**Sample Motion to Suppress**

**NOTE TO RECIPIENTS: What follows is a draft of a memorandum of law in support of a motion to suppress a juvenile statement. It is a far from perfect draft, but is meant to provide a framework for such a pleading. Of course, before using any of the law contained within this motion, the cases should be double checked to ensure that they are still valid and the pleading should be edited to incorporate local law.**

**MEMORANDUM OF POINTS AND AUTHORITIES**

**IN SUPPORT OF MOTION TO SUPPRESS STATEMENT**

1. **ALL STATEMENTS ALLEGEDLY MADE AT THE SCHOOL AND AT THE POLICE STATION WERE OBTAINED IN VIOLATION OF [John Doe]’S FIFTH AMENDMENT RIGHT AGAINST SELF-INCRIMINATION AND MUST BE SUPPRESSED PURSUANT TO *MIRANDA v. ARIZONA*.**

The government may not use statements “stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination.” *Miranda v. Arizona*, 384 U.S. 436, 444 (1966). In order to use a statement that is the product of custodial interrogation, the government must satisfy the burden of proving not only that *Miranda* warnings were given, but also that “the defendant knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel.” *Id.* at 475.

1. All Statements Allegedly Made by [John Doe] in the School Gym Were Obtained in Violation of *Miranda*.
2. [John Doe] Was in Custody When Questioned in the School Gym.

[John Doe] was in custody when a uniformed School Resource Officer, the school principal, and a teacher stopped him in the gym, demanded that he empty his pockets and then instructed him to remain on the bleachers. *See Miley v. United States*, 477 A.2d 720, 722 (D.C. 1984) (where officers asserted their authority over the defendant, making it clear that he was in custody). For purposes of *Miranda*, “[t]he [Supreme] Court agreed that ‘the circumstances of each case must certainly influence’ the custody determination, but reemphasized that ‘the ultimate inquiry is simply whether there is a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest.’” *Yarborough v. Alvarado*, 541 U.S. 652, 662 (2004) (quoting *California v. Beheler,* 463 U.S. 1121 (1983) (*per curiam*)). Custody must be determined based on how a reasonable person in the suspect's situation would perceive his circumstances. *J.D.B. v. North Carolina*, 131 S. Ct. 2394, 2402 (2011); *Berkemer v. McCarty,* 468 U.S. 420 (1984).

While the custody analysis does not take into account the subjective mental state of the suspect to prevent officers from having to analyze a suspect’s idiosyncrasies, age is different. *J.D.B.*, 131 S. Ct. at 2403. It is not an idiosyncrasy, but a fact with common sense implications. *Id.* As the Supreme Court recognized in *J.D.B.*, custodial interrogation is inherently coercive and can induce false confession, especially when the subject is a juvenile. Children like [John Doe] are less mature and less responsible than adults; lack experience, perspective and judgment to recognize and avoid poor choices; and are vulnerable or susceptible to outside pressures. *Id.* As long as age is known or objectively apparent to the officer, it is an appropriate consideration in determining whether a suspect was in custody at the time of interrogation. *Id.* at 2406.

In this case, there was no question that [John Doe] was a child. The School Resource Officer and the principal clearly recognized him as a seventh-grade student at East High. In addition, the circumstances of [John Doe]’s seizure by the uniformed School Resource Officer, who was employed by the Metropolitan Police Department, clearly involved a restraint on freedom of movement associated with a formal arrest, as articulated in *Yarborough*. According to the information provided by the government, the School Resource Officer seized [John Doe] in the school gym, conducted a search of his person and directly questioned him about the events concerning the underlying charges in this case. *See Dunaway v. New York*, 442 U.S. 200, 215 (1979). Further, the officer instructed [John Doe] to sit on the bleachers while the officer stood directly in front of him. [John Doe] did not feel free to leave the school gym prior to or during questioning by the officer and was therefore in custody.

Even where the circumstances of custody do not constitute an arrest under Fourth Amendment analysis, those circumstances may nonetheless indicate “custody” for Fifth Amendment purposes. The D.C. Court of Appeals in *In re I.J.* clearly stated that “although an encounter between the police and a suspect may not necessarily be deemed an arrest—requiring probable cause—within the meaning of the Fourth Amendment, the same encounter may nevertheless be custodial and require *Miranda* warnings when assessed against the different goals of the Fifth Amendment.” 906 A.2d 249, 257 (D.C. 2005). Even if [John Doe] was not formally placed under arrest at the school gym, a reasonable person in his position would not have felt free to leave at the time of the first alleged statements.

1. [John Doe] Was Questioned During Custodial Interrogation in the Gym Prior to the Administration of *Miranda* Warnings and Did Not Knowingly, Intelligently, and Voluntarily Waive his *Miranda* Rights.

After placing [John Doe] in custody, the officer asked him direct questions about the incident underlying [John Doe]’s arrest, in the presence of the school principal and teacher, prior to advising him of his rights required by *Miranda*. Where the police interrogate an individual who is in their custody, an individual has a constitutional right to be warned, “[p]rior to any questioning . . . that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has the right to an attorney, either retained or appointed.” *Miranda*, 384 U.S. at 444. “[T]he prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination.” *Rhode Island v. Innis*, 446 U.S. 291 (1980) (quoting *Miranda*, 384 U.S at 444). *Miranda* warnings provide the necessary safeguards where the police must expressly advise a person that he or she has the right against self-incrimination. *Miranda*, 384 U.S. at 471. It is the government’s burden to prove that the client did in fact waive his rights after he was properly given the warnings. *North Carolina v. Butler*, 441 U.S. 369, 375 (1979). In the absence of these specific warnings, statements elicited during custodial interrogations are presumptively coerced and must be suppressed. *See United States v. Patane*, 542 U.S. 630, 639 (2004); *see also Miley*, 477 A.2d at 724.

