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INTERROGATION OF STUDENTS: LEGAL AND POLICY ISSUE

Overview

Safety and security remain high priorities in every public school system in this country. No school system (rural, urban, and suburban) is immune from potential problems that place students and staff in harms way. However, what we do know is that steps can be taken to investigate and prevent problems from occurring—as well as to create a quick and effective response to crises when they occur. Strategic planning, readiness, and direct action lead to success in both spheres of activity.

Elements of Success. Contemporary public school administrators know that effective safety and security procedures must: (1) be information driven, (2) involve parents, students, and staff (3) rely on sustained cooperation and support of other community agencies (especially mental health, social services, and the police), (4) be clearly stated in non-legal jargon, and (5) follow a predetermined plan—one carefully crafted so as not to infringe on protected rights. Of the five elements mentioned, *information* is the foundation upon which all the other elements rest. Ironically, while we live in an era where information sources of all kinds exist at our finger tips, harmful events still occur.

Students Generated Information. Of all the information resources (including the plethora of electronic media) readily available, school principals continue to receive and evaluate information provided by students. In re T.S.A. (N.C. App. 2011) In the past, "tips" from students have prevented serious disciplinary problems from taking place or escalating. What is more, in situations following an incident a thorough investigation, including questioning (interrogation) of students by school administrators, has been and continues to be a necessary and productive process. Heyne v. Metropolitan Nashville Board of Public Education (Tenn. App. 2011)

Complex issues spring up when students mention suspected child abuse (especially physical and sexual abuse) or other criminal activity (especially drug and weapons possession). In such situations school officials know that they must immediately act to report the matter to and formally involve appropriate outside agencies—a process often mandated by state law. (Vacca and Bosher, 2012)

Police Involvement. Over the past two decades, as police officers (especially those formally assigned to school duty by their police department, and often functioning as school resource officers) have become more actively involved on a daily basis in all aspects of student control and discipline (both during the school day and during after school activities), the role and jurisdictional authority of police officers vis-à-vis school administrators gets blurred. To put it another way, in the daily routine of public schools it often is difficult to know when a student disciplinary matter is a school matter or one where the police are in charge.J.D. v. Commonwealth (Va. App. 2004)

While school administrators have the legal authority to carry out and enforce the student disciplinary policies and procedures of the local school board, they are not "the police." On the other hand, however, as one legal scholar reminds us, "[l]aw enforcement agencies are often involved initially in investigating the activities of young people, gathering evidence against them, and physically bringing them within the jurisdiction of the juvenile court." (Gardner, 2009)

School Authority and Police Authority. When the United States Supreme Court handed down its landmark student search and seizure decision in New Jersey v. T.L.O. (1985), it made it clear that: (1) students are protected by the Fourth Amendment, and (2) both public school administrators and police officers function as government actors. However, said the Court, in situations involving student searches each is held to a different standard. The Court made it clear that public school administrators are not police officers and need only *reasonable suspicion* to launch a search. Police officers remain held to the stricter standard of *probable cause*.

Over the past two decades the application of the Supreme Court's rationale in T.L.O. (1985) has been broadened and applied to a host of student Fourth (privacy) and Fourteenth Amendment (procedural due process) related disciplinary issues other than search and seizure. It was from the post-T.L.O. (1985) case law that a broad "special needs" analysis grew. Board of Education v. Earls (2002)

Constitutional Foundations

Police Procedure. Two decisions handed down by the United States Supreme Court have had a profound impact on establishing police arrest and interrogation procedures as we know them today. In Escabedo v. Illinois (1964) the Court held that criminal suspects (in this case a suspect arrested in connection with a murder) have a right to counsel during police interrogations. Two years later, in Miranda v. Arizona (1966), the Court held that in situations where a suspect is formally taken into custody and interrogated by the police the suspect must be warned that: (1) he/she has a right to remain silent, (2) anything said by him/her can be used against him/her in a court of law, (3) he/she has a right to remain silent before and during the interrogation and if they do so the interrogation will stop,
(4) he/she has a right to consult an attorney and have an attorney present during the police interrogation, (5) have an attorney appointed if he/she cannot afford one, and (6) until an attorney is present the interrogation will stop.

Miranda Warning and Public School Discipline. Legal scholars agree that public school students involved in school-related disciplinary infractions are "not entitled to a Miranda warning prior to being questioned by school authorities." (Alexander and Alexander, 2009) However, the legal landscape is changing rapidly. With the increase of potential violence and other security-related issues (on-line student-on-student threats, terrorist activity, street gangs) in schools (post-Columbine, "9/11", and Virginia Tech) the sustained involvement of local police agencies to both prevent and investigate security-related issues has become necessary in

communities across this nation. Thus, maintaining a balance between the constitutionally protected rights of students and the disciplinary prerogatives of school officials to do what is necessary became more difficult.

