

Juvenile Defender Conference

Defending School Cases

Assault on Government Officer or Employee / Assault on School Personnel

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Focus:

The focus of this section is on Assault on School Personnel and Assault on Government Officer/Employee. These are Class A1 misdemeanors in North Carolina and as such should be carefully handled by defenders because of the stakes involved. An adjudication of an A1 misdemeanor places a juvenile in the position of being placed immediately at level 2 for purposes of disposition. A subsequent misdemeanor or felony and motion for review can place the juvenile in the position to be disposed of as a level 3 commitment to the Youth Development Center.

Elements of the Offenses:

Assault on Government Officer or Employee
14-33 (c) (4) Class A1 misdemeanor

- (1) assault
- (2) on an officer or employee of the State or any political subdivision of the State
- (3) who is discharging or attempting to discharge his or her official duties

Assault on School Personnel
14-33(c) (6) Class A1 misdemeanor

- (1) assault
- (2) on a school employee or volunteer
- (3) (a) who is discharging or attempting to discharge his or her duties, or
(b) as a result of the employee's or volunteer's attempt to discharge his or her duties.

Purpose: To protect school personnel and associated law enforcement from bodily harm and threats of violence. See State v. Kirby, 15 N.C. App 480, 190 S.E. 2d 320, appeal dismissed, 281 N.C. 761, 191 S.E. 2d 362 (1972) and State v. Davis, 68 N.C. App 238, 314 S.E. 2d 828 (1984).

AOSP and AOGO/E overlap each other for teachers. AOSP contains an avenue for prosecution that AOGO/E does not for law enforcement. For example, AOSP

can be charged for an offense that one commits on a teacher because of the discharge of duties by teachers. For example, an assault on a teacher at the mall.

Presumption that Public Officer is acting lawfully. See State v. Jeffries, 17 N.C. App. 195, 193 S.E.2d 388 (1972), cert. denied, 282 N.C. 673, 194 S.E. 2d 153 (1973).

State has the burden to prove beyond a reasonable doubt that defendant knew that person assaulted was a law enforcement officer.

Who – law enforcement officers; campus police, private police – if off-duty officers or state employees and assigned through law enforcement agency to duties in off-duty employment. Employees of the local Boards of education-- Principals, administrators, teachers, teacher assistants, volunteers at public, charter schools and non public schools who have filed letters of intent to operate as independent contractors . . .

Where – All activities on school property, wherever occurring, during a school authorized event or the accompanying of students to or from that event and all activities relating to the operation of school transportation.

Related Statutes:

14-223 Resisting, Delaying, or Obstructing Officer – note this charge often accompanies AOGO/E charges and one must be careful to be sure that the same conduct is not charged for both. If so, then double jeopardy may attach or the offenses may be merged and the state would have to elect which charge the court would adjudicate. If the offenses charge different conduct, the both charges may be proceeded on by the state.

115C-288 (2001) Powers and Duties of Principals under section (e) where principals authority pursuant to local school board authority under section 115C-391(a) to use reasonable force consistent with section 115C-390 to discipline students and to assign duties to teachers with regard to discipline, general well-being and medical care of students is spelled out.

115C-391.1 Permissible use of seclusion and restraint

115C-288 (f) principal to protect school property

115C-288 (g) principal to report assaults to law enforcement subject to a Class 3 misdemeanor for failure to do so.

115C-401.1 Prohibition on the disclosure of information.

115C-402 Student records; maintenance; contents; confidentiality.

Cases:

In the Matter of Alexander COA 04-1497 July 19, 2005 – procedure due process Board of Education appeals

State v. Avery 315 N.C.1; 337 S.E.2d 786 (1985) – knowledge that person assaulted was a law enforcement officer required

In the Matter of S.W. 171 N.C. App. 335; 614 S.E. 2d 424 (2005) – official duties of law enforcement officers in conjunction with school officials

In re D.D., 146 N.C. App. 309; 554 S.E. 2d 346 (2001) – exercise of duties at school officials direction and in furtherance of well established educational and safety goals.

In the Matter of Eric Edwin Pope 151 N.C. App. 117 (2002) –Assault on a Government Employee; self defense

In the Matter of J.F.M. and T.J.B. 168 N.C. App. 143 (2005) – reasonableness standard vs. probable cause under New Jersey v. T.L.O., 469 U.S. 325, 105 S. Ct. 733, 83 L. Ed. 2d 720; assault on government officer/employee, resisting, delaying and obstructing an officer

In the Matter of S.S. T. NC COA 03-990 (July 2004) – evidence; impeachment

State v. Anderson, 40 N.C. App. 318, 253 S.E. 2d 48 (1979) – right to defend oneself against excessive force; one may use reasonable force whether lawful or unlawful arrest where excessive force is being used by officer.

