

School Resource Officers and Students with Disabilities: A Disproportional Connection?***Perry A. Zirkel**

Although their specific titles and definitions vary, “school resource officers” (SROs) herein generically refers to law enforcement officers assigned on a regular, rather than ad hoc, basis to public schools. As another indication of their variety within this generic scope, some SROs are direct employees of school districts, whereas others are based on arrangements with local police departments or, less frequently, as subcontractors from private security companies. It is generally agreed that SROs have a triad of functions: (a) teaching, (b) counseling/mentoring, and (c) law enforcement (e.g., Lavarello & Trump, 2001; National Association of School Resource Officers, 2012; Ryan, Katsiyannis, Counts, & Shelnut, 2018).

Achieving prominence in approximately 1990 in response to school violence (e.g., Normore, Bone, Jones, & Spell, 2015), SROs have become an increasing staple in schools throughout the country in not only urban but also suburban and rural communities (e.g., National Center on Education Statistics, 2017). Indeed, the recent Phi Delta Kappa poll (2018) revealed K–12 parents are more favorable to armed security personnel than any other school security measure.

Although with proper selection, training, compensation, and accountability within a carefully circumscribed governance policy, SROs can constitute a selectively useful part of an effective educational program, an empirical analysis of case law, which was a follow-up to an earlier and broader compilation (Cox, Sughrue, Cornelius, & Alexander, 2012), reveals that under presently prevailing policies and practices SROs in notable instances cause harm to the students whom they are charged with protecting (Zirkel, 2019). The purpose of this more specialized analysis is to systematically canvass the segment of the case law specific to students with

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disabilities, including an examination of whether determine whether this segment is disproportionately high in relation to the frequency of these students in the K–12 school population.

Professional Literature

Systematic case law analyses have revealed the disproportionate victimization of students with disabilities in the school environment in relation to bullying (e.g., Holben & Zirkel, 2018), seclusion (e.g., Bon & Zirkel, 2014), and restraints (e.g., Zirkel, 2016). However, although the aforementioned analysis of case law (Zirkel, 2019) showed the various litigation issues that have arisen specific to SROs, the special education and legal literature is thus far rather scant concerning the legal problems arising from the use of SROs specifically in relation to students with disabilities.

A few legal commentators have identified the SRO's role in the disproportionate criminalization of students with disabilities along with students of color in what has become known as the “school to prison pipeline” (e.g., Archerd, 2017; Nance, 2016; Thureau & Wald, 2009/2010; Tulman & Weck, 2009/2010). In the education literature, the recognition is also largely incidental to larger concerns. For example, paralleling the legal literature, Wilson (2013) identified SROs along with zero-tolerance policies and “criminal justice technologies” (p. 64), such as metal detectors and surveillance cameras, as the leading contributors to exclusion and criminalization of students, with disproportionate effect on students of color, with disabilities, and/or in poverty. Similarly, Nelson (2014) incidentally mentioned SROs as part of the punitive pipeline that has a significant overrepresentation of students with “educational disabilities (especially those with learning and behavioral disorders)” (p. 90). Focusing on the “significant degree of mission creep” of SROs (p. 188) toward punitive law enforcement at the expense of their education functions of teaching and mentoring, Ryan, Katsiyannis, Counts, & Shelnut (2018) pointed to the lack of adequate training as

“especially problematic when SROs interact with students with disabilities” (p. 190). Moving a step farther, as part of their detailed proposed governance document for SROs, Kim and Geronimo’s (2010) training prescription listed “children with disabilities or other special needs” (p. 35) as one of four required topics.

In the only empirical analysis in the education literature found specific to SROs and students with disabilities, May, Rice, and Minor (2012) examined the responses of 132 Kentucky SROs to the four items specific to their perceptions of special education students within a much longer mailed survey instrument. They found that on a six-category scale from strongly disagree to strongly agree, the respondents’ perceptions were more negative than positive about students with disabilities. As the leading examples, 84% of the respondents at least somewhat agreed that “some students who receive special education services used their special education status as an excuse for their problem behaviors,” and 79% at least somewhat disagreed with the statement that “students who receive special education services should receive less punitive treatment for their problem behaviors.” Moreover, although acknowledging the limitations of their research, including the state-specific sample, the researchers found that their two imprecise training-related items were not, via bivariate correlation analysis, significant predictors of any of their four perception items.

Additionally, the criminal justice literature contains an empirical analysis that addressed, as one of four questions, the effect on special education and minority students of adding SROs to the school environment. More specifically, based on a longitudinal regression analysis of U.S. Department of Education survey data from 2003–04, 2005–06, and 2007–08, Na and Gottfredson (2013) did not find the expected pattern of disproportionate impact for various measures of discipline and crime, although they acknowledged various methodological limitations for this finding. Pending more rigorous research specific to this issue, they recommended reliance on more

proven school-based interventions to reduce problem behavior.

Finally, the legal literature contributes a broad-based analysis that includes not only state laws concerning the training of SROs but court decisions specific to the interaction of SROs and students with disabilities (Shaver & Decker, 2017). However, the case coverage identifies only nine court decisions within this stated scope including two false positives. More specifically, although they properly excluded two other such cases (*J.W. v. Birmingham Board of Education*, 2015/2018; *Thomas v. City of New Orleans*, 2012), their identified decisions included the following two that were attributable to “local law enforcement officials, not SROs” (Shaver & Decker, p. 265): (a) in *Chigano v. City of Knoxville* (2012), the two SROs played only an incidental secondary role, whereas they—unlike the outside police officer who played a major role—were neither named defendants nor part of the court’s analysis of the plaintiff-student’s claims; and (b) in *C.B. v. City of Sonora* (2014), the only police officers at issue were dispatched from the local police department rather than being SROs. Based on their conclusion that “a few of these recent cases have involved SROs mistreating young students with disabilities,” Shaver and Decker recommended “comprehensive training” of SROs along with “clear delineation of” and “strict adherence to” their duties (pp. 281–282).

