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Schooling the Police: Race, Disability, and the Conduct of School Resource Officers

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SCHOOLING THE POLICE: RACE, DISABILITY, AND THE CONDUCT OF SCHOOL RESOURCE OFFICERS

*Amanda Merkwae**

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INTRODUCTION

On March 25, 2015, police officers effectuated a violent seizure of a citizen in Kenner, Louisiana:

[T]he police grabbed her by the ankles and dragged her away [from the tree]. . . . [She was] lying face down on the ground, handcuffed with her face pressed so closely to the ground that she was having difficulty breathing due to the grass and dirt that was so close to her nose and mouth. An officer was kneeling on top of her, pinning her down with a knee squarely in [her] back. Several other officers, as well as several school administra-

* University of Michigan Law School, J.D. Candidate, May 2016. Amanda Merkwae is an Executive Editor for the Michigan Journal of Race & Law, Volume 21. Special thanks is owed to her editors and Professor L. Kate Mitchell for helpful guidance throughout the writing process. This note is dedicated to Ki'tay Davidson, a fearless and full-of-love disability and racial justice activist. May he rest in power.

tors, stood around the scene watching. [She] was crying and yelling[,] “Help, I’m hurting.”¹

The handcuffed individual was a Black, ten-year-old child who has been diagnosed with autism.² On the day of the incident, she “began acting up in class, running around the classroom, climbing on desks, and knocking down classroom chairs.”³ After she climbed out of the classroom window and up a tree on school property, school officials called the police.⁴ Instead of responding to the situation in a manner appropriate for a fourth grader with autism, officers responded with handcuffs and a knee in her back.⁵

In Mississippi, a twelve-year-old diagnosed with bipolar disorder “was handcuffed in front of several classmates and put in the back of a police car outside of [his middle school]” after “los[ing] his temper in an argument with another student, and hit[ing] several teachers when they tried to intervene.”⁶ Following the incident, the boy was briefly admitted to a mental health facility, then “charged with three counts of assault.”⁷

In Virginia, a Black eleven-year-old boy diagnosed with autism was charged with disorderly conduct and felony assault of a police officer for his acts of kicking over a trash can in school and trying to pull away when a school resource officer grabbed him.⁸

Unfortunately, the facts in these elementary school students’ cases are not rare. Over the past few decades, schools across the country have adopted extremely harsh discipline policies to control student misbehavior that may be caused by an underlying disability. This includes the practice

1. Letter from Sara H. Godchaux & Eden B. Heilman, S. Poverty Law Center, to Office for Civil Rights, U.S. Dep’t of Educ. 15 (May 7, 2015) (on file with Office for Civil Rights) [hereinafter SPLC Complaint].

2. *Id.*

3. *Id.*

4. *Id.*

5. *See id.* The incident is one of many detailed in a May 2015 civil rights complaint drafted by the Southern Poverty Law Center (SPLC) and filed with the U.S. Department of Education (DOE) and the U.S. Department of Justice, Civil Rights Division. *Id.* SPLC filed an initial complaint in 2012 on behalf of African-American students disproportionately subjected to arrests and seizures in Louisiana’s Jefferson Parish Public Schools. *Id.* But three years after the DOE launched an investigation, SPLC attorneys maintained that the problem had only gotten worse. *Id.*

6. Jackie Mader & Sarah Butrymowicz, *Pipeline to Prison: Special Education Too Often Leads to Jail for Thousands of American Children*, THE HECHINGER REPORT (Oct. 26, 2014), <http://hechingerreport.org/pipeline-prison-special-education-often-leads-jail-thousands-american-children/>.

7. *Id.*

8. Susan Ferriss, *Virginia Tops Nation in Sending Students to Cops, Courts: Where Does Your State Rank?*, CENTER FOR PUBLIC INTEGRITY (Apr. 10, 2015, 5:00 AM), <http://www.publicintegrity.org/2015/04/10/17089/virginia-tops-nation-sending-students-cops-courts-where-does-your-state-rank>.

of stationing sworn police officers with full arrest power in elementary, middle, and high schools to exert social control.⁹ Data from the U.S. Department of Education confirms that students of color and students with disabilities are saddled with a disproportionate number of the school-based arrests and referrals to law enforcement that result from an increased police presence in schools.¹⁰

Critics of the enhanced law enforcement presence caution that the initial point of contact between a student and a police officer has the potential to define that student's social and educational future.¹¹ An officer's split-second decision about a student's conduct—which may be influenced by conscious or unconscious racial¹² or disability-related biases¹³—deter-

9. E.g., Nicole L. Bracy, *Student Perceptions of High-Security School Environments*, 43 *YOUTH & SOC'Y* 365, 366 (2011); Nirvi Shah, *Influx of School Police Raises Worries*, *EDUC. WEEK* (Mar. 13, 2013), http://www.edweek.org/ew/articles/2013/03/13/24sro_ep.h32.html. In addition to stationing sworn police officers in school hallways, schools implement a variety of other rules and security measures that exert social control over students and can affect school culture and student perceptions of school safety. See, e.g., Abigail Hankin, Marci Hertz & Thomas Simon, *Impacts of Metal Detector Use in Schools: Insights from 15 Years of Research*, 81 *J. SCH. HEALTH* 100 (2011) (analyzing the impact of school metal detectors on student and staff perceptions of school safety and suggesting that “the use of metal detectors in schools is associated with lower levels of students’ perceptions of security in school and higher levels of disorder”); Jafeth Sanchez, Andrew Yoxsimer & George Hill, *Uniforms in the Middle School: Student Opinions, Discipline Data, and School Police Data*, 11 *J. SCH. VIOLENCE* 4, 345 (2012) (examining the impact that school uniform policies have on school culture and safety); Bryan Warnick, *Surveillance Cameras in Schools: An Ethical Analysis*, 77 *HARV. EDUC. REV.* 317 (2007) (exploring the power dynamics and ethical questions raised by the use of video surveillance versus in-person surveillance practices and discussing).

10. U.S. DEP’T OF EDUC., OFFICE FOR CIVIL RIGHTS, *CIVIL RIGHTS DATA COLLECTION DATA SNAPSHOT: SCHOOL DISCIPLINE*, NO. 1 (Mar. 2014) [hereinafter *DATA SNAPSHOT*]. Nationwide, Black students “represent 16% of student enrollment,” but make up “27% of students referred to law enforcement and 31% of students subjected to a school-related arrest.” *Id.* at 6. Further, “[s]tudents with disabilities represent a quarter of the students who are referred to law enforcement or subjected to school related arrests, while representing just 12% of the student population.” *Id.* at 7.

11. See, e.g., *Hawker v. Sandy City Corp.*, 774 F.3d 1243, 1243-44 (10th Cir. 2014) (Lucero, J., concurring) (“[The] facts [in this case] compel me to comment on the potential future consequences to the child and the . . . broader phenomenon it unfortunately represents. The criminal punishment of young schoolchildren leaves permanent scars and unresolved anger, and its far-reaching impact on the abilities of these children to lead future prosperous and productive lives should be a matter of grave concern for us all.”). Judge Lucero also commented on the absurdity of trends in the jurisprudence to treat children who have committed minor offenses like hardened criminals. *Id.* He argued, “It is time for a change in our jurisprudence that would deal with petty crime by minors in a more elegant fashion Focusing narrowly on the legal standards applicable in this case renders it too easy to overlook the obvious question: Why are we arresting nine-year-old schoolchildren?” *Id.*

12. See L. Song Richardson, *Arrest Efficiency and the Fourth Amendment*, 95 *MINN. L. R.* 2035, 2039 (2011) (detailing implicit social cognition research and discussing how implicit racial biases influence interactions between police and citizens).

13. See Dale Larson, *Unconsciously Regarded as Disabled: Implicit Bias and the Regarded-As Prong of the Americans with Disabilities Act*, 56 *UCLA L. REV.* 451, 472-75 (2008) (arguing that

mines whether a student receives a warning, a suspension or expulsion from school, a municipal ticket, or even delinquency charges following an arrest.

School leaders' approval of in-school arrests and law enforcement referrals for students receiving special education services seems contrary to the ample protections afforded to this subset of students by federal disability laws. Under the U.S. Department of Education regulations implementing the terms of the Individuals with Disabilities Education Act (IDEA), all public schools are required to provide special educational services tailored to the individual needs of students who are diagnosed with one or more of the disabilities listed in the statute.¹⁴ IDEA also protects students with disabilities from being suspended or expelled for misbehaviors that are manifestations of their disabilities.¹⁵ Additionally, Section 504 of the Rehabilitation Act of 1973¹⁶ and the Americans with Disabilities Act (ADA) prohibit disability-based discrimination.¹⁷ But without proper training on schools' obligations under special education law, police officers stationed in schools may not account for students' disabilities when making arrests.¹⁸ Schools and law enforcement agencies must recognize the long-term consequences of giving sworn police officers constant access to students whose brains are not fully developed, whose behaviors may be caused or exacerbated by a disability, and who may be susceptible to the coercive authority of police officers due to their race or disability.

Part I of this Note describes the trend of exclusionary discipline practices and arrests in schools, which contribute to the school-to-prison pipeline and disproportionately affect students of color and students with disabilities. Part II examines the history of stationing police officers in schools, highlights the ambiguity in the roles and discretionary power of School Resource Officers (SROs), and concludes that SROs' discretion plays a role in the criminalization of students of color and students with disabilities. Finally, Part III argues that the IDEA requirements for school officials apply to the conduct of SROs, and SROs should be obligated to accommodate for students' disabilities during all interactions with students at school.

themes that have developed from the study of race-based implicit bias also apply to implicit bias against individuals with disabilities).

14. 34 C.F.R. § 300.110, §§ 300.121-300.156 (2013). Disabilities providing eligibility for special education services include deafness, visual impairment, speech or language impairment, emotional disturbance, specific learning disabilities, traumatic brain injury, and other health impairments, among others. 34 C.F.R. § 300.8(c) (2013).

15. See 20 U.S.C. § 1415(k)(1)(A)-(G) (2013). The procedural protections guaranteed by IDEA for students facing disciplinary actions are described in detail in part III.A.1. of this Note.

16. 29 U.S.C. § 794 (2000) (codifying Section 504 of the Rehabilitation Act).

17. 42 U.S.C. § 12101(b)(1)-(2) (2000).

18. See PETER FINN ET AL., *ABT ASSOCS., COMPARISON OF PROGRAM ACTIVITIES AND LESSONS LEARNED AMONG 19 SCHOOL RESOURCE OFFICER (SRO) PROGRAMS* 67 (2005).

I. RACE, DISABILITY, AND THE SCHOOL TO PRISON PIPELINE

Between 1980 and 2013, the number of people incarcerated in U.S. prisons and jails skyrocketed from 501,886 to 2,305,900—an increase of more than 450 percent.¹⁹ This increase has been attributed to changes in sentencing policies and policing strategies following the “War on Drugs.”²⁰ Concurrently, “tough on crime” policies and the broken windows philosophy of policing crime and disorder²¹ trickled down to the school system. Schools adopted zero-tolerance policies and began issuing suspensions and expulsions at unprecedented rates.²² These exclusionary discipline measures had a disparate impact on minority students and students with disabilities.²³ As a result, youth of color and youth with disabilities were swept into the juvenile and adult justice systems at higher rates than their White and non-disabled peers.²⁴ Education scholars and reformers labeled this phenomenon of cycling children out of classrooms and into the justice system the “school-to-prison pipeline.”²⁵ This section will (A) detail the overrepresentation of youth of color and youth with disabilities in the justice system and (B) attribute this imbalance, in part, to schools’ criminalization of these groups.

A. *The Overrepresentation of Youth of Color and Youth with Disabilities in the Juvenile Justice System*

For decades, studies have exposed the overrepresentation of youth of color and youth with disabilities in the juvenile justice system.²⁶ Youth of color are more likely than White youth to be arrested, detained, and com-

19. THE SENTENCING PROJECT, FACT SHEET: TRENDS IN U.S. CORRECTIONS at 2 (2015), http://sentencingproject.org/doc/publications/inc_Trends_in_Corrections_Fact_sheet.pdf.

20. *Id.* at 3.

21. See George Kelling & James Wilson, *Broken Windows*, THE ATLANTIC, Mar. 1982, <http://www.theatlantic.com/magazine/archive/1982/03/broken-windows/304465> (arguing that disorder plays a significant role in producing more serious crime and that police “exist to help regulate behavior” and maintain the informal social controls that help establish order in communities).

