



From the Classroom to the Courtroom:

A Review of Nebraska's School Police Programs

December 2018

ACLU
Nebraska

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Introduction

For over 50 years in Nebraska, the ACLU has worked in courts, legislatures, and communities to protect the constitutional and individual rights of *all* people. With a nationwide network of offices and millions of members and supporters, we take up the toughest civil liberties fights. Beyond one person, party, or side—we the people dare to create a more perfect union.

The ACLU works with teachers, parents, students, community stakeholders, and policymakers to ensure equality and dignity for all students in Nebraska schools, regardless of their race, disability, religious affiliation, immigration status, gender, gender identity, or sexual orientation. The ACLU is committed to challenging the school-to-prison pipeline, a well-established and disturbing trend wherein children are funneled out of public schools and into the juvenile justice and criminal justice systems with lasting and sometimes lifetime negative collateral consequences.¹ Children with learning disabilities, or histories of poverty, abuse, or neglect, instead would benefit from additional educational and counseling services.

Yet, far too often our most vulnerable students are unfairly and persistently isolated, punished, and pushed out of educational opportunities because of ill-advised policy choices and systemic failures. With an increased focus on safety in schools, many under-resourced schools risk exacerbating the school-to-prison pipeline by outsourcing disciplinary matters to school police, sometimes known as school resource officers, instead of ensuring teachers and administrators remain primarily responsible for maintaining school safety and discipline.

Nationally and in Nebraska, a growing number of districts have established or expanded school police programs, putting police officers on school grounds to patrol the hallways in response to national tragedies.² Far too often, these well-intentioned programs can have troubling consequences. As a result of having a permanent police presence in schools, children are far more likely to be subject to school-based arrests—the majority of which are for disciplinary matters, such as disruptive behavior—than they were a generation ago. A school-based arrest is the quickest route from the classroom to the courtroom and most directly exemplifies the criminalization of school children and the school-to-prison pipeline.

In Nebraska, we have a longstanding proud culture of valuing educational opportunities for all students.¹¹ The ACLU fully acknowledges that Nebraska is fortunate to have many hard-working and talented educators and law enforcement officers and recognizes that their jobs are becoming increasingly difficult while resources to support them and their important work are increasingly limited.

Disorderly conduct is defined under Neb. Rev. Stat. §28-1322 :

“(1) Any person who shall intentionally disturb the peace and quiet of any person, family, or neighborhood commits the offense of disturbing the peace.

(2) Disturbing the peace is a Class III misdemeanor.

A student charged with Disorderly conduct can be sentenced to up to three months in jail, or fined up to \$500, or both. Neb. Rev. Stat. §28-106.”

A conviction for disturbing the peace can have an impact on students’ future opportunities, such as finding a job, buying or renting an apartment or house, and seeking higher education.

SCHOOL POLICE

NATIONAL LANDSCAPE

There are more than 96,000 public schools in America responsible for educating about 50 million students.³ The U.S. Department of Education’s Office for Civil Rights (OCR) recently released data from public schools covering the 2015-2016 school year. The data reveals the extent of police presence in schools, the lack of basic services for students, and the growing racial disparities in public school systems.⁴ In far too many communities, these conditions are worsening. The data illustrates that public schools serve mostly students of color, students missed 11 million days of school because of suspensions, and millions of students are in schools with police but no counselor, social worker, or nurse.⁵

Despite the ever-growing use of police officers in schools, there is very limited data on school police and their effectiveness at keeping schools safe. What we do know is that violent offenses in school are extremely rare and have actually decreased in recent years. Student reports of being victimized by crime in school decreased by eighty-two percent between 1992 and 2014.⁶ Just .2% of all U.S. public schools reported an incident involving a school-related shooting and .1% of all schools reported a school-related homicide involving a student, faculty member or staff person.⁷

Having school police generally leads to higher incidents of student arrests, specifically for disciplinary or low-level offenses.⁸ One study specifically demonstrated that after school police were placed in schools, student arrests for disorderly conduct increased significantly.⁹ The study found that when school police are present in the school, the top offenses leading to arrest are disorderly conduct; other charges include trespassing, theft, and vandalism; and drug-related charges.¹⁰

The offense of disorderly conduct includes such a wide range of behavior that law enforcement officers in schools have virtually unfettered discretion in determining what does or does not constitute criminal activity. In this manner, the increased presence of school police has led to the criminalization of what was previously considered to be student misconduct. When, in the past pushing another student or cussing in the hallway may have landed the student in detention or the principal’s office, today that same student could easily wind up in the courtroom.

However, the ACLU also remains rightly and deeply concerned about how an increased police presence in our schools impacts racial justice, students' rights including immigrants, refugees, LGBTQ+ students, disability rights, parental rights, and the civil rights and civil liberties of all Nebraska students. To be clear, the ACLU does not support a permanent police presence in our schools for these very reasons. Under-resourced school districts should devote each precious dollar to advancing our most pressing educational goals. If policymakers decide to establish or expand school police programs, at a minimum, they should ensure they have established clear policies and are meeting best practices to safeguard students' civil liberties and rights and do everything in their power to mitigate the disproportionate negative impacts of the school-to-prison pipeline.

While an increased law enforcement presence in schools impacts all students, there are disproportionate negative impacts for youth of color, youth with disabilities, immigrant youth, and youth who identify as LGBTQ+:

- Black students are more than twice as likely as their white peers to be arrested at school.¹²
- Students with disabilities are far more likely to be arrested at school. Disabled students make up 12% of students in public schools, but 28% of arrests and referrals to law enforcement.¹³
- Immigrant students categorized as “gang members” by school police can be deported solely based on the school police’s allegations of gang affiliation.¹⁴ Recently, Latinx students have been falsely accused of gang involvement merely because of their clothing, thus complicating immigrant students’ lives when they are attempting to maintain or acquire immigration status.¹⁵
- Although LGBTQ+ youth represent five to seven percent of the nation’s population, they represent 13-15% of youth in the juvenile justice system.¹⁶

School Police Officers in Nebraska

The map reflects the number of school police officers by county as reported by school districts within those counties that were reported in response to our June 2018 open records requests. The color scale reflects the racial diversity within Nebraska counties using the most recent U.S. Census data for the state.

As depicted in the map, diverse counties tend to have more school police than counties that are predominantly white. In fact, counties that are 94% or more white account for only 4 of 76 (5%) school police in the state.

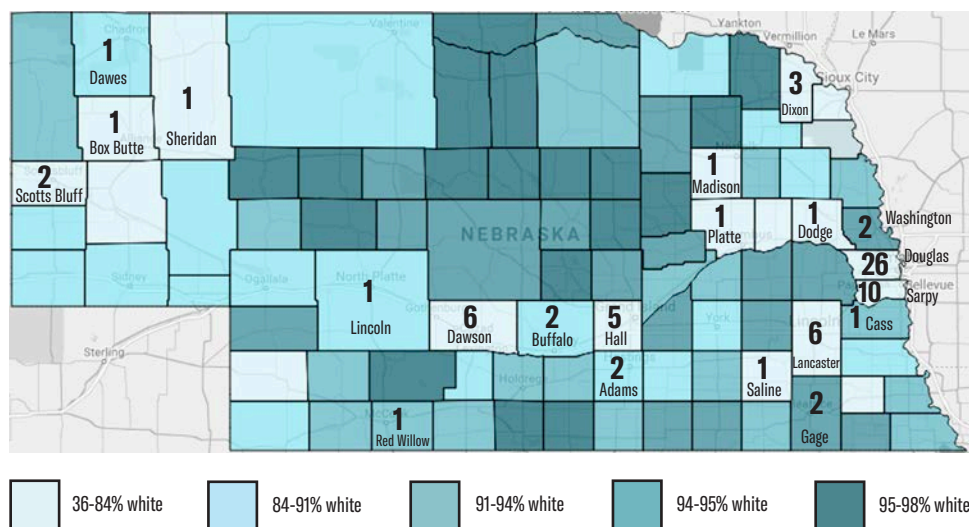




PHOTO CREDIT: LINCOLN JOURNAL STAR

Nebraska Landscape

Nebraska has 244 public school districts educating nearly 324,000 children.¹⁷ Approximately twenty-four percent of Nebraska public school students are people of color.¹⁸ Consistent with national trends, students of color are disproportionately overrepresented in schools contracting with law enforcement agencies to place police in schools. According to the Office of Civil Rights (OCR) data, during the 2015-2016 school year, 1,502 Nebraska students in public schools with school police were referred to law enforcement by their school.¹⁹ Additionally, some counties in Nebraska have schools with police, but no counselor, social worker, or nurse.²⁰

In Nebraska, consistent with national trends, there is a growing practice of using police officers in our schools. Despite this trend, there is no state-specific data on school police aside from the federal data collected by the OCR. The OCR requires schools to report the demographic data of those students referred to law enforcement and the number of law enforcement officers found in each school district, yet it does not track other important metrics. As reflected in this report, we have an incomplete, yet disturbing picture of these programs.



