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Policing in Schools: Developing a Governance Document for School Resource Officers in K-12 Schools

India Geronimo Thusi

Maurer School of Law - Indiana University, ithusi@indiana.edu

Catherine Y. Kim

American Civil Liberties Union

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Policing In Schools

DEVELOPING A GOVERNANCE DOCUMENT
FOR SCHOOL RESOURCE OFFICERS
IN K-12 SCHOOLS

AN ACLU WHITE PAPER
BY CATHERINE Y. KIM AND I. INDIA GERONIMO
AUGUST 2009





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PUBLISHED AUGUST 2009

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ACLU NATIONAL OFFICE
125 Broad Street, 18th Fl.
New York, NY 10004-2400
(212) 549-2500
www.aclu.org

OFFICERS AND DIRECTORS

Susan N. Herman, President
Anthony D. Romero, Executive Director
Richard Zacks, Treasurer

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Appendix: Model Governance Document for School Resource Officer (SRO) Program i

The Racial Justice Program is a division of the American Civil Liberties Union, the nation’s leading advocate of constitutional and civil rights. Staff members of the program are experts in constitutional law and civil rights, specializing in education, health care, racial profiling, juvenile justice, criminal justice, indigent defense, and other racial justice issues. Experts in policy, advocacy, and community organizing round out the core staff of the RJP.

Catherine Yonsoo Kim is a staff attorney with the American Civil Liberties Union, National Legal Department where she works with the Racial Justice Program. She has been involved in litigation and advocacy surrounding discrimination in K-12 public schools, Native American education rights, school desegregation, juvenile justice, racial and religious profiling, and government watchlists.

More recently, she has focused her work on challenges to the “school-to-prison pipeline,” the practice of criminalizing students, predominantly students of color, for trivial schoolyard misconduct. In addition to litigating cases in this area, she is the co-author of an upcoming book analyzing legal theories and remedies surrounding the school-to-prison pipeline to be published next fall, has organized two national conferences in this area, and has spoken extensively around the country on these issues.

Catherine began working on racial justice issues for the ACLU in 2003 as the Marvin M. Karpatkin Fellow. Prior to that, she clerked for the Honorable Carlos F. Lucero on the Tenth Circuit Court of Appeals in Denver. Catherine obtained her law degree from Columbia Law School, where she served as an editor on the *Columbia Law Review*, and her undergraduate degree from Cornell University.

I. India Geronimo is the Marvin M. Karpatkin Fellow with the American Civil Liberties Union, National Legal Department, where she works with the Racial Justice Program. She has been involved in litigation and advocacy surrounding affirmative action, racial profiling, and challenges to the school-to-prison pipeline. Prior to that, she clerked for the Honorable Robert L. Carter, a judge on the United States District Court for the Southern District of New York. India obtained her law degree from Fordham Law School, where she was a Crowley Scholar and the recipient of the *Summa Cum Laude* Archibald R. Murray Award for public service, and her undergraduate degree from Emory University. Before entering law school, she was the Du Institute Fellow at Harvard University and spent one year as a teacher for Yonkers Public Schools.

INTRODUCTION

K-12 public schools across the country have begun to deploy law enforcement agents on school grounds in growing numbers. Although there are no current national figures for the number of such officers, in 2004, 60 percent of high school teachers reported armed police officers stationed on school grounds,¹ and in 2005, almost 70 percent of public school students ages 12 to 18 reported that police officers or security guards patrol their hallways.²

Frequently referred to as “School Resource Officers” or SROs, these agents are often sworn police officers employed by the local police department and assigned to patrol public school hallways full-time.³ In larger jurisdictions such as Los Angeles and Houston, these officers may be employed directly by the school district.⁴

Without addressing the question of whether police officers should be deployed to schools in the first instance, this White Paper posits that if they are deployed, they must be provided with the tools necessary to ensure a safe school environment while respecting the rights of students and the overall school climate.

¹ Paul Hirschfield, *The Uneven Spread of School Criminalisation in the United States*, 74 CRIM. JUST. MATTERS 28, 28 (2008).

² RACHEL DINKES ET AL., NAT’L CTR. FOR EDUC. STATISTICS & BUREAU OF JUSTICE STATISTICS, INDICATORS OF SCHOOL CRIME AND SAFETY: 2007, at 116 (2008); *see also* PETER FINN ET AL., COMPARISON OF PROGRAM ACTIVITIES AND LESSONS LEARNED AMONG 19 SCHOOL RESOURCE OFFICER (SRO) PROGRAMS 7 (2005) (“By 1999 there were at least 12,000 law enforcement officers serving full-time as SROs.... Local police departments had about 9,100 full-time SROs assigned to schools.... Nationwide, about 2,900 sheriffs’ deputies worked as SROs during 1997.”).

³ CATHY GIROUARD, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, U.S. DEP’T OF JUSTICE, OJJDP FACT SHEET: SCHOOL RESOURCE OFFICER TRAINING PROGRAM (2001).

⁴ Los Angeles Schools Police Department, <http://www.laspd.com/>; Houston Independent School District Police Department, <http://www.houstonisd.org/portal/site/Police>.

Unfortunately, school districts and law enforcement agencies often fail to pay sufficient attention to the ways in which policing in schools is unique; many have no formal governance document for these officers at all. According to the National Assessment of School Resource Officers commissioned by the National Institute of Justice and the U.S. Department of Justice, “One [of] the most frequent and destructive mistakes many SRO programs make is to fail to define the SROs’ roles and responsibilities in detail before --- or even after --- the officers take up their posts in schools. When programs fail to do this, problems are often rampant in the beginning of the program --- and often persist for months and even years.”⁵

This White Paper argues that a formal governance document is necessary to ensure that law enforcement, school officials, and the communities they serve have a shared understanding of the goals of the SRO program, and that these officers receive the necessary support and training prior to their deployment.⁶ Absent specific guidelines, SROs may not have a clear understanding of their role within the larger educational context or the rights and needs of the children they are intended to serve; they may inadvertently, and indeed counterproductively, create an adversarial environment that pushes students, particularly at-risk students, out of school rather than engaging them in a positive educational environment.⁷ The reputation of law

⁵ FINN ET AL., *supra* note 2, at 23; *see also* AM. CIVIL LIBERTIES UNION, *HARD LESSONS: SCHOOL RESOURCE OFFICER PROGRAMS AND SCHOOL-BASED ARRESTS IN THREE CONNECTICUT TOWNS 18-20* (2008) (describing confusion between school officials and police on the role of SROs).