In this case, [John Doe] could not have knowingly, intelligently, and voluntarily waived his *Miranda* rights before he was interrogated by the School Resource Officer in the gym, because he was never given *Miranda* warnings. The failure to show that the client understood the warnings and that the police obtained a valid waiver would render any statement in response to custodial interrogation inadmissible. *Lewis v. United States*, 483 A.2d 1125, 1128 (D.C. 1984) (finding no valid waiver where officers’ *Miranda* warning included no reference to court-appointed counsel). Therefore, all statements allegedly obtained by the officer must be suppressed as a violation of [John Doe]’s Fifth Amendment right against self-incrimination.

1. All Statements Allegedly Made by [John Doe] Inside the School Principal’s Office Were Obtained in Violation of *Miranda*.
2. [John Doe] Was Still in Custody When Questioned Inside the Principal’s Office.

[John Doe] was still in custody when he was questioned inside the principal’s office. *See Miley*, 477 A.2d at 722. Similar to the circumstances in the school gym, [John Doe] reasonably felt that there was a restraint on his freedom of movement that rose to the level associated with a formal arrest when *inside* the principal’s office. *Yarborough*, 541 U.S. at 662; *Berkemer,* 468 U.S. 420. Moreover, the uniformed officer physically led [John Doe] by his shoulder from the school gym to the principal’s office and continued to maintain custody over [John Doe] while directing him into the principal’s office, shutting the door behind them, and holding him there for questioning. *See Dunaway*, 442 U.S. at 215. The principal’s office was small, measuring no more than 13 by 13 feet, and was crowded with a desk, two chairs, the principal, two uniformed officers, Mark and [John Doe]’s girlfriend. [John Doe] was ushered into the office ahead of the resource officer, did not feel free to leave, and was therefore in custody prior to further interrogation.

1. [John Doe] Was Questioned Prior to the Administration of *Miranda* Warnings During Custodial Interrogation Inside the Principal’s Office.

[John Doe] was again interrogated inside the principal’s office prior to being warned of his Fifth Amendment right against self-incrimination. *Miranda*, 384 U.S. at 444. Custodial interrogation has been defined by the Supreme Court as “…questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.” *Id.* at 444. However, interrogation does not only apply to police practices that involve *direct* questioning of a defendant while in custody. *See Innis*, 446 U.S. at 298. Interrogation under *Miranda* also refers to “words or actions on the part of the police . . . that the police should know are reasonably likely to elicit an incriminating response from the suspect.” *Id.* at 301. This behavior is the functional equivalent of police interrogation within the meaning of *Miranda*. *Id.* at 302.

Here, the officer knew or should have known that the interaction with [John Doe]’s girlfriend would elicit statements from [John Doe]. In [John Doe]’s presence, the officer asked his girlfriend about the underlying charges in this case, fully aware that her response would likely elicit statements from [John Doe]. Thereafter, the officer continued to question [John Doe] directly about the allegations after excusing his girlfriend from the office. Under the circumstances, the officer’s interaction with [John Doe] and with [John Doe]’s girlfriend constituted interrogation of [John Doe] for the purposes of *Miranda*.

1. Statements Allegedly Obtained from [John Doe] During Custodial Interrogation Inside the Principal’s Office Must Be Suppressed Because He Did Not Knowingly, Intelligently and Voluntarily Waive His *Miranda* Rights.

[John Doe] did not knowingly, intelligently and voluntarily waive his *Miranda* rights before he was subject to custodial interrogation inside the principal’s office. *Miranda*, 384 U.S. 436. As stated in Section I(A)(2), statements made during custodial interrogation must be suppressed unless the prosecution can demonstrate that *Miranda* warnings were given prior to questioning. *Innis*, 446 U.S. 291. Unless the government can show that the client was given and understood the warning, the Court must presume that there was no valid waiver. *Lewis v. United States*, 483 A.2d at 1128; *Butler*, 441 U.S. at 375.

Here, not only did the officer fail to advise [John Doe] of his *Miranda* rights, but the officer also clearly sought to obtain incriminating statements from [John Doe] through coercive tactics and inappropriate behavior. While inside the principal’s office, the officer pressured [John Doe] to speak by telling him that he needed to tell what he knew to avoid less trouble.

All alleged statements made by [John Doe], both in response to the officer’s pressure and in response to the girlfriend’s statements following the officer’s actions, were made as a result of custodial interrogation without a waiver of his rights as required by *Miranda*. As such, any and all unwarned statements given must be suppressed as the product of a Fifth Amendment violation.

1. All Statements Allegedly Made by [John Doe] at the Police Station Were Obtained in Violation of *Miranda*.
2. [John Doe] Was Subject to Custodial Interrogation While at the Police Station.

[John Doe] was in custody when he was taken from school, handcuffed and transported to the police station for questioning. *See Miley*, 477 A.2d at 722; *United States v. Little*, 851 A.2d 1280, 1286-87 (D.C. 2004). There should be no dispute that [John Doe] was in custody when he was formally arrested and transported to the Metropolitan Police Department. “‘The ultimate inquiry is simply whether there is a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest.’” *Yarborough*, 541 U.S. at 662 (quoting *California v. Beheler,* 463 U.S. 1121).

The Supreme Court held that “*Miranda* safeguards come into play whenever a person in custody is subjected to either express questioning or its functional equivalent.” *Innis*, 446 U.S. at 301. Here, the officer directly questioned [John Doe] about the school incident after his arrest. Any questions even remotely related to the subject of his arrest are an interrogation for *Miranda* purposes. *In re I.J.*, 906 A.2d 249 (officer’s question “what happened” amounted to interrogation while the defendant was in custody under *Miranda*). Because the officer questioned [John Doe] after he was already under arrest, this constituted custodial interrogation.