NEBRASKA STORIES

Students' Real-Life Experience with School Police

Parker *pseudonym to protect privacy*

Race: White
Gender: Male
Offense: Smoking on school property
Potential criminal conviction: Misdemeanor for using tobacco products as a minor
School level: High school

A group of students, including Parker, were caught smoking a vape cigarette in the bathroom by a teacher. Parker met with school administrators who asked to search his backpack. He refused. He told administrators he was going to call his mom and headed down the hall. As Parker was on the phone with his mother, officers tackled Parker to the ground, took his phone, patted him down, and handcuffed him. Police reports assert Parker was running away from officers. Parker suffered bruises to his face, shoulder, and leg.

Luke *pseudonym to protect privacy*

Race: Native American
Gender: Male
Offense: Disturbance
Potential criminal conviction: Disorderly conduct
School level: Elementary school

Elementary school student Luke refused to go to class and instead sat in the doorway of the classroom, crying and asking for his mom. Staff asked student to stand up, but he refused and continued to cry. The school police officer and parent were called to escort student out of the school.

Report Methodology

To better understand the Nebraska landscape on this issue, in the summer and fall of 2018, the ACLU of Nebraska sent open records requests (Appendix A) to the forty-three Nebraska public school districts that had at least one school within the district with a sworn law enforcement officer based on the 2015-2016 OCR reports. In response to the initial open records requests, we learned that nine of the forty-three districts did not actually utilize sworn law enforcement officers during the 2015-2016 school year and therefore had no responsive data to provide. Thirty-four school districts within Nebraska reported employing or contracting with law enforcement agencies in the relevant period.

Our initial records requests yielded the identification of eighteen law enforcement agencies with which school districts contract for their school police programs. As such, in a second round of open records requests (Appendix B), the ACLU sought complementary information from these eighteen law enforcement agencies.

Complete copies of the school district responses and law enforcement agency responses are on file at ACLU of Nebraska and available upon request.

The ACLU of Nebraska also conducted significant policy and legal research informing this analysis including a review of local and national media reports and collected relevant data from sources such as the US Department of Education.

Finally, the ACLU of Nebraska conducted a story banking project to learn more about students', teachers', and parents' experiences with school police in Nebraska.

Disparate Impacts in Student Referrals

The information in the following table comes from the federal OCR data for the 2015-2016 school year. The following table lists the school districts with school police and the disproportionate impact they have on the number of students of color and disabled students referred to law enforcement.

The table solely focuses on the disparity in referrals of students of color and disabled students; however it is possible to analyze referrals by other factors such as gender, English Language Learner (ELL), and race. Still, we are unable to measure the disparity in referrals of students from the LGBTQ+, immigrant and refugee communities using the OCR data.

Table A

Disproportionate minority
over-representation in Nebraska
student referrals.

School	Student Population	Referrals to Law Enforcement	Students of Color within School District	Students of Color Referred to Law Enforcement	Disabled Students within School District	Disabled Students Referred to Law Enforcement
Alliance*	1,454	0	32.2%	N/A	13.2%	N/A
Beatrice*	2,079	0	9.4%	N/A	22.2%	N/A
Bellevue	10,137	84	39.5%	52.4%	18%	39.3%
Blair	2,346	20	9.8%	20%	13%	40%
Chadron	866	4	22.3%	50%	11.7%	No OR
Columbus	3,963	91	41.6%	42.9%	15.9/%	2.2%
Crete*	1,914	0	61.4%	N/A	13%	N/A
Elkhorn	8,089	22	11.8%	No OR	9.4%	No OR
Fort-Calhoun	678	0	3.5%	N/A	17.1%	N/A
Fremont	4,800	0	32.7%	N/A	43.8%	N/A
Gordon-Rushville	630	29	39%	58.6%	16.8%	No OR
Grand Island*	9,773	0	56.1%	N/A	14.8%	N/A
Gretna	4,202	4	6%	No OR	11.2%	50%
Hastings*	3,650	0	32.2%	N/A	24.4%	N/A
Homer Comm. Schools	396	2	23%	No OR	14.6%	No OR
Kearney*	5,467	6	19.1%	100%	No OR	No OR
Lexington	2,966	75	83.5%	89.3%	No OR	No OR
Lincoln	40,029	97	32.9%	70.1%	15.5%	50.5%
Malcolm	539	0	7.2%	N/A	8%	N/A
McCook	1,398	0	10.6%	N/A	12.4%	N/A
Millard	23,857	385	20.4%	34.8%	13%	29.6%
Norfolk	4,347	19	34.6%	57.9%	15.1%	21.1%
Norris	2,259	0	8.5%	N/A	10.3%	N/A
North Platte	4,793	0	21.6%	N/A	12.2%	N/A
Omaha	52,208	104	71%	80.8%	18.2%	44.2%
Papillion-La Vista	11,488	64	19.9%	40.6%	11.9%	37.5%
Plattsmouth	1,674	14	7%	14.3%	14.7%	57.1%
Ralston	3,307	45	43.2%	57.8%	15.5%	17.8%
Raymond Central	617	0	6%	N/A	12.5%	N/A
Scottsbluff	3,380	8	51.7%	50%A	12.2%	0%
South Sioux City	3,891	30	78%	63.3%B	12.3%	20%
Springfield-Platteview	1,154	6	8.7%	33.3%	No OR	No OR
Waverly	2,029	6	5.7%	No OR	15.7%	33.3%
Westside	6,229	50	25.9%	42%	16.6%	46%

NO OR = No Overrepresentation

N/A = Not Applicable because district reported no referrals

(A) or (B) = At least one race or ethnicity is overrepresented within the larger students of color group:

(A) = While Native Americans make up 2.8% of the population, they make up 25% of referrals.

(B) = While Native Americans make up 2.8% of the population, they make up 6.7% of referrals.

(*) = These school districts provided the ACLU of NE with reports that reflected more referrals than the number reflected in the OCR data, potentially due to underreporting or misinterpretation of the definition of "law enforcement referral."²¹

It is evident that in far too many Nebraska school districts, students of color and disabled students are disproportionately referred to law enforcement in comparison to their white peers and peers without disabilities. While the OCR reports contain the number of students, disaggregated by race and sex, that were referred to law enforcement at school, there is no tracking of the reason for the referral or the ultimate outcome, and therefore certainly no way to discern from the OCR data the reason certain students were referred to law enforcement nor the outcome of the referral.

Reasons for Referral

“The push of children to the judicial system for acts that would have previously been viewed as typical youth behavior masks the issue that our schools need resources to appropriately implement support for special needs students, an issue the juvenile justice system is not well equipped to address.”

Christine Henningsen
Project Director
University of Nebraska
—Lincoln’s Center on
Children, Families & the Law

Students in policed schools are too often criminalized for behaviors that may be a typical part of adolescent development.²² Additionally, research has shown that police officers are more likely to arrest juveniles than adults engaging in similar behaviors, and more likely to exercise authority over perceived disrespect by juveniles.²³ This dynamic can mean that a perceived school rule violation may be treated as a crime.

Using our open records requests, the ACLU has documented some of the reasons students are referred to school police, which illustrate how blurry the lines can become when school police criminalize student disciplinary matters.²⁴ Table B on the next page represents common youth behavior that was criminalized by referral to a school police officer.

Disaggregated data can uncover trends in statistics that are sometimes hidden by aggregate data.²⁵ For example, the OCR requires districts to disaggregate the number of students referred to law enforcement by race in order to see if referrals rates vary by race. However, because the OCR data does not provide a means to track the reasons for referrals or outcomes of referrals disaggregated by demographic information of the student, we sent open records requests to the thirty-four school districts that used school police during the 2015-2016 school year and the eighteen law enforcement agencies known to contract with school districts for these programs. The requests asked school districts and law enforcement agencies for documents that indicate the reasons, disaggregated by factors like race, sex, and disability status, students were referred to school police and the outcome of those referrals.