⁶ *See* Ben Brown, *Understanding and Assessing School Police Officers: A Conceptual and Methodological Comment*, 34 J. CRIM. JUST. 591, 600 (2006) (“[I]t is important that school officials, school police officers and administrators, researchers, and public policymakers come together to adequately conceptualize school police officers ... and identify a clear set of reasonable duties and goals which the officers may be expected to fulfill.”).

⁷ *See* Matthew T. Theriot, *School Resource Officers and the Criminalization of Student Behavior*, 37 J. OF CRIM. JUST. 280, 280 (2009) (documenting studies suggesting that aggressive school security measures may increase student disorder and compromise positive school climate); KIM BROOKS ET AL., JUSTICE POLICY INST. & CHILDREN’S LAW CTR., INC., *SCHOOL HOUSE HYPE: TWO YEARS LATER* 11 (2000)

enforcement agencies, the climate of the schools, and, most important, the educational achievement and rights of public school students, suffer as a result.

This White Paper identifies specific areas of concern to be addressed in a governance document for SRO programs. In the case of districts that contract with local police departments, these provisions should be set forth in a Memorandum of Understanding; in the case of districts that employ their own police force, they should be set forth in another appropriate format. In either case, the governance document should include language that:

- Distinguishes between disciplinary misconduct to be handled by school officials and criminal offenses to be handled by law enforcement;
- Respects the rights of children in school;
- Ensures transparency and accountability;
- Defines the role of SROs within the context of the educational mission of schools;
- Provides minimum training requirements; and
- Promotes non-punitive approaches to student behavior.

(citing study suggesting that “jail-like” atmosphere in public schools “may foster the violence and disorder school administrators hope to avoid”).

I. DISTINGUISH BETWEEN DISCIPLINARY MISCONDUCT AND CRIMINAL OFFENSES

First, the governance document for School Resource Officer programs should specify that children will not be subject to formal law enforcement intervention --- whether that intervention take the form of an issuance of a criminal citation, ticket, or summons, filing of a delinquency petition, referral to a probation officer, or an actual arrest --- for ordinary school discipline issues; it should also specify that the drastic measure of a school-based arrest should be used only as a last resort.

The number of children arrested or referred to court for school discipline has grown in recent years.⁸ In South Carolina, the single most common offense resulting in a juvenile court referral during the 2007-08 year was “Disturbing Schools.”⁹ In Florida, during the same time

⁸ See, e.g., Paul J. Hirschfield, *Preparing for Prison? The Criminalization of School Discipline in the USA*, 12 THEORETICAL CRIMINOLOGY 79, 80 (2008) (describing that “problems that once invoked the idea and apparatus of student discipline have increasingly become criminalized”); Daveen Rae Kurutz, *School Arrests, Citations Jump by 46 percent*, PITTSBURGH TRIB.-REV., Aug. 23, 2008 (documenting 46 percent increase in number of school-based arrests and citations in Allegheny County in a single year); CHILDREN’S DEFENSE FUND, AMERICA’S CRADLE TO PRISON PIPELINE 125 (2007) (noting tripling in number of school-based arrests in Miami-Dade County from 1999 to 2001); ADVANCEMENT PROJECT, EDUCATION ON LOCKDOWN: THE SCHOOLHOUSE TO JAILHOUSE TRACK 15 (2005) (documenting growth in the number of school-based arrests in select jurisdictions).

In the past year and a half alone, there have been several highly publicized incidents of the criminalization of minor student misbehavior, including the arrest of a 14-year-old girl for text-messaging, Sharif Durhams, *Tosa East Student Arrested, Fined After Repeated Texting*, MILWAUKEE J. SENTINEL, Feb. 18, 2009, at B8; the arrest of a 13-year-old boy for repeatedly passing gas in class, *Student Arrested for Passing Gas and Turning Off Classmates’ Computers*, SOUTH FLORIDA SUN-SENTINEL, Nov. 22, 2008; and the use of a Taser to shock a student after knocking over a chair, Martin Cassidy, *Requests for Taser Recording Rejected*, GREENWICH TIME, May 31, 2008, at A1.

⁹ SOUTH CAROLINA DEP’T OF JUVENILE JUSTICE, ANNUAL STATISTICAL REPORT 2007-2008, at 13 (2009).

period, 15 percent of all delinquency referrals stemmed from school-related conduct, with 40 percent involving “disorderly conduct” or “misdemeanor assault and battery.”¹⁰ Last year in Birmingham, Alabama, 18 percent of juvenile arrests resulting in court referral were for school misconduct; among those, 33 percent were for fights, 29 percent were for disorderly conduct, and 21 percent were for trespassing or harassment.¹¹

Children of color and students with disabilities are disproportionately represented among these students.¹² In Florida, Black youth, who represented only 22 percent of the overall juvenile population, accounted for 47 percent of all school-based delinquency referrals; youth with special needs accounted for 23 percent of all school-based referrals.¹³

In the past several years, there have been several high-profile incidents in which children were arrested at school for questionable reasons.¹⁴ Even juvenile court personnel have expressed concern that school officials may be relying on the juvenile justice system inappropriately to

¹⁰ MARK A. GREENWALD, FLORIDA DEP’T OF JUVENILE JUSTICE, *DELINQUENCY IN FLORIDA’S SCHOOLS: A FOUR YEAR STUDY* 7, 12 (2009).

¹¹ Marie Leech & Carol Robinson, *City Schools Rely on Arrests to Keep Order*, BIRMINGHAM NEWS, Mar. 22, 2009, at 1A.

¹² AM. CIVIL LIBERTIES UNION, *HARD LESSONS*, *supra* note 5, at 35-43 (finding that in one jurisdiction, African American and Hispanic students accounted for 24 percent of the student body but 63 percent of school-based arrests, and that students of color who commit certain common infractions are more likely to be arrested at school than white students committing the same infractions); *see also* JUDITH A. BROWNE, ADVANCEMENT PROJECT, *DERAILED: THE SCHOOLHOUSE TO JAILHOUSE TRACK* 18-20, 23 (2003) (documenting disparities by race and special education status in school-based arrests in select jurisdictions).

