to institute corrective measures on the district’s behalf” has **actual notice** of, and is **deliberately indifferent** to, the teacher’s misconduct.



DAVIS V. MONROE COUNTY BOARD OF
EDUCATION
536 U.S. 629 (1999)

A school board may be held liable in cases of student-on-student harassment, but only where the district is deliberately indifferent to sexual harassment, of which the district has actual knowledge, and that harassment is so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to the educational opportunities or benefits provided by the school.



DEPARTMENT OF EDUCATION
THE OFFICE FOR CIVIL RIGHTS
(OCR)



OCR GUIDANCE

- From 2001-2017, OCR issued dozens of guidance documents regarding sexual harassment and Title IX, heavily focused on the rights of the victim and the obligation of schools to take prompt and effective steps reasonably calculated to end any harassment and prevent harassment from occurring again.
- Schools were required to engage in prompt, thorough, and impartial investigation while providing interim supportive measure to the victim, informing the victim of the progress of the investigation, and informing the victim of the outcome of the investigation.

CHANGES TO THE REGULATIONS

- Responding to complaints that the Department of Education's guidance did not adequately protect the rights of those accused of sexual harassment or sexual violence, in 2017, the U.S. Department of Education Secretary Betsy DeVos rescinded the Obama-era guidelines which encouraged colleges and universities to more aggressively investigate campus sexual assaults.
- In October, 2018, DOE proposed new regulations for the first time since 1997.
- The regulations were open to public comment, and the DOE received over 124,000 responses.
- The regulations were published May 6, 2020, and made effective August 14, 2020.

HIGHLIGHTS OF THE NEW REGULATIONS

- Definition of sexual harassment has changed—it is reserved for only very serious sexual conduct
- Respondent will get written notice before first investigative interview
- Parties will be able to have a parent and/or attorney at every interview (an “advisor”)
- Gag orders are prohibited
- The person who investigates the allegation and the person who makes the final decision must be different people
- Both parties have extensive opportunity to respond to evidence presented against them
- Appeal must be offered

NEW DEFINITION OF SEXUAL HARASSMENT

Quid Pro Quo

- When an employee conditions some benefit in exchange for unwelcome sexual conduct

Hostile Environment

- Conduct that is so severe, pervasive, and objectively offensive that it denies equal access to educational program

Violence Against Woman Act Big 4

- Sexual assault
- Dating violence
- Domestic violence
- Stalking

REQUIRED STEPS IN SCHOOL-BASED TITLE IX INVESTIGATION

1. Written formal complaint requesting an investigation must be filed.
2. Respondent is given a Notice of Complaint, including the allegation, the person who brought the allegation, and the time and place of the alleged conduct
3. Both Respondent and Complainant are sent notices of meetings 2-3 days prior to any interviews with the investigator. Parties may bring an attorney or any other advocate to that first investigative meeting.
4. Once the investigator has collected all evidence (interviews with parties, interviews with witnesses, documentary evidence, etc.), the investigator sends a draft of a report with a compilation of all evidence to both parties for review (10 days) and suggested changes. Investigator may or may not change draft.
5. Once the investigator finalizes report with findings, sends final report to both parties and to decision-maker.
6. Decision-maker notifies parties that they may submit written cross examination questions to each other or to any witness, and parties may respond to questions.
7. Final decision is made, and parties have an opportunity to appeal.

INFORMAL RESOLUTION PROCESS

- At any time BEFORE a final decision is reached, the parties may enter an informal resolution process.
- Allegations of a student complainant against an employee respondent do not have the option of going through the informal resolution process.
- The informal resolution process facilitator will work with the parties to resolve the allegations.

SCHOOLS MAY CONSIDER EMERGENCY REMOVAL

- **Emergency removal** is appropriate when it is determined, based on an individualized safety and risk analysis that an immediate threat to the physical health or safety of any student justifies removal.
- LEAs should have some articulable basis for determining a student pose an immediate threat to the physical health or safety of a student

SO HERE WE ARE...



