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IN THE
INDIANA SUPREME COURT

No. 32A05-1708-JV-1907

D.Z., *Appellant-Respondent*, v. STATE OF INDIANA, *Appellee-Petitioner*.	Appeal from the Hendricks Superior Court, No. 32D03-1704-JD-86, The Honorable Karen M. Love, Judge.

STATE'S PETITION TO TRANSFER

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QUESTION PRESENTED ON TRANSFER

Is a student subjected to custodial interrogation necessitating *Miranda* warnings and other procedural requirements when he is questioned by a school administrator about a school disciplinary matter with no law enforcement officer present?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Other Authorities

STATE'S PETITION TO TRANSFER

In its precedential opinion below, a divided Court of Appeals' panel has imposed the requirements of *Miranda v. Arizona* on a school administrator speaking with a student about a school disciplinary matter even though no law enforcement officer was present during, much less participated in, the conversation. *See D.Z. v. State*, __N.E.3d__, No. 32A05-1708-JV-1907, slip op. at 5-16 (Ind. Ct. App. Feb. 22, 2018). This holding conflicts with the rationale and limits of *Miranda* itself and with every other Court of Appeals' opinion addressing this issue, making the Court of Appeals the first court in the country to treat school administrators as law enforcement officers. *See* Ind. Appellate Rule 57(H)(1), (3) (6).

In this case, the assistant principal initiated and controlled an investigation into conduct occurring on school property during school hours that was indisputably a matter of school discipline: sexually-explicit graffiti naming specific female students being written on bathroom walls. The assistant principal summoned 17-year old Respondent to his office and spoke to him alone with no law enforcement officer present and without consulting any officer regarding what questions to ask or information to elicit. This does not constitute custodial interrogation by a law enforcement officer, which is the necessary prerequisite to trigger *Miranda*. *D.Z.*, slip op. at 19-24 (Brown, J., dissenting). This Court should grant transfer and hold that *Miranda* does not apply to questioning by school administrators where there is neither any law enforcement officer present during the questioning nor any evidence that the administrator was merely acting as the agent of the police.

BACKGROUND AND PRIOR TREATMENT OF ISSUE ON TRANSFER

In 2017, Respondent was seventeen years old and a student at Brownsburg High School (Tr. Vol. II at 50-51, 63, 65, 77-78). In February or March of 2017, graffiti began appearing on the walls of several of the boys' bathrooms in the high school that was sexually explicit in nature and talked about specific female students by name (Tr. Vol. II at 17-18, 29-30, 31-32, 33-34, 51). Two of the girls learned about the graffiti through social media, as pictures of it were posted and shared before school officials discovered and removed the graffiti (Tr. Vol. II at 64). Assistant Principal Demetrius Dowler began investigating the graffiti to try to identify the person responsible for it (Tr. Vol. II at 17-18, 50-51). Brownsburg High School has surveillance cameras in all the hallways, and Assistant Principal Dowler spent "many hours" reviewing video footage from outside the bathrooms without success (Tr. Vol. II at 18, 51-52).

On March 15, 2017, Assistant Principal Dowler brought School Resource Officer Nathan Flynn into the investigation and sought his help in ascertaining the identity of the graffiti writer (Tr. Vol. II at 16-17, 29-37, 50-51). Officer Flynn initiated a plan to search the bathrooms more methodically to pinpoint more accurately the time frame in which new messages appeared, which would then allow them to use the surveillance video to identify the students who entered the bathroom during that narrower window of time (Tr. Vol. II at 39-40). After obtaining narrower time frames for two incidents and reviewing surveillance video, Officer Flynn identified Respondent as the only person who had entered both

bathrooms during those time frames (Tr. Vol. II at 40-41, 46-49). Upon learning this, Assistant Principal Dowler remembered having also seen Respondent in the surveillance video he had watched pertaining to the earlier graffiti incidents as well (Tr. Vol. II at 26).

