



***A Uniform State
Memorandum of Agreement
Between Education
and
Law Enforcement Officials***

2019 Revisions*

***Approved by the New Jersey Department of Law & Public Safety
and the New Jersey Department of Education***

*This document is a revision of the 1988, 1992, 1999, 2007, 2011, and 2015 versions of the State Memorandum of Agreement approved by the Attorney General and the Commissioner of Education and which is required in *N.J.A.C. 6A:16-6.2(b)*13 through 14.

*The regulations at *N.J.A.C. 6A:16*, Programs to Support Student Development, are reviewed as new laws are passed and amendments may be presented to the State Board of Education. All related statutory language preempts any conflicts or inconsistencies with these regulations.

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In response to concerns of disproportionality and how a student's school-based arrest and subsequent court involvement may negatively impact him or her, the most recent revisions reorganized and reframed the Agreement to 1) clarify the difference between mandatory and non-mandatory reports to law enforcement and 2) acknowledge the collaborative efforts of schools and law enforcement and highlight the necessity of these relationships. The revisions intend to assist school district officials and law enforcement in their understanding of how to best support youth who commit minor offenses at school and encourage partnerships between schools and law enforcement. The parties to this Agreement recognize the value of cooperation and communication with respect to drug, weapons, violence and school security problems as they relate to students and school grounds, and believe that entering into this Agreement will help them to be more effective in managing these problems through building relationships between educators and local law enforcement and creating open lines of communication.

Training and collaboration among both schools and law enforcement is necessary to ensure appropriate outcomes for all involved as incidents arise. The 2019 revisions seek to highlight the Annual Review Guidelines process required to approve the Agreement. Appendix 2 outlines the annual review process, which requires schools (President of the District Board of Education, Chief School Administrator, Executive County Superintendent) and law enforcement (Chief of Police, County Prosecutor) to **meet each year** to:

- 1) Review the Agreement
- 2) Discuss the implementation of the Agreement
- 3) Sign the Agreement

During the annual review, schools and law enforcement shall discuss the content of the Agreement, with a special focus on:

- 1) Which acts are mandatory reports to law enforcement and which acts are non-mandatory reports to law enforcement
- 2) The process by which schools may consult with law enforcement to discuss an incident, report an act in school, and obtain informal guidance about concerns
- 3) How law enforcement will respond to such calls
- 4) The process by which law enforcement may call schools to report an act outside of school
- 5) How schools will respond to such calls

Reports to law enforcement are required to be reported through the Student Safety Data System (SSDS). Reported to police is defined as: "An action by which a student is reported to any law enforcement agency or official, including a school police unit, for an incident that occurs on school grounds, regardless of whether official action is taken. Citations, tickets, court referrals, and school-related arrests are considered reports to law enforcement." As detailed in this Agreement, schools are permitted to **consult** with law enforcement regarding an offense in school to decide whether law enforcement action is warranted. These consults do not need to be included in the SSDS as reported to police. Mandatory and non-mandatory reports are discussed in further detail in Articles 3 and 4.

action is necessary, law enforcement should embrace the use of stationhouse adjustments (see Article 4.2) as an alternative to filing a formal complaint, when appropriate.

1.4. Reasons for Special Concern

The parties to this Memorandum of Agreement are aware of and remain concerned by events that have occurred throughout the nation involving violence committed by youth and violence committed on youth by outsiders. The parties further recognize that no school is immune from the disruptive influence of alcohol and other drug abuse and distribution, vandalism, and violence. It is not our intention to cause undue alarm or to overstate the nature or magnitude of the problem. Nor is it our intention in any way to jeopardize the rights of students. To the contrary, we wish to emphasize that our goal is to safeguard the essential right of all students and school employees to enjoy the benefits of a school environment which is conducive to education and which is free of the disruptive influence of crime, violence, intimidation and fear. Accordingly, the parties to this Agreement recognize the need to have in place policies and procedures to appropriately and decisively manage these inherently dangerous and disruptive situations. It is our hope and expectation that by developing and publicizing the existence of clear policies, we can discourage the commission of serious offenses on school grounds and thereby protect the safety and welfare of all members of the school community.

Article 2. Liaisons; Law Enforcement Units

2.1. Liaisons

We, (*county prosecutor*) and (each law enforcement agency having patrol jurisdiction) shall each designate one or more persons to serve as a liaison to appropriate local and county school officials.

The (*executive county superintendent*) and the (*local chief school administrator of each school district*), pursuant to *N.J.A.C. 6A:16-6.2(b)1*, shall similarly designate one person to serve as a liaison to the county prosecutor's office and to the respective local law enforcement agency. Pursuant to *N.J.S.A. 18A:17-43.3*, the chief school administrator of each school district must designate the school safety specialist as the school district liaison with law enforcement. The roles and functions of these liaisons are to:

- facilitate communication and cooperation;
- identify issues or problems that arise in the implementation of this Agreement and facilitate the resolution of any such problems;
- act as the primary contact person between the schools and the affected law enforcement agencies;
- act together in developing joint training and other cooperative efforts, including information exchanges and joint speaking engagements;
- coordinate drug and alcohol abuse and violence intervention and prevention efforts; and
- consult on the review of school safety and security plans, pursuant to *N.J.A.C. 6A:16-5.1*, and the review of approved model policies of the School Security Task Force.

- b. The Comprehensive Drug Reform Act, focusing especially on those provisions affecting juveniles or that are designed to protect children and to displace drug trafficking activities from areas adjacent to schools;
- c. The United States Supreme Court decision in *New Jersey v. T.L.O.* and the *New Jersey School Search Policy Manual*;
- d. Federal and state laws and regulations on the confidentiality of alcohol and drug counseling and treatment;
- e. The warning signs of which school staff members should be aware that indicate a student may be abusing chemical substances or is at risk of committing an act of violence involving firearms or other deadly weapons;
- f. The scope and nature of the problem concerning firearms and other dangerous weapons on school grounds; and
- g. Training needs to support school safety and security and the effective implementation of the Agreement, including the exchange of information regarding the practices of the school district and law enforcement agencies, pursuant to *N.J.A.C. 6A:16-6.2(b)12*.

2.3. Safe Schools Resource Officers

The Attorney General's Education-Law Enforcement Working Group has developed resource material for a Safe Schools Resource Officer Program, recognizing that the presence of a police officer can be a deterrent in fighting drug use and sales and other forms of criminal behavior in schools. School districts and law enforcement agencies will comply with the training requirements of P.L. 2005, c. 276, (*N.J.S.A. 52:17B-71.8*; *N.J.S.A. 18A:17-43.1*) for safe schools resource officers and for the school district liaison to law enforcement, as soon as practicable. Besides enhancing school safety and security and facilitating the handling of delinquency complaints, the assignment of a safe schools resource officer on a full or part-time basis can help to enhance the working relationship between education and law enforcement officials. Most importantly, a Safe Schools Resource Officer program provides these specially trained officers an opportunity to interact with children in positive and constructive ways. It is understood and agreed that the parties to this Agreement shall, during the course of the annual conference convened, pursuant to Article 10 of this Agreement, discuss the feasibility and desirability of implementing this form of relationship.

Pursuant to *N.J.S.A. 40A-146.10*, signed in November 2016, Class Three special law enforcement officers may provide security and may also provide the role of SRO when schools are in session or occupied by students or staff.

or other school personnel, or that any student or other person has committed an offense with, or while in possession of, a firearm, whether or not such offense was committed on school grounds or during school operating hours, pursuant to *N.J.A.C.* 6A:16-5.5, 5.6(d)4 and 6.3(b) (Article 3.6);

- Whenever any school employee in the course of his or her employment develops reason to believe that anyone has threatened, is planning, or otherwise intends to cause death, serious bodily injury, or significant bodily injury to another person under circumstances in which a reasonable person would believe that the person genuinely intends at some time in the future to commit the violent act or to carry out the threat, pursuant to *N.J.A.C.* 6A:16-6.3(c) through (e) (Article 3.10);
- Whenever any school employee in the course of his or her employment develops reason to believe that a crime involving sexual penetration or criminal sexual contact has been committed on school grounds, or by or against a student during school operating hours or during school-related functions or activities, pursuant to *N.J.A.C.* 6A:16-6.3(d) (Article 3.12);
- Whenever any school employee in the course of his or her employment develops reason to believe that an assault upon a teacher, administrator, other school board employee, or district board of education member has been committed, with or without a weapon, pursuant to *N.J.A.C.* 6A:16-5.7(d)5 (Article 3.14);
- Whenever any school employee in the course of his or her employment develops reason to believe a “bias-related act” has been committed or is about to be committed on or off school grounds, pursuant to *N.J.A.C.* 6A:16-6.3(e) (Article 3.16); and
- Whenever any school employee in the course of his or her employment develops reason to believe a student is potentially missing, abused, or neglected, pursuant to *N.J.A.C.* 6A:16-11.1(a)3i through iii (Article 3.17).