Student Due Process Rights. In re Gault (1967) firmly established the constitutional right of juveniles to due process under the Fourteenth Amendment. In emphasizing that children are "persons" under the United States Constitution the United States Supreme Court held that a minor in juvenile court was entitled to: (1) specific notice of charges against him with time to prepare for a hearing, (2) notification of the right to counsel and if counsel cannot be afforded a court appointed counsel will be provided, (3) privilege against self-incrimination, and (4) right to confrontation and cross examination of witnesses. However, the specific standards established in Gault (1967), a juvenile law case, were not automatically applied to public school students involved in school-system exclusionary hearings. It was not until five years later, in Goss v. Lopez (1975), a short-term suspension case, that the Supreme Court established the elements of minimal procedural due process applicable in public school-related disciplinary matters. In the Court's opinion, a student must: (1) be given at least informal notice of the charges against him, (2) an opportunity for some form of hearing, and (3) if he/she denies the charges against him/her, an opportunity to present his/her side of the story. (Vacca and Bosher, 2012)

Recent Case Law

This past spring the United Supreme Court handed down two decisions that offer some guidance regarding the interrogation of public school students by outside agency employees, at school and during the school day. While both cases involve the interrogation of students by non-school system officials they are nonetheless instructive for school administrators. Both decisions emphasize (1) *student rights*,(2) *age* as a factor to consider, and (3) the presence of *coercion*, in determining the defensibility of information generated through the interrogation of students.

Camreta v. Greene (2011). Decided on May 26, 2011, the Camreta case involved the interview of a nine-year old female student by a state protective services worker and a county deputy sheriff. The purpose of the interview, which took place at the student's elementary school, was to investigate allegations that her father had sexually abused her.
Subsequently, the student's mother sued for damages alleging that the interview violated the Fourth Amendment. While a federal district court had granted summary judgment to the defendant officials, the Court of Appeals for the Ninth Circuit held that the child's rights and been violated. She had been questioned by a law enforcement officer who did not have a warrant. In this situation no exigent circumstances or parent consent existed. Green v. Camerta (9th Cir. 2009)

Decided on writ of certiorari to the Ninth Circuit, the Supreme Court (with one dissenter) vacated the Fourth Amendment part of the case, focused on the issue of qualified immunity, and remanded the matter back to the appeals court. The Court opined that the child was no longer in need of protection because of her age and relocation.

J.D.B. v. North Carolina (2011). Decided on June16, 2011, the *J.D.B.* case involves a 13-year old seventh grade student taken from his classroom by a uniformed police officer to a school conference room where he was questioned (in a closed-door session) by the police officer (on detail to the school) and a school administrator. Prior to the questioning, which lasted for approximately thirty minutes, the student did not get a Miranda warning or an opportunity to contact his legal guardian (grandmother); and, he was not informed that he could leave the room. During the questioning the student first denied his involvement in home break-ins, but he later

confessed when faced with potential juvenile detention. Ultimately, two juvenile petitions (breaking and entering, and larceny) were filed against him.

Subsequently, the student was adjudicated a delinquent—a decision later upheld by the North Carolina Supreme Court. In re J.D.B (2009) Decided on writ of certiorari to North Carolina Supreme Court, the United States Supreme Court dealt with the following issue: Is the age of a child being subjected to police interrogation a relevant factor in establishing the custody analysis of Miranda v. Arizona (1966)? By a vote of 5-to-4 the high court held that within the coercive nature of a police interrogation environment a child's age properly informs Miranda's custody analysis. The North Carolina Supreme Court's decision was reversed and the case remanded.

Policy Implications

Contemporary public school administrators recognize the importance of student information. The "texting mania" gripping our student population places a high value on student in-put. In today's schools students likely know "what is really going on" both inside and outside the school house, long before school officials know. At the same time, however, school administrators realize that when receiving and exploring sources of student generated information they must be careful to (1) separate fact from fiction, and (2) not violate either the prerogatives and trust of parents, or the rights of the students.

In an era when public school administrators and local police agencies have created working partnerships, both Camerta v. Green (2011) and J.D.B v. North Carolina (2011) are instructive to local school boards as they reexamine existing policies and contemplate new ones. What follow are suggestions for local school system policy:

It must be made clear that:

- Student and staff safety and security have been and remain a high priority.
- School officials, administrators, and staff will work closely with local, state, and federal agencies and to do what is necessary to keep the schools safe and secure.
- Student generated information is a valuable resource of data needed to effectively plan and take necessary steps to protect and maintain a safe and secure school system environment.
- Parents will be involved in disciplinary situations involving their child.
- A difference exists between an administrator and/or other staff member questioning (interrogating) students in a formal, authoritative setting (e.g., a disciplinary hearing) and simply asking questions and listening to students in an informal setting (e.g., a school hallway, or in the cafeteria, or on the playground).
- When questioning students regarding school matters, school administrators and staff are not bound by the procedural requirements applied to police officers.
- The age of the student being questioned, the subject matter being explored, and the presence of other persons (e.g., another administrator, another student, a school counselor, a parent, a police officer) will be considered in determining the appropriate investigatory process to be used.
- Police interrogation of students is different from a school system administrator or other staff member questioning a student and, where police questioning takes place on school grounds, school officials will do what is necessary to: (a) provide a safe and secure environment where questioning can take place, (b) protect the rights of parents and students involved, and (c) maintain confidentiality.

Postscript

The developing nature of the law regarding information sharing coupled with the potential for encountering privacy and other legal and constitutional issues requires local school system officials, with the direct assistance of legal counsel, to periodically reexamine and up-date existing policies and procedures, as well as to reexamine the school system's crisis intervention plan. What might be appropriate today most likely will not be appropriate tomorrow? Adjustments to plans and procedures must be made.

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Note: The views expressed in this commentary are those of the author.