Method

The aforementioned Zirkel (2019) empirical examination of 208 SRO-specific court decisions from January 1, 2008 to August 31, 2018 served as the database for this more specialized analysis. As described in more detail in Zirkel (2019), the 208 cases were the result of a systematic search and selection process of the Westlaw database, including as a primary criterion that the SRO was a plaintiff, a defendant, or a decisional factor, such as a Fourth Amendment ruling in which the SRO’s actions were an express part of the court’s analysis. The potential pool of cases was limited

to the subset of 79 court decisions in which the parent, on behalf of a student, sought civil liability primarily under federal law—(a) the Fourth Amendment search and/or seizure clause, (b) the Fourteenth Amendment due process or equal protection clause, (c) the Individuals with Disabilities Education Act (IDEA, 2016) requirement for a free appropriate public education (FAPE), (d) § 504 of the Rehabilitation Act (§ 504, 2016), and/or (e) the Americans with Disabilities Act (ADA, 2016). The reason is that these written court opinions often identified whether the student had one or more disabilities. The court decisions in the other categories, including the criminal cases with a claimed evidence-excluding defense of a Fourth Amendment illegal-search or a Fifth Amendment *Miranda*-less confession and the civil cases relying exclusively on state tort law, such as negligence and assault/battery, typically did not include this information (Zirkel, 2019).

First, the author narrowed the pool of 79 court decisions to those that identified the student as having one or more disabilities. Second, for each of the resulting decisions, the author recorded the following information in addition to the full citation:

- disability status: whether the student had an individualized education program (IEP) or 504 plan along with the identified classifications or diagnoses, such as attention deficit disorder (ADD), emotional disturbance (ED), oppositional defiant disorder (ODD), or other health impairment (OHI)
- SRO action: the primary conduct of the SRO at issue in the case, such as handcuffing and/or restraint
- claim categories: designation of the overall legal basis of each adjudicated claim according to these categories (Zirkel, 2019): 4th Am.=Fourth Amendment search/seizure; 14th Am.=Fourteenth Amendment due process (DP) or equal protection (EP); IDEA or § 504/ADA; or state law, such as assault/battery (A/B) or intentional

infliction of emotional distress (IIED)

- claim category ruling (R): similarly representing the Zirkel's (2019) customized culmination of a longer line of research, the outcome in the latest available court decision of each of the aforementioned claim categories according to this scale (Zirkel, 2019): 1=conclusively in favor of the plaintiff (student); 2=inconclusive (e.g., denial of defendants' pretrial motion for dismissal or summary judgment); and 3= conclusively in favor of the defendants.
- comments: key decisional basis for or other significant feature of the ruling

The tabular analysis did not include claim category rulings in these cases that were (a) specific to actions not directly connected to those of the SRO, or (b) merely discretionary declining of the supplemental jurisdiction of federal courts for ancillary state claims. On the other hand, the outcomes included, as clarified in the comments column, rulings for both federal and state claims that addressed procedural defenses, such as failure to exhaust administrative remedies, as well as substantive defenses, such as qualified or governmental immunity.

In addition to the descriptive quantitative syntheses of these entries, summaries of a few cases served as qualitative illustrations of the particularities of the student's disabilities, the SRO's actions, and the court's analyses. The selection of these cases exemplified both the justifiable and questionable sides of this judicial intersection.

Results

Quantitative Findings

Table 1 provides a chronological chart of the court decisions within the 10.7-year period from January 1, 2008 to August 31, 2018 that met the aforementioned successive selection criteria of (a) SRO-specific conduct at issue (n=208), (b) civil liability claims primarily under federal law

(n=79), and (c) the plaintiff-student having one or more disabilities.

[SEE TABLE ON PAGE 32]

For overall frequency, a review of Table 1 reveals that the plaintiff was a student with disabilities in 22 (28%) of the 79 otherwise qualifying decisions.

For the more specific contents of Table 1, first, the jurisdictions varied, and the trajectory plateaued at approximately two per year for the second half of the period. Second, the disability classification of the student was under the IDEA in the clear majority of the cases, but the students in approximately one fourth of the cases appeared to fit within the wider, residual coverage of § 504 and the ADA. The identified diagnoses varied rather widely, extending to physical impairments; however, behavior-related conditions, such as autism, ADD, ODD, and ED predominated. Third, the SRO conduct at issue was rather severe, with some form of handcuffing being at least one of the disputed actions in 15 (68%) of the 22 cases, often in combination with some other form of physical abuse. Fourth, the most common claims, which were not the exclusive basis in approximately half of the cases, were the Fourth Amendment (n=16) and § 504 and/or the ADA (n=16). Finally, the outcomes, all in response to pretrial motions, were generally skewed in favor of the defendants; only ten cases had at least one inconclusive ruling, and a single case contained a ruling conclusively in favor of the plaintiff student with disabilities. The reasons for the skew, as noted in the Comments column, included (a) the threshold procedural defense of exhaustion, which poses the prerequisite of a due process hearing decision under the IDEA for overlapping § 504/ADA claims, and the ultimate substantive defenses of (b) qualified immunity for individual defendants in their official capacities, which requires that the applicable law be clearly settled; (c) municipal liability, which requires a directly connected policy or custom of the institutional defendant, and (d) governmental immunity for any ancillary state tort law claims, such as negligence, that the court

addressed on the merits.

Additional findings, which were not included in the Table, are as follows: (a) in the majority (57%) of the cases the plaintiff child was in the elementary or middle school grades; (b) in almost every case the child's conduct that precipitated the SRO's was connected with the child's individual disability profile; (c) in the majority of the cases, the student's conduct fit in the disorderly, not dangerous, category; and (d) in slightly less than two thirds of the cases, the SRO's actions were at least arguably questionable from a reasonable, even if not rigorously optimal, professional perspective.

