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# ***MIRANDA GOES TO THE PRINCIPAL'S OFFICE: STATE V. ANTONIO T. AND JUVENILE MIRANDA WARNINGS IN SCHOOLS***

Javier B Garcia\*

## **INTRODUCTION**

A child in school is sent to the vice principal's office, on suspicion that he has been drinking alcohol.<sup>1</sup> While the vice principal talks to the child, a school police officer is in the same room silently preparing a portable breath test to determine whether the child indeed drank alcohol. The child confesses to the vice principal and the officer administers the test, which gives a positive result. The officer then reads the child his *Miranda* rights,<sup>2</sup> and the child refuses to answer any of the officer's questions regarding alcohol use. Nonetheless, the state later charges the child with possession of alcoholic beverages by a minor. Does a silent officer's mere presence while a school administrator questions a child about an issue involving both school discipline and delinquent behavior trigger the requirement of a *Miranda* warning? Could the state use the child's confession in pursuing charges against him, even though he confessed to the vice principal and not to the officer?

In *State v. Antonio T.*, the New Mexico Supreme Court found that such an encounter triggered a *Miranda* warning.<sup>3</sup> The officer's mere presence transformed the encounter between the vice principal and the child into a coercive and adversarial environment commonly found in a criminal investigation.<sup>4</sup> Accordingly, the officer not only should have provided a *Miranda* warning but also should have obtained a knowing, intelligent, and voluntary waiver before the child's statements could be admissible.<sup>5</sup> Because the officer failed to obtain a waiver, the statements were not admissible in a delinquency proceeding.<sup>6</sup>

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1. These facts are modeled after those in *State v. Antonio T.*, 2015-NMSC-019, 352 P.3d 1172.

2. See *Miranda v. Arizona*, 384 U.S. 436, 468–69 (1966) (announcing the establishment of *Miranda* rights, which are warnings given to a criminal suspect by police to protect the suspect's privilege against self-incrimination during a custodial interrogation). See *id.* at 467–73 (explaining that *Miranda* rights include the right to remain silent, the right to have an attorney present during any questioning, and the right to an appointed attorney if the individual wants an attorney but cannot afford to hire one). See also *In re Gault*, 387 U.S. 1, 55 (1967) (extending the application of *Miranda* rights to children).

3. 2015-NMSC-019, ¶ 26.

4. *Id.* ¶ 27.

5. *Id.* ¶ 30.

6. *Id.* ¶ 31.

New Mexico provides among the most expansive *Miranda* protections in the United States. Across the country, an officer must provide a *Miranda* warning when subjecting a child to a custodial interrogation.<sup>7</sup> By contrast, under the statutory expansion of *Miranda*,<sup>8</sup> an officer in New Mexico must provide a *Miranda* warning when subjecting a child to an investigatory detention, under circumstances less coercive than a custodial interrogation.<sup>9</sup> And, as *Antonio T.* showed, those circumstances include a silent officer's mere presence while a school administrator questions a child.<sup>10</sup> When placed in the context of New Mexico's approach to juvenile *Miranda* rights, *Antonio T.* represents another expansion of protections.

Yet, the Court in *Antonio T.* described a limiting principle. It emphasized that a school administrator should not be required to provide a *Miranda* warning when questioning a child for a violation of school discipline.<sup>11</sup> It reasoned that an administrator should have flexibility in disciplinary procedures in order to maintain security and order in schools.<sup>12</sup> This flexibility, the Court recognized, will help preserve the informality of the student-teacher relationship. When a police officer is in the room during questioning, however, the informal relationship disappears and the questioning evolves into a criminal investigation.

But suppose the officer in *Antonio T.* were not in the vice principal's office, and the child confesses only to the vice principal. Suppose further that the vice principal, outside the presence of the child, later informs the officer of the child's confession, and the state charges the child with possession of alcoholic beverages by a minor. Should the child be entitled to a *Miranda* warning? If so, who should provide it? This Note argues that a school administrator should provide a *Miranda* warning to a child if the administrator alone questions a child about conduct that is both a school disciplinary violation and a delinquent act and subsequently reports a child's confession to a police officer. It contends that an administrator creates just as coercive an environment when questioning a child as an officer who conducts the same questioning. Additionally, several school districts in New Mexico require that an administrator report certain conduct to a police officer. In light of the coercive impact of the school administrator-police officer relationship, the frequency of reporting student misbehavior to police, and the unique aspects of a child's cognitive development, the statutory *Miranda* protections should extend when an administrator reports a child's confession to a police officer.

Part I provides the constitutional and statutory backdrop for providing a *Miranda* warning. First, it describes the historical practices used to extract information from accused criminals and the emergence of the Fifth Amendment as a means to curb those practices. Second, it discusses the *Miranda* Court's reasoning for providing a warning for people undergoing a custodial interrogation. Third, it

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7. See discussion *infra* Part I.A.2.

8. See N.M. STAT. ANN. § 32A-2-14(A) (1993, as amended through 1999).

9. See *State v. Javier M.*, 2001-NMSC-030, ¶¶ 32, 42, 33 P.3d 1.

10. See *Antonio T.*, 2015-NMSC-019, ¶ 23.

11. See *id.* ¶ 24 (“Questioning a child for school disciplinary matter is distinguishable from questioning a child for suspected criminal wrongdoing.”).

12. See *id.* (Because “maintaining security and order in . . . schools requires a certain degree of flexibility in school disciplinary procedures,” we recognize “the value of preserving the informality of the student teacher relationship.” (quoting *New Jersey v. T.L.O.*, 469 U.S. 325, 340 (1985)).

explains the application of *Miranda* warnings to children. Finally, it ends by discussing New Mexico's departure from the federal approach toward providing more expansive *Miranda* protections for children.

Part II analyzes the necessity of providing a *Miranda* warning when an administrator alone questions a child and reports confession to law enforcement. First, it considers the coercive impact of the school administrator-police officer relationship. Second, it discusses specific policies in New Mexico schools with respect to interrogating students and reporting conduct to police. Finally, it explains the inadequacy of the agency framework as an alternative for providing a *Miranda* warning.

