

Student Note

Discipline or Crime: An Analysis of the Use of Memoranda of Understanding to Regulate School Resource Officer Intervention in South Carolina Schools.

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ABSTRACT

School Resource Officers (SROs) have become an integral part of the education environment and are the product of a societal and policy-minded push of law enforcement in schools. As a result of both federal and state legislation, the number of SROs has increased dramatically and has led to an interest in several topics including juvenile justice, criminal law, and police reform. Academics, legal scholars, and policy makers have nearly all agreed that school discipline and law enforcement are distinct concepts, and law enforcement should not be involved in the administration of school discipline. However, these concepts often overlap. This overlap has evoked a need for tools to help delineate the roles of law enforcement and school administrators regarding the school environment and student conduct. The Memorandum of Understanding (MOU) has been identified by research as a key tool in laying out the roles and responsibilities of school administrators and SROs and has been introduced by legislation in a number of states. MOUs from seven school districts in South Carolina were analyzed by this paper for their compliance to state educational regulations and effectiveness in achieving clarity with the SRO-school district relationship. After analysis, all seven districts reviewed were found to be out of compliance due to authorization of SROs to intervene in conduct they were prohibited from intervening in by the State. Key issues identified with the MOUs and educational regulations include: use of *pro forma* language, broad and vague definitions of student criminal behavior, and little definition of school administrator roles

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within the documents. This paper recommends individualizing MOUs to school districts based on demographics, clearer definitions of student conduct, and compliant SRO intervention in increasing the effectiveness of MOUs in South Carolina schools.

I. INTRODUCTION

In the past thirty-five years, the law enforcement presence in schools in the United States has increased dramatically. This presence, primarily employed in schools as SROs, has become entrenched in daily school operations and discipline. The National Association of School Resource Officers (NASRO) estimates that currently 14,000 to 17,000 SROs are in schools nationwide and that these officers are in approximately twenty percent of K-12 schools, both public and private, in the United States.¹ However, these numbers are merely estimates as NASRO points out that SROs are not required to be registered in any national database, law enforcement agencies are not required to report how many officers work as SROs, and school systems are not required to report how many SROs they use.²

The official definition and roles of SROs are wide-ranging. NASRO defines an SRO, in line with the statutory definition in the Congressional legislation authorizing the creation of The Office for Community Oriented Policing Services (COPS) program, as, “A career law enforcement officer [...] in a community-oriented policing assignment to work in collaboration with one or more schools.”³ States also have enacted definitions of SROs. For example, South Carolina defines an SRO as, “[...] a person who is a sworn law enforcement officer pursuant to the requirements of any jurisdiction of this State, who has completed the basic course of instruction for School Resource Officers as provided or recognized by the National Association of School Resource Officers or the South Carolina Criminal Justice Academy, and who is assigned to one or more school districts within this State to have as a primary duty the responsibility to act as a law enforcement officer, advisor, and teacher for that school district.”⁴ From these broad state, federal, and

1. *What is a school resource officer?*, NAT'L ASS'N OF SCH. RES. OFFICERS, <https://www.nasro.org/faq/> (last visited Dec. 10, 2020).

2. *Id.*

3. *Id.*; 34 U.S.C. § 10389(1)-(4) (2019).

4. S.C. CODE ANN. § 5-7-12(B) (2008).

organizational definitions, the role of the SRO is noted by The Congressional Research Service in its report, *School Resource Officers: Law Enforcement Officers in Schools*, as having evolved into “a hybrid educational, correctional, and law enforcement officer.”⁵

Whatever their definition, SROs are seen as the main enforcement mechanism of law enforcement in the school to which they are assigned.⁶ This perception of SROs, an outside presence from an area generally much different than the educational community, has created a somewhat murky and far-reaching set of roles and responsibilities ascribed to SROs. The Congressional Research Service notes that the activities of SROs can be categorized into three broad areas; “(1) safety expert and law enforcer, (2) problem solver and liaison to community resources, and (3) educator.”⁷ COPS described SROs as having wide-ranging roles from addressing “crime and disorder problems” to educating “likely school-age victims in crime prevention and safety” to assisting “in developing school policy that addresses crime and to recommend procedural changes.”⁸ Much of the descriptions of SROs’ roles link their duties as law enforcement to specialized duties of educating students. These officers are expected to handle criminal activity on school campuses and collaborate with educators as part of their duties.⁹ This description of SROs as “collaborators” and “assisting” the schools on various tasks has led some researchers to question the overlap of law enforcement into the realm of school discipline.¹⁰ Even NASRO makes this point clear in a released statement that SROs must be prohibited “from becoming involved in formal school discipline situations that are the responsibility of school administrators.”¹¹

5. CONG. RESEARCH SERV., R43126, *SCHOOL RESOURCE OFFICERS: LAW ENFORCEMENT OFFICERS IN SCHOOLS* (2013).

6. Elizabeth A. Shaver & Janet R. Decker, *Handcuffing a Third Grader? Interactions Between School Resource Officers and Students with Disabilities*, 2017 UTAH L. REV. 229, 235 (2017).

7. CONG. RESEARCH SERV., *supra* note 5.

8. *Id.*

9. *Id.* at 3.

10. *Id.* at 21.

11. *NASRO Position Statement on Police Involvement in Student Discipline*, NAT’L ASS’N OF SCH. RES. OFFICERS (Aug. 14, 2015), <https://www.nasro.org/aboutnasro/nasro-position-statement-on-police-involvement-in-student-discipline>.

In addition, the expansive definitions of SROs can be linked to the expansive definitions of student behavior that may be considered criminal by schools. The Congressional Research Service noted that a special issue for Congressional attention was how the presence of SROs in school systems may increase the possibility of criminalized discipline.¹² Students in schools served by SROs may be more prone to being arrested and reported for behavior by the SRO, most of the time for minor offenses or non-criminal offenses, that was generally in the past considered to be the jurisdiction of schools.¹³ In result of the encroachment of law enforcement into school discipline, a large gray area that encompasses the relations between students and SROs has formed and several regulatory agencies, legal analysts, and civil rights organizations have tried to formulate ways in which the relationship between officer and student can become more tangible, regulated, and beneficial to both sides.

To further analyze the definition of SROs, their roles, and how they may be regulated in terms of their interactions with students, this paper will examine the use and regulation of SROs in several school districts within the State of South Carolina. According to the South Carolina Department of Education in 2016, over 600 SROs were serving in South Carolina schools.¹⁴ In 2019, that number increased when the Department funded 205 new SROs with over 11.8 million dollars in funding from the state.¹⁵ Those new SROs would be placed in all seventy-nine of South Carolina's traditional school districts, including the school districts that already had SROs present.¹⁶ Each school district received one to four new SROs.¹⁷ This increase of officers in schools comes after South Carolina received nationwide media attention in 2015 after an SRO was caught on camera violently assaulting a high school student in

12. CONG. RESEARCHSERV., *supra* note 5, at 21.

13. *Id.*

14. S.C. DEP'T OF EDUC., SOUTH CAROLINA SAFE SCHOOLS. TASKFORCE REPORT, RECOMMENDATIONS OF THE SAFE SCHOOLS. TASK FORCE 6 (2016).

15. Fleming Smith, *SC Education Department Funds 205 New School Resource Officers for School Safety*, THE POST AND COURIER (Sept. 26, 2019), https://www.postandcourier.com/news/sc-education-department-funds-205-new-school-resource-officers-for-school-safety/article_fd2010fc-e05e-11e9-b7fb-c7d2f9c762f5.html.