Dowler called Respondent to his office for a "discussion" about the results of his graffiti investigation (Tr. Vol. II at 54, 56, 61). Officer Flynn was not present for and did not participate in this discussion nor did he direct any of Dowler's questioning (Tr. Vol. II at 42-43, 56). Respondent was remorseful and said that he knew what he did was wrong (Tr. Vol. II at 62-63). When asked why he had done it, Respondent said that he did not know why he did it and that he had no hard feelings toward the girls involved (Tr. Vol. II at 61). Assistant Principal Dowler informed Respondent that he would be suspended from school for five days, and he contacted Respondent's father (Tr. Vol. II at 56-57, 63). He also advised Officer Flynn that Respondent had admitted to writing the graffiti, and Officer Flynn then separately spoke to Respondent (Tr. Vol. II at 43-44).

The State filed a delinquency petition alleging that Respondent committed acts that would be criminal mischief and harassment if committed by an adult (App. Vol. II at 11-12). At the fact-finding hearing, the juvenile court admitted Respondent's statements made to Assistant Principal Dowler over Respondent's

objection that he was not given his *Miranda* warnings or an opportunity to consult with his father (Tr. Vol. II at 54, 57-60).[1]

On appeal, the Court of Appeals' majority held that school administrators "cannot pretend ignorance of the rules of criminal procedure" and that Respondent was subjected to custodial interrogation because the assistant principal sought the school resource officer's assistance during his investigation, he informed the school resource officer of the results of his conversation with Respondent, and the conduct at issue was criminal in nature as well as a violation of school rules. *See D.Z.*, slip op. at 11-15. Judge Baker concurred based on his view that the "presence of officers in our schools" has "changed the nature of the school disciplinary process," transforming it into "something quasi- (or actually) criminal in nature." *Id.* at 17-18 (Baker, J., concurring). Judge Brown dissented, finding that there was no custodial interrogation because the school resource officer was not present during the conversation and there was "no evidence that Dowler was acting as an agent of the police." *Id.* at 19-24 (Brown, J., dissenting).

[1] The State agreed that Respondent's subsequent statements to Officer Flynn were not admissible because Officer Flynn did not give Respondent any *Miranda* warning before that interview, so those statements were neither offered nor admitted (Tr. Vol. II at 44-45).

ARGUMENT

A student questioned by a school administrator about a school disciplinary matter without any law enforcement officer present is not subjected to custodial interrogation.

When a school administrator carries out his educational role to maintain order and protect the well-being of the student body by speaking to a student about a school disciplinary matter on his own initiative, not at the behest of law enforcement, and with no law enforcement officer present, there is no custodial interrogation implicating *Miranda v. Arizona*, 384 U.S. 436 (1966). Police presence and involvement is a necessary prerequisite to the existence of custodial interrogation, and that necessary prerequisite is missing in this scenario. Thus, "courts have generally held that governmental agents not primarily charged with enforcement of the criminal law," such as "school officials," "are under no obligation to comply with *Miranda*." Wayne R. LaFave et al., Criminal Procedure, § 6.10(c), at 982-83 (4th ed. 2015). In fact, until the Court of Appeals' opinion in this case, the State's research has not discovered another case anywhere in the country where questioning by a school administrator was found to constitute custodial arrest when no law enforcement officers of any kind were present during the conversation and there was no evidence that the school administrator was affirmatively acting as the agent of law enforcement.

The Court of Appeals has engaged in an unjustified and unprecedented expansion of *Miranda* by applying it to an encounter in which the police are absent. *Miranda* warnings were created to protect against the inherently-coercive pressures

of a police interrogation. *See Miranda*, 384 U.S. at 445-58; *Ritchie v. State*, 875 N.E.2d 706, 717 (Ind. 2007). "By custodial interrogation, we mean questioning initiated *by law enforcement officers* after a person has been taken into custody…." *Miranda*, 384 U.S. at 444 (emphasis added); *see Illinois v. Perkins*, 496 U.S. 292, 296 (1990) (stating that *Miranda* only applies when there is the "essential ingredient" of a "police-dominated atmosphere"). Interrogation, for purposes of *Miranda*, is defined as "'express questioning and words or actions *on the part of the police* that the police know are reasonably likely to elicit an incriminating response from the subject.'" *Ritchie*, 875 N.E.2d at 717 (quoting *White v. State*, 772 N.E.2d 408, 412 (Ind. 2002)); *see also Rhode Island v. Innis*, 446 U.S. 291, 301 (1980) (providing this definition of interrogation for these purposes).