¹³ GREENWALD, *supra* note 10, at 5.

¹⁴ *See, e.g.*, Ann N. Simmons, *Scuffle Exposes a Racial Rift*, L.A. TIMES, Oct. 11, 2007, at B1 (reporting the arrest of a sixteen-year-old girl for battery after dropping a piece of birthday cake in the school lunch area and failing to clean it up to the satisfaction of the school resource officer); Bob Herbert, *6-Year-Olds Under Arrest*, N.Y. TIMES, Apr. 9, 2007, at A17 (describing arrest of a six-year-old girl for felony battery on a school official and two misdemeanor counts of disruption of school and resisting arrest after throwing a temper tantrum at school); AM. CIVIL LIBERTIES UNION, *CRIMINALIZING THE CLASSROOM: THE OVER-POLICING OF NEW YORK CITY SCHOOLS* 6, 14 (2007) (documenting arrests of students for bringing cell phone to school and walking late to class).

handle minor school misconduct. For example, the National Council of Juvenile and Family Court Judges has urged collaboration between the justice system and school officials to “[c]ommit to keeping school misbehavior and truancy out of the formal juvenile delinquency court.”¹⁵

Improper school-based arrests and referrals to law enforcement have a devastating impact on children. Studies show that being arrested has detrimental psychological effects on the child; nearly doubles the odds of dropping out of school, and, if coupled with a court appearance, nearly quadruples the odds of dropout; lowers standardized test scores; reduces future employment prospects; and increases the likelihood of future interaction with the criminal justice system.¹⁶

These arrests and referrals also have a negative impact on the larger community. Classmates who witness a child being arrested for a minor infraction may develop negative views or distrust of law enforcement. Juvenile court dockets and detention centers become crowded with cases that could be handled more efficiently and more effectively by school

¹⁵ DAVID E. GROSSMANN & MAURICE PORTLEY, NAT’L COUNCIL OF JUVENILE & FAMILY COURT JUDGES, JUVENILE DELINQUENCY GUIDELINES: IMPROVING COURT PRACTICE IN DELINQUENCY CASES 151 (2005); *see also* Leech & Robinson, *supra* note 11 (documenting concerns regarding the criminalization of students resulting in the “flooding of Family Court with cases that once would have been handled in a principal’s office” and quoting Presiding Family Court Judge Brian Huff as stating, “But we’re arresting children for offenses no one should be arrested for”); AM. CIVIL LIBERTIES UNION, RACE AND ETHNICITY IN AMERICA: TURNING A BLIND EYE TO INJUSTICE 149 (2007) (documenting statement by a juvenile court judge in Massachusetts that he handles more school discipline in his courtroom today than he did in his former position, as a public school principal); Sara Rimer, *Unruly Students Facing Arrest, Not Detention*, N.Y. TIMES, Jan. 4, 2004 (reporting that juvenile court judges in Ohio, Virginia, Kentucky, and Florida have complained about the volume of school misconduct cases overwhelming their courtrooms).

¹⁶ *See* Gary Sweeten, *Who Will Graduate? Disruption of High School Education by Arrest and Court Involvement*, 23 JUST. Q. 462, 473, 478-79 (2006); ADVANCEMENT PROJECT, EDUCATION ON LOCKDOWN, *supra* note 8, at 12; Terence P. Thornberry et al., *The Causes and Correlates Studies: Findings and Policy Implications*, 9 JUVENILE JUST., Sept. 2004, at 3, 12; Jeff Grogger, *Arrests, Persistent Youth Joblessness, and Black/White Employment Differentials*, 74 REV. ECON. & STAT. 100, 105-06 (1992).

principals. And, the community pays the costs associated with an increase in dropouts, crime, unemployment, and, in extreme cases, the incarceration of children.

Studies also suggest that the increase in school-based arrests and court referrals for minor school misconduct may be the result of an increase in SRO programs.¹⁷ In any case, even where the deployment of police personnel in school hallways has not necessarily increased the criminalization of school misconduct, it is critical that SRO programs set forth guidelines for when formal law enforcement intervention is warranted. Such guidance aids the SRO who may initiate the intervention, and also assists school officials who might otherwise seek to request intervention inappropriately.¹⁸

Many current governance documents for SRO programs appropriately provide that school resource officers are responsible for enforcing criminal law, not for enforcing school discipline. But the vast majority of student misbehavior may technically fall within the definition of a

¹⁷ For example, social work researcher Matthew T. Theriot has found a correlation between the presence of a SRO and the number of school-based arrests for disorderly conduct. Theriot, *supra* note 7, at 285. Similarly, a Blue Ribbon Commission from Clayton County, Georgia, issued the following findings:

The number of school-related charges filed in the juvenile court increased from 90 in 1996 to 1,200 in 2004. At first glance, it appeared that crime in the schools skyrocketed, but after further study it became evident that the major cause of the increase in reporting was a result of law enforcement (SROs) within the schools. The data showed that most of the school offenses were minor matters involving school fights, disorderly conduct (e.g., yelling in the hallway or cursing); obstruction of an officer (e.g., running away from a police officer when told to stop); and disrupting a public school (similar to disorderly conduct). These offenses have traditionally been handled by the school and are not deemed the type of matters appropriate for juvenile court.

CLAYTON COUNTY PUBLIC SCHOOLS, BLUE RIBBON COMMISSION ON SCHOOL DISCIPLINE, EXECUTIVE REPORT 47 (2007), *available at* <http://www.clayton.k12.ga.us/departments/studentservices/handbooks/BlueRibbonExecutiveReport.pdf>.