Grade Level of Students Referred

This chart reflects the grade level of students receiving referrals to law enforcement as provided to the ACLU. After omitting traffic offenses, wellness checks, truancy or offenses occurring off school property or committed by nonstudents in those referrals, 968 referrals remained.

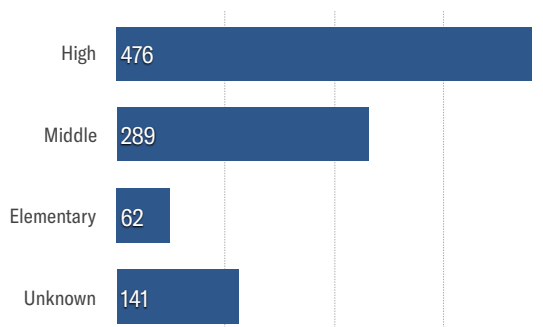


Table B

Examples of student behaviors
resulting in referrals to school
police in order of frequency.

POTENTIAL CRIMINAL CHARGE	EXAMPLES OF STUDENT BEHAVIOR
ASSAULT	Middle school student spit on another student. High school student threw apple and spoon at another student.
DRUGS/TOBACCO	Search of student uncovered Tylenol. Student smoking tobacco in parking lot.
DISTURBANCE/ SUSPICIOUS OCCURRENCE	Elementary school brothers yelling and cussing. Elementary school student became upset and disruptive in class due to “medicine issues.”
THEFT	Staff reported student stole a candy bar from her desk. High school student bragged about stealing a scale from class.
HARASSMENT/ BULLYING/THREATS	Parent said daughter was being bullied by student via Snapchat. High school student repeatedly calling another student names.
PROPERTY DAMAGE/ VANDALISM	Student egged another student’s car in high school parking lot. Middle school student caught writing on desk.
WEAPON	Elementary school student brought small pocket knife to school to show his friends.
OTHER	Student tried to use counterfeit currency to pay to participate in extra curricular activities.
SEXUAL ASSAULT/ CHILD PORNOGRAPHY	Student sent a naked picture of herself to another student.
TRESPASSING	Student refused to leave class despite suspension.

The school districts and agencies that provided data in response to our open records request regarding the reasons for law enforcement referrals were: Hastings Public Schools, Omaha Public Schools, Raymond Central Public Schools, Scottsbluff Public Schools, South Sioux City Community Schools, Springfield Platteview Community Schools, Beatrice Police Department, Blair Police Department, Chadron Police Department, Crete Police Department, Dakota County Sheriff, Grand Island Police Department, Gordon Police Department, Kearney Police Department, Lancaster County Sheriff, Omaha Police Department. Of the responding school districts and law enforcement agencies, Kearney Police Department merits accolades for its robust and complete data tracking methods and could serve as a model for other Nebraska schools and law enforcement agencies to emulate.

The data provided by the school districts and law enforcement agencies mentioned above varied in form and specificity. For example, some provided incident reports, others provided e-mails containing a summary of the incident,

others solely maintained a running list of incidents, and some failed to provide any data at all.

Responses from School Districts

Many school districts initially directed us to the reports they had submitted to the OCR for the 2015-2016 school year. When we clarified that we sought a listing of referrals that included the demographic information of the student as well as the reason for the referral, many schools indicated that they do not track this data.

- 6 of 34 (18%) of school districts were able to provide us with information that showed the reasons for referrals to law enforcement disaggregated by demographic information.

Responses from Law Enforcement Agencies

The chart below reflects the data each law enforcement agency tracks for student contacts with a school police officer during the 2016-2017 school year. To understand the full picture of student referrals to school police, each law enforcement agency should track the race, gender, gender identity, LGBTQ+ status, English language learner (ELL) status, disability status, age or grade level, school name, referral reason details regarding the reason for the referral and referral outcome. Some law enforcement agencies responded by directing us to the schools for documentation.

- 4 of 18 (22%) law enforcement agencies track reasons for the referral disaggregated by the categories mentioned above.
- 4 of 18 (22%) law enforcement agencies do not track any data regarding the reason for a student's referral disaggregated by the categories mentioned above.
- 10 of 18 (56%) law enforcement agencies track the reason for the referral, but do not maintain full details, thus making it difficult to identify disparities in treatment between students of different race, sex or disability status. Without the details regarding the reason for the referral, it is difficult to appreciate the circumstances underlying the decision to refer to school police.

Comparison of Referral Details

On the left is an example of a referral provided by the Kearney Police Department. The referral provides significantly more detail than the referral provided by the Grand Island Police Department on the right.

Kearney Police Department

Race: White
Sex: Male
Disability: None
Grade Level: Elementary
Referral Reason: Disturbance/Suspicious Occurrence
Details of Reason for Referral: Student rolling on the floor, grunting and making monkey noises, refusing to cooperate with teacher.

Grand Island Police Department

Grade Level: Middle
Referral Reason: Drugs

Table C

Data tracked by law enforcement agency for student contacts with a school police officer.

Law Enforcement Agency	Race	Sex	Disability Status	Age/Grade Level	Referral Reason	Details of Reason for Referral
Alliance Police Department	X	X		X	X	X
Beatrice Police Department	X	X	X	X	X	X
Bellevue Police Department*						
Blair Police Department					X	
Chadron Police Department					X	
Crete Police Department	X	X		X	X	
Dakota County Sheriff	X	X	X	X	X	X
Douglas County Sheriff*						
Fremont Police Department*						
Grand Island Police Department				X	X	
Gordon Police Department					X	
Kearney Police Department	X	X	X	X	X	X
Lancaster County Sheriff	X	X		X	X	
Lexington Police Department						
McCook Police Department						
Omaha Police Department					X	X
Sarpy County Sheriff						
Scottsbluff Police Department						

(*) Law enforcement agency refused to provide documentation reflecting reasons for referral of students to school police. This illustrates a lack of uniformity in school police programs and presents broader questions about public entities' understanding and compliance with open records requests.

An Analysis of MOUs

At the very minimum, if a school police program is maintained or expanded, a school district must have a robust and comprehensive memorandum of understanding (MOU) to provide all stakeholders clarity and transparency about the program. Of the thirty-four Nebraska school districts with school police, thirty-one have MOUs contracting with law enforcement agencies for the placement of police officers in schools. We analyzed each of those agreements to determine whether they contain crucial safeguards to protect Nebraska students' constitutional rights.

We looked for the following critical provisions in each MOU:

- Provision on how, or if, schools distinguish between serious versus low level offenses which would clearly delineate which conduct would be solely subject to school discipline;²⁶
- Provision on prohibition on the use of restraints and the de-escalation process used in lieu of weapons such as tasers, batons, pepper spray, or firearms;²⁷

- Provision on the process of questioning students including how students are advised of their right against self-incrimination;²⁸
- Provision on how students are advised of their right against unlawful search and seizure in addition to school police's limitations relevant to searching school property;²⁹
- Provision on school's prohibition of racial profiling by school police;³⁰
- Provision on the process of how parents receive notification that their student has been referred to the school police officers;³¹
- Provision on required mandatory school police officer training;³²
- Provision on the process of how students, parents, or guardians can complain about a school police officer's actions;³³ and
- Provision on whether the school is tracking demographics and reasons for referral data regarding each student referred to law enforcement.³⁴

Table D clearly demonstrates the lack of consistency, transparency, and critical safeguards in MOUs between the school districts and the law enforcement agencies. Additionally, our review of existing MOUs demonstrates that:

- None of the school district MOUs have a provision on de-escalation procedures.
- None of the school district MOUs have established a clear complaint process where students or parents can document complaints or grievances about a school police officer's actions.
- 1 of 31 (3%) school district MOUs contain a provision clearly delineating school-discipline matters versus those that would require school police to be involved.
- 1 of 31 (3%) school district MOUs contain a provision on the process by which the school district notifies parents/guardians of a student's referral to law enforcement.
- 2 of 31 (6%) school district MOUs contain a provision on the process of questioning students at school.
- 3 of 31 (10%) school district MOUs explicitly require school police officer-specific training.
- 4 of 31 (13%) school district MOUs have a provision on tracking demographics and reasons for the referral to law enforcement.
- 6 of 31 (19%) school districts with MOUs reported that they gathered information "regarding potential problems such as criminal activity, gang activity and student unrest, and attempt to identify particular individuals who may be a disruptive influence to the school and/or students."³⁵ If such data is being gathered, it is just as important, if not more so, to track data regarding the demographics and reasons for the referral of each student having contact with law enforcement to identify potential and impermissible bias or an overcorrection of student disciplinary matters.
- 10 of 31 (32%) school district MOUs contain provisions prohibiting racial profiling by school police.