Exceptions apply, as outlined below.

3.1.1. Law Enforcement Response to Mandatory Reports

Specific response to mandatory reports are noted by offense type in the following sections. A mandatory report to law enforcement does not preclude the law enforcement agency’s ability to investigate the act and decide that no further action is needed, or recommend a stationhouse adjustment, as outlined in Article 4.2.

3.2. Requirement to Report Offenses Involving Controlled Dangerous Substances

Subject to the provisions of Article 3.3 of this Agreement and *N.J.A.C.* 6A:16-6.2(b)9 and 6.3(a), school officials must immediately notify (*police department and/or prosecutor*) whenever any school employee has reason to believe a student is in possession of a controlled dangerous substance or related paraphernalia, or is involved or implicated in distribution activities regarding controlled dangerous substances, pursuant to *N.J.A.C.* 6A:16-4.3(a)3i. Per *N.J.S.A* 24:21-2, “controlled dangerous substance” means a drug, substance, or immediate precursor in Schedules I through V of article 2 of *P.L.* 1970, c.226 (C.24:21-1 et seq.). A non-exhaustive list of controlled dangerous substances (CDS) are detailed in sections 3.2.1 through 3.2.4.

synthetic cannabinoids and cathinones, designer drugs are not required by New Jersey law to be reported to law enforcement, but may be required under district policy or procedure to be reported to law enforcement in accordance with the provisions of this Agreement.

3.2.3. Prescription Controlled Dangerous Substances

The Centers for Disease Control and Prevention (CDC) classified prescription drug abuse as the fastest growing drug problem in the United States. Rates of prescription drug misuse (when an individual uses a medication for a reason other than prescribed or in a different manner than prescribed, or when an individual takes a medication not prescribed for him or her) and abuse are increasing at alarming rates, especially among youth. Because these medications are incorrectly believed to be safer because they are manufactured by companies, the dangers and potential for abuse associated with these medications is often overlooked or ignored. Access to prescription CDS is also easier than with traditional CDS, as they are often located in the home medicine cabinet.

The Substance Abuse and Mental Health Services Administration (SAMHSA), a federal health agency, reported that in 2015, 18.9 million people in the United States age 12 or older had misused prescription psychotherapeutic drugs, including CDS such as pain relievers, tranquilizers, stimulants and sedatives, in the past year. Moreover, the prevalence of prescription medication has led to an increase in misuse of prescription CDS stimulants among youth as study aids, and among prescription opioids and benzodiazepines as party drugs. Educators must be mindful that, absent a filed certification and medical plan as described in Article 4.1, students should not be in possession of CDS prescription medication on school grounds. Educators and law enforcement must focus on evidence-based prevention education and be alert for signs and symptoms of misuse and abuse in our students.

3.2.3.1. Considerations when Reporting Prescription Drugs to Law Enforcement

While possession of a CDS or related paraphernalia and distribution activities regarding CDS are required to be reported to law enforcement (see Article 3.2), students may also misuse or be in possession of prescription drugs that are not CDS. Possession or misuse of any drug should be deemed to be a serious matter that should be handled in accordance with the district board of education's approved student code of conduct and any other applicable policies and procedures. Non-CDS prescription drugs are not required by New Jersey law to be reported to law enforcement, but may be required under district policy or procedure to be reported to law enforcement in accordance with the provisions of this Agreement.

3.2.4. Opioids

In 2018, the CDC reported that drug overdoses killed 63,632 Americans in 2016 with nearly two-thirds of these deaths (66%) involved a prescription or illicit opioid. In New Jersey, heroin and opioid use has increased to epidemic proportions. One cause of this crisis is the overabundance of prescription opioids, with an estimated four out of five new heroin users beginning their addiction by misusing prescription pain killers. Unfortunately, sports activities, accidents or other causes may also lead to injury and, in rare cases, result in pain that is severe or

medical assistance for an individual believed to be experiencing a drug overdose, whether the person is seeking assistance for himself/herself or another, the person calling for help and the person experiencing the overdose must not be arrested, charged, prosecuted, or convicted for certain specified criminal offenses enumerated in *N.J.S.A. 2C:35-30(a)(1-6)* and *N.J.S.A. 2C:35-31(a)(1-6)* involving the use or simple possession of controlled dangerous substances. The Act does not limit in any way the ability of law enforcement to investigate, arrest, or prosecute an offense involving the manufacture, distribution, or possession with intent to distribute an illicit substance or paraphernalia or other drug-offenses. Attorney General Directive 2013-1 expanded the immunity provisions of the Act beyond its plain language to encompass the spirit of the law by providing immunity to others present at the scene of the overdose event if those other persons were made aware of and participated in the request for medical assistance, even if only one person actually placed the call to 9-1-1. As Attorney General Directive 2013-1 made clear, the immunity feature of the Act does not extend to simple use or possession drug offenses that come to the attention of law enforcement by independent means.

Law enforcement and educators should also be mindful of P.L. 2009, c.133, the “9-1-1 Lifeline Legislation,” which provides immunity for underage use and possession of alcohol for up to three people (including the individual in need of medical assistance) when 9-1-1 is called for an alcohol poisoning-related medical emergency. To be eligible for the immunity, the underage persons must be the first to place the 9-1-1 call, must provide their names to the 9-1-1 operator, must remain on the scene of the event, and must cooperate with law enforcement and medical responders.

3.3.4. Students Suspected of Being Under the Influence of Alcohol or Other Drugs

Pursuant to *N.J.A.C. 6A:16-4.3(a)3* and *6.3(a)4*, school officials may, **but need not**, disclose to law enforcement authorities the identity of a student suspected to be under the influence of alcohol or other drugs. In each instance of a report to law enforcement authorities of a student suspected of being under the influence of alcohol or other drugs, pursuant to *N.J.S.A. 18A:40A-12(a)* and *N.J.A.C. 6A:16-4.3(a)*, or of a student suspected of using of anabolic steroids, pursuant to *N.J.S.A. 18A:40A-12(b)* and *N.J.A.C. 6A:16-4.3(b)*, the student must receive the required medical examination, pursuant to *N.J.S.A. 18A:40A-12* and *N.J.A.C. 6A:16-4.3(a)2 et seq.* or *(b)2 et seq.*, as appropriate.

3.3.5. Possession or Consumption of Alcoholic Beverages

The parties to this Agreement recognize that public attention has been focused on the problem of alcohol consumption on school grounds. Surveys of New Jersey's high school students consistently report that alcohol continues to be by far the most commonly used chemical substance by school-age children. The parties to this Agreement recognize and reaffirm that alcohol remains an illicit substance for underage persons, and that alcohol offenses, especially those occurring on school grounds, are serious matters that warrant a decisive and predictable response.

It is understood that it is unlawful for a person under the age of 21 to purchase or knowingly consume an alcoholic beverage on school grounds (see *N.J.S.A. 2C:33-15* and

3.3.7. Compassionate Use Medical Marijuana Act

On January 18, 2010, the Compassionate Use Medical Marijuana Act (CUMMA) (*N.J.S.A. 24:6I-1 et seq.*) was signed into law. The purpose of CUMMA is to protect from arrest, prosecution, property forfeiture, criminal and other penalties, those patients who use marijuana to alleviate suffering from debilitating medical conditions, as well as their physicians, primary caregivers, and those who are authorized to produce marijuana for medical purposes. CUMMA expressly provides that it does not authorize a person to smoke marijuana in a school bus or on any school grounds. As to smoking medical marijuana at such protected locations, CUMMA expressly provides that the patient “shall be subject to such penalties as provided by law.” Although this provision of CUMMA applies only to smoking marijuana in certain specified places, district boards of education are encouraged to consult with their attorney about the oral consummation of medical marijuana at any of the protected locations. The Department of Health has promulgated regulations for the implementation of CUMMA and serves as the lead state agency in developing the Medicinal Marijuana Program (MMP) in the state of New Jersey.

