

Additional comments from Walgreens submitted 2/13/2020

We met with an attorney who is experienced in constitutional law and has represented schools, police departments and parents. We have additional input we would like to submit to the Naperville 203 school board and administration for consideration for the drafted Memorandum of Understanding (MOU) and Intergovernmental Agreement (IGA). We feel these recommendations will help to protect the School Resource Officer (SRO) and the school from legal repercussions as well as the students by helping to clarify the gray area that is often found with the overlap between school discipline and police presence. We have summarized our recommendations up front (listed here as Recommendations 1-6) and we have also pointed out specifics below in the MOU document where we find clarity is needed.

Recommendation 1: The main suggestion we have is to clarify the definition of what constitutes misconduct subject to school discipline and what constitutes misconduct that should involve the SRO. The varying descriptions such as “criminal activity”, “matters that threaten safety and security” and “generally not have any involvement in routine disciplinary matters” leaves too much subjectivity as to when a school disciplinary situation may overlap with law enforcement. Arguably, this could be literally any situation including such things as fighting, standing up in class and yelling, or spraying perfume because an SRO could consider that as disturbing the peace, disorderly conduct, felony assault, battery, disturbing the school environment or any other number of “criminal” activities. More clarity is needed to distinguish between disciplinary misconduct and criminal offenses that are subject to intervention by the SRO/law enforcement. Verbiage such as “Incidents involving public order offenses, including disorderly conduct, disturbance/disruption of school or public assembly, trespass, loitering, profanity, and fighting that does not involve physical injury or a weapon, should be considered school discipline issues to be handled by school officials. Absent a real and immediate threat to student, teacher or public safety, or students” (Mbekeani-Wiley P.20, 2017.) administration should

not involve the SRO.

Recommendation 2: The MOU indicates that reports will be generated regularly that sum up the number of referrals to the criminal justice system. We feel in order for complete accountability, it's important for the SRO, dean or any other administrator to report anytime the SRO is involved in the questioning of a student or maintaining safety, even if that doesn't lead to a referral to the criminal justice system.

Recommendation 3: It is important to establish systems of accountability in order to ensure quality performance. What is the process for filing a complaint against the SRO by either a teacher, staff member, student or parent? Can the complaint be filed with school authorities or will the parent or student be told to go to the police department to file the complaint? If complaints have to go through the police department then does that mean any investigation or disciplinary action on such a complaint is up to the police department? If so, this carries with it far more hoops to jump through for the person filing the complaint such as affidavit's, having their name made public, among others. We'd like to see a system where anyone can file a complaint against the SRO to the school administration and have a procedure in place on how the administration will address the complaint.

Recommendation 4: We suggest removing any vague descriptions about SROs being involved when "appropriate" or in cases where safety is a threat and use the common legal/police wording "exigent circumstances". (See specific references below) The word "exigent circumstances" is used in legal circumstances to mean an exception to the general requirement of a warrant under the Fourth Amendment search. Taken from the Cornell Law School website the definition of Exigent circumstances is: "circumstances that would cause a reasonable person to believe that entry (or other relevant prompt action) was necessary to prevent physical harm to the officers or other persons, the destruction of relevant evidence, the escape of the suspect, or some other consequence improperly frustrating legitimate law enforcement efforts." We feel that use of the term exigent circumstances would clarify what is meant in this case for all involved including police who are trained on the meaning of the term exigent circumstances.

Recommendation 5: The risk of allowing SROs to be in the room for interviews even if just keeping the peace, without calling it custodial or police interview is that the SRO may hear things that can and will be used against the student in a court of law and the student has not been told that ahead of time. The student should also be told when the police officer is in the room that they are free to leave at any time and can terminate the conversation at any time. The student does not understand this without being told. Our opinion is that if the SRO is even going to be in the room during a dean interviewing a student about an incident, then parents should be notified ahead of time and the student should be told that what they say can possibly be used against them legally and they have the right to remain silent.

Our suggestion is to have the dean alone or the dean along with other administration conduct the interview telling the student that they are not going to involve the police officer but the understanding is that the student be forthcoming with information and has to cooperate and talk to the dean. Only if exigent circumstances exist should the SRO be involved and at that point it becomes a custodial situation. The counter reasoning that the officer is there to maintain safety makes us argue that if safety is a concern then maybe it should be a police interview and parents should be notified and the child should be told their rights. Allowing the police officer to be in the room only creates more of a gray area. Our opinion is this should be more black and white. More straight forward.

Recommendation 6: In all searches involving the need to search a student's cell phone we recommend that the SRO obtain a valid warrant.

