August 11, 2016

Dr. Sabrina Moore
South Carolina Board of Education
Office of Student Intervention Services
Division of Federal, State, and Community Resources
1429 Senate Street, Room 805
Columbia, South Carolina 29201

By e-mail: smoore@ed.sc.gov

Dear Dr. Moore:

Thank you for the opportunity to comment on the proposed regulations from the Department's Safe Schools Task Force, specifically, the proposed Regulation 43-279 regarding minimum disciplinary standards and Regulation 43-210, regarding school resource officers. I am a professor at the University of South Carolina School of Law, where I teach juvenile justice and a juvenile justice clinic. Through my clinic, my students and I represent teenagers accused of crimes in Richland County, including a large number of cases that arise out of incidents at school. I say this by way of introduction only; I write in my personal capacity and do not speak on behalf of any other individuals or organizations.

The proposed regulations have their root in the October 2015 incident at Spring Valley High School. That incident led the Department to convene the Safe Schools Task Force, and illustrated a core problem in our law and practice – the absence of clear lines between school discipline and law enforcement. There is consensus that school discipline and law enforcement are different – and the Task Force rightly sought to propose regulations that would help schools and school resource officers (SROs) distinguish between the two. And the proposed regulations do include some modest proposals which help do so.

Unfortunately, the proposed regulations miss a significant opportunity to more clearly separate school discipline from law enforcement. Worse, the proposed regulations would codify (I believe unintentionally) a problematic policy of turning every school disturbance into a matter for law enforcement. As discussed further below, the proposed regulations would require schools to involve law enforcement whenever an incident rises to the level of criminality – a low bar because South Carolina law makes it a crime to disturb schools "in any way."[1] I submit these comments in hopes that the Board will revise the proposal to avoid that problem and seize this opportunity to make a significant and positive difference for South Carolina children.

The issues addressed in the proposed regulations and in these comments are ones that are national in scope. Schools and law enforcement agencies across the country have struggled with defining the proper role for SROs, and with limiting delinquency charges based on incidents better handled in schools. South Carolina could become a national model for dealing with these issues – but only if the Board adopts stronger regulations than are currently proposed.

[1] S.C. Code § 16-17-420(A)(1)(a).

The importance of distinguishing school discipline from law enforcement

It is important to start with an understanding of why drawing a line between school discipline and law enforcement is so important. Teenagers will misbehave, and when they do, they require discipline. That is in the nature of being a teenager. But most teenage misbehavior is not grounds for law enforcement involvement, and not grounds for prosecution. The incident at Spring Valley High School illustrates this point. The problem in that incident was not only excessive force by an individual officer, it was turning a incident calling for school discipline into a law enforcement incident by involving an officer in the first place. A child's refusal to put away her phone, and behavior like it, are grounds for school discipline and a variety of other interventions depending on each child's circumstances – mental health services for children who have been traumatized or who have mental health conditions, restorative justice programs operated at and by schools, and special education services for children with disabilities. When our state's law permits a law enforcement response to a child who refuses to put away a cell phone rather than pursue such interventions, it indicates that the law has failed to draw a line between school discipline and law enforcement.

When the line between school discipline and law enforcement is blurred, the result is inappropriate delinquency charges filed against children – and such charges are quite harmful. Simply filing charges – even if they are eventually dismissed – has been shown to reduce the likelihood that children will graduate high school. One study concluded, "first-time arrest during high school nearly doubles the odds of high school dropout, while a court appearance nearly quadruples the odds of dropout."[2] And when the charges are not dismissed the harms compound – and, indeed, can impose lasting harms on children. The collateral consequences of juvenile court convictions are significant – convictions, even charges, must be reported when one applies to many colleges (including via the Common Application), when one seeks to enlist in the military, or when one applies for a job.[3]

The absence of clear lines between school discipline and law enforcement does, in fact, lead to inappropriate charges in juvenile court. My law school clinic has handled disturbing schools cases in which students reacted loudly and angrily -- but not violently -- to school officials and SROs, and to fights between students that caused no injuries. These cases are, of course, on top of the incident at Spring Valley High School, in which one girl was charged with disturbing schools for refusing to put away a cell phone and a second girl was charged with disturbing schools for recording an officer's encounter with the first student. To be clear, these incidents do require discipline of students. But the conduct does not rise to a level that requires arrest or prosecution.

These South Carolina experiences have been corroborated by multiple studies across the country, which found that the presence and involvement of SROs at schools leads to more arrests for low-level offenses.[4] That is, leaving low-level offenses up to the discretion of school officials and SROs is a recipe for more arrests of children for low-level incidents. It is a recipe for continuing the school to prison pipeline.

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[2] Gary Sweeten, *Who Will Graduate? Disruption of High School Education by Arrest and court Involvement*, 23 Justice Quarterly 462, 473 (2006).

[3] For a detailed summary of the collateral consequences of delinquency prosecutions, see, South Carolina Commission on Indigent Defense, *The South Carolina Juvenile Collateral Consequences Checklist* (2015), https://www.sccid.sc.gov/docs/Collateral_Consequences.pdf.

[4] American Bar Association, School-to-Prison Pipeline Preliminary Report, 53 (2016), http://www.americanbar.org/content/dam/aba/administrative/diversity_pipeline/stp_preliminary_report_final.authcheckdam.pdf.

Accordingly, law enforcement involvement and juvenile court prosecution should be used sparingly, and only for incidents so severe that law enforcement must be involved.

The proposed regulations appear to seek this goal, and take one modest but important step towards it. In describing the three levels of school misbehavior, they properly define Level I offenses as those which should never call for school resource officer involvement. Level I offenses are simply too minor to involve law enforcement. This proposal is included in the proposed matrix which blacks out law enforcement involvement for Level I misbehavior, and in the absence of any suggestion that referral to law enforcement is an appropriate response to Level I misbehavior. Proposed Regulation § 43-279(IV)(A)(4). I enthusiastically endorse this provision and encourage the Board to adopt it and school districts to implement it as quickly as possible.

Problems in the proposed regulation

But beyond that proposal regarding Level I misbehavior, the proposed regulations do not do nearly enough to distinguish school discipline and law enforcement, especially in thousands of cases which fall beyond the category of Level I infractions. In particular, the proposed regulations make law enforcement involvement discretionary for all Level II offenses, including a long list of common examples of school misbehavior, such as a repeated refusal to obey school personnel. Notably, the repeated refusal to obey school personnel is precisely what triggered police involvement in the October 2015 Spring Valley High School incident; by continuing to permit police involvement in such cases, the proposed regulations fail to prevent that incident from recurring.

Even worse, the proposed regulations would codify a *requirement* than any Level II school misbehavior which rises to a crime must be reported to law enforcement. While that provision may sound reasonable, when understood in light of the extremely broad criminal law, this provision would erase the discretion that the Task Force seeks to provide to schools.

The proposed regulations do not include strong standards or much guidance for when Level II offenses ought to trigger a SRO's involvement. When is pushing and shoving or even punching an incident for school discipline, and when a subject for possible prosecution? The regulation gives no meaningful guidance. The result of this absence of guidance is predictable. As noted above, when law enforcement involvement is allowed, experience in South Carolina and empirical studies around the country strongly show that it will be used, and it will lead to arrests and charges in juvenile court that will, by themselves, harm children and ought to be avoided.

Moreover, the proposed regulation does nothing to correct a significant problem in existing Memoranda of Agreements (MOAs) between school districts and law enforcement agencies – and indeed makes the situation worse by seeking to codify the problematic MOA language in state regulation. The MOA in effect for SROs in the Spring Valley High School incident provides as follows: "SROs shall not act as school disciplinarians. Disciplining students is the school's responsibility. <u>However, if an incident is a violation of the law, the principal shall contact the SRO</u>."[5]

[5] The MOA is appended to these comments. The cited language is in paragraph B(15), on page 3 of the MOA (emphasis added).

The rule stated in the first two sentences is correct – SROs should not be involved in school discipline matters. The problem is that the exception swallows the rule. The criminal law is incredibly broad – it is a crime for any person "to interfere with or to disturb in any way" a school. S.C. Code § 16-17-420(A)(1)(a). So long as "disturbing schools" remains a crime that students in schools may commit and be charged with, a wide swath of student misbehavior can trigger law enforcement involvement. Indeed, under the language of the MOAs, such actions *must* trigger law enforcement involvement – contrary to students' best interests. As a result, this MOA provision takes away all discretion from schools. If anyone should have discretion about whether to refer an incident to law enforcement, it is school officials, because they are best positioned to know what interventions have and have not been tried with a particular student and thus whether law enforcement needs to be involved. But these MOA provisions deprive schools of that discretion.