16. *Id.*

17. *Id.*

Columbia, South Carolina leading to a state and federal investigation.¹⁸ The incident, along with several other incidents of SRO assaults on students in other states, requires a closer look at how states, in particular South Carolina, map out the use of SROs within their regulations. Of note to this paper, is the requirement in the South Carolina Department of Education's regulations that Memoranda of Understanding (MOUs) be executed between school districts and the law enforcement agencies from which they employ SROs.¹⁹ MOUs are documents that are meant to lay out the roles clearly and specifically of both law enforcement and school administrators in matters of school discipline, school safety, and school operation.²⁰ These documents lay out circumstances in which the school and SROs fill individually specific roles and when they may partner together to achieve resolution for student behavior.²¹ The South Carolina school district MOUs in this paper, which were provided to the author through Freedom of Information Act (FOIA) requests, will be scrutinized for their adherence to the state Department of Education regulations, their language regarding SROs' roles and possible interaction with student behavior regulations, and how the MOUs can be improved to further delineate the confusing web of relationships between SROs, school administration, and students.²²

II. RISE OF SROs IN SCHOOLS

Part of the increase in law enforcement presence in schools can be attributed to the public fear of juvenile crime and the wake of several school shootings in the 1990s.²³ Police have had a role in public schools since the 1950s, but the rise of fear and moral panic over the so-called teenage "super predator" in the 1980s and 1990s opened the door for law enforcement to enter schools in a far more substantial manner than ever

18. Sarah Aarhun & Holly Yann, *Student's Violent Arrest Caught on Video*; Officer Under Investigation, CNN (Oct. 27, 2015), <https://www.cnn.com/2015/10/26/us/south-carolina-spring-valley-high-school-student-video/index.html>.

19. S.C. CODE REGS. 43-210 (2019).

20. *Id.*

21. *Id.*

22. S.C. CODE ANN. § 30-4-30(A)(1) (2017).

23. Shaver & Decker, *supra* note 6, at 233.

before.²⁴ The public conscious was dominated by the idea of a violent and ruthless teenage criminal who was void of morals and constantly victimized fellow teenagers and adults alike.²⁵ The media and the “tough on crime” stance taken by the federal government during that time used this justification of unchecked youth delinquency to further entrench the criminal justice system into schools.²⁶ In hindsight, the super predator movement was largely driven by racist views and bias against young, Black males who the public saw as the main progenitors of drug activity and violent crime in America.²⁷ Even though this logic is deeply racist and flawed, it allowed for discussion on what could be done in the future to prevent what was thought to be widespread, uncontrollable youth crime rates. Federal legislation and programming spurred from these discussions and incidents and is noted to be a direct cause of the increase in the hiring of SROs.²⁸ Legislation such as The Gun-Free Schools Act of 1994 and the Violent Crime Control and Law Enforcement Act of 1994 directly intertwined the school environment and law enforcement with the mandatory expulsions in response to criminal activity and the creation of programs involving police and the youth, respectively.²⁹ The late 1990s and early 2000s, which saw several high-profile school shootings, such as Columbine High School in 1999, also led to increases in federal funding through grants to SRO programs with the amendments to the Omnibus Crime Control and Safe Streets Act of 1968 and the introduction of the Safe and Drug-Free Schools and Communities Act in 2001.³⁰

Most research done on the rise of SROs in schools points to the creation of the COPS program created by the U.S. Department of Justice (DOJ) in 1994 as cementing the federal initiative of SRO placement in schools.³¹ The COPS program was primarily responsible for

24. Perry L. Moriearty & William Carson, *Cognitive Warfare and Young Black Males in America*, 15 J. GENDER RACE & JUST. 281, 307 (2012) (discussing the broader context of American social wars in the 1980s and 1990s).

25. *Id.*

26. *See id.*

27. *See id.* at 283-84.

28. Shaver & Decker, *supra* note 6, at 233.

29. Shaver & Decker, *supra* note 6, at 233-34; *see* The Gun-Free Schools Act of 1994, Pub. L. No. 103-227, § 1031, 108 Stat. 270 (1994); *see also* The Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796 (1994).

30. Shaver & Decker, *supra* note 6 at 233; *see also* 34 U.S.C. § 10381(b)(12) (2018) (formerly cited as 42 U.S.C. § 3796dd(b)(12) (1998)).

31. Shaver & Decker, *supra* note 6, at 233.

implementing the federal legislation and programming with state and local law enforcement agencies.³² The DOJ further increased its initiative of law enforcement in schools with the “COPS in Schools” program which led to a large increase in SRO placements and hiring.³³ According to the DOJ, “COPS in Schools” provided close to 724 million dollars in grants to go directly to the hiring of SROs.³⁴ Though the “COPS in Schools” program ended in 2005, recent events, such as the Sandy Hook Elementary School shooting that killed twenty-six in 2012, inspired both Congress and the DOJ to appropriate millions of more dollars to fund the placement of SROs in schools around the nation.³⁵

III. CRITICISM OF SROs AND POLICING IN SCHOOLS

Since their introduction in mass, SROs have drawn criticism. Many organizations and researchers have noted that the direct introduction of police in schools has only facilitated issues relating to juvenile justice, including furthering racial disparities and stereotypes in arrests, criminalization of the school environments, and exposure of large numbers of children to the criminal justice system at an early age.³⁶

A. Use of Excessive Force by SROs

Notably, in 2015, video footage caught a confrontation between an SRO and a female student at Spring Valley High School in Columbia, South Carolina.³⁷ The female student was texting in class and refused to

32. *Id.*

33. *Id.*

34. *Id.* (citing *The COPS Office: 20 Years of Community Oriented Policing*, U.S. DEP’T OF JUST. 1 (2014), <https://cops.usdoj.gov/RIC/Publications/cops-p301-pub.pdf>).

35. Shaver & Decker, *supra* note 6, at 234.

36. ROBIN L. DAHLBERG, AM. CIVIL LIBERTIES UNION, *ARRESTED FUTURES* 5 (2012); Chongmin Na & Denise C. Gottfredson, *Police Officers in Schools: Effects on School Crime and the Processing of Offending Behaviors*, 30 JUST. Q. 619, 623 (2013); Sarah E. Redfield & Jason P. Nance, *The American Bar Association Joint Task Force on Reversing the School-to-Prison Pipeline Preliminary Report*, A.B.A. COALITION ON RACIAL AND ETHNIC JUST., CRIM. JUST. SEC., AND COUNCIL FOR RACIAL & ETHNIC DIVERSITY IN THE EDU. PIPELINE, 17 (2016).

37. Caitlin Byrd, *Former South Carolina School Officer Won’t Face Civil Rights Charges for Throwing High School Student Out of Desk*, POST AND COURIER (Jan. 13, 2017), https://www.postandcourier.com/news/former-south-carolina-school-officer-wont-face-civil-rights-charges-for-throwing-high-school-student/article_62dc518c-d9c1-11e6-bc32-8bba8b2e9482.html.

leave her seat to go to the school office.³⁸ The SRO, who was called by school employees to deal with the situation, can be seen on video violently flipping the student out of her desk and onto the ground.³⁹ The school district eventually fired the SRO, and the incident was investigated by the DOJ and the Fifth Judicial Circuit Solicitor's Office in South Carolina.⁴⁰ The investigation ultimately found the SRO to not have violated the civil rights of the student.⁴¹ The DOJ noted that there was insufficient evidence regarding the SRO's conduct to reach the "high legal standard" of a civil rights violation.⁴² The DOJ and the Richland County Sheriff's Office that employed the SRO reached a settlement that provided for intensive de-escalation training to SROs among other issues.⁴³

However, this settlement has done little to change the inclusion of this incident in a narrative of other incidents. In August 2019 in Farmington, New Mexico, an SRO was caught on video wrestling and restraining an eleven-year-old girl.⁴⁴ She supposedly had stood on top of a school bus, taken too many milks at lunch, and picked at a taped-up sign.⁴⁵ The SRO resigned, and his supervisor was demoted and reassigned.⁴⁶ In September 2019, an SRO at a school for special needs children in Pompano Beach, Florida was caught on camera slamming a teenage girl to the ground by her throat after a verbal altercation with the girl.⁴⁷ The SRO was later charged with felony child abuse and was suspended without pay.⁴⁸ In December 2019 in Henderson, North Carolina, another SRO was caught on camera throwing a middle school

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

44. P.R. Lockhart, Police Officer Resigns After Video Shows Him Using Excessive Force on an 11-year-old Girl, VOX (Oct. 24, 2019, 11:30 AM), <https://www.vox.com/identities/2019/10/24/20929397/police-officer-excessive-force-school-11-year-old-girl-new-mexico>.