TEMPORARY DELAY PROVISION

- The regulations allow for a “temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action.
- Good cause may include considerations such as the absence of a party, a party’s advisor, or a witness; **concurrent law enforcement activity**; or the need for language assistance or accommodation of disabilities;

IN THE MEANTIME... SUPPORTIVE MEASURES

- Counseling,
- Extensions of deadlines or other course-related adjustments,
- Modifications of work or class schedules,
- Altering work arrangements for employees or student-employees,
- School safety plan,
- Mutual restrictions on contact between the parties,
- Changes in work locations,
- Leaves of absence,
- Increased security and monitoring of certain areas of the school, and
- Other similar measures

ADMIN—WORK WITH LOCAL LAW ENFORCEMENT AGENCY!

- LEAs need to decide how to handle investigations of conduct that is also criminal in nature, eg, any type of sexual assault.
- Work with your law enforcement agencies and let them know of the constrictions of these new regulations.
- Let them know:
 - Schools have an obligation to conduct a prompt and timely investigation,
 - Schools don't want to step on toes, especially with the rights provided to the accused that are not necessarily rights the accused gets during a criminal investigation.
 - But schools cannot sit on these allegations. And schools cannot keep students in school if they are a danger.
 - Schools also cannot kick kids out of school without giving them some due process—following these procedures.

TIPS FOR LEAS PENDING LAW ENFORCEMENT INVESTIGATION

- Regularly follow-up on status of criminal investigation and document your efforts.
- Work with your SRO to determine whether the student poses an immediate threat to the physical safety of students.
- Ensure supportive measures are in place for both parties, and DOCUMENT whatever measure have been implemented.
- Check in with parties on a regular basis.
- Work with your SRO to obtain access to police report as soon as law enforcement is able to share.
- Try to work with parents of Respondent to agree to an alternative placement pending the criminal investigation. NOT a disciplinary placement, but a different school or an online program.
- Move schedules around, impose no-contact orders, assign staff to supervise Respondent/Complainant.

SHOW YOU ARE NOT DOING NOTHING!

TOPIC #2: FERPA

FERPA REVIEW

- Educational Records: records that are
 1. directly related to students and
 2. are maintained by the school or district.
- Personally Identifiable Information: any data or information about students collected by schools, districts, government agencies, or organizations and companies working with schools that might reveal the identity or personal information of specific students or that could allow someone to indirectly track down the identity or personal information of students.

EXAMPLES OF PERSONALLY IDENTIFIABLE INFORMATION (PII)

- The student's name;
- The name of the student's parent or other family members;
- The address of the student or student's family;
- A personal identifier, such as the student's social security number, student number, or biometric record;
- Other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name;
- Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty;
- Or information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.

BASIC FERPA RULE

**Education records may not be shared
without parental consent.**

EXCEPTIONS TO BASIC RULE (AS THEY APPLY TO AN SRO)

- Directory Information
- Law enforcement unit records
- School official
- Health and safety exception
- Utah Department of Human Services

DIRECTORY INFORMATION

- Student's name
- Address
- Telephone listing
- Electronic mail address
- Photograph
- Date and place of birth
- Major field of study
- Student ID in some instances
- Dates of attendance
- Grade level
- Participation in officially recognized activities and sports
- Weight and height of members of athletic teams
- Degrees, honors, and awards received
- The most recent educational agency or institution attended

LAW ENFORCEMENT UNIT RECORDS

- Some MOUs specifically designate SROs as “law enforcement units” for purposes of school records. This means:
- Records ***created by SROs, for a law enforcement purpose, and maintained by the SROs*** are NOT education records and may be shared freely with the law enforcement agency. This also means that students and/or parents may be denied access to these records.*
 - Criminal investigation reports
 - Witness statements
 - Body camera footage
 - Depending on who creates and maintains security cameras, possibly footage from security cameras

*NOTE: If the record is ALSO maintained by the school, then the record is considered BOTH a law enforcement unit record AND an education record. If parents ask the school for the record, the school must share the record (provided all students' PII is redacted).