Table D

In each column marked "X," at least one school in the school district contained such a provision within the memorandum of understanding (MOU).

(*) relevant only to transportation of a student

School	Provision regarding Serious v. Low Level Offenses	De-escalation Process	Questioning of Student	Search and Seizure	Racial Profiling Prohibition	Notice to Parent	Mandatory School Resource Officer Training	Complaint Process	Data Tracking
Alliance									
Beatrice									
Bellevue					X				
Blair									
Chadron									
Crete							X		X
Elkhorn					X				
Fremont									
Gordon-Rushville						X*			X
Grand Island							X		
Gretna									
Homer									
Kearney									
Lexington									
Lincoln									
Malcolm					X				
McCook									
Millard					X				X
Norfolk									
Norris					X				
North Platte									
Omaha	X				X				
Papillion-La Vista					X				
Plattsmouth									
Ralston									
Raymond-Central					X				
Scottsbluff			X						
South Sioux City									
Springfield-Platteview			X						X
Waverly					X				
Westside					X				

In general, a small amount of school districts contain safeguards to minimize the effect of school police on the school-to-prison pipeline. Although some school districts and law enforcement agencies may have policies outside the MOUs that may address some of these critical safeguards, having these provisions within the MOU would better ensure adherence to best practices and improve accountability.

School Police-Specific Training Requirements

Specific training that equips school police to work with young people is vital to the goal of upholding students' rights, advancing students' educational success, and combating the school-to-prison pipeline. Standard law enforcement training prepares officers to work primarily with adult populations, but may lack crucial components necessary to prepare officers to work with youth in schools. Specialized school police officer training may include adolescent brain development, de-escalation, making community referrals, and understanding special needs. For example, when a student exhibits behavior related to a disability, a school police officer must have the training to be able to recognize the disability, rather than reflexively issuing a citation or making an arrest.

Responses from School Districts

- 8 of 34 (24%) school districts that currently have school police reported that their officers participated in a school police/school resource officer-specific training.
- 26 of 34 (76%) school districts that currently have school police reported that their officers either do not receive school police/school resource officer-specific training or referred us to the law enforcement agency.
- 11 of 34 (32%) school districts have only a standard peace officer certification and receive no other training specific to school police work.
- 15 of 34 (44%) school districts referred us to the law enforcement agency to obtain information on training.

Responses from Law Enforcement Agencies

- 2 of 18 (11%) law enforcement agencies provided no information about training or indicated they did not have school police-specific training requirements.
- 16 of 18 (88%) law enforcement agencies with school police participate in some school police officer-specific training. The majority of the law enforcement agencies have their officers attend the National Association of School Resource Officers (NASRO) 40-hour basic course and some require or permit officers to participate in more advanced training. The

basic course includes components about understanding the teenage brain and training in de-escalation techniques.

These results demonstrate an area ripe for clarity and uniformity. While it is encouraging that many law enforcement agencies appear to understand the importance of school police officer-specific training, it is troubling that school districts with school police often disclaim responsibility regarding mandating youth-centered specific training.

Students' Civil Rights & Civil Liberties

Given the relative immaturity of young people with regard to understanding their rights, coupled with an increased police presence in school that puts students into regular contact with police, it is imperative that students' rights are upheld. As such, we asked school districts and law enforcement agencies about their policies in advising students of their right against unlawful search and seizure, right against self-incrimination, and right to legal counsel. Unfortunately, we discovered many divergent practices in implementing critical advisement of rights provisions. By failing to inform students of these crucial rights, and without robust parental engagement, schools and law enforcement agencies too easily risk violating a student's rights and further exacerbating the school-to-prison pipeline.

Responses from School Districts

- None of the school districts provided a procedure or policy on how students are advised of their right to legal counsel before being questioned by the police.
- 1 of 34 (3%) school districts provided a procedure or policy by which students are advised of their rights when being questioned by school police.
- 15 of 34 (44%) school districts have a written policy regarding students' rights against unlawful search and seizure. Many of the policies relevant to search and seizure were quite similar in stating the school district has exclusive control over "school property" via the school's inherent authority. Additionally, the districts have indicated they have the right to conduct random searches of school property so long as there is a reasonable basis to believe the search will uncover evidence of a crime or rule violation and it is conducted in a reasonable manner. School districts varied in how the right against unlawful search and seizure is communicated to students. Some school districts include this in their student handbook while others do not have a process for conveying this information to students.

Additionally, some school districts responded to our request by referring us to the law enforcement agency as the school districts were unaware of how students are advised of their rights when interacting with school police. "If



28% OF LAW
ENFORCEMENT
AGENCIES **HAVE
NO WRITTEN
POLICIES**

REGARDING PARENTAL
NOTIFICATION PRIOR
TO A STUDENT BEING
QUESTIONED.

the student is suspected of criminal activity, it is the responsibility of the law enforcement officer to advise a student of his or her rights against self-incrimination,” as the Fort Calhoun School District responded. Other school districts merely refused to respond with any documentation.

Responses from Law Enforcement Agencies

- 8 of 18 (44%) law enforcement agencies with school police have a policy on students’ rights against unlawful search and seizure. Some of those law enforcement agencies indicated they have an *informal* unwritten policy—meaning the law enforcement agency responded by stating their officers follow constitutional requirements, but the law enforcement agency does not have the policy in writing. The law enforcement agencies with a written policy use language very similar to the language we encountered in school districts’ responses. Like the school districts, law enforcement agencies do not explain the method by which students are made aware of these rights or how to invoke them.
- 15 of 18 (83%) law enforcement agencies have a procedure or policy by which students are advised of their rights against self-incrimination and right to counsel. The majority of law enforcement agencies advise students of their 5th and 6th Amendment rights by informing them of their Miranda rights once they are in custody.

It is important to note from a practical standpoint that it may be difficult to determine exactly when a student would be determined to be “in custody” in a

school environment.³⁶ For example, as documented in several school responses, often, the student is called into the principal's office and questioned by the administration in the presence of the school police officer and it is unclear when the Miranda warning becomes a requirement.

Parental Rights

Given that questioning a student at school can result in a referral for juvenile or adult criminal prosecution, the ACLU was also interested in the policies in place to notify and obtain permission from parents *before* a student is questioned by law enforcement in school. Current case law states that a student can waive their rights without their parent or guardian present, which may be a surprise to many stakeholders given our current understanding of youth development.³⁷ However, even if a student's parents are notified and present for questioning, parents are no substitute for an attorney as they themselves may misunderstand the legal consequences of their student's responses to questioning. As such, it is important to note that along with parental notification, it is just as necessary to inform the student of their right to seek legal counsel before submitting themselves to questioning.

We requested policies and procedures related to the current parent/guardian notification procedures when a student is referred to or questioned by a school police officer, from the school districts and law enforcement agencies. We found that school districts and law enforcement agencies make arbitrary distinctions about parental notification prior to law enforcement interrogation based on different factors. For example, school districts generally make distinctions based on whether the event occurred at school. Law enforcement agencies, on the other hand, make distinctions based on the age of the student. Whether or not the underlying incident occurred at school and regardless of the student's age, questioning a young person at school may very well lead to juvenile or criminal justice system involvement and the distinctions imposed by school districts and law enforcement agencies do not adequately safeguard students' or parental rights.

Current case law states that a student can waive their rights without their parent or guardian present, despite what we know about child development.

Responses from School Districts

- 19 of 34 (56%) school districts with school police have policies for parental notification that distinguish between questioning relating to conduct that occurred at school and questioning relating to non-school related events.

Generally, these policies require that if questioning relates to an investigation not related to events at the school or district, the questioning cannot occur at school or during school hours unless parent or guardian consent is obtained. However, these policies generally state that if questioning is relating to a district or school event, obtaining parental consent for questioning is unnecessary.

Nebraska Stories about Parental Notification Prior to Student Questioning

1. A high school student was questioned by law enforcement about pictures on his phone. After the questioning, the student's father called upset that his son was questioned without the father's knowledge. The officer apologized.