45. *Id.*

46. *Id.*

47. Karma Allen, *Florida School's Resource Officer Arrested After Video Shows Him Slamming 15-year-old Girl to Ground, Police Say*, ABC NEWS (Nov. 5, 2019, 9:50 PM), <https://abcnews.go.com/US/florida-schools-resource-officer-arrested-video-shows-slamming/story?id=66775374>.

48. *Id.*

student to the ground.⁴⁹ The SRO was later fired and charged with misdemeanor child abuse.⁵⁰

B. SROs and the Furtherance of the School-to-Prison Pipeline

While the incidents described above show an alarming number of incidents of excessive force by SROs in their school duties, the presence of police in schools has forced other negative consequences into the forefront of discussion. Notably, research has connected the increase in the use of SROs to the facilitation of the “school-to-prison pipeline.”⁵¹ The school-to-prison pipeline refers to the increasing trend of criminalizing behavior in schools leading to students being referred to law enforcement instead of school administration, who have traditionally handled behavior issues.⁵² According to the American Bar Association’s Joint Task Force on Reversing the School-to-Prison Pipeline, the increased presence of SROs in schools has led to increased involvement of juveniles in the criminal justice system for minor violations of school codes of conduct.⁵³ Schools are more often referring student behaviors, including fighting, vandalism, and even tardiness, to the SRO as a disciplinary method for these behaviors.⁵⁴ As a result, students are being exposed to the police in a setting normally reserved for education, increasing their contact with law enforcement.⁵⁵ Research tends to point to the beginning of this nexus of discipline and law enforcement in the enactment of several “zero-tolerance” policies beginning with the Gun-Free Schools Act of 1994.⁵⁶ Extending past guns to drugs and alcohol, “zero-tolerance” polices now cover even more conduct.⁵⁷ The State of South Carolina has prescribed expulsion

49. Tim Pulliam, *Family Wants Upgraded Charges Against Fired Vance County Deputy Who Slammed Student*, ABC NEWS 11 (Jan. 7, 2020), <https://abc11.com/officer-slams-student-vance-county-resource-sro-middle-school/5823836/>.

50. *Id.*

51. CONG. RESEARCH SERV., *supra* note 5, at 21.

52. Redfield & Nance, *supra* note 36, at 2; see also Lisa H. Thureau & Johanna Wald, *Controlling Partners: When Law Enforcement Meets Discipline in Public Schools*, 54 N.Y. L. SCH. L. REV. 977, 981 (2009).

53. Redfield & Nance, *supra* note 36, at 102.

54. *Id.*

55. CONG. RESEARCH SERV., *supra* note 5.

56. Na & Gottfredson, *supra* note 36, at 621.

57. *Id.*; CONG. RESEARCH SERV., *supra* note 5, at 23.

as a possible punishment for behavior such as “abusive language to staff,” “repeated refusal to comply with directives from school personnel or agents,” and “illegally occupying or blocking in any way school property.”⁵⁸ Notably, SROs in South Carolina are able to be and are even required to be called upon for all the conduct above.⁵⁹

C. Impact of SROs on Minority and Disabled Students

SROs have also been criticized in their impact on the school climate, particularly relating to minority students and students with disabilities.⁶⁰ A disproportionate number of minority students, most notably Black males, come into contact with SROs and are referred to the juvenile justice system for school related offenses.⁶¹ The American Civil Liberties Union (ACLU), in a study done in the three districts of the Boston, Massachusetts school system, found that students of color were disproportionately affected by the policing practices.⁶² The study noted that although Black students comprised one-third of all students during the time of data collection, two-thirds of all school related arrests were Black children.⁶³ The ACLU also found that students with learning and behavioral disabilities came into more contact with law enforcement than other groups.⁶⁴ In 2012, the Department of Education in the Civil Rights Data Collection Survey (CRDC), noted that over seventy percent of students arrested or referred to law enforcement in their schools were Black and Hispanic students.⁶⁵ In the same CRDC survey it was noted students with disabilities were over three times more likely to receive suspension and expulsion.⁶⁶ Similar research from as far back as 1992 has shown that Black students were punished far more severely than other student populations.⁶⁷ The American Bar Association’s Joint Task Force on Reversing the School-to-Prison Pipeline examined several empirical studies on biases in school environments and emphasized that

58. S.C. CODE ANN. REGS. 43-279(IV)(B)(4) (2017).

59. *Id.* (IV)(B)(3).

60. Na & Gottfredson, *supra* note 36, at 632.

61. Thureau & Wald, *supra* note 52, at 581.

62. DAHLBERG, *supra* note 36, at 6.

63. *Id.*

64. *Id.*

65. CONG. RESEARCH SERV., *supra* note 5, at 23-24.

66. *Id.* at 24.

67. Anna C. McFadden et al., *A Study of Race and Gender Bias in the Punishment of School Children*, 15 EDUC. & TREATMENT OF CHILD. 140, 144 (1992).

biases against Black and disabled students could be contributing to the increased disciplinary actions against these populations.⁶⁸ This early exposure of law enforcement to minority students, in particular Black males, is concerning considering that minorities comprise much larger fractions of both the juvenile and adult criminal justice systems.⁶⁹ Research also notes that the criminalization of school behaviors leads students to miss more school and, in result, fall behind in their academics.⁷⁰ As their academic progress decreases, students are then burdened with the lower expectations in terms of behavior and success that their teachers and schools assign to them.⁷¹ Students are then further pushed into disciplinary interactions with both the school and SROs.⁷² All of these factors ultimately culminate in more students, particularly minority students, dropping out of school and further criminal contact with the police in the regular societal setting.⁷³

IV. REGULATION OF SROs AND THE MEMORANDUM OF UNDERSTANDING

In response to renewed interest by Congress in SRO programs in the wake of the Sandy Hook Elementary School Shooting in 2012 and the allotment of over seventy-five million dollars of federal funds to the 2014 Comprehensive School Safety Initiative, the Congressional Research Service defined several key factors for efficient SRO programs and regulation of SRO programs.⁷⁴ According to the Congressional Research Service, pre-emptive planning and training of SROs is key to a successful SRO program.⁷⁵ First, schools should identify in advance the issues they are facing and analyze how their resources, including the SRO, should be utilized.⁷⁶ However, the SRO should not be the only resource relied upon.⁷⁷ Too much reliance may

68. Redfield & Nance, *supra* note 36, at 30.

69. Thureau & Wald, *supra* note 52.

70. Na & Gottfredson, *supra* note 36.

71. *Id.*

72. *Id.*

73. *Id.*

74. CONG. RESEARCH SERV., *supra* note 5, at 11.

75. *Id.* at 11.

76. *Id.*

77. *Id.*

lead to the criminalized atmosphere in schools. Second, there needs to be clear goals for the SROs, and the SRO “should engage in activities directly related to school safety goals.”⁷⁸ Third, SROs should take a more problem-solving approach to dealing with students, rather than simply instituting punishment for behavior.⁷⁹ Finally, a lack of resources for the SRO, particularly training, should be addressed.⁸⁰ The ACLU and Justice Policy Institute recommend, and other research reinforces, that SROs need training in regard to mental health, behavioral and learning disabilities, and bias and racial issues.⁸¹ The DOJ COPS program in 2005 said that SROs needed to be trained in “child development and psychology.”⁸² Advocates for this special training for SROs posit that a student’s behavior can be dealt with therapeutically at first and only in the most extenuating circumstances should arrest be used. The ACLU believes that the arrest of the student should be the “last resort.”⁸³

Most research agrees that clearly defined roles of the SRO and the school are key to an efficient and successful SRO program.⁸⁴ The DOJ COPS program notes that “school and law enforcement agencies should be aware of any pitfalls before agreeing to an establish an SRO program.”⁸⁵ The program also admits that there may be significant differences and opinions existing between law enforcement and the school on how to operate safely in schools.⁸⁶ Key to navigating these differences is the establishment of an MOU.