1. Statements Allegedly Obtained from [John Doe] During Custodial Interrogation Must Be Suppressed Because He Did Not Knowingly, Intelligently and Voluntarily Waive His *Miranda* Rights.

While [John Doe] was clearly advised of his rights at the police station, [John Doe] did not knowingly, intelligently and voluntarily waive his *Miranda* rights before he was subject to custodial interrogation. *Miranda*, 384 U.S. 436. The question of whether the waiver is valid depends upon the totality of the circumstances. *Butler*, 441 U.S. at 374-75 (citing *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938)) (waiver factors include the facts and circumstances of the case such as the background, experience and conduct of the defendant). “[I]t is [also] appropriate for a court to consider the intellectual capacity and education of the accused.” *Di Giovanni v. United States*, 810 A.2d 887, 892 (D.C. 2002) (citing *Sims v. Georgia*, 389 U.S. 404 (1967)). Juveniles, in particular, require a more cautious review of waivers. *In re Gault,* 387 U.S. 1, 45 (1967) (juvenile’s confession requires “special caution” because of the increased susceptibility of youth to coercion due to “fantasy, fright or despair”); *In re F.D.P.*, 352 A.2d 378, 381 (D.C. 1976). Factors to consider include the juvenile’s age, experience with law enforcement, education, background and intelligence, circumstances surrounding the statement itself, and whether the juvenile has the ability to comprehend his *Miranda* rights. *In re M.A.C.*, 761 A.2d 32 (D.C. 2000) (citing *Fare v. Michael C.*, 442 U.S. 707, 725 (1979)); *see also In re J.F.T.*, 320 A.2d 322, 325 (D.C. 1974); *Hawkins v. United States*, 304 A.2d 279 (D.C. 1973) (prior experience with law enforcement is a factor in understanding and voluntarily waiving *Miranda*).

Under the totality of the circumstances, [John Doe] could not have executed a valid waiver of his Fifth Amendment rights before the investigator engaged in custodial interrogation. His young age, combined with his lack of experience with law enforcement, suggests that he did not have adequate prior knowledge of *Miranda* warnings before this case. [John Doe] was 15 years old at the time of his arrest. An armed and uniformed officer placed [John Doe] in handcuffs after more than an hour of questioning at school, transported him to the police station and then placed him in an interrogation room after denying his numerous requests to speak with his parents. *Cf. Gallegos v. Colorado*, 370 U.S. 49, 53-54 (1962) (the absence of an adult or counsel are critical factors in determining whether a minor’s statement is involuntary); *Haley v. Ohio*, 332 U.S. 596, 599 (1948) (refusal to allow 15-year-old’s mother access to him and absence of counsel contributed to the involuntariness of his confession). Once at the police station, the officer insisted on speaking with [John Doe] at length. The questioning was extensive. Under these circumstances, [John Doe] would not have been able to waive his rights in any meaningful sense. These circumstances were exacerbated by [John Doe]’s low intellectual functioning. Although the officer claims to have advised [John Doe] of his rights, he acknowledges that he never asked if [John Doe] could read, and he never asked [John Doe] to read the card out loud. Moreover, [John Doe] never signed the card and never verbally acknowledged that he understood his rights.

Notwithstanding the Supreme Court’s reminder in *Berghuis v. Thompkins* that *Miranda* does not invariably require an express waiver of the right to silence or the right to counsel, 130 S. Ct. 2250 (2010), the prosecution bears a substantial burden in establishing an implied waiver. *Butler*, 441 U.S. at 373; *Tague v. Louisiana*, 444 U.S. 469, 470-71 (1980); *Michael C*, 442 U.S. at 724. “A valid waiver will not be presumed simply...from the fact that a confession was in fact eventually obtained.” *Miranda*, 384 U.S. at 475; *Butler*, 441 U.S. at 373. It is difficult in any case and even more difficult in a juvenile case, for the government to show that the client has made a valid waiver without the signature on the *Miranda* waiver card or any other verbal acknowledgement that the client understood his or her rights. *Cf. Butler*, 441 U.S. at 371 (defendant acknowledged receipt of his rights and willingness to talk when he stated “I will talk to you, but I am not signing any form”). Given the totality of the circumstances in the present case, the government cannot meet its burden to show that [John Doe] knowingly, intelligently and voluntarily waived his *Miranda* rights prior to custodial interrogation, and all alleged statements made at the police station must be suppressed.

1. **STATEMENTS ALLEGEDLY MADE AT THE POLICE STATION WERE OBTAINED IN VIOLATION OF [John Doe]’S FIFTH AMENDMENT RIGHT AGAINST SELF-INCRIMINATION AND MUST BE SUPPRESSED PURSUANT TO *MISSOURI v. SEIBERT*.**

In *Missouri v. Seibert*, 542 U.S. 600 (2004), the Supreme Court examined the “question first” technique often used by police officers. Under this practice, an officer first elicits a confession from a suspect without first advising the suspect of his *Miranda* warnings. *Id.* at 604. Clearly, such a confession would be inadmissible. After eliciting this preliminary confession, however, the officer follows with “mid-stream” *Miranda* warnings. *Id.* The officer then covers the same type of questioning, hoping that the suspect will speak freely, now that the suspect has already made incriminating admissions. The Court found that the “question first” interrogation technique used in *Seibert* was unconstitutional, because such an interrogation technique “is designed to circumvent *Miranda v. Arizona*.” *Id.*at 618 (Kennedy, J. concurring). A statement made after mid-stream warnings is thus inadmissible.

