

Report & Recommendations

Proposed School Resource Officer Intergovernmental Agreement

Prepared for:

Board of Trustees of Park Ridge-Niles
Community Consolidated School District
64 and Superintendent Laurie Heinz,
Ph.D.

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Report & Recommendations

**Park Ridge-Niles Community Consolidated School
District 64
Proposed School Resource Officer Intergovernmental
Agreement**

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To: *Board of Trustees of Park Ridge-Niles
Community Consolidated School District 64
and Superintendent Laurie Heinz, Ph.D.*

From: Ekl, Williams & Provenzale LLC (hereinafter "*Consultants*")

Re: Independent Assessment & Consultation of the Proposed
Intergovernmental Agreements for Placement of Sworn Peace
Officer Personnel at Lincoln & Emerson Middle Schools

Date: December 28, 2017

I. Introduction

Consultants were formally retained by the Board of Trustees of the Park Ridge-Niles Community Consolidated School District 64 (hereinafter "D64" or "the Board"), through its counsel, Hodges Loizzi, *et al.*, on November 29, 2017. We have been asked to weigh in on the proposed common Intergovernmental Agreement (hereinafter "IGA") for placement of a School Resource Officer (hereinafter "SRO") at Lincoln and Emerson Middle Schools, component Middle Schools within D64. Because these schools serve areas geographically located within the City of Park Ridge and the Village of Niles, respectively, a separate but identical IGA is proposed between D64 and each respective municipality.

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The date initially requested by D64 through Hodges Loizzi for completion of this assessment was December 11, 2017. D64 was kind to accommodate Consultants for a later submission. It should be noted that further opportunity for deeper assessment and data compilation is recommended, as will be discussed below.

As a prefatory disclaimer otherwise, this assessment and the recommendations contained herein do not speak directly to the question of whether an SRO should be placed within each component school. This ultimate decision, and the reasons for and against, while generally relevant to the recommendations for contours and provisions of an SRO IGA in these schools, is reserved to the Board as final policymaker for D64 and will not be addressed, *in specie*.

A. Data Reviewed

Consultants have endeavored to review as much data relevant to the question presented in the time frame provided for this consultation. The following is a list of publicly available or supplied data and resources reviewed and considered:

- Park Ridge and Niles demographic data (crime, income);
- Emerson and Lincoln Middle Schools, Illinois At-A-Glance Report Cards (2016-17);

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- City of Park Ridge and Village of Niles Police Department Minimum Hiring Qualifications *via* Northwest Suburban Police Consortium;
- Niles PD Calls for Service Detail Log to Emerson (2015-2017);
- Park Ridge PD Calls for Service Detail Log to Lincoln (2015-2017);
- D64 Middle School Disciplinary Data Report (2015-16, 2016-17).

The following is a list of published studies or articles regarding SROs also reviewed and considered by Consultants:

- Dilberti, M., Jackson, M., and Kemp, J. (2017). *Crime, Violence, Discipline and Safety in U.S. Public Schools: Findings From the School Survey on Crime and Safety*. U.S. Department of Education (2015-16) (NCES 2017-122) (USDOE, NCES);
- Mbekeani-Wiley, M. (2017). *Handcuffs in Hallways: The State of Policing in Chicago Public Schools*. Sargent Shriver National Center on Poverty Law (2017);
- Johnson, R. (2016). *What Effects do School Resource Officers Have on Schools?* Dolan Consulting Group (2016);
- Gray, L. and Lewis, L. (2015). *Public School Safety and Discipline*. U.S. Department of Education (2013-14) (NCES 2015-051);
- Anderson, M. (2015). When Schooling Meets Policing. *The Atlantic* (September 21, 2015);
- USDOE (2014). *Guiding Principles: A Resource Guide for Improving School Climate and Discipline*. U.S. Department of Education, Washington, D.C. (2014);

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- James, N., McCallion, G. (2013). *School Resource Officers: Law Enforcement Officers in Schools*. Congressional Research Service (2013) (CRS 7-5700, R43126);
- Pettertuti, A. (2011). *Education Under Arrest: The Case Against Police in Schools*. Justice Policy Institute 2011;
- Theriot, M. (2009). School Resource Officers and the Criminalization of Student Behavior. *Journal of Criminal Justice* 37(2009) 280-287;
- Hickman, M. (2006). *LEMAS: Citizen Complaints about Police Use of Force*. Bureau of Justice Statistics (Special Report), U.S. Department of Justice, Office of Justice Programs (2006);
- Finn, P., McDevitt, J. (2005). *National Assessment of School Resource Officer Programs: Final Project Report*. ABT Associates, Inc., Washington, D.C., (2005); and
- Kochel, T.R., Laszlo, A.T., Nickles, L.B. (2005). *SRO Performance Evaluation: A Guide to Getting Results*. U.S. Department of Justice, Office of Community Oriented Policing Services, (2005).

Finally, the following is a list of applicable Federal and State Statutory provisions for principles and guidelines considered:

- Fourth Amendment to the Constitution of the United States of America;
- Fourteenth Amendment to the Constitution of the United States of America;
- Rehabilitation Act of 1973, Section 504;

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- Illinois Juvenile Court Act, §405/5-401, *et seq.*;
- Illinois Criminal Code, 720 ILCS 5/1-1, *et seq.*; and
- Illinois Uniform Peace Officers' Disciplinary Act, 50 ILCS 725/3.8

In addition to the above, Consultants have also conferred directly with a current Law Enforcement source and a current School Administration source in the suburban Chicago area who have anonymously provided additional background and insights.