SCHOOL OFFICIALS

- FERPA specifically allows school officials to share education records without parental consent.
- Depending on the MOU and the relationship between the SRO and the school, SROs may also be considered school officials.
- Therefore, SROs can have access to student information—including electronic information, security cameras, and actual paper files.
- **HOWEVER**, an SRO may **ONLY** access and utilize school educational records for legitimate and necessary purposes, ie, law enforcement purposes related to school safety and security
- SROs may **NOT** use confidential student information for other purposes or provide student information to other law enforcement units or officers.
- If they don't already, your MOUs should talk about law enforcement unit records and whether an SRO is a school official

HEALTH AND SAFETY EMERGENCY EXCEPTION

- Schools may share records in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals
- In making a determination under paragraph (a) of this section, an educational agency or institution may take into account the totality of the circumstances pertaining to a threat to the health or safety of a student or other individuals. If the educational agency or institution determines that there is an articulable and significant threat to the health or safety of a student or other individuals, it may disclose information from education records to any person whose knowledge of the information is necessary to protect the health or safety of the student or other individuals. If, based on the information available at the time of the determination, there is a rational basis for the determination, the Department will not substitute its judgment for that of the educational agency or institution in evaluating the circumstances and making its determination.

UTAH DEPARTMENT OF HUMAN SERVICES AND JJS

Education records may be shared with between Department of Human Services, Utah Juvenile Court, and a school official if the student is:

- in the custody of, or under the guardianship of, the Department of Human Services;
- receiving services from the Division of Juvenile Justice Services;
- in the custody of the Division of Child and Family Services;
- receiving services from the Division of Services for People with Disabilities; or
- under the jurisdiction of the Utah Juvenile Court.

NON-SRO ACCESS TO EDUCATION RECORDS

- Law enforcement officials other than SROs may inspect and copy any public directory records maintained by the school such as yearbooks, phone directories, etc.
- Attendance records are NOT considered public directory records.
- Outside law enforcement officials may NOT inspect and/or copy confidential student records unless the student is under the care and protection or receiving services from DCFS, JJS, DSPD, or the Juvenile Court, OR in emergency situations.
- If no emergency situation exists, the information may be released to outside law enforcement only upon issuance of a search warrant or a subpoena.

SECURITY CAMERAS

- Every district has a different approach to security cameras.
- Some districts' cameras are created and maintained by their SROs and have been designated as law enforcement unit records.
- **NOTE:** A law enforcement unit does not have to be actual law enforcement. Some districts designate their IT person as the district's law enforcement unit.
- Others are created and maintained by the school district, but are shared with their SROs as school officials.
- Some districts require any law enforcement agent to get a subpoena before accessing records.

BEST PRACTICE

- It is reported that Johnny stole Bob's lunch money from Bob's locker while Bob was in class. Principal Pete and Officer Friendly, who is a school official, sit down and view the recording of the security camera that just happens to be directly across from Bob's locker. (Johnny's not that bright.) Sure enough, Johnny is seen opening Bob's locker while he surreptitiously looks around as if he's watching to see if anyone is coming. He reaches into the locker and clearly takes something out, then shuts the locker, shoves whatever he took out into his pocket, and runs.
- Officer Friendly says "Aha!" He makes a copy of the recording for himself, and designates it a law enforcement unit record. He then provides it to his agency to open a case of theft. Principal Pete says, "Aha!" and makes a copy of the recording for Johnny's files and calls Johnny down to his office to confront him about the incident.

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- When an SRO makes a copy of an incident and designates a law enforcement unit record for purposes of a criminal investigation, and an administrator also makes a copy of the incident for purposes of school discipline, copies of the same incident are going to be classified differently and treated differently.
 - The difference is the purpose for which the copy was made.
 - The law enforcement unit (including the SRO who is acting in his capacity as a law enforcement officer) may share the record with parents, or may refuse to provide access to the record. A law enforcement officer may want to deny access where there are other students in the recording and there is an ongoing investigation.
 - Administrators must provide a copy of the record to parents if identifiable features of other students featured in the video are blurred out. Schools may ask parents to pay for the technology to blur out the faces.
 - FPCO has stated in informal guidance that parents may come in and VIEW recordings where other students are involved without blurring out faces, but may not receive a copy of the recording.
 - FPCO has also stated the recording is an education record for all students who are focuses of the recording; the recording is not considered an education record for the bystanders in the recording. This means that if a parent wants a copy of the recording, each and every identifiable student need not be blurred out; just the identifiable features of those that are the focus of the recording.