The police violated the rule enunciated in *Seibert* in this case. First, as stated above, a School Resource Officer subjected [John Doe] to un-*Mirandized* custodial interrogation during his initial detention in the school gym and again inside the principal’s office. Only after [John Doe]’s alleged confession at the school was he formally arrested and transported to the police station for processing. Once [John Doe] arrived at the police station it was then that an officer administered the *Miranda* warnings. Immediately after warnings were given, the officer resumed questioning. The officer indicated to [John Doe] that he was going to ask him the “same questions” as the resource officer. As in *Seibert*, this use of a pre-warning statement to elicit post-warning statements is impermissible. 542 U.S. at 604. Therefore, [John Doe]’s statement to the officer while at the police station must be suppressed as a violation of his Fifth Amendment right against self-incrimination pursuant to *Miranda* and *Seibert*.

1. **ALL STATEMENTS ALLEGEDLY MADE BY [John Doe] WERE INVOLUNTARY AND MUST BE SUPPRESSED AS A VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT.**

Statements made to police that are not the “product of free will and rational choice” must be suppressed. *Mincey v. Arizona*, 437 U.S. 385, 398 (1978). [John Doe] has a constitutional right to a fair hearing on this matter, at which the government bears the burden of proving the voluntariness of the statements by a preponderance of the evidence. *Lego v. Twomey*, 404 U.S. 477, 489 (1972); *Jackson v. Denno*, 378 U.S. 368, 377 (1964). The test used by courts to determine voluntariness is whether the defendant’s free will has been overborne, given the totality of the circumstances. *Arizona v. Fulminante*, 499 U.S. 279, 288 (1991); Beas*ley v. United States*, 512 A.2d 1007, 1016 (D.C. 1986). The issue of free will must be addressed in light of the facts of the specific case. Coercive interrogation techniques as applied to, or independent of, the unique characteristics of the suspect must also be taken into consideration. *Colorado v. Connelly*, 479 U.S. 157, 163 (1985) (citing *Moran v. Burbine*, 475 U.S. 412, 432-434 (1986)).

Statements or admissions involving juveniles require special attention when evaluating voluntariness. *In re Gault*, 387 U.S. at 45. The Supreme Court has recognized that youth and inexperience make juveniles more vulnerable to interrogation techniques and that their confessions must be examined with “special care.” *Haley*, 332 U.S. at 599 (refusal to allow 15-year-old’s mother access to him and absence of counsel contributed to the involuntariness of his confession); *see also In re Gault,* 387 U.S. at 45 (juvenile’s confession requires “special caution” because of the increased susceptibility of youth to coercion due to “fantasy, fright or despair”); *In re Jerrell C.J.*, 699 N.W.2d 110, 117 (Wis. 2005) (relying on child and adult development research to conclude that being a child renders one “uncommonly susceptible to police pressures”). Juvenile confessions must not be “the product of . . . fright or despair.” *In re Gault*, 387 U.S. at 55. The determination of voluntariness for juveniles involves the review of additional evidence such as “(1) the advice of rights provided orally and in writing; (2) the absence of coercive police conduct, promises, or signs of emotional disturbance during the interview; (3) the client's apparent and expressed understanding of his rights, and the absence of evidence to show otherwise; (4) his age; and (5) prior experiences with the legal system, gained from numerous arrests.” *In re M.A.C.*, 761 A.2d 32, 39 (D.C. 2000) (citing *In re C.L.W.*, 467 A.2d 706, 709 (D.C.1983)).

[John Doe] was interrogated on four separate occasions in this case: (1) after he was stopped in the school gym; (2) inside the principal’s office; (3) while at the police station; and (4) while detained at the juvenile detention center. In each instance, [John Doe] was away from home and away from his parents when questioned at different times by a uniformed school officer, a uniformed police officer, a detective and a probation officer about the underlying charges. His request to speak with his parents was promptly and repeatedly denied, and he was questioned without their presence. At school, [John Doe] was frightened and intimidated by not only the officer, but also the principal and teacher who were initially present during the first interrogation. [John Doe] was subjected to intense questioning for an extended time without any food or drink, and no breaks.

The failure to send for a 15-year-old’s parents and the failure to see to it that he has the advice of a lawyer or friend during an interrogation contribute to the involuntariness of his statement because of the increased coercive effect from police that the youth may experience. *See Gallegos*, 370 U.S. at 53-54 (the absence of an adult or counsel are critical factors in determining whether a minor’s statement is involuntary); *Haley*,332 U.S. 596*.*

The officer began questioning 15-year-old [John Doe] at the school without ensuring that [John Doe]’s parents, a lawyer or another adult adviser were present to advise him, and instead convinced [John Doe] that he was “trying to help.” Further, when [John Doe] repeatedly asked the officer to allow him to telephone his father, the officer consistently refused or ignored his request. Despite [John Doe]’s requests for support, the officer continued to question [John Doe] and persuaded him to make a written statement without any advice from his parents, a lawyer or adviser. Finally, when [John Doe] refused to answer any more questions before speaking with his father and a lawyer, the officer brought him a telephone and left the room, giving [John Doe] the impression that he could seek the support of his parent in private. The officer further exploited [John Doe]’s youth and vulnerability by listening in on [John Doe]’s conversation with his father via intercom, and then using the statements he allegedly overheard during the private conversation to detain [John Doe] overnight. The officer used [John Doe]’s youth to coerce him into making statements and kept him from the advice and support of his parents or counsel. Therefore, all statements allegedly obtained by the officer at the school and at the police station must be suppressed as a violation of due process.

Because he had no prior experience with law enforcement or the legal system, [John Doe] was confused about the events that had transpired, and he did not understand why he was being questioned. Additionally, [John Doe]’s young age, developmental immaturity and low IQ level would render any statements he gave in response to police questioning involuntary. [John Doe] suffers from dyslexia and other severe learning disabilities and is currently a special education student. His IQ level borders on mental retardation, indicating that he has serious cognitive limitations and further suggests his inability to execute a valid *Miranda* waiver in any meaningful sense. As a result, the statements must be suppressed for all purposes at trial, including for purposes of impeachment. *See Mincey*, 437 U.S. at 398.

