

LEGAL ISSUES AS TO
POLICE
AND SCHOOL RESOURCE OFFICERS ON
SCHOOL PROPERTY

32nd Annual NMSBA
SCHOOL LAW CONFERENCE
June 10 - 11, 2011

John F. Kennedy
Cuddy & McCarthy, LLP, and
Desi Garcia
Director of Safety & Security
Los Lunas Public Schools

Police and School Resource Officers on School Property

I. Authority:

- NMSA 1978 Sections 22-5-4 and 22-5-14 - Duty of Local School Board and School Superintendent to control, manage and supervise public schools and school property.
- NMSA 1978 Section 32A-4-3 – Duty to report child abuse and neglect.
- NMSA 1978 Sections 22-5-4.4 and 22-5-47 – Duty to report drug and alcohol use and weapons on school property.

Police and School Resource Officers on School Property

- I. Authority: NMAC 6.11.20 – PED Regulation on Student Rights and Responsibilities
 - NMAC 6.11.2.8 – Jurisdiction over students. School officials and authorized agents have comprehensive authority within constitutional bounds to maintain order and discipline at school, wherever and whenever students are lawfully subject to the school's control.
 - NMAC 6.11.2.10B – Search and Seizure rules specified. Law enforcement may be notified when search produces contraband.
 - NMAC 6.11.2.10C – School discipline may be imposed regardless of whether criminal charges result.

Police and School Resource Officers on School Property

- II. Police/SRO Presence is Necessary:
 - Violent confrontations and criminal misconduct on school property, whether caused by students, parents, school patrons or even school staff are on the rise! Thus, the need for the presence of and a close working relationship with local law enforcement officials.

Police and School Resource Officers on School Property

- II. Police/SRO Presence is Necessary:
 - As a result, ALL DISTRICTS should have a local policy and rules on “Cooperation with Law Enforcement.” (Model forms on CD.)
 - In addition, those school districts which employ and pay School Resource Officers, who are assigned by a local law enforcement agency, should have a formal written agreement (MOU) setting up the contractual terms of the arrangement. (Sample format on CD.)

Police and School Resource Officers on School Property

III. IMPLEMENTING PROCEDURE FOR COOPERATION WITH LAW ENFORCEMENT:

A. Interview or Interrogation of Students

1. Essential Elements:

- All contacts between law enforcement and students at school should be coordinated through the School Principal's office.
- Verifying and documenting identity of officer appearing at school on police business. (Sample documentation form on CD at end of "Administrative Rules.")
- Purpose for the contact – Note: School officials must cooperate if law enforcement is serving legal process (e.g., search or arrest warrants.)

Police and School Resource Officers on School Property

III. IMPLEMENTING PROCEDURE FOR COOPERATION WITH LAW ENFORCEMENT:

A. Interview or Interrogation of Students

1. Essential Elements (Continued):

- Whether parents should be notified
- Is contact at request of school authorities
- Whether parents or a school official should be present during an interview of the student by police
- Must child be advised of his/her basic rights as specified in the Children's Code. Sections 32A-1-16 and 32A-2-14.
- Students 13 years or under may not be fingerprinted or photographed without court order. Section 32A-2-14I

Police and School Resource Officers on School Property

III. IMPLEMENTING PROCEDURE FOR COOPERATION WITH LAW ENFORCEMENT:

B. Arrest of Students at School:

- Verification and documentation procedure should be followed
- All arrests should occur outside presence of other students or staff, unless emergency circumstances present.

Police and School Resource Officers on School Property

III. IMPLEMENTING PROCEDURE FOR COOPERATION WITH LAW ENFORCEMENT:

C. Search and Seizure of Property:

- If at request of school officials, police may search student lockers, desks, automobiles in emergency situations.
- Search of student's clothing or body requires reasonable individualized suspicion that student is in violation of school rules. (Note: Never conduct a strip search of a student!)
- If nonemergency, school officials may request police assistance pursuant to a warrant.

Police and School Resource Officers on School Property

III. IMPLEMENTING PROCEDURE FOR COOPERATION WITH LAW ENFORCEMENT:

• D. CHILD PROTECTIVE AGENCIES:

- Section 32A-4-3 requires immediate report to law enforcement, CYFD or tribal social services if any school staff members reasonably believes a student is a victim of abuse or neglect.
- If child abuse investigators appear without prior request of school officials, state law allows child abuse investigators to interview student at school without parent present. Section 32A-4-5C.

