

The factors that courts consider differ by jurisdiction, but in addition to on whose behalf the officer is acting, factors typically also include for what purpose the search is being conducted and whether the officer is assigned to and/or paid by the school. For example, officers who conduct the search in order to gather evidence for a criminal investigation or on behalf of their municipal or county law enforcement agency will likely be held to the higher “probable cause” standard. For more information about the standards that courts in various states have held officers to for conducting searches in school, see the table in Appendix C.<sup>208</sup>

Any evidence of a crime uncovered by a school official’s search, or by the school official accompanied by an officer, or by an officer searching at the request of a school official, can be used for arrest purposes. Yet if the court finds the officer was not acting as a school official at the time of the search and lacked probable cause, the evidence may be suppressed at trial.

When interviewing SROs in the field for this report, most reported that they are required to meet a probable cause standard. There are several potential reasons this may be the case:

- a.** The officers typically act in a law enforcement role for policing purposes
- b.** The state or district has determined SROs should not be considered school officials for the purpose of searches
- c.** The police agency assigning the officer to the school is holding the officer to a higher standard consistent with the legal standard outside of schools
- d.** Officers are unaware of their ability to use a lower standard in certain circumstances

Some advocates are also calling for all school-based officers to be subject to the same probable cause standards as patrol or other officers responding to the school and that this provision should be included in the MOU.<sup>209</sup> Among the reasons given for the inclusion of a probable cause standard in an MOU is that the lower search standard creates additional tensions between the school community and law enforcement, and that it better protects police agencies given the often conflicting case law.<sup>210</sup> Other reviewers for this report believe the matter should remain in the hands of the courts, some of which have determined that school-based officers (whether a school district police officer or a municipal/county SRO) need only meet the reasonable suspicion standard if acting on behalf of school officials to further an educational purpose.

The standards set out in case law may be better understood by focusing on the actor(s) conducting the search as depicted in Table 5:<sup>\*</sup>

<b>TABLE 5. PERSON CONDUCTING A SEARCH AND THE LEGAL STANDARD</b>	
<b>Person Conducting Search</b>	<b>Standard that Applies</b>
<p><b>Police Officers Acting Alone</b></p>	<p><b>Probable Cause</b></p> <p>Generally, courts are more likely to require probable cause when:</p> <ul style="list-style-type: none"> <li>■ an outside police officer conducts the search or the police officer is ultimately responsible to a law enforcement agency</li> <li>■ the purpose of the search is to uncover criminal activity</li> <li>■ the officer, not the school officials, has initiated the search<sup>211</sup></li> </ul>
<p><b>School Officials Acting Alone</b></p>	<p><b>Reasonable Suspicion</b></p> <ul style="list-style-type: none"> <li>■ The lower "reasonable suspicion" standard strikes the balance between the student's legitimate expectation of privacy and the school's interest in maintaining a safe and effective learning environment.<sup>212</sup></li> <li>■ "The reasonableness standard should ensure that the interest of students will be invaded no more than is necessary" to preserve school order.<sup>213</sup></li> </ul>
<p><b>SRO Acting Alone</b></p>	<p><b>Reasonable Suspicion (typically):</b></p> <ul style="list-style-type: none"> <li>■ Courts consider who employs the officer, who the officer reports to, and the officer's assigned duties.<sup>214</sup></li> <li>■ The majority of jurisdictions find that reasonable suspicion is required based on a finding that a police officer acting as an SRO is more closely connected to the school than the police department.<sup>215</sup></li> <li>■ Some courts have distinguished between school police officers employed by the school district (which require reasonable suspicion) and those employed by an outside police department and assigned to the schools (which require probable cause).<sup>216</sup></li> </ul>

<sup>\*</sup> Reprinted with permission from Majd, K., Waldman, R. & Wolf, W. (2009). *Defending Clients Who Have Been Searched and Interrogated at School: A Guide for Juvenile Defenders*. Washington, D.C.: National Juvenile Defender Center, Barton Juvenile Defender Clinic, Emory University School of Law, Youth Advocacy Project, & Committee for Public Counsel Services, at [njdc.info/pdf/defending\\_clients\\_who\\_have\\_been\\_searched\\_and\\_interrogated\\_at\\_school.pdf](http://njdc.info/pdf/defending_clients_who_have_been_searched_and_interrogated_at_school.pdf), pp. 8–9. Note that "school official" in the second row of the table refers to teachers, administrators, and staff—not officers acting in furtherance of educational purposes.

**TABLE 5. (continued)**

Person Conducting Search	Standard that Applies
<p>School Officials Acting in Concert with Law Enforcement</p>	<p><i>Jurisdictions Vary</i></p> <p><b>Reasonable Suspicion is typically required when:</b></p> <ul style="list-style-type: none"> <li>■ the school mainly controls the search<sup>217</sup></li> <li>■ law enforcement involvement is minimal in most jurisdictions<sup>218</sup></li> <li>■ school officials initiate the investigation and law enforcement officers search a student at the request or direction of school officials<sup>219</sup></li> <li>■ school officials perform searches based on information from, or in the presence of, law enforcement officers<sup>220</sup></li> </ul> <p><b>Probable Cause is required:</b></p> <ul style="list-style-type: none"> <li>■ usually when a law enforcement officer generally works outside of the school system and is simply on assignment at the school (if officer is not acting under school's direction)<sup>221</sup></li> <li>■ in a few jurisdictions, for all searches performed by law enforcement officers, regardless of who initiated the search<sup>222</sup></li> <li>■ when a school official is acting at the behest of law enforcement<sup>223</sup></li> </ul>

School and police leaders should be aware of whether school-based officers are to be considered “school officials” and what the governing legal standard is under a variety of search scenarios. School officials also need to understand when they themselves may also be considered “agents of law enforcement” for the purposes of search standards as well. School officials cannot be asked to conduct searches on behalf of police officers to circumvent the probable cause requirements.