The circumstances of the officer’s interrogation of [John Doe] both at the school and then at the police station clearly indicate that his statements were involuntary. [John Doe]’s age and cognitive limitations at the time of each and every one of the statements, combined with the officer’s refusal to ensure that he had the advice of a parent, lawyer or another adviser while continuing to question him, rendered [John Doe]’s statements to the officer involuntary in violation of the Due Process Clause of the Fifth Amendment. These statements must be suppressed as evidence against him at trial.

1. **THE ALLEGED STATEMENTS OVERHEARD BY OFFICERS WHILE [John Doe] WAS ON THE PHONE AT THE POLICE STATION WERE OBTAINED IN VIOLATION OF [John Doe]’S FOURTH AMENDMENT RIGHT TO PRIVACY AND FIFTH AMENDMENT RIGHT TO COUNSEL AND MUST BE SUPPRESSED**

Even if the officers terminated their interrogation of [John Doe] after he asserted his right to counsel in this case, the officers’ conduct in listening to [John Doe]’s phone call with his father after placing [John Doe] in a police surveillance room, providing him with a phone and instructing him to call his parents as he had been asking to do for hours, was tantamount to interrogation in violation of his rights under *Miranda* and *Innis*, and violated a reasonable expectation of privacy created by the officer when he left [John Doe] alone.

1. The Officer’s Conduct Constituted a Search and Seizure in Violation of [John Doe]’s Fourth Amendment Rights.

The facts in this case present an issue of first impression for this Court – the use of electronic surveillance (i.e., an intercom) to eavesdrop on a conversation between a juvenile and his parents that was pre-arranged by the police in a stationhouse interview room. First, [John Doe] has a reasonable expectation of privacy in a phone call, especially when the officer has left the room and shut the door before allowing him to make the phone call. *See generally, Katz v. United States*, 389 U.S. 347, 353 (1967) (“The Government’s activities in electronically listening to and recording the petitioner’s words violated the privacy upon which he justifiably relied while using the telephone booth and thus constituted a ‘search and seizure’ within the meaning of the Fourth Amendment.”) Although police interrogation rooms are traditionally areas where people are watched and monitored in some form or fashion, whether it be by two-way glass, video-taping or audio recording, *see, e.g., Montana v. Meredith,* 226 P.3d 571 (2010), the police officer here created a reasonable expectation of privacy for [John Doe] in his conversation with his father. *See, e.g., Cox v. Florida*, 26 So.3d 666 (Fla. Dist. Ct. App. 2010) (officer’s misrepresentations that the defendant’s conversation with his co-defendant in an interrogation room was private created a reasonable expectation of privacy in the room, and defendant’s statements were rendered inadmissible); *Florida v. Calhoun*, 479 So.2d 241 (Fla. Dist. Ct. App. 1985) (suppressing videotaped jailhouse conversation between inmate and brother because statements were made while the defendant had a reasonable expectation of privacy and after assertion of *Miranda* rights); Here, [John Doe] was 15 years old, had never been arrested before this alleged incident and repeatedly requested an opportunity to speak with his father, but was denied. When the officer did finally allow [John Doe] to call his father, he brought a phone into the interview room, told [John Doe] to take the time he needed and left the room, shutting the door behind him. The officer’s conduct led [John Doe] to believe that the conversation was private. The officer’s intentional use of the intercom to listen to [John Doe]’s conversation constituted an illegal seizure within the Fourth Amendment. When law enforcement deliberately fosters an expectation of privacy, especially for the purpose of circumventing a defendant's right to counsel, subsequent jailhouse conversations and confessions are inadmissible. *Cf. Cox*, 26 So.3d at 677 (finding violation of 6th Amendment right to counsel).

As discussed in Part VII, neither the anonymous tip on the school hotline, nor the illegally obtained statements made by [John Doe] at the school provided the police with the requisite probable cause to seize evidence from him. As such, the statements must be suppressed as a violation of [John Doe]’s Fourth Amendment right to privacy.

1. The Officer’s Conduct Constituted Custodial Interrogation After [John Doe] Asserted His Right to Counsel and Thus Violated [John Doe]’s Fifth Amendment Right to Cease Questioning at Any Time.

Once *Miranda* warnings have been given and the individual states that he wants an attorney, all interrogation must cease until an attorney is present. *Edwards v. Arizona*, 451 U.S 477, 482-84 (1981). As stated in Section I (B)(2), custodial interrogation has been defined by the Supreme Court as “. . . questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.” *Miranda*, 384 U.S. at 444. Interrogation under *Miranda* also refers to not only direct questioning by officers while the suspect is in custody, but also “words or actions on the part of the police . . . that the police should know are reasonably likely to elicit an incriminating response from the suspect.” *Innis*, 446 U.S. at 301. This behavior is the functional equivalent of police interrogation within the meaning of *Miranda*. *Id.* at 302. Any statements deliberately elicited by police through such words or actions after a suspect has invoked his or her right to counsel is a violation of his Fifth Amendment right absent any counsel present. *See Minnick v. Mississippi*, 498 U.S. 146 (1990).