"'It is well established in the caselaw defining 'interrogation' and 'custody' that the two cannot exist without the presence of a law enforcement officer.'" *S.G. v. State*, 956 N.E.2d 668, 676 (Ind. Ct. App. 2011), *trans. denied* (quoting Elizabeth A. Brandenburg, *School Bullies–They Aren't Just Students: Examining School Interrogations and Miranda Warning*, 59 Mercer L. Rev. 731, 734 (2008)); *see also C.S. v. Couch*, 843 F. Supp. 2d 894, 917 (N.D. Ind. 2011) (stating that "custody and interrogation do not exist without the presence of law enforcement officers"). *Miranda* simply does not apply when the questioning is conducted by a civilian who is not a law enforcement officer and is not acting at the direction of or as an agent of a law enforcement officer. *See Ritchie*, 875 N.E.2d at 717.

Any "custody" that existed in this case was not law enforcement custody but rather school custody, and no law enforcement officer played any role in the "interrogation" that occurred; therefore, there was no custodial interrogation by police implicating *Miranda*. The investigation was initiated by Assistant Principal Dowler, and it concerned conduct occurring on school property during school hours that was indisputably a matter implicating order and discipline in the school and interfering with the educational mission of the school (Tr. Vol. II at 17-18, 50-52, 55). When, after a few weeks, the assistant principal had not been able to ascertain the identity of the student responsible for the graffiti, he brought the school resource officer into his investigation to assist him in doing so (Tr. Vol. II at 16-17, 37, 42, 50-51). But the record shows that the assistant principal retained control over the investigation at all times; he did not simply turn the matter over to the police for investigation (Tr. Vol. II at 39-42, 54-55, 61). Once they identified Respondent as the only person who could have written the graffiti, it was Assistant Principal Dowler who summoned Respondent to his office, and he questioned Respondent alone (Tr. Vol. II at 42-43, 54, 56, 61). The school resource officer played no role in the questioning of the student. He was not present in the room, he did not ask any questions, and he did not tell Dowler what questions to ask.

And, as Judge Brown correctly and thoroughly sets out in her dissent, there was no evidence that Assistant Principal Dowler was merely acting as an agent of the police when he questioned Respondent. *D.Z.*, slip op. at 21-24. This was not a case where the police were independently investigating criminal activity on their

own and sought the assistance of school administrators in their investigation. It was the assistant principal who brought this matter to the attention of the school resource officer, not the other way around. At the end of Dowler's questioning, he imposed a school discipline sanction, a five-day suspension from school, and called Respondent's father (Tr. Vol. II at 56-57, 63), refuting the notion that this was simply subterfuge for the purpose of supporting criminal charges. Officer Flynn then conducted his own separate interview with Respondent (Tr. Vol. II at 43-44), further showing that he was not simply using Dowler as his agent to do a criminal investigation for him.

If anything, it was the school resource officer who acted as the agent of the assistant principal by helping Dowler in Dowler's investigation. There is no evidence in the record that the school resource officer even brought Respondent to Dowler's office or that Respondent had any knowledge that the officer had assisted Dowler in his investigation.[2] The "essential ingredient" of a "police-dominated atmosphere" is entirely absent from this encounter. *Perkins*, 496 U.S. at 296; *see also* Paul Holland, *Schooling Miranda: Policing Interrogation in the Twenty-First Century Schoolhouse*, 52 Loy. L. Rev. 39, 31 (2006) (recognizing as an "easy" case in