**TOPIC #3: STUDENT'S RIGHTS: SEARCH
AND SEIZURE AND INTERROGATIONS**

WHAT KINDS OF THINGS DO WE SEARCH AT SCHOOL?

- Lockers
- Kids' backpacks
- Kids' jackets
- Kids' pockets
- Cars
- Cell phones

FOURTH AMENDMENT

“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

NEW JERSEY V. T.L.O. (1985)

- Two girls, including 14 year old T.L.O. were caught smoking in the bathroom by a teacher who took the girls to the Principal's office.
- One of the girls admitted she'd been smoking but T.L.O. denied it.
- Assistant Principal Choplick searched T.L.O.'s purse and found a pack of cigarettes, and also a package of cigarette rolling papers, and a small amount of marijuana, a pipe, a number of empty plastic bags, a substantial quantity of money in \$1 bills, and an index card that appeared to be a list of students who owed T.O. money, and two letters that implicated T.L.O. in marijuana dealing.
- T.L.O. was charged criminally, and T.L.O. moved to suppress the evidence found in her purse at school on the basis that Mr. Choplick violated the Fourth Amendment in his search.

ISSUE:

- Does a search of a student and/or her belongings without probable cause violate the Fourth Amendment?

HOLDING AND RULE:

Holding

- Court ruled for school.

Rule

- Search of students by school officials is constitutionally permissible if reasonable and not excessively intrusive.

HOW DOES THIS STANDARD APPLY TO SROS?

- **IT DOESN'T!**
- The Supreme Court in *T.L.O.* expressly reserved judgment on the appropriate legal standard for searches conducted by school officials in conjunction with or at the behest of law enforcement.
- ***SO SRO'S, HOLD YOUR SEAT... WE'LL GET BACK TO YOU***

STANDARD FOR SEARCHES FOR ADMINISTRATORS:

In order to meet the “reasonable suspicion standard”, you must be able to articulate **TWO** things:

1. That the search was reasonably justified at its inception **AND**
2. That the search was reasonably related in scope to the circumstances that justified the search in the first place.

*NOTE: Meeting the probable cause standard requires the same two things, only with **MORE** justification before initiating a search.

WHAT DOES THIS MEAN?

- **Justified at its inception:** Jenny is walking down the hall and hears Johnny say, “I’ve got dope in my backpack.” Jenny was an office aide last year and someone you know is reliable and has a reputation for honesty. Your decision to initiate a search is JUSTIFIED.
- **Reasonable in scope:** All you have is what Jenny told you—that she heard Johnny say, “I’ve got dope in my backpack.” The SCOPE of your search should be limited to Johnny’s backpack. You cannot expand your search to Johnny’s car.
- What about Johnny’s phone?

**NOT JUSTIFIED AT INCEPTION OR
REASONABLE IN SCOPE**

- **Inception:** Jenny tells you “I heard Johnny say he has dope in his backpack.” You know Johnny just broke up with Jenny and you also know Jenny is taking it really hard. Moreover, Jenny has been in your office several times that year because she likes to spread rumors about people on social media. A search of Johnny’s backpack is probably **NOT** justified under these circumstances.
- **Scope:** Most of the “not reasonable in scope” for administrators cases involve strip searches.

NOTE: Avoid asking students to take off clothes, unless you have reasonable suspicion that the student is hiding something under his/her clothes that poses a serious and immediate threat to himself or others.

FACTORS COURTS HAVE LOOKED AT WHEN DECIDING WHETHER A SEARCH IS REASONABLE:

- Prior offenses of the same or similar nature
- Reports from reliable staff that the student in question smells of marijuana, or has a bulge in his pocket, etc...
- Reports by reliable students of observations of the student in question engaging in the misconduct
- Reports by reliable students that the student in question confessed to engaging in the misconduct
- Your own observations of:
 - slurred speech
 - glassy eyes
 - smell of alcohol or drugs

BE CAREFUL!