2. Another student advised that he refused to answer questions without a parent present. The school police officer told the student that having a parent present was not a requirement anymore as the officer had already left voicemails on the parent's phone as a "courtesy" and the parent's permission was not needed to continue the interrogation.

In these situations, many districts require a district employee to be present to "ensure that the interview relates only to the incident which took place on school premises or during instructional time or something which relates directly thereto."

As a matter of exposure to the court system, there is little basis for such a distinction. Students can be, and often are, charged for conduct that occurs at school. As such, the same protections, including parental notification and consent prior to questioning, must be in place regardless of whether an incident that could lead to prosecution occurs at school or outside of school.

Responses from Law Enforcement Agencies

- 2 of 18 (11%) law enforcement agencies with school police contracts explicitly require a parent or guardian to be present during a student's questioning when in custody.
- 5 of 18 (28%) law enforcement agencies with school police contracts have no written policies regarding parental notification prior to a student being questioned.
- 5 of 18 (28%) law enforcement agencies with school police contracts have policies that express a general preference for notifying parents/guardians prior to students being questioned, such as mandating an attempt to contact parents/guardians prior to questioning.
- 6 of 18 (33%) law enforcement agencies with school police contracts make distinctions regarding parental notifications based on the age of the student.

Questioning by a law enforcement officer including a school police officer, regardless of whether it occurs at school, can lead to juvenile or adult criminal court involvement. These systems are fraught with direct collateral consequences potentially impacting job prospects, housing options, civic engagement, voting rights, and educational opportunities for years or a lifetime. Given these high stakes, it is vital that students' and parental rights are protected. It is troubling to find a lack of consistency or uniformity about how Nebraska parents or guardians will be informed about their children being interrogated by law enforcement and to learn that many parents or guardians will not have an opportunity for meaningful involvement until after their child is questioned and subsequently cited or arrested by law enforcement.

School Police-Specific Complaint Process

The U.S. Department of Justice recently released guidance to encourage trust between law enforcement and the community. The guidance encouraged agencies to listen to the concerns of the community and open the lines of communication. Civilian complaint processes are one of the simplest steps an agency can take to open up lines of communication between law enforcement and the public.³⁸

As such, having a specific complaint process for students and parents to address their concerns about school police would help to promote accountability within these programs and allow for ongoing evaluation of school police officers' performance. We asked school districts to provide us with "documents regarding the policies and procedures about the current student and parent complaint process to express concerns about [school police] and their practices."

- None of the school districts had a specific complaint policy regarding school police practices.
- 9 of 34 (26%) school districts provided a complaint policy that dealt only with complaints about discrimination, harassment, and/or retaliation in school generally.
- 17 of 34 (50%) school districts with school police had a complaint process for general grievances.
- Several districts indicated that all school police complaints should be directed to the police department with whom the district contracts or did not provide any complaint policy in response to our request.

Recommendations

The ACLU of Nebraska encourages individual school districts and law enforcement agencies to utilize this important opportunity to immediately review their policies and practices surrounding school police. The time is ripe for policymakers in Nebraska to conduct further review and analysis of the following policy reform solutions to ensure students' and parental rights are being protected. Such a reform can mitigate the real and harmful impacts of the school-to-prison pipeline which disproportionately impacts our diverse student population and give our children the opportunity to succeed in our schools and our society.

Reform solutions may include, but are not limited to, the following:

1. End Routine Policing of Schools

Police should enter schools only to address public safety threats. Schools should clearly delineate matters which are subject to school discipline or school police involvement for more appropriate, child-driven responses to challenging behavior. Additionally, police should end the practice of arrests and referral to law enforcement for common adolescent behaviors, including but not limited to, disciplinary matters, disturbance offenses, status offenses, and misdemeanors.

2. Explore State Legislation

Legislation designed to combat the school-to-prison pipeline has gained significant momentum across the country over the past decade. If Nebraska chooses to take statewide legislative action, it would be joining a diverse group of states addressing school police accountability in different ways.

“I am pleased that this report clarifies the need for legislation to provide training resources and a delineation of roles between administrators, teachers and school resource officers. Law enforcement needs to be able to focus on school safety and not school discipline.”

Sen. Patty Pansing Brooks
Nebraska Legislature

Interrogation safeguards for students: Current Nebraska state law and governing case law permit police to interrogate a child without any adult present to aid the minor in deciding whether to waive their Miranda rights.³⁹ This unfortunately holds true whether a student is questioned in a school setting or at a police station, and is true whether the minor is accused of breaking a school rule, misdemeanor, or a felony. In 2017, Nebraska State Senator Matt Hansen introduced LB 930 which called for prohibiting the use of juveniles’ statements made as a result of a custodial interrogation.⁴⁰ This bill would have adopted standards that sister states including Arkansas,⁴¹ Hawaii,⁴² and Missouri⁴³ have already required in their state laws. These laws allow for the interrogation of a minor, but only if the child’s parent or guardian is involved in the decision to cooperate with police. Protecting students was also part of the motivation behind Nebraska State Senator Patty Pansing-Brooks introducing LB 158 in 2017 and 2018, which would have informed young people and their parents about their right to retain legal counsel as needed.⁴⁴

Seeking alternatives to a referral to law enforcement for minor violations: Initial reforms in this area focused both on student arrests and updating laws to encourage schools to seek alternatives to referring students to law enforcement. Florida passed its law in 2008. North Carolina passed a similar law in 2011. In both states, lawmakers determined that exclusionary discipline should apply only to offenses that result in a direct safety threat to the school community.

Collecting data: Some states like Florida and Pennsylvania collect and report school police data. Florida provides a useful case study for these purposes, as it is one of the only states that collects detailed youth arrest data and relies on such data in policymaking. This data-driven approach has been key in Florida reducing its juvenile arrest rate by 25% over the most recent five years—from 47 youth per 1,000 at-risk (age 10-17) in fiscal year 2012-13 to 35 youth per 1,000 in 2016-17.⁴⁵ In September of 2018, Pennsylvania also took

Florida provides a useful case study for these purposes, as it is one of the only states that collects detailed youth arrest data and relies on such data in policymaking.

a small step to increase accountability.⁴⁶ The state's new Safety and Security Committee, established by a 2018 law, adopted a criteria for the assessment of school safety and security which states that schools employing any type of security staff should collect information about the staff, students', and parents' or community perceptions of that presence.⁴⁷ The analysis should be able to be disaggregated to look at different sub-populations of students, including disproportionality and the issue of equity.⁴⁸

The legislative victories and proposals presented here represent a snapshot of the diverse, creative, and effective measures in Nebraska and across the country. Today's legislative initiatives build on a rich decade of work designed to create a more equitable future for all children. Nebraska lawmakers should explore this emerging trend and move forward with accountability and remedial measures to address the school-to-prison pipeline and racial disparities.

Formalizing safeguard provisions in an MOU: The Department of Education and the Department of Justice have issued a state and local policy rubric under which school districts are encouraged to negotiate a MOU with law enforcement and to ensure that officers are adequately trained.⁴⁹ Additionally, the national Dignity in Schools Campaign released its policy recommendations, *Counselors Not Cops: Ending the Regular Presence of Law Enforcement in Schools*, which calls for MOUs that limit interactions between students and school police.⁵⁰ States like Missouri and Pennsylvania have already codified requirements for MOUs between school districts and local law enforcement agencies. Missouri requires law enforcement agencies and school districts to execute a MOU prior to putting police in schools.⁵¹ Pennsylvania, on the other hand, requires school districts to adopt the state-provided model MOU or, in the alternative, provide a rationale for any differences between their MOU and the model.⁵²

In sum, school districts and law enforcement agencies maintaining or adding school police should be required to have a robust MOU meeting best practices and containing specific provisions regarding:

- mandatory school police officer-specific training/school resource officer training;⁵³
- prohibiting racial profiling;⁵⁴
- categorization of serious versus low level offenses which would clearly delineate which conduct is solely subject to school discipline or school police involvement;⁵⁵
- de-escalation processes;⁵⁶
- process of questioning students;⁵⁷
- process of notifying students and parents of their 4th, 5th, and 6th amendment rights;⁵⁸
- equity assessment⁵⁹ and complaint process;⁶⁰ and
- tracking reasons for a student's referral and the outcome of the referral disaggregated by gender, gender identity, race, national origin, disability status, and ELL status.⁶¹

3. Data Collection and Analysis

Collect, review, and provide the public with access to complete data on police activity in schools. Police activity in schools should be reviewed on a regular basis with attention to racial disparities, the treatment of children with disabilities, and reasons and outcome for the referral with sufficient detail along with other metrics, including gender, gender identity, LGBTQ+ status, race, national origin, disability status, and ELL status. Along these lines, in 2018 Nebraska State Senator Tony Vargas introduced LR 458 which considered including racial impact statements with new legislation. A similar approach should be adopted by our school districts when analyzing data regarding law enforcement referrals before implementing a school police program.⁶² School districts are already required to collect and report general information regarding discipline every other year to the Department of Education.⁶³ Moreover, school districts must also collect data regarding discipline for an annual report card.⁶⁴ Thus, creating a robust state-based data report on discipline would not require additional resources and would simplify the process for all schools to abide by federal reporting requirements while simultaneously providing the necessary state-based data to promote accountability.