The Office of the Attorney General developed Enforcement Guidelines to provide law enforcement with guidance and instruction on key provisions of CUMMA. This document is available at the Division of Criminal Justice website under Attorney General Guidelines. The MMP, in cooperation with the Department of Law and Public Safety, has established an MMP Identification Card validation process. Law enforcement personnel that encounter or have questions regarding the validity of an MMP Identification Card should contact the New Jersey State Police, Regional Operations Intelligence Center (ROIC), for Identification Card validation.

As of January 23, 2018, the MMP has five Alternative Treatment Centers in operation in New Jersey. NJ Exec. Order No. 6 (Jan. 23, 2018), 50 N.J.R. 885(a). They are (1) Compassionate Care Foundation, Inc., in Egg Harbor Township, (2) Greenleaf Compassion Center in Montclair, (3) Garden State Dispensary in Woodbridge, (4) Breakwater Alternative Treatment Center in Cranbury, and (5) Curaleaf NJ, Inc., in Bellmawr. These facilities are presently dispensing medicinal marijuana in raw vegetative form only. They are in the process of developing protocols for the manufacture of lozenge, topical formulations and edible products. These products will be available in the future and will be lawfully dispensed, possessed and utilized by patients that are registered with the MMP. As these products become available, law enforcement will be notified and provided with appropriate instruction on identification. Additional information regarding the Medicinal Marijuana Program is available from the New Jersey Department of Health.

3.3.8. Electronic Smoking Devices

“Electronic smoking device” means an electronic device that can be used to deliver nicotine or other substances (e.g., marijuana) to the person inhaling from the device, including, but not limited to, an electronic cigarette, vape pen, cigar, cigarillo, or pipe. *N.J.S.A. 26:3D-55* bans the use of electronic smoking devices in public places and workplaces, including, but not limited to public and nonpublic elementary or secondary school buildings, board of education buildings and any area of any building of, or on the grounds of, any public or nonpublic

pursuant to *N.J.A.C.* 6A:16-3.1 or community-based alcohol or other drug abuse treatment program.

Nothing in this paragraph must be construed in any way to authorize or require a referral or transmittal of any information or records in the possession of a school-based alcohol or other drug abuse intervention, referral for evaluation, referral for treatment or continuity of care program or a community-based substance abuse treatment program where such referral or transmittal would constitute a violation of state or federal confidentiality laws or regulations, and such information or records must be strictly safeguarded in accordance with applicable state and federal laws and regulations.

3.6. Requirement to Report Incidents Involving Firearms and Dangerous Weapons

Subject only to the provisions of Articles 7.4 and 9 of this Agreement, it is agreed that *(designated school official)* must immediately notify *(designated law enforcement official)* whenever any school employee in the course of his or her employment, pursuant to *N.J.A.C.* 6A:16-5.5 and 6.3(b), develops reason to believe that a firearm or ammunition has unlawfully been brought onto school grounds, or that any student or other person is in unlawful possession of a firearm or ammunition, whether on or off school grounds, or that any student or other person has committed an offense with, or while in possession of, a firearm, whether or not such offense was committed on school grounds.

In addition, *(designated school official)* must immediately notify *(designated law enforcement official)* whenever any school employee in the course of his or her employment comes upon a non-firearm weapon that was **actually used or threatened to be used** in committing an offense, including weapons used to commit assault upon a teacher, administrator, other school board employee, district board of education member, or another student on school grounds, pursuant to *N.J.S.A.* 18A:37-2.2 through 2.5. Law enforcement **must be** notified when the weapon seized is any switchblade, gravity, or ballistic knife, stun gun, or metal knuckles, whether or not the weapon was actually used or threatened to be used.

3.7. Exceptions to Mandatory Firearms and Dangerous Weapons Reports

Whenever a school employee seizes a dangerous weapon that was not actually used or threatened to be used in committing an offense, the school employee *may, but need not* consult *(designated law enforcement official)* to decide whether the offense warrants law enforcement action.

In deciding whether to report the presence or seizure of a non-firearm weapon that was not actually used or threatened to be used in committing an assault or other offense, the *(school official)* and *(designated law enforcement official)* must consider:

- 1) the nature of the weapon;
- 2) any lawful purposes that it might have;
- 3) the age of the student; and
- 4) the student's intent.

It is generally not necessary to report the seizure of small pen knives or Swiss-Army style knives. It is further understood and agreed that school officials should consult with law

3.9.1. Interdiction of Weapons

It is understood and agreed that the (*law enforcement agency*) must make every reasonable effort to effect the arrest of any student believed to be in the unlawful possession of a firearm or other dangerous weapon while the student is not on school grounds, to prevent whenever possible the bringing of such firearm or weapon onto school grounds. When this is not feasible, the (*law enforcement agency*) must scrupulously comply with the notification requirements for planned arrests as set forth in Article 6.4 of this Agreement.

3.10. Requirement to Report Incidents Involving Planned or Threatened Violence

Notwithstanding any other provision of this Agreement, it is agreed that (*school official*) must immediately notify (*law enforcement agency*) whenever any school employee in the course of his or her employment develops reason to believe that anyone has threatened, is planning, or otherwise intends to cause death, serious bodily injury, or significant bodily injury to another person under circumstances in which a reasonable person would believe that the person genuinely intends at some time in the future to commit the violent act or to carry out the threat, pursuant to *N.J.A.C. 6A:16-6.3(c) through (e)*. In making these determinations, the school official should employ risk management and assessment tools. Chapter 7 of New Jersey Department of Education publication titled *School Safety and Security Manual: Best Practices Guidelines* provides an approach to behavioral assessment and risk determination. Specifically, section 7.2., the Four-Pronged Threat Assessment Model, addresses evaluation of persons making threats.

The school official must provide to the responding law enforcement agency all known information relevant to the threat, including but not limited to any historical or background information concerning the person's behavior or state of mind. For the purposes of this reporting requirement, the threatened or planned act of violence need not be imminent, and the intended victim of the violent act need not be aware of the threat. Nor must it be relevant for the purposes of this reporting requirement that the intended victim is not a student or member of the school community, or that the violent act is not intended to be committed on school grounds. The parties to this Agreement understand and agree that students who make a credible threat of harm to themselves or others should be taken seriously. Accordingly, the provisions of this paragraph must be liberally construed with a view toward preventing future acts of violence.

3.11. The New Jersey Office of Homeland and Security Response to Planned or Threatened Violence

The New Jersey Office of Homeland and Security receiving information about a threatened, planned, or intended act of violence pursuant to Article 3.10 of this Agreement agrees to promptly dispatch an officer, or immediately dispatch an officer where the circumstances so warrant, to undertake an investigation and to take such actions as may be appropriate and necessary to prevent the threatened, planned, or intended act of violence from occurring. Further, under the March 26, 2018, update to Attorney General Directive 2016-7, the law enforcement agency must immediately report any suspicious activity "with a possible nexus to terrorism or other criminal activity related to terrorism," which includes threats of violence

3.16. Requirement to Report Bias-Related Incidents

In accordance with N.J.A.C. 6A:16-6.3(e), school employees must notify the principal and chief school administrator when they develop reason to believe a “bias-related act”², has been committed or is about to be committed on school grounds, or has been or is about to be committed by a student on or off school grounds, and whether such offense was or is to be committed during operating school hours, or a student enrolled in the school has been or is about to become the victim of a bias-related act on or off school grounds, or during operating school hours. The principal and chief school administrator, in turn, should promptly notify the local law enforcement agency and the bias investigation officer for the county prosecutor’s office.

A “bias-related act” means an act that is directed at a person, group of persons, private property, or public property that is motivated in whole or in part by race, color, national origin, ethnicity, gender, gender identity or expression, disability, religion, or sexual orientation. A bias-related act need not involve conduct that constitutes a criminal offense. Note that all hate crimes and bias-intimidation crimes are also bias-related acts, but that not all bias-related acts will constitute a hate crime or bias-intimidation crime. A “hate crime”³ is defined as any criminal offense in which the person or persons committing the offense acted with a purpose to intimidate an individual or group of individuals because of race, color, gender, gender identity or expression, disability, religion, sexual orientation, ethnicity, or national origin.