- While the “reasonable suspicion” standard is fairly low, courts are wary of basing suspicion on:
 - “Suspicious” denial
 - “Acting weird”
 - Relying on students that you don’t know and could not speak to their reputation for honesty
 - History of discipline problems completely unrelated to the misconduct at issue
 - For example, student has a history of mis-using his cell phone in class, and you want to search his backpack for marijuana because you heard there was a group of kids distributing at school, and since this kid is a troublemaker, you bet he’s involved.
 - Example: Administrator stops kid walking down the hall and searches his backpack because kids aren’t supposed to be in the hall during class.

REASONABLE IN SCOPE

- The more invasive the search, the stronger your basis for beginning the search needs to be. For example, if you conduct a strip search, you had better be able to articulate with clarity the exact basis for your suspicion that you'd find contraband under the student's clothes.
- The more invasive your search, the more compelling the government interest should be. If you conduct a strip search, you'd better be looking for something that poses a serious threat to that student or others.

→ In other words, **DO NOT STRIP SEARCH FOR A STOLEN CALCULATOR.**

IN ADDITION, WHEN CONSIDERING
WHETHER YOUR SEARCH IS REASONABLE,
CONSIDER THE FOLLOWING:

1. How much privacy does a person legitimately expect to have in his...
 - Locker?
 - Social media posts?
 - Backpack?
 - Pants' pockets?
 - Purse?

WEIGHED AGAINST

2. How compelling is the school's interest in searching?
 - Is it different for an allegation that someone is carrying a gun compared to an allegation that someone cheated on the math test by bringing in a calculator?

SEARCHES CONDUCTED BY SROS OR AT THE REQUEST/DIRECTION OF SROS

- Is the search related to a criminal investigation OR a school infraction?
- Was the search initiated by school officials OR law enforcement?
- Is the SRO conducting the search at the request of/in conjunction with the school OR on his own initiative?
- Was the SRO actively participating in the search OR merely present during an administrative search?
- Was the SRO employed and paid by the school OR the local law enforcement agency?
- Does the SRO have other duties at school besides law enforcement duties OR is he strictly present to enforce law enforcement?

SEARCH GUIDELINES FOR ADMINISTRATORS AND SRO'S

- **ALWAYS, ALWAYS, ALWAYS, ASK FOR CONSENT FIRST. IF THE STUDENT CONSENTS, NONE OF THE PREVIOUS SLIDES MATTER.**
- If the student consents, be sure your search is limited to the student's consent.
 - E.g., "Tommy, one of your classmates told me she saw marijuana in your backpack. Mind if I have a look?" "Sure, Mr. Principal." Principal has consent to search backpack. (Not jacket, phone, or other personal belonging.)

SEARCH GUIDELINES, CONT.

ABSENT CONSENT...

- Searches that are wholly criminal in nature and have no relation to the school or school rules should only be done by an SRO or other law enforcement agent under a probable cause standard.
- Searches involving school infractions should be initiated by school officials, not SROs. It is permissible for SROs to be present and to assist where the search may become dangerous, but be careful that the search was initiated, led by, and done for the school administrator, not the SRO.

SEARCH GUIDELINES, CONT.

- Searches involving school infractions that are also criminal in nature (e.g., marijuana possession) may be done by the administrator at the lower reasonable suspicion standard. If the administrator is acting on reasonable suspicion, evidence he/she seizes as a result of his search may be turned over to law enforcement for prosecution. (See T.L.O.)
- SROs should **NOT** direct the administrator to conduct a search just to get around the higher probable cause standard.

CELL PHONE SEARCH GUIDELINES

Searches of cell phone may be performed by administrators if the administrator has reasonable suspicion that the student has violated a rule or law and evidence of the violation is on the cell phone.

Remember to keep the search reasonable in scope: You hear that someone cheated on his math test by texting himself all the answers. Look at texts.

- Pictures?
- Emails?
- Snapchat?
- Instagram?

CELL PHONE SEARCHES, CONT.