Searches often go hand in hand with interviewing and interrogating students. There are a number of useful and clear resources to guide personal searches, interviews, and interrogations of youth.<sup>224</sup> That information is not reiterated here, but should be reflected in an MOU and be consistent with training that officers working in schools receive. Many MOUs have provisions that if it is necessary to arrest a student for the commission of an off-campus offense, whenever possible the arrest should not be carried out on school grounds. If an arrest is to be made on school grounds for an on-campus offense, when practicable the principal should be notified prior to the arrest. Students should be called to the principal’s office or otherwise arrested out of the view of fellow students and led out of the building with as much privacy and dignity as possible.

The legal issues that are related to officers’ involvement in public schools are complex. With sometimes conflicting and vague case law, it is particularly important that legal counsel from police and schools be involved in reviewing the issues raised here as they consider developing or revising MOUs.

***RECOMMENDATION 2:*** Ensure that school-police information-sharing principles advance school safety goals and facilitate the provision of services and supports to students, without increasing stigmatization or violating privacy mandates.

One of the most divisive topics addressed by the advisors to this report was information sharing. There is considerable concern that even if all legal standards are met, certain key principles should guide all information sharing with and from police. These principles may be included in MOUs or in separate information-sharing agreements. Teachers, police, behavioral health professionals, court and juvenile justice personnel, civil rights advocates, and youth and their families agreed that where sharing is working, it is because 1) the individuals involved are committed to using the information to serve and protect students, and 2) there is a high level of trust among recipients and providers of information. Recognizing the challenge of needing to depend on trusting relationships, stakeholders put tremendous effort into developing safeguards to help ensure that information sharing will be carried out by all parties in accordance with clear guidelines and accountability standards.

Information-sharing agreements should not only address legal issues, but should also be practical and principled. They should address such matters as

- what type of information should be shared between schools and law enforcement, with whom, and for what purposes;
- how it will be shared, stored, or deleted; and
- what privacy safeguards (technological and personnel oversight) are required.

Some school-based officers believe that having certain information about students (e.g., conditions of probation, release notice from a secure facility, behavioral intervention plans, or involvement in community-based criminal incidents such as gang activity that could spill over onto school grounds) could help them better perform their jobs. They would like the information to be used to support students' reentry into the school after juvenile justice system involvement and to make them aware of issues that could positively affect their responses to these students' misconduct. SROs have reported using this information on the school campus to support, mentor, or guide students in avoiding risky behaviors and successfully completing their conditions of probation.

In contrast, some family members, students, and advocacy groups expressed fear that providing officers with this information will increase scrutiny of these youth, potentially resulting in greater chances for arrest or probation revocations, as well as potentially stigmatizing them at school with their peers, teachers, and other adults. They are also concerned about consequences for students when municipal or county police provide the school with information about students who have been arrested or are believed to be involved in illegal activity. Many school-police partnerships have developed systems of notifying school officials of arrests or potential gang activity. Yet some groups reported that information about arrests has prompted some schools to automatically suspend students even if the charges are ultimately dismissed, allegations of gang involvement are found to be untrue, names were entered into a database in error, or the arrest was a nonviolent misdemeanor.<sup>225</sup>

A 2013 poll showed that most SROs surveyed receive some sort of notification when a student is leaving a juvenile justice placement or disciplinary alternative education placement (DAEP) and returning to the school, but SROs do not usually receive information when the child is placed under supervision of the juvenile justice system. This level of information sharing also depends on the police department and the school-based officer's relationship with the courts and/or with probation agencies. Some SROs reported using this information to work with student support teams to help students transition back to their regular classrooms and to engage them with continuing services and programming.

Despite the challenges about how to best share information, a fair number of schools or school districts and municipal police agencies have been able to develop strong partnerships to coordinate services and leverage resources. Some police departments, such as East Palo Alto, CA, have officers who will share information with schools about off-campus minor incidents such as curfew violations, graffiti, and vandalism involving students to help the student avoid further juvenile justice involvement. The purpose of the information sharing is to provide alternatives to arrest so the student can choose to participate in school-based diversion programs.

School-based police officers interviewed for this report indicated that they would like to see an increase in information sharing and communication to make sure pertinent public safety information flows between the officers and school administrators as necessary and appropriate. Officers noted, however, that all parties must agree on what information to share, with whom, for what purposes, and on strict oversight and accountability.

Teachers, administrators, and police agree that information sharing is necessary when there is a threat of imminent harm to students and adults in the school or potential “spillover” crimes that occur in the community, such as a gang incident in the evening that promises reprisals the next day at school. In these cases, there is an understanding that this information is important to share with targeted schools. In Lowell, MA, for example, the sergeant who oversees SROs reviews police reports daily for incidents that might have involved Lowell public school students. The SROs are notified of off-campus incidents that happened during non-school hours if they impact school or student safety. These incidents might include fights or other serious events that are likely to spark conflicts on campus.

Police and school officials admit that case-by-case determinations are routinely made about what information to share, particularly to advance collaborations with community-based groups working in schools to reduce youth violence. Some police and school officials also have clear guidelines about what information they will not share, such as not identifying students who have been victims of sexual assaults.