22. See Johanna Wald & Daniel Losen, *Defining and Redirecting a School-to-Prison Pipeline*, 2003 NEW DIRECTIONS FOR YOUTH DEV. 9, 10; see also *What is the School-to-Prison Pipeline?*, ACLU, <https://www.aclu.org/racial-justice/what-school-prison-pipeline> (last visited Sept. 9, 2015).

23. *Id.*

24. *Id.*

25. Carla Amurao, *Fact Sheet: How Bad Is the School-to-Prison Pipeline?*, PBS (Mar. 28, 2013), <http://www.pbs.org/wnet/tavisssmiley/tsr/education-under-arrest/school-to-prison-pipeline-fact-sheet/>.

26. E.g., Rodney Engen, Sara Steen & George Bridges, *Racial Disparities in the Punishment of Youth: A Theoretical and Empirical Assessment of the Literature*, 49 SOC. PROBS. 194 (2002).

mitted to other community programs.²⁷ For instance, Black youth make up sixteen percent of all youth, ages 10 to 17, in the general U.S. population, but they account for twenty-nine percent of juvenile court referrals, thirty-six percent of youth detained outside of their homes, and thirty-five percent of youth waived into the adult criminal court system.²⁸ The Office of Juvenile Justice and Delinquency Prevention within the U.S. Department of Justice has provided funds to states for researching this racial disparity, or “disproportionate minority contact” (DMC), within the justice system, in an effort to identify the causes and consequences of this phenomenon.²⁹ Nevertheless, this racial disparity of youth in the justice system continues to perpetuate educational, social, and economic inequality due to the harsh collateral consequences of involvement with the system.³⁰ Michelle Alexander has garnered national attention for her work describing the implications that adult criminal convictions can have on Black Americans’ employment, housing, education, and public benefits.³¹ Black youth and other youth of color face similar obstacles to Black adults; those who are arrested or referred to the juvenile justice system may face suspension or expulsion and loss of education rights, denial of admission to higher education institutions, loss or denial of employment, or eviction of their entire family from public housing.³²

In addition to racial disparities in the juvenile and criminal justice systems, a disproportionate number of youth with learning disabilities and emotional or behavioral disorders are adjudicated delinquent, and generally, youth in the juvenile justice system are three to seven times more likely to need special education services than children outside of the system.³³ Juveniles incarcerated in detention facilities receive special education services at a rate four times as much as youth in public school programs.³⁴ And in some juvenile detention facilities, “75% to 100% of

27. See Joshua Rovner, *Disproportionate Minority Contact in the Juvenile Justice System*, THE SENTENCING PROJECT (May 2014).

28. Kimberly Kempf-Leonard, *Minority Youths and Juvenile Justice: Disproportionate Minority Contact After Nearly 20 Years of Reform Efforts*, 5 YOUTH VIOLENCE & JUV. JUST. 71, 73 (2007).

29. Kenneth B. Nunn, *The Black Nationalist Cure to Disproportionate Minority Contact*, in JUSTICE FOR KIDS: KEEPING KIDS OUT OF THE JUVENILE JUSTICE SYSTEM 138 (Nancy E. Dowd ed., 2011).

30. See Christopher Gowen, Lisa Thureau & Meghan Wood, *The ABA’s Approach to Juvenile Justice Reform: Education, Eviction, and Employment: The Collateral Consequences of Juvenile Adjudication*, 3 DUKE F. FOR L. & SOC. CHANGE 187 (2011).

31. MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 185-87 (2012).

32. Gowen et al., *supra* note 30, at 193-94.

33. PETER LEONE & LOIS WEINBERG, *CTR. FOR JUVENILE JUST. REFORM, ADDRESSING THE UNMET EDUCATIONAL NEEDS OF CHILDREN AND YOUTH IN THE JUVENILE JUSTICE AND CHILD WELFARE SYSTEMS* 12 (2010).

34. Mary M. Quinn et al., *Youth With Disabilities in Juvenile Corrections: A National Survey*, 71 EXCEPT’L CHILD. 339, 342 (2005). The authors describe the results of a nationwide survey of

youth in custody have a mental illness that meets a DSM-IV diagnosis,” while one out of five of these youth “suffer from the most severe mental illnesses, such as schizophrenia or bipolar disorder.”³⁵ The vast majority of youth who cycle through the juvenile justice system, however, will not be placed in a detention facility. Instead, most youth are placed on probation, ordered to pay restitution, or given other consequences.³⁶ As a result, it is more difficult to assess the rates of youth with disabilities who are not detained prior to court hearings and the rates of those who do not receive detention as part of their juvenile disposition.

Joseph Tulman, a legal scholar whose work focuses on special education, attributes the disproportionate number of youth with disabilities in the juvenile justice system to schools’ failure to identify students’ challenges and capabilities and to adapt their curricula accordingly.³⁷ Tulman also finds that delinquency-system personnel have the misguided belief that youth with disabilities may be best served by detention and that defense attorneys fail to take juvenile clients’ disabilities into account when determining case strategy.³⁸

The overrepresentation of youth of color and youth with disabilities in the juvenile justice system can be traced back to the decisions that trigger the juvenile court process: the decisions of police officers to make arrests. A growing number of these juvenile arrests are made in schools.

B. *The Criminalization of Students of Color and Students with Disabilities*

Following the passage of the Gun Free Schools Act in 1994, the national trend in school discipline has been to adopt a zero-tolerance philosophy, which is defined as “mandat[ing] the application of predetermined consequences, most often severe and punitive in nature, that are intended to be applied regardless of the gravity of behavior, mitigating circum-

juvenile corrections agencies which found that 33.4% of “youth [in juvenile corrections] . . . receiv[e] special education services” compared to “8.8% of students ages 6 to 21” in public schools. Authors of the study also noted the potential for under-estimation of the special education needs of youth incarcerated in juvenile facilities due to problems with transferring juveniles’ special education records as well as general issues with identifying students’ special education needs.

35. Lisa Thureau, *Rethinking How We Police Youth: Incorporating Knowledge of Adolescence into Policing Teens*, 29 CHILD. LEGAL RTS. J. 30, 34 (2009).

36. CHARLES PUZZANCHERA, BENJAMIN ADAMS & SARAH HOCKENBERRY, NAT’L CTR. FOR JUVENILE JUSTICE, *JUVENILE COURT STATISTICS 2009*, 58 (2012). Of the estimated 1,505,100 delinquency court cases processed in 2009, fifty-five percent “were handled formally (with the filing of a petition).” *Id.* Of the cases handled formally, one percent of youth were transferred to adult criminal court, and fifty-nine percent were adjudicated delinquent. *Id.*

37. Joseph Tulman, *Disability and Delinquency: How Failures to Identify, Accommodate, and Serve Youth with Education-Related Disabilities Leads to Their Disproportionate Representation in the Delinquency System*, 3 WHITTIER J. CHILD & FAM. ADVOC. 3, 28-41 (2003).

38. *Id.* at 41-75.

stances, or situational context.”³⁹ Based on this philosophy, students can be issued long-term suspensions (more than ten days) for minor infractions. Under a zero-tolerance policy, students can be expelled for violating specific discipline code provisions related to possessing weapons or contraband, fighting, or engaging in discretionary offenses like “disorderly conduct” or “insubordination.”⁴⁰

Not only are schools suspending and expelling students at higher rates, but students are now being ticketed or charged with crimes for behaviors that teachers and school administrators previously addressed.⁴¹ In recent years, students have received charges for wearing too much perfume,⁴² eating chicken nuggets from a classmate’s lunch tray,⁴³ throwing Skittles at another student on the school bus,⁴⁴ doodling on a desk,⁴⁵ and performing a science experiment without teacher approval.⁴⁶ In 2012 alone, schools referred 260,000 students to law enforcement agencies, and 92,000 students were arrested for school-related matters.⁴⁷ For example, in

39. Am. Psychol. Ass’n Zero Tolerance Task Force, *Are Zero Tolerance Policies Effective in Schools? An Evidentiary Review and Recommendations*, 63 AM. PSYCHOL. 852, 852 (2008).

40. However, students with disabilities are afforded additional protections in the long-term suspension and expulsion context under the IDEA. See 20 U.S.C. § 1415(k). If a student with a disability is facing exclusion from his regular educational placement for more than ten days (i.e. a suspension or expulsion), the school must convene a meeting called a “manifestation determination” where school officials determine whether the student’s disciplinary infraction (A) was a manifestation of the student’s disability or (B) a consequence of the school not following the student’s IEP. *Id.* at (1)(A)–(G). If the student’s conduct was either a manifestation of his disability or a consequence of the school’s failure to properly implement the IEP, school officials may not move forward with the exclusionary punishment. *Id.*

41. See Paul Hirschfield, *Preparing for Prison?: The Criminalization of School Discipline in the USA*, 12 THEORETICAL CRIMINOLOGY 79, 80 (2008); see also Therese Edmiston, *Classroom to Courtroom: How Texas’s Unique School-Based Ticketing Practice Turns Students into Criminals, Burdens Courts, and Violates the Eighth Amendment*, 17 TEX. J. ON C. L. & C. R. 181 (2012) (describing schools’ reliance on misdemeanor tickets to address student behavior issues in Texas and Colorado and the disproportionate impact the ticketing has on students of color).

42. Chris McGreal, *The US Schools with Their Own Police*, THE GUARDIAN (Jan. 9, 2012), <http://www.theguardian.com/world/2012/jan/09/texas-police-schools>.

43. Eugene Kane, *Chicken Nugget Arrest is Half Baked: Teen Accused of Theft, Faces Charge for Alleged Taking of \$2.60 Meal at School*, MILWAUKEE J. SENTINEL (July 17, 2010), <http://www.jsonline.com/news/milwaukee/98681399.html>.

44. SPLC Complaint, *supra* note 1, at 9.

45. Stephanie Chen, *Girl’s Arrest for Doodling Raises Concerns About Zero Tolerance*, CNN (Feb. 18, 2010, 10:22 AM), <http://www.cnn.com/2010/CRIME/02/18/new.york.doodle.arrest/>.

46. Alex Hobson, *Arrested for ‘Science Project Gone Wrong,’ Bartow High School Student Talks*, WFTS TAMPA BAY (May 23, 2013, 5:28 AM), <http://www.abcactionnews.com/news/region-polk/arrested-for-science-project-gone-wrong-bartow-high-school-student-talks>.

47. Gary Fields & John Emshwiller, *For More Teens, Arrests by Police Replace School Discipline*, WALL ST. J. (Oct. 20, 2014, 10:30 PM), <http://www.wsj.com/articles/for-more-teens-arrests-by-police-replace-school-discipline-1413858602>; see also Chris Zubak-Skees & Ben Wieder, *A State-by-State Look at Students Referred to Law Enforcement*, THE CENTER FOR PUBLIC

Clayton County, Georgia, misdemeanor referrals from schools to juvenile courts surged from forty-six referrals to 1,147 referrals between 1996 and 2003.⁴⁸ In Denver, school referrals to law enforcement rose from 818 to 1,401 between 2000 and 2004.⁴⁹ In Chicago, school arrests rose from 7,851 to 8,539 between 2001 and 2003.⁵⁰

Paul Hirschfield describes the criminalization of students as “the shift toward a crime control paradigm in the definition and management of the problem of school deviance.”⁵¹ This criminalization encompasses students’ subjection to suspensions and expulsions under zero-tolerance policies;⁵² “scrutiny by armed police, dogs, or metal detectors”; and labeling “rule-breaking and trouble-making students” as criminals.⁵³ He argues that mechanisms used for social control in schools now mirror those in prisons, and as a result, punishment in schools—like punishment in the criminal justice system—is borne disproportionately by youth of color.⁵⁴

Studies have consistently found that these exclusionary discipline policies have a disproportionate effect on students of color and students with disabilities.⁵⁵ For instance, national school discipline data released in 2014 by the U.S. Department of Education, Office for Civil Rights revealed that “black students are suspended at a rate three times greater than white students” and that “students with disabilities are more than twice as likely to receive an out-of-school suspension . . . than students without disabilities.”⁵⁶ Further, with the exception of Asian-American and Latino students, more than 25% of boys of color with disabilities and almost 20% of girls of color with disabilities receive at least one out-of-school-suspension in a given school year.⁵⁷ In New York City public schools, students with disabilities are “four times more likely to be suspended than students

INTEGRITY (Apr. 10, 2015, 5:00 AM), <http://www.publicintegrity.org/2015/04/10/17074/state-state-look-students-referred-law-enforcement> (providing a state-by-state breakdown of student arrests by race and disability status).

