

SROs, Safe Schools, and the Interagency Agreement

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The memorandum of understanding (MOU) is an essential document in interagency collaboration. It might more properly be called the “interagency agreement” or the partnership guide. Its chief utility is to provide structure to, and contact persons for, routine cooperation between agencies that share a common interest on a particular theme. The MOU serves as both a liability insurance policy for local government agencies as well as a policy instrument. The cooperative structure carved into an MOU has a better opportunity to be understood, consistently implemented, and passed down to future personnel. As a policy instrument, the MOU operates within the context created by federal and state laws, setting boundaries to avoid liability by helping the interagency team maintain an awareness of what the law allows and what it forbids.

The case for an MOU in the school/police relationship is easy to state. It sets forth the nature of the tasks to be performed by the SRO when assisting school officials in providing a safe and effective learning environment. It allows both the schools and law enforcement to find balance and a zone of comfort in the unique tasks that are performed when an SRO works on a public school campus. For example, it is assumed that SROs are already operating within the scope of their legal duties as a sworn law enforcement officer. What additional roles, if any, will the SRO fill as the safe schools plan is implemented? Will the SRO assist in enforcing the school code of conduct? Will the SRO teach classes or supervise school-sponsored events? Will the SRO be an extension of the police department when assigned to the school, or considered an independent contractor? To whom will the SRO report, the school administrator, or the law enforcement commander? These issues must be clearly spelled out in the MOU so that legal rules can be rigorously applied to protect the rights of students and other school personnel.

The courts now take the contents of the MOU very seriously when resolving the issues that arise from the presence of SRO on campus. Every jurisdiction with a school-law enforcement partnership should have such an agreement. The key to the resolution of many of the legal disputes (discussed below) has been found in the language of the MOU itself. As a result, it is also wise for agencies to reassess the contents of a pre-existing interagency agreement to make sure the document does not compromise the effectiveness of the safe schools plan.

Test your “MOU IQ” on the following scenarios:

1 An SRO is assigned to a local public high school under an interagency agreement. Under the agreement, the SRO is required to enforce the law, ensure a safe learning environment, and work cooperatively with school personnel to prevent disruptive conduct. One day, an administrator encountered a tardy, insubordinate student running across campus who repeatedly refused requests to come to him. The administrator asked the SRO for assistance. The student also ignored the SRO. The SRO seized the student, and a fight began in which the student hit and kicked the SRO. The student was arrested for battery on a law enforcement officer and resisting arrest with violence. The student filed a motion to dismiss the charges, arguing that the deputy was not engaged in the lawful execution of his duties when he followed the request of the school administrator. Should the motion be granted?

Y___ N___

2 Under an MOU, an SRO is assigned to a public school campus to investigate reports of criminal activity at the school. The SRO remained under the direct control and supervision of the police department and was not to become involved with administrative and disciplinary matters involving students. But, because of the high number of incidents requiring searches by the SRO, school officials agreed to investigate the less serious potential criminal matters (drugs), leaving the more serious investigations (weapons) to the SRO.

One day, during science class, a teacher observed Student A passing what appeared to be drugs to student B. After class ended, the teacher contacted the SRO and told him what she had observed. Acting under this agreement, two assistant principals brought Student B to the office, searched him and found a piece of paper wrapped in tinfoil with drugs. The student was arrested for possession and distribution of a controlled drug. The student filed a motion to suppress the evidence, arguing that the educators were acting as agents of the police. Should the motion be granted?

Y___ N___

3 A public school district has decided to retain peace officers to provide security on school campuses. Rather than sign an interagency agreement with the municipal police departments or the sheriffs' departments to provide SROs, the school district directly hired off-duty law enforcement officers employed in their private capacity as security guards. At the local high school, a student assaulted a teacher resulting in the death of the educator. Her family filed a negligence lawsuit against the SRO and the school, claiming that the SRO failed to perform his duties. The SRO and the school filed a motion for dismissal of the suit, arguing that the SRO was immune from suit based on his status as a peace officer. Should the court grant the motion?

Y___ N___

4 Student A was caught on campus skipping class. He was taken to the office of Vice-Principal because of concerns that he was under the influence of some type of intoxicating substance. The Vice-Principal asked an SRO for assistance. The SRO asked the student what he had taken, and he responded that he had drunk a quarter of a bottle of Robitussin cough syrup. The student said that he had been out in the parking lot in a truck belonging to Student B. The educator and the SRO found Student B in the school commons area and decided to search Student B's truck where drugs were found. Student B admitted that it was his. Both students were charged with committing delinquent acts. The students filed motions to suppress their statements and the evidence because of the involvement of the SRO. Should the Court grant the motion?

Y___ N___

The MOU is a dynamic document. Its contents control the legal description of the agencies whose activities it describes. The MOU must be seen as a tool designed to serve rather than restrict the lawful actions of agencies. Its language will and should change to meet changing circumstances in the interagency relationship. The focus should always be on finding language that accurately expresses the shared vision of each agency after which a review of the document for legal problems should take place.

Courts now examine closely the contents of the MOU to determine how to characterize the presence of the SRO on campus. Therefore, judges expect that officers assigned to work at schools under cooperative agreements between their law enforcement agencies and school boards will be called upon to perform many duties not traditional to the law enforcement function, such as instructing students, serving as mentors and assisting administrators in maintaining decorum and enforcing school board policy and rules. Judges look for evidence in the language of the MOU for clear intent by both the police department and the school district as to specific role of the SRO. Emerging from recent court decisions is a checklist:

1 Does the MOU clearly describe the tasks that require the SRO to be fully engaged in the lawful execution of his legal duty as a law enforcement officer and those situations that require the SRO to act as or perform the duties of a school official?