Part III addresses countervailing concerns for the proposed rule. First, it discusses a concern that school administrators lack substantive legal knowledge for providing a *Miranda* warning. Second, it describes whether a *Miranda* warning impedes a school's ability for responding to school disciplinary violations. Third, it explains a child's potential difficulty in understanding a *Miranda* warning and whether a child will adequately assert his or her *Miranda* rights. Finally, it considers the impact of the proposed rule when a school administrator questions a student with a disability. Part IV outlines recommendations for school districts and administrators who question children. It provides concrete instructions on providing a *Miranda* warning if an administrator reports a child's confession to a police officer.

This is the first scholarly treatment on the contours of New Mexico's statutory expansion of *Miranda* in the wake of the New Mexico Supreme Court's decision in *Antonio T.* Some existing scholarship focuses on the application of *Miranda* in schools.<sup>13</sup> Yet, none focus exclusively on the unique statutory framework that exists in New Mexico. Other scholarship extensively discusses the impact of police interrogations in schools.<sup>14</sup> While that scholarship sheds light on the proposed rule in this Note, this Note devotes attention to the role of a school administrator when questioning a child and reporting the information to police.

Police officers in schools have recently come under intense scrutiny in light of their aggressive responses to a child's misbehavior.<sup>15</sup> This scrutiny prompted reports on the proper role of an officer in a school, and the skills an officer needs when interacting with a child.<sup>16</sup> While an officer's response to student misbehavior deserves attention, so too does a school administrator's response. Addressing student misbehavior is among the variety of functions an administrator performs in school. But reporting a confession to police undermines the child's privilege against self-

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13. See, e.g., Kristi North, Comment, *Recess is Over: Granting Miranda Rights to Students Interrogated Inside School Walls*, 62 EMORY L. REV. 441 (2012); Paul Holland, *Schooling Miranda: Policing Interrogation in the Twenty-First Century*, 52 LOY. L. REV. 39, 65 (2006).

14. See, e.g., Lisa H. Thureau & Johanna Wald, *Controlling Partners: When Law Enforcement Meets Discipline in Public Schools*, 54 N.Y.L. SCH. L. REV. 977, 978 (2009–2010).

15. See, e.g., Dana Ford, Greg Botelho & Kevin Conlon, *Spring Valley High School officer suspended after violent classroom arrest*, CNN (Oct. 27, 2015), <http://www.cnn.com/2015/10/27/us/south-carolina-school-arrest-video/> (reporting a video showing a deputy “standing over a student . . . sharply tugging her toward the front of the classroom. [The student] flies out of her desk and slides several feet across the floor.”).

16. See Richard Pérez-Peña, Christine Hauser & Sheryl Gay Stolberg, *Rough Student Arrest Puts Spotlight on School Police*, N.Y. TIMES (Oct. 28, 2015), <http://www.nytimes.com/2015/10/29/us/police-officers-in-schools.html>.

incrimination. It provides a police officer and the state with the very testimony needed for a criminal prosecution without requiring them to comply with a child's right to remain silent. An administrator who provides a *Miranda* warning before questioning the child and reporting it to the police will safeguard that child's privilege.

## I. BACKGROUND

### A. Development of the *Miranda* Warning

#### 1. *Pre-Miranda: Historical Development of the Warning*

The nature of coerced confessions was known long before the Supreme Court decided *Miranda*. Early English and American courts recognized that coerced confessions are inherently untrustworthy.<sup>17</sup> Seventy years before *Miranda*, the Supreme Court described “the inquisitorial and manifestly unjust methods of interrogating accused persons” prevalent in seventeenth-century England.<sup>18</sup> Among those methods was “the temptation to press the witness unduly, to browbeat him if he be timid or reluctant, to push him into a corner, and to entrap into fatal contradictions.”<sup>19</sup> In light of the nature of coerced confessions, the Supreme Court evaluated the admissibility of a suspect's confession under a voluntariness test. The Court found two constitutional bases for the requirement that a confession be voluntary: the Due Process Clause of the Fourteenth Amendment<sup>20</sup> and the Self-Incrimination Clause of the Fifth Amendment.<sup>21</sup> While the Due Process Clause remains a viable basis upon which to determine the voluntariness of a suspect's confession,<sup>22</sup> the Fifth Amendment is the primary vehicle for making that determination.<sup>23</sup>

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17. See, e.g., *King v. Rudd* (1783) 168 Eng. Rep. 160, 161 (stating that the English courts excluded confessions obtained by threats and promises); *King v. Warickshall* (1783) 168 Eng. Rep. 234, 235 (“A free and voluntary confession is deserving of the highest credit, because it is presumed to flow from the strongest sense of guilt . . . but a confession forced from the mind by the flattery of hope, or by the torture of fear, comes in so questionable a shape . . . that no credit ought to be given to it; and therefore it is rejected.”); *Hopt v. Territory of Utah*, 110 U.S. 574 (1884).

18. See *Brown v. Walker*, 161 U.S. 591, 596 (1896).

19. *Id.* at 596–97.

20. See *Brown v. Mississippi*, 297 U.S. 278, 287 (1936) (reversing a criminal conviction under the Due Process Clause because it was based on a confession obtained by physical coercion).

21. See *Bram v. United States*, 168 U.S. 532, 542 (1897) (stating that the voluntariness test “is controlled by that portion of the Fifth Amendment . . . commanding that no person ‘shall be compelled in any criminal case to be a witness against himself.’”).

22. See *Dickerson v. United States*, 530 U.S. 428, 434 (2000); see also *Schneckloth v. Bustamonte*, 412 U.S. 218, 226 (1973) (explaining that under the Due Process Clause of the Fourteenth Amendment, the voluntariness of a confession depends on “whether a defendant's will was overborne” by the circumstances surrounding the giving of a confession. This analysis takes into consideration “the totality of all the surrounding circumstances—both the characteristics of the accused and the details of the interrogation.”).