48. Fields & Emshwiller, *supra* note 47.

49. ADVANCEMENT PROJECT, EDUCATION ON LOCKDOWN: THE SCHOOLHOUSE TO JAILHOUSE TRACK 23 (2005).

50. *Id.* at 32.

51. Paul J. Hirschfield, *Preparing for Prison? The Criminalization of School Discipline in the USA*, 12 THEORETICAL CRIMINOLOGY 79, 80 (2008).

52. *Id.* at 82.

53. *Id.* at 80.

54. *Id.* at 82.

55. See, e.g., DATA SNAPSHOT, *supra* note 10, at 1; RUSSELL J. SKIBA ET AL., INDIANA EDUCATION POLICY CENTER, THE COLOR OF DISCIPLINE: SOURCE OF RACIAL AND GENDER DISPROPORTIONALITY IN SCHOOL PUNISHMENT (2000); M Karega Rausch & Russell J. Skiba, *Discipline, Disability, and Race: Disproportionality in Indiana Schools*, 4 CTR. FOR EVAL. & EDUC. POL’Y 10 (2006); Robert Skiba et al., *Race is not Neutral: A National investigation of African American and Latino Disproportionality in School Discipline*, 40 SCH. PSYCHOL. REV. 85 (2011).

56. DATA SNAPSHOT, *supra* note 10, at 1, 3.

57. *Id.* at 1.

without disabilities,” and Black students with disabilities are suspended at disproportionate rates compared to non-Black students with disabilities.⁵⁸

National school-related arrest data reflect the same patterns: “27% of students referred to law enforcement and 31% of students subjected to a school-related arrest” are Black, despite the fact that Black students only comprise 16% of the student population.⁵⁹ In Chicago Public Schools, 75% of juveniles arrested on school properties in 2011 and 2012 were Black, despite the fact that Black students make up only 42% of the student population.⁶⁰ Nationally, students with disabilities make up about 12% of student enrollment, but they account for 25% of students arrested or referred to law enforcement.⁶¹

It is important to note the intersectionality across students’ race and disability.⁶² A disproportionate number of students of color are diagnosed with learning, cognitive, and emotional disabilities. Compared with their White peers, Black students are “twice as likely to be identified as ED [emotionally disturbed] and 2.7 times as likely to be identified as CI [cognitively impaired]” and Native American students are almost “twice as likely to be identified as SLD [specific learning disability].”⁶³ Researchers attribute this disproportionality to cultural or linguistic differences that “may be misinterpreted as symptoms of a learning disability” or differences in methods of referring students for special education services.⁶⁴ It is also possible that the diagnoses are valid, due to “early experiences influenc[ing] brain development” related to low socio-economic status.⁶⁵

58. Udi Ofer, *Criminalizing the Classroom: The Rise of Aggressive Policing and Zero Tolerance Discipline in New York City Public Schools*, 56 N.Y.L. SCH. L. REV. 1373, 1400 (2012).

59. DATA SNAPSHOT, *supra* note 10, at 6.

60. Mariame Kaba & Eva Nagao, *Policing Chicago Public Schools: Gateway to the School-to-Prison Pipeline*, PROJECT NIA: BUILDING PEACEFUL COMMUNITIES (2011), www.project-nia.org; *Policing Chicago Public Schools: Gateway to the School-to-Prison Pipeline* (May 29, 2013, 9:46 AM), <https://policeinschools.wordpress.com/>.

61. DATA SNAPSHOT, *supra* note 10.

62. See DAVID J. CONNOR, URBAN NARRATIVES: PORTRAITS IN PROGRESS, LIFE AT THE INTERSECTIONS OF LEARNING DISABILITY, RACE, & SOCIAL CLASS 291-305 (2008). Connor showcases the unique experiences of students of color diagnosed with learning disabilities, explaining how students can internalize their subordination and adopt fatalistic views of their future in school systems and other social “hierarchies that uphold long-standing dominate beliefs in relation to disability, race, and class.” *Id.*

63. Amanda L. Sullivan & Aydin Bal, *Disproportionality in Special Education: Effects of Individual and School Variables on Disability Risk*, 79 EXCEPT’L CHILD. 475, 476 (2013).

64. Dara Shiffer, Chandra Muller & Rebecca Callahan, *Disproportionality and Learning Disabilities: Parsing Apart Race, Socioeconomic Status, and Language*, 44 J. OF LEARN. DISABILITIES 246, 247 (2011).

65. *Id.* at 248. *But see* David M. Ramey, *The Social Structure of Criminalized and Medicalized School Discipline*, 2015 SOC. OF EDUC. 1, 15 (finding that schools with larger populations of Black students had “higher rates of criminalized school discipline and lower rates of medicalization,” while schools with more White students had lower rates of suspensions and school arrests but more students receiving special education services).

Students of color with disabilities face an increased likelihood of arrest at school or referral to law enforcement due to both layers of identity.⁶⁶ Based on data from the U.S. Department of Education, Office for Civil Rights, Black students with disabilities constituted 7.8 percent of school-related arrests and 6.4 percent of student referrals to law enforcement during the 2011-12 school year, despite the fact that Black students with disabilities only make up 2.3 percent of the U.S. student population.⁶⁷

To identify potential causal factors behind disproportionate student arrest rates, it is necessary to study the conduct of the individuals effectuating many of the arrests: School Resource Officers.

II. SCHOOL RESOURCE OFFICERS

In addition to harsher school discipline policies and the increased use of security devices like metal detectors and cameras, police presence in schools contributes to the criminalization of students of color and students with disabilities. Over the past few decades, armed police officers, commonly referred to as School Resource Officers (SROs), have become a ubiquitous presence in elementary, middle, and high schools. In the Safe and Drug Free Schools and Communities Act, the federal government defined an SRO as:

[A] career law enforcement officer, with sworn authority, deployed in community-oriented policing, and assigned by the employing police department or agency to work in collaboration with school and community-based organizations to—(A) educate students in crime and illegal drug use prevention and safety; (B) develop or expand community justice initiatives for students; and (C) train students in conflict resolution, restorative justice, and crime and illegal drug use awareness.⁶⁸

However, the responsibilities of SROs often differ from school to school. SROs' varied training experiences, evolving relationships with school administrators, and different policing models can have tremendous

66. See generally DATA SNAPSHOT, *supra* note 10.

67. U.S. DEP'T OF EDUC., OFFICE FOR CIVIL RIGHTS, CIVIL RIGHTS DATA COLLECTION (2011-12), <http://ocrdata.ed.gov> [hereinafter DEP'T OF EDUC. CIVIL RIGHTS DATA]. Percentages are based on author's calculations. Civil Rights Data indicates that the total U.S. student enrollment in 2011-2012 was 49,605,534; this includes 7,883,124 Black students and 6,086,426 students with disabilities. *Id.* The number of Black students with disabilities served under IDEA totaled 1,159,802. *Id.* In the same time frame, the number of students in the U.S. receiving school-related arrests was 64,218; Black students with disabilities served under IDEA received 5,005 of these arrests. *Id.* The total number of students in the U.S. referred to law enforcement was 249,752; Black students with disabilities served under IDEA received 15,735 of these law enforcement referrals. *Id.*

68. 20 U.S.C. § 7161 (2012).

consequences for students already at a disproportionate risk of becoming involved with the justice system.⁶⁹ Because youth of color and youth with disabilities are especially likely to be referred to the justice system following contact with law enforcement, school leaders must recognize the potential repercussions of facilitating daily interactions between these demographics and police officers. Before it is possible to identify specific areas for improvement in SRO-student relations, it is necessary to first (A) outline the recent history of increased police presence in schools, (B) describe common policing models implemented by SROs, (C) identify the legal roles SROs adopt in different situations, and (D) explore the implications that an influx of police in schools can have for students of color and students with disabilities.

A. *The Influx of Police in Schools*

The origins of SRO programs in the United States can be traced back to community policing strategies implemented in Flint, Michigan, during the 1950s.⁷⁰ By 1975, only 1% of school principals across the country reported having on-site police officers, but this increased to 36% by the 2003-2004 school year and to 40% by the 2007-2008 school year.⁷¹ According to the National Crime Victimization Survey, 69% of students ages twelve to eighteen reported having on-site security guards or police officers at school in 2007.⁷² And, as the National Association of School Resource Officers notes, “School-based policing is the fastest growing area of law enforcement.”⁷³

Following a general increase in juvenile crime rates along with highly publicized school shootings in the 1990s, public fear about violence and crime in schools stimulated funding for school policing programs.⁷⁴ To supplement this new police presence, schools began implementing zero-tolerance discipline policies and security measures such as metal detectors, security cameras, Tasers, and canine units to aid in enforcing these policies.⁷⁵ Beginning in 2000, the U.S. Department of Justice Office of Community Oriented Policing Services (COPS) awarded grants to communities to develop collaborative programs that involve local police

69. See, e.g., Mario Torres & Jacqueline Stefkovich, *Demographics and Police Involvement: Implications for Student Civil Liberties and Just Leadership*, 45 EDUC. ADMIN. Q. 450 (2009).

70. CATHY GIROUARD, OFFICE OF JUSTICE PROGRAMS, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION: SCHOOL RESOURCE OFFICER TRAINING PROGRAM (2005).

71. Chongmin Na & Denise Gottfredson, *Police Officers in Schools: Effects on School Crime and the Processing of Offending Behaviors*, 30 JUST. Q. 619, 620 (2013).

72. *Id.*

73. THE NAT'L ASS'N OF SCH. RES. OFFICERS, <https://nasro.org/> (last visited Sept. 9, 2015).

74. Spencer C. Weiler & Martha Cray, *Police at School: A Brief History and Current Status of School Resource Officers*, 84 THE CLEARING HOUSE 160, 160 (2011).

75. EDUCATION ON LOCKDOWN, *supra* note 49, at 17.

departments in schools.⁷⁶ From 1999 to 2008, COPS awarded more than \$750 million in grants to local police departments to hire more than 6,500 new SROs and provide them with training and technical assistance.⁷⁷ Some researchers have estimated that now more than 17,000 officers from sheriffs' offices and local departments work in schools, on top of the 3,200 officers employed directly by public school districts.⁷⁸ Some argue that this drastic increase in police and other surveillance systems is fundamentally altering the dynamics of power and student experiences in schools.⁷⁹

In response to a national survey conducted in 2005, school administrators and law enforcement officers cited a variety of reasons for why SRO programs were implemented in particular schools including national media attention about school violence, school disorder problems like rowdiness and vandalism, parents' desire for school officers, new grant funding, revised community policing efforts, or, for a relatively small proportion of respondents, the level of violence in their schools.⁸⁰

Despite the growing presence of SROs, it is unclear whether they are actually increasing student safety. Recent studies have yielded conflicting results as to whether officers stationed in schools decrease crime or simply promote the perception of a safe school environment.⁸¹ In addition, COPS has acknowledged that most research and evaluations of SRO programs document school administrator and parent satisfaction with the program, as opposed to objective crime-reduction outcomes.⁸² Even research geared towards measuring objective outcomes has failed to produce any conclusive results; a 2005 study that examined nineteen SRO programs throughout the country failed to offer any conclusions about program effectiveness because data on SRO operations is not regularly collected by schools or

76. Girouard, *supra* note 70.

77. BARBARA RAYMOND, CENTER FOR PROBLEM-ORIENTED POLICING, INC., PROBLEM-ORIENTED GUIDES FOR POLICE, RESPONSE GUIDES SERIES GUIDE NO. 10: ASSIGNING POLICE OFFICERS TO SCHOOLS 1 (2010).

78. Ben Brown, *Understanding and Assessing School Police Officers: A Conceptual and Methodological Comment*, 34 J. OF CRIM. JUST. 591, 592 (2006).

79. Aaron Kupchik & Torin Monahan, *The New American School: Preparation for Post-Industrial Discipline*, 27 BRIT. J. OF SOC. OF EDUC. 617 (2006). The authors describe the way school socialization directly influences students' socialization "into contemporary social roles." *Id.* at 618. Policing, surveillance, and other forms of social control in schools, the authors argue, is "prepar[ing] all public school students in the United States for life in an era of mass incarceration and post-industrialization." *Id.* In addition to increasing use of technological surveillance, SROs employ methods of "personal surveillance"—"collecting evidence about students from other students," creating a dynamic in which "[s]tudents' experiences are . . . framed within a climate of distrust under the watchful eye of the state." *Id.* at 622.