Police and School Resource Officers on School Property

III. IMPLEMENTING PROCEDURE FOR COOPERATION WITH LAW ENFORCEMENT:

D. CHILD PROTECTIVE AGENCIES

(Continued):

- School officials immune from liability for reporting possible abuse or neglect, or for cooperating with investigation, so long as acting in good faith. Section 32A-4-5B and C.
- Law enforcement officers and CYFD are entitled to access to any student records which may assist in investigation of child abuse or neglect. Section 32A-4-3B

Police and School Resource Officers on School Property

IV. MOU FOR SCHOOL RESOURCE OFFICERS:

A. Basic Elements:

- Reimbursement to law enforcement agency for specified portion of officer's salary, based on number of hours of SRO service.
- Set scope of work/duty hours.
- Coordination of service with site administrators/specify role in investigations of student misconduct.

Police and School Resource Officers on School Property

IV. MOU FOR SCHOOL RESOURCE OFFICERS:

A. Basic Elements (Continued):

- Will officer be in uniform/armed?
- Qualifications of assigned officer(s):
 - Certified/Commissioned law officer
 - Specified areas of training?
- Require documentation of activities/periodic reports.
- Confidentiality of information/student records.

Police and School Resource Officers on School Property

IV. MOU FOR SCHOOL RESOURCE OFFICERS:

B. Standard Contract Clauses:

- ❑ Non-appropriation
- ❑ Term and Termination
- ❑ Dispute Resolution
- ❑ Insurance
- ❑ Modification/Amendment
- ❑ Applicable Law
- ❑ Audit and Accounting for Funds
- ❑ Complete Agreement
- ❑ Authority of Signatories.

Police and School Resource Officers on School Property

V. COURT DECISIONS AS TO STUDENT DISCIPLINE AND POLICE INVOLVEMENT AT SCHOOL:

A. U.S. Supreme Court:

- Goss v. Lopez, 419 US 565 (1975) – Court decides for first time that students have due process rights, but that, in instances where removal/suspension from school is for ten days or less, only minimal due process requirements (i.e. an informal “give and take” with Student) are sufficient.

Police and School Resource Officers on School Property

V. COURT DECISIONS:

A. U.S. Supreme Court (Continued):

- New Jersey v. T.L.O. 469 U.S. 325 (1985) – Searches of students at public school are not subject to the criminal law requirement for “probable cause,” but rather, are justified if there is “reasonable individualized suspicion” that the search will uncover evidence of violations of law or school rules.

Police and School Resource Officers on School Property

V. COURT DECISIONS:

B. N.M Cases:

- State v. Doe, 88 NM 347 (Ct.App.NM 1975) – N.M. Court of Appeals finds that searches of student at school by school officials clearly constitute “state action” governed by constitutional standards (4th Amendment), but that the realities of the school situation and common sense teach that something less than the strict criminal law standards are appropriate to school searches. Court adopts reasonable suspicion standard ten years before TLO.

Police and School Resource Officers on School Property

V. COURT DECISIONS:

B. N.M Cases (Continued):

- Zamora v. Pomeroy, 639 F.2d 662 (10th Cir. 1981) – Federal Appellate Court decides students have no reasonable expectation of privacy in lockers, desks or other school property where personal items are stored.

Police and School Resource Officers on School Property

V. COURT DECISIONS:

B. N.M Cases (Continued):

- State v. Michael G., 106 NM 644 (Ct.App.NM 1987) – Reasonable suspicion standard met to justify search of student locker based on fellow student's account that unidentified student offender offered to sell him marijuana. Search turned up 2 joints.

Police and School Resource Officers on School Property

V. COURT DECISIONS:

B. N.M Cases (Continued):

- State v. Tywayne H., 123 NM 42 (Ct. App. NM 1997)
 - An after prom dance at Clovis High School co-sponsored by M.A.D.D., used uniformed City police officers for security. Students were directed to enter through front entrance. Officers observed Student enter through side door. When approached, odor of alcohol detected and Student admitted drinking a beer outside.

Police and School Resource Officers on School Property

V. COURT DECISIONS:

B. N.M Cases (Continued):

- State v. Tywayne H. (Continued) – Student asked to step outside and when frisked by officer, a loaded semi-automatic handgun discovered. NM Court of Appeals decided that the search was not conducted by school officials on their own initiative or by school authorities with or at the direction of a law enforcement agency. Search was completely at discretion of police, thus probable cause standard applied.