[2] When speaking with Respondent, Dowler told him "what *I* had seen. That *I* had been tracking some graffiti and that *I* kind of zeroed in and had seen that he had been in some of the restrooms that the graffiti was found and that *I* had kinda closed the gap, so to speak, on when the graffiti was written and that *I* had video of him…and therefore *I* knew that he was the one that was responsible for graffiti on the wall" (Tr. Vol. II at 61) (emphasis added). Dowler did not appear to tell Respondent about Officer Flynn's assistance in identifying Respondent as the culprit.

which *Miranda* does not apply a situation where a "principal acting alone and without invoking or outwardly benefiting from the authority of any law enforcement officer" questions a student). If this opinion is allowed to stand, school administrators will reasonably interpret it as requiring *Miranda* warnings any time they are talking to a student about conduct that potentially implicates the criminal law as well as the school's rules. This will significantly hamper their ability to preserve the order and secure environment inside the school necessary to carry out its educational mission.

This opinion is in conflict with every other Indiana decision addressing whether a student was subjected to custodial interrogation implicating *Miranda* when he was questioned by a school administrator about conduct implicating school discipline.[3] *See S.G.*, 956 N.E.2d at 675-80 (no custodial interrogation where principal questioned student while school officer was present but did not participate in the questioning); *State v. C.D.*, 947 N.E.2d 1018, 1021-23 (Ind. Ct. App. 2011) (no

[3] This Court previously granted transfer in *B.A. v. State*, 73 N.E.3d 720 (Ind. Ct. App. 2017), another case involving this issue, which remains pending before the Court as of the filing of this petition. In *B.A.*, however, school resource officers initiated the investigation, an officer removed B.A. from the bus and brought him to vice principal's office, two officers were present in the room while B.A. was questioned, one officer encouraged B.A. to tell the truth, and one officer obtained a handwriting exemplar from B.A. during the questioning. *Id.* at 722-23. The question of whether a custodial interrogation existed was put at issue by those facts, where there was some law enforcement officer involvement in the questioning; that question is not put at issue here, where there was no such involvement at all. Adjudicating this case in tandem with *B.A.* would allow this Court to provide greater clarity on the scope of law enforcement involvement that is necessary to convert questioning by a school administrator into a custodial interrogation.

custodial interrogation where student questioned by assistant principal while school officer present); *G.J. v. State*, 716 N.E.2d 475, 477 (Ind. Ct. App. 1999) (no custodial interrogation where student questioned by dean of students with no officer present); *S.A. v. State*, 654 N.E.2d 791, 796-97 (Ind. Ct. App. 1995) (no custodial interrogation where student questioned by school administrator and his father), *trans. denied*; *see also C.S.*, 843 F. Supp. 2d at 917-19 (no custodial interrogation where no law enforcement officers were present or involved with the questioning and there was no evidence the school administrators were acting at the behest of law enforcement in questioning the student).

It is also in conflict with the decisions of numerous other courts, which have consistently refused to find custodial interrogation in the absence of any police involvement in the questioning. *See, e.g.*, *In re Corey L.*, 250 Cal. Rptr. 359, 361 (Cal. Ct. App. 1988) (no custodial interrogation where student questioned by school administrator with no law enforcement officer present during the questioning); *People v. Pankhurst*, 848 N.E.2d 628, 631-37 (Ill. App. Ct. 2006) (same); *Commonwealth v. Ira I.*, 791 N.E.2d 894, 900-02 (Mass. 2003) (same); *Commonwealth v. Snyder*, 597 N.E.2d 1363, 1368-69 (Mass. 1992) (same); *State v. Tinkham*, 719 A.2d 580, 583-84 (N.H. 1998) (same); *New Jersey v. Biancamano*, 666 A.2d 199, 202-03 (N.J. Super. Ct. App. Div. 1995) (same); *In re Harold S.*, 731 A.2d 265, 266-68 (R.I. 1999) (same); *In re V.P.*, 55 S.W.3d 25, 31-33 (Tex. Ct. App. 2001) (same); *J.D. v. Commonwealth*, 591 S.E.2d 721, 723-26 (Va. Ct. App. 2004) (same). "There is no authority requiring a school administrator not acting on behalf of law