Qualitative Examples

Threshold caveat. Because in all of these cases the rulings were in response to the successive pretrial motions of (a) dismissal, which is in response to the plaintiff's complaint, or (b) summary judgment, which is after the intervening phase of written interrogatories and sworn depositions, the "facts" are only allegations construed in the light most favorable to the party who opposed the motion. Nevertheless, these facts tend to be more objective than the headlines typified in media reports of the initial filing of the lawsuit, and, most significantly, they are accepted as true for the purpose of the district-skewed rulings reported in Table 1. Moreover, with the advent of cellphone, school, and—more recently—SRO-body cameras and detailed depositions, in some of these cases the SRO's actions are either undisputed or, in the courts' carefully considered and impartial judgment, not constituting a genuine issue of material fact. Finally, although ultimately subject to the civil trial standard of preponderance of the evidence rather than the criminal standard of being beyond a reasonable doubt, the allegations are accepted as true for the purpose of the pretrial rulings in these cases. With this caveat, the following summaries illustrate the range of SRO actions and judicial rulings.

Justifiable side. On the one extreme, *E.C. v. County of Suffolk* (2013) represents the use of the SRO within the approximately reasonable range of a last resort in a student with disabilities' situation of danger to self or others. In this case, the student was eleven years old, had a height of at least five feet, and weighed 156 pounds. He had an IEP based on severe cognitive and developmental delays, speech and language impairments, and a medical condition that required both a feeding tube and a chest medi-port. His placement was a life skills class in a middle school. While on the playground for adaptive physical education class, he began throwing rocks. In response to the teacher's directions to stop doing so, he began running and yelling in an agitated state. When a second employee approached him, he assumed a boxing stance and started running and swinging at him. The two adults held his arms, but he screamed, kicked, and pulled them along with him. When they let go, he tried to swing at others on the playground. They again held him and managed to get him seated on a sandy area, but he continued to thrash, attempting to head butt and bite them despite the calming and deescalating attempts of the teacher and the school psychologist. The SRO, whom the principal summoned to the scene, handcuffed the student's wrists behind his back and held his shoulders to prevent him from banging his head on nearby railroad ties. When the student's mother, whom the principal also had summoned, arrived five minutes later, the SRO removed the handcuffs, and his mother was able to calm the student after he hit himself in the head.

In response to the parents' Fourth and Fourteenth Amendment claims, the federal district court granted the summary judgment motions of the individual defendants, the district, and the county. The court dismissed the ADA claim as beyond its jurisdiction because the parents had not exhausted the prerequisite of an impartial hearing under the overlapping IDEA. Upon appeal, the Second Circuit affirmed, concluding:

At bottom, resolution of most of these claims turns on a determination of whether the seizure of E.C. was reasonable—that is, justified at its

inception and reasonable in scope. . . . On these facts, which are not the subject of genuine dispute, the minimal amount of force that was used to seize E.C. for his safety and the safety of those around him was, as a matter of law, reasonable under the circumstances then existing and apparent. (p. 31).

Questionable Side

On the other side, three cases represent much more clearly questionable SRO conduct in relation to students with disabilities. In *Travis v. Deshiel* (2011), the student was a high school female with a kidney disorder that had frequent urination at one of its symptoms. The Philadelphia School District recognized the student's disability status, presumably via a 504 plan. The specified accommodation entitled her to a restroom pass. On the day in question, the teacher excused her to go to the restroom, although not providing her with the pass document. According to the student, the SRO and another adult blocked her path to the restroom and verbally harassed her. Hearing them, the safety manager came out of her office, and the three of them allegedly shoved her into that office, locking the door. When she told them that she needed to use the restroom because of her medical condition, they refused. Instead, according to her account, the SRO handcuffed her to a wooden bench and slammed her face on the cement floor, causing her to urinate on herself and on the floor. She alleged that he then dragged her by her handcuffs through the urine and, in the presence of the others, rubbed his pubic area in her face while making lewd remarks. He then took a photo of her with his cellphone and refused her repeated requests to exit the locked room to seek medical help and a change of clothes. When city police officers eventually arrived and the student asked for medical attention, the SRO and his manager asserted that she was faking. The police arrested and processed her. Upon her release when her father posted bail, the hospital treated her for contusions and cervical strain.

Her father subsequently filed a civil rights suit in federal court, which included various

ancillary state law claims, such as intentional infliction of emotional distress, false imprisonment, and negligence. Leaving the federal claims for subsequent disposition, the court granted the district's motion for dismissal of the state law claims because none of them fit in the exceptions to governmental immunity in Pennsylvania.

A pair of more recent cases provides additional examples of clearly questionable SRO conduct. In *S.R. v. Kenton County Sheriff's Office* (2017), the plaintiffs were two unrelated elementary school students—(a) an eight-year-old boy who weighed 54 pounds and did not have an IEP or 504 plan at the time of the incident although subsequently identified as eligible under § 504, and (b) a nine-year-old girl who weighed 56 pounds and had a 504 plan for ADD at the time of her incident with the SRO.

For the first child, the assistant principal summoned the SRO after he was out of control and an attempt to contact his parent was unsuccessful. At the principal's request, the SRO escorted the boy to and from the restroom. Upon return to the administration's office, he directed the boy to sit down. Instead, the boy swung his elbow at the SRO, which the SRO easily blocked. Next, the assistant principal's videotape revealed that the SRO placed handcuffs behind the child's back above his elbows, with a very tight connecting chain. On the video, the child can be heard saying: "Oh, God. Ow, that hurts." When the child's mother arrived 15 minutes later, the SRO removed the handcuffs. A month later, the parent requested an evaluation, which eventually resulted in a 504 plan based on diagnoses of ADD and PTSD.

For the second child, during the first month of the fourth grade, the SRO learned of her problems with behavioral control and their connection to her mother's failure to make sure she took her prescribed ADD medication. During the second month, the child again lost control in the classroom, causing the principal and assistant principal to escort her, with difficulty, to the "calm

room.” She continued to scratch, kick, hit, blow snot, and attempt to bite them. After unsuccessfully trying to contact the child’s mother, they summoned the SRO. He first tried de-escalation techniques, but when she directed her assaultive actions at him, he handcuffed her. When she did not calm down, he called for an ambulance, and removed the handcuffs when it arrived. Almost three weeks later, the child arrived at school and began wandering into unsupervised areas despite the principal’s repeated instructions. She ran away from the principal, and when the SRO tried to re-direct her to the assigned waiting area for the arriving children, she tried to push past and scratch him. When the SRO moved her into a nearby small room, her aggressive behavior escalated. After holding and warning her did not calm her, he handcuffed her behind her back above her elbows. The school summoned the child’s mother, who alleged that the child was on her knees when she arrived and that the SRO was holding her arms up behind and above her head. Not long thereafter the school obtained the mother’s consent for an IDEA evaluation, resulting in an IEP for the child.