B. Methodology

There is no generally established methodology applicable to develop recommendations to the question presented. The question of what are appropriate terms and conditions for placement of a sworn police officer in a middle school is, necessarily, a highly fact-specific and nuanced one. Even academic attempts to compile reliable epidemiological data for development of general correlation observations have been inconclusive, providing few reliable, epidemiologically based correlation principles from which to draw¹.

However, from a legal and common-sense approach, the most meaningful and productive methodology is to identify the risks and benefits of having a police officer in a school, and to recommend implementation of strategies that accentuate the

¹James, N., McCallion, G. (2013), at p.9.

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benefits and minimize the risks. Therefore, Consultants begin with a review and summary of the consensus views in available studies and literature that identify generally accepted or proffered principles of benefits and risks of an SRO in a middle school. Given the data about the community involved, we considered how those general principles apply here. Consultants then reviewed the proposed SRO IGAs with these benefits and risks for this community in mind, considering other factors, including applicable constitutional and statutory principles. Consultants' recommendations are, therefore, based upon a sound methodology of review of general and specific data, identification of applicable risks and benefits of placing an SRO in these middle schools, and application of legal principles and practical considerations to the proposed SRO IGAs to arrive at recommendations.

II. Assessment

A. Risks & Benefits

Every school may be viewed as its own "country."² Through its students, parents, faculty and administration, each school has its own culture, practices and, for lack of a better word, mood.³ Uniformly, evidence-based studies of the question

²A common sentiment expressed to consultants from their anonymous resources. *See also* Theriot (2009), at p.286 ("schools are extensions of the community").

³*Ibid.*

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of what happens when a school resource officer is placed into a school echo the same infirmities of the data - no two schools are alike and no "one-size-fits-all" model exists.⁴ Differences in school enrollment and attendance, student race, socio-economic demographics, and geographic location, among other variables, render meaningful statistical inference inconclusive.

Regardless, studies and related literature are more than competent at identifying the existence in given localities of definable benefits and risks of having an SRO in a middle school.

1. Benefits

Premises safety is most often the primary justification for having an armed, sworn police officer assigned to a school. Recent tragedies of shootings at schools, in fact, are repeatedly mentioned within the literature as primary drivers of federal funding for, and the increased use of SROs. Surprisingly, there is no data that correlates the presence of an SRO to a reduction in these types of incidents.⁵

Premises safety includes addressing student disorder, misbehavior and discipline. Studies have proffered that the presence of a school resource officer is a mechanism

⁴Ibid, *and* James, N., McCallion, G. (2013), at p.11.

⁵Id.

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to lower instances of weapons, drugs and violence within a school, though the data on this, too, is inconclusive.⁶

Trust and a sense of security, or the concept of "officer friendly," have also been proffered as benefits of an SRO. The development of meaningful trust between the community of parents, students and school personnel with law enforcement, and a concurrent feeling of physical safety, have been observed anecdotally with the presence of an SRO, though the data on this as a statistically correlated effect is lacking and, in any event, particularly subjective.⁷ In the one study to try to measure this, it was reported to be reliably prevalent at a smaller school with a full time SRO.⁸ Relatedly, though not measured in any study, there is also the proffered benefit that the SRO may serve as a role model for students, but this is certainly personnel specific.

Practical benefits of having a designated law enforcement officer within a school also include the ability of a law enforcement officer to direct students and families served to community and social services that school administrators may not have familiarity with, including family shelters, domestic violence victim

⁶*Compare* James, N., McCallion, G. (2013), at pp.10-11, *with* Theriot (2009), at 285.

⁷Finn, P. McDevitt, J. (2005), at pp. 17-19.

⁸*Ibid.*

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assistance and substance abuse rehabilitation resources. Finally, and perhaps most importantly, SROs function as educators of students regarding safety, crime and drug preventions strategies (such as D.A.R.E.), self-defense initiatives and traffic education.

2. Possible Risks

Contravening the purported benefit of a sense of trust and security a SRO may provide to students and parents, some commentators have proffered the opposite effect occurs, where the presence of a uniformed police officer in a school creates a sense of fear and triggers stress, particularly in the minority student population.⁹ The realities of this presence cannot be understated. A uniformed police officer in a school introduces a quasi-military presence. A standard build-out for a uniformed officer currently is a sidearm (usually a semi-automatic pistol) and holster, a ballistic vest, and a duty belt holding, variously, speed loader cartridges or magazines, handcuffs, mace/pepper spray, flashlight, radio and transponder, baton, knife or multi-purpose tool and keys. Optional equipment can include a Taser gun, a body camera and an ASP (extendable metal baton). Established use of force guidelines for police training rely on the intimidating presence of a uniformed

⁹Mbekeani-Wiley, M. (2017), at p.18.

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police officer as the start of the force continuum.¹⁰ The downside of such a continuous force presence within a school is apparent, where stress and fear within the school setting can interfere with a student succeeding academically.

Furthermore, commentators and studies have argued that the presence of an SRO within a school results in the criminalization of normal student misconduct that is traditionally or reasonably treated as school discipline; what has been referred to as the "school to prison pipeline."¹¹ There is no reliable data to make this generalization across the board or to quantify the risk in any specific school. Nonetheless, studies have validated the risk, particularly the statistically disproportionate impact of SRO law enforcement activities against economically disadvantaged students repeatedly confirmed by various studies. Furthermore, anecdotal incidents of young children being arrested and handcuffed in open view in a school hallway for disruptive behavior are emotionally jarring and objectively problematic. In any event, there appears to be a reliable basis in the data to conclude that, whether as confirmatory of the "school to prison pipeline" concept or otherwise, the presence of an SRO within a school is predictive of criminalization of disorderly conduct type student misconduct.¹²

¹⁰ See <https://www.nij.gov/topics/law-enforcement/officer-safety/use-of-force/Pages/continuum.aspx>.