- What if the phone is locked?
- Remember, first, ask for consent. If not provided, then...
- Consider the following:
 - Weigh the expectation of privacy a student has in his phone (consider all the personal data and information that is stored on a person's cell phone) with the school's interest in conducting the search. **How serious is the allegation?**
 - Can you articulate your basis for reasonable suspicion?
 - Do you have the technical help to get into a locked phone?
 - Is the allegation you're looking into criminal such that perhaps you should turn the phone over to law enforcement anyway?

SEXT CELL PHONE GUIDANCE

- If you have reason to believe there is a sexting situation, get your SRO involved. Images may contain child pornography.
- **DO NOT ASK STUDENTS TO FORWARD IMAGES.**
- Some prosecutors will not prosecute students who mutually exchange nude or compromising images. Cases with a clear victim are more likely to be prosecuted.
- Schools need to decide how to handle these cases.
- Administrators and SROs should work together to investigate sexting IF the sexting is occurring at school or is having a significant impact on the learning environment. If the sexting took place off campus and didn't come into the school in any way, administrators should be wary of taking action, and SROs should be wary of using administrators to get around a criminal investigation with the higher standards.

QUESTIONING STUDENTS

- Must a student be given *Miranda warnings* when questioned at school?
 - By an administrator?
 - What if the student is a minor?
 - What if the student is in Elementary school?
 - What if the SRO is with the administrator when questioning the student?
 - What if the administrator is not present but the SRO is questioning the student alone?
 - What if the person questioning the student is an outside detective?

FACTORS COURTS LOOK AT TO DETERMINE IF *MIRANDA* IS
REQUIRED:

Administrators Only:

Administrators do not have to read a student his *Miranda* rights when questioning students where the questions are about a school infraction

Period.

MIRANDA FACTORS FOR LAW ENFORCEMENT

Just law enforcement:

- Whether the student was told he was free to leave or to refuse to answer the questions?
- The student's age and prior experience with custodial interrogations and/or arrests
- Whether the student is interrogated as a suspect or a witness and whether the questioning is more inquisitorial or accusatory
- The number of officers asking questions of the student
- The level of understanding and intelligence of a student (the more likely it is that the student understands he/she is free to leave at any time, the less likely courts will find that the student was in custodial interrogation)
- Length of interrogation: the shorter the interrogation (15 minutes vs. 6 hours), the less likely the courts will find the interrogation amounted to a custodial interrogation
- Whether the officer was overbearing, dominating, used strong-arm tactics or deceptive stratagems, or was aggressive in questioning
- Where the interview took place: an open area like a cafeteria or parking lot is less likely to lead a student to the conclusion that he is not free to go, as is an office with a closed door

FACTORS COURTS LOOK AT TO DETERMINE IF MIRANDA IS REQUIRED:

Administrators + SRO/Law enforcement together:

- If the officer is actively involved in the questioning →SRO needs to consider whether *Miranda* is necessary
- If the questioning includes references to criminal charges that might be brought against the students →SRO needs to consider whether *Miranda* is necessary
- If the SRO is questioning the student for the purpose of determining whether to press criminal charges →SRO needs to consider whether *Miranda* is necessary
- If the officer was acting on his own rather than at the behest of the school official →SRO needs to consider whether *Miranda* is necessary
- If the SRO initiated the questioning →SRO needs to consider whether *Miranda* is necessary

INTERROGATION GUIDELINES FOR ADMINISTRATORS AND SROS

- When conducting an investigation of an offense that took place at school, administrators should take the lead on questioning students.
- Keep the focus of the questions on the school infraction and not on potential criminal sanctions. This is especially important where an SRO is present during the interview.
- If the SRO conducts the interrogation, the student should be informed he does not have to answer the questions and is free to leave and return to class at any time. The SRO should also avoid aggressive, strong-arm tactics to elicit a confession.
- Avoid lengthy interrogations in which it is implied that the student may only return to class after providing a confession.
- Consider the age, experience, and understanding of the student and be sure the student is fully aware that he or she has a right to leave and not answer questions posed by the SRO that may result in criminal consequences.