3.16.1. Considerations when Reporting Bias-Related Acts

N.J.A.C. 6A:16-6.3(e) requires schools to notify the law enforcement agency and the county prosecutor’s office of bias-related acts (whether committed or about to be committed) as described above. Under the authority of a separate agreement entitled **Responding to Hate Crimes and Bias-Related Acts**, the principal of the school, or his or her designee, should consider the nature and seriousness of the conduct and the risk that the conduct posed to the health, safety, or well-being of any student, school employee, or member of the general public when making the notification to the law enforcement agency and the county prosecutor’s office.

Bias-related acts may also constitute HIB. Law enforcement officials agree to notify the principal of the school at which a student is enrolled when a student or a student’s parent or guardian reports to the law enforcement agency that a student may be the victim of HIB, as defined in the ABR.

3.17. Requirement to Report Potentially Missing, Abused, or Neglected Children

² For the purposes of this document, “bias related act” includes and is used interchangeably with the term “bias incident”. The term “bias incident” is utilized in the 2000 Attorney General’s Guidelines on Bias Incident Investigation Standards and in the training of law enforcement officers. The term “bias related act” is utilized in N.J.A.C. 6A:16-6.3(e) and includes two categories that the 2000 Guidelines does not – gender and disability. It is the intention to update these Guidelines to bring it in accordance with N.J.A.C. 6A:16-6.3(e). Law enforcement are currently trained utilizing the term “bias incident” but with the inclusion of gender and disability.

³ For the purposes of this document, a “hate crime” is the same thing as a “bias crime” as utilized in the 2000 Attorney General’s Guidelines on Bias Incident Investigation Standards.

to anonymity for these reports. Furthermore, there is no anonymity when incidents are reported to law enforcement authorities.

3.17.7 Custody Disputes and Potentially Missing Children

It is recognized by all parties to this agreement that custody disputes between parents often have a detrimental effect upon the children. Sudden requests for school records accompanied by suspicious absences should result in a heightened scrutiny within the school. Therefore, to the extent that a report to law enforcement will not violate student record confidentiality, if it comes to the attention of a school administrator that the absence of a child from school may be due to a parental kidnapping or custodial interference, the school administrator must immediately contact law enforcement authorities. Concerns that a child may be unlawfully removed from the jurisdiction should be immediately brought to the attention of local law enforcement officials.

Article 4. Reporting other Offenses: Non-Mandatory Reports

4.1. Reporting Other Offenses

When contemplating a non-mandatory (i.e., voluntary) report, the Department of Education encourages school officials to refer to the code of student conduct and provide a graduated response to misconduct that provides a continuum of actions designed to remediate and impose more severe sanctions for continued misbehavior prior to referring the incident to law enforcement. Research has demonstrated that students who have contact with the juvenile justice system, including a single arrest, are at increased risk of dropping out of school and having further involvement with the juvenile and adult criminal justice system.

Subject to the provisions of Articles 7.4 and 9 of this Agreement, it is agreed that (*designated school official*) may, but need not, notify (*designated law enforcement official*) whenever any school employee develops reason to believe that a non-mandatory report offense has been committed on or against school grounds. In deciding whether to refer the matter to the designated law enforcement agency, the principal of the school or his or her designee should consider the nature and seriousness of the offense and the risk that the offense posed to the health or safety of other students, school employees, or the general public and must be mindful that offenses committed on school grounds by or against students may lead to an escalation of violence or retaliation that may occur on school grounds or at other locations. Under no circumstances may any school employee prevent or discourage the victim of an offense from reporting the offense to a law enforcement agency. Schools are encouraged to consult with law enforcement concerning a non-mandatory report offense to discuss the appropriate level of intervention and available resources.

4.2. Stationhouse Adjustments

All municipal and other law enforcement agencies having patrol jurisdiction within the State of New Jersey shall make stationhouse adjustments available as a method of handling minor juvenile delinquency offenses within their jurisdiction. See Attorney General Directive

ABR further requires that policies be adopted through a process that includes representation of parents or guardians, school employees, volunteers, students, administrators and community representatives (N.J.S.A. 18A:37-15a). Upon request by a school district, law enforcement agencies must make available a representative to participate in this process (see Article 9.4 of this Agreement).

The ABR also mandates that New Jersey's Department of Education aid schools in complying with the law by revising its model policy and guidance. The Department complied with this requirement by promulgating *Model Policy and Guidance for Prohibiting Harassment, Intimidation and Bullying on School Property, at School-Sponsored Functions and on School Buses* (most recently revised in April 2011).

4.4.1. Statutory Definition

The *Anti-Bullying Bill of Rights Act* sets forth the following definition for HIB (N.J.S.A. 18A:37-14.):

“Harassment, intimidation or bullying” means any gesture, any written, verbal or physical act, or any electronic communication, whether it be a single incident or a series of incidents, that is reasonably perceived as being motivated either by any actual or perceived characteristic, such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical or sensory disability, or by any other distinguishing characteristic, that takes place on school property, at any school-sponsored function, on a school bus, or off school grounds as provided for in section 16 of P.L.2010, c.122 (C.18A:37-15.3), that substantially disrupts or interferes with the orderly operation of the school or the rights of other students and that:

- a. a reasonable person should know, under the circumstances, will have the effect of physically or emotionally harming a student or damaging the student's property, or placing a student in reasonable fear of physical or emotional harm to his person or damage to his property;
- b. has the effect of insulting or demeaning any student or group of students; or
- c. creates a hostile educational environment for the student by interfering with a student's education or by severely or pervasively causing physical or emotional harm to the student.

School investigations of HIB must determine whether conduct meets this definition.

4.4.2. HIB's Relationship to Criminal Conduct

Significantly, **the ABR does not criminalize HIB**. In fact, there is **no criminal offense** for HIB in the New Jersey Code of Criminal Justice. This creates a potentially

destroy or otherwise dispose of any such evidence. Such evidence must be maintained in a locked and secure location and the handling of such evidence must be documented in order to provide a record that no one has had an opportunity to tamper with the evidence.

4.4.5. Reporting of HIB by Law Enforcement to Schools

In addition to the obligations to share law enforcement information with schools set forth in Article 9 of this Agreement, the law enforcement agency agrees to notify the principal of the school at which a student is enrolled when a student or a student's parent or guardian reports to the law enforcement agency that a student is the victim of HIB, as defined in the ABR.

Such reports are permissible pursuant to the authority of *N.J.S.A. 2A:4A-60c*, where a juvenile who is a student has been charged with an offense, or pursuant to *N.J.S.A. 2A:4A-60e*, which permits a law enforcement agency to verbally notify the principal of the school at which the juvenile is enrolled where the juvenile is under investigation or has been taken into custody but has not been formally charged with the commission of any act that would constitute an offense if committed by an adult, provided that the information may be useful in maintaining order, safety, or discipline in the school or in planning programs relevant to the juvenile's educational and social development. Such notification also must be provided when the alleged offending student is an adult. See Article 8.8 of this Agreement.

4.4.6. Coordination of HIB and Criminal Investigations

When a criminal investigation is initiated by law enforcement, but a school district has already initiated its own disciplinary investigation for the same incident or conduct, a school district generally agrees to suspend its own investigation until law enforcement has concluded its investigation. This best practice avoids hampering ongoing criminal investigations. Although the *Anti-Bullying Bill of Rights Act* (ABR) provides a ten school day timeframe to complete an HIB investigation, this investigation should be suspended or "stayed" when deemed appropriate and requested by law enforcement. The suspension or stay of a school district's HIB investigation may be appropriate when, among other things, there is a concern that witness statements and/or evidence could be adversely affected or detrimental to an ongoing criminal investigation.

Although, a law enforcement investigation focuses on whether there has been a violation(s) of the Code of Criminal Justice, an HIB investigation focuses on whether an act has been committed in violation of the ABR. In an effort to avoid hampering the independent efforts, and objectives, of both law enforcement and school officials, when law enforcement deems it appropriate for a school district to suspend or stay its HIB investigation because its own investigation could be compromised by a simultaneous or concurrent HIB investigation, it may request that the school district suspend or stay its HIB investigation. It is only when law enforcement affirmatively requests a school district to suspend or stay its HIB investigation that such an investigation should be suspended or stayed. If law enforcement does not affirmatively request a suspension or stay of an HIB investigation, a school district must comply with all applicable ABR timeframes. If law enforcement has not affirmatively requested a stay or suspension of an HIB investigation, but a school district believes that the action(s) involved may

review this additional information, and promptly determine whether the original report should be amended.