23. See *Malloy v. Hogan*, 378 U.S. 1, 5 (1964) (holding that the Fifth Amendment Self-Incrimination Clause is incorporated into the Due Process Clause of the Fourteenth Amendment).

## 2. *Miranda v. Arizona*

*Miranda v. Arizona* is the seminal case that established a criminal suspect's right to remain silent and to have an attorney, either retained or appointed, when a law enforcement officer places the suspect into custody.<sup>24</sup> The Supreme Court understood that a police interrogation entails "inherently compelling pressures" that, even for an adult, can "undermine the individual's will to resist and . . . compel him to speak where he would not otherwise do so freely."<sup>25</sup> The *Miranda* Court mentioned several aspects of that produce this pressure: the isolating nature of the interrogation,<sup>26</sup> their psychological orientation,<sup>27</sup> and the interrogator's trickery.<sup>28</sup> In order to protect a suspect's privilege against self-incrimination under the Fifth Amendment, a law enforcement officer must provide the suspect with a warning.<sup>29</sup>

But in order to trigger the warning, the suspect must undergo a custodial interrogation. The *Miranda* Court described a custodial interrogation as "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom in a significant way."<sup>30</sup> An individual is subject to custodial interrogation when he or she lacks the freedom to leave to an extent equal to formal arrest.<sup>31</sup> But the lack of freedom to leave is not the only fact that renders an interrogation custodial.<sup>32</sup> The New Mexico Supreme Court in *State v. Cooper* went to great lengths to describe the nature of a police encounter such that the suspect would be subjected to a custodial interrogation:

*Miranda* was focused upon the private and secret interrogation of a suspect in an isolated environment completely controlled by law enforcement officials. Isolation is the key aspect of the custodial interrogation under *Miranda*. In this setting, the police have immediate control over the suspect- they can restrain him and subject him to their questioning and apply whatever psychological techniques they think will be most effective. It is much easier, in such a setting, for investigators, intent upon obtaining a confession, to crush a suspect's will.<sup>33</sup>

## 3. *In re Gault*

In *In re Gault*, the Supreme Court expressly extended its holding in *Miranda* to children accused of committing crimes.<sup>34</sup> The *Gault* Court emphasized that "admissions and confessions of juveniles require special caution."<sup>35</sup> It explained

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24. 384 U.S. 436 (1966).

25. *Id.* at 467.

26. *Id.* at 449.

27. *Id.* at 448.

28. *Id.* at 453.

29. *Id.* at 444.

30. *Id.*

31. *State v. Javier M.*, 2001-NMSC-030, ¶ 18, 33 P.3d 1 (citing *California v. Beheler*, 463 U.S. 1121 (1983)).

32. *Javier M.*, 2001-NMSC-030, ¶ 18 (citing *State v. Cooper*, 1997-NMSC-058, ¶ 36, 949 P.2d 660).

33. *Cooper*, 1996-NMSC-058, ¶ 36.

34. 387 U.S. 1 (1967).

35. *Id.* at 45.

its reasons for providing the right to a child in much the same manner that it reasoned that adults should have the right:

Age 15 is a tender and difficult age for a boy of any race. He cannot be judged by the more exacting standards of maturity. That which would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens. This is the period of great instability which the crisis of adolescence produces. A 15-year-old lad, questioned through the dead of night by relays of police, is a ready victim of the inquisition. Mature men possibly might stand the ordeal from midnight to 5 a.m. But we cannot believe that a lad of tender years is a match for the police in such a contest. He needs counsel and support if he is not to become the victim first of fear, then of panic. He needs someone on whom to lean lest the overpowering presence of the law, as he knows it, crush him.<sup>36</sup>

In addition to the requirement that an adult or child undergo a custodial interrogation in order to receive a *Miranda* warning under the Fifth Amendment, it is also critical to understand *who* must provide the warning. Since a warning implicates the Fifth Amendment, the state action doctrine applies,<sup>37</sup> meaning that only state officials are charged with providing a warning. But with respect to *Miranda* warnings, not all state officials must provide one. A law enforcement officer is certainly expected to provide a warning, as the *Miranda* Court made abundantly clear.<sup>38</sup> But other state officials, such as school administrators, are generally not required to provide one, primarily when the conduct that would ordinarily give rise to a warning is a response to school discipline and not a criminal investigation.<sup>39</sup>

This Note takes issue with the rigid principle that a school administrator is generally exempt from providing a *Miranda* warning when questioning a child for school discipline. An administrator may have a legitimate interest in maintaining the health and safety of children in school. Questioning students on suspected violations of discipline is generally an appropriate means through which to maintain that health and safety. Yet, an administrator who reports a child's confession to a law enforcement officer undermines that child's privilege against self-incrimination. The administrator's report aims not to remedying school discipline, but at providing law enforcement with evidence needed in a criminal investigation. Accordingly, an administrator should be held to the same strictures as an officer when reporting a child's confession.

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36. *Id.* at 45–46.

37. *See* *Edmonson v. Leesville Concrete Co.*, 500 U.S. 614, 619 (1991) (“The Constitution’s protections of individual liberty and equal protection apply in general only to action by the government.”).

38. *Miranda v. Arizona*, 384 U.S. 436, 444 (1966).

39. *See* *State v. Antonio T.*, 2015-NMSC-019, ¶ 32, 352 P.3d 1172 (“We emphasize that our holding in this case should not be construed to require school administrators to advise a child of his or her right to remain silent in order to use incriminating statements elicited from the child against that child in school disciplinary proceedings.”).

## B. New Mexico's Departure from the Majority Approach

New Mexico departed significantly from the Supreme Court's approach in providing *Miranda* warnings. As a sovereign, New Mexico has the power to enact its own set of laws that provide greater protections than those available under the United States Constitution. Among those greater protections are *Miranda* rights available to children.<sup>40</sup> The New Mexico Legislature enacted statutory *Miranda* rights using language markedly different than what the Supreme Court of the United States used.<sup>41</sup> Additionally, the New Mexico Supreme Court developed the contours of those rights, making it applicable under less coercive circumstances than a custodial interrogation.<sup>42</sup> Taken together, efforts by the New Mexico Legislature and New Mexico Supreme Court represent a steadfast commitment to extend a child's *Miranda* rights.