The proposed regulations fail to address this essential legal problem. Unfortunately, while the proposed regulations rightly call on school districts to enter into MOAs (something many, if not most, South Carolina school districts have already done), they do nothing to make those MOAs draw more meaningful lines between law enforcement and school discipline.

Worse, the proposed regulation would codify the very problem in MOAs that contributes to overuse of law enforcement. The MOAs wrongly <u>require</u> schools to refer <u>all</u> misbehavior which amounts to a legal violation to law enforcement, rather than identifying which conduct is so severe that it cannot be handled in school. The proposed regulations would codify that flawed approach by providing "If the [Level II] misconduct appears to rise to a level of criminality, the administrator <u>must</u> refer the matter to the School Resource Officer or other local law enforcement authorities." Proposed § 43-279 (IV)(B)(3)(d) (emphasis added).

This proposed regulation would be a serious mistake. It would take away the discretion that the Task Force sought to apply for Level II incidents and result in far too many children facing law enforcement consequences for what should be school disciplinary issues.

<u>Proposed revisions</u>

The Board can make several revisions to the proposed regulations which would make them significantly more effective, and make South Carolina a national model.

I. Stronger lines between school discipline and law enforcement

I encourage the Board to consider some of the existing national models for drawing a stronger line between school discipline and law enforcement. These include two examples, both of which are significantly stronger than the proposed regulations:

a. Clayton County, Georgia Cooperative Agreement[6]

Clayton County, Georgia – a suburban county south of Atlanta – had a problem in the early 2000s. Referrals to juvenile court for school misdemeanors – fights, disorderly conduct, disrupting schools – had spiked to 1,147 in one year. Notably, South Carolina Family Courts similarly deal with a tremendous number of school-based misdemeanor referrals.[7] The juvenile court, school

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[6] The 9-page Cooperative Agreement is appended to these comments in full. Cited language is found on pages 2, 4, and 5.

[7] 1,222 disturbing schools cases were referred to family courts in 2014-15, making that the second-most frequent charge in the state. The most frequent charge – misdemeanor simple assault and battery – accounted for 2,382 referrals, many

system, law enforcement, prosecutors, juvenile justice agency, and mental health providers worked together to develop a "Cooperative Agreement" regarding how to handle these misdemeanor cases. The results are staggeringly positive – an 87% reduction in school misdemeanor cases in the juvenile court by 2013.[8]

The Clayton County Cooperative Agreement is based on two important principles that are equally applicable to South Carolina. First, the Cooperative Agreement recognized that not every minor law violation required law enforcement involvement or prosecution. As the school administrators and law enforcement officials who are parties to the agreement put it, many "misdemeanor acts . . . can be handled by the School System in conjunction with other Parties without the filing of a complaint in the Court." The Cooperative Agreement defines such cases as "misdemeanor type delinquent acts involving offenses against public order including affray [mutual fighting], disrupting public school, disorderly conduct, ..."

Second, the Cooperative Agreement spells out the narrow circumstances in which such "focused acts" should trigger a law enforcement response. Two criteria must be met. First, it must be the student's "third or subsequent similar offense during the school year." Second, the school must review the student's behavior plan "to determine appropriate action" – that is, ensure that the school has provided appropriate behavioral interventions and, for students with disabilities, special education services. Bad behavior is the predictable result of inadequate interventions. When previous interventions have not been adequate, the best response to the "focused acts" is to provide appropriate school-based interventions, rather than initiate a punitive law enforcement response.

The Cooperative Agreement is stronger than the proposed regulations because it provides sensible and meaningful standards to distinguish conduct which should be handled in schools and conduct for which law enforcement involvement and prosecution may be appropriate.

b. Ferguson, Missouri Consent Decree[9]

After the well-publicized 2014 events in Ferguson, Missouri, the U.S. Department of Justice investigated the Ferguson Police Department and found, among many other problems, that school resource officers frequently became involved in school discipline matters and arrested children for incidents better handled at school.[10] The Ferguson authorities agreed. The result was a consent decree in which the City of Ferguson agreed to strong limits on law enforcement involvement in school discipline matters. The Consent Decree provides:

> FPD [Ferguson Police Department] agrees to ensure that SROs and other FPD officers participate only in situations where police involvement is necessary to protect physical safety

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of which stemmed from fights at school. SC Department of Juvenile Justice, Annual Statistical Report 2014-2015, at 13, http://www.state.sc.us/djj/pdfs/2015-Annual-Statistical-Report.pdf.

[8] The Clayton County experience is described in a *Wall Street Journal* story which address similar school-to-prison pipeline problems around the country. Gary Fields & John R. Emshwiller, *For More Teens, Arrests by Police Replace School Discipline*, Wall St. Journal, Oct. 20, 2014, http://www.wsj.com/articles/for-more-teens-arrests-by-police-replace-school-discipline-1413858602.

[9] The full consent decree is 131 pages long, and is available on the website for the U.S. District Court for the Eastern District of Missouri, http://www.moed.uscourts.gov/sites/default/files/mdl/16-0180/0012-02.pdf. I have appended the sections which address school resource officers to these comments.

[10] U.S. Department of Justice, Civil Rights Division, Investigation of the Ferguson Police Department 37-38 (2015), https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf.

and do not participate in any situation that can safely and appropriately be handled by a school's internal disciplinary procedures. Incidents involving minor offenses committed by students, including, but not limited to, disorderly conduct, peace disturbance, loitering, trespass, profanity, dress code violations, and fighting not involving a weapon and not resulting in physical injury, will be considered school discipline issues to handled by school officials rather than criminal or municipal code violations warranting FPD involvement, unless necessary to protect the physical safety of any person. Nothing herein is intended to prevent victims from reporting cries or seeking assistance from SROs or other FPD officers.

The Ferguson Consent Decree is stronger than the proposed regulations in several respects. It offers a standard for determining when law enforcement involvement is appropriate – when it is necessary to protect physical safety – while the proposed regulations offer no such over-arching principle. It also offers meaningful guidance for how to distinguish common fights that do not require law enforcement involvement from those that do – the presence of an injury. In contrast, the proposed regulations permit law enforcement involvement for all "fighting."

c. Revisions to South Carolina regulations

Several revisions are appropriate to draw a stronger line between school discipline and law enforcement. These proposed revisions seek to incorporate the core elements of the Clayton County and Ferguson models.

First, I recommend replacing proposed § 43-279 (IV)(B)(3)(d) – the provision which would codify the mandatory referral of all law violations – including all disturbing schools cases – to law enforcement. I would strike that provision entirely and replace it with language consistent with the Task Force's purpose of making police involvement discretionary, and limit police involvement consistent with the Clayton County Cooperative Agreement:

- ~~If the misconduct appears to rise to a level of criminality, the administrator must refer the matter to the School Resource Officer or other local law enforcement authorities.~~ **The administrator or other school officials may refer Level II misconduct to School Resource Officers or other local law enforcement authorities only when (i) the conduct rises to a level of criminality, and (ii) the conduct presents an immediate safety risk to one or more people or it is the third or subsequent act which rises to a level of criminality in that school year.**

Second, I recommend adding language to the regulation regarding SROs that avoids the problem of mandating referral of every disturbing schools or other school misdemeanor to law enforcement.

- § 43-210 School Resource Officers
  - (IV)(A) Student Behavior. **School resource officers are** ~~As~~ law enforcement **officers, not school disciplinarians, and should not ordinarily be requested or permitted to intervene in school discipline matters. T**~~t~~he school resource officers should only be called **in these situations:**
    - **(i)** when a student's behavior has exceeded the level of disruptive conduct as determined by school administration, based on district policy **and reached conduct amounting to a Level III violation for which law enforcement**

involvement is required~~, or the student is engaging or has engaged in criminal conduct~~ (see Regulation 43-279 for levels of disruptive and criminal conduct). **School resource officers may only be called to respond to Level II misconduct when (i) the conduct rises to a level of criminality, and (ii) the conduct presents an immediate safety risk to one or more people or it is the third or subsequent act which rises to a level of criminality in that school year. When law enforcement referrals are required, a** ~~A~~ school resource officer should be the first line of contact for local law enforcement to ensure that the matter is resolved expeditiously to decrease significant interruption to the learning process.