In NASRO’s 2015 news release, “NASRO Position Statement on Police Involvement in Student Discipline,” the organization stated that “a clear and concise memorandum of understanding is essential.”⁸⁷ They advise that every law enforcement agency who assigns an SRO to a school should have an MOU, and several states require MOUs to be present in their education regulations.⁸⁸ NASRO recommends that the

78. *Id.*

79. *Id.*

80. *Id.*

81. DAHLBERG, *supra* note 36; AMANDA PETTERUTI, JUSTICE POLICY INST., EDUCATION UNDER ARREST: THE CASE AGAINST POLICE IN SCHOOLS 6-7 (2011).

82. Shaver & Decker, *supra* note 6, at 240-41.

83. DAHLBERG, *supra* note 36, at 37.

84. CONG. RESEARCH SERV., *supra* note 5, at 11-12.

85. *Id.* at 11.

86. *Id.*

87. NAT’L ASS’N OF SCH. RES. OFFICERS, *supra* note 11.

88. Shaver & Decker, *supra* note 6, at 243.

MOU should “clearly define the roles of the SRO to include those of: law enforcement officer, teacher, [and] informal counselor.”⁸⁹ This statement reflects the position stated by the DOJ COPS program that clarity and specificity is key in an MOU and its effectiveness to regulate the school-SRO relationship.

Importantly, and key to this paper, is that NASRO also recommends that the MOU “prohibit SROs from becoming involved in formal school discipline situations that are the responsibility of school administrators.”⁹⁰ In other words, the MOU should define when an SRO may intervene in student behavior and when that behavioral intervention may be kept in the realm of school administrators. A report on a study done by Peter Finn and colleagues noted that when schools and SROs do not define their roles in the school environment, “problems are rampant.”⁹¹ Finn’s study also noted that the schools in his study that had MOUs were more likely to have an SRO program that successfully reduced school violence.⁹²

MOUs hold an important place in the regulation of SROs in that they can potentially diminish the reliance that school administrators may develop on SROs with behavioral intervention.⁹³ The ACLU found in a study that schools without some type of protocol defining the roles of school administration and SROs have had a severely diminished school culture. In addition, the leadership in those schools which have traditionally taken on discipline matters was undermined greatly.⁹⁴ Administrators were more likely to resist being held responsible for any discipline matters, instead referring almost completely to the SRO.⁹⁵ Additionally, in schools where administrators had developed this reliance on law enforcement, less funding was diverted to alternative disciplinary tools which the ACLU believes are less harmful to the

89. NAT’L ASS’N OF SCH. RES. OFFICERS, *supra* note 11.

90. *Id.*

91. PETER FINN ET AL., CASE STUDIES OF 19 SCHOOL RESOURCE OFFICER (SRO) PROGRAMS, 2 (2005).

92. *Id.* at 3.

93. Dara Yaffe, *Reading, Writing, and Rethinking Discipline: Evaluation of the Memoranda of Understanding between Law Enforcement and School Districts in Massachusetts*, 51 NEW ENG. L. REV. 131, 142 (2016).

94. DAHLBERG, *supra* note 36, at 34.

95. *Id.*

students.⁹⁶ Reliance on arrests as a primary disciplinary tool also allocated less responsibility in addressing and shaping student behavior to the school administrators.⁹⁷ The ACLU notes that less responsibility of the school administrators led to less engagement of the administrators with the students.⁹⁸ Less engagement with the students leads to less acknowledgement of the long-term issues of the school.⁹⁹

Therefore, by this logic, MOUs that delineate the roles of SROs and administrators may clear the gray area that has been created by policing in schools and the mixture of school discipline and criminal arrest. Administrators and SROs who are unsure of whether certain incidences of student conduct involve law enforcement, creates an amorphous atmosphere of discipline that leads to a confusion of who oversees the school environment. This confusion, when experienced by the students, may lead them to equate school with law enforcement, discipline with arrest, and traditional school administrators as cops.

A. South Carolina: A Case Study

The State of South Carolina's Department of Education revised the most recent regulations regarding SROs in 2017.¹⁰⁰ Each SRO placed in South Carolina schools is regulated through the South Carolina State Board of Education Regulation 43-210.¹⁰¹ This regulation covers (1) the expectations for SROs, (2) the definition of SROs, (3) roles of SROs, (4) procedures, and (5) the Memorandum of Understanding (MOU).¹⁰² South Carolina, like many other states,¹⁰³ requires MOUs be present between the school district and the law enforcement agency associated with the SRO.¹⁰⁴ State Board of Education Regulation 43-210(V) states:

Prior to placing a school resource officer at a school or in a district office, a memorandum of understanding must be executed between the

96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.*

100. S.C. CODE REGS. 43-210 (2019).

101. *Id.*

102. *Id.* at § V; S.C. CODE ANN. 5-7-12 (2008).

103. U.S. DEP'T OF EDUC. & U.S. DEP'T OF JUST., SAFE SCHOOL-BASED ENFORCEMENT THROUGH COLLABORATION, UNDERSTANDING, AND RESPECT (SECURE), STATE AND LOCAL POLICY RUBRIC 2-3 (2020).

104. S.C. CODE REGS. 43-210 (V) (2019).

school district, and the employing local law enforcement agency [...]
The provisions of this regulation and Regulation 43-279 must be included in the memorandum of understanding. The school district shall provide the school administration with a copy of the memorandum of understanding and review it with the school administration and with the school resource officer prior to the start of every school year.¹⁰⁵

While South Carolina has enacted these regulations incorporating MOUs into the school-SRO relationship, of particular interest to this paper is how the MOU regulation and prescriptions interact with the student conduct regulations. The regulations governing student conduct make apparent that SROs may become involved in a variety of student behavior. Vague references to “criminal” acts and the ability of student conduct to rise in level of severity through the regulations allow for school administrators to place much of their discretion in the hands of outside parties, such as the SRO. When looking at the language of “criminal acts,” it may at first seem apparent that acts that are criminal should be within the reach of the SRO. However, the SRO and the school may use a subjective determination of what they may consider criminal behavior. This subjective determination may not always be correct and may encompass behavior in the school, that in the larger criminal justice context, would not merit an arrest or even involvement by law enforcement. School administrators, who do not know the criminal law would refer situations that they deem criminal to the SRO, which may not be actually criminal or can be appropriately handled by administration. The SRO, who is supposed to know the criminal law, but may have been initially trained with adult populations in the larger community, may take this training and apply what they know as criminal in the larger context, to the student. The student may then be treated as a criminal in the community, when again, this behavior may be properly dealt with by school administration and forgo the introduction of the student to law enforcement.

The MOU requirement and language throughout the conduct regulations contradict the broader picture South Carolina behavioral regulations prescribe. South Carolina’s regulations specifically

105. *Id.*

emphasize that SROs are not to be considered disciplinarian and should not be involved in regular discipline matters. The regulation states in section 43-210(IV)(A) titled “Student Behaviors” that:

School resource officers are not school disciplinarians and shall not ordinarily be requested or permitted to intervene in school discipline matters. The school resource officers shall be called when a student’s behavior amounts to a Level III violation for which law enforcement involvement is required (see Regulation 43-279). School resource officers shall be called to respond to any misconduct when

1. the conduct is criminal, or
2. the conduct presents an immediate safety risk to one or more people. In addition, school administrators must also contact law enforcement consistent with S.C. Code Ann. 59-24-60.

When law enforcement referrals are required, a school resource officer shall 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.¹⁰⁶

This section on its face seems to ascribe to the important point emphasized by NASRO and other research that SROs should not be the first point of contact regarding disciplinary matters in a school.¹⁰⁷ The section also seems to emphasize the point made in the MOU provision which states:

The role of the school district, individual schools, local law enforcement agency, school administration, and the school resource officer shall be clearly defined in the memorandum of understanding. The role of the school resource officer must clearly be defined pursuant to S.C. Code Ann 5-7-12 and in the memorandum of understanding.¹⁰⁸

With this language, South Carolina seems to delineate the disciplinary roles between SROs and administrators by relegating the SRO involvement to certain levels of student conduct and when law

106. *See id.* §(IV)(A).