All personnel in systems (including schools) that have mandatory reporting requirements for crimes against children must be aware of their responsibilities. They should be cognizant of when permission is needed from parents or guardians to share information with other professionals for the child’s treatment or other services as well. It is also important to create pathways for students to report abuse and neglect. In a school setting, a child may be more likely to report abuse, domestic violence, or other safety concerns to an officer if a trusting relationship is forged. Students’ reports of abuse or neglect can alert student support teams or school counselors of the potential need for supports and services. School-based officers may also be provided with information from patrol officers about a child’s family in crisis that may indicate an opportunity to involve a school counselor.

There are often appropriate mechanisms for sharing information that can be used that meet all privacy mandates. But just because information can be shared does not mean it always should be shared. The MOU or separate information-sharing agreement presents an opportunity to limit the use of information only to those individuals who need it to serve students and advance school safety while minimizing stigmatization of youth and protecting their privacy. Information about students involved with multiple systems, including education, juvenile justice, mental health, child welfare, and others, could potentially be shared but would require a new layer of permissions and policies that have effective privacy safeguards and oversight for appropriate usage.<sup>226</sup>

**RECOMMENDATION 3: Outline in writing officers' roles and authority as defined through the collaborative process for determining the parameters of the school-police partnership.**

The MOU provides an opportunity for school and police partners to formalize their agreement on the type of partnership they will have and how they will address roles, responsibilities, training, information sharing, and other important aspects of an effective school-police partnership. Police and school leaders have extensive experience with using formal agreements such as MOUs, yet these partnership agreements can become quite complex. The agreement should be developed by school and police leaders with the advice of legal counsel from both parties. It should reflect input from parents and students and other stakeholders. The MOU should be signed by the chief of the law enforcement agency and principal of the participating school or superintendent of the school district or the education authority.

A NASRO survey showed that most respondents—the majority of whom were SROs assigned by a city/county law enforcement agency—reported having an MOU or other written agreements between the school district and their agencies.<sup>227</sup> Similarly, a survey of the Major Cities Chiefs Association found that most respondents reported having an MOU between their police agency and the school district in their jurisdiction.<sup>228</sup> A number of SROs interviewed for this report noted that they were aware of the existence of an MOU between their school and their police department, but were not familiar with its contents or provisions.<sup>229</sup>

These school-police agreements vary considerably. The COPS Office and other policing associations and agencies, as well as student advocacy groups and school safety associations, have developed a range of model or sample MOUs describing the role of school-based officers (see examples in text box).<sup>\*</sup> Some MOUs may also include other agencies beyond just police and school districts, such as juvenile justice agencies and mental health partners.<sup>230</sup>

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\* This list of sample MOUs is meant to help readers appreciate the range of potential approaches; the inclusion of a sample agreement in this list does not constitute an endorsement of its provisions. Additional examples can be found in the resources listed at [safesupportivelearning.ed.gov/events/webinar/intersection-school-safety-and-supportive-discipline-navigating-roles-and](https://safesupportivelearning.ed.gov/events/webinar/intersection-school-safety-and-supportive-discipline-navigating-roles-and).

## EXAMPLES OF MODEL MOUS AND RELATED GUIDANCE

### **National Law Enforcement Examples**

- Office of Community Oriented Policing Services, September 2013, *Memorandum of Understanding for FY2013 School-Based Partnerships* at [cops.usdoj.gov/pdf/2013\\_MOU-FactSheet\\_v2\\_091613.pdf](http://cops.usdoj.gov/pdf/2013_MOU-FactSheet_v2_091613.pdf).
- Canady, M., James, B., & Nease, J. (2012). *To Protect and Educate: The School Resource Officer and the Prevention of Violence in Schools*. Hoover, AL: National Association of School Resource Officers, pp. 47-49, [nasro.org/cms/wp-content/uploads/2013/11/NASRO-To-Protect-and-Educate-nosecurity.pdf](http://nasro.org/cms/wp-content/uploads/2013/11/NASRO-To-Protect-and-Educate-nosecurity.pdf).
- Kochel, T. R., Laszlo, A. T., & Nickles, L. B. (2005). *SRO Performance Evaluation: A Guide to Getting Results*. Washington, D.C.: U.S. Department of Justice, Office of Community Oriented Policing Services, pp. 43-45, [cops.usdoj.gov/files/ric/CDROMs/Tribal/law/SROPerformanceEvaluationGuide.pdf](http://cops.usdoj.gov/files/ric/CDROMs/Tribal/law/SROPerformanceEvaluationGuide.pdf).

### **State Examples**

- Atkinson, A. J., & Kipper, R. J. (2004). *The Virginia School Resource Officer Program Guide*, [dcjs.virginia.gov/forms/cple/sroguide.pdf](http://dcjs.virginia.gov/forms/cple/sroguide.pdf).
- The North Carolina Department of Public Safety Sample MOU for SRO-School Partnerships at [ncdps.gov/div/JJ/sro\\_agreement.pdf](http://ncdps.gov/div/JJ/sro_agreement.pdf).
- The Kentucky Center for School Safety at [kycss.org/schoolresource.php](http://kycss.org/schoolresource.php).
- A Uniform State Memorandum of Agreement between Education and Law Enforcement Officials (2011 Revisions). Approved by the New Jersey Department of Law & Public Safety and the New Jersey Department of Education, [state.nj.us/education/schools/security/regs/agree.pdf](http://state.nj.us/education/schools/security/regs/agree.pdf).