Here, after [John Doe] invoked his right to counsel, the interrogating officer gave [John Doe] a phone to call his parents and created an atmosphere of privacy by leaving the interview room and shutting the door. The officer then listened to the conversation [John Doe] had with his father over an intercom. The officer’s actions were the functional equivalent of interrogation. Although not every case in which an officer allows a defendant to make a phone call will constitute interrogation, the facts and circumstances of [John Doe]’s interrogation are quite different from those in which police-facilitated phone calls have been found not to constitute interrogation. Here, [John Doe] was never told that he was on speakerphone or intercom, *cf. State v. Herrera*, 672 S.E. 2d 71 (N.C. Ct. App. 2009) (holding that defendant was not interrogated when police placed phone call to defendant’s grandmother and defendant made incriminating statements to her when he knew he was on speakerphone), *abrogated on other grounds by State v. Flaugher*, 713 S.E.2d 576 (N.C. Ct. App. 2011), and he was never told or otherwise made aware that a police officer would be able to hear his conversation, *cf. United States v. Smith*, 138 F. App’x 217 (11th Cir. 2005) (holding that an officer’s offer allowing the suspect to make a phone call cannot be considered interrogation when officer was present in the room at the time of the statements and even advised the suspect to wait for his lawyer before making incriminating statements). Moreover, the officer’s conduct in the case was clearly designed to elicit a statement from [John Doe]. Here, during an interrogation at the police station for quite some time, [John Doe] tells some, but clearly not enough, information to satisfy the police. Mid-way through his conversation with the police, [John Doe] not only requested to speak with his father, but also asserted his right to counsel. It was at this point that the officer brought a phone into the room and created the false impression that [John Doe] would have privacy. The officer – who was well aware of [John Doe]’s strong desire to speak with his parents – engaged in conduct that was the functional equivalent of custodial interrogation after [John Doe] had already invoked his right to counsel. Therefore, all statements made by [John Doe] while on the phone with his father must be suppressed in violation of his Fifth Amendment rights.

1. **ALL STATEMENTS MADE TO POLICE AT THE JUVENILE DETENTION CENTER TWO WEEKS AFTER HIS ARREST AND AFTER [John Doe]’S REQUEST FOR A LAWYER WERE OBTAINED IN VIOLATION OF HIS FIFTH AMENDMENT RIGHT TO COUNSEL AND MUST BE SUPPRESSED PURSUANT TO *MIRANDA*.**
2. All Statements Allegedly Made by [John Doe] at the Detention Center Were Obtained in Violation of *Miranda*.
3. [John Doe] Was Subject to Custodial Interrogation While at the Juvenile Detention Facility.

[John Doe] was clearly subject to custodial interrogation when he was interviewed at the detention facility. *See Miley*, 477 A.2d at 722; *Little*, 851 A.2d at 1286-87. [John Doe]’s probation officer and a Metropolitan Police Officer questioned [John Doe] not only about uncharged allegations but also specifically about the drug offense. Although the officer initiated the discussion under the pretense of discussing uncharged allegations, the officer ultimately asked [John Doe] about the charged drug offense. Such questioning constituted custodial interrogation pursuant to *Miranda* and *Innis*.

1. Statements Allegedly Obtained from [John Doe] During Custodial Interrogation at the Detention Facility Must Be Suppressed Because He Did Not Knowingly, Intelligently and Voluntarily Waive His *Miranda* Rights.

Although [John Doe] was advised of his rights at the detention center, [John Doe] did not knowingly, intelligently and voluntarily waive his *Miranda* rights before he was subject to custodial interrogation. *Miranda*, 384 U.S. 436. As discussed at length in section I(C)(2), the question of whether the waiver is valid depends upon the totality of the circumstances. *Butler*, 441 U.S. at 374-75 (waiver factors include the facts and circumstances of the case such as the background, experience and conduct of the defendant). For many of the same reasons as articulated above, [John Doe] did not make a knowing, voluntary or intelligent waiver of his *Miranda* rights at the juvenile detention center two weeks after his arrest. At the detention center, [John Doe] was visibly upset and immediately dropped his head on the desk when the officers explained why they wanted to speak with him. [John Doe] had been in custody for over two weeks after expressly advising the officer that he wanted a lawyer. Notwithstanding [John Doe]’s emotional state and refusal to speak for three and half hours, the police officer and the probation officer did not let him return to his cellblock and persisted in their efforts to get him to talk.

Any statement that [John Doe] made in direct response to the officer’s question about the drug allegation three and half hours after the police arrived must be suppressed because [John Doe] did not make a valid waiver of his *Miranda* rights. As noted above, although *Miranda* does not require an express or written waiver of the *Miranda* rights, the government cannot meet its burden to show that [John Doe] – a 15-year-old juvenile – knowingly, intelligently, and voluntarily waived his rights. The circumstances surrounding the interviewed combined with [John Doe]’s low intellectual capacity, limited experience with law enforcement and separation from his parents all undermine any assertion that [John Doe] executed a waiver of his rights. *See Haley*, 332 U.S. at 599; *Di Giovanni*, 810 A.2d at 892; *In re F.D.P.*, 352 A.2d at 381; *In re M.A.C.*, 761 A.2d 32 (2000) (citing *Michael C.*, 442 U.S. 707 at 725); *In re J.F.T.*, 320 A.2d at 325; *Hawkins*, 304 A.2d 279.

1. [John Doe] Unambiguously Invoked His Right to Counsel During Custodial Interrogation.

The officer’s interrogation of [John Doe] at the detention center two weeks after his arrest was obtained in violation of [John Doe]’s Fifth Amendment right to counsel. All police questioning must cease when a suspect unambiguously invokes his right to counsel. *Davis v. United States*, 512 U.S. 452 (1994). Although the police are not required to clarify a suspect’s ambiguous request for an attorney and may continue questioning, *id.* at 459-60; *Burno v. United States*, 953 A.2d 1095, 1099-1100 (D.C. 2008); *Riley v. United States*, 923 A.2d 868, 882 (D.C. 2007), when an individual makes a *clear* invocation of his right to counsel, any statement obtained thereafter must be suppressed as a violation of the *Miranda* doctrine. *In re G.E.*, 879 A.2d 672 (D.C. 2005).

