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Fifth Amendment Rights: Questioning Students

By Charles J. Russo, J.D., Ed.D.

When do student interrogations require the reading of *Miranda* rights?

Because juveniles are increasingly subject to questioning about their potential involvement in what may constitute adult criminal activities, the role of law enforcement personnel, including police officers and school resource officers (SROs), in interrogating students is worth visiting.

This column examines early litigation on student Fifth Amendment rights and a more recent case, *N.C. v. Commonwealth* (2013), in which an assistant principal (AP) interviewed a student about giving prescription drugs to a peer. The questioning took place in the presence of a deputy sheriff who served as an SRO but because the AP did not read the student his *Miranda* warning, the court suppressed his statements. These cases serve as a backdrop against which recommendations for school leaders can be framed.

Early Litigation

Courts agree that when educators question students about in-school misbehavior, the students are not entitled to receive *Miranda* warnings (*In re Tateana R.* 2009; *State v. Schloegel* 2009). Courts also concur that when students are interviewed by SROs (*State v. J.H.* 2005) or law enforcement personnel who are in schools regularly but are assigned duties beyond those of ordinary officers (*R.D.S. v. State* 2008), juveniles lack the Fifth Amendment right against self-incrimination.

Distinguishing between educators and law enforcement officials, the Pennsylvania Supreme Court observed that because school police officers who interrogated a juvenile about the break-in and vandalism of a classroom were law enforcement officials, they violated the student's rights by not giving him a *Miranda* warning (*In re R.H.* 2002). Later, an appellate court in Georgia affirmed that where a police officer

participated in the questioning of a student as part of a robbery investigation, and the school's assistant principal acted as an agent of the police, the juvenile was entitled to a *Miranda* warning because he was in custody when interviewed (*In re T.A.G.* 2008).

The Supreme Court entered the fray over the *Miranda* rights of students who are questioned by police officials. In *J.D.B.* (2011), the Court found that when police officers question juveniles in custodial educational settings about their possible involvement in criminal activities, they must take students' ages into consideration in evaluating whether to give them *Miranda* warnings. A closely divided Court invalidated the finding that a middle school student who was interrogated about a series of home break-ins was a delinquent, remanding for further consideration as to whether he was in police custody when questioned.

Shortly thereafter, the Alaska Supreme Court relied in part on *J.D.B.* in invalidating a state trooper's interrogation of a 15-year-old (*Kalmakoff v. State* 2011). The court decided that for the purposes of *Miranda*, the student was in police custody when he was questioned about a series of crimes, including murder, even though the interrogations were not in a school.

N.C. v. Commonwealth

When a teacher discovered an empty prescription pill bottle for hydrocodone in a high school bathroom with the name of a juvenile identified as *N.C.* on the label, he informed an assistant principal. When the AP took the student to an office for questioning, a deputy sheriff who was assigned to the location as an SRO remained present throughout the interview. In response to the AP's questioning, the student incriminated himself by admitting to giving two pills to a friend. The AP informed the student that

he would be disciplined for violating school rules.

At no point did the SRO who filed the charges against the student inform him that he was free to leave or provide him with a *Miranda* warning. Consequently, N.C. was charged in juvenile court with possession and dispensation of a controlled substance, a class D felony, and was classified as a youthful offender because he was over 16 at the time.

When a juvenile court refused to suppress N.C.'s statements, he entered a conditional guilty plea and was sentenced to 45 days in jail, 30 hours of community service, and another 27 hours of service in lieu of court costs. The court stayed the sentence pending appeal. After an intermediate appellate court refused to intervene, the case proceeded to the Kentucky Supreme Court.

A divided Kentucky Supreme Court—in a four-to-three judgment—reversed in favor of N.C. The court identified the issue as “whether a student is entitled to the benefit of the *Miranda* warnings before being questioned by a school official in conjunction with a law enforcement officer, the SRO, when he is subject to criminal charges in district court or, as in this case, adult felony charges” (p. 855). The court next divided its opinion into four substantive sections examining when *Miranda* applies, addressing the custody aspect of *Miranda* in juvenile cases, discussing whether N.C. was entitled to a warning before being interrogated, and balancing public need against the rights of individual students.

The court identified a two-part threshold as to when warnings are required.

As to *Miranda*'s applicability, the court identified a two-part threshold as to when warnings are required. First, the court reiterated that prosecutors may not rely on statements obtained during interrogations of those being held in custody unless

those being questioned received procedural safeguards to protect their right against self-incrimination. The second issue is whether those who are being questioned are in custody or whether, under the circumstances, reasonable persons would believe that they were free to end the questioning and leave.

In its lengthy review of the custody aspect of *Miranda* in juvenile cases, the court examined Supreme Court precedent, including *J.D.B.*, and the relevant Kentucky statutes. Under commonwealth law, in particular, the court acknowledged that juveniles have rights that cannot be waived by others and that judges must explain fully the meaning of the right to remain silent to children and their related adults who are present.