### **Advocacy Group Examples**

- ACLU. Kim, C.Y., and I. Geronimo. (2009). *Policing in Schools: Developing a Governance Document for School Resource Officers in K-12 Schools*. New York, NY: American Civil Liberties Union, [aclu.org/files/pdfs/racialjustice/whitepaper\\_policinginschools.pdf](http://aclu.org/files/pdfs/racialjustice/whitepaper_policinginschools.pdf).
- The Advancement Project's Model MOU at [advancementproject.org/resources/entry/proposed-memorandum-of-understanding-between-the-school-district-and-police](http://advancementproject.org/resources/entry/proposed-memorandum-of-understanding-between-the-school-district-and-police).
- Dignity in Schools. *A Model Code on Education and Dignity: Presenting a Human Rights Framework for Schools*. New York, NY, [dignityinschools.org/files/DSC\\_Model\\_Code.pdf](http://dignityinschools.org/files/DSC_Model_Code.pdf).



Based on a review of the literature, sample or model MOUs, and surveys and interviews of police agency personnel, the following eight elements were most commonly found in school-police partnership agreements. It is unusual, however, to find MOUs that contain all of these elements:

### **1. Goals and objectives**

The MOU should reflect the goals and objectives that emerged from the engagement of school community stakeholders. They should be tailored to the needs and priorities of schools in the district. Goals will vary, but should include such common themes as improving or maintaining school safety, promoting positive experiences with law enforcement, protecting students' privacy and dignity, reducing the need for police enforcement (arrests and citations) for minor offenses, connecting students to needed supports and services, and reducing disparities for students of color and vulnerable populations. Surveys and feedback from practitioners also indicated that among common goals and objectives are improving the preparation and response to critical incidents (e.g., natural disasters or threats posed by individuals with weapons).

#### **SCHOOL-POLICE MOUs/MOAs HARTFORD AND BRIDGEPORT, CT**

The MOU in Hartford and MOA in Bridgeport, CT, are based on a model agreement created by the state's Juvenile Justice Advisory Committee.<sup>231</sup> As of March 2014, it has been tailored or adopted by at least 16 other school districts and their police agencies,<sup>232</sup> and states that "The purpose of this agreement is to encourage a more consistent response to school incidents and to reduce the number of referrals of students to court by establishing guidelines for the handling of non-emergency disruptive behavior at school and school-related events by school and police personnel." The MOU and MOA reflect input from students, parents, teachers, and others in the school community. The agreements include guiding principles for working together and outline which offenses are best dealt with at the classroom, school administration, assessment and service, and law enforcement levels. Although both cities' agreements state that SROs will not be responsible for student discipline or enforcement of school rules, SROs may assist school personnel in de-escalating conflicts. The Hartford MOU recognizes that officers retain discretion over options that include alternatives to arrest and "in no way restricts, supersedes or limits HPD [Hartford Police Department] officers' requirements under Connecticut State Statutes or by Department Policy and Procedures."

The Hartford agreement can be found at [hartford.gov/Images/mayors/MOUPoliceAndSchools.pdf](http://hartford.gov/Images/mayors/MOUPoliceAndSchools.pdf).<sup>233</sup>

## 2. Roles and responsibilities of all parties

School-police partnerships will typically outline distinct roles as determined during the partnership planning process. For example, Denver's Interagency Agreement outlines the roles and responsibilities for each party involved, so each agency is clear on its obligations and expectations.<sup>234</sup>

### **DENVER MOU ON SRO RESPONSIBILITIES DENVER, CO**

The High School/Middle School SRO will:

- i. Differentiate between disciplinary issues and crime problems and respond appropriately.
- ii. De-escalate school-based incidents whenever possible.
- iii. Understand that the District has adopted a Discipline Policy that emphasizes the use of restorative approaches to address behaviors, and is designed to minimize the use of law enforcement intervention.
- iv. Enhance school safety on school grounds to help foster a safe and secure learning environment.
- v. As partners with the District, when appropriate and to the extent that SROs are familiar with various City agencies or community organization, SROs may assist school staff and students with locating such City agencies or community organizations.
- vi. As partners with the District, when appropriate, SROs may assist with resolving law enforcement issues that affect the School District and the broader community.
- vii. Provide a positive liaison between the Police Department, the students, the school administration, and the District security department.
- viii. Participate in meetings with school administration when requested by school administration during the SRO's normal shift.
- ix. Officers making an arrest or writing a citation/summons to a student at school, at a school event, or on a school vehicle shall notify the school principal or the principal's designee in a reasonable time period, not to exceed the mandates set forth by state law.
- x. Question students in a manner and a time when it has least impact on the student/suspect's schooling so long as the delay in questioning does not interfere with the effectiveness of an investigation.

For more information, see [juvjustice.org/sites/default/files/ckfinder/files/Denver%20IGA.pdf](http://juvjustice.org/sites/default/files/ckfinder/files/Denver%20IGA.pdf).

In an effort to clearly communicate the roles of school personnel and police in incidents involving students, some MOUs refer to matrices developed in student codes of conduct for a list of student offenses that warrant officer involvement, and those that may be handled through the school's disciplinary system (see Policy Statement II, Recommendation 1 for information on Baltimore, Buffalo, Chicago, Fort Wayne, and San Diego).

In most cases, jurisdictions using this approach have tried to direct educators and school staff on when they must or may involve officers. Guidance focuses on which types of misconduct should be considered a disciplinary matter and not a misdemeanor offense (e.g., talking in class as a classroom discipline issue and not disorderly conduct requiring a police response). MOUs are typically careful not to limit police authority or discretion. Instead, they urge officers to minimize arrests for minor offenses (particularly when there has been no injury or threat to school safety) and access alternative programs when possible. These MOUs typically distinguish school disciplinary violations from offenses for which officers should be called.