107. NAT’L ASS’N OF SCH. RES. OFFICERS, *supra* note 11.

108. S.C. CODE REGS. 43-210 (V) (2019).

enforcement is required.¹⁰⁹ However, closer analysis reveals possible holes in the language that could facilitate a reliant relationship between school administration and law enforcement. First, the regulation provides that the SRO may be called in when a student's behavior amounts to a "Level III Violation for which law enforcement involvement is required."¹¹⁰ According to South Carolina State Board of Education Regulation 43-279, disciplinary action is based on the severity of student conduct and that conduct is split into three levels.¹¹¹ Level III conduct is described as "criminal conduct."¹¹² The regulations lay out criminal conduct as follows:

Criminal conduct is defined as those activities engaged in by student(s) which result in violence to oneself or another's person or property or which pose a direct and serious threat to the safety of oneself or others in the school. When school officials have a reasonable belief that students have engaged in such actions, then these activities usually require administrative actions which result in the immediate removal of the student from the school, the intervention of the School Resource Officer or other law enforcement authorities, and/or action by the local school board. The provisions of this regulation apply not only to within-school activities, but also to student conduct on school bus transportation vehicles, and during other school-sponsored activities.¹¹³

Certain acts that may amount to criminal conduct and are prescribed in this section include, but are not limited to, lower level assault and battery offenses, sexual offenses, major vandalism, theft, and furnishing or selling controlled substances.¹¹⁴ The regulations also note that criminal conduct does not include acts that "amount to disturbing schools, breach of peace, disorderly conduct, or affray under South Carolina law."¹¹⁵ While the actions listed under Level III conduct may seem relatively self-explanatory that they are considered criminal

109. *See id.*

110. S.C. CODE REGS. 43-279 (IV)(C)(1) (2017).

111. *See id.*

112. *Id.*

113. *Id.*

114. *See id.*

115. *Id.*

conduct and may warrant intervention by law enforcement, of note is the stipulation that “criminal conduct may include, but is not limited to” the acts identified in the regulation, gives wide latitude to what may be considered criminal conduct.¹¹⁶ In fact, lower level violations in the regulation-- Level I or Level II conduct-- may rise to Level III classification and become the target of law enforcement intervention. Level II conduct is described as disruptive conduct and stated as:

Disruptive conduct is defined as those activities engaged in by student(s) which are directed against persons or property, and the consequences of which tend to endanger the health or safety of oneself or others in the school. Some instances of disruptive conduct may overlap certain criminal offenses, justifying both administrative sanctions and court proceedings. Behavioral misconduct (Level I) may be reclassified as disruptive conduct (Level II) if it occurs three or more times. The provisions of this regulation apply not only to within school activities, but also to student conduct on school bus transportation vehicles, and during other school-sponsored activities.¹¹⁷

Disruptive conduct may include, but is not limited to, acts of fighting, trespass, abusive language of staff, and repeated refusal to comply with directives from school personnel or agents.¹¹⁸ Although Level II conduct is a lower level conduct than stated in the regulation describing the roles of SROs, it may still come to the attention of the SRO or other law enforcement.¹¹⁹ For example, abusive language of staff could be referred to the SRO because threats aimed at teachers are considered a crime in South Carolina.¹²⁰ The Level II conduct section specifies that behavior may reach the attention of SROs “only when the conduct rises to the level of criminality, and the conduct presents an immediate safety risk to one or more people or it is the third subsequent act which rises to a level of criminality in that school year.”¹²¹ Level II instances of conduct are similar to the conduct described in Level III. As a result, it may be misclassified by school administrators, and even

116. *Id.*

117. *Id.* at § (B)(1).

118. *See id.*

119. *See id.*

120. *See* S. C. CODE ANN. § 16-03-1040(A)-(C) (2012).

121. *Id.*

SROs, and lead to law enforcement intervention, although not prescribed by the regulations. For example, it could be difficult to delineate between “acts of fighting” from “assault and battery” and a law enforcement officer could get involved in what could be considered an “affray.” In South Carolina, an affray “is a fight in a public place to the terror and alarm of the people.”¹²² The SRO could arrest a student based on an affray. However, the conduct regulations specifically note that an affray is not considered an “act of criminal conduct” that requires SRO intervention.¹²³ This contradiction is just an example of how the regulations may lead to the school administrators to turn to the SRO to discern what the behavioral conduct is and if they can intervene.

Adding to the slippery slope of conduct classification, Level I conduct may rise to the categorization of Level II conduct. In fact, a listed act under Level II conduct is the “violation of a Level I intervention plan and/or behavioral contract.”¹²⁴ Level I conduct is described as “behavioral misconduct” and is written in the regulation as:

Behavioral misconduct is defined as those activities engaged in by student(s) which tend to impede orderly classroom procedures or instructional activities, orderly operation of the school, or the frequency or seriousness of which disturb the classroom or school. The provisions of this regulation apply not only to within-school activities, but also to student conduct on school bus transportation vehicles, and during other school-sponsored activities.¹²⁵

Certain acts defined as Level I conduct include, but are not limited to, tardiness, lying, cheating, truancy, and cutting class.¹²⁶ The section referring to Level I behavior only refers to administrators as the disciplinarian.¹²⁷ The administrators are also able to exercise discretion in developing a behavioral contract with the student and determining consequences that may include detention, demerits, or withdrawal of

122. S.C. CODE ANN. § 16-5-120 (2012).

123. *See id.*

124. *Id.*

125. *See id.* § (A)(1).

126. *See id.*

127. *See id.*

privileges.¹²⁸ These behaviors listed as Level I are what most traditionally think of as school realm issues. However, law enforcement can be brought in under certain circumstances dealing with these relatively minor infractions.

For example, if a student is on a behavioral contract with the school administrators for the Level I offense of “abusive language between or among students” and violates that contract, their behavior would become a Level II behavioral issue. SROs entering discipline are then within the realm of possible outcomes. If the abusive language rises to the level of a crime and (often if containing threats) becomes a Level II issue, then the conduct will also be considered within the realm of possible criminal behavior. As stated earlier, abusive language containing threats aimed at teachers is a felony crime in South Carolina as it is considered threatening the life of a public official/employee.¹²⁹ If this occurs, the initial Level I conduct now has become Level III conduct. Therefore, a Level I act primarily dealt with by school administrators becomes the responsibility of law enforcement as stated in the regulation that governs them. Students could be criminally punished for acts that originally only amounted to disruption, something South Carolina terms “behavioral misconduct.” It is easy to see how certain sections of the regulations may create unnavigable gray area when it comes to the roles of school demonstrators and SROs. While not a perfect solution, MOUs may be able to help to further separate the jurisdictions of SROs and school administration that is vaguely provided for by the state regulations.

B. Methods of Collection

To examine how MOUs may impact South Carolina schools and their relationships with law enforcement, the author of this paper sent out Freedom of Information Act (FOIA) requests to school districts within South Carolina to gather information on district specific MOUs. The districts who responded to the FOIA requests include Richland County School District One and Richland County School District Two in the capital city of Columbia, South Carolina, Greenville County School District, Aiken County School District, Rock Hill School

128. *See id.*

129. *See* S. C. CODE ANN. § 16-03-1040(A)-(C) (2012).

District III, Fort Mill School District, and Florence County School District III. The Charleston County School District, Clover County School District, and Georgetown School Districts did not respond to FOIA requests. Further research should include requesting and receiving FOIA requests for every school district in the state to get a fuller picture of the MOU requirement in school districts. FOIA rights should also be enforced against districts who do not respond. Transparency and informational exchange are key in formulating effective regulations and MOUs in the school districts.

1. Richland County School District One and Richland County School District Two

The MOUs from Richland County School District One and Richland County School District Two will be analyzed together because the documents are identical. The MOUs were executed in the 2019-2020 school year and are with the Richland County Sheriff's Office. In reviewing these MOUs, it is apparent that sections of the MOUs in both districts authorize SRO involvement that is out of compliance with the state regulations. Even though the state regulations include gaps and contradictions, specifically in defining student conduct and how law enforcement may intervene in specific conduct, the SRO involvement authorized by these districts through their MOUs does not even rise to the low standard the state regulations prescribe.