Subsequently, the mothers of the two children jointly filed a civil rights suit in federal court against the SRO and his employer. Both defendants moved for summary judgment. For the Fourth Amendment claim, the court granted the SRO’s motion based on a two-step analysis: (a) his seizure was unreasonably excessive in light of the age and stature of the two children and the method of handcuffing, but (b) qualified immunity protected him because prior case law had not clearly established this legal conclusion for the applicable jurisdiction, which was the Sixth Circuit. In contrast, the court granted the parent’s motion for summary judgment against the county because the pretrial depositions of the sheriff and his supervisory subordinate undisputedly showed that elbow-cuffing of students was an accepted practice among their SROs, thus meeting the policy or custom standard for municipal liability. The sheriff’s office reportedly settled the claim for \$337,000 (Samuels, 2018). For the ADA claims, the court ruled conclusively in favor of both

defendants because there was no evidence that (a) they knew that either child met the applicable criteria for disability, and (b) the children's behavior was a manifestation of their disability.

As a final example, *Meekins v. Cleveland County Board of Education* (2017) is a case in North Carolina concerning a 15-year-old female student with an IEP for autism. Her IEP included a behavior intervention plan that explicitly provided for (a) calling her mother rather than restraining her, (b) resorting to the SRO only if she was in danger, and (c) if restraints were necessary for an emergency, no males were to be involved. Her mother also made clear to the school representatives that her daughter was afraid of police and would run away from the SRO.

On the day in question, the student returned to school after two days of absence due to illness, and her mother told the special education teacher to call her if her daughter started to feel unwell. After experiencing difficulty with her computer tablet's passcode, the student asked for permission to go to the front office for assistance with calling home, because she did not feel well. The special education teacher refused, insisting that she needed to memorize her mother's telephone number before having access to the phone in the adjoining classroom. Frustrated, the student tried to exit via the doors of each of the two classrooms, but the teachers' blocked her and summoned the assistant principal, who recruited the SRO to join him.

When the assistant principal and SRO, who were both males, replaced the teachers to block the student, she told them that she had permission to call her mother. The SRO reached for her, she tried to run away, and he shoved her into another room so hard that she fell down. When she tried to get up, he pushed her back down and tried to handcuff her. When she resisted, the SRO punched her in the face repeatedly while holding first her neck and then her hair. She bit his hand in an effort to escape, whereupon he administered pepper spray and punched her again. Upon the assistant principal's order to stand up, she complied, but the SRO slung her across the room by her hair and

pepper sprayed her a second time.

When paramedics arrived in an ambulance, they found the student handcuffed, bleeding, blinded, and hyperventilating. Her resulting physical injuries included contusions, acid chemical burns, acute headaches, and bald spots where her hair had been ripped out. Her accompanying emotional injuries included ongoing nightmares, a 60-pound weight gain, hallucinations, panic attacks, and suicidal ideation. Based on diagnoses of PTSD and related disorders, she was admitted for psychiatric hospitalization. The six school employees who were present all knew or had reason to know of her disability and her IEP. They took no action to stop the SRO's attack, yet none received any discipline.

The student's mother filed suit on her behalf in federal court, including claims under the Fourth Amendment and § 504/ADA as well as ancillary state tort law. In response, the school defendants' moved for dismissal. For the Fourth Amendment claim, the court ruled in the defendants' favor because the unreasonable force was attributable to the SRO and his county employer, which were the subject of a pending companion case. For the § 504/ADA claim, the court granted the dismissal for failure to exhaust the due process hearing procedure under the overlapping IDEA; this outcome was inconclusive depending on any further proceedings at the hearing and, if then appealed, judicial level. For the claims against the school employees for negligence and negligent infliction of emotional distress based on their failure to intervene, the court also granted dismissal, although it was not clear whether the outcome was conclusive based on governmental immunity in North Carolina or inconclusive based on leaving open the option of state court proceedings.

Discussion

This analysis is limited to "published" court decisions in the current broad meaning of this term (including those with only "WL" citations) and then only within selection criteria that are

inevitably not precise, bright lines. For example, the scope is narrower than not only the larger segment of the litigation iceberg that contains not only unpublished decisions and settled or pending suits but also the incidents that for various reasons were not subject to litigation. Similarly, an occasional case (e.g., *K.J. v. Egg Harbor Regional High School District*) was marginally within the selection criteria, and some of the court opinions (e.g. *Rivera v. New York City Board of Education*) were unspecific or incomplete with regard to the selected variables.

Nevertheless, this case sampling on both a quantitative and qualitative basis is significant for more than one reason. First, these court rulings provide an organic framework for the disposition of future cases under the adjudicative doctrine of precedent (e.g., Dobbins, 2010). Second, when considered in tandem with the related professional literature, the findings contribute to greater awareness and assessment of the larger issue of the vulnerability of students with disabilities to the disparate adverse impact of governmental actions that are intended to provide for safe and effective education. For example, even after eliminating marginal cases, the frequency of court decisions is more than twice the number that Shaver and Decker (2017) identified for the same period, thereby extending the foundation for corrective action.

Overall Disproportionality

The first and foremost finding of this analysis is that students with disabilities account for a disproportionately high share of the published court decisions addressing civil rights liability claims arising from the actions of SROs. More specifically, the proportion of these cases where the plaintiff child is a student with disability was approximately 28%; yet, the corresponding proportion for students with disabilities in the overall school population during this period averaged approximately 13% (National Center for Education Statistics, 2018; Zirkel & Huang, 2018). These figures are reasonable estimates even though not exactly precise. For example, one of the 22

court cases, *J.V. v. Albuquerque Public Schools*, appears twice in Table I due to the separability in years and judicial levels of its claim category rulings; yet, as the Table's comments column and notes indicate, other decisions represent corresponding under-counts to the extent of not including separable earlier decisions (*Salyer v. Hollidaysburg Area School District*) or pending rulings (*Hoskins v. Cumberland County Board of Education*, *Meekins v. Cleveland County Board of Education*; *Rivera v. New York City Board of Education*; *Travis v. Deshiel*).