Several groups have gone a step further, however, by stating in a proposed MOU that the police agency agrees not to arrest or ticket students for particular categories of minor offenses, such as first-offense misdemeanors in which there is no serious injury or threat to individuals' safety. These may also be outlined in a related matrix, flow chart, or code of conduct.\* Several advisors for this report cautioned that attempting to limit officer discretion is likely to meet with resistance or problems with enforcement in most jurisdictions.

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\* Some model MOUs, for example, state types of offenses when arrests and tickets "may only be used" (excluding, for example, incidents resulting in minor injuries that do not require medical treatment. See e.g., Advancement Project Model MOU at [advancementproject.org/resources/entry/proposed-memorandum-of-understanding-between-the-school-district-and-police](https://advancementproject.org/resources/entry/proposed-memorandum-of-understanding-between-the-school-district-and-police)). Some police advisors stated that officers could be provided guidance but could not be prohibited from enforcing minor offenses. A report by the National Association of School Resource Officers cautions that by trying to limit officer discretion on enforcing minor offenses, it is possible there may be other legal and practical ramifications. For example, the report posits that SROs are less likely to be considered "school officials" if they are told not to address classroom disorder—thereby potentially limiting access to student records and imposing higher standards for searches—and that schools are more vulnerable to obstruction of justice charges. See, Canady, M., James, B., & Nease, J. (2012). *To Protect and Educate: The School Resource Officer and the Prevention of Violence in Schools*. Hoover, AL: National Association of School Resource Officers, [nasro.org/cms/wp-content/uploads/2013/11/NASRO-To-Protect-and-Educate-nosecurity.pdf](https://nasro.org/cms/wp-content/uploads/2013/11/NASRO-To-Protect-and-Educate-nosecurity.pdf).

## **SCHOOL-POLICE COLLABORATIVE AGREEMENT BROWARD COUNTY, FL**

In 2013, the Broward County School District and several local law enforcement agencies worked closely with a group of juvenile justice and community partners to develop a collaborative agreement on school discipline.<sup>235</sup> The agreement provides school officials with guidance on when to consult with police and promotes the use of graduated sanctions for student misbehavior. It states:

"Many types of minor student misbehavior may technically meet the statutory requirements for non-violent misdemeanors, but are best handled outside of the criminal justice system. In any school year, the first instance of student misbehavior that rises to the level of a non-violent misdemeanor and requires consultation with a police officer should not result in arrest nor the filing of a criminal complaint, but instead be handled through the Code of Student Conduct and Discipline Matrix. Behavior that rises to the level of a felony offense under any of the above statutes is not included herein."

The Role of Officers' section further states that "law enforcement officers shall follow the steps and guiding questions" in a decision flow chart that indicates when officers arrest/do not arrest for both first and repeat misdemeanor offenses outlined in the code of conduct matrix. Although the word "shall" could lead one to believe that law enforcement has been divested of discretion for the designated misdemeanor offenses, such divestiture is actually not allowable under Florida law for County Sheriffs.<sup>236</sup> The agreement sets out to specifically preserve officer discretion in both the MOU, in section 2.05, and as a footnote to the decision-making chart made part of the agreement:

### **2.05 Discretion of Law Enforcement.**

"Nothing in this agreement is intended to limit the discretion of law enforcement. Officers responding to an incident or consulting with school officials are encouraged to use their discretion in determining the best course of action, especially when using alternatives to arrest. While the option to use the criminal justice system is available for many incidents, the totality of the circumstances should be taken into consideration and any less punitive alternatives that ensure the safety of the school community should be considered."

The agreement outlines the path officers will take for specified misdemeanor offenses that warrant alternatives to arrest. Police are also encouraged to use the civil citation and Preventing Recidivism through Opportunities, Mentoring, Interventions, Supports & Education (PROMISE) diversion program as alternatives to arrest.<sup>237</sup>

The MOU may be considered a "work in progress," as the Broward County School Board is working with other local municipal police forces throughout the county to join this agreement, which in updated form may include modifications of the language and revisions based on the implementation assessment to date.<sup>238</sup>

More information on the collaborative agreement can be found at [browardprevention.org/wp-content/uploads/2013/10/Collaborative-Agreement-on-School-Discipline.pdf](http://browardprevention.org/wp-content/uploads/2013/10/Collaborative-Agreement-on-School-Discipline.pdf).

School personnel cannot prevent officers from making a lawful arrest (without risking obstruction of justice charges), and officers cannot stop school officials from suspending or expelling a student. Through an MOU that stresses the need to use alternatives to arrests when possible, police and school officials can, however, communicate consistent expectations to the school community and ensure that their own personnel have clear guidance on achieving shared goals.

When there are no SROs or other school-based police officers, MOUs can still be developed between police agencies and schools. Depending on the product of negotiations during the collaborative process for determining police patrol responses to schools and/or the roles of school-based officers, this section of an MOU can vary widely. It can be as simple as an understanding of when local/county police will respond to school-based emergency incidents or conduct patrols at the start or finish of school, or as complex as a full range of officers' responsibilities for providing education programs to students, conducting crime prevention activities, or defining the parameters under which officers can access alternatives to arrest. Some MOUs may outline the roles of each individual player in the agreement and include communication protocols between the school and the police agency, as well as other parties to the agreement.