Section IV(A) of the document describes the duties of the School Resource Officer in a two-part designation.¹³⁰ The role of the SRO is described in two-fold framing of the position as a "law enforcement officer" and "law related advisor."¹³¹ Regarding the "law enforcement officer" role SROs in these districts will "perform law enforcement duties in the school," "be present for school activities and provide a visible and positive image," and "work to protect the school

130. Memorandum from Richland County School District One to Richland County Sheriff's Department (June 1, 2019) (on file with Richland County School District One); Memorandum from Richland County School District Two to Richland County Sheriff's Department (June 1, 2019) (on file with Richland County School District Two) [hereinafter *Richland Memoranda*].

131. *Id.*

environment.”¹³² Relating to the “law related advisor” role, SROs may “serve as a resource for students on all law-related subjects.”¹³³

This language of the SRO as a law enforcement officer and law related advisor comports to the state regulation language of the SRO roles to include a (1) law enforcement officer, (2) law-related educator, and (3) community liaison.¹³⁴ Both the regulation and this MOU specify that the SRO is first a law enforcement officer and may be called upon for other activities by the school.¹³⁵ Additionally, in this MOU, there is a list of thirty-two additional duties of an SRO.¹³⁶ Duties listed include “establish[ing] and maintain[ing] liaison with school principal, faculty, students, and parents;” “helping prevent juvenile delinquency through close contact with students, school personnel, and parents;” and being visible to students throughout the day.¹³⁷ Of note, is the twelfth additional duty which states, “The SRO shall not act as a school disciplinarian, as disciplining students is a school responsibility[...] if the incident is a violation of law [...] the SRO shall determine whether law enforcement action is appropriate.”¹³⁸

This language is not in compliance with the language found in Section four of the state regulation.¹³⁹ While the language states that SROs are not to be disciplinarians, the MOU allows the SRO to involve themselves in any type of incident that may deem a violation of the law. However, the state regulation denotes that SROs may only become involved “when the conduct rises to a level of criminality” or when “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.”¹⁴⁰ The issue with noting that an act that rises to criminality is that some acts are specifically not included in the regulations. Such criminal acts like stalking and harassment that may occur in schools are not listed. Some crimes under South Carolina law, including breach of the peace and disorderly conduct are not to be reported to the SRO at first violation by the student. The MOU does not reference these parts

132. *Id.*

133. S.C. CODE REGS. 43-210 (I)-(III)(A) - (D) (2019).

134. *Id.*

135. *Id.*

136. *Richland Memoranda*, *supra* note 130.

137. *Id.*

138. *Id.*

139. *See* S.C. CODE REGS. 43-210(IV)(A).

140. S.C. CODE REGS. 43-279(IV)(B)(3)(d).

or gaps of the regulation at all. The twenty-fifth additional duty listed in the MOU also stands in violation of the section of the state regulation prescribing that SROs only be involved in Level III conduct. The duty in question states, “Any reported crime {i.e., Larceny, Assault, Disturbing Schools, etc.} or knowledge of a suspected crime is to be reported to the School Resource Officer immediately.”¹⁴¹ The conduct regulations note that “disturbing schools” is not a Level III conduct classification.¹⁴² Therefore, if an SRO were to intervene in the ground prescribed by these MOUs and the school were to report a ground to the SRO, the officer and the school would be out of compliance and intervening in conduct that is reserved for school administrators only. If an administrator or SRO were to consult this document to determine when and in what way they can act, the MOU would put them out of compliance.

2. *Aiken County School District*

Aiken County School District’s MOU, executed with the Aiken County Department of Public Safety for the 2019-2020 school year, is similar to the previous MOUs in that the primary responsibility of the SRO is law enforcement.¹⁴³ The SRO is relegated to “investigating criminal activity on the school campus” and “gathering information on criminal and law enforcement activities.”¹⁴⁴ While this description of the SRO varies slightly from the Richland County MOUs, it prescribes the exact same language regarding the SRO acting as a disciplinarian. Although it states that SROs will not act as school disciplinarian, the MOU states, “the SRO shall not as a school disciplinarian, as disciplining students is a school responsibility . . . if the incident is a violation of law . . . the SRO shall determine whether law enforcement action is appropriate.”¹⁴⁵ Again, the MOU and the school district is out of regulation. The provision does not follow the regulation’s

141. *Richland Memoranda*, *supra* note 130.

142. *See id.*

143. Memorandum from Aiken County School District One to Aiken County Department of Public Safety (2019) (on file with Aiken County School District) [hereinafter *Aiken Memorandum*].

144. *Id.*

145. *Id.*

determinations of when conduct warrants SRO involvement. SROs, by this language, are given free discretion into what conduct they may intervene. This language is in direct contradiction to the state regulations which prevent some acts, even though they are considered crimes under South Carolina law, to be reported to the SRO. By the MOU, the SROs are given latitude to involve themselves in these non-reportable acts because they are technically crimes and to an SRO, law enforcement should be involved in dealing with crime. However, the state regulations carve out a sphere of non-intervention for law enforcement and the MOUs do not comply with this.

3. *Florence County School District III*

The MOU analyzed in this section is the most recent document from Florence County School District III for the 2019-2020 school year.¹⁴⁶ This agreement was executed with the Florence County Sheriff's Office. This document details the duties of the SRO in the same general language as stated in the Richland County MOUs.¹⁴⁷ Additionally, like the previous MOU, an item in the document notes that the SRO is not a school disciplinarian and includes the exact same problematic language of "if the incident is a violation of the law . . . the SRO shall then determine whether law enforcement action is appropriate."¹⁴⁸ Of particular note with this MOU is the phrase that "if there is a problem, the SRO shall assist the school until the problem is solved."¹⁴⁹ Again, SROs are only permitted to interfere when Level III conduct is present, and the act is criminal.¹⁵⁰ The phrase "a problem" could mean a number of things that the SRO could be involved in. For example, if a child is screaming in the classroom, according to this, the SRO could "assist" the school administrators in solving this problem of the child yelling. Therefore, minor issues, like being loud, could initiate law enforcement presence based on this document's provisions. Also, this MOU contains the same provision as the previous MOU in that "disturbing schools" is

146. Memorandum from Florence County School District III to Florence County Sheriff's Office (2019) (on file with Florence County School District III) [hereinafter *Florence Memorandum*].

147. *Richland Memoranda*, *supra* note 130.

148. *Id.*

149. *Id.*

150. S.C. CODE REGS. 43-279(IV)(C)(1) (2017).

referenced as a crime.¹⁵¹ Again, this violates the state regulation specially prohibiting SRO involvement in that type of conduct.

4. *Greenville County School District*

The Greenville County School District MOU, executed with the Greenville Police Department, follows the tune of the other MOUs in that it lays out the basic roles of SROs.¹⁵² In addition, it also contains the provision “if the incident is a violation of the law . . . the SRO shall then determine whether law enforcement action is appropriate.”¹⁵³ However, the Greenville MOU goes far beyond the previous MOUs in that it states “SROs shall provide reasonable assistance to the school principal in the event of a routine disciplinary problem.”¹⁵⁴ In violation of the state statute, the MOU clearly allows for the SRO to be the school disciplinarian. The MOU even contradicts itself with this language from a prior sentence that states, “the SRO shall not act as disciplinarian.”¹⁵⁵ This MOU is the closest example of language providing the SRO with the ability to become involved in traditional school discipline. With these provisions in their MOU, the Greenville County School District is plainly out of compliance with the state regulations.

5. *Rock Hill School District Number Three*

The MOU provided from this district was executed in 2013 and remains in effect until 2039 and was in agreement with the Rock Hill Police Department.¹⁵⁶ While this document was executed before the state regulations went into effect, the document has not been updated since 2013 and will remain in effect for another nineteen years unless updated by the parties.¹⁵⁷ This document did not meet any

151. *Id.*

152. Memorandum from Greenville County School District to City of Greenville, South Carolina (2015) (on file with the Greenville County School District) [hereinafter *Greenville Memorandum*].