**82% OF
NEBRASKA
SCHOOL DISTRICTS
DO NOT TRACK
REASONS FOR
REFERRALS
BY STUDENT
DEMOGRAPHIC
INFORMATION.**

4. Training Standards

School police should obtain adequate continuous training for responding to youth. Training topics should include adolescent development, disability sensitivity, implicit bias, communication, de-escalation, and use of force, including handcuffs and other forms of restraints.

School districts should invest in supportive resources such as mental health counselors and community intervention workers to establish a holistic response to student behavioral needs. Teachers, school administrators, and other officials who interact with students should also receive training in de-escalation, mediation, and crisis intervention.

5. Advise Students and Parents about their Rights

Law enforcement agencies and school districts should enact policies that create specific protocols for when and how police should interact with students in schools. Schools must have an internal crisis plan with de-escalation techniques and protocols to follow before police are involved. When police are involved or seek access to a student, the school should (i) notify a parent/guardian to provide them an opportunity to be present and (ii) always read a student their rights.

Given that school police interactions and referrals can lead to court involvement that can have lifetime effects on students, it is imperative that we do better for our children.

6. Establish Complaint Process

To promote accountability, school districts and law enforcement agencies should adopt a specific complaint process for students and parents to address their concerns about school police. In order to ensure diverse voices are heard, we encourage school districts to create and task a committee assessing school safety and security to collect information about the staff, students' and parents' or community perceptions of a school police presence. Said committee could then conduct a racial equity impact assessment and analyze how different sub-populations of students view the impact of the security presence, examine disproportionality, and ensure equity.⁶⁵ In other words, does a school police presence result in certain students having more negative school experiences without justification?

School resource officers remain police officers and are accountable to the normal chain of command as are other police officers. However, parents and others might understandably not realize this and may assume that comments or complaints they have about school police should be brought to the attention of school administrators. Similarly, if a teacher receives a complaint from a parent about a school police officer, is the teacher to pass that complaint along to any official? A clear explanation or procedure for parents, students, and others to follow would be appropriate in order to ensure that police at schools are held accountable.

RECOMMENDATIONS

PARENTS:

- Learn about the presence of police at your child's school.
- Carefully review your school's written disciplinary policies.
- Contact your elected officials about adopting robust MOUs governing school police programs and state laws that provide for complete data collection and training requirements for school police.

RECOMMENDATIONS

STUDENTS:

- Learn about the rights that apply to you when you interact with school police and school administrators.
- Require information be provided about students' rights while in schools. Communication should be clear about behavior expectations and punishments.
- Speak to a parent or guardian about any perceived disciplinary inequalities in your school.

Conclusion

As the number of police officers in schools has grown over the course of the last 20 years, there is a crucial lack of national and local data on these programs. As such, the ACLU of Nebraska believes it is vital to understand the state school police program landscape. As discussed above, what we found in Nebraska mirrors the inconsistencies and lack of data on school police at the national level.

There are significant inconsistencies across Nebraska school districts and law enforcement agencies in meeting best practices such that the establishment of statewide minimum standards would be beneficial. It is also important to note that our research identified some policies and practices deserving of attention. These policies could serve as models for statewide standards.

Given that school police interactions and referrals can lead to court involvement that can have lifetime effects on students, it is imperative that we do better for our children. We need consistency and standards in place that govern things like MOUs, training requirements, the reasons students are referred to law enforcement and juvenile courts, parental notification and complaint provisions, as well as addressing disparities in referrals based on demographic data like race or disability.

Acknowledgments

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Heidi Uhing, Communications Director, ACLU of Nebraska
Caroline Sojka, University of Nebraska—Lincoln College of Law, Class of 2020
Cassie Geiken, University of Nebraska—Lincoln, Class of 2019

Appendices

Appendix A: Open Records Request to school districts
Appendix B: Open Records Request to law enforcement agencies

A sample Memorandum of Understanding can be found at: https://www.aclunebraska.org/sites/default/files/field_documents/sample_sro_mou.pdf

Appendix A

June 18, 2018
BY MAIL AND EMAIL DELIVERY



RE: Open Records Request

Dear Superintendent [REDACTED]:



134 S. 13th St. #1010
Lincoln, NE 68508
(402) 476-8091
aclunebraska.org

We are writing to collect information relating to your school districts use of school resource officers (SROs) to gain a better understanding of how these programs work in Nebraska and considering LR 429, introduced by Senator Patty Pansing Brooks, which is an interim study on the presence of SROs in Nebraska public schools.

This is a request under Nebraska public records law, Neb. Rev. Stat. §84-712.

In the following request, "document" is not limited to written policy but includes any informal or procedural policy. For the purposes of this request, "document" includes e-mails; instructions; memos; directives; guidance documents; formal and informal presentations; training documents; bulletins; alerts; updates; advisories; reports; minutes or notes of meetings and phone calls; and memoranda of understanding.

If any documents responsive to this request have personal information about a student, please be aware that the document must still be produced with a redaction of any personal information pursuant to Neb. Rev. Stat. 84-712.06

We request the following information from you:

1. Any and all documents reflecting the number of SROs assigned to the school district and which schools the SROs are assigned as of the date of this letter, and whether they are full-time or part-time.
2. Any and all Memoranda of Understanding (MOU) or similar agreements currently in force between your school district and any law enforcement agency(s) regarding SROs.
3. Any and all documents prepared for your most recent submission on school discipline to fulfill your obligation under the Civil Rights Data Collection (CRDC) biennial survey required by the U.S. Department of Education's Office for Civil Rights (OCR).
4. Any and all documents regarding the extent and nature of SROs' training that is currently required, including de-escalation training, whether the training takes place prior to the SRO being placed in the school, and/or whether the training is ongoing.



5. Any and all documents regarding the policies and procedures about the current student and parent complaint process to express concerns about SROs and their practices. Please provide copies of documents in English and in other languages, if applicable.
6. Any and all documents regarding the policies and procedures related to the current parent or guardian notification when a student is referred to a law enforcement officer, including a SRO. Please provide copies of the documents in English and in other languages, if applicable.
7. Any and all documents regarding the current policies and procedures describing how and when children are notified by school staff or SROs of their constitutional rights including, but not limited to, the right to legal counsel, the right against self-incrimination, and the right to be free from unlawful search and seizure. Please provide copies of the documents in English and in other languages, if applicable.
8. Any other documents regarding your SRO or law enforcement officer program that you wish to share to help us understand your district's policies and practices.

As you may know, Nebraska law requires a response to an open records request to be made within four (4) days of receipt. However, we understand fulfilling this request may take some additional time. As such, we request the responsive documents by Monday, July 2, 2018. If you need additional time to comply with this request, please contact us at your earliest convenience to negotiate a production schedule.

When the documents relevant to this request are ready, you may provide them in electronic form by emailing them to me at srichters@aclunebraska.org or you may mail them to me at 134 S. 13th Street, Suite 1010, Lincoln NE 68508.

Thank you for your time and attention to this matter.

Sincerely,


Scout Richters
Legal & Policy Counsel
(402) 476-8091 ext. 108
ACLU of Nebraska

Appendix B

October 12, 2018
BY MAIL AND EMAIL DELIVERY



RE: Open Records Request

Dear [REDACTED]:



134 S. 13th St. #1010
Lincoln, NE 68508
(402) 476-8091
aclunebraska.org

For over 50 years in Nebraska, the ACLU has worked in courts, legislatures, and communities to protect the constitutional and individual rights of *all* people. With a nationwide network of offices and millions of members and supporters, we take up the toughest civil liberties fights. Beyond one person, party, or side—we the people dare to create a more perfect union.