¹⁸ In some cases, it has been law enforcement officials who have been most critical of schools' reliance on police to handle minor school discipline issues. Leech & Robinson, *supra* note 11 (noting concern of Birmingham Chief of Police that school incidents referred for arrest should have been handled by the principal's office rather than law enforcement); Rena Havner, *Crisis Center Could Help Reduce Arrests in Mobile Schools*, PRESS-REGISTER, July 5, 2008, at A1 (reporting view of local law enforcement that not all school-based arrests were warranted).

criminal offense, leading to confusion among officers, teachers, parents, and children alike. Absent clear guidelines, there may be confusion or disagreement as to whether a food fight in the cafeteria amounts to criminal “disorderly conduct,” whether talking back to a teacher constitutes a criminal “disturbance of school or public assembly,” or whether a playground shoving match should be classified as a criminal “assault.”

To address this concern, the governance document must provide clear guidance as to when children may be subject to formal law enforcement intervention, or when incidents that might be interpreted technically as a criminal offense should be handled by school officials alone. We propose the following language:

Model Language on Distinguishing Between Disciplinary Misconduct and Criminal Offenses

- School Resource Officers are responsible for criminal law issues, not school discipline issues.
- Absent a real and immediate threat to student, teacher, or public safety,¹⁹ incidents involving public order offenses including disorderly conduct; disturbance/disruption of schools or public assembly; trespass; loitering; profanity; and fighting that does not involve physical injury or a weapon, shall be considered school discipline issues to be handled by school officials, rather than criminal law issues warranting formal law enforcement intervention (e.g., issuance of a criminal citation, ticket, or summons, filing of a delinquency petition, referral to a probation officer, or actual arrest).

¹⁹ In other contexts, officers are expected to evaluate whether an individual poses an “immediate threat” to “safety.” See *Graham v. Connor*, 490 U.S. 386, 396 (1989).

- Students shall not be arrested at school, except where the child poses a real and immediate threat to student, teacher, or public safety; or a judicial warrant specifically directs the arrest of the student in a school; in all other instances the execution of an arrest warrant shall be undertaken at a location other than a school.
 - School principals shall be consulted prior to an arrest of a student where practicable.
 - The student's parent or guardian shall be notified of a child's arrest as soon as practicable.

II. RESPECT FOR STUDENTS' RIGHTS

Second, the governance document should delineate the contours of students' rights, including the circumstances under which a child may be questioned or searched by school officials or by or in the presence of a School Resource Officer.

As the Supreme Court of the United States has made clear repeatedly, K-12 public school students retain their constitutional rights at school.²⁰ There is a large body of case law defining the extent to which a school principal may search a student's person or belongings pursuant to the Fourth Amendment prohibition against unreasonable searches and seizures.²¹ There is also a large body of case law, some of it conflicting, on the extent to which the presence or participation of a SRO alters the analysis.²² Similarly, case law describes the circumstances under which a student may be questioned by a school principal or by or in the presence of a SRO, where the questioning exposes the child to criminal liability or juvenile delinquency proceedings, pursuant to the Fifth Amendment right against self-incrimination and the Supreme

²⁰ See, e.g., *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969) ("It can hardly be argued that ... students ... shed their constitutional rights ... at the schoolhouse gate.").

²¹ See *New Jersey v. T.L.O.*, 469 U.S. 325, 341-42 (1985) (holding that school officials may only search a student's person or belongings where they have "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," and "the search as actually conducted was reasonably related in scope to the circumstances which justified the interference in the first place") (quotations omitted).

²² See *id.* at 341 n.7 (declining to rule on the appropriate standard for student searches conducted by school officials in conjunction with or at the behest of law enforcement agencies). Compare *State v. Scott*, 630 S.E.2d 563, 566 (Ga. Ct. App. 2006) (holding that school resource officers, unlike school officials, must have probable cause rather than mere reasonable suspicion to search or seize a student), and *A.J.M. v. State*, 617 So.2d 1137, 1138 (Fla. Dist. Ct. App. 1993) (same), with *People v. Dilworth*, 661 N.E.2d 310, 317 (Ill. 1996) (applying reasonable suspicion standard to search by school resource officer), *In re William V.*, 4 Cal. Rptr. 3d 695, 698 (Cal. Ct. App. 2003) (same), *Russell v. State*, 74 S.W.3d 887, 891-92 (Tex. App. 2002) (same), and *Commonwealth v. J.B.*, 719 A.2d 1058, 1062 (Pa. Super. Ct. 1998) (same).

Court's ruling in *Miranda v. Arizona*.²³ Again, some of these cases are in conflict.²⁴ Some jurisdictions provide additional protections to students against searches or questioning pursuant to the state constitution or state statute.²⁵ Given the relative lack of clarity in the law, erring on the side of caution and affording more protective rights to students minimizes school districts' and law enforcement agencies' vulnerability to lawsuits.²⁶

Of course, the case law establishes only the floor for students' rights, the minimum level that must be afforded to students to avoid legal liability; it does not set forth best practices. Searching students or questioning them in an unnecessarily coercive manner, even if it passes

²³ *Miranda v. Arizona*, 384 U.S. 436 (1966).

²⁴ Compare *In re C.H.*, 763, 715 N.W.2d 708 (Neb. 2009) (finding custodial interrogation, which requires Miranda warnings, where law enforcement questioned student in principal's office), *In re R.H.*, 791 A.2d 331, 333-34 (Pa. 2002) (finding custodial interrogation where SRO questioned student), *In re D.A.R.*, 73 S.W.3d 505, 512-13 (Tex. App. 2002) (same), *In re G.S.P.*, 610 N.W.2d 651, 658 (Minn. Ct. App. 2000) (finding custodial interrogation where school officials and police officers questioned student), and *State v. Doe*, 948 P.2d 166, 169 (Idaho Ct. App. 1997) (finding custodial interrogation where SRO questioned student), with *Cason v. Cook*, 810 F.2d 188, 193 (8th Cir. 1987) (finding no custodial interrogation where school principal questioned student in the presence of SRO), *In re W.R.*, 675 S.E.2d 342, 344 (N.C. 2009) (finding no custodial interrogation where school official and SRO questioned student), *Commonwealth v. Ira I.*, 791 N.E.2d 894, 902 (Mass. 2003) (finding no custodial interrogation where principal questioned student); *State v. J.T.D.*, 851 So.2d 793, 796 (Fla. Dist. Ct. App. 2003) (same), and *State v. D.J.*, 132 Wash. App. 1055 (Wash. Ct. App. 2006) (unreported) (finding no custodial interrogation where principal and SRO questioned student). For further discussion of this issue, see Paul Holland, *Schooling Miranda: Policing Interrogation in the Twenty-First Century Schoolhouse*, 52 LOY. L. REV. 39 (2006).