enforcement officials to furnish *Miranda* warnings." *Snyder*, 597 N.E.2d at 1369 (holding that the "*Miranda* rule does not apply to a private citizen or school administrator who is acting neither as an instrument of the police nor as an agent of the police pursuant to a scheme to elicit statements from the defendant by coercion or guile"). The State's research has not uncovered any case in which custodial interrogation was found to exist even though no law enforcement officer was present during questioning by a school administrator and there was no evidence the school administrator was acting as the agent of the police to obtain the information for the police's benefit.

Even the Kentucky Supreme Court opinion relied upon extensively by the Court of Appeals does not go this far. *See N.C. v. Commonwealth*, 396 S.W.3d 852 (Ky. 2013). In *N.C.*, it was the presence of the law enforcement officer during the questioning that was a critical fact in creating a custodial interrogation. *See id.* at 862, 864 (framing the issue addressed by the Court as whether answers to questions from a school official "in the presence and in cooperation with law enforcement" could be used against him in a criminal proceeding); *id.* at 870 (Cunningham, J., dissenting) ("Our majority opinion limits the exclusionary rule only to those school disciplinary investigations where outside criminal charges are anticipated *and there is the presence of a* [*school resource officer*]."") (emphasis added); *see also State v. Heirtzler*, 789 A.2d 634, 636-41 (N.H. 2001) (finding school official was agent of law enforcement where they had an "agreement" that the officer would turn his investigations over to the school when the officer's ability to act was limited "due to

constitutional restraints"); *In re K.D.L.*, 700 S.E.2d 766, 772 (N.C. Ct. App. 2010) (finding custodial interrogation where the school resource officer brought the student to the principal's office, frisked the student, and remained present in the room while the student was questioned).

The Court of Appeals' opinion has taken Indiana onto uncharted ground, and it fails to grapple with the practical difficulties that make this expansion untenable. School administrators with no training in criminal law and criminal procedure will be required to discern when *Miranda* warnings are required, at pain of civil liability if they guess wrong. Moreover, the Court of Appeals provided no guidance as to the necessary modifications to the *Miranda* warnings that will be required in the school context. School administrators cannot simply read *Miranda* warnings in the same manner that law enforcement officers do because students, in fact, do not possess those rights vis-à-vis the school disciplinary process that is undeniably ongoing. A student's refusal to talk to the principal can be used against the student as a reason to impose a harsher school sanction, just as a student who admits responsibility and expresses remorse may receive a lesser sanction. And a student has no right to consult with an attorney before talking to the principal about a violation of school rules. If students are not to be confused and misled, it will be necessary to create "*Miranda* warnings" for school administrators that explain and differentiate between the law enforcement and school disciplinary contexts and the ramifications for each.

* * *

Courts in other jurisdictions have not extended custodial interrogation to situations involving investigations initiated by the school administrator for school purposes and in which no law enforcement officer was present during his questioning. Indiana should not do so either. The mere presence of school resource officers in schools does not convert all administrator-student interactions into custodial interrogations, nor does an administrator's act of informing the school resource officer of the outcome of his conversation with a student show that the administrator was merely acting as the officer's agent when he decided of his own accord to investigate and deal with a matter directly impacting school discipline. The police-coercion rationale behind *Miranda* does not apply in this context, and the harm to the state's substantial interest in maintaining order and safety in its schools that would flow from extending *Miranda* in this fashion would be significant.

CONCLUSION

This Court should grant transfer and affirm the juvenile court's judgment.

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

I verify that this Petition to Transfer, including footnotes, contains no more than 4,200 words according to the word count function of the Microsoft Word word-processing program used to prepare this brief.

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CERTIFICATE OF SERVICE

I certify that on March 26, 2018, the foregoing document was electronically filed using the Indiana E-filing System ("IEFS"). I further certify that on March 26, 2018, the foregoing was served upon opposing counsel and upon amicus counsel, via IEFS, addressed as follows:

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