- (V) Memorandum of Understanding. Prior to placing a school resource officer at a school or in a school district, a memorandum of understanding must be executed between the school district **and the local law enforcement agency which employs the school resource officers. The role of the school district**, individual schools, local law enforcement agency, school administration, and the school resource officer should be clearly defined in the memorandum of understanding. The role of the school resource officer as law enforcement must clearly be defined pursuant to state law in the agreement. **That definition must include the provisions of this regulation and Regulation 43-279 which distinguish school discipline from law enforcement and prohibit the involvement of school resource officers in school discipline.**

II. Prohibit law enforcement involvement for appropriate Level II incidents

The proposed regulations would make law enforcement involvement discretionary for *all* Level II offenses. That is simply inappropriate because multiple Level II offenses neither pose a risk to school safety nor amount to criminal behavior warranting law enforcement involvement. For instance, Level II offenses include the following:

- "Violation of a Level 1 intervention plan and/or behavioral contract."
- "Abusive language to staff"
- "Repeated refusal to comply with school personnel or agents."
- "Inappropriate use of technology"

These offenses should not ever trigger a law enforcement response. They are purely on the school discipline side of the line. Indeed, one of these offenses – repeated refusal to comply – describes the conduct at issue in the Spring Valley High School incident. That incident should not have involved a school resource officer, and the Board should use this opportunity to make that clear. Unfortunately, the proposal permits discretionary involvement of law enforcement – just as occurred in the Spring Valley High School incident.

I urge the Board to provide that law enforcement should never be called to respond to the above-listed examples of Level II misconduct.

III. End mandatory law enforcement involvement for several Level III offenses

The regulations make law enforcement involvement mandatory for *all* Level III offenses. For some offenses – such as the possession or use of a weapon at school – such a practice is obvious. But that is not the case for each offense listed in Level III. Many of these offenses call for greater use of discretion. Consider these examples:

- "Illegal use of technology (e.g., communicating a threat of a destructive device, . . . and transmitting sexual images of minors)." There is a significant difference between making a bomb threat and sexting. The former calls for law enforcement involvement to protect students' immediate safety and to refer a child to juvenile court. The latter calls for discussion about healthy and appropriate activity (and perhaps other interventions based on each individual circumstance), but not law enforcement activity and not prosecution. Yet the proposed regulation would *require* law enforcement involvement in such incidents.
- "Assault and battery." A shove during a lunchtime fight likely qualifies as simple assault. But if it ends there, I would not recommend referring that case to law enforcement and certainly not to criminal or family court. Under the Clayton County Cooperative agreement, such an incident would qualify as one that "can be handled by the school system in conjunction with other Parties without the filing of a complaint in the Court." Unfortunately, the proposed regulations *require* assault and battery to trigger a call to law enforcement.

The Board has several mechanisms for rectifying these problems: (1) The Board could provide that law enforcement involvement should be discretionary for all Level III offenses; or (2) The Board could provide that law enforcement involvement should be discretionary for the Level III offenses indicated above.

I also urge the Board to narrow the definition of Assault and Battery to specify an assault or battery that is particularly dangerous or causes serious injury, to better distinguish such severe fights with less clear-cut situations.

In addition, Level III "criminal conduct" includes a list of "acts of criminal conduct." That list is explicitly not exhaustive – it "may include, but are not limited to" the listed items. Proposed § 43-279 (IV)(C)(2). Such language is appropriate because there should be no need to list all appropriate criminal offenses. However, some criminal offenses are *not* appropriate to include in Level III. I recommend adding the following language:

- **3. "Acts of criminal conduct," for purposes of Level III incidents, do not include acts that only amount to disturbing schools, breach of peace, disorderly conduct, or affray under South Carolina law.**

This added language is modeled after the Clayton County Cooperative Agreement and will ensure that these less severe crimes will not trigger automatic law enforcement involvement.

Conclusion

The Spring Valley High School incident was terrible – but it also provides the State of South Carolina an unparalleled opportunity to become a national leader on an important and difficult issue. Doing so will take stronger regulations than are proposed. I encourage the Board to seize the opportunity by significantly strengthening the proposed regulations before adopting them.

I would be pleased to discuss these proposed regulations with anyone on the Board or in the Department who wishes to. I may be reached at jgkagan@law.sc.edu or (803) 777-3393.

Sincerely,

Josh Gupta-Kagan

STATE OF SOUTH CAROLINA	)	**MEMORANDUM OF AGREEMENT**
	)	
COUNTY OF RICHLAND	)	

This agreement is made this 1st day of March, 2015 between **Richland County School District Two** (hereinafter referred to as the District) and the **Richland County Sheriff's Department** (hereinafter known as the Sheriff's Department). The District and Sheriff's Department agree that the effective date of this agreement shall be the 2015-2016 school year.

Rights and Duties of the Sheriff's Department

A. The Sheriff's Department shall assign a specifically selected and trained sheriff's deputy (designated as a School Resource Officer/SRO) to the schools listed below. The district will reimburse the Sheriff's Department an annual total of **$690,992.00** for the services of 19 SROs at the schools assigned to the District. Payments will be made upon receipt of bi-annual invoicing (50% of total annual contract) (December 31 and May 1). The following schools are included in this agreement:

Anna Boyd Academy	Longleaf Middle
Blythewood Academy	Muller Road Middle
Blythewood High (2)	Richland Northeast High (2)
Blythewood Middle	Ridgeview High (2)
Dent Middle	Spring Valley High (2)
E. L. Wright	Summit Parkway Middle
Kelly Mill Middle	Westwood High (2)

The Sheriff's Department will provide services to other District schools based on mutual agreement between the parties and if SRO officers are available.

C. The SROs will be hired and supervised by the Sheriff's Department. The Sheriff's Department will make periodic announced and unannounced visits to each school site to observe the SROs' performance.

D. The Sheriff's Department will maintain statistical data on the assigned schools and a report will be provided to the Richland County School District Two's Superintendent or his designee upon request.

E. The Sheriff's Department will evaluate the school assignment each year.

Regular Duty Hours of School Resource Officers

A. Each School Resource Officer (hereinafter referred to as SRO) shall be assigned to a school during the regular school year for eight and one-half (8.5) hours per day. When the SRO is responsible for more than one school, the SRO will divide his/her time equitably between each of the assigned schools. The Sheriff's Department may temporarily reassign

any SRO during school holidays and vacations, or in the event of a law enforcement emergency.

In the event an SRO is absent for their assigned facility, under the direction of the SRO leadership, substitute coverage will be provided, based on availability, by another SRO(s) for the duration of the absence. Principal will be notified as soon as possible of absence and District designee will be notified if absence is expected to be long term.

Duties of the School Resource Officers

A. Duties of the School Resource Officer

1. Law Enforcement Officer. First and foremost the SROs will perform law enforcement duties in the school such as handling assaults, theft, burglary, bomb threats, weapons, and drug incidents. Officers will participate in school activities (i.e., school clubs, parent-teacher organizations, school athletic teams, field trips, and community outreach programs) and provide a visible and positive image. They will work to protect the school environment and maintain an atmosphere where teachers feel safe to teach and students feel safe to learn.

2. Law Related Counselor. The SROs will serve as a source of counseling for students on law related subjects. Maintaining an open-door policy with the students enables them to interact freely with the SRO. The SROs will bring an expertise into the schools that will help students make more positive choices in their lives. The officers will also refer students to various community services and/or service agencies if additional assistance is needed. An SRO will not actively participate in student counseling or referrals until properly trained to do so.

3. Law Related Education Teacher. The SROs will teach law related topics to students and will be able to give a unique perspective based on the officer's training and experience. There are a variety of topics that the SRO can choose to teach depending on the grade level of the students. The goal of law related education is to teach students to be successful citizens. The SRO will explain the role of law enforcement in society.

B. Additional Duties of School Resource Officers

1. To remain on school grounds of those assigned schools from opening to closing times. (Exceptions: During the times the SRO needs to perform departmental administrative functions, i.e., training, court, etc.)

2. To help prevent juvenile delinquency through close contact with students, school personnel, and parents.

3. To establish liaison with the school principal, faculty, students and parents.

4. To establish and maintain liaison with school security staff.

5. To inform the students of their rights and responsibilities as lawful citizens.

6. To assist the principal, school officials and personnel by initiating an investigation of violations of criminal laws occurring in the school or on school property. School Resource Officers will investigate reported crimes and complete the appropriate documentation which will include the school incident report that will be forwarded to the S.C. State Attorney General's office. Officers may arrest, detain, and transport a person when authorized by state and federal law and department policy.

7. To assist the administration and faculty in formulating criminal justice programs.

8. To formulate crime prevention programs to education and reduce the opportunity for the commission of crimes against persons and property in the school.

9. To be available for the parent-teacher organization meetings and participate in PTO problems.

10. To provide services for neighborhood merchants and residents in school related problems.

11. To be aware of the responsibilities to improve the image of the uniformed law enforcement officers in the eyes of the community.

12. To notify the principal or principal's designee, as soon as possible and practicable, of any police action that occurs on the school campus.