- If law enforcement requests a suspension or stay of school district action at any other point, including prior to the reporting of the results of the investigation to the chief school administrator or the board of education; the reporting of information to the parent(s)/guardian(s) of the alleged perpetrator(s) and alleged victim(s); a parental request hearing before the board of education; or prior to the issuance of the board of education's written decision; the school district must comply with this request while following the parental/victim notification requirements and seeking court orders, if necessary, to stay requirements set forth above. All school district action must be stayed during the pendency of law enforcement's request. Following notification of that completion from the county prosecutor, the school district must immediately resume any and all remaining action(s) required under law and regulation.

4.5. Hazing

Hazing is a process, based on tradition that is used by groups to maintain a hierarchy (i.e., a pecking order) within the group. Regardless of consent, the rituals require individuals to engage in activities that are physically and/or psychologically stressful. These activities can be humiliating, demeaning, intimidating, and exhausting, all of which results in physical or emotional discomfort. Hazing is about group dynamics and proving one's worthiness to become a member of a specific group. The newcomer, or victim, is hazed. Once accepted by the group, the victim may become a bystander, watch others get hazed, achieve senior status, and ultimately become a perpetrator of hazing.

In New Jersey, hazing is a separate criminal offense under *N.J.S.A. 2C:40-3*. School officials should be aware that hazing which involves the participation of a coach or a teacher may also constitute child abuse. Hazing may also involve other predicate crimes, such as sexual assault. Hazing may also constitute HIB. As noted in Article 4.4.2, although HIB is not a separately defined criminal offense, the conduct that constitutes bullying may constitute one or more criminal or disorderly person offenses, including assault, harassment, threats, robbery and sexual offenses.

4.5.1. Statutory Definition

The statute sets forth the following definition for hazing:

A person is guilty of hazing, a disorderly persons offense, if, in connection with initiation of applicants to or members of a student or fraternal organization, he/she knowingly or recklessly organizes, promotes, facilitates or engages in any conduct, other than competitive athletic events, which places or may place another person in danger of bodily injury (*N.J.S.A. 2C:40-3(a)*).

A person is guilty of aggravated hazing, a crime of the fourth degree, if he/she commits an act defined as hazing that results in serious bodily injury to another person (*N.J.S.A. 2C:40-*

- (2) a class or training program intended to bring awareness to the dangers associated with cyber-harassment.
- d. A parent or guardian who fails to comply with a condition imposed by the court pursuant to subsection c. of this section is a disorderly person and must be fined not more than \$25 for a first offense and not more than \$100 for each subsequent offense (*N.J.S.A. 2C:33-4.1*).

4.6.2. Reporting of Cyber-Harassment

Accordingly, there is no obligation on the part of school personnel to report any cyber-harassment incident, unless the conduct rises to the level of mandatory report, as outlined in Article 3.

Cyber-harassment may also constitute HIB. Law enforcement officials agree to notify the principal of the school at which a student is enrolled when a student or a student's parent or guardian reports to the law enforcement agency that a student may be the victim of HIB, as defined in the *Anti-Bullying Bill of Rights Act*.

4.7. Sexting

Sexting, or the sending of sexually explicit photos by electronic means such as text message, may constitute a criminal act pursuant to New Jersey's child pornography laws. For instance, it is a crime to give to someone else, offer to give to someone else, transfer, disseminate, distribute, circulate, or possess pornography depicting a child, defined as a person younger than 18 (*N.J.S.A. 2C:24-4*). Penalties for violating such laws include not only significant time in prison but also mandatory registration as sex offenders.

4.7.1. Reporting of Sexting

Sexting has become increasingly common among both pre-teens and teens who may be unaware that it can compromise not only their social reputation, but their digital reputation as well. Once a photograph has been sent out, it becomes difficult, if not impossible, to know how many people have saved it, tagged it, shared it, etc. Unfortunately, the photograph could resurface years after it was taken and posted. Working proactively with law enforcement is often the best way to quickly ascertain who has a digital copy of the photograph and to destroy it before it can be further circulated.

School officials agree to immediately report to law enforcement officials any sexting incident that rises to the level of mandatory report, as outlined in Article 3. In addition, schools are encouraged to consult with law enforcement for any incident that may require outside investigation. New Jersey has created an alternative to criminal prosecution for teens charged with child pornography as a result of sexting (*N.J.S.A. 2A:4A-71.1*). If the court deems it appropriate, these teens may be ordered to participate in an educational program or counseling in lieu of prosecution. Both the creator and subject of the sexting image must be younger than 18 to be eligible for this program.

individuals. The mere fact that the communication is in electronic form, rather than oral or written form is irrelevant. School personnel should be guided by the reporting obligations elsewhere in this agreement. School personnel should be mindful of the fact that forensic computer analysis of an individual computer or network can result in valuable evidence for an investigation. Therefore, when notification to law enforcement is appropriate, the entirety of the investigation should be conducted by law enforcement so as not to compromise the integrity of potential evidence.

Finally, computers and other forms of current and emerging technology may be used to facilitate other criminal activity. Financial information, identifying information and illicit images may all be contained on a suspect's computer. Therefore, it is vital that law enforcement be notified immediately when a school learns that a juvenile may be using a computer to violate the law. Similarly, cell phones, smart phones, tablets, PDAs and other electronic communication devices should be turned over to the police, not parents, when the school comes into possession of items which they suspect may contain evidence of criminal behavior. For any offense committed on media, reporting should be guided by Articles 3 and 4 in this agreement.

4.8.3. Blogging and Free Speech Issues

The creation of a "web-log" or "blog" is a current trend for many individuals using the Internet. A blog is personal space on the world-wide-web devoted to a particular topic. Often a single individual authors a blog, or as is becoming more common, access to the blog is 'open' and anyone may post an entry. Blogging is not limited to text, and information which can be stored electronically may be placed in a blog: music, photos and videos, for example, all can become part of a blog.

There are many free blog sites available for use by anyone with Internet access. Registration requirements are often loose and potentially ineffective. Blogs have become a public forum for many people, including students, to post a variety of personal information, including biographical information, opinion, media, and insulting or harassing speech.

Law enforcement officials, while vigilant in the pursuit of criminal activity, are often faced with the issue of "free speech" under the Federal and New Jersey Constitutions. Prosecution of individuals who harass or threaten specific groups or individuals is commonplace. However, law enforcement may be unable to prosecute those who merely publish an opinion or a photograph. School personnel as well as students often are the target of information contained in blogs.

4.8.4. Reporting of Blogging and Free Speech Issues

Accordingly, there is no obligation on the part of school personnel to report any blogging or free speech issues, unless the conduct rises to the level of mandatory report, as outlined in Article 3.

Law enforcement authorities have the ability to preserve evidence before the author has an opportunity to alter it. If such information is brought to the attention of law enforcement, a

Article 6. Arrest Protocols

For the purpose of this Agreement, the term "arrest" shall include the taking into custody of a juvenile for any offense which if committed by an adult would constitute a crime or disorderly persons offense.

6.1. Requests by School Officials

All requests by any school official to summon a law enforcement officer for the purpose of making an arrest on school grounds, pursuant to *N.J.A.C. 6A:16-6.2(b)2* and 9, whether for a suspected violation of the Comprehensive Drug Reform Act or for a suspected violation of any other criminal statute, should be directed to the (*designated police liaison or to the chief of the department having patrol jurisdiction*). Nothing herein shall be construed in any way to preclude or discourage any person from dialing "9-1-1" to report an emergency.

6.2. Minimizing Disruption of the Educational Process

It shall be the general policy of (*law enforcement agency*) when making any arrest on school grounds to minimize the disruption of the school environment to the greatest extent possible, consistent with the requirements of public safety. Accordingly, substantial weight shall be given by the law enforcement officer assigned to make the arrest to the specific recommendations of the building principal or local chief school administrator as to the time, place, and manner for effecting the arrest.

6.2.1. Arrests to be Conducted in Private

So as to minimize any disruption of the educational environment, every reasonable effort should be made to effect the arrest in the building principal's office, or in some other designated area away from the general student population.

6.2.2. Preferred Use of Plainclothes Officers to Effect Arrest

Where feasible, the responding law enforcement officer(s) should be in plainclothes, use unmarked police vehicle(s) and refrain from using a siren or flashing overhead lights. In addition, the number of responding officers should be kept to a minimum, consistent with the requirements of public safety.