80. LAWRENCE TRAVIS III & JULIE COON, *THE ROLE OF LAW ENFORCEMENT IN PUBLIC SCHOOL SAFETY: A NATIONAL SURVEY* 84-85 (2005).

81. RAYMOND, *supra* note 77, at 7-8. Arguably, both perceived safety and actual safety are vitally important for students' academic performance and psychological well-being.

82. *Id.* at 7-9.

law enforcement.⁸³ COPS publications cite to SRO programs in the United Kingdom and Canada that have yielded positive safety outcomes such as “reduced offending behavior and victimization,” “reduced truancy rates and total absences,” and an increased likelihood that victims (but not necessarily witnesses) would report crimes to police.⁸⁴ Nonetheless, COPS acknowledges that the success of U.K. program can be attributed to a comprehensive plan addressing youth issues in schools and communities and notes that “school liaison officers are but one component” of that plan.⁸⁵

One study by Chongmin Na and Denise Gottfredson found no decrease in assaultive or property crimes in schools that implemented new SRO programs.⁸⁶ In fact, the presence of an SRO correlated with higher referral rates to law enforcement for weapon and drug offenses, along with more serious consequences for student offenders.⁸⁷ Other studies found that the implementation of SRO programs generally reduced teachers’ and administrators’ subjective fear of violence at school⁸⁸ and that an overwhelming majority of adults believed SRO programs were an effective strategy for making schools safer.⁸⁹

Examining student perceptions of safety and the function of SROs may serve as a better measure of program effectiveness than administrator or parent perceptions, but few studies specifically address this student-SRO relationship. High school students surveyed in Chicago expressed an appreciation for police and security guards in schools, attributing feelings of a safer school environment to their presence; however, students also noted that sometimes security personnel verbally and physically exacerbate student conflicts.⁹⁰ Specifically, security guards’ ability to build relationships with students and proactively address conflicts contributed to students’ feelings of safety.⁹¹ One study found that interaction with SROs had little to no influence on students’ perception of police in general or on students’

83. PETER FINN & JACK McDEVITT, ABT ASSOCS., NATIONAL ASSESSMENT OF SCHOOL RESOURCE OFFICER PROGRAMS FINAL PROJECT REPORT 42-47 (2005).

84. RAYMOND, *supra* note 77, at 9-10.

85. *Id.* at 7-9.

86. Na & Gottfredson, *supra* note 71, at 634-36.

87. *Id.*

88. FINN & McDEVITT, *supra* note 83, at 19 (noting, however, that such findings were limited to small new programs; the study showed no difference in faculty fear of violence in large established sites).

89. Brad Myr Stol, *Police in Schools: Public Perceptions*, 27 ALASKA JUST. F. 1, 6 (2010). The general applicability of this study’s findings, however, are limited by its small sample size: adults in Anchorage, Alaska. *Id.*

90. MATTHEW P. STEINBERG, ELAINE ALLENSWORTH & DAVID W. JOHNSON, STUDENT AND TEACHER SAFETY IN CHICAGO PUBLIC SCHOOLS 26 (U. Chi. Urb. Educ. Inst. 2011).

91. *Id.*

perception of offending.⁹² Yet, the data did reveal that “students who had ‘been in trouble with the law’ were more likely to perceive the police negatively,” as compared to “students who reported they had not ‘been in trouble with the law.’ ”⁹³

B. Policing Models Implemented by SROs

The difficulty of accurately evaluating SRO program effectiveness is due, in part, to the complexity of the police function.⁹⁴ In contrast to the standard model of policing,⁹⁵ the philosophy behind SRO programs is grounded in the preventative strategies of community- and problem-oriented policing.⁹⁶ Whereas community-oriented strategies aim to facilitate collaborative relationships between law enforcement and community members to proactively prevent crime,⁹⁷ problem-oriented strategies focus on producing measurable solutions for problems that are pervasive in a given community.⁹⁸ Unlike police officers who respond to calls at schools, SROs traditionally adopt the “triad model,” serving students and staff in three different roles: the law enforcer, the counselor, and the law-related educator.⁹⁹ A 2005 survey of SRO programs found that SROs typically spend about 50% of their time performing the law enforcement role, 25% counseling or mentoring, 13% teaching, and 12% on other activities.¹⁰⁰ For example, SROs give law-related presentations pertaining to alcohol and drug prevention, gang awareness, and conflict resolution.¹⁰¹

In identifying the activities in which SROs engage on school grounds, the perceptions of school administrators and SROs varied quite

92. Arrick Jackson, *Police-School Resource Officers' and Students' Perception of the Police and Offending*, 25 POLICING: INT'L J. POLICE STRATEGIES & MGMT. 631, 645 (2002).

93. *Id.* at 644.

94. Herman Goldstein, *Confronting the Complexity of the Policing Function*, in DISCRETION IN CRIMINAL JUSTICE: THE TENSION BETWEEN INDIVIDUALIZATION AND UNIFORMITY 23-66 (Lloyd E. Ohlin & Frank J. Remington eds., 1993) (arguing that police officers are responsible for much more than simply investigating crime and arresting offenders, and even within officers' pursuit of responding to crime, police are “called on to handle infinite and unpredictable [incidents], requiring flexibility in responding to them”).

95. David Weisburd & John E. Eck, *What Can Police Do to Reduce Crime, Disorder, and Fear?*, 593 ANNALS AM. ACAD. POL. & SOC. SCI. 42, 44 (2004) (“[The] standard model of policing . . . [is]based on the assumption that generic strategies for crime reduction can be applied throughout a jurisdiction regardless of the level of crime, the nature of crime, or other variations.”).

96. DEV'L SERVS. GRP., COMMUNITY- AND PROBLEM-ORIENTED POLICING 1, 4 (2010), http://www.ojjdp.gov/mpg/litreviews/Community_and_Problem_Oriented_Policing.pdf.

97. *Id.* at 1-3.

98. *Id.* at 4-6.

99. Weiler & Cray, *supra* note 74, at 161.

100. FINN ET AL., *supra* note 18, at 14.

101. RAYMOND, *supra* note 77, at 5.

significantly in one survey.¹⁰² For example, 61.7 percent of administrators perceived that SROs engaged in mentorship with individual students, but only 28.5% of SROs reported doing so.¹⁰³ However, in virtually every other category of SRO activity—patrolling school grounds, enforcing truancy laws, responding to crime/disorder, advising teachers on school policies, or attending school events—a higher percentage of SROs than school administrators reported that SROs were involved in that activity.¹⁰⁴ Without standardized expectations or regular communication, school administrators may be ill informed about the extent of SRO-student interactions.

Given the dearth of conclusive research about SRO program outcomes, it may be useful to assess the quality of SRO training programs in order to determine whether SROs are equipped to meet established program goals. One study identified three key components of successful SRO programs: extensive training, clearly defined roles within the school structure, and systems for evaluating officers.¹⁰⁵ Yet, the study noted problems in relation to each of these objectives: (1) many SROs do not receive specialized training in adolescent development, counseling, or teaching youth;¹⁰⁶ (2) the specific responsibilities of an SRO and their decisions to make arrests can vary based on the individual relationship between an SRO and school administrators;¹⁰⁷ and (3) schools use inconsistent methods for assessing the effectiveness of SRO programs.¹⁰⁸ In addition, few studies identify that comprehensive training was provided by schools or law enforcement departments to assist SROs with shifting between their roles in the triad model.¹⁰⁹ While no state laws require SROs to undergo any specific training program prior to working in schools, many departments take advantage of week-long trainings offered by the National Association of School Resource Officers (NASRO) if funding is available.¹¹⁰ None of the SROs interviewed in a 2009 study “receive[d] training in mediation, basic de-escalation techniques, or in detecting symptoms and behaviors of

102. TRAVIS & COON, *supra* note 80, at 7.

103. *Id.* at 87.

104. *Id.* at 86-91.

105. FINN ET AL., *supra* note 18.

106. *Id.* at 48.

107. *Id.* at 63-70.

108. *Id.* at 99.

109. Brown, *supra* note 78, at 591 (noting that “officers have little or no training in fields such as education and developmental psychology” and “may be evaluated by supervisors who have little knowledge of educational theory and practice”); FINN & McDEVITT, *supra* note 83, at 3, 23, 28, 44 (finding that some SROs are required by the COPS Office to attend training sessions, some to attend the National Association of School Resource Officers’ (NASRO) 40-hour training session, and some to shadow experienced SROs, but that “few of the 19 programs [studied] train SROs before they go on the job”).

110. Lisa H. Thureau & Johanna Wald, *Controlling Partners: When Law Enforcement Meets Discipline in Public Schools*, 54 N.Y.L. SCH. L. REV. 977, 998 (2010).

youths who have been exposed to violence, trauma, or abuse” and “rarely had any formal knowledge of, or training in, adolescent psychology or development, how to secure the respect and cooperation of youths, or on the behavioral precautions and protections that need to be taken with youths [who have] Individual Education Plans (IEPs).”¹¹¹ As a result, SROs may not be properly equipped for their varied responsibilities.

In order to clarify enforcement strategies and priorities, researchers have advocated for formal policies outlining SRO responsibilities and program objectives, for continued review of SROs’ roles in individual schools, and for constant communication among school administrators, SROs, and law enforcement leadership.¹¹² This communication should go both ways: SROs are likely familiar with a school’s discipline policies and school administrators’ preferred strategies for enforcement, but administrators may not be aware of police department policies and enforcement priorities that affect SRO decision-making. In one study, 47.1% of school administrators had never met with their SRO’s law enforcement supervisor, and only 9.2% of administrators met with their SRO’s supervisor on a monthly basis.¹¹³ As a result, a police department’s enforcement priorities¹¹⁴ may trump school policy or an individual student’s needs. It can also be difficult for administrators to monitor any SRO conduct that runs afoul of standard procedures when, as one study found, most police supervisors “do not conscientiously supervise their SROs.”¹¹⁵

C. *The Legal Significance of SRO Roles in Schools*

The political impetus for federal SRO funding was, in large part, to prevent major school shootings and other violent incidents.¹¹⁶ Yet, the adoption of SRO programs nationwide has tremendous legal consequences for every daily interaction among administrators, law enforcement, and students. Regardless of what function an SRO is carrying out in the triad

111. JOHANNA WALD & LISA THURAU, HARVARD LAW SCHOOL, CHARLES HAMILTON HOUSTON INST. FOR RACE & JUSTICE, *FIRST, DO NO HARM: HOW EDUCATORS AND POLICE CAN WORK TOGETHER MORE EFFECTIVELY TO PRESERVE SCHOOL SAFETY AND PROTECT VULNERABLE STUDENTS* 7 (2010).

112. See Weiler & Cray, *supra* note 74; ACLU OF CONN., *HARD LESSONS: SCHOOL RESOURCE OFFICER PROGRAMS AND SCHOOL-BASED ARRESTS IN THREE CONNECTICUT TOWNS* 6 (2008); N.Y. CIVIL LIBERTIES UNION, *SAFETY WITH DIGNITY: ALTERNATIVES TO THE OVER-POLICING OF SCHOOLS* 17-18 (2009).

113. David C. May, Stephen D. Fessel, & Shannon Means, *Predictors of Principals’ Perceptions of School Resource Officer Effectiveness in Kentucky*, 29 AM. J. CRIM. JUST. 75, 85 (2004).

114. See Nirej S. Sekhon, *Redistributive Policing*, 101 J. CRIM. L. & CRIMINOLOGY 1171, 1186-95 (2013) (describing police departmental discretion in identifying the types of crimes officers concentrate on within the “proactive policing” model).

115. FINN ET AL., *supra* note 18, at 47.

116. Weiler & Cray, *supra* note 74.

model, an SRO is a sworn police officer.¹¹⁷ But when sworn police officers are provided with unique access to students and are given disciplinary authority by school administrators, it is not always clear “where administrators’ disciplinary roles stop and police powers begin.”¹¹⁸ Because students have a diminished expectation of privacy at school,¹¹⁹ the distinction between the role of a school official versus a law enforcement official is legally relevant to arrests, searches, and interrogations of students at school, all of which implicate students’ Fourth and Fifth Amendment rights.¹²⁰ Ultimately, any legal categorization of SROs as a school official may also impact SROs’ obligations under federal special education law.