13. To assist other law enforcement agencies, as well as patrol officers regarding law enforcement matters.

14. The SRO shall maintain detailed and accurate records of the School Resource Officer program and shall forward them to the SRO supervisor.

15. The SRO shall not act as a school disciplinarian, as disciplining students is a school responsibility. However, if the incident is a violation of the law, the principal shall contact the SRO or their supervisor in a timely manner and the SRO shall then determine whether law enforcement action is appropriate. SROs are not to be used for regularly assigned lunchroom duties, hall monitors, or

other monitoring duties. If there is a problem, the SRO shall assist the school until the problem is solved.

16. To be a visible presence during the arrival and dismissal of students.

17. To provide assistance in directing traffic during drop-off and pick-up when necessary.

18. To conduct a daily drive/walk around the perimeter of school – inspect/check parking lots.

19. To be present when possible at lunchtime with students. School Resource Officers will not leave the campus for lunch.

20. To be a visible presence during recess and class change.

21. Teach safety, drug awareness, gang awareness and law-related education classes. Principal or designee to assist in obtaining classroom time for these classes.

22. Officers are encouraged to participate as a Breakfast Buddy, student mentor, and sponsor/advisor and in athletic programs, or programs available at his/her school.

23. Officers will participate in school administrative team meetings.

24. Officers to serve as a security/safety advisor to the principal and to submit all safety concerns in writing to the principal.

25. SRO is encouraged to establish a presence on the District Security Committee.

26. SRO will take holidays corresponding to school holidays.

27. SRO will not leave school campus without prior approval of SRO Sergeant or Captain of Region. After approval, the Principal or designee will be advised and estimated time of absence and return. SRO will attempt to minimize scheduled; court, training, administrative duty or any activity that will take the SRO from the campus during school hours. SRO will make all efforts to be on campus when school is in session.

28. A monthly crime incident summary will be submitted to the principal.

29. The chain of command for any issues, problems, complaints, etc., for the SROs will be provided by the Sheriff's Department

30. Any reported crime (i.e., Larceny, Assault, Disturbing School, etc.) or knowledge of a suspected crime is to be reported to the School Resource Officer immediately.

31. The SRO is responsible for the criminal investigation of crimes.

32. The SRO will determine if criminal charges will be made on all crimes. The SRO will consult with his/her supervisors and/or the Solicitor's Office if necessary.

33. The SRO will notify the principal or a designee if the principal is not available, of an arrest or criminal incident that the SRO is investigating as soon as possible.

34. Any complaint on an SRO by a school employee, student, or parent will be forwarded to the SRO supervisor, who will have the complaint investigated by the Department. The principal will be informed of the result of the investigation.

35. The principal, SRO and SRO supervisor will meet at the beginning of the school year to discuss the responsibilities and procedures of the SRO and District employees.

36. SROs assigned to Blythewood Academy campuses will teach a block of instruction during the school year as requested by Richland County District Two.

After winter break, another meeting will be conducted to discuss the progress of the SRO and district employees in meeting the responsibilities and procedures.

School Functions and Extracurricular Activities

A. Upon the request of the principal, or his/her designee, an SRO may accompany their schools to events outside of the county for the purpose of security. The payment for the SRO will be based on an hourly rate determined by Sheriff's Department policy, and in effect upon execution of this agreement, and the payment will be provided by the school requesting the SRO's services. In the event the SRO does accompany his/her school to a event outside of the county, the SRO will have jurisdiction to arrest persons committing crimes in connection with a school activity or a school-sponsored event, pursuant to Section 5-7-12 of the South Carolina Code of Laws.

B. Any events that are of a school related nature (including, but not limited to carnivals, proms, overnight trips, dances, drama, etc.), where an SRO is requested for the purpose of security, the SRO shall be paid on an hourly rate, by the school or the sponsoring group, based on current county Sheriff's Department guidelines.

Program Goals and Evaluation

The Sheriff's Department in conjunction with the District will develop program goals and objectives for the SRO program. These programs and goals shall be in line with the District's plan for a safe school climate. This means that the SRO will be an active law enforcement official on campus, a classroom instructor, and a resource for teachers, students and parents. The SRO will also be active in conferences, counseling and referrals. Indicators of success will be developed independently and objectively to measure how well goals were obtained.

The Sheriff's Department shall evaluate the effectiveness of the SRO program and report annually to the District no later than July 30th of each year.

Rights and Duties of the District

The District will provide to the full-time SRO of each high school, middle school and elementary schools the following materials and facilities which are deemed necessary to the performance of the SROs duties:

A. Designated private office. This office will contain a telephone, which may be used for general business functions.

B. A location for files and records which can be properly locked and secured within the office.

C. A desk with drawers, an office chair, work table, filing cabinet, office supplies, and a computer.

Employment Status of the School Resource Officers

SROs will remain employees of the Sheriff's Department and shall not be employees of the District. The District and the Sheriff's Department acknowledge that the SROs are Sheriff's Department officers who shall uphold the law under the direct supervision and control of the Sheriff's Department. SROs shall remain responsible to the chain of command of the Sheriff's Department.

Appointment of School Resource Officers

The Sheriff's Department shall be responsible for recruiting, interviewing, and evaluating SROs. The Sheriff's Department will assign selected and trained police officers from within the department to work as SROs.

Reassignment/Resignation/Dismissal of School Resource Officers

In the event the principal or District Liaison feels that the particular SRO is ineffective in performing his/her duties, the principal will state these reasons to the superintendent or the superintendent's designee who will notify the sheriff or his/her designee. The District and the Sheriff's Department may meet to mediate or resolve any problems. If the problems cannot be resolved, the SRO shall be reassigned and a replacement SRO named.

Good Faith

The District, Sheriff's Department, their agents and employees agree to cooperate in good faith in fulfilling the terms of this agreement. Reimbursement for the SRO positions is contingent upon future funding from the Office of the Governor for the State of South Carolina or some alternate source of funding. Negotiations between the District Superintendent or his/her designee and the sheriff or his/her designee will resolve unforeseen difficulties or questions. The terms of the agreement are subject to change no later than May 31st of the calendar year. Any recommended changes or modifications will be reviewed by the sheriff and the district superintendent or their designees and any recommendations to the agreement will be submitted in writing.

Mutual Agreement

This document constitutes the full understanding of the parties, and no terms, conditions, understanding or agreements purporting to modify or vary the terms of this document shall be binding unless hereafter made in writing and signed by all parties involved.

Services will commence on the first day of teacher in-service of the new school year and will continue through the last day of school, graduations exercises and summer school programs. This agreement shall start during the 2015-2016 school year and continue through the end of that year.

The Sheriff's Department agrees that it will indemnify and hold harmless the District, its servants, agents and employees, from any and all liability, damage, expense, causes of action, suits, claims or judgments arising from injury to person(s) or personal property or otherwise which arises out of the act, failure to act, or negligence of the Sheriff's Department, its agents and employees, in connection with or arising out of the activity which is the subject of this Agreement.

This Agreement is to be governed by the laws of the State of South Carolina.

Merger

This agreement, consisting of eight (8) numbered pages, constitutes the final written expression of all the terms of this agreement to be signed by their duly authorized officers.

Richland County School District Two

By: Debra W. Hamm Date: 5/7/2015
Dr. Debra Hamm, Superintendent

Richland County Sheriff's Department

By: Leon Lott Date: 2/11/15
Leon Lott, Sheriff

(Revised 2/2015)