6.2.3. Cooperation with Arrests on School Property

It is understood and agreed that school officials shall cooperate with law enforcement officials and shall not provide sanctuary from arrest to any person, and that school officials shall not interfere with or impede any law enforcement officer in the performance of his or her duties.

communications. The procedures for and responsibilities of staff, with regard to interviews of students suspected of possessing or distributing a controlled dangerous substance, including anabolic steroids, drug paraphernalia or a firearm or other deadly weapon shall be in accordance with *N.J.A.C. 6A:16-6.1 et seq.* and the associated board policies and procedures. Notification of parents in instances of law enforcement interviews involving their children will be made by school staff in accordance with *N.J.A.C. 6A:16-6.2(b)* and the associated board policies and procedures. It is understood that law enforcement officials need not contact parents to interview a minor student when the student is not the target of an investigation. However, law enforcement officials must contact parents to interview a minor student when the student is a target of an investigation.

7.3. Undercover School Operations

Undercover school operations are designed to disrupt ongoing drug-distribution activities. These operations are difficult to implement and require extensive planning, cooperation, and secrecy. Attorney General Executive Directive 1988-1 imposes strict limitations on the use of this investigative tactic. The Attorney General Directive is designed to protect the educational environment of a school and to minimize the risk of injury to students and undercover officers. Rules and regulations promulgated by the State Board of Education and codified at *N.J.A.C. 6A:16-6.2(b)7* require local district boards of education to adopt and implement policies and procedures to ensure cooperation between school staff and law enforcement authorities in all matters relating to undercover school operations.

7.3.1. Requests to Conduct Operations

a. All requests by school officials to undertake an undercover school operation in a particular school or school district will be directed to the local chief of police or, where appropriate, to the Superintendent of State Police. However, it is understood that the ultimate approval of all undercover school operations can only be granted by (*designated school official*) and (*the county prosecutor*) or, where appropriate, the Attorney General or his or her designee. When the school official designated as the liaison for law enforcement is the person under investigation, school districts are encouraged to have a plan in place on who should report to law enforcement (e.g., the liaison's supervisor or the chief school administrator).

b. A request to undertake an undercover school operation will not be made public by either the requesting school official or the law enforcement agency receiving the request.

c. The county prosecutor or the Attorney General or his or her designee will make a good faith effort to comply with all reasonable requests to initiate an undercover operation, considering the scope and nature of the substance abuse or weapons-related problem in the school or district and the availability of law enforcement resources.

d. Where the county prosecutor or the Statewide Narcotics Task Force is for any reason unable to comply with a request to undertake an undercover school operation, the county prosecutor or the Attorney General or his or her designee will promptly notify the requesting school officials.

e. No law enforcement officer will disclose the fact that an undercover school operation has been proposed, requested, or is being or has been considered with respect to any particular school or school district.

f. The building principal and the local chief school administrator will be afforded the opportunity to offer specific concerns regarding the conduct of any proposed undercover school operation, and will also be given the opportunity to make general or specific recommendations as to how to minimize the impact of the proposed operation on the educational environment, existing substance abuse counseling programs, and the relationship between school authorities, the law enforcement community, and the student population. In developing an undercover school operation plan, and throughout the course of the operation, the law enforcement agency conducting the operation will give due consideration to the concerns and recommendations offered by the building principal and local chief school administrator. Furthermore, these school officials will be advised whenever the law enforcement agency conducting the undercover school operation is for any reason unable or unwilling to follow any proposed recommendation. However, it is understood that the law enforcement agency responsible for conducting the undercover operation shall maintain control of the logistics of any operation once begun.

g. The law enforcement agency conducting the undercover school operation will provide to the building principal and local chief school administrator a detailed briefing concerning the logistical and record keeping requirements associated with successfully placing an officer undercover. The building principal and local chief school administrator may contact the designated liaison who will be available on a 24-hour basis to respond to any problems or inquiries.

7.3.3. Security; Limited Disclosure Agreements; Early Termination

a. The building principal and local chief school administrator will be informed as to the identity of any person assigned to an undercover investigation unless there are compelling reasons, as shall be determined by the Attorney General, not to inform either of these officials. The building principal and local chief school administrator, and any other school officials or employees who may be informed as to the identity of the undercover officer, will safeguard the identity of that officer and will not disclose the existence of a contemplated or ongoing undercover school operation to any person.

b. In the event that the building principal, local chief school administrator or any other school official or employee who may have been informed as to the existence of the operation subsequently learns of any information that suggests that the true identity of the undercover officer has been revealed, or that any person has questioned the identity or status of the undercover officer as a bona fide member of the school community, or that the integrity of the operation has been in any other way compromised, such information will be immediately communicated to the law enforcement agency conducting the operation or to the county prosecutor.

c. The school principal and local chief school administrator will be advised whenever an undercover school operation has been suspended or terminated or whenever the undercover officer is permanently removed from the school environment.

onto school grounds will ordinarily be contained in a closed and fastened case locked in the trunk of an automobile operated by the undercover officer. It is assumed, moreover, that any exemption from the general weapons carrying policy agreed to herein will only be rarely sought, and approval to carry a firearm onto school grounds will only be granted where alternative means of providing adequate security or support are not feasible.

e. *Non-Participation in Treatment.* No undercover officer will in any way participate in or attend any drug or alcohol abuse treatment or counseling program. In the event that an undercover officer is referred to, or recommended to participate in, a counseling or treatment program by a teacher or school staff member, the undercover officer will report the circumstances of that referral or recommendation to his superiors and will decline such referral or recommendation.

f. *Preservation of Teacher Trust Relationships.* No undercover officer will engage in any activity or conversation that would require any teacher or school official to violate or compromise a trust relationship with any student.

g. *Romantic Involvement.* No undercover officer will encourage or participate in any romantic relationship with any student during the course of an undercover operation.

h. *Treatment.* No undercover officer will discourage any student from seeking drug or alcohol abuse treatment or counseling, or from reporting his or her own alcohol or substance abuse problem or dependency.

i. *Use and Distribution Prohibition.* No undercover officer will ingest or inhale (other than passive inhalation) any controlled dangerous substance; nor will any undercover officer be permitted to distribute or dispense any controlled dangerous substance without the express approval of the county prosecutor or, where appropriate, the Attorney General or his or her designee. Under no circumstances will an undercover officer sell or transfer a firearm on school grounds or to a student without the express prior approval of the county prosecutor, or, where appropriate, the Attorney General or his or her designee.

7.3.6. Post-Operation Report

It is understood that following the termination of every undercover school operation, the county prosecutor or the Assistant Attorney General in charge of the Statewide Narcotics Task Force will prepare a post-operation report that will be transmitted to the Attorney General. The report will discuss the results and impact of the operation and any logistical or policy problems which were encountered. The report will also include recommendations for improved procedures in dealing with potentially recurring problems. The county prosecutor or the Assistant Attorney General in charge of the Statewide Narcotics Task Force will solicit the comments and recommendations of the building principal and local chief school administrator, and these comments and recommendations will be included in the post-operation report. The contents of a post-operation report will be publicly disclosed, and a copy will be provided to the building principal, the local chief school administrator, the executive county superintendent and the Commissioner of Education.

7.4.2. Notice and Consultation

In the absence of compelling or exigent circumstances, as shall be determined by the county prosecutor or the Attorney General or his or her designee, no planned narcotics surveillance operation as defined in this Agreement will be conducted during operating school hours without first consulting with the building principal or local chief school administrator of the school involved.

7.4.3. Limitations; Targeted Subjects

Nothing in this Agreement shall be construed to prevent any law enforcement officer from making any observations from any place or property not owned or used by a school or school board, except that a planned narcotics surveillance or any other form of observation should, wherever possible, be limited to observing 1) those specific individuals or groups of individuals who are believed to be involved in drug trafficking or weapons-related activities, or 2) those specific areas or places on school grounds, where drug use or trafficking or weapons-related activity is believed to occur frequently.

7.5. School Searches

7.5.1. Searches Conducted Independently by School Officials

No law enforcement officer shall direct, solicit, encourage or otherwise actively participate in any specific search conducted by a school official unless such search could be lawfully conducted by the law enforcement officer acting on his or her own authority in accordance with the rules and procedures governing law enforcement searches. Nothing in this Agreement shall be construed to preclude a law enforcement officer from taking custody of any item or substance seized by any school employee, pursuant to *N.J.A.C. 6A:16-6.2(b)5iv*.