¹¹ Mbekeani-Wiley, M. (2017); Pettertuti, A. (2011); Anderson, M. (2015).

¹² Theriot, M. (2009).

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Finally, and while not specifically addressed by any commentators or studies to which Consultants are aware, the presence of a SRO in a school risks instances of disability discrimination that would circumvent procedural manifestation considerations in the context of school discipline. Specifically, a law enforcement officer need not consider disability of a student when determining the existence of probable cause and deciding whether to arrest or charge a student and seek detention under 705 ILCS 405/5-501. In contrast, Section 504 of the Rehabilitation Act of 1973 would require, at a minimum, due process on this subject before a child's right to education is interrupted.¹³ Avoidable interference with the educational opportunities of a student by an SRO therefore may arise where an arrest and removal of a student from the school occurs, but involves circumstances under which school officials would not, by law, be able to impose discipline.

¹³The constitutional standard for arrest under the Fourth Amendment, and the standard for continued detention under the Juvenile Court Act, do not consider whether the alleged misconduct of a student was the manifestation of a disability, but only whether there was probable cause to support the charge, and whether an immediate and urgent necessity for protection of person or property exists to detain, whereas Section 504 requires a manifestation assessment of whether a disciplinary consequence amounts to discrimination on the basis of a disability before a deprivation of FAPE can occur.

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3. D64 Demographics and Comparison to National Data

In comparison to similarly situated middle schools as of 2015-16, D64 (1) falls well below the national average for incidents of violence¹⁴, (2) approximates the national average for rates of vandalism and theft¹⁵, but (3) appears to be above the national average for the rate of drug related / substance abuse¹⁶ incidents.

Nationwide, 58.6% of middle schools have full or part time SROs, but only 47.4% of schools in the 500-999 enrollment range do.¹⁷ Schools in this enrollment range have a slightly higher rate of part-time SROs than full time.¹⁸ Finally, for schools having the race demographics similar to D64 (over 80-95% white, non-hispanic), only 45.7% have SROs, with nearly the same having part-time

¹⁴Dilberti, M., Jackson, M., and Kemp, J. (2017), at Table 1; D65 Discipline Data, Summary (2016-17). Note, the national data category is "all violent incidents," whereas the D64 data category is "fighting."

¹⁵Id., Tables 1 and 3.

¹⁶Ibid, at Table 3. Note, the discipline data does not lend to complete confidence that the comparison is apples to apples. The category in D64 data is "substance abuse," whereas the data categories in the national study are "Distribution, Possession or use of illegal drugs," "Distribution, Possession or use of alcohol" and "Distribution, Possession or use of prescription drugs." The totals of the national data were combined for this comparison and the D64 rate was still roughly 1 per 1,000 higher than the aggregate of the 3 categories in the national data.

¹⁷Id., at Table 9.

¹⁸Ibid.

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versus full time SROs (23.4% have part-time whereas 22.7% have full-time).¹⁹ Of middle schools comparable to Lincoln and Emerson in location, enrollment size and demographics, roughly about half of the similarly situated schools have SROs as of 2015-16 data.²⁰

B. Review of Principles & Introduction of Strategies

The role of an SRO within a school is not standardized. Even within federal law, the definition of a "school resource officer" differs.²¹ To some, an SRO serves primarily as a security and law enforcement presence, whose job is primarily to protect the school from external or internal threats to the safety and security of students and school personnel, and to maintain order and lawful conduct within the school. To others, an SRO serves primarily as an educator, counselor and role model for students, and does not engage in any traditional law enforcement activities such as investigation of crime, evidence collection and arrest, but only does so in the event of an emergency. To others, still, an SRO plays a hybrid role within a school (sometimes referred to as the "Triad" role), combining the above roles of advocate and educator for parents and students and providing for student

¹⁹Ibid, compared with At-a-Glance Report Cards.

²⁰Ibid.

²¹ Compare 42 U.S.C. §3796dd-8 with 20 U.S.C. §7161.

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and premises security in the event of threats of or actual violent disruptions that may occur within a school, while also conducting law enforcement activities within the school to address problems with crime, gangs and drugs. Overall, the benefits of a designated and assigned law enforcement officer within a school provides immediacy and physical presence, rapid response time to any threat, and positive opportunities as role model, counselor and educator to students.

On the other hand, many believe that school officials already largely provide these benefits, except armed security, and otherwise many of these positive police benefits are achievable through local police agencies that already serve the school and larger community. Studies and the literature observe real risks to the education setting and the rights of parents and students with the involvement of SROs, and the identifiable benefits, while noble and valid, are not necessarily borne out by existing studies and data.

