

DISABILITY RIGHTS CENTER - NH

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July 1, 2020

Commission on Law Enforcement Accountability, Community and Transparency
Office of the Governor
State House
107 North Main St..
Concord, NH 03301

Re: Written submission of Disability Rights Center-NH and Juvenile Reform Project

Sent by email only to LEACT@doj.nh.gov

Dear Attorney General MacDonald and members of the Commission:

Thank you for the opportunity to provide input to the Commission on Law Enforcement Accountability, Community and Transparency. I am writing on behalf of the Disability Rights Center of New Hampshire (DRC) to urge you to include in your recommendation improvements to the training and role definition of School Resource Officers. Such improvements would likely reduce the criminalization of minor student misbehavior and in turn reduce some of the significant negative outcomes for students, families, and public safety that can result.

The DRC is New Hampshire's designated Protection and Advocacy agency. We are authorized by federal statute "to pursue legal, administrative and other appropriate remedies" on behalf of individuals with disabilities, including students with disabilities in the school system and adults and children with disabilities in the juvenile justice and criminal justice systems.

I am also writing on behalf of the Juvenile Reform Project, a collaboration of ACLU-NH, the Disability Rights Center, New Futures' Children's Behavioral Health Program, New Hampshire Legal Assistance, and Waypoint. The Project has been extensively involved in juvenile justice reform efforts over the last several years, focusing on issues such as reducing the use of incarceration for non-violent offenders, strengthening the right to counsel for children, and improving services for court-involved children with behavioral health needs.

The use of school resource officers, or SROs, has expanded significantly in New Hampshire and around the country since the 1990s. Their use has received significant

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federal financial support and is widely perceived to contribute to school and community safety, but for years there has been growing concern that the presence of police officers in schools contributes to the criminalization of student behavior by moving children with challenging but nonviolent behaviors into the court system rather than addressing their behaviors in school.

Although many believe that the presence of a police officer in a school will make the school more safe and the students in that school less likely to commit delinquency offenses and become caught up in the adult criminal justice system, the consequences of the use of SROs are at best mixed. Schools with SROs may gain some protection against serious violent offenses in some kinds of circumstances, and SROs tend to be welcomed and supported by school administrators, but such schools also tend to refer more children into the juvenile justice system for minor offenses. That is because “the presence of police officers helps to redefine disciplinary situations as criminal justice problems rather than social, psychological, or academic problems, and accordingly increases the likelihood that students are arrested at school.”¹ One study found that adding SROs to a school more than doubled the arrest rate for disorderly conduct, an offense that does not involve violent behavior and is highly subject to the judgement and discretion of an officer.²

Juvenile justice referral for low-level offending is harmful to children and the community because it is strongly associated with higher dropout rates, more serious delinquent conduct following such referrals, and a greater likelihood of involvement in the adult criminal justice system. These are the same negative outcomes that often result from exclusionary discipline, as both sanctions tend to weaken and sever positive connections with prosocial peers and supportive adults, making it more likely that children will behave more antisocially in the years after such interventions, particularly if they are already at risk for delinquency.

School resource officers, particularly if their role is not clearly defined, typically exercise a high degree of discretion in determining what behavior will receive a juvenile justice referral and what will be handled by the school disciplinary system. This creates fertile ground for different responses to children of color and children with disabilities, frequently creating disproportionate impacts on those populations. Such disproportionality is present in federal statistics showing the use of exclusionary discipline in New Hampshire schools.³

¹ Chongmin Na & Denise C. Gottfredson (2013) Police Officers in Schools: Effects on School Crime and the Processing of Offending Behaviors, *Justice Quarterly*, 30:4, 619-650. Accessed at <https://doi.org/10.1080/07418825.2011.615754>.

² Theriot, M. (2009). School resource officers and the criminalization of student behavior. *Journal of Criminal Justice*, 37, 280–287.