PARENT NOTIFICATION?

- Parents do **not** have a constitutional or statutory right to notification of searches or interviews by **administrators**, period.
- Your district policies may require notification of parents prior to questioning by an administrator or law enforcement officer. Follow your policy.
- Parents **MAY** need to be notified where the searches and interviews are conducted by law enforcement for law enforcement purposes depending on the age of the child and if the child is being interrogated as a suspect:
- **In Utah, a child under 14 cannot waive *Miranda* outside the presence of his/her parents, so when SRO or outside law enforcement is conducting a custodial interrogation, parents of a student-suspect under 14 **MUST** be notified and present before questioning can begin.**
- **NOTE:** When a student refuses to answer questions without parents' present, you have to make a choice: do you keep the kid in your office until he answers the questions, do you suspend the kid for insubordination, or do you let the kid off until his parents can make it?

LAW ENFORCEMENT INTERVIEW PROTOCOLS

	Criminal Incident Involves School	Criminal Incident Does NOT Involve School
Student is under 14 and is a suspect	SRO may interview student at school. SROs determine whether <i>Miranda</i> is necessary and if so, parents must be present. If parents cannot be located, no interview. Administrators may also be present.	SRO or outside law enforcement should contact administrator to detain student so student may be transported to off campus location with parents present. Admin contact parents with information after student has been transported.
Student is 14 or over and is a suspect	SRO may interview student at school and parents need not be present or notified. SRO determines if <i>Miranda</i> is necessary. Administrators may also be present.	SRO or outside law enforcement should contact admin to detain student so student can be transported to off campus location. Admin contact parents with information after student has transported.

LAW ENFORCEMENT INTERVIEW PROTOCOLS, CONT.

	Incident Involving School	Incident NOT Involving School
Student is a witness	May be interviewed by SRO at school during non-class periods when practical. Parents need not be notified. Administrators may be present.	Should be interviewed by SRO or outside law enforcement before or after school at an alternative location. Parents need not be notified. Administration should not be involved as these interviews should be taking place before or after school.

NOTE:

In no way does this guideline preclude a law enforcement officer from lawfully detaining or arresting a student. If an officer wishes to detain or arrest a student and remove him/her from school grounds, the administrator shall not interfere or question this detention or arrest. The administrator should assist the officer with any lawful detention or arrest as specified in this protocol.

QUESTIONS:

1. Were the SRO's questions an interrogation?
2. Was the questioning custodial in that SRO should have given Ryan *Miranda* warnings?
3. Was the search of the vehicle upheld?

TOPIC #4: CULTURAL AWARENESS



CULTURAL AWARENESS WHAT'S MAKING HEADLINE NEWS

- June 4, 2020: “Portland superintendent says he’s ‘discontinuing’ presence of armed police officers in schools” (*Oregonlive.com*)
- June 12, 2020: “Do Police Officers Make Schools Safer or More Dangerous?” (*New York Times*)
- June 21, 2020: “Fueled by protests, school districts across the country cut ties with police” (*Washington Post*)
- July 2, 2020: “Meeting at Syracuse City Hall discusses the role of school resource officers” (*CNYCentral*)
- Sept. 28, 2020: “Debate over school resource officers once again ignited in Urbana” (*New Talk 1400*)
- Sept. 29, 2020: “Edmonds School District cuts resource officers in favor of preventative approach” (*MyNorthwest.com*)

WHAT CAN WE DO TO HELP THE PUBLIC SEE SROS ARE AN IMPORTANT PART OF SCHOOLS?

- A. Ignore it and wait it out—the headlines will go away
- B. Increase arrests at school—that'll show 'em!
- C. Don't pursue ANY criminal activity at school—that'll show 'em!
- D. Take the opportunity to become the kind of SRO that the public needs right now



SROS HAVE AN INCREDIBLY UNIQUE ROLE

Unlike other law enforcement officers, an SRO is a:

Mentor

Role Model

Teacher

Educator

Protector

Counselor

Enforcer

Instructor

Guardian

Defender

Advisor

Caretaker

TRAINING ON

- childhood and adolescent development;
- responding age-appropriately to students;
- working with disabled students;
- techniques to de-escalate and resolve conflict;
- cultural awareness;
- restorative justice practices;
- identifying a student exposed to violence or trauma and referring the student to appropriate resources;
- student privacy rights;
- negative consequences associated with youth involvement in the juvenile and criminal justice systems;
- strategies to reduce juvenile justice involvement; and
- roles of and distinctions between a school resource officer and other school staff who help keep a school secure.