²⁵ See *R.D.S. v. State*, 245 S.W.3d 356, 362 (Tenn. 2008) (noting in student questioning case that state constitutional right against self-incrimination more protective than federal right); *Commonwealth v. Berry*, 570 N.E.2d 1004, 1007 n.2 (Mass. 1991) (providing more protective juvenile right against self-incrimination under state law than afforded under federal law); *Theodore v. Delaware Valley Sch.*, 761 A.2d 652, 660 (Pa. Commw. Ct. 2000) (noting in student search case that state constitution is more protective than federal constitution).

²⁶ See Brown, *supra* note 6, at 594 ("In light of the potential for lawsuits and public outcry about inappropriate contact with youth..., school police officials must be especially cautious in terms of how they treat and interact with students.").

legal muster, risks creating an adversarial relationship with students, severely compromising the educational climate and potentially increasing distrust and disorder in public schools.²⁷

For these reasons, the governance document for the SRO program should include the following language:

Model Language on Students' Rights

- Absent a real and immediate threat to student, teacher, or public safety, a School Resource Officer may conduct or participate in a search of a student's person, possessions, or locker only where there is probable cause to believe that the search will turn up evidence that the child has committed or is committing a criminal offense.
 - The SRO shall inform school administrators prior to conducting a probable cause search where practicable.
 - The SRO shall not ask school officials to search a student's person, possessions, or locker in an effort to circumvent these protections.
- A school official may conduct a search of a student's person, possessions, or locker only where there is reasonable suspicion to believe that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school, and the search is justified in scope given such suspicion.
 - Absent a real and immediate threat to student, teacher, or public safety, a school official shall not ask a SRO to be present or participate in such a search.

²⁷ See Randall R. Beger, *The "Worst of Both Worlds": School Security and the Disappearing Fourth Amendment Rights of Students*, 28 CRIM. JUST. REV. 336, 340-41 (2003) (documenting studies suggesting that intrusive school searches "produce alienation and mistrust among students," "disrupt the learning environment and create an adversarial relationship between school officials and students," and "may actually interfere with student learning").

- Absent a real and immediate threat to student, teacher, or public safety, a SRO may question or participate in the questioning of a student about conduct that could expose the child to court-involvement or arrest only after informing the child of his or her Miranda rights and only in the presence of the child's parent or guardian.
 - The SRO shall inform school administrators prior to questioning the student where practicable.
 - The SRO shall not ask a school official to question a student in an effort to circumvent these protections.
- Absent a real and immediate threat to student, teacher, or public safety, a school official shall not ask a SRO to be present or participate in the questioning of a student that could expose the student to court-involvement or arrest.
- Strip searches of children by either school officials or SROs shall be prohibited.
- Absent a real and immediate threat to student, teacher, or public safety, other physically invasive searches by a school official or SRO shall not be conducted on a child.
- Absent a real and immediate threat to student, teacher, or public safety, a SRO shall not use physical force or restraints --- including handcuffs, Tasers, Mace, or other physical or chemical restraints --- on a child.

III. TRANSPARENCY AND ACCOUNTABILITY

Third, the governance document for the School Resource Officer program must provide mechanisms for transparency and accountability, including mandatory public reporting on SRO activities and a meaningful complaint resolution system.

Public schools are subject to strict transparency and accountability requirements in virtually every regard, from mandatory reporting on student achievement and teacher qualifications, statistics on student disabilities and discipline, publicly available district budgets, and public access to school board meetings. These requirements reflect a shared commitment to parents' right to know what is happening in their children's schools, and the community's right to know how public school dollars are being spent.

Yet, governance documents for SRO programs often fail to include mechanisms for transparency and accountability. We are left to guess the extent to which crimes are being committed at schools; the number and types of incidents leading to student arrests or court referrals; disparities between schools within a district, between districts, or between different categories of students; and, even more important given today's economic climate, the cost-effectiveness of SRO programs in improving school safety.²⁸ As one scholar has put it, "It may be that millions of tax dollars are being spent on inappropriate training for school police officers, that school policing tactics are ineffective or, as a worst case scenario, that the presence of police officers in schools creates more harm than good."²⁹ Without information on the number and

²⁸ See Brown, *supra* note 6, 596-97 (describing need for evaluating impact of school resource officer "on both the school environment and society as a whole" and proposing methodology for such an evaluation); see also Beger, *supra* note 27, at 351 (advocating further research to evaluate the costs and effectiveness of school police measures).

²⁹ Brown, *supra* note 6, at 592.

types of school-based arrests or the activities of SROs, neither the school, nor the police, nor the public can properly assess these programs.

Similarly, these programs frequently lack a meaningful complaint resolution system to investigate and resolve allegations of abuse or misconduct by SROs. Parents may not be informed of how to lodge a complaint or where to lodge it.³⁰ Anecdotal reports suggest that in some cases, officials have responded to a complaint of SRO abuse by transferring the SRO to a different school. Such incidents compromise the legitimacy, whether perceived or actual, of SRO programs.

To ensure sufficient transparency and accountability, the governance document should include the following language:

Model Language on Transparency and Accountability

- The school district and relevant law enforcement agency shall maintain annual publicly available data, without disclosing personally identifiable information, documenting the following:
 - Number of incidents resulting in a juvenile arrest for conduct on school grounds or at a school-sponsored event, broken down by school; offense; arrestee's age, grade level, race, sex, and disability status; and disposition/result;
 - Number of incidents resulting in other forms of law enforcement intervention --- including searches and seizures by SROs; questioning by SROs; issuance of a criminal citation, ticket, or summons; filing of a delinquency petition; and referral

³⁰ See AM. CIVIL LIBERTIES UNION, CRIMINALIZING THE CLASSROOM, *supra* note 14, at 27-28 (documenting provision of confusing and contradictory information for those seeking to file complaints against school resource officers).

to a probation officer --- for juvenile conduct on school grounds or at a school-sponsored event, broken down by school; offense or reason; type of law enforcement intervention; juvenile's age, grade level, race, sex, and disability status; and disposition/result;

- Number of suspensions or other disciplinary consequences imposed on students, broken down by school; offense/infracton; student's age, grade level, race, sex, and disability status; and disciplinary consequence imposed;
 - Regulations, policies, and protocols governing the SRO program;
 - Budget information for the SRO program including funding and expenditures;
 - Number of SROs deployed to each school;
 - Training materials for SROs; and
 - Number and types of complaints lodged against SROs.
- The SRO program shall set forth a simple and straightforward mechanism for any student, parent, teacher, principal, or other school administrator to submit a complaint, orally or in writing, of abuses or misconduct by SROs.
 - Parents shall be permitted to submit a complaint in their native language.
 - The complaint system must be confidential and protect the identity of the complainant from the SRO to the extent consistent with the SRO's due process rights.
 - The system shall provide for an independent investigation into the allegations in the complaint.