7.5.2. Notice to Law Enforcement of Seizure of Contraband

School officials shall immediately notify law enforcement officers whenever a school employee comes into possession, whether as a result of a search or otherwise, of any substance or item believed to be a controlled dangerous substance, drug paraphernalia, firearm, or non-firearm weapon used or threatened to be used in committing an offense.

7.5.3. Law Enforcement Assumption of Responsibility

School officials shall permit law enforcement officers upon their arrival to the scene to assume responsibility for conducting any search, in which event the standards governing searches conducted by law enforcement officers shall prospectively apply.

7.6. Routine Patrols

7.6.1. Visible Enforcement Plans

The (*police department*) shall maintain at appropriate times a visible police presence within all drug-free school zones, and shall file and periodically update a confidential report with the (*prosecutor*) detailing how these zones are to be patrolled.

7.6.2. Notice to School Officials

Where a patrol plan requires an officer periodically to enter onto school grounds, the (*police department*) shall advise the appropriate (*school building principal and local chief school administrator*). It is understood and agreed that any portion of a patrol plan disclosed to school officials in accordance with this subsection shall be kept strictly confidential.

7.6.3. On-Site Reporting

Except when responding to an emergency, no on-duty police officer will enter any school building without first complying with the procedures established by the school for the reporting of visitors. It shall be the responsibility of each police department or agency with patrol responsibilities to make certain that all officers are familiar and comply with the reporting policies established by each school within the law enforcement agency's jurisdiction.

7.7. Police Presence at Extra-Curricular Events

It is our agreed upon policy that (*police department_with patrol responsibilities*), working in conjunction with appropriate school officials, should, whenever possible, provide for the presence of uniformed police officer(s) at any event at which the chief school administrator believes it would be in the interest of public safety. In the absence of compelling reasons as may be determined by the (*county prosecutor or chief executive officer of the law enforcement agency having patrol jurisdiction*) it is understood and agreed that uniformed police officers shall not be assigned to school functions, and especially those functions occurring within school buildings, except with the approval of the building principal or local chief school administrator. All requests by school officials for law enforcement agencies to provide for a uniformed presence at any school event should be made in accordance with *N.J.A.C. 6A:16-6.2(b)*¹⁰ and directed to (*local police or liaison, local chief executive officer of the law enforcement department or agency having patrol jurisdiction*).

7.8. Truancy; Assistance Provided to Attendance Officers

The sheriff and his officers and all police officers and constables are required to assist school attendance officers in the performance of their duties (*N.J.S.A. 18A:38-30*). Assistance shall, when practicable, include accompanying attendance officers to the homes of students in circumstances where attendance officers may have concerns for their safety. However, attendance officers are not law enforcement officers and law enforcement officers should not provide assistance of a type that would not be available to other civilian investigators. For example, law enforcement officers should not use law enforcement computer systems to run

enforcement agency immediately when there is reasonable cause to believe that a child is or has been abused or neglected.

8.2. Clarification Regarding Confidentiality of Contents of Student Records

It is understood and agreed that federal and state laws pertaining to the confidentiality of student records, pursuant to 42 C.F.R. Part 2, *N.J.S.A.* 18A:40A-7.1 and 7.2 and *N.J.A.C.* 6A:32-7, only prohibit the disclosure of the contents of such records; these laws do not extend to other sources of information concerning the same events or transactions that happen to be memorialized in the student records. Thus, for example, a teacher, counselor, administrator, or other school staff member who is a witness to criminal activity may be required to testify in a court or grand jury or may be required to report information to law enforcement authorities pursuant to this Agreement based upon personal knowledge and memory notwithstanding that the criminal activity reported or testified about has been recorded in a student record that is subject to state or federal confidentiality laws. In other words, the act by a school official of memorializing an incident, event, or observation in a student record in no way precludes that school official or any other material witness from reporting or testifying from personal knowledge as to the documented incident, event, or observation, provided, however, that nothing in this Agreement must be construed to authorize or require a school employee to divulge information or records in violation of the confidentiality requirements of 42 C.F.R. Part 2, or any other applicable state or federal regulation, law or rule of evidence concerning confidential and privileged communications. Furthermore, the records of a designated “law enforcement unit” do not constitute student records (20 U.S.C. 1232g(a)(4)(ii)).

8.3. Records of Law Enforcement Units

Records of a “law enforcement unit” designated pursuant to Article 2.4 of this Agreement do not constitute student records. This comports with the requirements of the Family Educational Rights and Privacy Act (FERPA), which was amended in 1992 to exempt such records from the definition of “education records” (20 U.S.C. 1232g(a)(4)(ii)). Law enforcement records are records, files, documents and other materials created by a law enforcement unit for a law enforcement purpose and maintained by the law enforcement unit (34 C.F.R. 99.8(b)(1)). In the preamble to the FERPA regulations published in the Federal Register on January 17, 1995, the United States Department of Education stated: “...where a law enforcement unit also performs non-law enforcement functions, the records created and maintained by that unit are considered law enforcement unit records, even when those records were created for dual purposes (e.g., for both law enforcement and student conduct purposes). Only records that were created and maintained by the unit exclusively for a non-law enforcement purpose will not be considered records of a law enforcement unit” (60 F.R. 3467). When one or more law enforcement units have been established by the school district, the school district agrees to disclose to the appropriate law enforcement agency, or the Department of Children and Families, as appropriate, any records, files, documents and other materials of the law enforcement unit pertaining to the investigation of a violation of the law. The disclosure of these records to a law enforcement agency does not prohibit the use of these records for educational purposes, such as violations of the code of student conduct.

- involved the unlawful manufacture, distribution, or possession with intent to distribute a controlled dangerous substance or controlled substance analog;
 - was committed by a juvenile who acted with a purpose to intimidate an individual or group of individuals because of race, color, religion, sexual orientation, or ethnicity; or
 - constitutes a crime of the first, second, or third degree.
- N.J.S.A. 2A:4A-60d*

8.5. Agreement to Disclose Information Following a Charge

Where a juvenile has been charged with an act of delinquency that if committed by an adult would constitute a crime or offense, it is requested and agreed, pursuant to the authority of *N.J.S.A. 2A:4A-60c(1)* and (3) that the (*law enforcement agency*) or County Prosecutor's Office shall promptly provide information as to the identity of the juvenile, the offense charged, the adjudication and the disposition to (1) the principal of any school that is the victim of the offense; (2) the principal of any school that employs the victim of the offense; and (3) the principal of any school where the juvenile is enrolled.

8.6. Agreement to Disclose Information during an Investigation

Pursuant to the authority of *N.J.S.A. 2A:4A-60e*, the (*law enforcement agency*) and/or the County Prosecutor's Office agree(s) to notify verbally the principal of the school at which the juvenile is enrolled where the juvenile is under investigation or has been taken into custody but has not been formally charged with the commission of any act that would constitute an offense if committed by an adult, provided that the (*law enforcement agency*) or the County Prosecutor's Office determines that the information may be useful in maintaining order, safety, or discipline in the school or in planning programs relevant to the juvenile's educational and social development, and further provided that the sharing of information will not interfere with or jeopardize an ongoing investigation or prosecution of any person. It is understood and agreed that the information provided pursuant to this paragraph shall be provided orally rather than in writing, will be kept confidential, shall not be maintained by the school as part of the juvenile's student records, and shall be used only in accordance with the provisions of *N.J.S.A. 2A:4A-60e* to maintain order, safety, or discipline in the school or in planning programs relevant to the juvenile's educational and social development. Nothing herein shall be construed to preclude school officials from using such information in a suspension, expulsion, or other school conduct proceeding, pursuant to *N.J.A.C. 6A:16-7.1*, whether occurring on or away from school grounds, pursuant to *N.J.A.C. 6A:16-7.5*.

8.7. Specificity of Disclosed Information

It is understood and agreed that where the (*law enforcement agency*) and/or County Prosecutor's Office is authorized, pursuant to law and the provisions of this Agreement to disclose information concerning charged or suspected acts of delinquency, the law enforcement agency may provide the principal with specific information concerning the offense or investigation, as appropriate, that may be useful in maintaining order, safety, or discipline in the school or in planning programs relevant to the juvenile's educational and social development.

that the imposition of sanctions by both schools and by the juvenile justice system based upon a single infraction or event in no way constitutes “double jeopardy.”