### **NEW JERSEY'S SCHOOL-BASED COMMUNITY SERVICE PROGRAMS**

New Jersey's model MOU states that an "Education-Law Enforcement Working Group, in consultation with the Administrative Office of the Courts, has developed a program whereby schools can serve as community service sites where students can fulfill their court-ordered community service obligations on school grounds and under the supervision of school staff. By participating in this voluntary program, schools can help to give ...judges more disposition options and 'intermediate' sanctions to address certain types of delinquent behavior." Some minor offenses may also be diverted by police from formal processing through "stationhouse adjustments" that result in no juvenile record. See the MOU at [state.nj.us/education/schools/security/regs/agree.pdf](http://state.nj.us/education/schools/security/regs/agree.pdf).

### **3. The selection, employment, training, logistics, and oversight of school-based officers**

As previously noted, there are diverse practices for how school-based police officers are selected, trained, and supervised. These elements of an MOU should clearly outline the role of each agency in these tasks to encourage accountability. Relevant information may include the following:

- Who will be involved in the selection process and who makes the final selection decision
- What the criteria will be for a successful candidate
- What happens if the school has a problem with the selected officer, and procedures for any replacements or extended absences
- Who pays for the officer
- What types of training will be available to the officer and which agency will fund or provide that training
- Officer's duty hours and any summer assignments\*
- Staffing levels for school events
- Dress code for the officer (clarify that the school-based officer will be armed on campus)
- Office space, materials, and other logistics needed and who will provide them
- Who will be responsible for oversight and supervision of the officer
- Citizen complaint/feedback procedures regarding police and/or school personnel†
- What reporting responsibilities the officer will have beyond his or her immediate supervisor

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\* Many MOUs acknowledge that work hours are subject to any existing labor contracts.

† See, e.g., Memorandum of Understanding Between the City of Pasadena, CA and the Pasadena Unified School District in which positive comments and complaints are shared, unless prohibited by law, and each agency is responsible for any disciplinary issues involving their own existing complaint review processes. The Pasadena MOU, effective July 2013, also explicitly states that officers will not respond to discipline problems except when administrators are required to call officers under law. However, on-campus officers may participate in dispute resolution on a case-by-case basis. Lines of supervision are also outlined. For more information, see [cityofpasadena.net/councilagendas/2013%20agendas/Sep%2016%2013/AR%202%20MOU%20\(CORRECTED%20AND%20REVISED%20as%20of%209-13-2013\).pdf](http://cityofpasadena.net/councilagendas/2013%20agendas/Sep%2016%2013/AR%202%20MOU%20(CORRECTED%20AND%20REVISED%20as%20of%209-13-2013).pdf). The Oakland, CA School Police Department has also agreed to a Public Complaints Process and Complaints Reports Policy. The ACLU of Northern California and Black Organizing Project developed a campaign with the parents, youth, schools, and the school police to develop a complaint procedure. It was introduced in the Oakland Unified School District in the 2012 school year and more formally adopted in the 2013–14 school year, so implementation results are not available at this writing.

In addition to noting the critical need for including high-quality, tailored SRO training, the Rochester, NY Police Department emphasized the need for ongoing awareness training related to the partnership elements outlined in its MOU.<sup>239</sup> High turnover in school administrations requires ongoing cross-training and education about police officer roles, when to involve officers, and clarity about other key aspects of the collaboration.

#### **4. Legal Issues**

##### **a. Searches and interviews**

The legal issues discussed in Recommendation 1 above should be reflected in the MOU. Many codes of conduct and MOUs refer to policies for searching students and their property, including backpacks and lockers.

##### **b. Jurisdictional boundaries and investigation authority**

In a formal agreement, all parties will need to understand when and where the agreement applies. The document should clearly identify the jurisdiction of the agreement and its boundaries. This will include defining what are considered “school hours” or “school grounds” for enforcement purposes.

In defining school hours, consideration must be given to the fact that most schools, in addition to the school day, also include school-sanctioned activities such as after-school tutoring, sporting events, academic clubs, student council, or picnics/fairs. The geographic jurisdiction also requires definition. Agreements should be clear on whether school bus stops or sporting events that do not take place on the school campus, for example, are included under the jurisdictional partnership.

This information is also important for separate mutual aid agreements between, or MOUs with, municipal or county police agencies and school districts that may have overlapping jurisdiction.

- The Texas Education Code allows a school district police agency’s jurisdiction to include all territory within the boundaries of a district and the property outside of the district boundaries that is owned, leased, rented by, or otherwise under the control of the district. Within this jurisdiction, a school district police agency’s peace officer has certain powers, privileges, and immunities; may enforce all laws, including municipal ordinances, county ordinances, and state laws; and may take a juvenile into custody.<sup>240</sup> The Mansfield Independent School District, for example, states that the school district police serves individuals “that are participating in or attending school-sponsored activities which include, but not limited to, extra-curricular activities, students in transit to and from school in a District vehicle or any other school-sponsored or school-related activity on or off campus.”<sup>241</sup>

- Fla. Stat. §1006.12 defines a school safety officer's jurisdiction and allows a district school board to enter into mutual aid agreements with other law enforcement agencies regarding overlapping jurisdiction. The Miami-Dade Schools Police Department and Miami-Dade County Police have entered into a MOU that permits school police to exercise "continuing police authority to respond to those law enforcement incidents which occur on School Board District property. This police authority shall be exercised in connection with incidents that occur on roadways and property adjacent to and abutting School Board property and incidents that occur in plain view of a School Board police officer within 1,000 feet of school property."