153. *Id.*

154. *Id.*

155. *Id.*

156. Memorandum from Rock Hill School District III to City of Rock Hill, South Carolina (2013) (on file with Rock Hill School District III) [hereinafter *Rock Hill Memorandum*].

157. *See id.*

of the requirements in the state regulation, and no provision was present that stated the roles of the SRO or the school administrators. The document only referred to items such as equipment, payment, and the fact that the SRO was not considered an employee of the school district.¹⁵⁸ This MOU is out of compliance with current regulations as it is grossly out of date and does not set out any rules or regulations for the SRO in reference to school discipline. The MOU being executed before the updated SRO regulations in 2017 and not further amended to stand in compliance only adds to its inadequacy as a guide to the school district and SROs in their relationship.

6. Fort Mill School District

Fort Mill School District's MOU is interesting because it is an agreement with a private security agency, Defender Service, Inc.¹⁵⁹ This was the only district that responded to the FOIA request that did not use a city or county law enforcement agency. This agreement employs Security Services Officers (SSOs), which according to the agreement must only have "a valid security officer registration certificate."¹⁶⁰ These SSOs do not even have to be trained and licensed law enforcement. They can even carry a firearm if properly licensed through state law enforcement.¹⁶¹ The individuals under this contract may not have proper grasp of the law of South Carolina, proper questioning or detaining of juveniles, or at the minimum, any experience or contact with children. This document governing the SSOs is referred to as the "Security Services Statement of Work" and is much longer than the other MOUs received.¹⁶² According to this agreement, SSOs are to perform a variety of duties that schools include but are not limited to activities such as "serv[ing] as first responder to violent, disruptive, or other emergency incidents on school property" and "report[ing] matters of concern to school administration or law enforcement."¹⁶³ This language is akin to the concerning language of the prior MOUs in that SROs seem to be

158. *Id.*

159. Memorandum from Fort Mill School District to Defender Services, Inc. (2019) (on file with Fort Mill School District) [hereinafter *Fort Mill Memorandum*].

160. *Id.*

161. *See id.*

162. *Id.*

163. *See id.*

able to insert themselves into administrative discipline “with matters of concern.” These “matters of concern” could mean a lot of situations and reach far beyond the boundaries of Level III behavioral conduct SROs can intervene in.

Even though the SSOs must report to law enforcement and, therefore, lack arrest power, it is not hard to imagine that these SSOs are seen as actual law enforcement by the administration and the students. The SSOs do much of what an SRO can do, but they can do it without a law enforcement license. The students likely are not aware that the individuals are private security and not actual law enforcement. All they see is an individual that responds to disruptions at the school and carries a firearm. The fact that the SSO is technically not law enforcement does nothing to dispel all the issues that law enforcement in schools may bring if no one can tell they are not actually law enforcement. To any outsider not aware, and this is likely to include the teachers and students at the school, of the private security contract, these SSOs are on the same level of the SRO.

This agreement stands out among the other MOUs in that officers are given much wider latitude of law enforcement provision, and this latitude is clearly violative of state regulations. Although the SSO is not technically law enforcement, the state regulations should still apply to the private security contract. If these security officers can intervene in the behavior that the SRO can intervene in (disruptive, violent conduct) and carry a firearm like an SRO, they should be considered SROs under the regulation. The school district wants the security and presence of an SRO but has chosen a private security officer to fill that role. Therefore, the school district should expect the regulation of these officers if they are going to use them in place of an SRO who is an actual law enforcement officer.

The student behavior provisions further this placement of the SSO on the level of an SRO in that they are involved with student conduct. The student behavior provisions state the SSO shall “monitor student activity . . . warn students of rule violations when appropriate and notify school personnel of continued or serious rule violations, disorderly student behavior, or otherwise unsafe conditions.”¹⁶⁴ If the SSO was strictly a security officer, the officer would mostly be involved in the

164. *Id.*

security of the building, keeping intruders off of school property, and other matters. However, the SSO is ingrained deeply within student conduct. Because the SSOs are able to monitor and warn students of rule violations, the students are being disciplined by individuals who are not school administration and not law enforcement. This adds on an extra layer of enforcement and authority that will be detrimental to the school environment. The students must deal with the administration, these security officers, and then law enforcement if the conduct takes them that far through the system in this school district. The distinct concept of school discipline is even further buried within the relationship between school administration and law enforcement and the added layer of a private security officer. Again, kids are likely not able to discriminate between these SSOs and law enforcement. They see an individual with a gun who intervenes in their school environment, and based on the agreement, for even minor behavioral misconduct. This position of the private security officer acting in the guise of the SRO is a clear violation of the extent to which law enforcement can act in schools and likely adds to the confusion of delving out school discipline related responsibilities.

V. ANALYSIS OF MOUs AND HOW THEY MAY BE IMPROVED

In analyzing the state regulations and MOUs found in South Carolina school districts, several shortfalls are apparent.

A. *Pro Forma* Mechanics and Vague References

First, in South Carolina, the school district and the law enforcement agency, not the individual schools, initiate the construction and dissemination of the MOU.¹⁶⁵ Having the larger school district draft and execute the MOU ignores all the specifications and diverse populations that exist in each individual school in the district. Not all schools, even when geographically similar, are similar in all other respects. Schools may vary in the ethnic composition of their students, socioeconomic status, access to resources, and caliber of administration and teachers. Different schools are going to present different behavioral challenges

165. See S.C. CODE ANN. REGS. 43-210(IV) (2019).

and safety related issues. Therefore, it would be more efficient, and an SRO program would be more successful, if MOUs were executed between the individual schools and individual officers. The SRO program would be able to mold their roles and duties to the needs of the individual schools rather than act within a vague and *pro forma* bracket of regulations.

It would be wrong to disregard the impracticalities that might exist with this argument. Administrators of school districts sometimes must deal with dozens of schools at one time, tens of thousands of students, and as we have seen, a sizeable amount of law enforcement. These MOUs were also crafted by the legal departments of school districts. Individual schools are not assigned individual general counsel so it is easy to imagine that executing a required legal document as a school administration would be difficult. Sending out an attorney to work with each school to craft and MOU would likely be costly and time-consuming. Some smaller districts may just have one attorney employed.

However, school districts simply cannot ignore the characters and challenges of their individual schools and the school district. If school districts want to improve the weak state of their regulations involving SROs, they need to involve the variations of the school district in their MOUs. District wide MOUs, while easy and efficient to draw up, do not involve the input of the individual school administrators that are the key to discipline within their schools. The administrators are the ones who will come into contact with the students and the law enforcement the most and experience the difficulties that everyday school administration carries. District wide administration is more concerned with the “big picture” concepts of running a school district and does not encounter students often, which is reflected in the MOUs. To the teachers, SROs, and especially students, the school district and their legal departments are vague, somewhat omnipotent organs. School districts may need to sacrifice ease and efficiency for detail and close research of the schools and their issues. Again, each individual school may not be able to execute their own MOUs, but the school district must consider the characters of their schools and react accordingly. This may be somewhat easier for South Carolina districts. South Carolina is a small state and has smaller school districts than larger states have. The smaller size of the districts could work in favor of the argument of individualized

MOUs as it could be a more attainable goal.

SRO rules and regulations must meet the different challenges of school districts as well. For example, school districts like Greenville County, which includes the urbanized area of Greenville along with rural areas, could craft two or three different MOUs to fit the needs of the students within the area. If it knows students have different disadvantages, such as exposure to certain types of crime in particular areas, its MOUs could craft roles of the SRO and school administrators to respond in a proportionate way to the students that would achieve the most favorable outcomes. SRO regulations must also provide flexible discipline strategies. Districts that have students that come from more impoverished and crime exposed areas should not be subjected to more zero-tolerance, heavy handed law enforcement that is likely used in the communities. It is undoubtedly detrimental that students are further exposed to law enforcement within their schools when they may be regularly exposed at higher rates in their community. SRO regulations should be crafted to take this into account. This does not mean that schools in impoverished or high-crime areas should be treated completely differently from schools in non-impoverished areas. However, it cannot be ignored that law enforcement may affect these students differently. SROs cannot treat the children in the school like the individuals engaged in criminal acts in their community. Children are children, not adult offenders. Although some juveniles certainly engage in criminal acts, the vast majority of juvenile crime or disorder is minor. SRO regulations and training need to institute an approach to their involvement that takes into account the specialized needs of children and bend to these needs. SRO involvement should be coupled with other behavioral strategies such as mental health treatment, community involvement, and mentoring relationships. These behavioral strategies should be clearly and confidently implemented along with the intervention of the SRO.