Given the above, strategies must be implemented to reduce the known and foreseeable risks when drafting the contours of the SRO-to-school-to-community relationship to maximize the opportunity for success of the position and the personnel. Based upon the studies and data available, these strategies should include: (1) making sure the right person is selected for the role, because much

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about the success of the SRO-to-school-to-community relationship is correlated to the temperament and personality of the SRO within the established culture and norms of that school and community; (2) requiring sufficient pre-qualifying and ongoing training of the SRO regarding the challenges and nuances of the role within that particular community; (3) promoting and valuing a community conscience as to the mission and goals for the SRO, including a clearly articulated memorandum of understanding or mission statement; (4) having clearly delineated and administrable standards and restrictions for the duties and responsibilities of the SRO that meet the community's stated purposes and goals and comply with statutory and constitutional requirements; (5) having a clearly delineated supervision, review and complaint procedure in place for oversight of the SRO; and (6) providing for flexibility for the SRO duties and responsibilities to adapt to the customs and practices that develop through experience over time through a data collection regime, and a requirement for a re-authorization or sunset provision that will require a thorough review and assessment of the data by a date certain, allowing an opportunity for thoughtful community dialogue about the good and bad of the program and personnel, and an opportunity to fine tune it or allow it to lapse.

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The following are brief comments about specific aspects of these strategies:

1. Strategy 1

As noted throughout the studies and literature referenced and reviewed herein, the person who takes the job of SRO may be as important to the success of the position as the terms of the IGA.²² The body of studies and commentary on SROs compels that an SRO should be selected based upon the right temperament to interact with children through compassion and patience.²³

However, who is the right person depends on who is asked, what is the purpose and what are the objectives for the position. For example, even school personnel and law enforcement personnel view the reasons / needs for or against an

²²This point was further emphasized by Consultants' sources as having vital importance to the success of the assigned individual. As they described to us, these personnel assignments take time to evolve and for the people involved to develop an understanding of how they will carry out their jobs. Problems, therefore, occur as a natural result of inertia due to the passage of this time, meaning that the wrong person could be in the job for a long time, creating personnel problems or worse before that person is replaced, all of which can introduce disruptive forces to the school environment. *See James, N., McCallion, J. (2013), at pp.11-12.*

²³Anecdotally, the law enforcement and school sources with whom Consultants conferred related their feeling that the traditional law enforcement algorithm of "ask, tell, make" must be modified within a school to only "ask, tell," as use of force should only be last resort, not just the next step. Obviously, this is a component both of training and temperament.

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SRO differently.²⁴ Certainly, parents in the community would likewise have their own opinions about the matter, too, and there is no reason these opinions would be necessarily aligned with either the school perspective or the police perspective.

Therefore, an ideal SRO IGA should allow for a selection process to include input not only by police and school administrators, but the School Board *and* representative(s) of the community. All of these stakeholders certainly would have further practical input and insights on the right temperament of SRO for that school and the job contemplated.

2. Strategy 2

In addition to placing the right person in the job of SRO, to the extent that the position contemplates the "Triad" role of SRO, there should be sufficient training to carry out these non-law enforcement roles while maintaining (and not compromising) the ability to effectively carry out his or her law enforcement responsibilities. Problematic to achieving this goal, there is no governmentally accepted standardized training and certification for an SRO in Illinois.²⁵ The National Association of School Resource Officers offers basic and advanced SRO

²⁴ James, N., McCallion, J. (2013), at p.4.

²⁵There do appear to be some standardized training minimums in other jurisdictions. Mbekeani-Wiley (2017), at pp.23-24.

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training courses, but there is no governmental entity or agency that recognizes this training as a minimum, much less required, basic training regimen.²⁶ However, the Illinois Juvenile Court Act requires training through the Illinois Law Enforcement Training and Standards Board (ILETSB) or State Police for qualification as a Juvenile Police Officer under 705 ILCS 405/1-3(17). Given all of the above, from Consultants review of the applicable references and resources, consensus appears to compel the fact that, through whatever training resource, an SRO should be trained in strategies of restorative justice, de-escalation, child and adolescent psychology, crisis prevention and crisis intervention.²⁷ Resources for this training can certainly include the NASRO, but also, training in Basic and Advanced (Juvenile) Crisis Intervention Training (CIT) through ILETSB, as well as training by the D64 (or outside) Crisis Prevention Institute (CPI) instructor.

3. Strategy 3

Commentators addressing the subject of SROs in schools have repeatedly stressed the importance of a clear understanding with the community about the

²⁶ See <https://nasro.org/training/nasro-training-courses/>. However, the states or cities that have minimum training standards do not involve NASRO training, specifically. Mbekeani Wiley (2017), at p.23. See also <http://lib.post.ca.gov/Publications/60700295.pdf>.

²⁷ See e.g., Mbekeani-Wiley (2017), at pp.23-24.

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reasons, roles and objectives of the SRO through a Memorandum of Understanding developed with community input.²⁸ Consultants' law enforcement and school sources echoed this, characterizing it as a "Mission Statement." As referenced by James and McCallion, when SRO programs fail to define the SROs roles and responsibilities before - or even after - the officer takes up the post in the school, problems are often rampant - and may last for months and even years.²⁹ Proposed structure for an SRO MOU is discussed in the literature; for example, 6 main points have been identified by the ACLU for an SRO MOU.³⁰ Certainly, given the involvement of the community in the selection process, referenced above, a meaningful precursor to that selection is a community understanding of the reasons for and objectives of the program.

4. Strategy 4

In addition to a community conscience about and buy-in to the SRO program, its reasons and objectives, the roles and responsibilities of the SRO must be clearly and plainly defined so that the SRO knows what he or she can or cannot do within

²⁸ Id., at pp.19-20; James, N., McCallion, J. (2013), at pp.11-12; Kochel, T.R., Laszlo, A.T., Nickles, L.B. (2005), at p.11.

²⁹James, N., McCallion, J. (2013), at pp.11-12.