### 1. New Mexico Children's Code

Enacted in 1993, the New Mexico's Children's Code was meant to embody the New Mexico Legislature's efforts to provide rights available to children in the state.<sup>43</sup> Article 1 describes many purposes of the Children's Code, among which are: "to provide for the care, protection and wholesome mental and physical development of children;"<sup>44</sup> "to provide judicial and other procedures through which . . . the parties are assured a fair hearing and their constitutional and other legal rights are recognized and enforced;"<sup>45</sup> and "to reduce overrepresentation of minority children and families in the juvenile justice, family services and abuse and neglect systems."<sup>46</sup>

As a means to achieve these purposes, the legislature also enacted a statute providing for the basic rights of children with respect to delinquent acts.<sup>47</sup> Entitled "Basic rights," this statute provides, in part, that "[n]o person subject to the provisions of the Delinquency Act who is alleged or suspected of being a delinquent child shall be interrogated or questioned without first advising the child of the child's constitutional rights and securing a knowing, intelligent and voluntary waiver."<sup>48</sup> As a provision dealing with interrogation and questioning, it shares language also provided under *Miranda*. It refers to a waiver that a child must make in order for that child's statements to be admissible in a delinquency proceeding. Specifically, the waiver must be "knowing, intelligent, and voluntary," language the *Miranda* Court also included.<sup>49</sup>

However, this provision includes language not found in either the United States Constitution or *Miranda*. First, the provision reaches a child who is either

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40. See N.M. STAT. ANN. § 32A-2-14 (1993, as amended through 1999).

41. See *id.*

42. See *State v. Javier M.*, 2001-NMSC-030, ¶ 19, 33 P.3d 1.

43. See generally § 32A-1-3.

44. § 32A-1-3(A).

45. § 32A-1-3(B).

46. § 32A-1-3(E).

47. See § 32A-2-14.

48. See § 32A-2-14(C).

49. See *Miranda v. Arizona*, 384 U.S. 436, 444 (1966) ("The defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly, and intelligently.").

“alleged” or “suspected” to have committed a delinquent act, although neither word is defined in the statute.<sup>50</sup> Significantly, it makes no mention that the child be subjected to a custodial interrogation. In fact, “custody” is not included anywhere in the statute. As the New Mexico Supreme Court would reason in *State v. Javier M.*, the absence of “custody” suggests that the statute was not intended merely to codify *Miranda*’s holding.<sup>51</sup> Second, the provision states that a child must be advised of “constitutional rights.”<sup>52</sup> Yet, the statute does not specify the constitutional rights of which the child must be advised. Similar to the absence of “custody,” the New Mexico Supreme Court interpreted “constitutional rights” to include a different subset of rights than the *Miranda* Court found.<sup>53</sup>

Consistent with its power as a sovereign, New Mexico enacted Section 32A-2-14 to protect a child’s constitutional rights during an interrogation or questioning. But the the language of the provision does not lend itself for a simple interpretation and application. Specifically, the absence of “custody” in and lack of specific “constitutional rights” to which a child is entitled suggest that the provision attaches rights under different circumstances than what the *Miranda* Court held.

## 2. *State v. Javier M.*

The New Mexico Supreme Court interpreted the contours of Section 32A-2-14(C) in *State v. Javier M.*<sup>54</sup> In that case, police officers in Hobbs, New Mexico, were dispatched to an apartment in response to a loud music complaint.<sup>55</sup> As the officers approached the building, they saw a female, who yelled “Five O” and ran inside the apartment.<sup>56</sup> When they reached the front door of the apartment, the officers heard scuffling, the music was turned off, and an officer could smell alcohol and marijuana from inside the apartment.<sup>57</sup> When the door opened, the officers smelled a stronger odor of alcohol and marijuana, and noticed between ten and fifteen individuals inside.<sup>58</sup> They separated the individuals under eighteen from the adults.<sup>59</sup> One of the officers spoke with Javier, a fifteen-year-old inside the apartment.<sup>60</sup> Although Javier did not appear intoxicated, the officer detected the smell of alcohol on his breath or clothing.<sup>61</sup> The officer took Javier to a stairwell near the apartment and asked for his name, age, and whether he consumed any alcohol.<sup>62</sup> Javier answered the officer’s questions and admitted that he consumed alcohol.<sup>63</sup>

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50. § 32A-2-14(C).

51. *See infra* Part I.B.2.

52. § 32A-2-14(C).

53. *See infra* Part I.B.2.

54. 2001-NMSC-030, 33 P.3d 1.

55. *Id.* ¶ 2.

56. *See id.* (explaining that “Five O” is slang for police).

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.* ¶ 3.

63. *Id.*

The Court concluded that the officer should have provided Javier with a *Miranda* right before asking him questions.<sup>64</sup> It first observed that Javier would not have been entitled to a warning under *Miranda*, since he was not undergoing a custodial interrogation.<sup>65</sup> The Court found that the limited duration of the officer's questioning and its public nature suggest that the child was not deprived of his freedom to the extent found in a custodial interrogation.<sup>66</sup> Nonetheless, it interpreted Section 32A-2-14(C) to provide for a *Miranda* warning even in the absence of a custodial interrogation.<sup>67</sup> In other words, the Court reasoned that "the Legislature intended [Section 32A-2-14] to provide greater protection to juveniles than is afforded to adults in the area of police questioning."<sup>68</sup> Looking to the language of the provision, the Court reasoned that the statute provides for a *Miranda* warning when a child is either "alleged"<sup>69</sup> or "suspected"<sup>70</sup> of committing a delinquent act, neither of which are the equivalent to a custodial interrogation.<sup>71</sup> The Court emphasized that "[g]iven a child's possible immaturity and susceptibility to intimidation, a child who is subject to an investigatory detention may feel pressures similar to those experienced by adults during custodial interrogation."<sup>72</sup> An investigatory detention occurs when "a child . . . is detained or seized and suspected of wrongdoing."<sup>73</sup> If the child is subjected to an investigatory detention, he or she "must be advised of his or her right to remain silent and that if the child waives that right, anything said can be used against them."<sup>74</sup> Therefore, unlike the Fifth Amendment's requirement that a child undergo a custodial interrogation to receive a *Miranda* warning, an investigatory detention is the threshold condition that triggers a warning for a child.