- Complaints shall be investigated and resolved, and complainants shall be furnished with a written explanation of the investigation and resolution, within 30 days.
- Where serious allegations of abuse or misconduct are raised, the SRO shall be temporarily removed from having contact with students as appropriate.
- Where allegations of abuse or misconduct are substantiated, the SRO shall be suspended or permanently removed from school assignments or receive additional training as appropriate.
- Every student, parent, and guardian in the school system shall be informed of the complaint procedure.

IV. DEFINING THE ROLE OF THE SRO IN THE CONTEXT OF THE EDUCATIONAL MISSION OF SCHOOLS

Fourth, the governance document must establish the role of the School Resource Officer within the larger educational mission of public schools. It must make clear that the primary role of the SRO is to improve school safety and the educational climate of schools, and not to discipline or punish students. It must also set forth the lines of communication and authority between the SRO and building-level administrators.

The absence of such guidance threatens the credibility of the SRO program. For example, in 2007, the *New York Times* reported an incident in which a SRO and school principal disagreed over the manner in which an arrested student would be escorted off of school grounds; the SRO wanted to take the student through the front door, while the principal wanted her to be escorted through a side door; as a result of the disagreement, the SRO arrested the principal for obstruction of justice.³¹ In another highly publicized incident, in 2005, a disagreement arose between a SRO and a school principal when the principal tried to prevent the officer from arresting an unruly student, whom the principal thought should be handled through the school's disciplinary system; as a result, the SRO placed the principal under arrest, leading him away from the building in handcuffs in front of the students.³²

To reduce the risks of such situations arising, the governance document should ensure the primacy of the overall educational mission in schools and expressly set forth the lines of authority in the school building with the following language:

³¹ Jennifer Medina, *Police Arrest a Student, Then Her Principal, Too*, N.Y. TIMES, Oct. 10, 2007, at B3.

³² Elissa Gootman, *Arrest of a Bronx Principal Spurs Criticism of the City*, N.Y. TIMES, Feb. 9, 2005, at B1.

Model Language on Defining the Role of the SRO in the Context of the Educational Mission of Schools

- The mission of the School Resource Officer program is to improve school safety and the educational climate at the school, not to enforce school discipline or punish students.
- Building-level school administrators shall be consulted as to whether a SRO will be deployed to the school and shall participate in periodic performance reviews of the SRO.
- The SRO shall meet with building-level school administrators, teachers, parents, and student representatives at least annually to discuss issues of school safety.
- The SRO shall be integrated into the school community through participation in faculty and student meetings and assemblies as appropriate.
- The SRO shall maintain daily activity reports and submit monthly summaries of these reports to building-level school administrators, district-level school administrators, and the relevant law enforcement agency. The monthly summaries shall include, for each SRO, the numbers and descriptions of all incidents or calls for service; names of school officials involved (referring teachers, principals, etc.); student searches; student questioning; tickets, citations, or summonses; filing of delinquency petitions; referrals to a probation officer; actual arrests; and other referrals to the juvenile justice system.
- Absent a real and immediate threat to student, teacher, or school safety, and absent the situations described above where formal law enforcement intervention is deemed appropriate, building-level school administrators shall have final authority in the building.

V. MINIMUM TRAINING REQUIREMENTS

Fifth, the governance document must provide for minimum training requirements for all School Resource Officers assigned to K-12 public schools. Police officers generally are trained to deal with adult perpetrators on the street, not children in schools. Yet, these officers face challenges unique to the public school setting and must be prepared to handle these challenges appropriately.

As noted by the National Assessment of School Resource Officers commissioned by the National Institute of Justice and the U.S. Department of Justice, “without proper training, SROs can make serious mistakes related to their relationships with students, school administrators, and parents that at best cause short-term crises and at worst jeopardize the entire program at the school.”³³ The assessment also explains that “SROs may need help to ‘unlearn’ some of the techniques they learned to use on patrol duty that are not appropriate in dealing with students (for example, resorting too quickly to using handcuffs or treating misconduct as part of a person’s criminal make-up when in a student the behavior may be an example of youthful indiscretion).”³⁴ Similarly, another research scholar observed that because school resource officers often “have little or no training in fields such as education and developmental psychology and because the officers may be evaluated by supervisors who have little knowledge of educational theory and practice, it is possible that the officers’ discretionary actions (e.g., whether to arrest a student) will be based on criteria which do not include the students’ educational attainment, an issue which has been raised by national policymakers.”³⁵

³³ FINN ET AL., *supra* note 2, at 50.

³⁴ *Id.* at 48.

³⁵ Brown, *supra* note 6, at 591.

Just as we require other professionals entrusted to work in our schools --- teachers, counselors, administrators --- to satisfy rigorous training and certification requirements, we propose that SROs likewise obtain the tools necessary to work with student populations. For these reasons, the governance document should include the following language:

Model Language on Minimum Training Requirements

- Every School Resource Officer shall receive at least 40 hours of pre-service training and 10 hours of annual in-service training on the following topics:
 - Child and adolescent development and psychology;
 - Positive behavioral interventions and supports (PBIS), conflict resolution, peer mediation, or other restorative justice techniques;
 - Children with disabilities or other special needs; and
 - Cultural competency.