2 Is it clear when, if at all, the SRO will be acting at the direction of educators who are attempting to enforce a school policy?

3 Does the MOU spell out the circumstances when, if at all, the SRO should immediately intervene in potential campus disruptions as they occur without waiting first for direction by either the police or school officials?

4 Is the SRO working as a police officer working in his off-time as a security guard for a school district, or has the school district contracted directly with a law enforcement body to assign an officer assigned to the school?

A flawed MOU is either one that does not accurately state the intentions of the safe schools team, or one that has not kept up with the changing duties of the SRO after its original implementation. Both instances can create liability for the team or the individuals implementing the plan. For example, an MOU that states that “the SRO is at the school as a law enforcement presence and is not responsible for discipline at the school,” has been held to prevent the SRO from being considered a “school official” and acting under the lower standards of reasonableness under the Fourth Amendment. (See *State v. R.D.S.*, 2009 Tenn. App. LEXIS 440 (Tenn. Ct. App. July 16, 2009)). In another case, the court held that the tasks performed by the team that were not written in the MOU would be treated as part of the agreement. (See *State v. Heirtzler*, 147 N.H. 344, 789 A.2d 634 (2001)). In addition, under the clear terms of an MOU, a court upheld law enforcement tasks performed solely by law enforcement without the aid of school officials. (See *Hill v. Sharber*, 544 F. Supp. 2d 670 (M.D. Tenn. 2008)). Another court set forth the importance of the MOU in this regard,

School resource officers perform a unique mission. They are certified law enforcement officers who are assigned to work at schools under cooperative agreements between their law

enforcement agencies and school boards. They [may be] bound to abide by district school board policies and consult with and coordinate activities through the school principal. In this capacity, resource officers are called upon to perform many duties not traditional to the law enforcement function, such as instructing students, serving as mentors and assisting administrators in maintaining decorum and enforcing school board policy and rules. *C.M.M. v. State*, 983 So. 2d 704, 2008 Fla. App. LEXIS 8157 (Fla. Dist. Ct. App. 5th Dist. 2008)

One of the lessons that emerge from these cases is that a well written MOU will characterize every disruption on campus as one involving school discipline and campus safety. Disruptions that violate both the school rules and criminal law will occur in the process. The intervention that results when implementing this language will make SRO and school officials more effective, falling under the deferential standard of law that does not require Miranda warnings (See *In re D.E.M.*, 1999 PA Super 59, 727 A.2d 570 (Pa. Super. Ct. 1999)), or probable cause when investigating disruptions. (See *In re William V.*, 4 Cal. Rptr. 3d 695 (2003), cert. den., 541 U.S. 1051 (2004)). A well-written MOU will clearly state that educators are required to report suspected and investigated violations of the law to police in the ordinary course of enforcing school discipline, but do not become agents of law enforcement when they do so. This is precisely the result in the seminal case of *TLO* (See *New Jersey v. TLO*, (469 U.S. 325 (1985))).

In the I.Q. test, the answer is “No” to fact patterns One and Three and “Yes” to numbers Two and Four. Question One involves a deputy assigned to the school by the police department who was engaged in the execution of his duties as spelled out in the agreement. In the incident, the deputy was acting at the direction of the administrator who was attempting to enforce a school policy regarding students who were late to class. The deputy was therefore clearly engaged in the lawful execution of his legal duty as a school resource officer. (See *C.M.M. v. State*, 983 So. 2d 704 (Fla. Dist. Ct. App. 5th Dist. 2008). Question Two involves the case of a team that made a poor policy that could not be examined and corrected because it was not made part of the written agreement. The court found that an oral agreement between the school and the police in which the educators investigated suspicious criminal activity when the SRO was too busy to take action made the school officials agents of the police when they questioned and searched a student. A well-written agreement on this task could have avoided this result altogether. (See *State v. Heitzler*, 147 N.H. 344, 789 A.2d 634, 2001 N.H. LEXIS 224 (2001) and compare with *In re D.E.M.*, 1999 PA Super 59, 727 A.2d 570 (Pa. Super. Ct. 1999)).

Question Three is an illustration of the negative legal consequences of the language of an MOU. The nature of the agreement between schools and law enforcement is important to the issue of immunity from suit. A police officer working in his off-time as a security guard for a school district has no immunity from federal and state claims that would otherwise apply to law enforcement officers. In addition, his liability is directly imputed to the school district. The best practice for a school district to provide a safe environment for students and avoid liability is by contracting directly with the police department. (See *Knight v. Terrell*, 961 So. 2d 30, 2007 Miss. LEXIS 408 (Miss. 2007)). Question Four is an example of how too binding a characterization of an SRO may defeat a cooperative strategy. The SRO was a law enforcement officer assigned to the high school on a regular basis, and was assigned duties at the school beyond that of an ordinary law enforcement officer. But the court ruled that, “[t]he MOU neither anticipates nor permits an SRO to act as or perform the duties of a school official. Under the terms of the MOU, the SRO was at the school as a law enforcement presence and was not

responsible for discipline at the school.” After the implementation of the agreement, the SRO properly became involved in school discipline, but this change was not made part of the MOU. Therefore, the court ruled that the SRO could not be considered a school official and that the reasonable suspicion standard would not apply to his searches. (See *State v. R.D.S.*, 2009 Tenn. App. LEXIS 440 (Tenn. Ct. App. July 16, 2009)).

Article reprinted from the Spring 2012 edition of the NASRO Journal of School Safety.