Additionally, the *Javier M.* Court interpreted the scope of "constitutional rights" provided under Section 32A-2-14(C). It interpreted "constitutional rights" to include only the right to remain silent and that a child's statements could be used against him or her.<sup>75</sup> It declined to parallel *Miranda*'s holding by including the right to an appointed lawyer during an investigatory detention.<sup>76</sup> It reasoned that Section 32A-2-14(C) would present unworkable situations that would greatly infringe on a child's fundamental rights if the provision included a right to counsel.<sup>77</sup> If an officer were required to advise the child that he has the right to counsel during an

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64. *Id.* ¶ 1.

65. *Id.* ¶ 21.

66. *Id.* ¶ 48.

67. *Id.* ¶ 1.

68. *Id.* ¶ 48.

69. *See id.* ¶ 29 (defining "alleged" as a "specific legal term which pertains to the time period after which a formal petition alleging delinquency has been filed in the Children's Court" (citing BLACK'S LAW DICTIONARY 74 (7th ed.1999))).

70. *See id.* (defining "suspected" as a "period prior to the filing of a petition when a child is believed to have committed a crime or offense but has not yet been formally charged" (citing WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 1189 (1985))).

71. *Id.*

72. *Id.* ¶ 37.

73. *Id.* ¶ 48.

74. *Id.*

75. *Id.* ¶ 41.

76. *Id.* ¶ 46.

77. *See id.*

investigatory detention, the Court emphasized, the officer would have to further detain the child so that an attorney may be either retained or appointed. Since an investigatory detention is valid only if it is limited in scope and duration, an officer who detains a child simply to find an attorney would likely violate the child's Fourth Amendment rights against an unreasonable seizure.<sup>78</sup>

The significance of the *Javier M.* Court's decision not to interpret the protections under Section 32A-2-14(C) as merely a parallel to *Miranda* is a willingness to recognize the unique circumstances that occur when an officer subjects a child to an investigatory detention. Specifically, an officer would likely violate the Fourth Amendment by detaining a child for an unreasonable length of time during an investigatory detention. But the same violation may not occur if a school administrator questions a child for the same length of time in order to address a school disciplinary issue. While this Note does not explore the implications that may arise when an officer does not inform a child of a right to counsel during an investigatory detention, the Court's focus remains on the coercive impact an officer creates when questions a child. Even when a case involves a school administrator questioning a child, as *Antonio T.* showed, the Court remains steadfast in analyzing coercion caused by a law enforcement officer.

### 3. *State v. Antonio T.*

On April 14, 2010, two teachers working at Kirtland Central High School (KCHS) in Kirtland, NM, escorted Antonio T. to the Vice Principal Vanessa Sarna's office on the suspicion that he was intoxicated.<sup>79</sup> Once Antonio was in her office, Principal Sarna called Deputy Emerson Charley into her office to administer a portable breath test.<sup>80</sup> Deputy Charley is a police officer who served in the San Juan County Sheriff's Office for over eleven years before being assigned to KCHS as the student resource officer.<sup>81</sup> On that day, Deputy Charley wore his full uniform, equipped with all of the standard instruments of lethal and non-lethal force.<sup>82</sup> Deputy Charley stood five feet from Antonio, preparing the breath test, while Principal Sarna questioned Antonio about drinking alcohol at school.<sup>83</sup> Although Deputy Charley's normal procedure was to question a student suspected of drinking alcohol prior to administering a breath alcohol test, since Principal Sarna asked Antonio questions identical to the questions he would have asked, he merely listened attentively to Principal Sarna's questioning.<sup>84</sup> She asked Antonio whether he had been drinking, what he drank, how much he drank, and if anyone else was drinking with him.<sup>85</sup> She told him that if he told her the truth, he would receive a lesser term of suspension.<sup>86</sup>

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78. *Id.*

79. *State v. Antonio T.*, 2013-NMCA-035, ¶ 2, 298 P.3d 484.

80. *Id.*

81. *State v. Antonio T.*, 2015-NMSC-019, ¶ 4, 352 P.3d 1172.

82. *Antonio T.*, 2013-NMCA-035, ¶ 2.

83. *Antonio T.*, 2015-NMSC-019, ¶ 5.

84. *Id.*

85. *Id.*

86. *Id.* Principal Sarna testified that her questions and bargains to Antonio were ones she routinely told students because her job is to enforce discipline at KCHS, and she may have student disciplinary cases "just one right after another." *Id.*

In response to Principal Sarna's questions, Antonio admitted that he consumed two shots of alcohol in a soda or Gatorade bottle, and disposed of the bottle in a bathroom trash can east of the school library.<sup>87</sup>

After Antonio confessed to consuming alcohol to Principal Sarna, Deputy Charley administered the breath test, which showed that his blood alcohol concentration was .11%,<sup>88</sup> corroborating his confession.<sup>89</sup> While Deputy Charley administered the test, Principal Sarna searched Antonio's backpack, where she found a pocketknife. Deputy Charley did not provide Antonio a *Miranda* warning before administering the test.<sup>90</sup> After administering the test, Deputy Charley left Principal Sarna's office to search for the plastic bottle in a nearby bathroom, but failed to find it.<sup>91</sup> When he returned, he provided Antonio with a *Miranda* warning asked Antonio about his alcohol consumption.<sup>92</sup> Antonio answered Deputy Charley's questions about the pocketknife, but refused to answer questions on his alcohol consumption.<sup>93</sup> Nonetheless, Deputy Charley wrote Antonio statements to Principal Sarna in his police report under the "investigation" heading.<sup>94</sup> He confiscated Antonio's pocketknife, and the State later charged Antonio with possession of alcohol beverages by a minor.<sup>95</sup>

