



MMD Legal Insider

McLocklin, Murphy & Dishman, LLP

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Miranda, Student Searches, & School Resource Officers

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Save the Date for these Upcoming Presentations by the Center for School Law & Policy!

- *Student Discipline Training on August 8 (CSRA Resa in Dearing).*
- *Discipline and the Disabled Student on August 27 (Macon).*
- *Cyber-bullying & Student Threats on September 16 (Rome)*
- *Student Records and FERPA on September 22 (Lenox)*
- *Fair Dismissal and Personnel on September 24 (Lenox).*
- *Legal Issues and Student Health Services on October 21 (Macon).*
- *School Safety, Gangs and Hate Groups on November 18 (Macon)*

For further information and program registration, please see www.cslap.org.

On June 18, 2008, the Georgia Court of Appeals decided another in a line of cases which have carved out a comparatively strict interpretation of the role of school resource officers in the public school setting, a body of law school officials are advised to take note of as we begin another school year.

New Jersey v. T.L.O. & Young

Any discussion involving SRO's and the public school student must begin by acknowledging the foundational case of New Jersey v. T.L.O. where the Supreme Court held that while the 4th Amendment did protect public school students, those protections do not require school officials to obtain a warrant or demonstrate probable cause prior to conducting a search at school. Rather, the lower, "reasonable suspicion" standard was endorsed by the Court as controlling public school searches by school officials.

In Georgia, the leading case on student searches is State v. Young. (1975). In Young, the Georgia Supreme Court distinguished between private persons not subject to the 4th Amendment at all, law enforcement officers "bound by the full panoply of Fourth Amendment rights," and an "intermediate group, including school officials." As to this intermediate group, reasonable suspicion (rather than probable cause) has been the standard for conducting a search. *Miranda* warnings have not been required, and the exclusionary rule has not been applied.

In the Interest of T.A.G.

On June 18, 2008, the Georgia Court of Appeals upheld the suppression of incriminating statements made by a student at Loganville Middle School in a juvenile court delinquency proceeding. In this case, an Assistant Principal interviewed the student after he was implicated in the theft of money from a locker room. After the student admitted to taking money from one student, he was interviewed again by a second A.P. while a school resource officer was also present, and during this interview the student confessed to taking money from a second student as well. Notably, the resource officer did not ask any questions of the student. The Court of Appeals began by stating that "a police officer assigned to work at a school as a school resource officer should be considered a law enforcement officer, not a school official" under Young.

In reference to the second interview, the court found that "any involvement or participation by law enforcement officers brings a case within Young's third category." In this case, the officer's presence after the student had been interviewed for roughly five hours and his suggestion that criminal charges of robbery might be appropriate were held to constitute "involvement" by the officer.

The court also found that the second A.P. was acting as an agent of the police where she acknowledged conferring with the officer about possible criminal charges, possible questions to ask a student, and admitted that both she and the officer knew that "different rules would apply so they decided that the officer should not ask questions." Under these circumstances and after finding the A.P. acted as a police agent, the court held that the student should have given his *Miranda* warnings prior to the second interview, and upheld the exclusion from the juvenile court proceeding of the confession obtain during that later interview.

In some states, the determination as to whether and when a school resource officer is acting as a school official subject to T.L.O., or a law enforcement official under Young's third category, has permitted the application of lesser constitutional protections of students until an investigation is initiated by law enforcement officials for off-campus activity. In the T.A.G. case, however, we see the Georgia courts treating S.R.O.'s as law enforcement, not school officials, more aggressively and frequently. Principals, Assistant Principals, Resources Officers and Safety Directors are advised to take note of this trend in Georgia law.

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