State v. Harrell, 67 N.C. App 57, 312 S.E. 2d 230 (1984) – illegal restraint; reasonable force

Defenses:

Self defense – in defense of self, another

Accident – horseplay, intent to hit another in self defense or retaliation

Consent

Not aware that individual allegedly assaulted was law enforcement

Unlawful arrest; therefore resistance and reasonable use of force justified

Officer/Teacher not acting within the scope of their duties (limited to discharge of duties or attempt to discharge duties of their office)

Officer acted with excessive force - State v. Mensch, 34 N.C. App. 572, 239 S.E. 2d 297 (1977), cert. denied, 294 443, 241 S.E. 2d 845 (1978)

Individual allegedly assaulted not properly trained in detention and restraint techniques

No fear or harm; therefore no assault
Incapacity
Immaturity, age and adolescent brain development

Theories of Defense:

I was assaulted by the teacher/bmt/principal/sro – so I defended myself
It was an accident; the teacher got in the way – I didn't intend to hit them
I wasn't doing anything wrong; they had no right to put their hands on me
My behavior was a manifestation of my disability
I didn't know they were law enforcement officers
The teacher/sro etc. was acting outside the scope of their official duties

Investigation:

Opportunities to investigate school offenses start with your client. Ask them about the incident and for the name of the teacher, class, students, principal, assistant principal, school resource officer, or bus driver involved in the incident and any witnesses. The police report should be available to you to determine what preliminary information the police gathered if any. Ask your District Attorney for incident reports and supplementary reports, including statements taken by administrators or the police of witnesses. School hearings are a source of information about witnesses and are recorded. Because student information is confidential you may have to obtain statements, names, addresses and phone numbers of students and school personnel involved in the incident by subpoena or court order to the school system attorney or superintendent.

In defending school cases, be cognizant that school records of attendance, grades, individualized education plans, personal education plans, 504 plans, educational and mental health evaluations, medical records, disciplinary records and awards may help in understanding your clients case. Specific diagnoses such as ADHD, Schizophrenia, Oppositional Defiant Disorder, Depression, Mood Swing, and Intermittent Explosive Disorder may be helpful in understanding your client's behavior or reaction to situations and may provide the basis for a defense.

Personnel records of school employees or law enforcement are not easily obtained because they are confidential. However, a showing to a court that the inquiry into personnel records is relevant to your case may result in the court allowing access to records about a teacher or police officers disciplinary history.

General:

School systems across the country are utilizing a complex system of school administrators, school security, law enforcement, and juvenile courts to

administer discipline in an effort to maintain security. Juvenile justice observers have begun to call this the Schoolhouse to Jailhouse Pipeline. Be aware of the interrelationships between these systems as they ensnare unsuspecting youth and parents who are unaware of the traps waiting for them.

This trend is characterized by “zero tolerance”, “no hitting zones”, and an increasing reliance on suspensions, expulsions, alternative schools, boot camps and “administrative passing” of students.

The outcry is largely over school discipline to quell disruptive behavior, insubordination, fighting, assaults on school personnel, weapon and drug offenses and gangs.

Another possible consideration is that school systems have no control over whether a particular teacher or administrator files charges. One influence that may have a bearing on school systems policy is the district attorney’s policy concerning school cases. Another potential influence is law enforcement. Law enforcement may have influenced school systems to recommend or require that charges for Assault on School Personnel, Assault on Government Officer/Employee and Resisting, Delaying or Obstructing be taken out as a liability precaution where students themselves allege they are assaulted by the school personnel or law enforcement. This is reminiscent of the situation where law enforcement officers have been accused of police brutality and they have in anticipation filed Assault on Law Enforcement Officer and Resisting, Delaying or Obstructing as a means of protecting themselves and their employers from civil liability.

Scenario:

Johnny is a 15 year old, eighth grader, who is BED, and is diagnosed with ADHD and is in regular classes. He is charged with Resisting, Delaying or Obstructing, Assault on a Government Officer/Employee and two counts of Assault on School Personnel, Disorderly Conduct and Communicating Threats. Johnny became belligerent in class when his teacher, Mr. Jones, asked him to sit down. Johnny had been talking in class and disturbing fellow students. He was told to stop talking. Johnny eventually got up and began walking around the classroom. The teacher asked him to sit down. He refused. The teacher advised Johnny that he would call the BMT to have him removed and taken to the principal’s office. Johnny stated, “Then I’ll just leave!” Mr. Jones told Johnny, “No, you won’t!” As Johnny headed toward the exit, Mr. Jones jumped in front of the door and blocked his exit. Johnny kept going and as he approached the door Mr. Jones extended both hands to force Johnny to stay in the classroom. Johnny kept going and turning sideways, extended his arms past Mr. Jones, bumped him in the chest as he pushed Mr. Jones arms away from him and went down the hallway. Mr. Jones told Johnny to “Come back here!” Johnny kept going down the hall. As Johnny got halfway down the hall, Officer Gruff turned the corner and Mr. Jones told

him, "He just left my class without permission!" Officer Gruff told Johnny to stop. Johnny turned around and went the other direction toward Mr. Jones. Officer Gruff and Mr. Jones both rushed Johnny from opposite directions and as Officer Gruff reached Johnny he grabbed him by the shoulder to stop him from walking away. Johnny whirled his arms and struck Officer Gruff in the shoulder and said, "I ain't going nowhere!" Johnny then turned in the other direction. Mr. Jones grabbed Johnny by the waist and Officer Gruff grabbed Johnny from behind by the shoulders. Mr. Olsen, who heard all the commotion outside his class came and tried to grab Johnny by the left arm. As he did, Johnny kicked him. Johnny was screaming at the top of his lungs, "Get your M-f- hands off of me! I'll kill you for this!" During the struggle all three fell to the floor. Officer Gruff was able to handcuff Johnny while they were on the floor. Once they got Johnny off the floor Officer Gruff began to escort him to the principal's office. As he did, Johnny broke away from him by wrestling his arm away from the officer and twisting his shoulders. Officer Gruff quickly reasserted control over Johnny and took him to the principal's office.