Jurisdiction for particular kinds of investigations may also need to be articulated, particularly where there is both a municipal/county police agency and school district police agency. Some agencies have the municipal or county law enforcement agency conduct all felony investigations; the school district police agency may assist in these cases but is primarily responsible for non-felony cases. In other cases, responses and investigations may be dependent on the resources each agency can offer. A survey of Major Cities Chiefs Association members and interviews with local law enforcement personnel confirmed that common provisions in formal agreements between a municipal/county police department and a school district police agency deal with

- the jurisdiction for investigating crimes committed on school campuses;
- critical incident management jurisdiction;
- security provisions for school-based events or after-school activities;
- traffic supervision responsibilities; and the
- co-placement of officers from both the municipal and school district agency in schools (including joint training).

There may also be provisions that allow the sharing of resources. For example, a school district police agency may be given access to the municipal police agency's Juvenile Division resources and report-writing program.

### **c. Reporting Laws**

In addition to federal law, most states or municipalities have mandatory reporting laws that require teachers, health professionals, school staff, and other covered entities to report certain types of suspected cases to police, child protective services, or other authorities. In many cases, these laws are related to allegations of child abuse or sexual abuse. MOUs should articulate where to access reporting protocols.



#### **d. Information Sharing**

As outlined in Recommendations 1 and 2 above, information-sharing provisions or separate agreements must be in compliance with federal, state, and local laws and reflect the principles agreed upon by school-police partners, other parties to the agreement, and affected stakeholders. Surveys and practitioner feedback indicated that among the types of information typically shared are, at minimum, crimes and any school-wide or student safety threats.

#### **5. Data collection and reporting**

The need for appropriate data collection, reporting, and analysis is highlighted in various sections of this report and is summarized in the Data Collection chapter. The processes for data collection and reporting, including who will be collecting which information and how it will be reported (both internally and to the larger school community), should be included in an MOU. Data that can be collected and reported are discussed in the processes described earlier in this chapter as part of the collaborative decision-making tool, and can be tailored to the particular goals of the school and the outcomes of a proposed school-police partnership.

Data collection agreements must include, if at all possible, specific procedures for tracking and evaluating to what extent school policies and police officer actions may be disproportionately impacting students of color, those with special needs, or other affected youth.<sup>242</sup> Demographic data should be collected on disciplinary actions, referrals to programs, and arrests, and should be disaggregated by type of offense, location, response, and the school's information on the student's race, gender, disability status, age, grade, and other characteristics.

Despite the U.S. Department of Education's Civil Rights Data Collection (CRDC), many schools and law enforcement agencies still lack reliable, comprehensive data about which categories of students are being arrested on school grounds, how school policies play a factor in those arrests, and the impact on particular groups of students.<sup>243</sup> When possible, outcome data should be collected to determine the results of referrals and arrests.\*

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\* The Broward County, FL, MOU requires data "reflecting all school-based arrests, referrals to law enforcement, and filing of criminal complaints and disaggregated by location of arrest/school, charge, arresting agency, gender, age, race/ethnicity, disability and ESL status [be] collected by the School District and Department of Juvenile Justice. Data reflecting the number and nature of incidents of misbehavior is also collected by the School District."

## **6. Evaluation procedures for the partnership**

The MOU should clearly articulate a process for regularly evaluating the partnership and its policies and procedures. Typically, expected outcomes and related data will be decided at the same time that school districts and police are deciding whether to assign officers to particular schools or to revisit their roles. The evaluation should focus on those outcomes and related data that the initial collaborative decision-making process identified as related to the goals for the school-police partnership. These may include some combination of reducing drug or gang activity on campus, lowering crime and fear of crime, minimizing the use of arrests for minor offenses, increasing referrals to services, and improving the learning environment for all students and staff. Specific measures tied to those goals may include the extent to which officers use curriculum on how students avoid risky behaviors, number of referrals to the student support team or counselor to address behavior issues, school survey data on feelings of safety or experiences with officers, and use of alternatives to arrest for minor offenses.

To analyze trends and changes, the agencies engaged in the evaluation should return to the baseline data collected to identify crime problems and prevention needs as part of the collaborative decision-making process. Because the raw data does not necessarily tell the whole story of what is happening in schools, the MOU should allocate resources for analyzing and discussing the data to get a full picture of the impact of new policies.\* In all cases, police and school district leaders must agree on what data will be collected and by whom, who has access to this data, how often the data will be made available, how it will be used, and how it will be stored and secured.

Although many school-police partners will conduct their own evaluations, some districts have spelled out arrangements for independent evaluations of whether positive outcomes have been achieved in a district. The MOU may indicate who will conduct the evaluation (the school district, police agency, or an independent evaluator) and when, as well as who will pay for the evaluation if it is outsourced. It may also articulate how the results will be used or shared. This process should not be narrowly focused on officer performance; it is about understanding if the school-police partnership is achieving its stated goals.

## **7. Cost-sharing or funding**

As previously discussed, school-based police officer positions are funded through a variety of mechanisms: municipal police budgets, school district budgets, grant and blended funding, and others. This agreement can include details of this arrangement, such as budgets and payment schedules. The Sacramento City, CA Unified School District's agreement, for example, outlines funding and billing procedures for the SROs in their schools. Consideration must be given to how officer positions will be sustained following the termination of grant funds.<sup>244</sup>

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\* By reviewing trends and particular incidents throughout the school year, it is possible to identify barriers to effective implementation. If these barriers have been addressed and schools are still not seeing the desired results, it may be necessary to revise the policies. The scheduled review of the MOU and related policies need not be the only time this is conducted in collaboration with the school community.

