



NATIONAL JUVENILE DEFENDER CENTER

**SUMMARY OF THE STATEMENT OF INTEREST IN
S.R. & L.G. v. KENTON COUNTY, ET AL.
U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF KENTUCKY**

United States Department of Justice, Civil Rights Division

In a case involving two elementary school children who allege that a school resource officer (SRO) violated their rights under the Fourth and 14th Amendment and Title II of the Americans with Disabilities Act (ADA) when they were handcuffed in school after exhibiting conduct arising out of their disabilities, the Department of Justice (DOJ) filed a Statement of Interest regarding the rights of children, particularly children with disabilities, in their interactions with SROs.

The Department calls for *appropriate limits* on the role and responsibilities of SROs:

SROs should not criminalize behavior that school officials could properly handle. An SRO's role should be focused on addressing and preventing serious, real, and immediate threats to the physical safety of the school and its community. SROs should not enforce the school code of conduct or engage in routine discipline of students. Further, SROs should only use law enforcement actions as a last resort and only for serious criminal conduct or when necessary to protect students and staff from a threat of immediate harm.

SROs should have clearly defined roles and specialized training. SROs and law enforcement agencies need to ensure that their responsibilities in the school setting are clearly delineated. Where it is necessary for an SRO to intervene, the officer should deploy a range of non-punitive alternatives and always select the least coercive measure. SROs should receive specialized training to work with children, especially children with disabilities, to better understand adolescent development and disability-related behavior.

The Department calls for the following *Fourth Amendment rights* of children handcuffed at school:

The Court must consider whether an objectively reasonable officer would have seized S.R. and L.G. by handcuffing them for their misbehavior. *See Graham v. Connor*, 490 U.S. 386, 398 (1989). An SRO's subjective belief that he had probable cause to arrest the children is irrelevant. Even assuming that the officer had probable cause, that alone would not make the decision to handcuff the children reasonable. The ultimate inquiry is whether the scope and character of the seizure was objectively reasonable under the totality of the circumstances. *Tennessee v. Garner*, 471 U.S. 1, 8-9 (1985).

Plaintiffs have alleged sufficient facts to state a claim that the SRO's handcuffing of S.R. and L.G. was unreasonable. In considering the reasonableness of the SRO's conduct, the Court must consider the particularized facts and circumstances, including:

- the age of the children,
- the fact that the incidents occurred at a school,
- the severity of the alleged crime(s),
- whether the children posed a safety threat,
- whether the children were actively resisting arrest,
- the children's disabilities,
- the risks of intrusion by handcuffing compared to the countervailing government interests,
- the punitive purpose of the SRO's action, and
- the appropriate role of an SRO in a school.

The Department calls for the following *Title II ADA rights* of school children:

The ADA applies to interactions between SROs and children with disabilities. An SRO, similar to all law enforcement officers, must carry out law enforcement responsibilities in a manner that complies with the anti-discrimination mandate of the ADA. *See Pennsylvania Dept. of Corrections v. Yeskey*, 524 U.S. 206, 209 (1998); *Johnson v. City of Saline*, 151 F.3d 564, 569 (6th Cir. 1998); U.S. Dep't of Justice, *Commonly Asked Questions About the Americans with Disabilities Act and Law Enforcement*, § I.2 (Apr. 4, 2006).

The ADA requires SROs to reasonably modify their practices when needed to interact with students with disabilities to avoid disability-based discrimination. 28 C.F.R. § 35.130(b)(7). The ADA's reasonable modification requirement applies to interactions between SROs and children with disabilities. The existence of probable cause to arrest an individual is independent of the obligation to make reasonable modifications to law enforcement policies, practices, or procedures where necessary to avoid disability discrimination. Examples of reasonable modifications that might be necessary include:

- Adopting a non-confrontational stance by removing the officer's hat, sitting down, and assuring the individual that he or she is heard, in light of the understanding that the officer's uniform may frighten an individual with mental illness.
- Asking an individual with mental illness questions regarding his or her basic needs, such as "what would make you feel calmer/safer, etc.?"

The ADA prohibits policies and practices that have a discriminatory effect on children with disabilities. U.S. Dep't of Justice, 28 C.F.R. Pt. 35, App. B at 688 (2015). This prohibits public entities from applying nonessential policies and practices that are neutral on their face but have the effect of discriminating based on disability.

If you have questions about this Statement of Interest or questions about how to use it to strengthen work in your community, please contact NJDC at 202.452.0010.