VI. PROMOTING NON-PUNITIVE TECHNIQUES TO IMPROVE SCHOOL SAFETY AND CLIMATE

Finally, the governance document should integrate research-based practices to improve school climate and student behavior. Studies suggest that punitive approaches to student behavior --- such as zero-tolerance policies, out-of-school suspensions, and school-based arrests --- may not be effective in reducing misconduct and instead may actually increase dropout rates and juvenile delinquency.³⁶

By contrast, a consensus is developing among experts in education and child psychology that alternative approaches to student behavior --- such as positive behavioral interventions and supports (PBIS) programs, peer mediation programs, conflict resolution programs, and other restorative justice models --- may be more effective in reducing school misconduct and improving student engagement.³⁷ Moreover, by reducing discipline incidents, these programs increase the time available to teachers for actual classroom instruction. For these reasons, educators, psychologists, and the federal and state governments have embraced the nationwide movement to implement these alternative programs in K-12 schools across the country. For these reasons, the governance document should include the following language:

³⁶ NATIONAL ASS'N OF SCHOOL PSYCHOLOGISTS, ZERO TOLERANCE AND ALTERNATIVE STRATEGIES: A FACT SHEET FOR EDUCATORS AND POLICYMAKERS (2008); Committee on School Health of the American Academy of Pediatrics, *Policy Statement: Out-of-School Suspension and Expulsion*, 112 PEDIATRICS 1206 (2003) (expressing concern over use of punitive school discipline measures and advocating for alternative disciplinary policies); CRIMINAL JUSTICE SECTION OF THE AMERICAN BAR ASSOCIATION, ZERO TOLERANCE POLICY REPORT (2001) (stating ABA position condemning zero-tolerance policies in schools).

³⁷ *See, e.g.*, NATIONAL INST. FOR JUSTICE, U.S. DEP'T OF JUSTICE, RESTORATIVE JUSTICE (2007); OFFICE OF SPECIAL EDUCATION PROGRAMS, U.S. DEP'T OF EDUCATION, POSITIVE BEHAVIORAL SUPPORTS AND INTERVENTIONS, IS SCHOOL-WIDE POSITIVE BEHAVIOR SUPPORT AN EVIDENCE-BASED PRACTICE? (2009).

**Model Language on Promoting Non-Punitive Approaches
to Student Behavior**

- The School Resource Officer shall be familiar with and trained in all programs adopting non-punitive approaches to discipline available in the school district. If a school has implemented a specific program designed to improve overall school climate or respond to student behaviors in specific ways, the SRO shall participate in all trainings associated with that program.

CONCLUSION

The safety of our children is of the utmost importance to school officials, law enforcement, and community members alike. But without sufficient guidelines, programs to deploy School Resource Officers into public schools may hamper effective policing as well as effective pedagogy by unnecessarily criminalizing student misbehavior, alienating youth, and creating an adversarial environment in schools. It is our sincere hope that the recommendations in this White Paper will be instituted to ensure that SRO programs are implemented in a thoughtful and conscientious manner and for the benefit of the children they are intended to serve.

APPENDIX

The following document provides model language for a formal governance document that will ensure that law enforcement, school officials, and the communities they serve have a shared understanding of the goals of a School Resource Officer (SRO) program, and that SROs receive the necessary support and training prior to their deployment.

In the case of districts that contract with local police departments, these provisions should be set forth in a Memorandum of Understanding; in the case of districts that employ their own police force, they should be set forth in another appropriate format. A Microsoft Word version of the document is available on the American Civil Liberties Union's Racial Justice Program website at <http://www.aclu.org/racialjustice/index.html> for use by local agencies.

MODEL GOVERNANCE DOCUMENT FOR SCHOOL RESOURCE OFFICER (SRO) PROGRAM

WHEREAS, the purpose of this document is to establish a School Resource Officer (SRO) Program and to set forth guidelines to ensure that law enforcement, school officials, and the communities they serve have a shared understanding of the goals of the SRO program and that SROs receive the necessary support and training to ensure a safe school environment while respecting the rights of students and improving the overall school climate;

WHEREAS, the parties agree that an effective SRO program sets forth: the role of the SRO within the context of the educational mission of the school; distinctions between disciplinary misconduct to be handled by school officials, and criminal offenses to be handled by law enforcement; respect for the rights of students; transparency and accountability; minimum SRO training requirements; and promotion of non-punitive approaches to student behavior;

WHEREAS, the signatories agree as follows:

ROLE OF THE SCHOOL RESOURCE OFFICER IN THE CONTEXT OF THE EDUCATIONAL MISSION OF THE SCHOOL

1. The mission of the School Resource Officer program is to improve school safety and the educational climate at the school, not to enforce school discipline or punish students.
2. Building-level school administrators shall be consulted as to whether a SRO will be deployed to the school and shall participate in periodic performance reviews of the SRO.
3. The SRO shall meet with building-level school administrators, teachers, parents, and student representatives at least annually to discuss issues of school safety.
4. The SRO shall be integrated into the school community through participation in faculty and student meetings and assemblies as appropriate.
5. The SRO shall maintain daily activity reports and submit monthly summaries of these reports to building-level school administrators, district-level school administrators, and the relevant law enforcement agency. The monthly summaries shall include, for each SRO, the numbers and descriptions of all incidents or calls for service; names of school officials involved (referring teachers, principals, etc.); student searches; student questioning; tickets, citations, or summonses; filing of delinquency petitions; referrals to a probation officer; actual arrests; and other referrals to the juvenile justice system.
6. Absent a real and immediate threat to student, teacher, or school safety, and absent the situations described herein where formal law enforcement intervention is deemed appropriate, building-level school administrators shall have final authority in the building.

DISTINGUISHING DISCIPLINARY MISCONDUCT TO BE HANDLED BY SCHOOL OFFICIALS FROM CRIMINAL OFFENSES TO BE HANDLED BY LAW ENFORCEMENT

7. School Resource Officers are responsible for criminal law issues, not school discipline issues.

8. Absent a real and immediate threat to student, teacher, or public safety, incidents involving public order offenses including disorderly conduct; disturbance/disruption of schools or public assembly; trespass; loitering; profanity; and fighting that does not involve physical injury or a weapon, shall be considered school discipline issues to be handled by school officials, rather than criminal law issues warranting formal law enforcement intervention (e.g., issuance of criminal citation, ticket, or summon, filing of delinquency petition, referral to a probation officer, or actual arrest).

