

## Questioning Youth at School: When is it a Custodial Interrogation?

When does questioning of a middle school student by the principal and in the presence of the school resource officer (SRO) constitute a custodial interrogation? The Court of Appeals of North Carolina issued a decision last week, [In re D.A.H.](#) \_\_\_ N.C. App. \_\_\_, 2021-NCCOA-135 (April 20, 2021), that details the legal analysis necessary to answer this question. The decision reviews the unique characteristics and law related to schoolhouse questioning and identifies seven factors most relevant to determining whether a juvenile is in custody and three factors most relevant to determining whether questioning is an interrogation. The application of this analysis to the facts of the case offers an important takeaway—the legal analysis must focus on an objective reasonable child standard and not on a particular child’s subjective familiarity with an SRO who is regularly present in the school environment.

### The Facts in D.A.H.

The respondent in D.A.H. was a 13-year-old student, called Deacon in the opinion, who was implicated in selling marijuana by a classmate who was found with marijuana on the school bus. The classmate was escorted to the principal’s office by the SRO at which time his father was called. The SRO told the classmate not to speak until his father arrived. Once the father arrived, the classmate stated that he had asked Deacon to sell him marijuana and that Deacon had, in fact, sold him marijuana that morning in the school locker room.

Deacon did not attend school the next two days and there is no record of the school or law enforcement trying to contact Deacon or his guardian during the absences. Deacon returned to school three days after his classmate implicated him in the drug sale. He was called to the principal’s office where the principal and the SRO were waiting for him. The SRO was in uniform and the principal was in a suit and tie. Deacon sat across a table from the SRO and the principal. The opinion details three versions of the questioning that ensued, as described by the SRO. All three versions include that the questions were asked only by the principal and that Deacon admitted to selling the marijuana. The principal called Deacon’s guardian after he confessed. When she arrived, the principal asked Deacon to tell his guardian what happened and Deacon repeated that he sold marijuana to his classmate. Deacon was never read his *Miranda* rights nor was he ever told that he did not have to answer questions or was free to leave. Deacon was charged with violation of G.S. 90-95(a)(1) in a juvenile petition and he subsequently filed a motion to suppress his confession.

### The District Court’s Ruling on the Motion to Suppress

The district court found that the circumstances surrounding Deacon’s confession did not constitute a custodial interrogation. The district court stated its view that Deacon was not in custody and went

on to emphasize that the SRO did not directly question Deacon and was someone who was at the school daily rather than “some strange officer in a uniform.” Slip. Op. at ¶10. The court also reasoned that it is not unusual for students to be called to the principal’s office and it is reasonable for a principal to inquire about a student’s absence. The motion to suppress was denied and deacon was adjudicated delinquent for the sale and delivery for marijuana.

## **Weighing the Enhanced Duty to Protect Children Against the Special Schoolhouse Setting**

The opinion in *D.A.H.* acknowledges that analysis of *Miranda* rights in the context of the schoolhouse setting raises two unique considerations:

1. Students lose some freedom of action while in school and
2. The right against self-incrimination is different for juveniles than it is for adults because juveniles enjoy enhanced statutory protection and the determination of whether a juvenile is in custody is determined under an objective, child-centered test.

### *Reduced Freedom of Action in the Schoolhouse*

The court acknowledges that there is legal precedent for a heightened standard for custodial interrogation in a school. Pointing to the decision in [In re K.D.L.](#), 207 N.C. App. 453 (2010), the court explains that students “inherently shed some of their freedom of action when they enter the schoolhouse door” (Slip. Op at ¶21, citing *In re K.D.L.*) so that educators can have the control they need in the school environment. A student is therefore only in custody for *Miranda* purposes when the student is subjected to restraints that are beyond the usual restraints in school.

### *Enhanced, Child-Centered Standards Apply to Juvenile Interrogation*

While students are subject to certain levels of restraint due to the nature of the school setting, they are also entitled to the enhanced statutory and constitutional protections afforded to children in the context of interrogation. The court notes that juveniles in North Carolina are entitled to the *Miranda* protections afforded to adults, along with enhanced statutory protections. Slip. Op. at ¶ 16 – 18. Embedded in [G.S. 7B-2101](#), the statutory protections provide juveniles the right to have a parent, guardian, or custodian present during questioning and prohibit the admission of any in-custody confession made when juveniles who are under the age of 16 confess without a parent, guardian, or attorney present.

The court also discusses the United State Supreme Court’s holding in [J.D.B. v. North Carolina](#), 564 U.S. 261 (2011), which requires use of a reasonable child standard when determining whether a child is in custody, not a reasonable adult standard. The decision in *D.A.H.* quotes the Court in *J.D.B.* regarding the importance of the fact of childhood in consideration of the potentially coercive nature of the schoolhouse.

[T]he effect of the schoolhouse setting cannot be disentangled from the identity of the person being questioned. A student—whose presence at school is compulsory and whose disobedience at school is cause for disciplinary action—is in a far different position than, say, a parent volunteer on school grounds to chaperone an event[.] . . . Without asking whether the person questioned in the school is a minor, the coercive effect of the schoolhouse setting is unknowable. Slip. Op. at ¶30.