The New Mexico Supreme Court found that when a child suspected of delinquent behavior is questioned in the presence of a law enforcement officer, that child is subjected to an investigatory detention.<sup>96</sup> It looked to the character of the vice principal's questioning when the officer was present during Antonio's questioning.<sup>97</sup> Specifically, the officer's presence "creat[es] a coercive and adversarial environment that does not normally exist between school officials and students."<sup>98</sup> The Court used the officer's very appearance— "wearing a full uniform, including his badge and duty belt with a holstered gun—" to depict the questioning as sufficiently coercive to be an investigatory detention. And even though the officer remained silent throughout the questioning, the Court refused to consider his presence innocuous. Rather, they reasoned that his presence made it impossible for Antonio to leave.<sup>100</sup> The Court also observed that the officer's presence also allowed him to test Antonio's breath for alcohol, the results of which would help him gather evidence needed for a delinquency proceeding.<sup>101</sup>

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87. *Id.*

88. *Antonio T.*, 2013-NMCA-035, ¶ 3.

89. *Antonio T.*, 2015-NMSC-019, ¶ 6.

90. *Id.*

91. *Id.* ¶ 7.

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.* ¶ 26.

97. *See id.* ¶ 25.

98. *Id.*

99. *Id.* ¶ 26.

100. *Id.*

101. *Id.* ¶ 27.

While the scope of Section 32A-2-14(C)'s protections apply to a child regardless of where the questioning occurs, *Antonio T.* illustrates its application in a school setting. Specifically, it exposed the nature of questioning that may occur in a school, where an administrator enlists the support of a police officer in aid of school discipline. The vice principal and officer collaborated with one another to achieve the same goal, namely Antonio's confession. His confession served distinct goals of the administrator and officer. If Antonio confessed, then the vice principal would carry out a school disciplinary consequence and the officer would gather evidence against him in a delinquency proceeding. But the Court focused only on the coercion caused by the officer. It expressly refused to construe its holding to require an administrator to provide a *Miranda* warning when questioning students only for a violation of school discipline.

As this Note addresses in the following section, by refusing to extend its holding to administrators, the Court overlooked the possibility that a child's privilege against self-incrimination may still come under attack. Specifically, the administrator can employ tactics as coercive as an officer. Additionally, regulations common in schools throughout New Mexico enable law enforcement to receive a child's statements when questioned during school. Finally, the existing alternative that would require an administrator to provide a *Miranda* right—under agency law—does not apply when an administrator questions a child alone for a school disciplinary issue.

## II. ANALYSIS

### A. The Necessity for a *Miranda* Warning When School Administrators Alone Question Children

#### 1. *Coercive Impact of the School Administrator-Police Officer Relationship*

In response to growing safety concerns, schools have increased the presence of law enforcement in their buildings.<sup>102</sup> As a result, the number of student interactions with law enforcement officers has dramatically increased.<sup>103</sup> Officers who work in schools generally perform traditional law enforcement duties and school duties.<sup>104</sup> In some school districts, local police departments and school have developed liaison programs through which police officers are stationed at schools.<sup>105</sup> One scholar argues that the increased law enforcement presence has “fostered more cooperative, formalized, and interdependent relationships between . . . schools and

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102. See generally *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646 (1995); Eugene C. Bjorklund, *Using Metal Detectors in Public Schools: Some Legal Issues*, 111 EDUC. L. REP. 1 (1996).

103. See *Controlling Partners*, *supra* note 14, at 978 (attributing the increased presence of law enforcement to (1) increased federal funding in schools; (2) high-profile school shootings; and (3) an increasingly strict approach to adolescent crime).

104. See Michael Pinard, *From the Classroom to the Courtroom: Reassessing Fourth Amendment Standards in Public School Searches Involving Law Enforcement Authorities*, 45 ARIZ. L. REV. 1067, 1077–78 (2003).

105. *Id.* at 1077.

law enforcement agencies.”<sup>106</sup> In other words, law enforcement and school officials are no longer working independently, but instead rely on one another to achieve their respective goals.<sup>107</sup> This reliance has the potential to convert an encounter with a child into a coercive environment, where the child sees both the administrator and the officer as his adversaries.

This coercive impact can occur even when a school administrator alone questions a child. Even without the aid of a police officer to interrogate a child, schools are actively seeking the training needed to question children. School administrator associations, such as the Illinois Principals Association, organize professional development conferences to learn techniques on investigating student misbehavior, and on interviewing students suspected of violating school disciplinary rules.<sup>108</sup> The goals of the events are: to help an administrator “assess the credibility of information that the subject (student or faculty) is giving you during the interview;” to “structure the investigative interview to maximize the flow of information;” and to “persuade the guilty to tell the truth.”<sup>109</sup> A common method to achieve these goals is the Reid Technique, developed by John E. Reid & Associates, the largest interrogation trainer in the world.<sup>110</sup> The technique consists of utilizing “maximization,” which involves confronting a suspect to raise anxiety,<sup>111</sup> and “minimization,” which involves commiserating with a suspect to reduce their feelings of guilt.<sup>112</sup>

But while these techniques increase the likelihood that a guilty person will confess, it also may lead an innocent person to confess falsely.<sup>113</sup> And although studies show that a child is more vulnerable to confessing falsely than an adult,<sup>114</sup> the impact of those studies has not precipitated a shift in approaching a child’s

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106. *Id.* at 1079.

107. *Id.*

108. See, e.g., *The Reid Technique of Investigative Interviewing and Active Persuasion*, ILL. PRINCIPALS ASS’N, <http://www.ilprincipals.org/professional-development/events-search/developing-interview-interrogation-skills-reid-9-steps-of-interrogation> (last visited Apr. 9, 2015).

