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Wisconsin Supreme Court Addresses Miranda Protections in School Settings

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Posted By: Ryan P. Heiden & Payton L. Rahn

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The Wisconsin Supreme Court recently clarified student questioning conducted by school resource officers in schools may constitute "custodial interrogation" requiring *Miranda* warnings, even when no arrest occurs. In *State v. K.R.C.*, the Court held that a 12-year-old student was in custody for *Miranda* purposes when the student was questioned by two police officers in the SRO office. One officer was the school resource officer, and the other officer was not affiliated with the school.

The *K.R.C.* decision provides important guidance for school districts and municipalities performing law enforcement services in schools, whether directly through SROs or indirectly through responding to calls on school premises.

What Happened in *K.R.C.*?

A middle school student reported inappropriate touching by a classmate. The following day, the accused student was questioned in the SRO office by two officers. One officer, in full uniform, stood at the door and prevented the student from leaving, while the SRO, who was dressed in casual attire, conducted the questioning.

A handwritten sign in the SRO office stated "You are in here voluntarily unless told otherwise. You are being filmed and can leave at any time!" But neither officer identified or explained the sign to the student. Nor was the student told he could leave, refuse to answer questions, or contact a parent. During questioning, the SRO falsely stated witnesses existed.

The student maintained the alleged inappropriate contact was accidental and received school discipline. The student's statements were later used in criminal court proceedings.

The Court's Decision

The Wisconsin Supreme Court held the student was in criminal custody such that his right to *Miranda* warnings applied. The Court, in applying a totality of the circumstances test, emphasized a reasonable 12-year-old would not have felt free to leave under the circumstances.

Key factors considered by the Court included the student's age, the presence of a uniformed officer blocking the exit, the use of a closed SRO office, the failure to identify or explain the sign and its significance, and the absence of any clear advisement the student could leave or contact a parent.

Because the student's criminal conviction was based on other evidence and would have resulted without the introduction of the student's improper testimony, the Court concluded the introduction of the evidence at trial did not undermine the conviction. Nonetheless, the Court noted the student's constitutional rights were violated, which could lead to other liability.

Why the Decision Matters for Schools and Municipalities

This decision provides Wisconsin schools and municipalities with greater clarity as to when a school resource officer transforms from a school official in a non-custodial context into a law enforcement officer in a custodial context. A student's age is a particularly determinative factor, noting students under the age of 12 are unusually susceptible to pressure and influence. The decision also confirms a custodial environment can arise when an SRO leads the questioning in a school environment even though an arrest does not occur if other environment factors exist such as blocking of exits, the presence of a non-SRO law enforcement officer, and lack of clear advisements as to the situational context when younger students are involved. This decision demonstrates how the tweaking of a few facts can transform a discussion with the SRO from non-custodial to custodial.

Practical Takeaways

Schools and municipalities should take the following steps in order to respect the rights of children while ensuring criminal investigations and prosecutions are not compromised:

1. Mutual Understanding. Ensure the school and municipality have an understanding of when SROs are involved in student disciplinary discussions compared to non-disciplinary discussions. The school and municipality should also have an understanding of who decides when an SRO is to be involved in a disciplinary student matter. Breakdowns in communication are one of the more likely sources of risk in this area.
2. Know the SRO Agreement and Policies. Review SRO memorandums of understanding, contracts, or agreements between your local school and municipality to ensure it does not create conflicting expectations about responsibilities associated with student interviews. This issue can likely be addressed through policy discussed between the Chief and the School Administration to address such expectations in writing (e.g., through a local policy adopted by the School Board or by the Chief of Police and their municipal body). Any agreement between the parties must not conflict with a collective bargaining agreement in existence between the municipality and the local police union.
3. Respect Union Contracts. The local municipality needs to review policy and collective bargaining agreements in comparison to SRO contract requirements with the school district. If conflicts between a collective bargaining agreement and desired policy or SRO contract expectations, the municipality should explain to the union the importance of addressing the considerations brought about by this Supreme Court decision. Failure to properly address the nuances recognized in this decision places everyone, including the officers, in a difficult position to properly effectuate law enforcement investigation responsibilities. Mid-contract adjustments can be made through side letters, if appropriate processes are followed by the municipality and union.
4. Training. If a student disciplinary discussion is transforming into a discussion of criminal matters and the SRO is present for that discussion, the SRO should be trained to pause the discussion and consider whether the SRO should leave, whether Miranda warnings should be issued, or if the discussion can proceed based upon the totality of circumstances.
5. Recognize Individual Facts Matter. The younger the student, the more likely it is that any law enforcement involvement by the SRO will result in the student being "in custody" due to their susceptibility to coercion. Although the Court did not explicitly indicate 12-years-old is the cutoff for a law enforcement officer's presence triggering a custodial environment, the Court suggested schools and municipalities must exercise due caution when SROs converse with students about issues that could have criminal implications. When SROs talk with younger students, limit as practical the unintended likelihood of a custodial environment—for example, explain the student does not have to answer questions and is free to leave at any time, consider leaving the door open depending on the environment, consider where the officer is positioned in the room compared to the student, or consider having a school administrator (as opposed to another law enforcement officer) present to lead the questioning, and avoid coercive tactics used during criminal interviews such as lying about evidence.

Should you have any questions about the implications of this decision, please contact a member of our School Law Section or our Government Law Group.

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