ADMIN—HELP!

- Until there is a comprehensive training that covers all these topics, there are people at your schools who do these things and can provide a primer on many of these topic.
- Be proactive about getting in front of it.
- Show the public how valuable you are as a law enforcement officer AND a school official

RESPONSIBILITIES OF AN SRO

TEACHER

- Act as a member of the faculty and administration
- Provide law related education to the students, parents, and staff upon request
- Fill the role of a guest speaker

INFORMAL COUNSELOR

- Informal counseling of students and parents based on the expertise of a law enforcement officer
- Work closely with the school's counseling staff
- Provide information on community services and the law to students, parents, and staff

POLICE OFFICER

- Appear as a uniformed or plainclothes armed officer with a marked vehicle
- Investigate crimes, make arrests
- Act as the officer for the school community
- Work with other law enforcement officers and agencies
- Liaison between school and policy community
- Provide a positive role model

RESPONSIBILITIES OF A SCHOOL ADMINISTRATOR

INSTRUCTIONAL LEADER

- Facilitates the development, articulation, implementation, and stewardship of a vision of learning
- Advocates, nurtures, and sustains a school focused on teaching and learning conducive to student, faculty, and staff growth
- Designs instruction for student success and assures instruction is aligned to state academic content standards

COUNSELOR

- Ensures management of the organization, operation, and resources for a safe, efficient, and effective learning environment
- Acts with, and ensures a system of integrity, fairness, equity, and ethical behavior
- Creates a positive school culture where everyone feels valued

SCHOOL OPERATIONS

- Oversees day to day operational activities
- Collaborates with faculty, staff, parents, and community members
- Respond to diverse community interests and needs
- Mobilizing community resources

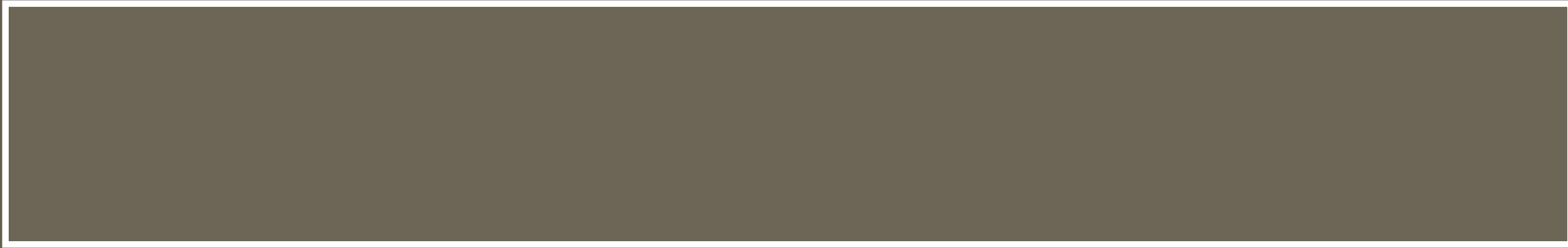
SHARED ROLE

- Both SROs and school administrators:
 - Strive to create a safe environment for students inside and outside of school
 - Understand and respect student rights
 - Teach students respect for others
 - De-escalate school based incidents



BEST PRACTICE

- Administrators and SROs should meet annually to review how to:
 - Differentiate between disciplinary misconduct and criminal offenses
 - Discuss effective diversion approaches that will reduce the number of arrests and court referrals
 - Respect students' rights when searching and questioning
 - De-escalate school-based incidents
 - Share information if a student involved in a criminal infraction has an IEP, 504, Behavior Plan, or otherwise requires accommodations
 - Facilitate investigations and actions



QUESTIONS???

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