³⁰ Mbekeani-Wiley (2017), at p.20 (citations omitted).

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that mission. Students do not surrender their constitutional rights at the school doors. If an SRO is assisting school staff in restoring order in connection with a disturbance, is he acting in a law enforcement capacity, or as an educator? Will he have his own office?³¹ What if a school resource officer is present and/or participates while a student is questioned by school officials about some misconduct that involved another student that may also violate the law; is it questioning in a "law enforcement investigation" or a "school disciplinary investigation?" Can anyone even tell?³²

Blurring the lines between police officer and school official, a natural consequence of the "Triad" role, only blurs the lines of when constitutional and state statutory protections apply.³³ The consequences of these blurred lines can interfere with delinquency or criminal prosecutions or, worse, violate students' constitutional

³¹ Specifically, will the SRO have a space within Lincoln and Emerson that could be a place of detention under §5-401.5(a) of the Juvenile Court Act, triggering the requirement to record questioning that could be custodial under ¶(a-5)?

³² Obviously, if there is ambiguity about what role the SRO is playing, then all involved can be painted with the law enforcement brush, triggering constitutional and statutory protections for admonishment and notice. *See, e.g.*, 705 ILCS §405/5-401.5, §405/5-405.

³³ For example, if questioning of a student by an SRO or a "public official" is arguably custodial, which itself is a low threshold, statutory and constitutional rights require (1) immediately notifying a parent; (2) admonishing the student with youth Miranda-type warnings, and (3) creating an audio-video record of the questioning. *Ibid*; *see also*, J.D.B. v. North Carolina, 564 U.S. 261 (2011).

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rights. Where clearly delineated lines are not drawn on the involvement of an SRO in school discipline investigations (i.e., when they intervene and when they can't intervene) or as to school order issues, the concerns of criminalizing disorder offenses become prominent. Furthermore, blurred lines can subject school officials to liability as agents of the police under traditional Fourth Amendment principles, as opposed to the relaxed TLO³⁴ reasonable suspicion standards.³⁵

Finally, the potential of an armed, uniformed police officer achieving an "officer friendly" persona while also acting in the capacity of disciplinarian is a *posteriori* problematic. Obviously, if the SRO one day is acting as counselor for a student, and the next day arrests that student, a sense of trust and friendship is likely to be broken, not only with the involved student, but also with other students. Eventually, if not at the outset and particularly if he or she is armed and in full uniform, an SRO will be viewed as force. Furthermore, as the old saw goes,

³⁴ New Jersey v. TLO, 469 U.S. 325 (1985).

³⁵ *See, e.g., Wallace by Wallace v. Batavia School Dist.* 101, 68 F.3d 1010, 1013 (7th Cir. 1995). If school officials act in conjunction with law enforcement agents, even if concurrent with a school discipline investigation, the Fourth Amendment (and all other constitutional rights) arguably applies to them the same as it does to the police for which school officials may be held liable for police misconduct. *See Husband v. Turner*, 2008 WL 2002737 at *3 (W.D. Wis., May 6, 2008); *and Thomas v. Barze*, 57 F.Supp.3d 1040, 1065-66 (D. Minn. 2014).

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familiarity breeds contempt, and some measure of acknowledgement must be given to the risk that, after a time, an armed, uniformed officer's presence could be viewed more as an expression of continuous force than as a measure of security.

5. Strategy 5

Law enforcement agencies are quasi-military, "flat" organizations, meaning that the majority of the manpower allocations are unsupervised "street" personnel, *i.e.*, patrol officers assigned to interact with the community without direct supervision of a supervisor.³⁶ As a result, lax supervision of the majority of an officer's day results in officers developing "working rules" that can deviate from applicable written policies, considered vague and "out of touch" by the officers charged with implementing them.³⁷

Much of the literature discussing police occupational culture expounding on these observations reinforces the concept that adequate supervision, in the form of a fair and effective complaint and disciplinary system, is vital to combating problems that arise within such a lax supervisory structure, including lax supervision involved with the assignment of a police officer off-site of the police station.

³⁶Manning, P.K. (2008). *Performance Rituals*. Policing 2 (3): 284-293.

³⁷Manning P.K., Van Maanen, J. (1977). *Policing: A View from the Streets*. Random House, NY (1977).

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6. Strategy 6

Uniformly across the studies and commentaries on the subject of SROs, data collection is accepted as a necessity. Determining whether the reasons for the positions, the objectives pursued, and whether the person selected for the job is the right fit, can only be determined through a robust and continuing regime for the collection of relevant data. Furthermore, as with any experiment, a meaningful opportunity must be set aside for review and analysis of this data, so that decisions can be made about the program, including termination if appropriate.

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III. Recommendations

Based upon all of the above, reviewing the applicable studies and literature, the data about the community to be served and Consultants' experiences and knowledge of applicable statutory and Constitutional law, the following recommendations are made:

- A. The reason for creating an SRO position at each school should be the subject of dialogue involving each respective police department, school and community served. A "Mission Statement" or "Memorandum of Understanding" should be developed through this communicative process, and should be drafted and incorporated into the IGA, setting out with clarity the collective conscience of all stakeholders explicitly addressing the reasons for, roles and objectives of the SRO. The language "WHEREAS the Board decides to have the services of one of the City's police officers to perform the duties of a School Resource Officer ("SRO") at the School" should therefore be replaced with the appropriate memorandum, or reference thereto;
- B. Revise ¶3 of the Proposed IGA. Consultants recommend that only one person be assigned to each school as an SRO, and that there be no substitution or other "revolving personnel" that occurs, if it can be avoided. Furthermore, the vetting process

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to select the police officer who will be assigned to each school should also involve an administrator of each school *and* a representative(s) of the school community from each school, perhaps the PTA president(s) or some other designee. Effort should be made to identify the right employee that fits best among the pool of candidates for that placement. If staffing limitations of each servicing police department do not allow for a single person to serve at each school as SRO, Consultants recommend that this fact be the subject of specific community input so as to incorporate community feedback as may affect the defined roles and responsibilities of the position. For example, we do not believe that different and changing personalities rotating through the schools will foster familiarity with the personnel or a sense of trust. Given that the proposal is for part time SRO positions, the school or the community may feel that the role should reflect these staffing realities.