9. Students shall not be arrested at school, except where a child poses a real and immediate threat to student, teacher, or public safety; or a judicial warrant specifically directs the arrest of the student in a school; in all other instances the execution of an arrest warrant shall be undertaken at a location other than a school.

- a. School principals shall be consulted prior to an arrest of a student where practicable.
- b. The student's parent or guardian shall be notified of a child's arrest as soon as practicable.

RESPECT FOR THE RIGHTS OF STUDENTS

10. Absent a real and immediate threat to student, teacher, or public safety, a School Resource Officer may conduct or participate in a search of a student's person, possessions, or locker only where there is probable cause to believe that the search will turn up evidence that the child has committed or is committing a criminal offense.

- a. The SRO shall inform school administrators prior to conducting a probable cause search where practicable.
- b. The SRO shall not ask school officials to search a student's person, possessions, or locker in an effort to circumvent these protections.

11. A school official may conduct a search of a student's person, possessions, or locker only where there is reasonable suspicion to believe that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school, and the search is justified in scope given such suspicion.

- a. Absent a real and immediate threat to student, teacher, or public safety, a school official shall not ask a SRO to be present or participate in such a search.

12. Absent a real and immediate threat to student, teacher, or public safety, a SRO may question or participate in the questioning of a student about conduct that could expose the child

to court-involvement or arrest only after informing the child of his or her Miranda rights and only in the presence of the child's parent or guardian.

- a. The SRO shall inform school administrators prior to questioning the student where practicable.
- b. The SRO shall not ask a school official to question a student in an effort to circumvent these protections.

13. Absent a real and immediate threat to student, teacher, or public safety, a school official shall not ask a SRO to be present or participate in the questioning of a student that could expose the student to court-involvement or arrest.

14. Strip searches of children by either school officials or SROs shall be prohibited.

15. Absent a real and immediate threat to student, teacher, or public safety, other physically invasive searches by a school official or SRO shall not be conducted on a child.

16. Absent a real and immediate threat to student, teacher, or public safety, a SRO shall not use physical force or restraints --- including handcuffs, Tasers, Mace, or other physical or chemical restraints --- on a child.

TRANSPARENCY AND ACCOUNTABILITY

17. The school district and relevant law enforcement agency shall maintain annual publicly available data, without disclosing personally identifiable information, documenting the following:

- a. Number of incidents resulting in a juvenile arrest for conduct on school grounds or at a school-sponsored event, broken down by school; offense; arrestee's age, grade level, race, sex, and disability status; and disposition/result;
- b. Number of incidents resulting in other forms of law enforcement intervention --- including searches and seizures by SROs; questioning by SROs; issuance of a citation, ticket, or summons; filing of a delinquency petition; or referral to a probation officer --- for juvenile conduct on school grounds or at a school-sponsored event, broken down by school; offense or reason; type of law enforcement intervention; juvenile's age, grade level, race, sex, and disability status; and disposition/result;
- c. Number of suspensions or other disciplinary consequences imposed on students, broken down by school; offense/infracton; student's age, grade level, race, sex, and disability status; and disciplinary consequence imposed;
- d. Regulations, policies, and protocols governing the SRO program;
- e. Budget information for the SRO program including funding and expenditures;

- f. Number of SROs deployed to each school;
- g. Training materials for SROs; and
- h. Number and types of complaints lodged against SROs.

18. The SRO program shall set forth a simple and straightforward mechanism for any student, parent, teacher, principal, or other school administrator to submit a complaint, orally or in writing, of abuses or misconduct by SROs.

- a. Parents shall be permitted to submit a complaint in their native language.
- b. The complaint system must be confidential and protect the identity of the complainant from the SRO to the extent consistent with the SRO's due process rights.
- c. The system shall provide for an independent investigation into the allegations in the complaint.
- d. Complaints shall be investigated and resolved, and complainants shall be furnished with a written explanation of the investigation and resolution, within 30 days.
- e. Where serious allegations of abuse or misconduct are raised, the SRO shall be temporarily removed from having contact with students as appropriate.
- f. Where allegations of abuse or misconduct are substantiated, the SRO shall be suspended or permanently removed from school assignments or receive additional training as appropriate.
- g. Every student, parent, and guardian in the school system shall be informed of the complaint procedure.

MINIMUM SCHOOL RESOURCE OFFICER TRAINING REQUIREMENTS

19. Every School Resource Officer shall receive at least 40 hours of pre-service training and 10 hours of annual in-service training on the following topics:

- a. Child and adolescent development and psychology;
- b. Positive behavioral interventions and supports (PBIS), conflict resolution, peer mediation, or other restorative justice techniques;
- c. Children with disabilities or other special needs; and
- d. Cultural competency.

PROMOTING NON-PUNITIVE APPROACHES TO STUDENT BEHAVIOR

20. The School Resource Officer shall be familiar with and trained in all programs adopting non-punitive approaches to discipline available in the school district. If a school has implemented a specific program designed to improve overall school climate or respond to student behaviors in specific ways, the school resource officers shall participate in all trainings associated with that program.

STRUCTURE AND FUNDING FOR SCHOOL RESOURCE OFFICER PROGRAM

21. *[Insert language here on how program will be funded]*

22. *[Insert language here on the payment of SROs and the terms of their employment]*

23. *[Insert language here on the funding of SRO equipment and training]*

24. *[Insert language here on the chain of command for SROs]*

25. *[Insert language here on SRO duty stations and hours of duty.]*

26. *[Insert language here on SRO responsibilities during summer break and school term vacations.]*

DURATION OF GOVERNANCE DOCUMENT

27. This Governance Document shall become effective immediately upon execution by signature and remain effective until _____, whereupon it must be reviewed annually by all signatories or their successors before being renewed.

28. A signatory may terminate this Governance Document by serving written notice to all other signatories at least thirty (30) days in advance of such termination. A termination by a signatory shall eliminate the presence of School Resource Officers at ___ Public Schools.

Signed on this ___ of ____, 2009.

Superintendent

Representative of Law Enforcement Agency

[Insert other signatories as appropriate]

