

**CRIMINAL MINDS: MANAGING LAW ENFORCEMENT AND SCHOOL DISTRICT RELATIONSHIPS**

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**INTRODUCTION**

- Through a discussion of cases and U.S. Department of Education Guidance, participants will develop an understanding of how to (1) effectively partner with law enforcement; (2) formalize those relationships in Board Policy and Memoranda of Understanding; (3) and reinforce roles and responsibilities through Professional Development.

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**SCHOOL AUTHORITY OVER NON-STUDENTS: ON SCHOOL PROPERTY**

- The board “may prohibit entry to and provide for the removal from any public school building or grounds of any person who refuses to identify him/herself and state a lawful purpose for entering.”
- “Any person who refuses may be removed by school authorities, who may use reasonable physical force to accomplish the removal.”
- “Alternately, a person who refuses and who then refuses a lawful request to leave school premises may be subject to arrest by law officers for criminal offenses including but not limited to criminal trespass, interference with the educational process or disorderly conduct.”

6.11.2.8(B)(1) NMAC.

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**SCHOOL AUTHORITY OVER NON-STUDENTS: ON SCHOOL PROPERTY**

- "A person who does identify him/herself and states a lawful purpose may nevertheless be subject to removal by school officials for engaging in activities prohibited by this rule."
- "The person may also be subject to arrest by law officers if (s)he is committing any crime."

6.11.2.8(B)(1) NMAC.

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**RESTRICTING ACCESS FOR CRIMES AGAINST PUBLIC PEACE, NMSA 1978, § 30-20-13**

- "No person shall, at or in any building or other facility or property owned, operated or controlled by [a school district] **willfully impede** the staff or a public official or a member of the general public through the use of restraint, abduction, coercion or intimidation or when force and violence are present or threatened."
- "No person shall willfully interfere with the educational process of any public or private school by committing, threatening to commit or inciting others to commit any act which would disrupt, impair, interfere with or obstruct the lawful mission, processes, procedures or functions of a public or private school."

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**RESTRICTING ACCESS FOR CRIMES AGAINST PUBLIC PEACE, NMSA 1978, § 30-20-13**

- However, you cannot restrict:
  - Lawful freedom of movement within the building or facility or the land on which it is situated;
  - Lawful use of the building or facility or the land on which it is situated;
  - The right of lawful ingress and egress to the building or facility or the land on which it is situated; or
  - The lawful assembly and peaceful and orderly petition for the redress of grievances, including any labor dispute.

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**SCHOOL AUTHORITY OVER NON-STUDENTS: OFF SCHOOL PROPERTY**

- "Public school authorities have indirect and limited authority over the activities of non-students off school property."
- "To the extent that non-students' conduct at or near schools or school-sponsored activities may constitute a criminal offense, including the crimes of interference with the educational process, disorderly conduct or criminal trespass (after refusing a lawful request to leave), school authorities may request law enforcement agencies to arrest the offenders."

6.11.2.8(B)(1) NMAC.

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**SCHOOL AUTHORITY OVER STUDENTS**

- "All officials, employees and authorized agents of the public schools whose responsibilities include supervision of students shall have comprehensive authority within constitutional bounds to maintain order and discipline in school."
- "In exercising this authority, such officials, employees and authorized agents of the public schools may exercise such powers of control, supervision, and correction over students as may be reasonably necessary to enable them to properly perform their duties and accomplish the purposes of education."

6.11.2.8(A) NMAC.

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**SCHOOL AUTHORITY OVER STUDENTS**

- "This authority applies whenever students are lawfully subject to the schools' control, regardless of place."
- "During such periods, public school authorities shall have the right to supervise and control the conduct of students, and students shall have the duty to submit to the schools' authority."

6.11.2.8(A) NMAC.

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**STATE V. SILVA, 1974-NMCA-072**

- In 1974, ENMU had students arrested for conducting a sit-in.
- The Court of Appeals held that this was a valid arrest.
  - The United States Supreme Court had previously held that similar statutes are constitutional.
  - The arrest was for an activity that physically obstructed the operation of the school.
  - The arrest was made by police officers, not school officials.
- What about disruptive speech?
  - Arrests for disruptive speech may be constitutional.
  - But New Mexico's statute only covers physical disruption.

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**THE RESEARCH ON EXCLUSIONARY DISCIPLINE PRACTICES**

- "Research clearly shows that discipline policies and practices that remove students from engaging instruction — such as suspensions, expulsions, and inappropriate referrals to law enforcement — generally fail to help students improve their behavior and fail to improve school safety." *Rethink School Discipline*, U.S. Dept. of Educ. Resource Guide (July 2015).

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**BOARD AND SUPERINTENDENT RESPONSIBILITY FOR SCHOOL SAFETY**

- State regulations require that the Board develop and the district implement "a policy that addresses student and school employee wellness through a coordinated school health approach." 6.12.6.8 (B) NMAC.
- The wellness policy must include "school safety plans at each school building focused on supporting healthy and safe learning environments; the school safety plan must be submitted to the public education department for approval on a three-year cycle..." 6.12.6.8 (D)(7) NMAC.
- The powers and duties of the superintendent include "be[ing] accountable for school safety." 6.29.1.9 (B)(6) NMAC.