To accomplish all of this, we recommend that ¶3 create a "selection panel"³⁸ for each school comprised of the referenced involved designees, such as the Chief of Police, The School Superintendent, each School's Principal, and parent representative from each school, with a majority vote

³⁸An odd number of panel members should be required to avoid ties.

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required for assignment based upon the position criteria discussed in ¶C, below.

- C. Revise Exhibit A of the proposed IGA regarding experience and training minimums. First, to the extent that the SRO position is contemplated to require SRO as counselor and educator, D64 should give serious consideration to requiring a bachelor's degree, as the current minimum educational requirements for both departments is a high school diploma and 60 hours of post-high school classes from accredited institutions. Second, specific subject-matter minimums of training should be required and articulated in the Exhibit, for: (1) certification through ILETSB as a Juvenile Police Officer under 705 ILCS 405/1-3(17); (2) Advanced CIT (Juvenile) training through ILETSB (or other similar mental health training involving child / adolescent psychology); (3) training in restorative justice; and (4) Crisis Intervention and Prevention / de-escalation training. Recommendation is made for investigation of NASRO 40 hour basic SRO training to evaluate whether such is sufficient to accomplish the above. Understanding that the SRO position is new and no personnel may currently meet these requirements, the Exhibit should allow for this training / credentialing to be completed within a defined reasonable time period after assignment, if not already possessed, in addition to a requirement of regular and periodic

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in-service or seminar training requirements in all of the above subjects.

- D. Revise ¶4 of the proposed IGA. The IGA should specify a supervision, complaint and discipline regime for the SRO. In other words, to whom does the SRO report as to his activities - the School Principal? The District Superintendent? His Sergeant? The Chief of Police? To whom does he go in the event he has an issue he needs to be addressed? To whom does anyone complain about the SRO? In the absence of any specified chain of command or complaint procedure, particularly for a role that requires hybrid responsibilities, the absence of a defined structure may lead to problems in which the SRO could act against the wishes of school authorities or without proper authority because he has no identified day-to-day supervisor.³⁹

Furthermore, a procedure for school administrator, parent and student complaints against an SRO must be delineated and followed. For example, a parent who has a complaint about an SRO would naturally go to the school authorities. Can school officials receive and log the complaint, or is the parent told, "sorry, go to the police department and file your complaint." If the latter, the structure of the proposed IGAs would leave all

³⁹ See Mbekeani-Wiley (2017), at pp. 24-25.

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investigatory and disciplinary issues up to the "City," presumably meaning the normal police internal complaint, investigation and discipline procedures, which may be otherwise defined by collective bargaining agreements.⁴⁰ However, police internal investigatory mechanisms are entirely opaque and, in Consultants opinion, ill-suited for administratively addressing problems with school personnel. Worse, the complaint procedure in Illinois requires that an affidavit support all complaints against police officers.⁴¹ How many parents may be discouraged from filing a complaint against an SRO because they have to do so under oath and publicly, identifying their child and the issue in a public document, and perhaps fear reprisal by the SRO against their child? This is not a speculative fear; for example, the BJS

⁴⁰The specifics of the complaint, investigation and discipline procedures of the involved departments is currently unknown. Consultants recommend that D64 investigate the involved departments' procedures and disciplinary records to understand the procedures and efficacy of it (Consultants previously did this for the Park Ridge Police Department almost a decade ago in 2008, but have no current familiarity with it). In any event, recent criticisms of cumbersome complaint, investigatory and disciplinary procedures for police misconduct point out a very real phenomenon, being delay, which could be of particular importance in the school setting, where the complaining parent or child would be interacting with the alleged offending officer on a nearly daily basis.

⁴¹50 ILCS 725/3.8(b).

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estimates that only 1 in every 7.5 complaints involving police excessive force events, for example, are ever formally filed.⁴²

Furthermore, police departments have no obligation to reveal their inner workings or bases for any complaint investigatory findings, especially where the subject of collective bargaining agreements that require treatment of employee discipline as part of the personnel file. Active internal investigations are withheld from FOIA responses routinely. In essence, there is little accountability to the community for a department's internal decisions of whether to discipline an officer or not. Therefore, where the complaint procedure, itself, may discourage anyone from complaining, and where the investigatory process, itself, is opaque and non-responsive to the community, there is a serious risk that the educational environment could be disrupted.

To address these issues, Consultants recommend the following: First, there must be a requirement that the SRO suspend his rights under Illinois law to have a complaint supported by affidavit, allowing that a complaint may be filed against the SRO with a school official or police representative in the SRO's defined chain of command orally and/or anonymously. Second,

⁴²Hickman, M. (2006). *LEMAS: Citizen Complaints about Police Use of Force*. Bureau of Justice Statistics (Special Report), U.S. Department of Justice, Office of Justice Programs (2006), at p.4.