1. Arrests of Students at School

In order to make an arrest with or without a warrant outside of the school context, police must have probable cause that a suspect committed a crime.¹²¹ To make a warrantless misdemeanor arrest, the officer must have been present for the commission of the offense,¹²² but a warrantless felony arrest does not require officer presence.¹²³ Some courts have held that in order to effectuate an arrest at school, law enforcement officers are held to the same probable cause standard as they would be for an arrest made outside of school.¹²⁴ In contrast, school administrators and SROs may, in some circumstances, seize a student on school grounds for the purpose of maintaining school order or security, so long as the seizure was initially

117. See GIROUARD, *supra* note 70; see also *State v. Meneese*, 282 P.3d 83, 93 (Wash. 2012) (Stephens, J., dissenting) (“The relationship between a student and the ‘school police’ is no different than that between a student and a school resource officer merely because one is employed by the district and the other by the city.” (quoting *In re William V.*, 4 Cal. Rptr. 3d 695, 699 (Cal. Ct. App. 2003))); *M.J. v. State*, 65 So. 3d 563, 568 (Fla. Dist. Ct. App. 2011) (contrasting a school resource officer who is a Sheriff’s employee and sworn, certified officer with a security guard employed by a school).

118. Thureau & Wald, *supra* note 110, at 983.

119. *Vernonia School Dist. 47J v. Acton*, 515 U.S. 646, 657 (1995) (noting that “students within the school environment have a lesser expectation of privacy than members of the population generally” (quoting *New Jersey v. T.L.O.*, 469 U.S. 325, 348 (1985) (Powell, J., concurring))).

120. See *infra* pp. 121-24.

121. See *Wong Sun v. U.S.*, 371 U.S. 471, 479 (1963) (holding that an arrest “must stand upon firmer ground than mere suspicion” and probable cause must be based on evidence which would “warrant a man of reasonable caution in the belief that a [crime] has been committed”).

122. See *Atwater v. Lago Vista*, 532 U.S. 318, 322 (2001).

123. See *U.S. v. Watson*, 423 U.S. 411, 418 (1976).

124. See, e.g., *Pacheco v. Hopmeier*, 770 F. Supp. 2d 1174, 1183-84 (D.N.M. 2011) (finding that probable cause was required for police officers to arrest a high school student and involuntarily transport him from school to a police station for questioning); *G.M. ex rel. B.M. v. Casalduc*, 982 F. Supp. 2d 1235, 1242 (D.N.M. 2013) (noting that an SRO must have probable cause before he can arrest a student at school).

justified and is reasonably related to the circumstances permitting the initial seizure.¹²⁵

2. Searches of Students at School

Although typical warrantless searches can only be conducted if there is probable cause that contraband or evidence of a crime will be found in a particular place,¹²⁶ the U.S. Supreme Court in *New Jersey v. T.L.O.* held that students may be searched by school officials under the lower “reasonable suspicion” standard while on school property, so long as the search is “justified at its inception” and “reasonably related in scope to the circumstances which justified the interference in the first place.”¹²⁷ The T.L.O. Court provided some guidance as to why students should be treated differently from other individuals subject to searches but did not address the applicability of the reasonable suspicion standard to SROs or other police officers conducting searches in schools.¹²⁸ Some lower courts distinguished between school searches conducted by SROs and those conducted by law enforcement officers unaffiliated with the school,¹²⁹ and many courts use

125. See, e.g., *Edwards ex rel. Edwards v. Rees*, 883 F.2d 882, 884 (10th Cir. 1989) (applying a reasonableness standard to a vice-principal’s brief detention of a student for questioning); *In re J.F.M.*, 607 S.E.2d 304, 307 (N.C. App. 2005) (using only a reasonableness standard to analyze the detention of a juvenile on school property by a school resource officer working in conjunction with a school official).

126. See *United States v. Ross*, 456 U.S. 798 (1982).

127. *New Jersey v. T.L.O.*, 469 U.S. 325, 333, 340–41 (1985) (reasoning that although the Fourth Amendment’s “prohibition on unreasonable searches and seizures applies to searches conducted by public school officials,” the school’s “need to maintain an environment in which learning can take place,” along with students’ diminished privacy interests at school, necessitates a less stringent requirement than probable cause for searches by school officials).

128. *Id.* at 341 n.7 (“We here consider only searches carried out by school authorities alone and on their own authority. This case does not present the question of the appropriate standard for assessing the legality of searches conducted by school officials in conjunction with or at the behest of law enforcement agencies, and we express no opinion on that question.”). *But see Couture v. Bd. of Educ. of Albuquerque Pub. Schs.*, 535 F.3d 1243, 1250 (10th Cir. 2008) (“[T]he setting and purpose of actions undertaken outside the typical law enforcement context profoundly affect their reasonableness,” thus “[t]he requirement that police have probable cause before conducting a seizure, for example, does not apply in schools”).

129. See, e.g., *People v. Dilworth*, 661 N.E.2d 310, 317 (Ill. 1996) (applying the reasonable suspicion standard to an SRO’s search of a student where the SRO was a staff member at the student’s alternative school, and the search was conducted in furtherance of school disciplinary goals); *R.D.S. v. State*, 245 S.W. 3d 356, 369–70 (Tenn. 2008) (citing the SRO’s specific duties, whether the SRO wears a uniform and is armed, and which entity pays the SRO’s salary as relevant factors for determining whether the SRO should be held to a reasonable suspicion or probable cause standard); *State v. Tywayne H.*, 933 P.2d 251, 254 (N.M. Ct. App. 1997) (requiring probable cause for a search of a student “conducted completely at the discretion of . . . police officers”). *But see State v. Meneese*, 282 P.3d 83, 88 (Wash. 2012) (holding that the T.L.O. standard does not apply to searches conducted by SROs because the underlying purpose of the search is related to finding “evidence for criminal prosecution, not evidence for informal school discipline”); *Patman v. State*, 537 S.E.2d 118, 119 (Ga. Ct. App. 2000) (holding that a search by a police officer working a special detail at a school requires probable cause).

the reasonable suspicion standard when an SRO and a school official conduct a search together.¹³⁰

3. Interrogations of Students at School

A suspect's Fifth Amendment right to an attorney and right against self-incrimination are implicated during custodial interrogation.¹³¹ If the suspect is both in custody¹³² and being interrogated¹³³ by police,¹³⁴ she must be given *Miranda* warnings to dispel the inherently compelling nature of the interrogation.¹³⁵ If police fail to provide these warnings, any statements or confessions given by the suspect can be deemed inadmissible at trial.¹³⁶ A suspect can expressly or impliedly¹³⁷ waive her rights, so long as the waiver is made "knowingly," "voluntarily,"¹³⁸ and "intelligently."¹³⁹ In order for a suspect to invoke her right to counsel, the invocation must be clear and "unambiguous"¹⁴⁰ and must be a request for a lawyer, specifically.¹⁴¹ Once the right to counsel has been invoked, interrogation must

130. See, e.g., *Cason v. Cook*, 810 F.2d 188 (8th Cir. 1987) (applying the reasonable suspicion standard where an SRO conducts a search in conjunction with a school official); *Martens ex rel. Martens v. Dist. No. 220, Bd. of Educ.*, 620 F. Supp. 29 (N.D. Ill. 1985) (applying the reasonable suspicion standard where a police officer provided support to a school administrator during a search of a student); *Coronado v. State*, 835 S.W.2d 636 (Tex. Crim. App. 1992) (applying the reasonable suspicion standard where a student was searched by a sheriff's deputy assigned to his school along with a school official); *In re Alexander B.*, 270 Cal. Rptr. 342 (Cal. Ct. App. 1990) (also applying reasonable suspicion standard where a school official commences the search and requests assistance from law enforcement).

131. "Custodial interrogation" has been defined as questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. See *Miranda v. Arizona*, 384 U.S. 436, 444 (1966).

132. Custody is an objective inquiry; courts look at the totality of the circumstances to determine whether a reasonable person in the suspect's position would understand his freedom to terminate questioning and leave. E.g., *J.D.B. v. North Carolina*, 131 S. Ct. 2394, 2402 (2011).

133. Interrogation is defined as express questioning or its functional equivalent—statements reasonably likely to elicit an incriminating response, from the officer's perspective, taking into account a suspect's known susceptibilities. *Rhode Island v. Innis*, 446 U.S. 291, 300-01 (1980).

134. In order to constitute an interrogation, the express questioning or its functional equivalent must be conducted by the police, not third parties or agents. *Arizona v. Mauro*, 481 U.S. 520 (1987).

135. *Miranda v. Arizona*, 384 U.S. 436 (1966).

136. *Id.*

137. *North Carolina v. Butler*, 441 U.S. 369 (1979) (holding that a suspect's waiver of the right to an attorney can be inferred from the suspect's conduct).

138. *Berghuis v. Thompkins*, 560 U.S. 370, 385 (2010) (finding that after the suspect was given *Miranda* warnings and indicated he understood those warnings, the suspect's uncoerced statement acted as an implied waiver of his right to silence).

139. *Johnson v. Zerbst*, 304 U.S. 458, 468 (1938).

140. *Davis v. United States*, 512 U.S. 452, 459 (1994).

141. See *Fare v. Michael C.*, 442 U.S. 707, 722 (1979) (finding that a juvenile suspect has not invoked his right to counsel after requesting to speak with his probation officer).

cease until counsel is present, unless the suspect initiates further communication, exchanges, or conversations with the police.¹⁴²

In *J.D.B. v. North Carolina*, which involved an interrogation conducted at school, the Supreme Court recognized that a suspect's age is a relevant factor in determining whether he is in custody for *Miranda* purposes.¹⁴³ However, many courts are unwilling to find that an interrogation is custodial where a school official conducts the questioning and police officers are not active participants in the interaction or where the questioning pertains specifically to a disciplinary issue.¹⁴⁴ Similar to case law regarding arrests and searches of students at school, courts are split in designating SROs as school officials or as law enforcement during interrogations on school grounds.¹⁴⁵

142. *Edwards v. Arizona*, 451 U.S. 477, 485 (1981) ("*Miranda* itself indicated that the assertion of the right to counsel was a significant event and that once exercised by the accused, 'the interrogation must cease until an attorney is present.' " (internal citation omitted)).

143. *J.D.B. v. North Carolina*, 131 S. Ct. 2394, 2406 (2011).

144. *Compare* *S.E. v. Grant Cnty. Bd. of Educ.*, 544 F.3d 633, 640 (6th Cir. 2008) (holding that a school administrator was not acting "at the behest of law enforcement" when he asked a student to write down "her side of the story" concerning a disciplinary violation), *and* *C.S. v. Couch*, 843 F. Supp. 2d 894, 917-18 (N.D. Ind. 2011) (holding that school administrators' questioning of a student accused of sexual harassment on the bus did not require recital of *Miranda* warnings where the student was questioned at school, and police officers were not present), *and* *Brian A. ex rel. Arthur A. v. Stoudsburg Area Sch. Dist.*, 141 F. Supp. 2d 502, 511 (M.D. Pa. 2001) (holding that *Miranda* was not implicated when a student was questioned by school administrators about a disciplinary issue), *and* *Boynton v. Casey*, 543 F. Supp. 995, 997 (D. Me. 1982) (finding that questioning of a student by school officials about marijuana use on school premises did not constitute custodial interrogation), *with* *Husband v. Turner*, No. 07-CV-391-BBC, 2008 WL 2002737, at *3 (W.D. Wis. 2008) (holding that *Miranda* warnings were required when school security guards and a school administrator escorted a student to a closed room and where he was interrogated by police officers), *and* *State v. Heirtzler*, 789 A.2d 634, 641 (N.H. 2001) (holding that a school administrator was acting as an agent of police when an SRO informed the administrator of a possible drug transaction, and the administrator searched and interrogated a student as a result of receiving that information).

145. *Compare In re E.M.*, 634 N.E.2d 395, 400 (Ill. App. Ct. 1994) (holding that *Miranda* was not implicated where an SRO was not present during a school administrator's questioning of a student about stolen property, despite the fact that the SRO was present while the administrator conducted a search of the student's locker), *and* *People v. Pankhurst*, 848 N.E.2d 628, 636 (Ill. App. Ct. 2006) (finding that *Miranda* warnings were not needed where an SRO briefly entered the room while a school administrator was questioning a student about drug possession), *with In re J.C.*, 591 So. 2d 315, 316 (Fla. Dist. Ct. App. 1991) (recognizing that if an SRO were to participate in the interrogations of a student, *Miranda* warnings would be required due to his status as a law enforcement officer), *and* *State v. Antonio T.*, 352 P.3d 1172, 1179-80 (N.M. 2015) (holding that an SRO's presence during a school official's questioning of a student followed by the SRO's administration of a breathalyzer of the student and additional questioning necessitated *Miranda* warnings), *and In re Welfare of G.S.P.*, 610 N.W.2d 651, 657-59 (Minn. Ct. App. 2000) (finding that a student was in custody and entitled to *Miranda* protections when questioned by a school administrator and an SRO in the school office while a tape recorder was running).