109. *Id.*

110. Drake Bennett, *The Dark Science of Interrogation: How to Find Out Anything From Anyone*, BLOOMBERG (Feb. 12, 2015), <http://www.bloomberg.com/graphics/2015-dark-science-of-interrogation/>; see also GISLI H. GUDJONSSON, *THE PSYCHOLOGY OF INTERROGATIONS AND CONFESSIONS: A HANDBOOK* 10 (2003).

111. Bryce Wilson Stucki, *Teacher, May I Plead the Fifth?*, THE AM. PROSPECT (Jul. 22, 2013), <http://prospect.org/article/teacher-may-i-plead-fifth> (providing an example of the “maximization” technique, which suggests telling the suspect “Quit lying to me”).

112. See *id.* (asserting that a proper application of the “minimization” technique is telling the suspect “I can really understand how much pressure you were under that day”).

113. See, e.g., Wendy Gillis, *Aggressive police questioning may boost false accusations, study finds*, THESTAR.COM (Feb. 15, 2015), <http://www.thestar.com/news/crime/2015/02/15/aggressive-police-questioning-may-boost-false-accusations-study-finds.html> (reporting that “participants in a psychological study . . . accused another person of stealing a cellphone after being subjected to aggressive and coercive interrogations about a sham crime”).

114. See, e.g., Pamela S. Pimentel, Andrea Arndorfer & Lindsay C. Malloy, *Taking the Blame for Someone Else’s Wrongdoing: The Effects of Age and Reciprocity*, LAW AND HUMAN BEHAVIOR, April 13, 2015, <http://dx.doi.org/10.1037/lhb0000132> (providing that juvenile false confessions may occur at a disproportionate rate compared to adult false confessions due, in part, to psychosocial immaturity and vulnerability to external influences).

misbehavior in school. In fact, the trend appears to be that school administrators are increasingly interested in the Reid Technique. In 2013, the National Association of School Resource Officers (NASRO) enrolled over 3,500 to 4,000 police officers and school administrators in Reid & Associates' basic program, an increase from the previous year.<sup>115</sup> In New Mexico, Reid & Associates has at least three courses planned in 2016, offering four-day seminars on the Reid Technique.<sup>116</sup>

In the context of questioning a child suspected of violating school discipline, an administrator is likely well-equipped to elicit a child's confession. By employing strategies such as the Reid Technique, an administrator can manipulate a child's words and responses in order to convince the child to confess. Without the opportunity to hear the right to remain silent, a child may not stand a chance against the administrator's skills in active persuasion.

## 2. *New Mexico School Policies Concerning Student Interrogations*

Many New Mexico school districts have policies that both allow principals to interrogate students without providing a *Miranda* warning and require that principals turn over any evidence of a crime to law enforcement. In 2009, the Las Cruces Public Schools promulgated a regulation involving a school's relation with law enforcement authorities and social service agencies.<sup>117</sup> This regulation includes a section entitled "Administrative Monitoring of Contact with Students."<sup>118</sup> That section provides that "neither the principal nor his/her designee shall disclose any written statements made nor the content of statement given during the interview, with the exception that the statements or the content of the statements may be given to . . . the district attorney or other law enforcement agencies."<sup>119</sup> The section does not specify the bases to make contact with students and accordingly may include any contact, from a minor infraction to a serious felony. More significantly, the regulation permits an administrator to report a child's statements to the district attorney or other law enforcement agencies. Thus, an officer may receive the child's confession without the need to provide a *Miranda* warning beforehand. Identical regulations were promulgated by Carrizozo Municipals Schools,<sup>120</sup> Pojoaque Valley Schools,<sup>121</sup> Dulce Independent School District,<sup>122</sup> Belen Consolidated Schools,<sup>123</sup> and Walatowa High Charter School.<sup>124</sup>

The ubiquity of the regulation reflects a common approach in the use of a child's statements. Under the regulation, a district attorney has the authority to

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115. THESTAR.COM, *supra* note 113.

116. JOHN REID & ASSOCIATES, *The Reid Technique of Interviewing and Interrogation*, [https://www.reid.com/training\\_programs/r\\_interview\\_schedule.html](https://www.reid.com/training_programs/r_interview_schedule.html) (last visited Apr. 9, 2016).

117. Las Cruces (N.M.) Public Schools, Regulation, Relations with Law Enforcement Authorities and Social Service Agencies 7 (2009).

118. *Id.* at 2.

119. *Id.* at 3.

120. See Carrizozo (N.M.) Municipal Schools, Board Policy, School Discipline Procedures 14 (2005).

121. See Pojoaque Valley (N.M.) Schools, Student Discipline Policies § B, at 16 (2001).

122. See Dulce (N.M.) Independent School District, School Discipline Process § III, at 29 (2003).

123. See Belen (N.M.) Consolidated Schools, Addressing School Discipline § 743 (2005).

124. See Walatowa High Charter School (Jemez Pueblo, N.M.), Student Discipline Procedures § 363 (2011).

receive a child's statements, and the child cannot prevent the disclosure. The impact of this disclosure is the opportunity for the district attorney to receive a child's confession to a delinquent act. Perhaps more problematic than the possibility of a district attorney obtaining a child's confession secondhand is the practice of administrators knowingly intending to share a child's information with law enforcement.

### 3. *Inadequacy of Agency Framework in Providing a Miranda Warning*

An alternative to the proposed rule is rooted in the law of agency. If a person acts as an agent of law enforcement, then that person is required to comply with the same *Miranda* requirements as the law enforcement officer. In New Mexico, a person acts as an agent of law enforcement when two requirements are met: (1) whether the government knows of and acquiesced to the intrusive conduct, and (2) whether the party performing the search intended to assist law enforcement efforts or to further his own ends.<sup>125</sup> New Mexico courts established this agency test as a means to determine the constitutionality of a search and seizure under the Fourth Amendment.<sup>126</sup>

But the New Mexico Court of Appeals applied the agency test in *State v. Antonio T.*<sup>127</sup> The Court found that the first prong was met when the officer stepped inside the vice principal's office while she questioned Antonio.<sup>128</sup> However, the Court found that the second prong was not met because the vice principal questioning the child for violating school discipline.<sup>129</sup> In other words, the vice principal was attempting to further her own ends by questioning Antonio, not the officer's. Accordingly, the vice principal was not required to provide a *Miranda* warning.