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there must be a specific timeline for investigation and resolution of the complaint that will afford the effected community the perception of accountability that is reasonably contemporaneous with the complaint (60 days is recommended). Delays in discipline of a police officer, due to a department's levels of review, appeal rights and collective bargain in provisions for arbitration, are well known to delay and reduce police misconduct discipline, and in any event, attenuate the misconduct with the consequence so much that the officer perceives the consequence as arbitrary and therefore, unhelpful to everyone.⁴³

In summary, requirements of a defined chain of supervision and command for the SRO, which includes school administration personnel, and a streamlined and prompt complaint, investigation and discipline procedure, are recommended, so that involved persons are not discouraged to file complaints against the SRO and so that such complaints are promptly resolved and problems addressed.

- E. Revise ¶6, consistent with ¶3, above. Together with ¶3, it appears the IGA allows for substitution or interchangeability of police personnel to serve as SRO essentially at the unilateral discretion of the Chief of Police in each municipality. Given

⁴³See Smith-Richards, J, Cohen, J. (December 14, 2017). Chicago Police Win Big When Appealing Discipline. ProPublica Illinois (2017), at <https://www.propublica.org/article/chicago-police-grievances>.

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the selection, vetting and training recommendations hereinabove, otherwise, this is not recommended. Rather, a dedicated SRO placement per school is recommended, and that rather than substitute coverage, Consultants recommend that all efforts are made by D64 and the respective department to maintain that the selected employee remains in place for periods of assignment that are no less than 2 year stints, with the qualification otherwise as to periods of review and/or in the event of discipline / removal;

- F. **Revise Exhibit B of the proposed IGA. First, recommendation is made to allow for the SRO to engage in law enforcement activities, without a school official's consent and at the school Principal's direction, in the event of an "exigent circumstance." Obviously, in the event of some emergency to the life or health of a student or staff, provision should be made to allow the police officer to be a police officer.**

We specify the standard as "exigent circumstances," as opposed to "real and immediate threat," because the concept of exigent circumstances is more thoroughly and continuously addressed in Fourth Amendment jurisprudence than the concept of "real and immediate threat."⁴⁴ From the perspective of a law enforcement officer charged to assess circumstances against

⁴⁴For elaboration on the factors of what constitutes exigent circumstances in the context of application of Fourth Amendment principles in Illinois, *see, e.g., In re D.W.*, 341 Ill.App.3d 517, 527 (1stDist.2003).

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this standard, the standard that he or she is most familiar with is the preferable one.

Recommendation, therefore, is also made to substitute the "real and immediate threat" standard with "exigent circumstances" as to the limitation on the SROs involvement in public order offenses specified as "school discipline."

Relatedly, recommendation is made to revise the itemization of "public order offenses" that constitute mere school discipline versus criminal misconduct, for clarity of purpose and the sake of administration. Specifically, it appears that the list of "public order offenses" set out is taken from the recommendations of Mbekeani-Wiley.⁴⁵ However, this list may prove to be simultaneously too restrictive and vague given the definitions and crimes that are subject to the descriptions.

For example, "disorderly conduct" under Illinois law includes a bomb threat or a threat directed at a school or against school occupants.⁴⁶ It also includes pointing a laser at a police

⁴⁵Mbekeani-Wiley (2017), at p.21.

⁴⁶720 ILCS 5/26-1(a)(3) and (3.5).

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officer.⁴⁷ Policy may want to include these types of offenses as subject to the SRO's authority to investigate.

On the other hand, the list includes descriptions that are too vague to be consistently administered. For example, the Criminal Code does not contain any offense for "fighting." More specifically, any intentional or knowing contact, whether causing bodily harm or merely insulting or provoking, directed at a school official or a police officer, is a felony under Illinois law.⁴⁸

As an observation, it appears to Consultants that D64 is seeking to craft terms of the IGA that will limit the risk acknowledged in the Theriot study that disorderly type offenses, traditionally the subject of school discipline, may be criminalized by the presence of an SRO. Consultants recommend that, to accomplish this outcome, two things need to occur. First, recommendation is made to specify which offenses D64 wishes the SRO not to enforce against a student, absent exigent circumstances, rather than a generic list of descriptors that does not clearly correlate to offenses in the

⁴⁷720 ILCS 5/26-7(b)(1).

⁴⁸720 ILCS 5/12-3.05(d)(3) and (4), the latter of which is a Class 2 felony if committed by an adult, punishable by up to 3 to 7 years in the Department of Corrections.

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Criminal Code.⁴⁹ Second, there must be some provision for training / education of the SRO as to these specific limitations and offenses applicable to his or her law enforcement responsibilities that includes the school's personnel, so that there is a mutual basis of understanding between the SRO and the school staff as to how these limitations will be implemented, and what specific types of incidents the school staff says they can handle versus what they foresee as a need of SRO involvement consistent with the IGA.

Finally, we recommend that D64 consider the ramifications of the SRO having a dedicated office in the school wherein he maintains "office hours." Specifically, a dedicated office may result in a Court determining that the entire school constitutes a "place of detention" under 705 ILCS 405/5-401.5(a). If that is the case, the school must have recording equipment present and record questioning of a student because any custodial⁵⁰ questioning of a student in connection with any sex offense that is a misdemeanor, or a felony offense otherwise, even if

⁴⁹This, again, interjects problems with how to administer the standards, as the question of whether exigent circumstances exists is a function of the conduct at issue.