D. *Implications of an Increased Police Presence for Students of Color and Students with Disabilities*

Due, in part, to some courts' reduced arrest and search standards for SROs, there is growing concern among criminologists that the increased police presence in schools will further "criminalize student behavior and lead to a substantial increase in the number of school-based arrests."¹⁴⁶ As previously noted, students of color and students with disabilities bear a disproportionate risk for being criminalized at school.¹⁴⁷ These disparities may be due in part to SRO discretion in deciding whether to make an arrest. During a 2002 focus group of SROs and school administrators, participants confirmed the considerable discretion given to both SROs and administrators in determining whether a student's conduct violates a statute or whether it should simply be considered a school disciplinary code violation.¹⁴⁸

In 2009, Matthew Theriot found a strong correlation between school poverty and the number of total arrests made at the school.¹⁴⁹ Further, he determined that the presence of an SRO at a school increased the rate of arrests per 100 students for incidents of disorderly conduct by more than 100%, even when controlling for school poverty.¹⁵⁰ In Kerrin Wolf's examination of the arrest-making behavior of SROs, he specifically addressed the level of discretion SROs had when deciding whether to make an arrest of a student on school grounds.¹⁵¹ He found that, although "77% of [SRO] respondents indicated that they had previously refrained from arresting students because the students had never been in trouble before," SROs reported circumstances when discretion favored making an arrest:

Seventy-seven percent of SROs indicated that they had arrested a student in the past to calm that student down; 68% indicated that they made arrests to show students that actions had consequences; and 55% indicated that they had arrested students for minor offenses because teachers wanted the arrests to occur.¹⁵²

146. Matthew Theriot, *School Resource Officers and the Criminalization of Student Behavior*, 37 J. CRIM. JUST., 280, 280-82 (2009).

147. See *id.* at 285-86 (students of color); Tulman, *supra* note 37 (students with disabilities).

148. JOANNE MCDANIEL, N.C. STATE DEP'T OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, SCHOOL RESOURCE OFFICERS AND SCHOOL ADMINISTRATORS: "TALKING AND WALKING" TOGETHER TO MAKE SAFER SCHOOLS 5 (June 2002).

149. Theriot, *supra* note 146, at 285 (defining school poverty as the "percentage of students receiving a free or reduced lunch at school")

150. *Id.*

151. Kerrin Wolf, *Arrest Decision Making by School Resource Officers*, 12 YOUTH VIOLENCE & YOUTH JUST. 137, 142 (2014). The study analyzed survey responses of forty-nine SROs serving in Delaware public schools. *Id.* at 140. Survey questions addressed factors influencing arrest decisions, SROs' perceptions of the differences between arrest decisions made inside and outside of school, and the impact that consultation with others has on arrest decisions. *Id.*

152. *Id.* at 142.

Wolf noted that a number of factors contributed to SROs' discretionary decisions to make arrests.¹⁵³ Two of the top three factors influencing SROs' arrest decisions were the "guidelines provided by applicable laws, rules, and regulations" and the "nature of the alleged misbehavior."¹⁵⁴ On average, SROs ranked "[t]he impact the behavior had on the victim," "[t]he wishes of the victim's parent/guardian," and "[t]he student's attitude when approached about the alleged misbehavior" as more important than "[t]he potential consequences of the student's involvement in the juvenile justice system" in deciding whether to make an arrest.¹⁵⁵

Wolf's study did not measure the influence that a student's race or disability could have on SROs' arrest decisions, though these aspects of a student's identity can directly impact the initial point of contact between a student and officer. For a better understanding of the disproportionate rates of suspension, expulsion, and arrest for students of color and students with disabilities, it is relevant to examine SROs' general perceptions of these subsets of students that contribute to arrest-making decisions.

Race plays a role in SROs' perceptions of situations involving youth and can influence split-second decisions related to culpability and whether an arrest is necessary.¹⁵⁶ One study of subconscious racial stereotypes of decision-makers in the juvenile justice system involved subliminally exposing police officers to racially-coded and racially-ambiguous descriptions of offenders and then requiring the officers to "[make] judgments about the offenders[]" culpability, expected recidivism, and deserved punishment.¹⁵⁷ The study indicated that "[p]olice officers [who were primed with racially-coded descriptions] were less likely to judge the offender as immature (by virtue of adolescence) and more likely to perceive him as culpable and deserving of punishment."¹⁵⁸ A similar study involving police officers from a large urban police department found that "Black boys are seen as more culpable for their actions (i.e., less innocent) within a criminal justice context than are their peers of other races," and are also "mis-perceived as older relative to peers of other races."¹⁵⁹ Therefore, if an SRO encounters a student who may have violated a discretionary law, such as disturbing the peace, the split-second decision to arrest the student or simply give a warning may hinge on the SRO's unconscious judgments about the student's race, age, and culpability for the infraction.

153. *Id.* at 143.

154. *Id.*

155. *Id.*

156. See Sandra Graham & Brian S. Lowery, *Priming Unconscious Racial Stereotypes About Adolescent Offenders*, 28 L. & HUM. BEHAV. 483 (2004).

157. *Id.* at 487.

158. *Id.* at 494.

159. Phillip Atiba Goff et al., *The Essence of Innocence: Consequences of Dehumanizing Black Children*, 106 J. PERSONALITY & SOC. PSYCHOL. 526, 533, 540 (2014).

There is also cause for concern with regard to SRO interactions with students with disabilities. David May, Corrie Rice, and Kevin Minor surveyed 130 SROs in Kentucky, revealing gaps in SRO training related to special education issues.¹⁶⁰ Of the SROs, “[o]ver half had not received either academic training (58.8%) or in-service training (56.5%) on special education issues,”¹⁶¹ despite the fact that approximately 10% of students ages six to twenty-one received special education services in Kentucky during the same year.¹⁶² Notwithstanding their lack of special education training, SROs estimated that 36.75% of law-related incidents they responded to at schools involved special education students.¹⁶³ “Approximately fifty-five percent of the SROs agreed [at least somewhat] that students receiving special education services were responsible for a disproportionate amount of problem behaviors at school.”¹⁶⁴ About 79% disagreed at least somewhat that students receiving special education services “should receive less punitive treatment for their problem behaviors.”¹⁶⁵ Of concern, 84.8% “at least somewhat agreed that some students receiving special education services used their special education status as an excuse for their problem behavior to avoid accountability for their actions.”¹⁶⁶ Without sufficient training on the nature of students’ disabilities and proper strategies for meeting students’ special needs, the misperceptions of SROs threaten to govern their interactions with students who have special needs.

In addition to the unconscious and conscious biases of SROs that may affect their arrest decisions, the particular susceptibilities of students of color and students with disabilities could play a role in the higher rates of school disciplinary actions and arrests that SROs conduct for these groups. As the Supreme Court has recognized on several occasions, juvenile suspects in criminal cases are regarded differently than adults.¹⁶⁷ Juveniles, regardless of race or disability status, are particularly vulnerable to the ma-

160. David C. May, Corrie Rice, & Kevin I. Minor, *An Examination of School Resource Officers’ Attitudes Regarding Behavioral Issues Among Students Receiving Special Education Services*, 15 CURRENT ISSUES EDUC. 1, 8-10 (2012).

161. *Id.* at 6.

162. DEP’T OF EDUC. CIVIL RIGHTS DATA, *supra* note 67.

163. *Id.*

164. *Id.* at 7 (internal quotation marks omitted).

165. *Id.*

166. *Id.*

167. See *Roper v. Simmons*, 543 U.S. 551, 569 (2005) (“[Children] are more vulnerable . . . to negative influences and outside pressures” than adults); *Graham v. Florida*, 560 U.S. 48, 68 (2010) (“[D]evelopments in psychology and brain science continue to show fundamental differences between juvenile and adult minds.”); *J.D.B. v. North Carolina*, 131 S. Ct. 2394, 2403 (“[C]hildren characteristically lack the capacity to exercise mature judgment and possess only an incomplete ability to understand the world around them.”); *Miller v. Alabama*, 132 S. Ct. 2455, 2468 (2012) (recognizing the “incompetencies associated with youth,” including the “inability to deal with police officers or prosecutors”).

nipulative and coercive strategies used by police to obtain consent for searches or seizures¹⁶⁸ or to garner information during custodial and informal interrogations.¹⁶⁹ Not surprisingly, it is estimated that eighty to ninety percent of juveniles waive their right to counsel when questioned by police.¹⁷⁰

Race and disability add additional layers to the power differential between children and police officers. A student's race may influence the likelihood that she will consent to an SRO search, admit to wrongdoing during SRO questioning, or otherwise comply with an SRO's orders.¹⁷¹ Some scholars argue that the historical potential for a violent confrontation fundamentally alters the dynamic between people of color and police during routine interactions,¹⁷² and the frequent, negative interactions between

168. Megan Anitto, *Consent Searches of Minors*, 38 N.Y.U. REV. L. & SOC. CHANGE 1, 19-23 (2014) (outlining courts' use of age as a factor in determining whether consent to search was obtained by coercive means and the imposition of higher standards in cases where minors consent to searches).

169. See Buffie Merryman, *Arguments Against Use of the Reid Technique for Juvenile Interrogations*, 10 COMM. L. REV. 16, 24-25 (2010) (maintaining that the psychologically manipulative "Reid" interrogation technique widely used by police officers to obtain confessions is not appropriate for use on non-adult suspects because of the "cognitive traits unique to a juvenile, such as desire to please authority"); BERRY FELD, *KIDS, COPS, AND CONFESSIONS: INSIDE THE INTERROGATION ROOM* 35 (2013) (noting developmental psychologists' reluctance to conclude that juveniles "possess the cognitive ability and judgment necessary to exercise legal rights" or even comprehend the terms and meaning of the Miranda warnings); Laurel LaMontagne, *Children Under Pressure: The Problem of Juvenile False Confessions and Potential Solutions*, 41 W. ST. U. L. REV. 29 (2013) (describing the effects that threats and promises by police or physical and emotional stressors can have on juveniles' susceptibility to giving false confessions).

170. Judith Jones, *Access to Counsel*, JUVENILE JUSTICE BULLETIN (Dep't of Justice, Office of Justice Programs, Washington, D.C.), June 2004, at 2; see also Jessica Owen-Kostelnick, N. Dickon Reppucci & Jessica R. Meyer, *Testimony and Interrogation of Minors: Assumptions About Maturity and Morality*, 61 AM. PSYCHOL. 286, 293 (2006) ("[T]he majority of juveniles in pretrial proceedings waive their rights and often do not comprehend the rights that they are waiving.").

171. See R. Barry Ruback & Paula J. Vardaman, *Decision Making in Delinquency Cases: The Role of Race and Juveniles' Admission/Denial of the Crime*, 21 L. & Hum. Behav. 47, 53 (1997) (finding that race had a significant effect on the likelihood for juveniles admitting to the commission of a crime). *But see* Feld, *supra* note 169, at 216-19 (2013) (finding a lack of a "statistically significant relationship between youths' race and their decision to waive or invoke their Miranda rights" but noting that a minority youth's increased likelihood of prior court contact and general distrust of the system may account for his or her reluctance to provide a waiver).