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### THE IMPACT OF POSITIVE SCHOOL CLIMATE ON SCHOOL SAFETY

- ❑ “Positive school climate is associated with better outcomes for students, including limited incidences of school violence; increased feelings of safety by students, faculty, and staff; high academic achievement.” *Rethink School Discipline*, U.S. Dept. of Educ. Resource Guide (July 2015).

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### THE IMPORTANCE OF A MULTI-TIERED BEHAVIORAL FRAMEWORK

- ❑ “Research shows that implementing evidence-based, multi-tiered behavioral frameworks can help improve overall school climate, school safety, and academic achievement for all children, including children with disabilities.”

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### THE ROLE OF LAW ENFORCEMENT

- ❑ “First and foremost, any school or district using school-based law enforcement officers should clearly define the officers’ roles and responsibilities at the school as that of important partners in school safety efforts.”
- ❑ “This role should be focused on school safety, with the responsibility for addressing and preventing serious, real, and immediate threats to the physical safety of the school and its community.”

U.S. Department of Education *Guiding Principles, A Resource Guide for Improving School Climate and Discipline* (January 2014)

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### THE ROLE OF LAW ENFORCEMENT

- "By focusing officers' roles on the critical issue of safety and avoiding inappropriate officer involvement in routine discipline matters, schools have found that they can reduce students' involvement in the juvenile justice system and improve academic outcomes while improving school safety."

U.S. Department of Education *Guiding Principles, A Resource Guide for Improving School Climate and Discipline* (January 2014).

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### USE OF CONTRACT SECURITY

- Herrera v. Santa Fe Public Schools*, 41 F.Supp.3d 1027 (D.N.M. 2014), examined whether a private contractor, hired by a district to run security, could be liable for illegal searches and seizures under the Fourth Amendment.
- The Fourth Amendment applies only to the government.
  - This contractor was a "state actor" and could be liable.
  - In order for the Board to be liable, the plaintiff must prove that a Board or District policy caused the contractor to act illegally.
  - In order for the contractor to be liable, the plaintiff must prove that a company policy caused its employees to act illegally.
  - Neither will be liable if the contractor has "qualified immunity."
  - "Qualified immunity" applies when the alleged act does not violate "clearly established law."

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### THE ROLE OF SCHOOL RESOURCE OFFICERS

- "For school resource officers, their role on campus typically involves three parts: law enforcer, informal counselor, and educator."
- "In their capacity as counselors and educators, SROs can, and should, support positive school climate goals by developing positive relationships with students and staff, and helping to promote a safe, inclusive, and positive learning environment."

U.S. Department of Education *Guiding Principles, A Resource Guide for Improving School Climate and Discipline* (January 2014).

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**POLICIES OR WRITTEN AGREEMENTS**

- “Schools and districts should document the expectations for officers’ roles through clear, written policies or MOUs between school administrators and law enforcement personnel.”

U.S. Department of Education *Guiding Principles, A Resource Guide for Improving School Climate and Discipline* (January 2014).

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**WHAT TO INCLUDE IN YOUR POLICY OR WRITTEN AGREEMENT**

- Specify that “law enforcement approaches (such as arrest, citations, ticketing, or court referrals) should be used only as a last resort, and never to address instances of non-violent misbehavior that do not pose a serious and immediate threat to school safety.”
- Document “examples of the types of conduct or incidents that generally would not meet the definition of an immediate threat to school safety, such as tardiness, loitering, use of profanity, dress code violations, and disruptive or disrespectful behaviors.”

U.S. Department of Education *Guiding Principles, A Resource Guide for Improving School Climate and Discipline* (January 2014).

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**WHAT TO INCLUDE IN YOUR POLICY OR WRITTEN AGREEMENT**

- Include measures to “ensure that school-based law enforcement officers receive rigorous training before the officers begin working on the school campus as well as continuing throughout their work at the school.”
- Require that training “cover the proper role and responsibilities of officers consistent with the school’s written policies or MOU.”
- Require that training address “how to distinguish between, and appropriately respond to, disciplinary infractions appropriately handled by school officials on the one hand, and major threats to safety or serious criminal conduct that requires law enforcement involvement on the other.”

U.S. Department of Education *Guiding Principles, A Resource Guide for Improving School Climate and Discipline* (January 2014).

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**WHAT TO INCLUDE IN YOUR POLICY OR WRITTEN AGREEMENT**

- Consider including as part of the required training of school-based law enforcement officers, the following topics:
  - Basic childhood and adolescent development, age-appropriate responses, disability issues, and conflict resolution and de-escalation techniques;
  - Bias-free policing (including implicit or unconscious bias and cultural competence);
  - Restorative justice practices; and
  - How to identify and refer for services those students exposed to trauma and violence.