One interpretation of this almost 2:1 disproportionality is attribution to students with disabilities professedly accounting for twice as much SRO-triggering unsafe conduct as do other students. However, to whatever extent students with disabilities account for more such conduct, the two significant intervening variables are (a) the minimum legal obligation and more rigorous professional norm to provide appropriate special education and proactive individualized steps, such as functional behavioral assessments (FBAs) and behavior intervention plans (BIPs), to address such conduct in more positive and less restrictive ways, and (b) the overlapping tendency, as evident in an objective review of these cases and the related literature (e.g., Theriot & Cuellar, 2016), for punitive SRO actions, such as arrests, to be triggered by relatively minor, allegedly "disorderly" student conduct.

An alternate interpretation is to attribute the disparity to the purported propensity of parents of students with disabilities to pursue litigation. However, the availability of an impartial administrative adjudication under the IDEA and § 504, although less imposing than court proceedings, is more likely to ameliorate than accentuate judicial action for two reasons. First, these earlier and alternate means of dispute resolution, along with the corresponding mechanisms of complaint investigations via the state education agency under the IDEA and the federal Office for Civil Rights under § 504, serve to filter out a substantial proportion of the claims under these

disability-specific laws. Second, the IDEA requirement to exhaust its impartial hearing avenue as a prerequisite for not only IDEA claims but also any alternate, including but not limited to § 504, claims that concern the disability-specific free appropriate public education (FAPE) obligation (*Fry v. Napoleon Community Schools*, 2017).

Thus, although warranting and pending more extensive research, the more likely interpretation, particularly in light of the aforementioned May, Rice, and Minor (2012) findings, is that SROs and the school systems that use them are not sufficiently prudent and proactive in addressing the behaviors of students with disabilities. Unless and until the courts develop a more sensitive and protective posture in these cases, professional norms warrant a more preeminent and prevailing position. These norms apply to systemic alternatives, such as such as restorative justice (e.g., Archerd, 2017; Wilson, 2013) and multi-tiered system of positive behavioral interventions and supports (e.g., Nelson, 2014). More significant in light of the individualized hallmark for students with disabilities, these norms include child-specific manifestation determinations and FBAs-BIPs that go well beyond the legal minimum of disciplinary changes in placement (e.g., Collins & Zirkel, 2016).

Regardless of the district-deferential application of the rather gross judicial standards for federal civil rights claims and the similarly governmentally-skewed ancillary state tort claims, the Table entries for “SRO actions,” such as the handcuffing of a kindergarten child with disabilities for a temper tantrum (*Rivera v. New York City Board of Education*) and tasing a middle school child with autism who eloped in the wake of his documented “shutting down” behavior in class (*De Gutierrez v. Albuquerque Public Schools*), flagrantly conflict with professional best practices. The “questionable side” qualitative examples make the normative inexcusability all the more clear, such as handcuffing and other SRO abuse of a female high school student for a manifestation of her

kidney disorder (*Travis v. Deshiel*) and pepper spraying, punching, and other abusive actions against a female high school student who was not allowed to call her parent because she had not memorized the telephone number (*Meekins v. Cleveland County Board of Education*).

Subsidiary Findings

The other findings that merit discussion arise largely from each of the successive columns in Table 1. The final one, which concerns the disability connection, is only partially based on the final, comments column, extending more generally as a significant overall issue that merits more extensive investigation and consideration.

Demographic distribution. The first subsidiary cluster of findings, which is based on the content of the “Year/Court” and “Disability Status” columns of Table 1, reflect a diversity of jurisdictions and a skew toward behavioral diagnoses. The jurisdictional diversity aligns with the results of the broader coverage of the springboard analysis (Zirkel, 2019) and its overlapping predecessor compilation (Cox, Sughrue, Cornelius, & Alexander, 2012), although the cluster of five cases all from Albuquerque is curious. The predominance of autism, ED, and OHI (ADD) similarly aligns with the distributional findings of the aforementioned disability-specific analyses for bullying, seclusion, and restraint, but these cases extend more notably to the residual coverage of § 504 and perhaps also the child-find category under the IDEA or § 504, which provides disciplinary protection for students the district had reason to identify as eligible (e.g., *Hoskins v. Cumberland County Board of Education*).

The qualitative analysis, specifically the *S.R. v. Kenton County Sheriff's Office* case, illustrates the less than careful judicial approach to students in the § 504 and child find categories. It is undisputed that the female child had a 504 plan and a child-find analysis for the second child would require a determination of when the district first had reasonable suspicion of § 504 (or IDEA)

eligibility (e.g., Zirkel, 2014). More specifically, as a federal court made clear, “In establishing a [§ 504 child find] claim, a plaintiff must demonstrate that the defendants knew or should have known about the disability” (*D.G. v. Somerset Hills School District*, 2008, p. 496). Instead, the *S.R.* court’s rather cursory § 504 analysis relied on the SRO not having actual knowledge of either child’s disability, which does not address whether he should have known of their status. Arguably, the difference may be attributable to the defendants being limited to the SRO and his employer, which in this case was not the district. Nevertheless, to the likely extent the district relied on the Family Educational Rights and Privacy Act (FERPA) for not sharing the disability status of these students, this rationale is not necessarily legally justified. The accurate answer as to whether FERPA prohibits this sharing is “it depends.” In addition to its provision recognizing law enforcement units of school districts (§ 99.8), the FERPA regulations (2018) allow for the district’s disclosure not only to employees but also individuals to whom the district has “outsourced institutional functions” if these employees or other individuals are “determined to have legitimate educational interests” (§ 99.31[a][1]). In light of (a) the aforementioned general understanding that the SRO’s role integrally includes educational functions regardless of whether the district is the employer and (b) the quantitative as well as qualitative findings of the 22 cases, is it not in the legitimate educational interests of both the student and the district to take the child’s individual disability profile into consideration for effective fulfillment of the SRO’s role?