172. See Tracey Maclin, "Black and Blue Encounters" *Some Preliminary Thoughts About Fourth Amendment Seizures: Should Race Matter?*, 26 VAL. U. L. REV. 243, 255 (1991) ("Why do black men fear the police? . . . Black males learn at an early age that confrontations with the police should be avoided; black teenagers are advised never to challenge a police officer, even when the officer is wrong. Even if a police officer has arguable grounds for stopping a black male, such an encounter often engenders distinct feelings for the black man. Those feelings are fear of possible violence or humiliation.")

young men of color and police during stops and frisks has a profound impact on the legal socialization of this group of young people.¹⁷³

Disability status can also create a level of vulnerability for a student interacting with an SRO. Depending on the nature of a student's disability, police questioning or orders may be misunderstood,¹⁷⁴ physical searches or seizures may provoke a violent response, and confrontations with students may become dangerous without the use of proper de-escalation techniques by SROs or school staff members.¹⁷⁵ In the interrogation context, for example, a study on the ability of fourteen- to eighteen-year-old male students to understand *Miranda* warnings found that the "presence of a learning disability severely hampered comprehension of the . . . warnings regardless of other factors."¹⁷⁶ Thus, a student's disability may play a significant role in whether his waiver of legal rights was made knowingly, intelligently, and voluntarily, as required by law.¹⁷⁷

173. Tom Tyler, Jeffrey Fagan & Amanda Geller, *Street Stops and Police Legitimacy: Teachable Moments in Young Men's Legal Socialization*, 11 J. EMPIRICAL L. STUD. 751, 753 (2014) (recognizing that citizens' perceptions of the lawfulness and intrusiveness of police stops influences citizens' notions of police legitimacy, and noting the human impact of negative police interactions on urban residents: that an understanding of "legal standards," such as the reasonable suspicion needed for a stop-and-frisk, are "at best . . . abstract civics lessons detached from the salience of the moment and the emotional freight that these interactions carry").

174. See Richard Leo, *False Confessions: Causes, Consequences, and Implications*, 37 J. AM. ACAD. PSYCHIATRY L. 332, 335-37 (2009) (describing the particular vulnerabilities of developmentally disabled or cognitively impaired individuals during police interrogations, including difficulties comprehending questions posed by the police, the inability to understand the implications of answers provided, a desire to please authority, and the impact of stress and anxiety during a confrontational situation).

175. See OREGON ADVOCACY CENTER, *A 5TH-GRADE SPECIAL EDUCATION STUDENT IS TASERED BY POLICE IN HIS OREGON CLASS ROOM*, (Dec. 2005), <http://droregon.org/wp-content/uploads/An-Investigation-of-Systemic-Failure-A-5th-Grade-special-education-student-is-tasered-by-police.pdf>; Terry Sater, *Special Needs Student Thrown to Ground by School Resource Officer*, WISN NEWS (Apr. 27, 2015), <http://www.wisn.com/news/special-needs-student-thrown-to-ground-by-school-resource-officer/32608934>; Monica Trevino & Kara Devlin, *Officer Resigns After Alleged Beating of Student Caught on Tape*, CNN (Oct. 8, 2009), <http://www.cnn.com/2009/US/10/08/special.needs.student.beating/index.html?s=PM:US>; Jackie Mader & Sarah Butrymowicz, *For Many With Disabilities, Special Education Leads to Jail*, THE HECHINGER REPORT (Oct. 29, 2014), <http://www.disabilitycoop.com/2014/10/29/for-sped-leads-jail/19800/>.

176. Maryann Zavez, *Kids and the Criminal Justice System: Questions of Capacity, Competence and Disability*, 44 VT. B.J. & L. DIG. 45 (1998).

177. See generally THOMAS GRISSO, *JUVENILES' WAIVER OF RIGHTS* 133-36, 140 (1981) (explaining that a juvenile's social problem solving skills, including the "abilit[y] to imagine alternative responses to police requests for information," are highly relevant to determining whether the juvenile meaningfully waived his or her rights). The author conducted a study with 183 juveniles where he asked interviewees to imagine the various responses that could be given to police questioning based on a hypothetical situation. *Id.* He found that "most juveniles considered options involving what they could tell police about the allegations. But the option to say nothing occurred to only slightly more than half." *Id.* at 142. Further, "[t]he evidence for constriction in alternative thinking, and thus for potentially less meaningful decision making in

III. IMPACT OF SPECIAL EDUCATION LAW ON THE POLICE FUNCTION

In order to better protect the constitutional rights of juveniles at school, some have argued for the courts to establish a bright-line rule that categorizes SROs as law enforcement officers in all activities (including searches and interrogations) conducted at school.¹⁷⁸ Other scholars have advocated for a “parental presence” requirement in all custodial interrogations of juveniles¹⁷⁹ and have encouraged states to adopt a “presumptive in-custody determination,” for *Miranda* purposes, of all police-conducted interrogations of juveniles at school.¹⁸⁰ But one powerful tool that can provide greater procedural protections to some students of color and students with disabilities during interactions with police is already at the disposal of school personnel—federal disability law related to special education services. Specifically, the Individuals with Disabilities Education Act (IDEA) requires school personnel to provide a host of services and accommodations to students diagnosed with a disability;¹⁸¹ Section 504 of The Rehabilitation Act of 1973 (Section 504) prohibits disability-based discrimination in programs receiving federal funding;¹⁸² and the Americans with Disabilities Act (ADA) extends the prohibition on disability-based discrimination to all public entities.¹⁸³ In order for SROs to appropriately address the needs of students with disabilities in accordance with these federal laws, officers must (A) understand the rights afforded to students with education-related disabilities under IDEA, Section 504, and the ADA and (B) understand their potential obligations as school staff members to provide the necessary modifications and accommodations outlined in these records.

waiver situations, was more marked for juveniles with lower IQ scores and for average IQ blacks as compared to average IQ whites.” *Id.*

178. See, e.g., Peter Price, *When Is a Police Officer an Officer of the Law?: The Status of Police Officers in Schools*, 99 J. CRIM. L. & CRIMINOLOGY 541 (2009).

179. Robert E. McGuire, Note, *A Proposal to Strengthen Juvenile Miranda Rights: Requiring Parental Presence in Custodial Interrogations*, 53 VAND. L. REV. 1355 (2000) (maintaining that the presence of a parent or guardian during custodial interrogation of a juvenile could help to ensure juveniles truly understand the Miranda warnings and to provide an emotionally supportive counselor during the interrogation).

180. Sally Terry Green, *A Presumptive In-Custody Analysis to Police-Conducted School Interrogations*, 40 AM. J. CRIM. L. 145 (2013) (arguing that the Supreme Court’s decision in *J.D.B.* to consider age as a relevant factor in *Miranda* custody determinations did not go far enough to protect juveniles from the inherent coercion of police interrogations).

181. 20 U.S.C. §§ 1400-1482 (2012).

182. 29 U.S.C. § 794 (2000).

183. See 42 U.S.C. §§ 12131-12134 (2012).

A. *Students' Rights Under IDEA, Section 504, and ADA*

Three federal laws prohibit discrimination against students with disabilities: IDEA, Section 504, and the ADA. In accordance with these laws, schools must provide services and support to guarantee that students with disabilities can attend school and have access to the regular education curriculum to the maximum extent possible.

1. IDEA Protections

IDEA, first passed by Congress in 1975 under the title “Education of All Handicapped Children Act,” is a law designed to protect the rights of students with disabilities by requiring states to provide these students access to a free and appropriate public education (FAPE).¹⁸⁴ Under FAPE, special education services must be provided in the least restrictive environment for each student.¹⁸⁵ The “procedural safeguards” of IDEA include a host of procedures available to parents to participate in the “identification, evaluation . . . educational placement . . . and . . . provision of a free appropriate public education” for a child.¹⁸⁶ This statute is based on the premise that students with disabilities and students without disabilities should be educated together as much as possible.¹⁸⁷

A key component of IDEA is the requirement for all public schools to develop Individualized Education Programs (IEPs) that outline students’ present performance levels, goals, and the special education services and accommodations needed to meet students’ individual needs.¹⁸⁸ If a student with a disability demonstrates behavior that impedes her learning or the learning of others, IDEA requires that the drafters of the student’s IEP “consider the use of positive behavioral interventions and supports, and other strategies, to address” that behavior.¹⁸⁹

Before a student with a disability faces disciplinary action that may result in exclusion from his educational program for more than ten school days, a school must first follow the detailed procedures outlined in IDEA and corresponding regulations.¹⁹⁰ Once a student has been excluded for a cumulative total of ten days throughout a school year (as a result of suspensions, for example), the school must conduct a “functional behavioral assessment” and provide “behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not re-

184. 20 U.S.C. § 1412(a)(1)(A) (2012).

185. *Id.* at § 1412(a)(5)(A).

186. *Id.* at § 1415(b)(1).

187. *Id.* at § 1412(a)(5)(A).

188. *McQueen ex rel. McQueen v. Colo. Springs Sch. Dist. No. 11*, 488 F.3d 868, 870 (10th Cir. 2007).

189. 20 U.S.C. § 1414(d)(3)(B)(i) (2012).

190. *Id.* at § 1415(k)(1)(E); 34 C.F.R. § 300.530(b) (2015).

cur.”¹⁹¹ Any further exclusion from school after the ten days constitutes a “change of placement,” triggering a special meeting called a “manifestation determination” review (MDR).¹⁹² At this MDR meeting, a special education provider from the school, the student’s parent, and other relevant staff members “must review all relevant information in the student’s file, including the child’s IEP, any teacher observations, and any relevant information provided by the parents to determine” whether the student’s behavior that brought about the disciplinary action was either,

- (1) “caused by, or had a direct and substantial relationship to, the child’s disability; or”
- (2) “was the direct result of the [school’s] failure to implement the IEP.”¹⁹³

If the student’s behavior *was not* a manifestation of his disability, the school may proceed with the suspension, expulsion, or other exclusionary disciplinary action. But, if the behavior *was* a manifestation of the student’s disability, school officials must take steps to address the behavior and must allow the student to return to school.¹⁹⁴

Under IDEA, a parent may pursue a claim against a school for failing to properly identify a disabled student if the failure results in any of the following: denial of FAPE to the qualifying student,¹⁹⁵ failure to formulate an IEP that enables the student to receive adequate educational benefits,¹⁹⁶ or failure to implement a substantial or significant provision of a student’s IEP.¹⁹⁷ But despite the potential for IDEA claims brought by parents,

191. 20 U.S.C. § 1415(k)(1)(D) (2012); 34 C.F.R. § 300.530(b)(2), (d) (2015).

192. 20 U.S.C. § 1415(k)(1)(E) (2012); 34 C.F.R. § 300.530(e) (2015).

193. 20 U.S.C. § 1415(k)(1)(E) (2012); 34 C.F.R. § 300.530(e) (2015).

194. 20 U.S.C. § 1415(k)(1)(E) (2012); 34 C.F.R. § 300.530(e) (2015).

195. See *Jamie S. v. Milwaukee Pub. Sch.*, 668 F.3d 481, 485 (7th Cir. 2012) (“The failure to properly identify a disabled student can itself be a violation of the IDEA if the failure results in the denial of a free appropriate public education to a qualifying child with a disability.”); see also 20 U.S.C. § 1412(a)(3)(A) (2012) (defining who is a qualifying student in the “child-find” provision).

196. See *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 203-04 (1982) (“[T]he IEP . . . should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.”).

197. 20 U.S.C. § 1412(a)(4) (2006) (defining “IEP”); see also *Van Duyn ex rel. Van Duyn v. Baker Sch. Dist.* 5J, 502 F.3d 811, 822 (9th Cir. 2007) (holding that only “a material failure to implement an IEP violates the IDEA,” such as the school’s inadequate provision of reading instruction based on a student’s IEP that results in “a shortfall in the child’s reading achievement”) (emphasis in original); *Neosho R-V Sch. Dist. v. Clark*, 315 F.3d 1022, 1028-29 (8th Cir. 2003) (finding an IDEA violation where a school “did not appropriately address [the student’s] behavior problem” and “any slight benefit obtained” by the student’s IEP “was lost due to behavior problems that went unchecked and interfered with his ability to obtain a benefit from his education”); *Hous. Ind. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000) (requiring a party challenging a school’s implementation of an IEP to show “more than a de minimis failure

many schools and individual educators do not live up to the ideal provision of special education services mandated by IDEA. In particular, students with IEPs face a host of additional problems when they attend under-resourced schools—a “lack of early identification and intervention for students with disabilities, . . . fewer methods to monitor and measure student progress,” lack of trained special education staff (and thus, lower quality IEPs), “insufficient parent involvement,” absenteeism, and general student behavior issues.¹⁹⁸ These problems, exacerbated by the increased criminalization of students of color and students with disabilities in school, contribute to the disproportionate representation of children with education-related disabilities and children of color in the justice system.¹⁹⁹

2. Section 504 and the ADA

Section 504 is a short but powerful civil rights law included in the Rehabilitation Act of 1973.²⁰⁰ It states, in relevant part, “No otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”²⁰¹ Similar to Section 504, Title II of the ADA creates a general prohibition on discrimination of individuals with disabilities in public services.²⁰² Section 504 has less stringent requirements than IDEA for students to qualify for services. A student is protected by Section 504 and the ADA, under federal regulations implementing both statutes, if she (1) has a “physical or mental impairment that substantially limits one or more major life activities,” (2) “has a record of such an impairment,” or (3) is “regarded as having such an impairment.”²⁰³ During the 2011–12 school year, 1.5 percent of all students in the U.S. received special education services under Section 504 compared to 12.3 percent of all students receiving services under IDEA.²⁰⁴

to implement all elements of that IEP, and, instead demonstrate that the school board or other authorities failed to implement substantial or significant portions of the IEP”).