When applying the agency test to an administrator who reports a child's confession to police, at least one of the prongs is not met. With respect to the first prong, an officer may not know of or acquiesce to the administrator's questioning, since that questioning may occur outside the presence of an officer. With respect to the second prong, the Court Appeals' reasoning in *Antonio T.* becomes illustrative. The administrator may conduct questioning in order to resolve a school disciplinary issue, not to assist an officer in a delinquency proceeding. Even if the administrator intends to report the child's statements before conducting the questioning, the nature of the questioning is still to resolve a school disciplinary issue. Thus, the agency test would not provide for a *Miranda* warning under these circumstances.

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125. *See* *State v. Santiago*, 2009-NMSC-045, ¶ 18, 217 P.3d 89 (establishing the two-prong agency test).

126. *See id.*; *see also* U.S. Const. amend. IV (stating, in part, that “[t]he right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated . . .”).

127. 2013-NMCA-035, ¶ 22, 298 P.3d 484.

128. *Id.*

129. *Id.* ¶ 23.

### III. COUNTERVAILING CONCERNS

#### A. An Administrator's Lack of Formal Legal Training in Criminal Procedure

One counterargument to the proposed rule is rooted in a school administrator's training. Requiring a *Miranda* warning may make some administrators apprehensive because they lack legal training in criminal procedure. The presence of police officers in schools appears to bolster this counterargument, since the officer's role is to investigate criminal activity, while the administrator's role, in part, is to address student discipline that impacts the educational process.<sup>130</sup> However distinct an officer's and administrator's roles appear, their collaboration in addressing crime in school requires that an administrator understand a child's constitutional and statutory rights. Additionally, some school districts already require that an administrator provide a *Miranda* warning under certain circumstances. For example, the Albuquerque Public Schools Student Handbook provides that a school official inform a child, both verbally and in writing, that he or she has the right not to speak to a police officer before an officer speaks with the child.<sup>131</sup>

#### B. Impact of a *Miranda* Warning on the Administrator-Child Relationship

Another contention with the proposal is its impact on the relationship between an administrator and a child in school. If an administrator provides a *Miranda* warning, the informality of the relationship appears to dissolve, making way for an adversarial environment. A child who may have been willing to speak with an administrator at the beginning of an encounter may no longer be so willing once the administrator provides the warning. This counterargument maintains that repeated hesitations by children will impede an administrator's ability to resolve disciplinary issues swiftly. However, since some school districts already require administrators to provide *Miranda* warnings, there is no indication that making that requirement uniform throughout the state will impede on the relationship between a child and an administrator.

#### C. A Parent as a More Appropriate Recipient of a *Miranda* Warning

Yet another counterargument to the proposed rule is that a parent should receive the *Miranda* warning instead of the child. On the one hand, the efficacy of the warning appears to be met when a parent is notified, since a parent may understand the legal consequences of a warning. In fact, several school policies in New Mexico already call for parent notification if either a school administrator or a law enforcement officer question a child.<sup>132</sup> Additionally, a parent who receives the warning may advocate for the child's behalf more effectively than the child alone can. On the other hand, the parent should not serve as a substitute for a child in

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130. ALBUQUERQUE PUB. SCHS., STUDENT HANDBOOK 2 (2015–16).

131. *See id.* at 4.

132. *See id.*

receiving the warning. The child will be the one facing legal consequences, and it is his or her statements that will be used in a delinquency proceeding, not the parents.

**D. A Child with a Learning Disability and the Effectiveness of a *Miranda* Warning**

Lastly, a child with a learning disability may face extreme difficulty in understanding a *Miranda* warning. Even if the administrator were required to provide one, the child may not understand it well enough to assert it. At best, the child may be confused about the intricacies of the warning and ask for clarification; at worst, the child may waive it unknowingly and make self-incriminating statements that may be reported to police. When considering *Miranda* rights and their application to a child with a learning disability, notifying a parent may be the best compromise. With a parent present during the questioning, the child may have someone who can advocate on his or her behalf.

**IV. RECOMMENDATION**

The wider implication of the proposed rule is that a school administrator must provide a *Miranda* warning to a child before questioning. In order to effectuate the proposed rule, schools can adopt the following language in student handbooks:

*“Questioning a Child”*

If a school official questions a child regarding behavior that violates both a school rule and may be a crime and reports the child’s statements to police, the official should remind the child verbally and in writing that he has the right to remain silent and anything he says can be used against him.

**CONCLUSION**

New Mexico provided enhanced *Miranda* protections to children because it recognizes their vulnerability in the face of questioning by police. As *Antonio T.* illustrated, that vulnerability also occurs when an officer is silent and a school administrator is questioning the child. But a child is equally vulnerable when questioned solely by an administrator. The greater cooperation between an administrator and police officer in school, the interrogation tactics administrators learn, and the frequency of administrator reports to police of student misbehavior all point to a prevailing trend in questioning students coercively. Accordingly, a child must have the opportunity to hear the right to remain silent before an administrator conducts questioning and reports a possible confession to police.

An administrator should have the flexibility to address a child’s misbehavior in school. In order to ensure that flexibility, no administrator is required to provide a child with a *Miranda* warning when questioning a child on a violation of school discipline. However, that flexibility cannot supersede a child’s constitutional and statutory privilege against self-incrimination. When an administrator intends to report a child’s confession to police, the child unknowingly places himself or herself at risk of a delinquency proceeding. Providing a warning may prompt the child to consider the consequences of a confession, and thus prevent the commencement of a delinquency proceeding.