

## **Working with the School Resource Officer: Legal Issues & Practical Advice**

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**Question:** What is the role of the school resource officer?

**Answer:** Generally. In the Lakeville Public Schools, there are two school resource officers (SRO). Each is assigned to one of the high schools and also serves select middle schools. The SRO's also work in the elementary buildings as needed.

Responsibilities. The officers' first responsibility is as a sworn law enforcement official. The officer works simultaneously to build and foster positive relationships with students, parents, faculty and staff. The officer's presence sends a strong message that violence of any kind in the schools is not acceptable.

Role of the Officer at School. The SRO's role is to help students improve their lives by building positive self-esteem and learning critical life skills during their school year.

An SRO serves many roles as a police officer. With the goal of promoting positive interactions in school, the SRO may educate a student about safe behavior in school, on the internet or in the community. The SRO's role also includes coaching or mentoring students to help them to make appropriate choices and to understand and appreciate the opportunities that are available to them. As the SRO builds a relationship with the school and the students, he or she can often help students make appropriate choices before the behavior or choice becomes problematic.

The SRO supports the education of students and may be asked to provide education on school safety, internet safety, drug and alcohol awareness and other topics where the SRO has expertise.

The SRO also works directly with the school administration and staff regarding community issues such as understanding gang related activities and promoting drug and alcohol awareness. Trained in emergency response, the SRO also assists in individual school emergencies such as accidents or injury, choking or anaphylactic shock. The SRO is a leader in establishing and implementing a school's emergency and crisis response plan.

**Question:** Is the SRO an employee of the school district?

**Answer:** No. The SRO is employed by the local law enforcement agency. The local police department assigns an officer to be the SRO. A written contract governs the role of the SRO while assigned to the school.

**Question:** Who supervises the SRO?

**Answer:** The SRO is supervised by the police department. Because the SRO is generally working out of a school district building, he or she is also responsible to follow the direction of the building principal or administrator except where that direction may conflict with the SRO's obligations as a law enforcement officer. The "chain of command" is one of the critical elements in the contract or agreement between the school district and the police department.

**Question:** Who pays the SRO?

**Answer:** As an employee of the police department, the SRO is paid by the police department. The school district pays for a portion of the services according to the contract.

**Question:** What are the essential elements that should be in the contract?

**Answer:** The contract between the police department and the school district should clearly define the SRO's role as a law enforcement officer. It should address the responsibilities of the officer, the lines of supervision, liability for accident and injury and the cost of the services.

Elements in the Contract. The following elements are essential to a complete contract:

- Overview of the school/police partnership (Definitions)
  - The purpose of the School Resource Officer Program
  - The objectives of School Resource Officer Program
  - Specific responsibilities of parties involved in the agreement
  - Chain of command (supervision) and communication between the parties
  - Funding and resources
  - Reporting procedures
  - Evaluation process
  - Terms of the agreement<sup>1</sup>
- Indemnification of the School District for acts of the SRO
- Non-responsibility for school policies; responsibility for law enforcement
- Data Practices procedure (*See the sample job description and contract attached*)
- In the event of a community emergency (or state wide emergency) what is the role of the SRO and will the SRO be re-assigned to other duties during that time or serve the school district.

**Question:** Does the SRO have access to private educational data?

**Answer:** No, generally the SRO does not have access to private educational data because the SRO is not an educator with a legitimate educational interest in the data.

**However,** the District's Data Practices or Data Privacy Policy *may* include the release of educational data to *agents* of the school district with a legitimate need to have access to the data.

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<sup>1</sup> References include: The School Safety Net; <http://cte.jhu.edu> (last accessed October 7, 2013); National Association of School Resource Officers, <http://www.NASRO.org> (last accessed October 7, 2013).