Second, the MOUs presented also take a formulaic approach in the way they are written. All, even the Fort Mill agreement with the private security company, contain broad language that seems ill equipped to handle the different issues of each individual school.¹⁶⁶ This broad

166. See generally, *Richland Memoranda*, *supra* note 130; *Aiken Memorandum*, *supra* note 143; *Florence Memorandum*, *supra* note 146; *Greenville Memorandum*, *supra* note 152; *Rock Hill Memorandum*, *supra* note 156; *Fort Mill Memorandum*, *supra* note 159.

language does little to clear up the intertwined intervention of law enforcement and school discipline. The regulations and MOUs permit large gaps in the roles of law enforcement and school administration that it is not surprising that a hybrid administrator-cop figure has evolved. While the state regulations do require that the language regarding the roles of SROs and their involvement in discipline be present, the *pro forma* aspect of the MOUs makes them less accessible, less effective, and less usable by the individual schools. Research shows that when MOUs take this formulaic approach, they act more like a document just executed for legal purposes and then filed away, rather than a guide to be used by administrators and law enforcement.¹⁶⁷ Authors Lisa Thureau and Johanna Wald found in interviewing several SROs, the officers often barely knew the MOU existed.¹⁶⁸

It is not hard to imagine that in many situations, administrators call on the SRO without consulting any regulations on how they are used, and the SROs answer without consulting any regulations. School administrators have a tough and complex job. They must juggle the varying issues that the school environment and the students present. When a situation presents itself, there may not be time to consult a document or wonder if the SRO can even be involved in the situation. However, executing an individualized MOU may give administrators a standard to have in mind when addressing behavioral issues. They need to know what their jurisdiction is and in which jurisdiction the SROs may intervene. If an MOU is tailored to the specific school and the issues are known by the administration at that school, a plan of resolution to behavioral issues can already be in place, and the parties can operate in the most efficient and beneficial way to the school environment and the students. If the administrators of the school and the SRO know what special issues the school faces, they should be able to subscribe their input and knowledge to the MOU. Administrators and the SROs should be required to meet and discuss these issues the school is facing and prescribe to the school district in the MOU in what ways the SRO should be involved with the issues their school is facing and when they should step back. While, of course, these prescriptions should be in compliance with the state regulations, the administrators and the

167. Thureau & Wald, *supra* note 52, at 991.

168. *Id.*

SRO will know what situations each party is in charge of and when they may collaborate to the needs and behaviors of the students.

B. Broad Definitions of “Criminal Behavior”

As previously noted, the state regulation regarding the levels of student conduct in South Carolina is problematic in its construction.¹⁶⁹ Broad definitions of criminal behavior exist, and student conduct can easily rise to high levels of disciplinary action warranting law enforcement involvement.¹⁷⁰ Regarding student behaviors, the MOUs do not address the broadness, keep vague language, and even maintain language in violation of the regulations. If read plainly, the MOUs allow the SROs to get involved in conduct they are not permitted to be involved in. The MOUs mention vague forms of conduct and even prohibited conduct for SROs to intervene in, such as “disturbing schools.” In addition, there is no mention of the levels of conduct in any of the MOUs. The MOUs just mention criminal behaviors, which are only one portion of behaviors that the SRO may get involved, as seen with the provisions of Level I behavior (lying, cheating, truancy) and Level II behavior (minor vandalism, violation of Level I behavioral contract, fighting) being able to rise to Level III behavior.¹⁷¹ If reading the documents broadly, SROs may be able to get involved in many more types of behaviors than they should. The Florence County District MOU goes so far as to note that SROs may assist until “problems” are resolved, and the Fort Mill District MOU allows their officers to get involved in “school rule violations.”¹⁷² This language goes out of the bounds set by the state regulations prohibiting SROs as school disciplinarians. The language of “problems,” “matters of concern,” and “school rule violations” could mean any number of things that does not have to do with criminal activity. The broad language of criminality will cause confusion and reliance on behalf of the school administrators. School administrators are likely aware of the levels of student conduct and generally what those levels contain. However, in practice, the SRO is likely much more involved with general matters of discipline than the regulations would prescribe. Many acts could be considered “criminal”

169. See S.C. CODE REGS. 43-279 (2017).

170. *Id.*

171. *Id.*

172. *Florence Memorandum, supra* note 146; *Fort Mill Memorandum, supra* note 159.

by school administration or cause the administrators to want SROs as back up. For example, while fighting is considered “disruptive conduct,” it may be hard for school administrators to distinguish between a small scuffle with pushing and shoving to what may be considered lower degree criminal assault and battery. Therefore, the SRO is likely to be used as tool for differentiating this type of conduct. The students involved in a small scuffle could be expelled or further punished and exposed to law enforcement in the same way as someone who committed a serious criminal act would. Criminal punishment could be prescribed for minor offenses when they may be better served by intervention by school administration. If the South Carolina MOUs want to be effective, they need to be more specific and address the levels of conduct prescribed in the wider state regulations. Administrators need to be aware that the SRO can only act in the most serious of situations.

C. Lack of School Administrator Roles

In addition to the broad references to criminality, the MOUs lack any real mention of the specific role that educators hold. The MOU, as required in the state regulation, must clearly state the roles of the SRO and educator.¹⁷³ The MOUs analyzed above make little mention of the administrator’s role aside from the provisions that the SRO cannot act as disciplinarian. The administrators are not recognized in the MOUs in specific terms of what they may and may not handle in terms of discipline. “Ordinary school discipline” or other similar language may mean a number of things. The blurring of lines with the roles of the SRO and the administrators may impact the entire disciplinary response and affect the school culture as a whole.

If the administrator roles are not clearly defined and there is this morphing of law enforcement and traditional school discipline, reliance of administrators on SROs may become apparent and eventually affect how the students view school. Students may equate any type of school discipline with law enforcement if the school administrators are not clearly visible as the main disciplinarians. Law enforcement-based school discipline may lead to a criminalized environment that creates a

173. See S.C. CODE REGS. 43-210(IV) (2019).

bevy of issues that affect student perception, academic success, and future student behavior.¹⁷⁴ More effective MOUs would specifically display or have their own section regarding the jurisdiction of the school administrators. In addition to the limits of the SROs, the administrators should have specifically and clearly defined areas they are entitled to act within. There must be more specific language, perhaps with the addition of the levels of conduct, than the simple “ordinary school discipline” phrase or, as Florence County School District puts it, “problems.”¹⁷⁵

VI. CONCLUSION

The relationship between School Resource Officers and the school districts they serve is complex. Broader issues of juvenile justice, police reform, school environment, and criminal law influence the actions of both school administrators and law enforcement officers. While many different strategies and tools have been imagined to hash out and control the harm that police presence in schools may bring, the Memorandum of Understanding has received considerable attention for its ability to define and clarify specific roles and jurisdictions school and law enforcement officials must take. South Carolina school districts, like those in many other states, are not immune from the pitfalls of trying to regulate law enforcement activity in schools. While schools in South Carolina have tried to temper the problem by instituting regulations and MOUs, several gaps exist in the language and execution of these documents that render many school districts out of compliance with state education regulations. To resolve this issue, South Carolina schools must further their efforts to delineate the roles and responsibilities of SROs and school administrators; better explore and define student conduct and its rise to criminality; and empower school administrators to remain the foremost disciplinarian and guardians of their students.

174. DAHLBERG, *supra* note 36, at 5.

175. *Florence Memorandum*, *supra* note 146.