⁵⁰While much of the authority addressing the issue of custody for a student in a school setting questioned by school officials fall in favor of finding a non-custodial setting, the presence of a law enforcement officer, or questioning done at the direction of a law enforcement officer, changes that analysis 705 ILCS 405/5-401.5(a-5)(b).. *See, e.g.,* fn.34, *supra*.

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only conducted by school staff, could be rendered inadmissible in any delinquency prosecution.⁵¹

- G. Revise ¶8. Recommendation for a data collection regime, designating specific categories of data to collect and mechanisms for collection that will allow for later evidenced-based analysis of the effectiveness of the program and employee toward satisfying the stated reasons for, roles and objectives of the SRO program set out in the Mission Statement / MOU. Draft provisions within the IGA that require examination and publication of this data by a date certain, and that require a periodic re-authorization vote and/or sunset provision for the IGA.

- H. Finally, Consultants recommend further opportunity for data collection, such as through interviews with school administrators, community law enforcement representatives and parents, or *via* a community roundtable forum creating a dialogue for all to communicate, to augment the pre-placement and ongoing evidenced-based efficacy analysis.

⁵¹705 ILCS 405/5-401.5(a-5)(b).

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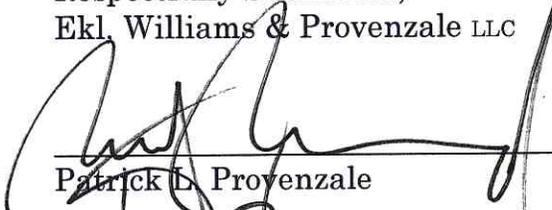
IV. Conclusion

Placement of an SRO within a school, whether it be elementary, middle or high school, is an experiment, and every school is a laboratory. As with any experiment, controls should be in place and data should be collected to allow for a meaningful examination, and ultimately to assess a finding of success or failure.

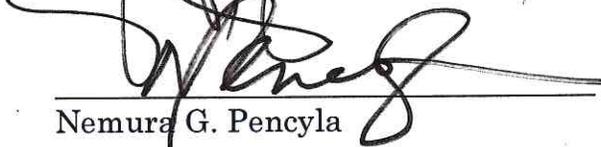
And, as with any experiment, success is not guaranteed. To limit the damage of unknown but foreseeable outcomes, meaningful strategies must be applied to limit the possible harm while allowing for the best chances of success. This is what this Report and Recommendations has attempted to accomplish. The recommendations set forth above are not static. In fact, a great deal more study needs to be done, and more data collected, to arrive at further recommendations moving forward. However, as with any experiment, experience is the best guide.

Respectfully Submitted,
Ekl, Williams & Provenzale LLC

By:



Patrick D. Provenzale



Nemura G. Pencyla

About Consultants

Ekl, Williams & Provenzale LLC (EWP) is a full service litigation law firm that provides specialty consulting and auditing services on behalf of governmental and law enforcement agencies. We have over 100 years of combined experience in various aspects of criminal and civil rights litigation, including as former prosecutors. Since 2001, the firm has been involved numerous governmental consulting activities, including: a policy and practices audit investigation and related civil litigation regarding the hiring practices of a Chairman of the Town of Cicero Board of Fire & Police Commissioners (2003); a policy and practices audit investigation of allegations of profiling police activity in the Village of Mt. Prospect, Illinois (2004); a policy and practices audit investigation of allegations of police misconduct in the Village of Park Ridge, Illinois (2008); a policy and practices audit investigation of allegations of correctional staff misconduct in the Lake County Jail (2012); and a policy and practices audit investigation of employee Hiring, Firing and Discipline by the DuPage County Sheriff's Office (2013). The firm is otherwise regularly involved in prosecuting and defending civil rights cases brought under 42 U.S.C. §1983, Title VI of the Civil Rights Act and Title IX of the Education Amendments, in various Federal District Courts throughout the Seventh Circuit Court of Appeals. In 2012, EWP became the only firm in Illinois, before and since, to have obtained a jury verdict in a pattern and practice municipal liability (*Monell*) claim on behalf of a private citizen against the City of Chicago that established the existence of a persistent and widespread "Code of Silence" among Chicago Police Officers causing violations of constitutional rights of citizens, which verdict was a precursor to many reforms that have been implemented in the Chicago Police Department since then. EWP currently represents a family whose 16 year old son was allegedly driven to take his own life due to the unconstitutional conduct of a school resource officer and school officials in a high school in Naperville, Illinois.

Patrick L. Provenzale has been a Partner at EWP since 2006, having started his law career in 1994 as a criminal prosecutor for 6 years. His practice includes consulting and auditing governmental and law enforcement agencies for compliance with Constitutional and Statutory requirements, in addition to handling litigation involving civil rights. His extensive work in constitutional law and civil rights issues has led directly to landmark verdicts and governmental policy and practices reforms within governmental agencies throughout the Chicago area.

Nemura "Mu" Pencyla recently joined EWP after a 23 year career in law enforcement. Before joining EWP, Pencyla was the Kendall County First Assistant State's Attorney since 2010, working with numerous state and federal law enforcement agencies and prosecuting the most serious and complex cases, including public corruption, homicide, drugs and child abuse.

On occasions, his reputation in the judicial and law enforcement communities led him to be appointed by both Federal and State courts to serve as an Independent Special ASA in the Chicago metropolitan area. As a result of his many successes in the field of law enforcement, he has been recognized by law enforcement agencies, public service organizations, and his peers and supervisors as a dedicated legal professional.