U.S. Department of Education *Guiding Principles, A Resource Guide for Improving School Climate and Discipline* (January 2014).

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**WHAT TO INCLUDE IN YOUR POLICY OR WRITTEN AGREEMENT**

- Consider including as part of the required training of school-based law enforcement officers, the following topics:
  - Student privacy rights; and
  - Working with specific groups of students, such as those at risk for dropping out of school, trauma, social exclusion, or behavior incidents.

U.S. Department of Education *Guiding Principles, A Resource Guide for Improving School Climate and Discipline* (January 2014).

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**THE DISTRICT'S RESPONSIBILITIES WHEN LAW ENFORCEMENT RESTRAINS OR SECLUDES A STUDENT**

- Although law enforcement officers are not subject to the requirements of the new H.B. 212, now codified at NMSA 1978, § 22-5-4.12 (2017) (restraints and seclusion law), any restraint or seclusion by law enforcement on campus does trigger the District's parent notification, documentation and meeting requirements by district staff.

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**DISCLOSING FERPA PROTECTED INFORMATION TO LAW ENFORCEMENT**

- Under the Family Educational Rights and Privacy Act (FERPA), parental consent is required before a school district can disclose personally identifiable information from a student's education records, unless an exception applies. See 34 C.F.R. §99.30(a).
- "FERPA does not prohibit a school official from disclosing information about a student if the information is obtained through the school official's personal knowledge or observation, and not from the student's education records."
- "For example, if a teacher overhears a student making threatening remarks to other students, FERPA does not protect that information and the teacher may disclose what he or she overheard to appropriate authorities."

*Balancing Student Privacy and School Safety: A Guide to the Family Educational Rights and Privacy Act for Elementary and Secondary Schools (FPCO 2007).*

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**DISCLOSING FERPA PROTECTED INFORMATION TO LAW ENFORCEMENT**

- However, FPCO has further stated that when law enforcement wants to review records, the deputy can obtain access in one of two ways: (1) obtain written consent of the parent or eligible student; or (2) present the district with a court order or subpoena for the student's records.
- According to FPCO, the only other exception which could apply is if immediate access to the records is necessary due to an emergency which threatens health or safety. "This exception is limited to the period of the emergency and generally does not allow for a blanket release of personally identifiable information from a student's education records."

*Balancing Student Privacy and School Safety: A Guide to the Family Educational Rights and Privacy Act for Elementary and Secondary Schools (FPCO 2007).*

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**DISCLOSING CONFIDENTIAL PERSONNEL INFORMATION NOT SUBJECT TO DISCLOSURE UNDER IPRA**

- "Every person has a right to inspect public records of this state except ... letters of reference concerning employment, licensing or permits." NMSA 1978 § 14-2-1 (A)(2).
- "Every person has a right to inspect public records of this state except ... letters or memorandums which are matters of opinion in personnel files..." NMSA 1978 § 14-2-1 (A)(3).
- "Every person has a right to inspect public records of this state except ... as otherwise provided by law." NMSA 1978 § 14-2-1 (A)(8).

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**DISCLOSING CONFIDENTIAL PERSONNEL INFORMATION NOT SUBJECT TO DISCLOSURE UNDER IPRA**

- ❑ However, according to the New Mexico Attorney General, “an agency may release a record covered by an exception if the agency determines that release would be appropriate and not in violation of any other law that specifically requires that the record be kept confidential.” NM IPRA Compliance Guide (2015).
- ❑ With regard to the matters of opinion exception, the New Mexico Supreme Court has observed: “The Legislature quite obviously anticipated that there would be critical material and adverse opinions in letters of reference, in documents concerning disciplinary action and promotions and in various other opinion information that might have no foundation in fact but, if released for public view, could be seriously damaging to an employee.” *State ex rel. Newsome v. Alarid*, 90 N.M. 790 (1977).

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**WHAT ABOUT WHEN THE DA OR DEFENSE ATTORNEY WANTS STATEMENTS?**

- ❑ Statements. “Any person, other than the defendant, with information which is subject to discovery shall give a statement. A party may obtain the statement of the person by serving a written “notice of statement” upon the person to be examined and upon each party not less than five (5) days before the date scheduled for the statement. The notice shall state the time and place for taking of the statement. **A subpoena may also be served** to secure the presence of the person to be examined or the materials to be examined during the statement. If a subpoena is served to secure a witness or materials, a copy of the subpoena shall be served upon each party.” Rule 5-503(A) NMRA.

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**WHAT ABOUT WHEN THE DA OR DEFENSE ATTORNEY WANTS STATEMENTS?**

- ❑ Protective Orders. “Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition or statement, the court in the district where the deposition or statement is to be taken may make any order which justice requires **to protect a party or person** from annoyance, embarrassment, oppression, undue burden or expense, the risk of physical harm, intimidation, bribery or economic reprisals.” Rule 5-507(A) NMRA.

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