Specific sections of MOU:

1. Section I (A)

The word "discipline" should be removed in the sentence "This SRO program provides District administrators with law enforcement resources and expertise to assist with maintaining safety, security, order and discipline in the school environment..." Saying here that the SRO program assists in discipline directly contradicts elsewhere in the MOU where it states that the SRO will not be involved in

- school discipline.
2. Section I (C) (8): Change the word “primarily” to “solely”.
Primarily leaves room for literally anyone else to be responsible for administering discipline within the school. In section III (D), you use the word “solely responsible”. This should be consistent throughout the MOU in order to not cause confusion.
 3. Section I (C)(10): “collaborative administration of school discipline” leads us to believe that the SROs will be involved in discipline. This contradicts number 2 above.
 4. Section I (D)(1): The word “final” in the sentence “Final discretion regarding the imposition of school based behavioral interventions, consequences and discipline lies with the building principal or designees”. What is meant by “final”? Shouldn’t it read “All discretion”? “Final discretion” leads us to believe others have input on imposing interventions and discipline. Also, please clarify what is meant by “designees”.
 5. Section I (D)(4) : again change the word “Final” to read “All discretion”.
 6. Section II (A)(1): The last sentence says “including representatives from the respective school district”. Please clarify. Does that mean administration? Does that include any of the school board members? Does that include members from the community such as parents?
 7. Section II (5)(B): What does this mean exactly? Who is “dissatisfied” with their performance? Refer to Recommendation # 3 above.
 8. Section II (B): Is the SRO required to be a certified Juvenile officer?
 9. Section II (D) Reporting: Will the SRO only be required to report students that were referred to the criminal justice system? Is there a tracking mechanism for how many times the SRO was asked to be in the room for an investigation that did not lead to a referral to the criminal justice system? Also, is there a tracking mechanism for how many times a school representative was used in place of the parent/guardian? Refer to Recommendation # 2 above.
 10. Section III (C): too vague. Refer to Recommendation # 4 above.
 11. Section III (C): second paragraph...Add in that “in such instances, the student will not be charged with resisting or battery to police officer unless the school directs it.” This

- will protect the student from legal repercussions while still allowing the SRO to get involved in restraint of the student.
12. Section III (C)(1)(c)(4). We suggest you remove this statement. What does it mean? Would the school ever have a police officer that is NOT trained in safe interactions with youth on school property? In the IGA paragraph 8(a) (iv) seems to address the same thing but goes into more detail. Why not use the language from the IGA?
 13. Section III (C)(1)(d). Please explain what is meant by “the Building Principal and one other adult witness selected by the Building Principal”? Is this in addition to a support person such as the school social worker, school nurse or school psychologist?
 14. Section III (D): In the first sentence, we suggest adding the “and exercising” after “responsible for implementing”. Also, halfway down the paragraph, the sentence reads “the SRO should generally not have any involvement in routine discipline”. What is meant by “generally”? We suggest taking that out completely. It’s completely subjective and allows for too much of a gray area. Further down the paragraph, the sentence “School officials shall only request SRO assistance when necessary”... What is meant by necessary? Refer to Recommendation #4 above.
 15. Section III (D)(1) Second paragraph states “the reasonableness standard”. We believe you are referring to “reasonable suspicion”? There is not such a thing as reasonableness standard that we are aware of. Please clarify. Also, it states “pursuant to Illinois law”. Is there an Illinois specific law? Please reference the specific Illinois Compiled Statute (ILCS) or Illinois school code. We believe you are referring to a federal law, but if there is a state law, please reference it.
 16. Section III (D)(2) We are unsure what is meant by reasonably necessary to maintain safety. We think it’s too subjective and allows too much of a gray area allowing SROs to be in the room for any questioning of a student by a dean in the event they determine “safety” is a concern. Refer to Recommendation #4 and 5 above. They should be in the room during exigent circumstances or if investigating a criminal activity and parents have been notified.
 17. Section III (E). We recommend replacing “in light of a significant and articulable threat to one or more person’s health or safety” with “due to exigent circumstances”. As

mentioned earlier in the Recommendations.

18. Section IV (B) “that do not constitute violations of law, ...”. Again, too much subjectivity as just about any misconduct could be construed as “violation of law”. Can this be clarified by taking out that part of the sentence?
Refer to Recommendations above.
19. Section IV (D) Will the SRO be trained on Crisis Prevention Institute (CPI) or Crisis Prevention Training (CIT) and additional de-escalation techniques?

Suggestions on the Intergovernmental Agreement (IGA)

Paragraph 8 (b) – too vague. Refer to recommendation # 4. We recommend using the “exigent circumstances” phrasing so that it’s consistent.