³ See the Juvenile Reform Project's 2019 report, *Keeping Kids in School: The Urgent Need for Reform of School Discipline in NH*, accessed at

Because of the negative outcomes associated with exclusionary discipline, court referral, and other responses to problem behaviors, it is recommended that detailed memoranda of agreement be put into place between the police agency providing an SRO and the school so that there is a clear delineation between normal school disciplinary activities to be handled by educators and law enforcement responses to serious criminal activity, to be handled by the SROs. Extensive training is also recommended, with a common recommendation being 40 hours prior to the school assignment and an additional 10 hours per year on an ongoing basis. Such recommendations have been made by the U.S. Department of Education, the U.S. Department of Justice Office of Community Oriented Policing Services, and the President's Task Force on 21st Century Policing, among others.

Despite the dangers which are known to flow from exclusion and alienation from school and particularly from court referral for nonviolent behaviors, nothing like these widely recommended safeguards are in place in our state. Current law permits a school resource officer to work in a New Hampshire school without any training beyond that which is required of any other officer.

Moreover, there is no requirement that the school and police department carefully determine what the role of the SRO should be at the school. Although there is a statutory requirement for a memorandum of understanding between the department and the school, there is no requirement that that agreement cover any particular subject.⁴

Recommendations for training and specific and explicit written agreements between the police agency and the school should be included in the Commission's report. The recommendation should include the adoption of the following as mandatory requirements for the use of School Resource Officers in any New Hampshire school:

1. No less than 40 hours of training for SROs prior to beginning their school assignment, and 10 hours of training on an annual basis while the assignment continues. The training should cover issues of
 - a. child and adolescent development and psychology,
 - b. positive behavioral interventions and supports,
 - c. conflict resolution,
 - d. peer mediation and other restorative justice techniques,
 - e. children with disabilities or other special needs, and
 - f. cultural competency.

https://www.nhla.org/assets/customContent/FINAL_Keeping_Kids_in_School_-_The_Urgent_Need_to_Reform_School_Discipline_in_NH.pdf; See also the Carsey/NH Kids Count research brief: Exclusionary Discipline Highest in New Hampshire's Urban Schools: Suspension and Expulsion Found to Disproportionately Affect Disadvantaged Students (2016), accessed at <https://scholars.unh.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1266&context=carsey>

⁴ See RSA 186:11 XXXVII.

2. A written memorandum of agreement between a school and policy agency before the agency may provide an SRO at the school. Each memorandum should include, at a minimum,
 - a. the mission of the SRO program,
 - b. guidelines on distinguishing between disciplinary misconduct to be handled by the school district and criminal offenses to be handled by the SRO and law enforcement, with a clear prohibition of school officials utilizing the SRO for the resolution of routine student discipline problems,
 - c. the division of authority between school officials and SROs in emergency and non-emergency situations,
 - d. a plan for supervising the SRO's performance,
 - e. a process for filing complaints by students, parents, teachers, and other school officials resulting from misconduct by the SRO,
 - f. the type and extent to which information may be shared between the school district and the law enforcement agency,
 - g. guidelines for the SRO's conduct regarding student searches and seizures, interviewing or questioning a student, arrest of a student, reading Miranda rights to students in certain circumstances, and the SRO's use of physical force or restraints on a student.

Please note that the legislature previously considered a proposal to require a very similar set of requirements as we are urging the Commission to recommend. In 2015, House Bill 527, an act establishing guidelines for school districts relative to the use of school resource officers, was introduced. Following objections by law enforcement organizations, the bill was amended to only require that memoranda of understanding between schools and police agencies be executed, but the final version of the bill passed in 2016 required no particular content of such memoranda. No training requirements were included in the final version.

Thank you for considering the views of the Disability Rights Center and the other member organizations of the Juvenile Reform Project. Please contact me if you have any questions or if I can provide additional information.

Sincerely,



Michael Skibbie
Policy Director