SRO actions. The next column of the Table reveals that the SRO actions in these cases are predominantly the same responses that non-school police officers accord to adults engaged in apparent criminal conduct, primarily consisting of the use of handcuffs but extending to the use of chokeholds, pepper spray, and tasers; however, compared to the SRO cases for students generally, these severe measures were disproportionately more frequent for students with disabilities (Zirkel,

2019). Additionally, the qualitative case analyses illustrate the SROs gravitational pull to such extreme measures for students with disabilities that may be engaging in behaviors that were not only direct symptoms of their individual impairments but also did not amount to clearly criminal conduct. Moreover, the physical abuse that the SROs delivered was largely disproportional to the age and size of these students and contributed to escalation rather than mitigation of the child's initial behaviors.

Claims and rulings. Consistent with the broader SRO case law (Zirkel, 2019), the primary constitutional bases of the civil rights liability claims were Fourth Amendment excessive force and, to a lesser extent, Fourteenth Amendment substantive due process. More pronounced in its frequency, in light of the disability focus of these cases, was § 504 along with its sister statute, the ADA. In contrast, the IDEA is an infrequent basis in terms of federal legislation, likely due primarily to the unavailability of the remedy of money damages. A second reason is that SRO actions are often not central to the IDEA's central obligation of FAPE. For example, in *P.K.W.G. v. Independent School District No. 11* (2008), the court rather easily disposed of the parents' IDEA SRO-related claim based on their acknowledgement that was only incidental to FAPE. Other reasons for the relative infrequency are that the IDEA regulations (2016) (a) only require disciplinary protections, including manifestation determinations, for exclusions for more than ten consecutive days or the equivalent pattern (§§ 300.530 and 300.536); and (b) allow for referrals to juvenile justice authorities regardless of the disciplinary protections (§300.535). Finally, the state tort claims were only ancillary to the federal bases, thus subject to the courts' discretionary jurisdiction and only infrequently addressed on the merits.

The rulings for each of these claim categories were skewed in favor of the defendants for several reasons, including (a) the steep uphill standards for substantive claims under the Fourth

Amendment and Fourteenth Amendment; (b) the corresponding high hurdle of deliberate indifference or bad faith/gross misjudgment for § 504/ADA claims; (c) the rather broad-based defense of qualified immunity for individual defendants in relation to federal civil rights claims and governmental/official immunity for defendants in relation to state liability claims; (d) the aforementioned policy/custom requirement for municipal liability; and (e) judicial deference in applying these standards and defenses in favor of school authorities and related defendants based on not only their specialized administrative expertise but also the widespread perception of exploding school violence.

For the conclusive outcomes of Constitution-based claims, the Tenth Circuit's rulings in *Scott v. City of Albuquerque* (2016) illustrate the gross judicial, as compared to nuanced professional, perspective. Upon encountering a middle school student with bipolar disorder and oppositional defiant disorder in the hallway apparently skipping class, the SRO grabbed and handcuffed him, marched him down the hall in front of other students when the bell rang, and mockingly interrogated him in his office for an hour despite repeated complaints about the pain the handcuffs caused. The student's wrists were bruised and swollen for at least a week afterwards. First, although finding that the SRO's arrest of the student lacked the requisite cause under the Fourth Amendment, the court ruled in the SRO's favor based on qualified immunity, concluding that the case law at the time was not sufficiently established to provide the SRO with clear notice of that his conduct was unlawful. Second, in response to the Fourth Amendment excessive-force claim, the Tenth Circuit relied on adult criminal cases—without any adjustment for not only the school context but also the disability status—to conclude that such physical injuries and the accompanying humiliation of custodial arrest are de minimis for constitutional purposes. Finally, for the alternative failure-to-train claim under the Fourth Amendment, the court concluded: “[The

plaintiff] has not demonstrated that the alleged policies that he identified—failing to train SROs placed in special-education school settings and giving them free rein in arresting special-needs children—. . . were the ‘moving force’ behind the [Fourth Amendment arrest] violation” (p. 883).

The single ruling conclusively in favor of the plaintiff parents, as the aforementioned analysis of *S.R. v. Kenton County Sheriff’s Office* (2017) seems to suggest, is attributable to the unusual, severe form of handcuffing and the equally unusual undisputed fact that the agency’s customary practice and thus de facto policy was to have SROs use such elbow-cuffing. Yet, the corresponding claim against the SRO was conclusively in his favor based on qualified immunity. In the future, the application of qualified immunity in such circumstances is less likely based on the settling of the law in this and related cases in but only for this generally unaccepted procedure for SROs.

The inconclusive rulings serve as a partial buffer for the outcomes skew in favor of the defendants. More specifically, they account for 36% of all 45 rulings. Moreover, when calculated based on the conflated unit of analysis of the case rather than claim category, they account for 45% of the 22 cases due to the multiple claim category rulings in some cases. The broader springboard analysis of SRO litigation (Zirkel, 2019) and empirical analyses of related disability issues, such as bullying (e.g., Holben & Zirkel, 2018), seclusion (e.g., Bon & Zirkel, 2014), and restraints (e.g., Zirkel, 2016), also revealed the multiple-claim litigation strategy along with the notable proportions of inconclusive rulings. Theoretically, such rulings upon further proceedings would not necessarily result in conclusive judicial outcomes in favor of either party. The limited research to date suggests that the majority but not at all the entirety of such cases end in settlement. More specifically, Zirkel and Holben’s (2017) follow-up analysis of inconclusive rulings in bullying cases found that settlement was the ultimate outcome in almost two thirds of the cases, but the extent of plaintiff

success in settlements was difficult to ascertain, and the remainder ended almost entirely in the defendants' favor via abandonment/withdrawal or conclusive rulings.

Disability connection. As both the quantitative and qualitative analyses signal, the concept of the disability connection merits special attention. This concept is a core commonality for the discrimination standards of the ADA (§ 12132 - "by reason of ... disability") and § 504 (§ 794[a] - "solely by reason of . . . disability"). Derived therefrom (Dagley, McGuire, & Evans, 1994), it is also the basis for the IDEA's disciplinary provision of manifestation determination (§ 1415[k][1][E] - "caused by, or had a direct and substantial relationship, to the child's disability").