## **8. Term of the MOU and schedule for review and/or renewal**

The partnership agreement should be treated as a living document that will be refined over time. It is important that law enforcement and school district representatives be authorized to periodically review and refine these documents as needed, with input from school staff, parents, students, and other community stakeholders. In some jurisdictions, the MOUs are revisited before the beginning of each school year. In others, more frequent reviews are planned. For example, the agreement among the Birmingham, AL Police Department, Birmingham City School System, Jefferson County Family Court, and Jefferson County District Attorney's Office states partners must meet quarterly to review the agreement and relevant data and to make recommendations for revisions to the agreement.<sup>245</sup>

### **DENVER PUBLIC SCHOOLS AND DENVER POLICE DEPARTMENT: INTERGOVERNMENTAL AGREEMENT DENVER, CO**

In 2013, Denver Public Schools and the Denver Police Department signed an Intergovernmental Agreement that clarifies the enforcement role of school-based police officers in schools, details due process protections for parents and students, requires that SROs meet with community stakeholders regularly, and requires training of SROs and school administrators on working with students while in school. Critical to the development of this agreement was the deep involvement of the community, particularly youth leaders. The goal of the agreement is to establish policies that keep students out of the juvenile justice system and on track to graduate.

The agreement outlines specific roles and responsibilities for SROs, school districts, and police departments, including de-escalating situations when possible, and differentiates between school discipline matters and crime problems to minimize the use of law enforcement intervention. It also requires that SROs be familiar with schools' codes of conduct related to disciplinary matters and attend training.

For more information, visit [safequalityschools.org/resources/entry/Padres-IGA](http://safequalityschools.org/resources/entry/Padres-IGA) or the Padres & Jóvenes Unidos website, [padresunidos.org](http://padresunidos.org).

After agreements have been signed, MOUs should be shared with staff members who will be under obligation to follow the agreement. These agreements should be available to all school administrators and staff, as well as any police officer who will be in contact with schools, to ensure that they are implementing the policies that flow from the MOU.

## Conclusion

Law enforcement agencies have partnered with schools for decades. They have performed a broad range of activities—from improving school safety and critical incident planning to mentoring students and educating them about the law and avoiding gang activity or drug use. In recent years, the roles that school officials and law enforcement officers play in responding to student misbehavior have come under intense scrutiny, particularly in an effort to avoid an over-reliance on suspensions, expulsions, and arrests to address students' minor offenses.

The simple truth is that not every school requests, needs, or is able to fund a school-based officer. This chapter provides a collaborative process to identify and prioritize when officers should be placed on a particular school campus or whether another partnership arrangement works best to maintain safety while contributing to a school environment that is conducive to learning. Law enforcement, school officials, educators, students, parents, and other stakeholders can help define the roles and activities of officers that meet the distinct needs of a school. With the proper selection, training, and supervision of officers serving schools, and the oversight of how school personnel are involving officers, responses to student misbehavior can result in better academic outcomes and less student involvement with the juvenile justice system.

### KEY TAKEAWAYS

- ▶ Determining the appropriate type of school-police partnership should be a local decision made by education and law enforcement leaders who are engaged in a collaborative, data-driven process with their personnel, students and parents, and a broad range of stakeholders.
- ▶ The chapter's collaborative decision-making tool can help police and school leaders identify crime prevention, safety, and related needs of particular schools; develop goals in response to these needs; and determine whether and where to place officers on campuses and how to tailor their responses to particular problems.
- ▶ The extent to which schools can create a positive school climate and provide behavioral health interventions (including preventive approaches that encourage positive behaviors, behavioral supports for students and adults, and restorative strategies for addressing student misconduct outlined in previous chapters) can influence officers' involvement in schools.

## KEY TAKEAWAYS (continued)

- ▶ When officers are assigned to schools (whether state, county, or municipal officers or a school district's own police agency officers), their roles may involve a broad range of activities that are part of a comprehensive effort to support students and educators. At minimum, officers should foster positive relationships with students and the school staff and community, focus on safety and prevention efforts, minimize arrests for minor misconduct whenever possible, and support the schools' specific goals identified through the collaborative process.
- ▶ School-based officers working with students must be properly selected, trained, supervised, and evaluated to maintain safety in schools while promoting positive conditions for learning for all students. Off-campus officers serving schools should be made aware of the policies and practices that the partnership has set out for minimizing arrests for minor misconduct when possible and being responsive to victims' needs.
- ▶ Teachers, school administrators and other staff, youth and their families, and other adults serving students should be made aware of the proper role of officers and the protocols and criteria for when it is appropriate to call for an enforcement response, as well as the potential consequences for the student.
- ▶ There should be cross-training opportunities for officers, such as attending school staff professional development sessions on positive behavioral approaches and restorative strategies, as well as for school leaders to participate in SRO training. Ideally, police and school personnel should also be trained together to ensure that everyone receives the same information about officers' roles and policies for engagement.
- ▶ There must be oversight and review processes to ensure that officers are not being engaged in routine classroom management. In keeping with established policies, officers should use their discretion to divert students to alternative programs when possible and reserve arrests for the most serious offenses and threats to safety.
- ▶ School districts and their local law enforcement agency(ies) should develop an MOU that reflects a shared understanding of the school-police partnership's key provisions, including legal issues, information sharing, the roles of officers, selection, training, and supervision. The schedule and parameters for routine evaluations of the partnership and reviews of the agreement should be spelled out as well.
- ▶ Many proposed school-police partnership activities can be integrated into safety planning, school climate improvement, and other related efforts already underway in most schools.