We are writing to collect information relating to your officers who serve as school resource officers (SROs) to gain a better understanding of how these programs work in Nebraska schools. Additionally, Senator Patty Pansing-Brooks, recently introduced LR 429 is an interim study on the presence of SROs in Nebraska public schools.

This is a request under Nebraska public records law, Neb. Rev. Stat. §84-712.

In the following request, “document” is not limited to written policy but includes any informal or procedural policy. For the purposes of this request, “document” includes e-mails including personal emails if used for public official business; instructions; memos; directives; guidance documents; formal and informal presentations; training documents; bulletins; alerts; updates; advisories; reports; minutes or notes of meetings and phone calls; and memoranda of understanding.

If any documents responsive to this request have personal information about a student, please be aware that the document must still be produced with a redaction of any personal information pursuant to Neb. Rev. Stat. 84-712.06.

We request the following information from you:

1. Any and all documents regarding the extent and nature of SROs’ training that is currently required, including de-escalation training, whether the training takes place prior to the SRO being placed in the school, and/or whether the training is ongoing.
2. Any and all documents regarding the policies and procedures related to the current parent or guardian notification when a student is referred by school staff to your law enforcement officers and/or questioned by your law enforcement officers, including SROs.
3. Any and all documents regarding the current policies and procedures describing how and when children are notified by your law enforcement officers or SROs of their constitutional rights when being questioned, investigated, or arrested on

school premises including, but not limited to, the right to legal counsel, the right against self-incrimination, and the right to be free from unlawful search and seizure.

4. Any and all documents reflecting the reasons students are referred to your law enforcement officers or SROs for incidents arising out of student's actions in school during the August 2016-May 2017 school year, disaggregated by race, sex, and disability status.



As you may know, Nebraska law requires a response to an open records request to be made within four (4) days of receipt. However, we understand fulfilling this request may take some additional time. As such, we request the responsive documents by Wednesday, October 24, 2018.

When the documents relevant to this request are ready, you may provide them in electronic form by emailing them to me at rgodinez@aclunebraska.org or you may mail them to me at 134 S. 13th Street, Suite 1010, Lincoln NE 68508.

Thank you for your time and attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Rose Godinez".

Rose Godinez
Legal & Policy Counsel
(402) 476-8091 ext. 105
ACLU of Nebraska

ENDNOTES

1. Libby Nelson & Dara Lind, *The school to prison pipeline, explained*, JUSTICE POLICY INSTITUTE (Feb. 24, 2015), <http://www.justicepolicy.org/news/8775>.
2. In a national survey of principals and law enforcement funded by the U.S. Justice Department, less than 4 percent of each group stated that the decision to start a school police program was due to the level of violence in schools. In the survey, the top reason given by police officials for starting a school police program was “disorder” (23.5 percent); for principals, it was “national media attention about school violence” (24.5 percent). Lawrence F. Travis III & Julie Kiernan Coon, *The Role of Law Enforcement in Public School Safety: A National Survey*, CENTER FOR CRIM. JUST. RES., Criminal Justice (Oct. 2005), <https://www.ncjrs.gov/pdffiles1/nij/grants/211676.pdf>.
3. *Race, Discipline, and Safety at U.S. Public Schools*, ACLU, <https://www.aclu.org/issues/juvenile-justice/school-prison-pipeline/race-discipline-and-safety-us-public-schools> (last visited Dec. 12, 2018).
4. *Id.* A recent *Education Week* report asked important questions relating to school spending in the name of school safety. The report stated, “[n]ationally, schools are spending tens of millions of dollars this year to shore up security in the wake of two mass school shootings. But how do K-12 leaders know if they are spending their scarce funds in the right way? Are the measures they invest in going to make their schools safer? How will they know if what they’ve done is working? Researchers who study school security worry school leaders can’t get good answers to these questions.” Evie Blad, *Schools Are Spending Millions on Safety. How Will They Know It’s Working?*, EDUC. WEEK, (Nov. 13, 2018), <https://www.edweek.org/ew/articles/2018/11/14/schools-are-spending-millions-on-safety-how.html> A recent seven-year study in North Carolina compared middle schools that used state funds to hire and train school police with those that did not. The study concluded that middle schools that used state grants to hire school police did not report a reduction in assaults, homicide, bomb threats, substance possession or use, or weapons possession. Kenneth Alonzo Anderson, *Policing and Middle School: An Evaluation of a Statewide School Resource Officer Policy*, MIDDLE GRADES REVIEW (2018), <https://scholarworks.uvm.edu/mgreview/vol14/iss2/7>.
5. *Race, Discipline, and Safety at U.S. Public Schools*, *supra* note 3.
6. Anlan Zhan et al., *Indicators of School Crime and Safety: 2015*, Institute of Education Sciences (May 2016), <https://nces.ed.gov/pubs2016/2016079.pdf>.
7. 2015-16 Civil Rights Data Collection: School Climate and Safety, U.S. DEP’T OF EDUC. OFFICE FOR CIVIL RIGHTS, <https://www2.ed.gov/about/offices/list/ocr/docs/school-climate-and-safety.pdf>.
8. See Chongmin Na & Denise C. Gottfredson, *Police Officers in Schools: Effects on School Crime and the Processing of Offending Behaviors*, JUST. Q., Oct. 2011, at 24.
9. Matthew T. Theriot, *School Resource Officers and the Criminalization of Student Behavior*, 37 J. CRIM. JUST. 280, 285 (2009), available at <http://youthjusticenc.org/download/education-justice/school-policing-security/School%20Resource%20Officers%20and%20the%20Criminalization%20of%20Student%20Behavior.pdf> (Students are more likely to be arrested for disorderly conduct in schools with school police officers).
10. *Id.* at 284.
11. See NEB. CONST. art. VII-1.
12. 2015-16 Civil Rights Data Collection: School Climate and Safety Data Highlights on School Climate and Safety in Our Nation’s Public Schools, U.S. DEP’T OF EDUC. (2018) available at <https://www2.ed.gov/about/offices/list/ocr/docs/school-climate-and-safety.pdf>.
13. Moriah Balingit, *Racial disparities in school discipline are growing, federal data show*, THE WASHINGTON POST (Apr. 24, 2018), https://www.washingtonpost.com/local/education/racial-disparities-in-school-discipline-are-growing-federal-data-shows/2018/04/24/67b5d2b8-47e4-11e8-827e-190efaf1f1ee_story.html?noredirect=on&utm_term=.d5b72ea14e11.
14. Alice Speri, *From School Suspension to Immigration Detention: For Immigrant Students on Long Island, Trump’s War on Gangs Means the Wrong T-Shirt Could Get You Deported*, THE INTERCEPT (Feb. 11, 2018, 11:10 AM), <https://theintercept.com/2018/02/11/ice-schools-immigrant-students-ms-13-long-island/>.
15. *Id.*
16. Jerome Hunt and Aisha Moodie-Mills, *The Unfair Criminalization of Gay and Transgender Youth: An Overview of the Experiences of LGBT Youth in the Juvenile Justice System*, CENTER FOR AMERICAN PROGRESS (June 29, 2012), https://cdn.americanprogress.org/wp-content/uploads/issues/2012/06/pdf/juvenile_justice.pdf.
17. 2018-2019 Number of Districts/Systems, NEB. DEP’T OF EDUC. (August 28, 2018), <https://cdn.education.ne.gov/wp-content/uploads/2018/08/2018-2019-Numbers-of-Districts-and-Schools-updated-August-28-2018.pdf>; *Statistics and Facts about Nebraska Schools 2017-2018*, NEB. DEP’T OF EDUC., https://cdn.education.ne.gov/wp-content/uploads/2018/11/Statsfacts_20172018-for-pdf.pdf.
18. *Statistics and Facts about Nebraska Schools 2017-2018*, *supra* note 17 at 74.
19. Although OCR only reports 1,502 Nebraska students were referred to law enforcement by their school, it is apparent from responses to our open records requests that school districts may be underreporting or misinterpreting the definition of “law enforcement referral.” Civil Rights Data Collection, U.S. DEP’T OF EDUC., available at <https://ocrdata.ed.gov/file/Reports.aspx?type=school>; *Civil Rights Data Collection*, U.S. Dep’t of Educ., available at <https://ocrdata.ed.gov/Downloads/Master-List-of-CRDC-Definitions.pdf>. (Referral to Law Enforcement is defined as “an action by which a student is reported to any law enforcement agency or official, including a school police unit, for an incident that occurs on school grounds, during school related events, or while taking school transportation, regardless of whether official action is taken. Citations, tickets, court referrals, and school-related arrests are considered referrals to law enforcement.”)
20. *Race, Discipline, and Safety at U.S. Public Schools*, *supra* note 3.
21. *Civil Rights Data Collection*, *supra* note 19.
22. See Na and Gottfredson, *supra* note 8; See Steven C. Teske, *A Study of Zero Tolerance Policies in Schools: A Multi- Integrated Systems Approach to Improve Outcomes for Adolescents*, 24 J. OF CHILD AND ADOLESCENT PSYCHIATRIC NURSING 88 (2011), [http://www.ncjfcj.org/sites/default/files/Zero%20Tolerance%20Policies%20in%20Schools%20\(2\).pdf](http://www.ncjfcj.org/sites/default/files/Zero%20Tolerance%20Policies%20in%20Schools%20(2).pdf); See Matthew T. Theriot, *supra* note 9; See Amanda Ripley, *How America Outlawed Adolescence*, THE ATLANTIC (Nov. 2016), <https://www.theatlantic.com/magazine/archive/2016/11/how-america-outlawed-adolescence/501149/>.