COOPERATIVE AGREEMENT

BETWEEN

THE JUVENILE COURT OF CLAYTON COUNTY

THE CLAYTON COUNTY PUBLIC SCHOOL SYSTEM

THE CLAYTON COUNTY POLICE DEPARTMENT

THE RIVERDALE POLICE DEPARTMENT

THE JONESBORO POLICE DEPARTMENT

THE FOREST PARK POLICE DEPARTMENT

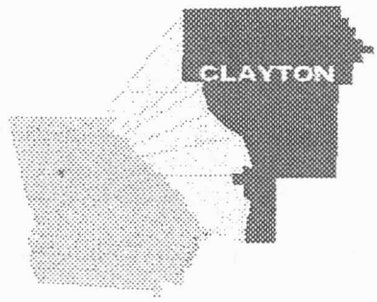
THE CLAYTON COUNTY DEPARTMENT OF FAMILY & CHILDREN SERVICES

THE CLAYTON CENTER FOR BEHAVIORAL HEALTH SERVICES

ROBERT E. KELLER, DISTRICT ATTORNEY

AND

THE GEORGIA DEPARTMENT OF JUVENILE JUSTICE



1. PURPOSE OF AGREEMENT

This agreement is entered into between the Juvenile Court of Clayton County (hereinafter referred to as the Court), Clayton County Public School System (hereinafter referred to as the School System), Clayton County Police Department (hereinafter referred to as the Police), Forest Park Police Department (hereinafter referred to as the Police), Riverdale Police Department (hereinafter referred to as the Police), Jonesboro Police Department (hereinafter referred to as the Police), the Clayton County Department of Family and Children Services (hereinafter referred to as DFCS), Robert E. Keller (hereinafter referred to as the District Attorney), The Clayton Center for Behavioral Health Services (hereinafter referred to as The Clayton Center), and the Georgia Department of Juvenile Justice (hereinafter referred to as DJJ) for the purpose of establishing a cooperative relationship between community agencies (hereinafter referred to as the Parties) involved in the handling of juveniles who are alleged to have committed a delinquent act on school premises. The Parties acknowledge that certain misdemeanor delinquent acts defined herein as the focused acts can be handled by the School System in conjunction with other Parties without the filing of a complaint in the Court. The Parties acknowledge that the commission of these focused acts does not require the finding that a student is a delinquent child and therefore not in need of treatment or supervision (OCGA 15-11-65). The parties acknowledge that the law requires the Court to make a preliminary determination that a petition be certified in the best interest of the child and the community before it can be filed with the Court (OCGA 15-11-37) The parties acknowledge that the Court has the authority to give counsel and advice to a juvenile without the filing of a petition and to delegate such authority to public or private agencies (OCGA 15-11-68 & 15-11-69).

The Parties acknowledge that the law expressly prohibits the detention of a student for punishment, treatment, satisfy the demands of the victim, police or the community, allow parents to avoid their legal responsibility, provide more convenient administrative access to the child, and to facilitate further

interrogation or investigation (OCGA 15-11-46.1 (c)). The law allows for the detention of a student who is a flight risk, presents a risk of serious bodily injury, or requests detention for protection from imminent harm (OCGA 15-11-46.1 (b)).

The parties acknowledge and agree that decisions affecting the filing of a complaint against a student and whether to place restraints on a student and place a student in secure detention should not be taken lightly, and that a cooperative agreement delineating the responsibilities of each party when involved in making a decision to place restraints on a student and to file a complaint alleging the child is a delinquent child would promote the best interest of the student and the community.

The parties acknowledge and agree that this Agreement is a cooperative effort among the public agencies named herein to establish guidelines for the handling of school related delinquent acts against public order which are defined herein as the focused acts. The parties further acknowledge and agree that the guidelines contained herein are intended to establish uniformity in the handling of student who has committed one of the focused acts as defined herein while simultaneously ensuring that each case is addressed on a case by case basis to promote a response proportional to the various and differing factors affecting each student's case. The parties acknowledge and agree that the manner in which each case or incident is handled by SROs, school administrator, and/or the Juvenile Court is dependent upon the many factors unique to each child that includes, but is not limited to, the child's background, present circumstances, disciplinary record, academic record, general demeanor and disposition toward others, mental health status, and other factors. Therefore, the parties acknowledge that students involved in the same incident or similar incidents may receive different and varying responses depending on the factors and needs of each student.

Finally, the parties acknowledge that a Cooperative Agreement has previously been entered into by the Juvenile Court of Clayton County, Georgia Department of Juvenile Justice, Clayton County Department of Family and Children Services, and The Clayton Center for Behavioral Health Services to coordinate intake services to ensure that children who do not present a high risk to re-offend are not detained using a Detention Screening Instrument (DSI) and that children presenting a low to medium risk are returned home

or appropriately placed in a non-secured or staff-secured setting. The parties acknowledge that the prior Agreement remains in full force and effect and is interrelated to this Agreement as part of the Juvenile Detention Alternative Initiative and Collaborative of Clayton County, Georgia.

II. DEFINITIONS

As used in this Agreement, the term:

A. "Student" means a child under the age of 17 years.

B. "Juvenile" means a child under the age of 17 years, which term is used interchangeably with "Student."

C. "Regional Youth Detention Center" or also known as RYDC means a secure detention facility for the housing of juveniles detained by authorization of Intake and awaiting adjudication and/or disposition of their case.

D. "Intake" means the division of the Juvenile Court responsible for making reviewing complaints to determine which complaints may be handled informally and by diversion, which complaints may be forwarded to the District Attorney's Office for a petition to be drawn, and which juveniles should be detained in the RYDC, or placed at another location, or returned home.

E. "Detention Screening Instrument" or known also as "DSI" means a risk assessment instrument used by Intake to determine if the juvenile should be detained or release. The DSI measures risk according to the juvenile's present offense, prior offenses, prior runaways or escapes, and the juvenile's current legal status such as probation, commitment, etc.

F. "Detention Assessment Questionnaire" or known also as "DAQ" means a document used to determine if the juvenile presents any mental health disorders, aggravating circumstances, or mitigating circumstances. The DAQ assists Intake in making a final decision regarding detention or release.

G. "Warning Notice" means a document or form used by the SRO to place a student on notice that he or she may be referred to the Court upon the commission of another similar delinquent act involving a misdemeanor against public order or to refer a child and parent to a Court Diversion Program in lieu the filing of a formal complaint.

H. "Diversion" means an educational program developed by the Court for those juveniles who have been charged with less serious delinquent acts, and Intake believes is not a delinquent child and most likely does not require probation or commitment to DJJ.

I. "Informal Adjustment" means informal supervision in which the juvenile is required to comply with conditions established by Intake of the judge for up to 90 days and is dismissed upon successful completion.

J. "Bully" is a student who has three (3) times in a school year willfully attempted or threatened to inflict injury on another person, when accompanied by an apparent present ability to do so or has intentionally displayed force such as would give the victim reason to fear or expect immediate bodily harm.

K. "Focused Acts" are misdemeanor type delinquent acts involving offenses against public order including affray, disrupting public school, disorderly conduct, obstruction of police (limited to acts of

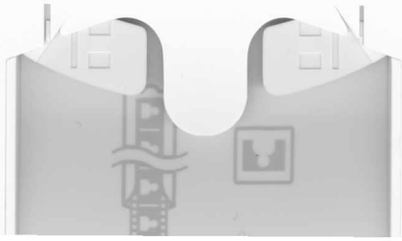
truancy where a student fails to obey an officer's command to stop or not leave campus), and criminal trespass (not involving damage to property)

III. TERMS OF AGREEMENT

A. Warning Notice and Referral Prerequisites to Complaint in Cases Where a Student has Committed a Focused Act.

Misdemeanor type delinquent acts involving offenses against public order including affray, disrupting public school, disorderly conduct, obstruction of police (limited to acts of truancy where a student fails to obey an officer's command to stop or not leave campus), and criminal trespass (not involving damage to property) shall not result in the filing of a complaint alleging delinquency unless the student has committed his or her third or subsequent similar offense during the school year and the Principal or designee has reviewed the behavior plan with the appropriate school and/or system personnel to determine appropriate action. In accordance with O.C.G.A. §20-2-735, the school system's Student Codes of Conduct will be the reference documents of record. The parties agree that the response to the commission of a focused act by a student should be determined using a system of graduated sanctions, disciplinary methods, and/or educational programming before a complaint is filed with the Juvenile Court. The parties agree that a student who commits one of the focused acts must receive a Warning Notice and a subsequent referral to the School Conflict Diversion Program before a complaint may be filed in the Juvenile Court. An SRO shall not serve a Warning Notice or make a referral to the School Conflict Diversion Program without first consulting with his or her supervisor if the standard operating procedures of the SRO Program of which the SRO belongs requires consultation.

1. **First Offense.** A student who commits one of the focused acts may receive a Warning Notice that his or her behavior is a violation of the criminal code and school policy, and



that further similar conduct will result in a referral to the Juvenile Court to attend a diversion program. The SRO shall have the discretion not to issue a Warning Notice and in the alternative may admonish and counsel or take no action.

2. **Referral to School Conflict Diversion Program**. Upon the commission of a second or subsequent focused act in that or a subsequent school year, the student maybe referred to Intake to require the student and parent to attend the School Conflict Diversion Program, Mediation Program, or other program sponsored by the Court. However, a student who has committed a second "bullying" act shall be referred to the School Conflict Diversion Program to receive law related education and conflict resolution programming, and may also be required to participate in the mediation program sponsored by the Court for the purpose of resolving the issues giving rise to the acts of aggression and to hold the student accountable to the victim(s). Intake shall make contact with the parent of the child within ten (10) business days of receipt of the notice from the School Resource Officer or the school to schedule the parent and child to attend the School Conflict Diversion Program, or other program of the Court appropriate to address the student's conduct. Intake shall forward to the school where the child attends a confirmation of the child's successful participation in the diversion program. A child's failure to attend shall be reported to the School Resource Officer to determine if a complaint should be filed or other disciplinary action taken against the child.