The application of this core concept merits differentiation between legal requirements and professional recommendations. As a matter of legal requirements, the concept thus far has gained limited traction in more than one way. First, although the IDEA manifestation provision makes clear that the disability connection applies to the student's "conduct in question" (§ 1415[k][1][E]), not the school's adverse action to this conduct, it only applies to disciplinary changes in placement. Second, the courts' interpretation of the broader causal requirement under § 504 and/or the ADA has been fatally stingy. The primary way is by treating the adverse action as mutually exclusive from the child's conduct. For example, in summarily rejecting the parents' § 504 claim in *S.R.*, the court concluded that "no reasonable jury could find that [the SRO's] handcuffing of [the two students] would not have occurred 'but for' their alleged disabilities, as opposed to their behavior on the days in question" (p. 837). Similarly, the series of three Tenth Circuit cases all focused their § 504/ADA causal analysis on the connection between the SRO's action and the child's conduct to the exclusion of the connection between the child's disability and the child's conduct (*Scott v. City of Albuquerque*, 2017; *J.V. v. Albuquerque Public Schools*, 2016; *J.H. v. Bernalillo County*, 2016). These Tenth Circuit decisions additionally illustrate the court's generally very narrow and

defendant-friendly view of the alternate § 504/ADA failure-to-accommodate and failure-to-train claims.

Implications

Limitations

Although representing a notable advance beyond the limited previous research concerning the SRO-disability case law, this analysis is still only one step in a warranted line of more extensive and intensive analysis. Not only do court decisions represent a skewed sample that inevitably accentuates the negative side of SRO actions in relation to students with disabilities, but also the quantitative and qualitative labels here are not to be confused with the more refined meanings of quantitative and qualitative research. This exploratory analysis is intended to stimulate follow-up analyses that included these refined methodologies.

Moreover, the judicial rulings specific to civil liability are distinct from ethical best practice. Thus, the final message is focused on this higher, professional level. For the broader constituency of practitioners and policymakers, the author offers selective and specific recommendations and conclusions.

Recommendations

The recommendations here are for professional proactivity in a few priority areas. First, on a collective basis through professional organizations and on an individual basis as concerned citizens, special education personnel should lobby for federal and state laws that provide for improved selection, compensation, training, and accountability of SROs not only generally but also specifically in relation to students with disabilities. Second, as expert witnesses and consultants to parent attorneys, special education personnel should help advocate for more nuanced judicial interpretations of § 504/ADA and other claim categories in litigation at the intersection of SROs and

students with disabilities. Third, promoting collaboration between SRO organizations, such as NASRO, and special education organizations, such as CASE, CEC, and NASDSE, special education personnel should develop and implement more specific and effective training materials and programs for SROs. Unlike recommendations limited to disability-specific training focused on legal requirements (e.g., NASRO, 2015), the training should extend to professional best practices for SRO actions vis-à-vis students with disabilities. As examples, it should include “recognizing manifestations of students’ disabilities” (Thurau and Wald’s, 2009/2010) p. 1019) and “subconscious (or implicit) bias . . . that can disproportionately impact . . . youth with disabilities” (California Police Foundation’s, 2016, p. 6). In contrast to the aforementioned findings of May, Rice, and Minor (2012), the training must attune SROs to the disability connection. As Merkwae (2015) observed: “Depending on the nature of the student’s disability, [SRO] questioning or orders may be misunderstood, physical searches or seizures may provoke a violent response, and confrontations . . . may become dangerous without the use of proper de-escalation techniques by SROs or other staff members” (p. 172). Finally, training will not be effective unless it is part of a multi-pronged approach that includes the aforementioned areas of improvement that starts with selection of SROs and that puts a priority on quality rather than quantity (e.g., Dear Colleague Letter, 2016).

Conclusion

SRO’s, as the acronym emphasizes, are intended as a resource for more safe and effective schools. This resource warrants reallocation to emphasize an effective rather than extensive and cadre of SROs who (a) are enculturated in education generally and special education specifically, and (b) serve only as a last resort upon exhaustion of positive, proactive best practices for students generally and for students with disabilities specifically. This least restrictive alternative approach

extends beyond SROs to the use of other purported safety procedures, such as seclusion and restraints, with a corresponding emphasis on professional proactivity. Moreover, although sharing the invidious effects of the prison-to-pipeline syndrome, students with disabilities merit special attention. For example, both inside and outside analyses of the U.S. Department of Education 2011-2012 data found that the rate of referral to law enforcement agencies was even more disproportionately high for students with disabilities than for black students (U.S. Department of Education, 2014; Zubak-Skees & Wieder, 2015). The problems are complex, with similarities for various vulnerable groups, but also with specialized differences specific to students with disabilities that have not been sufficiently addressed. For example, the cursory treatment of the disability connection not only contributes to the entry side of the school-to-prison pipeline but also often accounts for further harm at its prosecution (e.g., *Commonwealth v. Geordi G.*, 2018) and incarceration (e.g., U.S. Department of Education, 2017) stages.

Without the recommended professional proactivity, this exploratory empirical analysis of the court decisions demonstrates that in too many cases the intersection between SROs and students with disabilities may result in the opposite of the intended result. As the mother of the SRO-handcuffed child with autism observed: “It doesn’t make sense that somebody who was supposed to protect our children [ends up] hurting them” (ABC News Video, 2018).