198. Mitchell L. Yell et al., *Individualized Education Programs and Special Education Programming for Students with Disabilities in Urban Schools*, 41 *FORDHAM URB. L.J.* 669, 672 (2014).

199. See Tulman, *supra* note 37, at 4–6.

200. See 29 U.S.C. § 794 (2010).

201. *Id.* at § 794(a).

202. See 42 U.S.C. §§ 12131–12165 (2000).

203. 34 C.F.R. § 104.3(j) (2015); 28 C.F.R. § 35.104(4) (2015). These regulations implementing both Section 504 and the ADA provide the following examples of major life activities: “caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.” *Id.*

204. DEP’T OF EDUC. CIVIL RIGHTS DATA, *supra* note 67.

B. SRO Obligations Under IDEA, Section 504, and the ADA

SROs should be bound by the requirements of IDEA, Section 504, and the ADA in all three roles of the triad model: educator, counselor, and law enforcement officer. State educational agencies, local educational agencies, nonprofit public charter schools, and “any other political subdivisions of the state that are responsible for providing education to children with disabilities” are liable for committing IDEA violations.²⁰⁵ Many state school codes explicitly address the employment contracts of SROs or required memoranda of understanding between local law enforcement agencies and local educational agencies;²⁰⁶ as a result, SROs providing services to state or local educational agencies or public charter schools in accordance with an employment contract or a memorandum of understanding should fall under the broad category of state actors responsible for complying with the IDEA.²⁰⁷ Further, SROs must comply with the broader prohibition on disability discrimination under the ADA since Title II imposes an affirmative obligation on all public entities.²⁰⁸ As the ADA states, “[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subject to discrimination by any such entity.”²⁰⁹ Accordingly, actions carried out in an SRO’s law-enforcer, counselor, or teacher capacities must not discriminate against students for activity that is consistent with their disabilities.

IDEA explicitly recognizes that school officials are not prohibited from referring students with disabilities to law enforcement agencies for crimes these students have committed.²¹⁰ However, schools and other government agencies are still required to provide the appropriate procedural and due process rights under IDEA to any student who may have been referred to law enforcement if the student is facing a concurrent disciplinary action in school that may result in suspension or expulsion.²¹¹

205. 34 C.F.R. § 300.33 (2015).

206. See, e.g., ALA. CODE § 16-1-44.1 (2015); COLO. REV. STAT. § 24-33.5-1803 (2015); IND. CODE § 20-26-18.2-2 (2015); KY. REV. STAT. ANN. § 158.441 (2014); LA. REV. STAT. ANN. § 17:416.19 (2015); MISS. CODE ANN. § 37-3-82 (2015); N.C. GEN. STAT. § 162-26 (2015); VA. CODE ANN. § 9.1-110 (2002).

207. In holding that the reasonable suspicion standard applied when an SRO conducted a student search on his own initiative and authority, the Illinois Supreme Court recognized that the SRO was acting “in furtherance of the school’s attempt to maintain a proper educational environment.” *People v. Dilworth*, 661 N.E.2d 310, 318 (Ill. 1996). Accordingly, SROs hold a responsibility of maintaining a proper educational environment for students with disabilities.

208. 42 U.S.C. §§ 12131-12134 (2015).

209. 42 U.S.C. § 12132 (2015).

210. 20 U.S.C. § 1415(k)(6)(A) (2015) (“Nothing in this subchapter shall be construed to prohibit any agency from reporting a crime committed by a child with a disability to appropriate authorities . . .”).

211. 20 U.S.C. § 1415(k)(1) (2015).

IDEA and its implementing regulations outline the requirement of agencies to provide copies of a child's special education and disciplinary records to law enforcement and judicial authorities when a crime is reported, but "only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act" (FERPA).²¹² FERPA prohibits the disclosure of information about particular students without a parent or guardian's consent, but exceptions to this requirement are triggered if the records are released to the juvenile justice system, if an emergency necessitates the release of the records, or if SROs are maintaining the records solely for law enforcement purposes.²¹³ Although some courts have weighed in on the record transfer requirements,²¹⁴ it is unclear whether SROs would have regular access to students' IEPs under FERPA without a clearer congressional mandate. However, categorizing SROs as school personnel—distinct from law enforcement officers who merely respond to schools' calls for service—implies that SROs should have regular access.²¹⁵

When SROs serve in an educator role and teach law-related lessons to groups of students, IDEA obligates them to provide the necessary accommodations and modifications listed in a student's IEP throughout each lesson.²¹⁶ If a student has a specific learning disability²¹⁷ or a cognitive impairment,²¹⁸ for example, the SRO may need to modify class assignments to make sure that the material is accessible to the student or accom-

212. *Id.*; 34 C.F.R. § 300.535(b)(2).

213. 20 U.S.C. § 1232g (a)(4)(B), (b)(1)(I), (b)(1)(E)(2)(ii)(I-II) (2012).

214. *See* Commonwealth v. Nathaniel N., 764 N.E.2d 883, 888 (Mass. App. Ct. 2002) (holding that special education records can be "provided at any stage in the prosecution" since IDEA does not specify a time frame for schools to transfer the records to law enforcement); Joshua S. v. Sch. Bd. of Indian River Cnty., No. 00-14143-CIV-PAINE, 37 IDELR 218, 968 (S.D. Fla. 2002) (finding that IDEA was violated when a school failed to transfer a student's special education records following a referral to the sheriff's office but ruling that the school's failure to transfer the records did not have a direct negative impact on the student's disposition in juvenile court and, thus, was inconsequential).

215. *See supra* note 207 and accompanying text.

216. 34 C.F.R. § 300.323 (Each child's IEP must be "accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation," and these teachers and service providers must be informed of their "specific responsibilities related to implementing the child's IEP" in addition to "[t]he specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.").

217. 34 C.F.R. § 300.7(c)(10) (A specific learning disability (SLD) is "a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations.").

218. *Id.* at § 300.7(c)(6) (A cognitive impairment or intellectual disability "means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance.").

modate the student's special needs by allowing her more time to complete assignments. If a student has an emotional or behavioral disorder,²¹⁹ the SRO should be aware of classroom dynamics that could affect the student's ability to learn alongside her classmates. When functioning as a counselor, SROs should be accounting for the psychological, behavioral, educational, and physical needs outlined in students' IEPs.²²⁰

An SRO's compliance with IDEA, Section 504 and the ADA is most salient when carrying out law enforcement duties at school. The description of a student's disability diagnoses listed in an IEP is relevant to a determination of whether the student understood *Miranda* warnings during an interrogation; had the capacity to knowingly, intelligently, and voluntarily waive her legal rights; or was particularly susceptible to defer to authority when approached about consenting to a search.²²¹ If an SRO were aware of a student's propensity to react violently in a confrontation with authority because of his disability, the SRO could employ any de-escalation strategy that may be outlined in the student's IEP or Behavior Intervention Plan.²²²

It is ultimately a school district's responsibility under IDEA to provide FAPE to students with disabilities in the least restrictive environment.²²³ Accordingly, if a district makes the choice to employ an SRO or station an officer on school grounds in conjunction with a local law enforcement agency, the district has the responsibility to ensure that sworn officers do not compromise the provision of FAPE to students with disabilities. To avoid confusion about an SRO's obligations in a particular case, a student's IEP team could explicitly address interventions that should or should not be carried out by the SRO and list the appropriate and inappropriate interventions in a student's IEP and Behavioral Intervention Plan.²²⁴

219. *Id.* at § 300.7(c)(4) (Emotional disturbance (ED) is "a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance: (A) An inability to learn that cannot be explained by intellectual, sensory, or health factors. (B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers. (C) Inappropriate types of behavior or feelings under normal circumstances. (D) A general pervasive mood of unhappiness or depression. (E) A tendency to develop physical symptoms or fears associated with personal or school problems.").

220. *Id.* at § 300.323; *see also* Amy Milsom, Gary Goodnough & Patrick Akos, *School Counselor Contributions to the Individualized Education Program (IEP) Process*, 52 PREVENTING SCH. FAILURE 19 (2007) (describing school counselor participation in a multi-disciplinary team as an IEP is developed and the potential for counselors to "be responsible for implementing interventions that the IEP team determines").

221. *See* Grisso, *supra* note 177.

222. *See* 34 C.F.R. § 300.324(a)(2)(i) (2012).

223. 20 U.S.C. §1412(a)(1)(A) (2015).

224. 34 C.F.R. § 300.320(a)(4) (2012). The IEP must include "a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a

During the 2011-12 school year, over 87,000 Black students were arrested at school or referred to law enforcement.²²⁵ That means police officers had over 87,000 opportunities to exert conscious or unconscious biases about students' culpability, expected recidivism, and desert of punishment.²²⁶ Over 75,000 students with disabilities received school-related arrests or referrals to law enforcement.²²⁷ That means police officers had over 75,000 opportunities to either (A) exert conscious or unconscious biases against students with disabilities because these students "use their special education status as an excuse for their problem behavior" and should not be treated less punitively than other students,²²⁸ or (B) proceed without knowledge of students' disabilities and the accommodations and modifications required by students' IEPs. For some students, an SRO's compliance with an IEP or Behavioral Intervention Plan under IDEA can mean the difference between getting appropriate treatment for a diagnosis and getting swept into the justice system.²²⁹

CONCLUSION

In conclusion, there is overwhelming evidence suggesting that students of color and students with disabilities are funneled into the justice system due to the disparate impact of exclusionary discipline policies and discretionary arrests in schools. Regulating the conduct of SROs more closely by mandating their compliance with federal special education laws during interactions with students who have special education needs may serve to obstruct the school-to-prison pipeline for these groups of students. Due to the categorization of SROs as "school officials" by some

statement of the program modifications or supports for school personnel that will be provided," so the child can work towards his or her annual IEP goals along with participating and advancing in the general education curriculum and non-academic activities alongside non-disabled students. *Id.* If services and interventions are to be evidence based "to the extent practicable," it is important to consider whether behavioral interventions carried out by SROs (such as citations or arrests) have been proven to be effective in reducing student misbehavior. *Id.*

225. DEP'T OF EDUC. CIVIL RIGHTS DATA, *supra* note 67. A total of 19,149 Black students received school-related arrests, while 67,907 were referred to law enforcement. *Id.*

226. Graham, *supra* note 156; Atiba Goff et al., *supra* note 159.

227. DEP'T OF EDUC. CIVIL RIGHTS DATA, *supra* note 67. A total of 16,576 students with disabilities received school-related arrests, while 58,805 were referred to law enforcement. *Id.*

228. *See generally* May et al., *supra* note 160 (describing SRO attitudes towards and beliefs about students with disabilities).

229. *See, e.g.,* J.H. *ex rel.* J.P. v. Nation, No. CIV 12—0128 JB/WDS, 2015 WL 403734, at *1 (D.N.M. 2015). The court held that an SRO did not violate a developmentally disabled eleven-year-old's substantive due process rights under the Fourteenth Amendment when the SRO arrested her, handcuffed her, and transported her to a juvenile detention center following her physical altercation with another student in class, despite the fact that he allegedly violated her IEP and behavioral intervention plan (BIP) that detailed procedures school officials were required to follow before and during use of physical restraints. *Id.* However, the court did not address potential claims under IDEA for the SRO's alleged violations of the student's IEP and BIP. *Id.*

courts in the criminal procedure context (requiring a lesser standard than probable cause for searches and seizures under the Fourth Amendment and not always requiring Fifth Amendment *Miranda* warnings before students are questioned), SROs should comply with all of the obligations that come along with that title. This includes honoring all provisions listed in students' IEPs and refraining from discriminatory or implicitly biased arrest decisions. Schools must critically examine the role SROs play, if any, in the discipline of students with disabilities. Schools must provide the necessary training to SROs to ensure students with disabilities are provided FAPE in the least restrictive environment possible. These changes would afford greater protection to these susceptible student populations in their interactions with SROs and ensure more individualized and appropriate disciplinary measures.