3. **Complaint.** A student receiving his or her third or subsequent delinquent offense against the public order may be referred to the Court by the filing of a complaint. If the student has attended a diversion program sponsored by the Court in that year or any previous school year and the student has committed a similar focused act, the student may receive a Warning Notice warning that the next similar act against the public order may result in a complaint filed with the juvenile court. A student having committed his or her third "bullying" act shall be referred to the Juvenile Court on a juvenile complaint and the

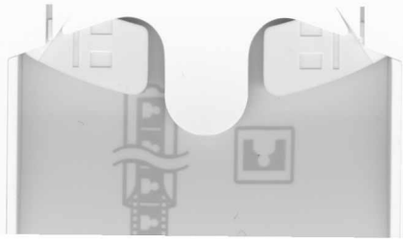
Court shall certify said petition provided probable cause exists and if adjudicated shall proceed to determine if said student is delinquent and in need of supervision. The school system shall proceed to bring the student before a tribunal hearing and if found to have committed acts of bullying shall in the least, with consideration given to special education laws, expel said child from the school and place in an alternative educational setting, unless expulsion from the school system is warranted. All acts of bullying shall be reported by school personnel and addressed immediately to protect the victims of said acts of bullying.

B. Emergency Shelter Care In Event Parent Cannot Be Located.

The Clayton County Juvenile Court, Georgia Department of Juvenile Justice, and The Clayton County Department of Family and Children Services previously entered into an agreement that establishes a protocol for the handling of youth who are charged on a delinquent offense and present a high risk using the Detention Assessment Instrument and a parent, guardian or custodian cannot be located or refuses to take custody of the youth. The protocol set forth in said agreement is incorporated herein and made a part hereof and shall continue in full force and effect. Nothing in this agreement shall be construed to alter or modify the prior agreement. Reference is made to said agreement reflect the relationship and continuity between the agreements as it relates to the handling of school related offenses described herein.

C. Treatment of Elementary Age Students.

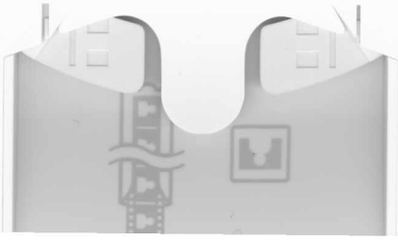
Any situation involving violence to the extent that others are placed at risk of serious bodily injury shall constitute an emergency and warrant immediate action by police to protect others and maintain school safety. O.C.G.A. §15-11-150 et seq. sets forth procedures for determining if a juvenile is incompetent also provides for a mechanism for the development and implementation of a competency plan for treatment, habilitation, support, supervision for any juvenile who is determined not to be mentally competent to participate in an adjudication or disposition hearing. Generally, juveniles of elementary age do not possess the requisite knowledge of the nature of



court proceedings and the role of the various players in the courtroom to assist his or her defense attorney and/or grasp the seriousness of juvenile proceedings, including what may happen to them at the disposition of the case. The parties acknowledge that the Court will make diligent efforts to avoid the detention of juveniles who may be mentally incompetent upon reasonable suspicion, unless they pose a high risk of serious bodily injury to others. Furthermore, it is a fundamental best practice of detention decision-making to prohibit the intermingling of elementary age juveniles from adolescent youth and to treat elementary age students according to their age and level of development. Furthermore, the parties acknowledge that the commission of a delinquent act does not necessitate the treatment of the child as a delinquent, especially elementary age juveniles in whom other interventions may be made available within the school and/or other agencies to adequately respond to and address the delinquent act allegedly committed by the juvenile. The Court shall make its diversion, intervention, and prevention programs available to the juvenile without the filing of a complaint upon a referral from the school social worker. Intake shall respond to any and all referrals made by elementary school staff within 24 hours of receipt of the referral. Any delay shall be communicated to the official making the referral within 24 hours with an explanation for the delay. Intake shall respond no later than 72 hours or the matter shall be referred to the Intake Supervisor or the Chief Probation Officer. In the event an elementary age student is taken into custody and removed from the school environment for the safety of others, the decision to detain said child shall be made by the Intake Officer pursuant to law. The parties acknowledge that taking a child into protective custody is not a detention decision, which is a decision solely reserved for a juvenile judge or his or her intake officer and therefore requiring law enforcement to immediately contact the Court to determine if the child should be detained or released and under what conditions, if any, if so released.

III. DURATION AND MODIFICATION OF AGREEMENT

This Agreement shall become effective immediately upon its execution by signature and shall remain in full force and effect until such time as terminated by any party to the Agreement. The Agreement may be modified at any time by amendment to the Agreement. The parties



acknowledge and agree to meet quarterly to provide oversight of the Agreement and make recommendations to the heads of each agency on any modifications to the Agreement.

IN WITNESS WHEREOF, the parties hereto, intending to cooperate with one another, have hereunder set their hands on the date set forth below.

R. Van Banke, Chief Judge
Juvenile Court of Clayton County

Luvenia Jackson, Assistant Superintendent
for Dr. Barbara Pulliam, Superintendent
Clayton County Public School System
(with expressed permission)

Darrell Partain, Chief
Clayton County Police Department

Dwayne Hobbs, Chief
Forest Park Police Department

Robert Thomas, Chief
Jonesboro Police Department

Greg Barney, Chief
Riverdale Police Department

Chuck Fischer, Deputy Director
for Cathy Ratti, Director
Clayton County Department of Family and Children Services
(with expressed permission)

Dr. Thomas Coleman, Deputy Commissioner
for Albert Murray, Commissioner
Georgia Department of Juvenile Justice
(with expressed permission)

Robert E. Keller, District Attorney
Clayton Judicial Circuit

Jimmy Wiggins, Director
The Clayton Center for Behavioral Health Services

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	**NO. 4:16-cv-000180-CDP**
	)	
Plaintiff,	)	**JUDGE CATHERINE D. PERRY**
	)	
v.	)	
	)	
THE CITY OF FERGUSON,	)	
	)	
Defendant.	)	
	)	
	)	

CONSENT DECREE

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204. FPD will encourage specialized CIT officers to redirect individuals with mental health and substance abuse issues to the health care system, where appropriate.

205. FPD policy will provide that a crisis intervention response may be necessary even in situations where there has been an apparent violation of law. This policy shall not prevent responding FPD officers from conducting law enforcement action necessary to address an urgent public safety situation.

D. Ongoing Assessment and Improvement

206. Within 180 days of the Effective Date, the City and FPD will develop protocols for at least annually conducting cost-feasible data-driven and qualitative assessments of FPD's CIT first responder model of police-based crisis intervention. These assessments will be designed to ensure FPD's crisis intervention practices allow FPD to provide an appropriate response to an incident involving an individual in crisis, including reducing injuries to officers, persons in mental health crisis, and the public. Assessments will include review and analysis of whether CIT officers were properly dispatched to calls for service involving an individual in crisis, as well as targeted and systematic review of CIT conduct where CIT officers did respond. As part of this internal assessment process, the City and FPD will identify deficiencies and opportunities for improvement; implement appropriate corrective action and improvement measures; and document measures taken.

XI. SCHOOL RESOURCE OFFICER PROGRAM

207. Ferguson's existing school resource officer (SRO) program offers a unique opportunity to build trust and cooperation between Ferguson's youth and law enforcement on a daily basis. This program, through education and the promotion of mutual respect, also provides Ferguson the opportunity to reduce students' unnecessary involvement in the juvenile and criminal justice systems, which can have profound negative effects on students' engagement and success in school and the broader community. In light of these dynamics, FPD agrees that its SRO program will build positive relationships between officers and youth, avoid unnecessary negative police actions such as arrests, and develop alternatives that promote keeping students in school and out of the criminal justice system.

A. Revision of SRO Program and Training and Qualifications of SROs

208. FPD agrees to use SROs who: (a) have the ability to work effectively with students, parents/guardians, teachers, and school administrators; (b) possess strong interpersonal communication skills; (c) have the ability to competently engage in public speaking; (d) have effective teaching skills; (e) have effective counseling skills; (f) understand the importance of diversion programs and alternatives to arrest for youth; (g) are respectful to the youth and families of all backgrounds and cultures; and (h) have an interest in promoting and enriching the lives of young people. In selecting an SRO, the recommendation of the School District and the principal of the school to which the officer will be assigned shall be considered.

209. FPD agrees to ensure that, after an officer is selected for the position of SRO and prior to assuming SRO responsibilities, the officer receives sufficient training that is consistent with FPD's Training Plan and the terms of this Agreement.