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Table. Federal Civil Liability Case Law at the Intersection of SROs with Students with Disabilities

Case Name	Citation	Court/Year	Disability Status	SRO Action(s)	Claim Categories	R	Comments	
<i>P.K.W.G. v. Indep. Sch. Dist. No. 11</i>	2008 WL 2405818	D. Minn. 2008	IEP: ED (including ADD, ODD)	attempted handcuff, arrest	IDEA (FAPE)	3	rejecting alleged over-use	
<i>J.D.P. v. Cherokee Cty. Sch. Dist.</i>	735 F. Supp. 2d 1348	N.D. Ga. 2010	IEP: autism, ID, ADD/ODD	handcuff, restraint	§ 504/ADA	3	lack of proof of inadequate training and of student harm	
<i>Travis v. Deshiel</i>	832 F. Supp. 2d 449	E.D. Pa. 2011	504: kidney disorder	handcuff, phys. abuse	tort claims (e.g., IIED)	3	gov'tal immunity (but various remaining fed. claims)	
<i>Rivera v. N.Y.C. Bd. of Educ.</i>	2012 WL 1049996	N.Y. Sup. Ct. 2012	undisclosed (kindergartener)	handcuff	A/B, false arrest	2	residual IDEA/ADA claims – noted as subject to exhaustion	
					negl., IIED	3		
<i>E.C. v. Cty. of Suffolk</i>	514 F. App'x 28	2d Cir. 2013	IEP: multiple disabilities	handcuff, restraint	4 th Am.	3	failure to exhaust	
					14 th Am. EP/DP	3		
					§ 504/ADA	2		
<i>J.V. v. Sanchez (“I”)^a</i>	2013 WL 12334144	D.N.M. 2013	IEP: autism	handcuff	4 th Am.	3	qualified immunity	
<i>Thomas v. Barze</i>	57 F. Supp. 3d 1040	D. Minn. 2014	IEP: ED	chokehold	4 th Am.	2	not qualified immunity	
<i>J.G. v. Lingle</i>	2014 WL 4273269	W.D. Wis. 2014	IEP: ED+	takedown, arrest	4 th Am.	2	SRO-security camera video mun. liability (no policy)	
						3		
<i>Hoskins v. Cumberland Cty. Bd. of Educ.</i>	2014 WL 7238621	M.D. Tenn. 2014	504?: anxiety, behavior	handcuff	4 th Am.	3	qualified immunity	
					14 th Am. DP	3		
					§ 504/ADA	3		residual IDEA claim-exhaust
<i>Avery v. City of Hoover</i>	2015 WL 4411765	N.D. Ala. 2015	IEP: dyslexia+ various phys. disabilities	handcuff, phys. abuse, arrest	4 th Am.	2	not qual. immunity + potential mun. liability	
					§ 504/ADA	2		failure to exhaust
					A/B	2		not gov'tal immunity
<i>K.J. v. Greater Egg Harbor Reg'l H.S. Dist.</i>	2015 WL 5039460	D.N.J. 2015	IEP: OHI (ADD + Asperger)	search	4 th Am.	3	reasonable basis and scope (3 days after Newtown shooting)	
<i>J.H. v. Bernalillo Cty.</i>	806 F.3d 1255	10th Cir. 2015	IEP: ED	handcuff, arrest	4 th Am.	3	including lack of causation	
					14 th Am. DP	3		
					ADA	3		
<i>Castaneda v. City of Albuquerque</i>	276 F. Supp. 3d 1152	D.N.M. 2016	IEP: OHI (ADD)	handcuff, arrest	4 th Am.	2	probable cause? no qual. immunity (arrest only)	
					14 th Am. DP	3		

					ADA	3	not eligible (narrow interp.)
					A/B, false impr.	2	not briefed-not ripe yet
					negl. trg./supv.	3	
					state const.	2	not ripe
<i>J.V. v. Albuquerque Pub. Sch. (“II”)</i> ^a	813 F.3d 1289	10th Cir. 2016	SAME AS <i>J.V. “I”</i> ABOVE	SAME AS <i>J.V. “I”</i>	ADA	3	lack of causation+ exclusion+deliberate indiff.
<i>Lewis v. Scott Cty. Pub. Sch. Bd. of Educ.</i>	2016 WL 1611384	W.D. Va. 2016	IEP: multiple disabilities	takedown	IDEA→§ 504	2	possible amended complaint
					negl.	3	gov’tal immunity
<i>Hofschneider v. City of Vancouver</i>	182 F. Supp. 3d 1145	W.D. Wash. 2016	IEP: autism+	handcuff	4 th Am.	3	qual. immunity
					§ 504/ADA	2	
<i>Love v. Penn-Harris-Madison Sch. Corp.</i>	2016 WL 3442252	N.D. Ind. 2016	IEP: ED?	grab/shove/ kick?	4 th Am.	3	scuffle, not seizure - videotape
<i>Scott v. City of Albuquerque</i>	711 F. App’x 871	10th Cir. 2017	IEP (and 504): bipolar, ODD	handcuff, arrest	4 th Am.	3	qual. immunity, mun. liability
					ADA	3	rejects manifestation determ.
<i>S.R. v. Kenton Cty. Sheriff’s Office</i>	302 F. Supp. 3d 821	E.D. Ky. 2017	1) 504: ADD 2) pre-504:ADD, PTSD	elbowcuff ” (2X)	4 th Am.	3	qual. immunity
					ADA	1	municipal liability
					ADA	3	lack of knowledge and causation
<i>Meekins v. Cleveland Cty. Bd. of Educ.</i>	2018 WL 2326129, <i>adopted</i> , 2018 WL 2325201	W.D.N.C. 2018	IEP: autism+	handcuff, punch, pepper spray	4 th Am.	3	municipal liability ^b
					§ 504 (FAPE)	2	failure to exhaust
					negl., NIED	3	gov’tal. immunity (or “2” via alternative of declining ancillary jurisdiction)
<i>Salyer v. Hollidaysburg Area Sch. Dist.</i>	2018 WL 3579838	W.D. Pa. 2018	IEP: autism	tackle	4 th Am.	3	
					A/B, false impr.	3	same in 2016 decision for the other tort claims
<i>De Gutierrez v. Albuquerque Pub. Sch.</i>	2018 WL 3647208	D.N.M. 2018	IEP: autism	taser	4 th Am.	2	failure in training of SROs
					negl. trg./supv.	2	SAME

Note. R = ruling; ^aDesignating two successive decisions within the same case addressing separate claims; ^bAdditionally referencing an as yet undecided (and thus inconclusive) separate companion case against SRO and his employer referenced in this decision.