[John Doe] unambiguously invoked his right to counsel while at the police station on the day of his arrest when he stated to the officer, “I want to talk to my father and a lawyer.” This is a clear and explicit invocation of his right to counsel, requiring that the officer stop all questioning. Notwithstanding this clear assertion of his rights, the officer resumed his interrogation when he visited [John Doe] two weeks later with [John Doe]’s probation officer. “[W]hen an accused has invoked his right to have counsel present during custodial interrogation, a valid waiver of that right cannot be established by showing only that he responded to further police-initiated custodial interrogation even if he has been advised of his rights.” *Edwards*, 451 U.S. at 484-85. The police, or any government agent, may not question the suspect any further until counsel has been made available to him. *Id.* The *Edwards* decision presumes the involuntariness of any statement made by a suspect during custodial interrogation following the suspect’s request for counsel. *Maryland v. Shatzer*, 130 S.Ct. 1213, 1220 (2010) (citing *Arizona v. Roberson*, 486 U.S. 675, 690 (1988)). Any subsequent statements made in response to interrogation, without an attorney present, violates the suspect’s Fifth Amendment privilege against self-incrimination. *Minnick*, 498 U.S. at 153 (citing *Oregon v. Bradshaw*, 462 U.S. 1039, 1043 (1983)).

The *Edwards* presumption of involuntariness ends when there is a break in custody. Whether or not there was a break in custody depends on if the suspect regained a “sense of control or normalcy” after he was first taken into custody for the charges of which he is accused. *Shatzer*, 130 S.Ct. at 1221 (citing *Minnick*, 498 U.S. at 148-49). The coercive effects associated with custodial interrogation are dispelled when a suspect is released from pre-trial custody and allowed to return to his normal life for a significant period of time before a second interrogation. *See id.* at 1222-23 (finding 14 days sufficient to dissipate coercive effects of prior custody and holding that police may re-interrogate a suspect after 14-day break, even if suspect invoked his *Miranda* right to counsel during the former custodial interrogation). In *Shatzer*, the Court held that release back into the general prison population for the conviction of an unrelated crime is equivalent to being returned to “normal life” and does not create the coercive, custodial pressures identified in *Miranda*. *Id.* at 1221. Here, [John Doe] was not in custody on an unrelated charge, but was held solely in connection with the alleged drug offense about which he was interrogated. [John Doe] was never released from pre-trial custody in this case and was not allowed to return to his normal life or regain any sense of control or normalcy to dispel the coercive nature of custody as defined by *Miranda*. Because the detective directly asked [John Doe] questions about the underlying charges in this case while [John Doe] was still in custody at the detention facility and had previously invoked his right to counsel, any statements elicited by the detective while interviewing [John Doe] at the detention facility must be suppressed in violation of his Fifth Amendment right to counsel under *Miranda*.

1. **THE ALLEGED STATEMENTS MADE BY [John Doe] TO OFFICERS AT THE JUVENILE DETENTION CENTER WERE OBTAINED IN VIOLATION OF HIS SIXTH AMENDMENT RIGHT TO COUNSEL AND MUST BE SUPPRESSED PURSUANT TO *MASSIAH v. UNITED STATES*.**

The Sixth Amendment requires that police cease all questioning after a defendant has been indicted. *Massiah v. United States*, 377 U.S. 201, 204 (1964) (citing *Spano v. New York*, 360 U.S. 315(1959)). Confessions deliberately elicited by a government agent after formal indictment must be suppressed as a violation of the defendant’s Sixth Amendment right to counsel. *Id.* The Constitution guarantees a defendant the aid of counsel after indictment – anything less would deny the defendant “effective representation by counsel at the only stage when legal aid and advice would help him.” *Id.* (quoting *Spano*, 360 U.S. at 326). Therefore, any direct or “secret interrogation” of the defendant after indictment, without the presence of counsel, is a violation of the defendant’s fundamental rights. *Id.* at 205.

[John Doe] was arraigned and appointed counsel for the drug charges in this case. [John Doe] was then ordered to remain at the detention center, pending his trial date. As stated above, a detective and probation officer came to the detention facility to question [John Doe], post-arraignment. The detective told [John Doe] that he was there talk to about a separate offense, unrelated to the drug charges in this case. However, the detective quickly changed the interview and directly asked [John Doe] questions about the drug charges for which he had already been arraigned. The detective and probation officer deliberately elicited incriminating statements from [John Doe] about the underlying charges in this case, without the presence of counsel. While the detective initiated the interview, giving the impression that he was there for a different purpose, it is clear that he violated [John Doe]’s fundamental right to counsel when he directly questioned [John Doe] about the charges in this case. Therefore, any statements made by [John Doe] to the detective and probation officer at the detention facility must be suppressed as a violation of [John Doe]’s Sixth Amendment right to counsel.

1. **THE ALLEGED STATEMENTS MADE BY [John Doe] TO OFFICERS WHILE DETAINED MUST BE SUPPRESSED AS A VIOLATION OF D.C. SUPERIOR COURT RULE (JUVENILE) 105(e).**

Pursuant to D.C. Superior Court Rule (Juvenile) 105(e), “[n]o person shall be permitted to interview a client held in the facility without the parent, guardian, custodian or attorney being present” unless the parent or guardian is informed of the purpose of the interview and gives written permission. Rule 105(e)(1). A client in detention may only be interviewed by police when he or she may have “information pertaining to any criminal offense committed in the facility or in transit to or from the facility and with which the client is not currently charged…” D.C. Superior Court Rule (Juvenile) 105(e)(2).

After [John Doe] was questioned by the police officer at the station, he was arraigned and detained pending his trial date. Two weeks after [John Doe] was detained, [John Doe]’s probation officer, along with a detective, interviewed [John Doe] in the detention facility. [John Doe] was not only questioned about the underlying drug charges in this case, but he was also questioned about an unrelated offense. The probation officer and detective did not receive parental consent to interview [John Doe], nor were [John Doe]’s parents or attorney present at the facility at the time of questioning. Additionally, the detective and probation officer questioned [John Doe] about an offense that did not occur within the detention facility or even in transit to the facility. Therefore, any and all statements elicited by the detective and probation officer at the detention facility must be suppressed as a direct violation of Rule 105(e)(1).