210. Within 120 days of the Effective Date, in consultation with the Ferguson-Florissant School District (FFSD) and consistent with the agreements with the FFSD, the Monitor, and subject to approval by DOJ, FPD will develop an SRO program and operations manual that clearly defines the role of each SRO and promotes the role of SRO as one of educator, counselor, mentor, and law enforcement problem-solver, consistent with best practices. The manual will address youth-appropriate law enforcement techniques; use of restorative approaches to address student behaviors; arrests of students; notification to parents/guardians when students are arrested; searches of students; special considerations regarding use of force within and around schools; procedures to receive and respond to complaints regarding SROs; selection of SROs and SRO assignments; training requirements; weapons qualifications; required equipment and supplies; opportunities for community-stakeholder meetings; SROs' role in identifying candidates for FPD's Explorer program and the City's Police Academy Assistance program; and the collection, analysis, and use of data regarding law enforcement activities in the FFSD schools.

211. Within 90 days of the Effective Date, FPD agrees to review and make a good-faith effort to amend its Memorandum of Understanding (MOU) with FFSD, to delineate authority and specify procedures for law enforcement interactions with students while on school grounds, consistent with this Agreement. Before providing SRO services at any school in which FPD is not currently engaged, the City will enter into an MOU with the appropriate school

district consistent with this Agreement. Further, any subsequent MOU with FFSD shall be consistent with this Agreement.

B. SRO Non-Involvement in School Discipline

212. FPD agrees to ensure that SROs and other FPD officers participate only in situations where police involvement is necessary to protect physical safety and do not participate in any situation that can safely and appropriately be handled by a school's internal disciplinary procedures. Incidents involving minor offenses committed by students, including, but not limited to, disorderly conduct, peace disturbance, loitering, trespass, profanity, dress code violations, and fighting not involving a weapon and not resulting in physical injury, will be considered school discipline issues to be handled by school officials rather than criminal or municipal code violations warranting FPD involvement, unless necessary to protect the physical safety of any person. Nothing herein is intended to prevent victims from reporting crimes or seeking assistance from SROs or other FPD officers.

213. FPD agrees to ensure that SROs and other FPD officers who intervene in an incident in order to ensure physical safety employ age-appropriate conflict resolution techniques to de-escalate the situation whenever possible and refer the matter to school personnel at the earliest opportunity.

214. FPD agrees to ensure that SROs continue to contribute positively to their school communities by serving as educators in addition to their responsibilities to protect the safety of students and school personnel. Nothing in this Agreement limits or is intended to limit FPD's role in providing mentoring, counseling, education, and support to students, faculty and school officials.

C. Minimizing School Arrests and Force

215. FPD agrees to develop and implement policies that discourage the arrest of students on school grounds except as necessary to ensure the physical safety of students, school personnel, and the public. The City agrees not to execute arrest warrants for municipal ordinance violations against students during school hours or school-sanctioned events on school grounds.

216. FPD agrees to ensure that officers document in sufficient detail the basis for any arrest on school grounds, including any factors that justify arresting the youth at school and factors that support a determination of probable cause.

217. FPD agrees to ensure that, upon arresting a student, officers notify the student's parent/guardian of the arrest as soon as practicable. The officer must notify the student's parent/guardian of the nature of the incident leading to arrest, the arrest charges, and if the student was removed from school grounds, the location of the student and relevant contact information. If a parent/guardian is not notified within two hours of the arrest, the arresting officer must document, in writing, the reason for the delay.

218. FPD agrees to ensure that officers do not use restraints—including, but not limited to, handcuffs—on a student on school grounds, unless the objective circumstances indicate that the restraints are necessary to ensure the immediate physical safety of any person.

219. An FPD officer may not remove a student from school grounds with the intent of circumventing the requirements of this Agreement.

220. Within one year of the Effective Date, FPD agrees to assist FFSD to develop a conflict resolution program in the schools; a system for referrals to school discipline personnel; alternatives to arrest; and diversion programs for students who are charged with offenses to minimize the involvement of students and youth in the juvenile and criminal justice systems. These programs will be structured to assess the underlying causes of the student's misbehavior and to develop and implement steps to address those underlying causes, and, if authorized by FFSD, will be developed in consultation with the Monitor and be approved by DOJ.

221. FPD will require that SROs exercise their discretion to refer youth to alternatives, rather than arrest them, whenever possible.

222. FPD agrees to ensure that SROs and other FPD officers do not use force on a student on school grounds unless necessary to address an immediate threat to the physical safety of the officer or any other person. In those situations where an officer must use force, the officer must act in accordance with all applicable use-of-force policies and the terms of this Agreement.

223. FPD will ensure that FPD officers de-escalate school-based incidents whenever possible. SROs should work with the FFSD to emphasize the use of restorative approaches to address behaviors and to minimize the use of law enforcement intervention.

D. SRO Supervision and Evaluation

224. FPD agrees to ensure that supervisors visit SROs to observe SRO activity in schools at least once every two weeks.

225. FPD agrees to ensure that supervisors solicit formal feedback on SRO performance from teachers, school administrators, parents/guardians, and students at least once a semester.

226. FPD agrees to ensure that, at least once per semester, SRO supervisors meet with SROs and school administrators to review incidents in which SROs and/or other FPD officers were involved in the discipline, arrest, or restraint of a student. The review will evaluate the effective use of skills learned through professional development and identify areas for continuous improvement.

E. Ongoing Assessment and Improvement

227. Within 180 days of the Effective Date, the City and FPD will develop protocols for at least annually conducting cost-feasible data-driven and qualitative assessments of FPD's SRO program. These assessments will be designed to ensure that FPD's SRO program is accomplishing the objectives of reducing students' unnecessary involvement in the criminal justice system, building trust between students and Ferguson law enforcement, and ensuring the protection and safety of students. Assessments will include review and analysis of calls for service in schools, as well as officer uses of force, arrests, or charges brought on school grounds; decisions not to arrest when arrest was permitted by FPD policy; complaints regarding FPD officers on school grounds; and student and staff perceptions of school safety and officer fairness, including breakdowns by protected characteristics for all assessments. As part of this internal assessment process, the City and FPD will identify deficiencies and opportunities for improvement; implement appropriate corrective action and improvement measures; and document measures taken.

XII. BODY-WORN AND IN-CAR CAMERAS

228. In an effort to bring continued transparency regarding police activities; improve the effectiveness and reliability of use-of-force and misconduct investigations; enhance supervision of FPD stops, searches, and arrests; and provide material for officer training, the City will equip FPD officers with body-worn and in-car cameras, and will ensure that such devices are used consistent with law and policy. All aspects of FPD's use of body-worn and in-car cameras will be designed and implemented to promote transparency, provide learning

Georgetown County School District

Safety and Risk Management Department
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Sept. 7, 2016

Dr. Sabrina Moore
South Carolina Board of Education
Office of Student Intervention Services
Division of Federal, State, and Community Resources
1429 Senate Street, Room 805
Columbia, South Carolina 29201

By e-mail: smoore@ed.sc.gov

Dear Dr. Moore;

I would like to respond to Professor Gupta-Kagan's comments on the proposed regulations. While I agree with some of what he says, I must respectfully take issue with several of his positions. Perhaps my background as a former law enforcement officer (and SRO) and current municipal court judge, college criminal justice instructor and school district safety director shaped my views at the practical application level; in any event, I hope the following explains the thinking that I and other members of the task force used in drafting the regulation.

Dr. Gupta-Kagan mentioned several variations of the following statement: "Even worse, the proposed regulations would codify a *requirement* than any Level II school misbehavior which rises to a crime must be reported to law enforcement." This was not something we chose to codify, the Legislature did that when they passed 59-24-60, the text of which I include below:

SECTION 59-24-60. Requirement of school officials to contact law enforcement authorities when criminal conduct occurs.

In addition to other provisions required by law or by regulation of the State Board of Education, school administrators must contact law enforcement authorities immediately upon notice that a person is engaging or has engaged in activities on school property or at a school sanctioned or sponsored activity which may result or results in injury or serious threat of injury to the person or to another person or his property as defined in local board policy.

This is also the reason for the language in the Memorandum of Understanding.

P&A PROTECTION & ADVOCACY FOR PEOPLE WITH DISABILITIES, INC.