Police and School Resource Officers on School Property

V. COURT DECISIONS:

B. N.M Cases (Continued):

- State v. Tywayne H. (Continued) – Court of Appeals held no probable cause existed to justify a search of the student and no exception to the probable cause standard (e.g., exigent circumstances or search incident to an arrest) was present. Result: search suppressed.

Police and School Resource Officers on School Property

V. COURT DECISIONS:

B. N.M Cases (Continued):

- In Re Josue T., 128 NM 56 (Ct.App.NM 1999). Question presented – Does the 4th Amendment require probable cause for a full-time, commissioned police officer assigned to a public high school as a resource officer (SRO) to lawfully search a student during school hours at request of a school official?
- Answer: No

Police and School Resource Officers on School Property

V. COURT DECISIONS:

B. N.M Cases (Continued):

□ In Re Josue T. (Continued):

Facts: Student drove to Goddard high School in another student's pickup. Other student referred to Principal because of odor of marijuana. Other student and truck searched but no marijuana found. When student called out of class, he was immediately evasive, smelled of marijuana. Student taken to office, SRO asked to join them.

Police and School Resource Officers on School Property

V. COURT DECISIONS:

B N.M Cases (Continued):

- In Re Josue T. - Facts (Continued): Student kept hands in pockets of baggy pants and appeared to be hiding/protecting a large object in right pocket. When searched, refused to turnout right pocket or remove hand. SRO removed hand, reached into pocket and retrieved loaded .38 handgun.

Police and School Resource Officers on School Property

V. COURT DECISIONS:

B. N.M Cases (Continued):

▫ In Re Josue T. (Continued):

Court's Analysis and Decision: The search of the Student was initiated by school officials and police involvement was minimal. Officer assisting school official at school during school day to protect student welfare met reasonable suspicion standard.

Police and School Resource Officers on School Property

V. COURT DECISIONS:

B. N.M Cases (Continued):

- State v. Antonio T., NM Court of Appeals No. 30827 (Pending briefing) -

Facts: Student at Kirkland High School taken to office by two teachers on suspicion of drinking. Assistant Principal interviewed student, observed slurred speech and odor of alcohol. Student admitted drinking. SRO called in during interview to administer breath test.

Police and School Resource Officers on School Property

V. COURT DECISIONS:

B. N.M Cases (Continued):

- State v. Antonio T. - Facts (Continued): SRO was commissioned officer of San Juan County Sheriff in uniform and armed while on duty. SRO did not ask Student any questions. Search of backpack by Assistant Principal produced pocketknife with 3.5 inch blade. Student tested positive for alcohol, admitted drinking two shots of peppermint schnapps at school and disposing of bottle in bathroom trash can near library. (Search of trash can negative.) After positive breath test and knife found, Student given Miranda rights and arrested. Juvenile Court petition charged on alcohol offense only, not for knife.

Police and School Resource Officers on School Property

V. COURT DECISIONS:

B. N.M Cases (Continued):

- State v. Antonio T. - Facts (Continued): Student's Public Defender moved to suppress evidence of searches (breath and backpack) because Miranda warnings not given prior to the searches. Court denied motion. Case pending on appeal. Court of Appeals initially proposed Summary Reversal, but case placed on General Calendar after briefing by Attorney General's Office.
 - NMSBA and NMCSA have agreed to participate and file brief as Amicus Curial (Friend of the Court) supporting the actions of school officials.

Police and School Resource Officers on School Property

VI. LESSONS LEARNED:

- Parents and defense attorneys will continue to push for criminal law standards where police or SRO's are involved in investigations of misconduct or searches of students at school or school events.
- In Josue T. the state Court of Appeals noted that it could be “hazardous to discourage school officials [who are generally untrained in proper pat down procedures or in neutralizing dangerous weapons] from requesting assistance of available trained police resources” to conduct a search of a student suspected of carrying a dangerous weapon on campus.

Police and School Resource Officers on School Property

VI. LESSONS LEARNED (Continued):

Since “school disciplinary matters” committed at school and “delinquent acts” which can have juvenile or criminal law consequences, are not mutually exclusive, school officials require the flexibility to respond to such issues without fear that criminal defense attorneys will overturn their decision based on the more rigorous criminal law technicalities.

QUESTIONS?

Thank You!

**John F. Kennedy
Cuddy & McCarthy, LLP
1701 Old Pecos Trail
Santa Fe, NM 87505**

(505) 988-4476

(866) 679-4476

jkennedy@cuddymccarthy.com