## **The Juvenile Custodial Interrogation Test Clarified**

The opinion in *D.A.H.* reconciles these bodies of law, stating that increased collaboration between law enforcement and educators in school settings must be consistent with the Fifth Amendment privilege against self-incrimination as it applies to children. The court notes that

[i]ncreased cooperation between educators and law enforcement cannot allow the creation of situations where no *Miranda* warnings are required just because a student is on school property. Slip. Op. at ¶ 35.

The opinion acknowledges that there is a spectrum of questioning that may occur in a school, with meetings between students and school officials (not including law enforcement who may work regularly in the school) on the end of the spectrum that clearly is not a custodial interrogation and meetings with heavy SRO involvement on the other end of the spectrum that clearly constitutes custodial interrogation. The court held that interactions in the middle, where the SRO is present but does not question the child or participates only minimally in the questioning, can qualify as custodial interrogation. In fact, the court notes that the presence of an SRO or other law enforcement officer during interrogation by a school official “weighs heavily on the scale when determining whether what otherwise might appear to be a voluntary encounter is instead a custodial interrogation.” Slip. Op. at ¶ 41. The court also notes that law enforcement presence is not dispositive in the custodial interrogation determination. The opinion then provides factors that are most relevant to the determinations of custody and interrogation in the context of a schoolhouse interview of a child.

### *Factors Relevant to Custody Analysis*

The court provides the following list of factors that are most relevant to determining whether a student is in custody during questioning at school:

- (1) traditional indicia of arrest;
- (2) the location of the interview;

- (3) the length of the interview;
- (4) the student's age;
- (5) what the student is told about the interview;
- (6) the people present during the interview; and,
- (7) the purposes of the questioning. Slip. Op. at ¶ 43.

The opinion provides discussion of each factor, including a distinction between an interview focused on disciplinary investigations into the breaking of school rules that are unlikely to involve the justice system and questioning that is the result of specific criminal suspicion of the student. Slip. Op. at ¶ 50. The court notes that the degree and nature of cooperation between school officials and law enforcement informs the question of whether an interview was criminal or school disciplinary in nature. Slip. Op. at ¶51.

#### *Factors Relevant to Interrogation Analysis*

The court lays out three factors that are most relevant to determining whether questioning of a student in school constitutes an interrogation. They include:

- (1) the nature of the questions asked (interrogative or mandatory);
- (2) the willingness of the juvenile's responses; and,
- (3) the extent of the SRO's involvement. Slip. Op. at ¶ 53.

After laying out all of these factors, the court also notes that no one factor controls the determination of whether an encounter was custodial interrogation. Instead, the test is whether the totality of the circumstances constitute custody. Slip. Op. at ¶ 57.

#### **Applying the Law to Deacon**

After providing a thorough description of the factors that must inform the analysis of whether a student was subject to a custodial interrogation in school, the court applied those factors to the facts in the case. The court first held that Deacon was in custody during questioning. Applying the objective test required by *J.D.B.*, the court held that a reasonable 13-year-old would not have felt free to terminate the interview and leave. The court pointed to the facts that:

- Deacon came to school knowing he was in trouble,
- the two authority figures, one in a law enforcement uniform, sat together opposite Deacon,

- the principal and the SRO were following a lead in a criminal investigation,
- there would be no need for SRO presence for a purely disciplinary matter about two days of school absence, and
- Deacon was questioned in the intimidating environment of the principal's office with the same officer who had questioned his classmate about the marijuana. Slip. Op. at ¶ 59 – 63.

The court then relied on the following facts and determined that the questioning constituted an interrogation:

- Enough questions were asked prior to calling Deacon's guardian to elicit a confession;
- Deacon was treated differently from his classmate, as no one told him not to speak and his guardian was not immediately called; and
- The SRO's presence during the entire interview, intimate involvement in the investigation from its outset, uniform, and position beside the principal at the table during questioning.

The court also noted that the trial court's reliance on the subjective state of mind of the child—based on his assumed familiarity with the SRO, was not the appropriate test. Instead, the courts must engage in an analysis of the objective circumstances of the interrogation using a reasonable child standard. Slip. Op. at ¶ 71 – 72. The court ultimately found that the trial court's conclusion that the questioning did not constitute a custodial interrogation was error and the adjudication was reversed and remanded.

### Key Takeaways

The opinion in *D.A.H.* is one to keep handy whenever you are determining if questioning of a student in a school constitutes a custodial interrogation. While there is no one determinative fact, there are some important themes to remember.

- Every analysis must be based on the totality of the circumstances using an objective test of how a reasonable child would feel.
- Schools present a unique setting in which children may feel more coerced to comply.
- A clear distinction between school disciplinary conversations and questioning to further a criminal investigation will assist in understanding what law applies.
- SRO (and other law enforcement) involvement in questioning of students in school, even when the SRO does not ask questions, is a substantial factor in the determination of whether questioning constitutes a custodial interrogation.