The Protection & Advocacy System for South Carolina

September 23, 2016

Dr. Sabrina Moore, South Carolina Board of Education
Office of Student Intervention Services
Division of Federal, State, and Community Resources
1429 Senate Street, Room 805
Columbia, South Carolina 29201

By e-mail: smoore@ed.sc.gov

Re: Proposed Amendments to Regulation 43-279, Minimum Standards of Student Conduct and Disciplinary Enforcement Procedures to be Implemented by Local School Districts and New Regulation 43-210, School Resource Officers

Dear Dr. Moore:

Protection and Advocacy for People with Disabilities, Inc. (P&A) advocates for the rights of South Carolinians with disabilities, including students receiving educational services in the community and in the care of the South Carolina Department of Juvenile Justice (DJJ). P&A has represented hundreds of students with disabilities who have had contact with the school discipline and juvenile justice systems. We have often found that districts' negative responses to behaviors of children with disabilities stem from inappropriate behavior planning or implementation. Additionally, in our experience, the vast majority of children in the juvenile justice system also have had disciplinary issues at school. We believe it is critical that the school discipline system, including School Resource Officers (SROs), be aware of the needs of students with disabilities to enable them to stay in school safely.

P&A was disappointed that no groups specifically advocating for children with disabilities were represented on the task force[1]. As the United States Department of Education Office for Civil Rights 2013-2014 Civil Rights Date Collection First Look[2] shows:

> Students with disabilities in grades K-12 are disproportionately suspended from school. Students with disabilities served by IDEA (11%) are more than twice as likely to receive one or more out-of-school suspensions as students without disabilities (5%). More than one out of five American Indian or Alaska Native (22%), Native Hawaiian or other Pacific Islander (23%), black (23%), and multiracial (25%) boys with disabilities served by IDEA received one or more out-of-school suspensions, compared to one out of ten white (10%) boys with disabilities served by IDEA. One in five multiracial girls with disabilities served by IDEA

[1] Ms. Susan Beck, SC Council for Administrators of Special Education and the SC Association of School Psychologists, and Mr. Phillip Young, SC Association of School Psychologists, were members, but there were no advocates for the students with disabilities such as P&A or Family Connection who are members of the state Advisory Council on the Education of Students with Disabilities, http://ed.sc.gov/districts-schools/special-education-services/oversight-and-assistance-o-a/sc-advisory-council-on-the-education-of-students-with-disabilities/

[2] http://www2.ed.gov/about/offices/list/ocr/docs/2013-14-first-look.pdf

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> (20%) received one or more out-of-school suspensions, compared to one in twenty white girls with disabilities served by IDEA (5%).

These data do not cover expulsions, abbreviated school days, or transfers to alternative school, which in our experience also disproportionately affect students with disabilities. The lack of advocates for children with disabilities may have led to some omissions in the proposed regulations, such as requirements for training (see below).

P&A has reviewed University of South Carolina Law School Professor Joshua Gupta-Kagan's comments and agrees with many of his concerns. As he points out, proposed Regulation 43-279(IV)(B)(3)(d) would require that a referral must be made to law enforcement whenever an incident rises to a level of criminality. South Carolina's disturbing school statute, S.C. Code § 16-17-420(a)(1)(a), is so broad that it is often used for minor incidents that otherwise would not be crimes, such as verbal abuse of a teacher, overturning furniture, or, as in the Spring Valley case, refusing to give up a cell phone.

The charge of disturbing school has long been one of the major reasons for referral to the Family Court: for instance, in fiscal year 2014-15 there were 1222 referrals[3] and an additional 675 students were referred for truancy, an offense that would not be a crime if the individual were an adult. As the 2014-15 report states at page 14,

> Historically, school related offenses have factored heavily into juvenile cases in South Carolina. The 10-year trend in disturbing school cases reflects a peak in FY 06/07, followed by a steep decline dipping well below the original baseline in the past four years. A slight upward trend since FY 10/11 merits watching in the coming year. A joint effort by DJJ and the State Department of Education to manage truancy as a school issue rather than a juvenile justice issue resulted in an abrupt decline in truancy cases after FY 02/03. Following a period of relative stability between FY 04/05 and FY 09/10, truancy declined. However for the past two fiscal years, truancy has been on a slight upward trend.

Many unsuccessful efforts have been made in recent years to amend the disturbing school statute to limit its scope, for example, H. 4516 and H. 4418 in the most recent legislative session. Until the current law is amended, however, a requirement that the Memorandum of Understanding between a school district and law enforcement include mandatory referral of any potentially criminal matter will continue to cause minor offenses to be referred to Family Court. It essential that referrals for disturbing school be made on a case by case basis, taking into account the student's disabilities, among other factors.

P&A agrees with the Task Force's recommendation that there should be uniform training requirements for what constitutes a "basic course of instruction" for training SROs. We believe that training about adolescent development and the impact of disabilities on students' conduct is essential to enable SROs to de-escalate situations and to understand factors that may affect students' behavior. For example, a student who has been abused may react violently to efforts at restraint; a student with

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[3] http://www.state.sc.us/djj/pdfs/2015-Annual-Statistical-Report.pdf

an autism spectrum disorder may become very agitated when touched. SROs need to be aware of different techniques to respond to students with mental illness, intellectual disabilities, and autism spectrum disorders, to name some of the more common disabilities that we see. SROs also need training needs include to understand the requirements under the IDEA and Section 504 for disciplining students with disabilities, crisis management,[4] and the effect of trauma on student behavior. P&A also agrees with the Task Force's recommendation that training include classroom management, positive intervention, cultural diversity, de-escalation, and CPI training.

P&A agrees with many of the Task Force's other recommendations, including that the South Carolina Department of Education 1) provide access (including online access) to best practice, evidence-based interventions for students, teachers, administrators, and SROs; 2) provide training about the new discipline regulations and positive intervention strategies to incoming principals during their initial training; and 3) provide comprehensive training on the progressive behavior plan to teachers, principals, and individuals receiving alternative certification. All of this training should include specific content about working with students with disabilities.

If not part of the training to implement these proposed regulations, P&A suggests that regular education teachers and school administrators should receive training on behavior management, so they have the tools to respond to behaviors by students with disabilities. Special education teachers do get this training, but more of these students are now being included in regular classrooms for at least part of the day. When the regular education teachers are unable to manage the behavior, they often turn to SROs at inappropriate times. As a result, behavior management training for regular education teachers and administrators should result in fewer calls on SROs in situations where they are not needed.

We appreciate the opportunity to comment on these proposed regulations. Please contact me at 803 217-6703 or mccormick@pandasc.org if I may provide any additional information.

Very truly yours,

Nancy C. McCormick
Senior Attorney

cc: Gloria M. Prevost
Pete Cantrell, Esq.
Amanda Hess, Esq.

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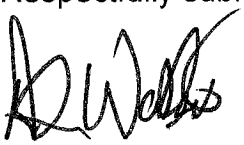
[4] See National Disability Rights Network, *Orphanages, Training Schools, Reform Schools and Now This? Recommendations to Prevent the Disproportionate Placement and Inadequate Treatment of Children with Disabilities in the Juvenile Justice System,* http://www.ndrn.org/images/Documents/Issues/Juvenile_Justice/NDRN_-_Juvenile_Justice_Report.pdf

I agree with his assertion that the regulation does not offer much guidance in differentiating between Level II Fighting and Level III Assault & Battery, or Level II Stealing and Level III Theft, possession or sale of stolen property. I also agree with his statement that school officials are best positioned to know about possible interventions, but the flaw in Dr. Gupta-Kagan's reasoning is that we have the authority to regulate discretion in favor of school administrators when 59-24-60 clearly invests that authority in Law Enforcement. Failure to report what is determined to be a criminal incident could have serious criminal and civil implications for administrators and districts.. Because of the way the statute is written both of the Level II offenses cited above would require a prosecutorial decision by the SRO (or other prosecuting authority) before disciplinary action could be taken.

The Disturbing School law which he cites was discussed at length, but that too is in the hands of the Legislature to amend or repeal. I just don't see how his recommendations to end mandatory law enforcement involvement in several Level III offenses or redefining "acts of criminal conduct" can be accomplished by regulation as long as they would contradict existing law.

Respectfully submitted,



Alan Walters
Director of Safety & Risk Management

From: webmaster-noreply
Sent: Friday, September 23, 2016 8:49 AM
To: info
Subject: SCDE Website General Contact Form Submission

This form was sent at: Sep 23, 2016 8:48 AM

NAME: Master Deputy J.T.Foster
EMAIL: FosterJT@Spart6.org
COMMENT: I am an SRO in the upstate, 15 years in that capacity. My colleagues and I got a copy of your Safe Schools Task force sent to us yesterday and we were appalled. This thing reads like it was written by people who have spent no time at all in a school recently. It appears to be solely an effort to satisfy activists who are trying to stop any arrests for Disturbing Schools as a way to bypass the legislatures refusal to change the law. If implemented administrators will have some serious issues to deal with for which there will be no solutions but to beg disruptive students to stop. I would suggest you get some input from folks in the trenches before you implement this mess. You should have already done that. Typical Columbia.