1. **ALL STATEMENTS MUST BE SUPPRESSED AS FRUIT OF [John Doe]’S ILLEGAL SEIZURE PURSUANT TO THE FOURTH AMENDMENT.**
2. [John Doe] Was Illegally Arrested and Searched Without an Arrest Warrant.

Warrantless seizures are considered “*per se* unreasonable under the Fourth Amendment – subject only to a few specifically established and well-delineated exceptions.” *Katz*, 389 U.S. at 357. Absent a warrant, the government bears the burden of establishing that the arrest of a client fell within one of the time-honored exceptions to the warrant requirement. *Id.* In this case, the arresting officer did not have a warrant to seize and search [John Doe] at school. Because the government cannot justify the warrantless seizure, all subsequent statements made by [John Doe] during custodial interrogation must be suppressed under the exclusionary rule. *See Wong Sun v. United States*, 371 U.S. 471, 484-86 (1963).

1. [John Doe] Was Placed Under Arrest and Searched.

Under the Fourth Amendment, a person is seized when an officer’s actions would lead a reasonable person to believe he is not free to leave. *United States v. Mendenhall*, 446 U.S. 544, 554 (1980). “Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a ‘seizure’ has occurred.” *Terry v. Ohio*, 392 U.S. 1, 20 n. 16 (1968); *see also In re D.T.B*, 726 A.2d 1233, 1235 (D.C. 1999). A seizure may escalate to an arrest where the “investigatory” detention has all the characteristics of a formal arrest, requiring that there be probable cause to justify the police conduct. *Dunaway*, 442 U.S. at 215-16. In this case, [John Doe] was placed in custody when first approached and detained by the resource officer, principal, and teacher in the school gym. According to the information provided by the government, the resource officer seized [John Doe] in the school gym, demanded that he empty his pockets and directly questioned him about the events concerning the underlying charges in this case. *See id.* at 215. The resource officer’s actions amounted to a formal arrest, where [John Doe] was clearly seized, searched and not free to leave. There can be little dispute that the officer conducted a full search when he ordered [John Doe] to empty his pockets.

1. The Officer Did Not Have Probable Cause to Arrest and Search [John Doe].

Should the police act without an arrest warrant, it is the government’s burden to prove that police conduct was justified and that there was sufficient evidence for probable cause. *See id.*, 442 U.S. 200; *Malcolm v. United States*, 332 A.2d 917, 918 (D.C. 1975). “Probable cause exists where ‘the facts and circumstances within their [the officers’] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that’ an offense has been or is being committed.” *Brinegar v. United States*, 338 U.S. 160 (quoting *Carroll v. United States*, 267 U.S. 132, 162 (1925)).

Under the totality of the circumstances, the arresting officers had no probable cause to search [John Doe] in this case. The resource officer approached [John Doe] after receiving an anonymous tip. The anonymous tip did not provide the officer with reasonable articulable suspicion to search [John Doe] or seize his possessions. A student has a legitimate expectation of privacy both in his person and in the personal possessions he carries, and the legality of a search or seizure by school officials will be evaluated based upon reasonableness. *New Jersey v. T.L.O.*, 469 U.S. 336, 340-42 (1985); *see, e.g., In re Gregory M.*, 627 N.E.2d 500, 502 (N.Y. 1993); *Commonwealth v. J.B.*, 719 A.2d 1058 (Pa. 1998). Although *T.L.O.* allows for lower standard of “reasonableness” for searches by school officials, even that lower standard of reasonableness was not met in this case. The vague anonymous tip provided at some unknown time without specific details regarding the suspect could not provide reasonable grounds for search by the school principal. More important, the lower standard for justification of a search only applies to a search by school officials, not by the local police department. In this case, although the principal was present, the uniformed School Resource Officer, who was employed by the local police department, conducted the search and seizure. The police must be held to the higher standard of probable cause, which was not satisfied here.

An anonymous tip alone “seldom demonstrates the informant’s basis of knowledge or veracity” and can provide reasonable suspicion only if it is reasonably corroborated. *Florida v. J.L.*, 529 U.S. 266, 270 (2000). Reasonable suspicion must be based on what the officers knew before they conducted the search, and the fact that the allegation subsequently proved to be correct does not provide reasonable suspicion. *Id.* at 271; *see also People v. Sparks*, 734 N.E. 2d 216, 223 (Ill. App. Ct. 2000). The anonymous tip received by the officer was not reliable, and he made no attempt to corroborate it before searching [John Doe]. On its face, the tip provides no additional detail that would readily indicate its veracity or the informant’s basis of knowledge, and the officer did not personally observe [John Doe] engage in any criminal behavior that would warrant further investigation. The officer simply assumed that the content of the tip was true without further investigation. Even if the officer later found [John Doe] by the bleachers with a bag of white powder, there was no reasonable basis for suspecting him before the officer’s search. Further, the tip spoke only of bags of white powder that appeared to be cocaine, so there was no reliable assertion of illegality in the tip for the officer to go on, as *J.L.* requires, only the officer’s personal suspicions of [John Doe]. *See id.*at 272. Because the anonymous tip provided no reliable basis for suspecting [John Doe] of any illegal activity, [John Doe] was arrested based on the officer’s suspicions. *Brinegar,* 338 U.S. at 175 (probable cause may not be based on mere suspicion). Without probable cause to believe that [John Doe] committed any crime, all statements made by [John Doe], subsequent to his seizure, must be suppressed as fruit of his illegal arrest.

WHEREFORE, for the foregoing reasons, and any others that may appear to the Court at a hearing on this matter, [John Doe] respectfully requests that this Motion be granted and that the Court suppress statements obtained in connection with this case.