23. Robert A. Brown, Kenneth J. Novak, and James Frank, *Identifying variation in police officer behavior between juveniles and adults*, 37 *Journal of Criminal Justice* 200 (2009): 200-208, <http://www.unctfsu.edu/Documents/Criminal-Justice/Brown6.pdf>.
24. See Amanda Ripley, *supra* note 22.
25. *The Importance of Disaggregating Student Data*, SAFE SCHOOLS HEALTHY STUDENTS (Apr. 2012), http://www.educationnewyork.com/files/The%20Importance%20of%20disaggregating_O.pdf.
26. *Counselors Not Cops: Ending the Regular Presence of Law Enforcement in Schools*, DIGNITY IN SCHOOLS (Oct. 2013), http://dignityinschools.org/wp-content/uploads/2017/10/DSC_Counselors_Not_Cops_Recommendations-1.pdf; *Safe School-based Enforcement through Collaboration, Understanding, and Respect SECURE State and Local Policy Rubric*, U.S. DEP'T OF EDUC. & U.S. DEP'T OF JUSTICE, available at <https://www2.ed.gov/documents/press-releases/secure-policy.pdf>.
27. *Restraint and Seclusion Resource Document*, U.S. DEP'T OF EDUC. (May 2012) available at <https://www2.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf>.
28. *Counselors Not Cops*, *supra* note 26.
29. See Kimberly Small, *Improving Memoranda of Understanding for School Resource Officer Services*, ILLINOIS ASSOCIATION OF SCHOOL BOARDS, <https://www.iasb.com/law/nsbaim-provingmouforsro2014.pdf>.
30. *Counselors Not Cops*, *supra* note 26.
31. *Id.*
32. *Id.*
33. *Id.*
34. Matthew J. Mayer, *Fact Sheet #5: School Resource Officers (SROs)* (Nov. 2008) available at <https://k12engagement.unl.edu/CPSVFactSheet5SchoolResourceOfficers.pdf>; *The Importance of Disaggregating Student Data*, *supra* note 25.
35. This data collection is especially troublesome for immigrant and refugee students who can be falsely accused of gang involvement, leading to them being arrested and charged, and ultimately into ICE custody facing deportation. Alice Speri, *supra* note 14.
36. The Nebraska Supreme Court has identified six factors to determine when an individual would be considered to be in custody. The six factors are: "(1) whether the suspect was informed at the time of questioning that the questioning was voluntary, that the suspect was free to leave or request the officers to [leave], or that the suspect was not considered under arrest; (2) whether the suspect possessed unrestrained freedom of movement during questioning; (3) whether the suspect initiated contact with authorities or voluntarily acquiesced to official requests to respond to questions; (4) whether strong[-] arm tactics or deceptive stratagems were employed during questioning; (5) whether the atmosphere of the questioning was police dominated; or, (6) whether the suspect was placed under arrest at the termination of the questioning." *State v. Tyler F. (In re Tyler F.)*, 755 N.W.2d 360, 367-68 (Neb. 2008) (quoting *U.S. v. Axsom*, 289 F.3d 496, 500 (8th Cir. 2002)).
37. See, e.g., *Graham v. Florida*, 130 S.Ct. 2011 (2010); *Roper v. Simmons*, 453 U.S. 551 (2005).
38. *Building trust between the police and the citizens they serve: An internal affairs promising practices guide for local law enforcement*, U.S. DEP'T OF JUST., OFFICE OF COMMUNITY ORIENTED POLICING SERVICE, at 3 (2010), <https://www.theiacp.org/resources/document/building-trust-between-police-and-citizens>.
39. *State v. Miah S. (In re Miah S.)*, 861 N.W.2d 406 (Neb. 2015) (14 years old); *Rone v. Wyrick*, 764 F.2d 532 (8th Cir. 1985) (16 years old), *State v. Garner*, 614 N.W.2d 319 (Neb. 2000) (15 years old).
40. LEGIS. B. 930, 105th Leg., 2nd Sess. (Neb. 2018), https://nebraskalegislature.gov/bills/view_bill.php?DocumentID=34059.
41. A.C.A. § 6-18-513.
42. H.R.S. § 571-31.
43. Mo. Rev. Stat. § 162.215.
44. LEGIS. B. 158, 105th Leg., 2nd Sess. (Neb. 2018), https://nebraskalegislature.gov/bills/view_bill.php?DocumentID=31309.
45. Mark Greenwald, *Delinquency Intake*, FLA. DEPT. OF JUVENILE JUSTICE (2016-17), [http://www.djj.state.fl.us/docs/car-reports/\(2016-17-car\)-intake-\(mg\).pdf?sfvrsn](http://www.djj.state.fl.us/docs/car-reports/(2016-17-car)-intake-(mg).pdf?sfvrsn).
46. See *School Safety and Security Committee Safety and Security Assessment Criteria*, PA. COMM'N ON CRIME AND DELINQUENCY (Sept. 26, 2018), <https://www.pccd.pa.gov/schoolsafety/Documents/School%20Safety%20and%20Security%20Assessment%20Criteria%20-%20ad-opted%20Sept%2026%202018.pdf>.
47. *Id.*
48. *Id.*
49. *Safe School-based Enforcement through Collaboration, Understanding, and Respect SECURE State and Local Policy Rubric*, *supra* note 26.
50. *Counselors Not Cops*, *supra* note 26.
51. Mo. Rev. Stat. § 162.215.
52. 22 Pa. Code 10.11 *Memorandum of Understanding: Safe School-based Enforcement through Collaboration, Understanding, and Respect SECURE State and Local Policy Rubric*, *supra* note 26.
53. *School Safety and Security*, PA COMMISSION ON CRIME AND DELINQUENCY (PCCD), <https://www.pccd.pa.gov/schoolsafety/pages/default.aspx>; Harold Jordan, *Rethinking School Safety*, End Zero Tolerance (Dec. 5, 2018) <https://www.endzerotolerance.org/single-post/2018/12/05/Rethinking-School-Safety>.
54. *Counselors Not Cops*, *supra* note 26.
55. *Id.*
56. *Id.*
57. *Id.*
58. *Id.*; See Kimberly Small, *supra* note 29.
59. *School Safety and Security*, PA COMMISSION ON CRIME AND DELINQUENCY (PCCD), <https://www.pccd.pa.gov/schoolsafety/pages/default.aspx>; Harold Jordan, *Rethinking School Safety*, End Zero Tolerance (Dec. 5, 2018) <https://www.endzerotolerance.org/single-post/2018/12/05/Rethinking-School-Safety>.
60. *Counselors Not Cops*, *supra* note 26.
61. Matthew J. Mayer, *supra* note 34; *The Importance of Disaggregating Student Data*, *supra* note 25.
62. LEGIS. B. 158, 105th Leg., 2nd Sess. (Neb. 2018), https://nebraskalegislature.gov/bills/view_bill.php?DocumentID=36295.
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