MSBA Policy. The standard Minnesota School Board Association policy states that prior consent is not required to release educational data to:

2. To a contractor, consultant, volunteer, or other party to whom the school district has outsourced institutional services or functions provided that the outside party:
  - a. performs an institutional service or function for which the school district would otherwise use employees;
  - b. is under the direct control of the school district with respect to the use and maintenance of education records; and
  - c. will not disclose the information to any other party without the prior consent of the parent or eligible student and uses the information only for the purposes for which the disclosure was made.

MSBA Policy 505.

Arguably, an SRO could be a contractor who is providing an institutional service. However, it would be more precise to state that an SRO may have access to private educational data when the SRO has a legitimate need to know in order to perform the duties in the SRO job description as approved by the Board of Education. This issue should also be directly addressed by the contract or memorandum of understanding.

**Question:** What is the role of the SRO in conducting searches of student's person, property or car?

**Answer:** The Fourth Amendment to the U.S. Constitution guarantees "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." This has long been interpreted to require that law enforcement or other government agencies have probable cause that a crime was committed before searching a person or their property.

School Administrator's Standard. The Fourth Amendment applies to searches by school officials. *Doe v. Little Rock Sch. Dist.*, 380 F.3d 349, 352 (8th Cir.2004). In a U.S. Supreme Court case decided in 1985, *New Jersey v. T.L.O.*, 105 S.Ct. 733 (1985), the Court determined that the need to control the school environment required a lesser standard for school administrators than probable cause. Instead, administration is required to have reasonable suspicion of a crime or violation of a school policy or rule. Reasonable suspicion requires that: (1) the search is justified at its inception. There must be reasonable grounds for suspecting that the search will reveal evidence that the student has violated the law or school policy and (2) the search is reasonably related in scope to the circumstances that justified the search. This means

the scope and manner of the search must be appropriate to the type of violation, the age and gender of the student.

In a 2006 criminal case, the Minnesota Court of Appeals addressed what was a reasonable search by school officials. *In re Welfare of S.M.L.*, WL 2255834 (Minn.App. 2006). A student missed an appointment with her dean and when located, the student smelled strongly of cigarette smoke. When confronted, the student admitted she was smoking and turned over a package of cigarettes. Her backpack, pockets and locker were searched and a knife was found. The student admitted it was hers but stated she had forgotten it was in her backpack. She acknowledged that she carried it often for safety and to use as a tool. She challenged the scope of the search as unreasonable. The Court disagreed and found the search appropriate at its inception and reasonable in scope. The SRO reported the crime and the student was charged with possession of a weapon on school grounds. She was found delinquent and ordered to participate in chemical treatment.

Standard for SRO. The SRO may search a student's person, property or car if the SRO is acting in his or her role as police officer and has probable cause to believe the student violated a law. Again, the legal standard for such searches by an SRO is "probable cause" that the person or property searched will turn up evidence of a crime.

The courts have fairly consistently held that individual suspicion is not necessary for a search when there is a policy that addresses searches and there is in fact a real threat to the educational environment in terms of safety or disruption. In *Burlison v. Springfield Public Schools*, 708 F.3d 1034 (8<sup>th</sup> Cir. 2013), the Eighth Circuit Court of Appeals held that a student's rights were not violated when pursuant to school policy, the local police brought in drug sniffing dogs and searched a classroom. The students were asked to leave the room at the time and leave their belongings there. The school had a known increase in drug possession on campus and the student testified he was aware of the increase in the problem and knew students who had drugs on campus. He complained that the zipper on his backpack seemed to have been touched while the dogs were in the classroom. The Court addressed this fact situation as a seizure – that is, the student as claiming that he was illegally separated from his possessions. The Court held the student was not unreasonably separated from his backpack as the amount of time was de minimus and he retained possession. The Court held that the procedure used by the school district in this case was reasonable.

**Question:** Can the SRO restrain a student or put the student into seclusion?

**Answer:** Acting as a law enforcement officer, the SRO may need to restrain a student or seclude the student. The district should not direct the officer to restrain or seclude a student. The school district may only restrain a student in the event of an emergency.