Educators must be cautious when SROs interrogate students or are present when others are doing so.

The court reasoned that N.C. was entitled to a *Miranda* warning before questioning. The court noted that the SRO, as a clearly identifiable law enforcement official wearing a gun and uniform, removed N.C. from his class and brought him into the assistant principal's closed office where he sat down next to the juvenile, across from the AP who made it clear that he expected N.C. to remain still. The court added that neither adult told N.C. that he was free to leave, that he did not have to answer their questions, or that he faced criminal charges. Nor did they contact his mother.

The court determined that under the circumstances, no reasonable 17-year-old would have thought that he was free to leave, that he could remain silent, or that he was confessing to criminal charges. Moreover, the court pointed out that had N.C. been an adult, it would have been clear that the results of the interview would have been

inadmissible because he had not received a *Miranda* warning.

Turning to the balancing of public needs against those of individual students, the court declared that educators reach a proper balance when they are free to question students about issues of discipline and school safety. However, the court specified that educators cannot use information that they receive from students in these interrogations as grounds for criminal charges when law enforcement officials are involved or if administrators are working with the police to gather incriminating evidence unless they first provide students with *Miranda* warnings and then take voluntary statements. The court clarified that if police officials are present during custodial questioning of students, students' comments must be suppressed only if they relate to criminal matters, not to issues of school discipline.

The court thus concluded that insofar as N.C. thought that he was facing school discipline only, the failure of the AP and SRO to advise him of his Fifth Amendment right to remain silent because he faced criminal charges meant that the charges against him had to be dropped.

Reflections

At the outset, it is important to recognize that although *J.D.B.* involved questioning by the police, whereas in *N.C.* an SRO was present as an assistant principal interviewed the student, both focused on the actions or presence of law enforcement officers in the interrogations of juveniles. As such, these cases raise implications for school business officials, their boards, and other education leaders in districts where SROs are active duty officers assigned to schools or work in schools during off-duty hours.

School boards are certainly free to afford students who are subject to questioning about wrongdoing by school officials alone greater rights, such as offering a *Miranda*-type

warning, although they are not required to do so. However, educators must be cautious when SROs interrogate students or are present when others are doing so. To this end, education leaders should consider the following suggestions.

1. Education leaders should work with their boards to develop policies about the role of law enforcement professionals. Policies should specify whether SROs are acting as school personal on in-house school disciplinary matters or whether they are functioning as police officers investigating potential crimes, in which case their actions are subject to cases such as *J.D.B.* and *N.C.* Of course, *N.C.* is only binding in Kentucky, but it offers useful food for thought in other jurisdictions.
2. In developing or revising policies about the presence and role of the police in schools, boards should assemble broad-based teams of stakeholders to review policies before they are implemented. Policy teams should include, but not necessarily limit membership to, a board member, central office personnel such as the school business official, the board's attorney, building-level administrators, support personnel such as SROs and counselors, teachers, students (especially at the high school level), parents, community members, and representatives of local law enforcement. Assembling broad-based policy development teams should help ensure that all reasonable perspectives are taken into consideration, and it should also help ensure compliance as long as the constituencies buy into the policies they helped to develop.
3. Policies should address the procedural due process rights of students and their parents or guardians by including provisions that
 - Specify that others may not waive the Fifth Amendment rights of students.
 - Require educators to provide notice to the parents or guardians of minors who are subject to questioning either by or in the presence of the police before allowing any interrogations to begin.
 - Identify who will contact parents or guardians; specify how soon after students are accused of wrongdoing educators must contact parents; and indicate how parents will be contacted, such as by telephone or email.
 - Mandate the creation of records acknowledging when educators fulfilled these steps.
4. When notifying parents or legal guardians, policies should
 - Identify all relevant facts in charges lodged against their minor children.
 - Inform them of the right to be present with their children regardless of whether they are subject to custodial questioning or decline to speak with the police once they have been asked to do so formally.
 - Explain how they can obtain attorneys should they wish to do so.
5. If parents or guardians permit their minor children to consent to being questioned, especially in their absence, officials should obtain advanced written permission from the juveniles and the adults. Further, boards should consider video- or audiotaping student interviews when police officers are present, regardless of whether they are participating, because this step can help ensure an accurate record of what occurred.
6. Policies should identify when the public safety exception might allow educators to question students without giving them Miranda warnings, such as when seeking to uncover weapons in schools.
7. Education leaders and boards should review policies annually.

This suggestion is important because officials want to ensure that policies are as up-to-date as possible, reflecting the most recent developments in case law and statutes. Another value of reviewing policies regularly is that if litigation ensues, evidence of their being updated can help convince courts that educators are doing their best to be current in safeguarding the rights of all in school communities.

Conclusion

Clearly, a key duty of all educators, including school business officials, is devising policies to maintain safe schools. Since this responsibility sometimes involves questioning students about their misbehaviors, it is important for school boards and education leaders to have effective policies in place that protect student *Miranda* rights so they can accomplish their goals in as legally sound a manner as possible.

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