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 REPLY IN SUPPORT OF TRANSFER

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ARGUMENT

Respondent was questioned by a school administrator for purposes of school discipline, not by a law enforcement officer for purposes of a criminal investigation.

The attempts by Respondent and his Amici to characterize this matter as a criminal investigation in which the school acted in concert with the police to deliberately circumvent *Miranda* is belied by the record. This was a school investigation of a school disciplinary matter in which the assistant principal asked the school resource officer to assist him in identifying the student responsible for the graffiti but never relinquished control over the investigation. Dowler and Flynn both testified that they did not discuss the possibility of criminal charges resulting from this investigation (Tr. Vol. II at 42-43, 55).[1] Dowler did not ask Flynn to participate in the questioning of Respondent or even to be present during it (Tr. Vol. II at 42-43, 54, 56, 61). There is no evidence that Dowler and Flynn had an agreement to delegate questioning desired by Flynn to Dowler in order to circumvent *Miranda*'s restrictions on Flynn or that this played any part of Dowler's motivation in desiring to talk to Respondent by himself. Dowler did not seek to elicit an admission for the purpose of using it against Respondent in a criminal case; his purpose was to impose school discipline and stop Respondent from writing sexual graffiti about female students on the bathroom walls.

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[1] Amici's claim that Dowler described the matter as "criminal mischief" is incorrect (Br. of Amici Juvenile Law Center et al. at 12). It was Flynn who used that term (Tr. Vol. II at 17). There is also no evidence anywhere in this record that Dowler, or any other Brownsburg school administrator, has been trained in the Reid Technique of interrogation.

Without this mischaracterization of the facts attempting to convert Dowler into Flynn's agent, Respondent's claim fails. There cannot be a custodial interrogation without the presence and involvement of a law enforcement officer, and none was present here. For the same reason, Amici's reliance on *J.D.B. v. North Carolina*, 564 U.S. 261 (2011), is misplaced. There was no question in that case that any custodial interrogation that existed was law enforcement custody and law enforcement interrogation. A police officer was investigating a series of residential burglaries, and, after thirteen-year-old J.D.B. became a suspect, he went to the school to interrogate him, which he did in the presence of school administrators and a school police officer, rather than conducting the interrogation at the station house. *Id.* at 265-67. That is not remotely comparable to the situation here. No law enforcement officer was present during or participated, either directly or indirectly, in the questioning of Respondent, and the only law enforcement involvement that existed at all was the school resource officer's minor assistance in identifying the student responsible for the graffiti, which was done at the behest of the assistant principal, not by the independent instigation of police.

If *Miranda* is expanded to require warnings in this case, they will be required virtually every time a school administrator talks to a student about a violation of school rules. It is not as simple as saying that such warnings only need to be given if the conduct may ultimately result in the filing of criminal charges. Juveniles do not have to violate criminal laws to become subject to delinquency proceedings. Juveniles may be alleged delinquent for incorrigibility or habitually disobeying

reasonable commands of their parents and custodians, *see* Ind. Code § 31-37-2-4; *Jordan v. State*, 512 N.E.2d 407, 408 (Ind. 1987), which would include habitually disobeying school rules; they can even be alleged delinquent for being suspended from school, *see L.L. v. State*, 774 N.E.2d 554, 557 (Ind. Ct. App. 2002) (citing I.C. § 31-37-2-3), *trans. denied.* School administrators do not decide whether delinquency proceedings will be initiated, and they cannot know ahead of time which disciplinary conversations they engage in may later become relevant to a delinquency petition.[2] Requiring such warnings in all administrator-student discussions will negatively alter and harm the relationship between administrators and students, which is not supposed to be an adversarial relationship akin to that between detective and suspect. It will make it more difficult for administrators to investigate matters implicating school discipline and therefore harming the educational mission of the school.

If Respondent had made this admission in response to questioning by his parents, there is no question it could be admitted in his subsequent delinquency proceeding without violating *Miranda*. Similarly, if a juvenile admits to his employer that he has been writing graffiti on the bathroom walls of the business, there is no question that admission could be used in a subsequent delinquency proceeding without violating *Miranda*. In both of those scenarios, a juvenile would

[2] School administrators have been sued for allegedly violating a student's *Miranda* rights. *See, e.g., C.S. v. Couch et al.*, 843 F. Supp. 2d 894, 916-20 (N.D. Ind. 2011). Regardless of whether the lawsuit is ultimately successful, the administrator is still subject to the financial and emotional burdens of litigation.

not have felt free to disregard the questioning from these authority figures and would have presented the same psychological and developmental characteristics, but he still would not have been subjected to custodial interrogation by law enforcement. The same is true in the school context. Questioning by an assistant principal is not custodial interrogation by law enforcement, regardless of the nature of the conduct being discussed, absent evidence that the administrator is acting as the agent of police during this questioning, which is wholly lacking here. The general presence of school resource officers in schools does not convert all school administrators into agents of law enforcement. Amici's argument seeks to vastly expand Fifth Amendment law, not apply it as it exists.

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 Reply in Support of Transfer, including footnotes, contains no more than 1,000 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 April 26, 2018, the foregoing document was electronically filed using the Indiana E-filing System ("IEFS"). I also certify that on April 26, 2018, the foregoing was served upon opposing counsel and upon amicus counsel, via IEFS, addressed as follows:

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