8.11. Notification of Arrests or Charges Filed Against School Personnel

The parties acknowledge that procedures already are in place that require prosecutors to provide notifications of indictments or convictions of public employees to the Division of Criminal Justice, which are then transmitted to the appropriate public agency. However, no notifications are required during the period between the filing of a complaint and an indictment, creating a period of time during which school administrators may be unaware of charges pending against school personnel, which may have an impact on their fitness for carrying out official duties. Therefore, it is agreed that whenever a law enforcement agency files a complaint or summons for one of the offenses listed in Article 8.11.3 below against a person that they know to be employed by a school district, or who works as a school bus driver or other outside employee in a school district, the law enforcement agency shall provide notice and a copy of the complaint to the school district no later than the next business day.

8.11.1. Applicability Not Limited to Local Jurisdiction

The requirement to notify a school district of such complaints is not limited to the school district in which the law enforcement agency is located. Notice shall be given to any school district or nonpublic school within the state of New Jersey where the accused is employed.

8.11.2. Employment Information

This requirement does not create an obligation to investigate or verify the employment of every person arrested or charged with an offense. It is intended only to require the notification in circumstances where the accused admits to employment in a school district or nonpublic school, or such information is otherwise available to the law enforcement agency.

8.11.3. Offenses Requiring Notification

Notification is required for all indictable offenses, all driving while intoxicated (DWI) offenses and any disorderly persons offenses or petty disorderly persons offenses.

8.11.4. Notification of Emergencies

Whenever local law enforcement is aware of an emergency affecting the safety of children during school hours, the Chief of Police or Station Commander or designee shall notify the principal of the school affected as soon as practicable. Law enforcement will provide all appropriate non-confidential information so that the principal can take necessary steps for the protection of students, staff and notification to parents. The Chief of Police or Station Commander shall attempt to provide, as practicable, the school principal and executive county superintendent, or his or her designee, with updated information throughout the duration of the emergency, and will provide notification when the emergency is over.

8.12. Notification to Executive County Superintendent

school safety and security planning in a manner prescribed by the school district that would not divulge confidential information.

It is further understood and agreed that law enforcement officials shall review and, where necessary, provide written comments to the chief school administrator concerning the required SSSPs, pursuant to *N.J.A.C. 6A:16-5.1*. It is understood and agreed that the chief school administrator shall annually submit a copy of the school district's SSSPs and promptly submit any important revisions to the plan or school grounds to law enforcement officials. The chief school administrator agrees to supply law enforcement officials with current copies of blueprints and maps of all schools and school grounds. If at any time there are changes to the blueprints or maps of any school or school grounds, the chief school administrator shall forward revised copies to law enforcement officials as soon as practicable. It also is understood and agreed that, pursuant to Article 7.1 the conferees shall discuss the feasibility and desirability of implementing a Safe Schools Resource Officer program.

9.1.1. Critical Incident Planning

The parties to this Agreement understand that it is important for school officials and local police departments and county prosecutors to work together to adopt and implement policies for dealing with disruptive and potentially catastrophic crisis situations for all hazards, recognizing that it is essential to consider the most appropriate response to these kinds of situations before a crisis develops. The comprehensive SSSPs, procedures and mechanisms established by school officials, pursuant to *N.J.A.C. 6A:16-5.1* and Article 2.2 of this Agreement, shall be developed in consultation with law enforcement agencies, emergency management planners, health and social services provider agencies and school and other community resources, as appropriate. Pursuant to *N.J.A.C. 6A:16-5.1(b)*, the plans, procedures and mechanisms shall be consistent with the provisions of *N.J.A.C. 6A:16-5.1* and the format and content established by the Domestic Security Preparedness Task Force, pursuant to *N.J.S.A. App. A:9-64 et seq.*, and the Commissioner of Education (e.g., the Department of Education confidential publication titled *School Safety and Security Manual: Best Practices Guidelines*), and shall be reviewed annually and updated, as appropriate.

Additionally, procedures for school lockdown, active shooter, emergency evacuation, bomb threat, risk and violence assessments, and public information sharing shall be based on the standard operating procedures (SOPs) developed by the School Security Task Force and issued by the Attorney General. The model SOPs follow other nationally-recognized standards.

9.1.2. Consultation in Development of SSSPs

It is understood and agreed that, pursuant to Article 9 and *N.J.A.C. 6A:16-5.1(b)*, the chief school administrator shall consult with law enforcement agencies, health and social services provider agencies, emergency management planners, and school and other community resources, as appropriate in the development and maintenance of the school district's plans, procedures and mechanisms for school safety and security to fulfill the requirements of *N.J.A.C. 6A:16-5*, School Safety and Security.

9.1.3. Format and Contents of SSSPs

9.2. Implementation of Approved School Security Task Force Recommendations

The parties agree to work together to implement the approved recommendations of the Governor's K-12 School Security Task Force. The parties recognize that joint planning, training and consultation are needed to effectively implement these recommendations. Any Executive Orders or Directives that are issued as a result of these approved recommendations are hereby incorporated into this Agreement.

9.2.1. Sharing of Model School Security Policies (MSSP)

The Model School Security Policies for law enforcement agencies issued pursuant to the Attorney General's Law Enforcement Directive No. 2007-1 on the topics of bomb threats, active shooter response, school lockdowns, school evacuations and public information policies shall serve as templates for the development of local law enforcement policies. Local law enforcement officials shall discuss the policies which they adopt on these topics with school administrators from the school district or districts within their jurisdiction. It is further understood that school administrators shall share their procedures for critical incidents, developed in accordance with the policies issued by the Commissioner of Education, with local law enforcement officials. These procedures shall remain confidential and shall not be shared with the public.

9.3. Gang Threat and Recruiting Information

Law enforcement and school officials agree to engage in ongoing discussions and training in gang prevention and intervention, as appropriate, regarding gangs that are thought to be active in the area, gang recruiting and signs of gang activity or recruiting. School officials shall inform law enforcement officials of any signs of gang activity or recruiting observed on school grounds.

9.4. Harassment, Intimidation or Bullying Policies

It also is understood that, pursuant to *N.J.A.C. 6A:16-7.7(a)1*, the harassment, intimidation or bullying policies required pursuant to *N.J.S.A. 18A:37-13 et seq.* and *N.J.A.C. 6A:16-7.7*, shall be developed by school officials in consultation with law enforcement officials, in addition to parents and other community members, including appropriate community-based social and health provider agencies and other school employees. It is agreed that law enforcement officials shall consult with school officials in the development of the policies and the annual review of the policies, the training needs of school employees and the extent and characteristics of harassment, intimidation and bullying behavior in the school buildings of the school district, pursuant to *N.J.A.C. 6A:16-7.7(e)*. It also is understood that the executive county superintendent shall maintain a current file copy of the harassment, intimidation or bullying policies, pursuant to *N.J.A.C. 6A:16-7.7(e)5*, for review by both education and law enforcement officials, upon request.

9.5. Law Enforcement Testimony at School Student Conduct Hearings; Required Notices to the County Prosecutor

however, to consult with their school board attorneys and communicate with designated local and/or county law enforcement authorities, per the provisions of the *Uniform State Memorandum of Agreement Between Education and Law Enforcement Officials* and *N.J.A.C. 6A:16-6.2(b)13*, on questions and issues that arise in the implementation of the individual victims of violent criminal offenses policy.

The following criteria must be used to determine when an enrolled student has become a victim of a violent criminal offense while in or on the grounds of a public elementary or secondary school that the student attends. These criteria only apply to a student who has become a victim of one or more of the violent criminal offenses enumerated in the Unsafe School Choice Option Policy. A student is considered a victim of a violent criminal offense when:

- 1) A report has been made to law enforcement officials for suspicion that one of the violent criminal offenses enumerated below has occurred; **and**
- 2) One or more of the following applies:
 - Law enforcement officials have filed formal charges against the perpetrator(s) for commission of the violent crime; **or**
 - The perpetrator(s) of the violent crime has received sanctions in accordance with the district board of education's code of student conduct, pursuant to *N.J.A.C. 6A:16-7.1*; **or**
 - The perpetrator(s) of the violent crime either has not been identified or is not an enrolled student(s), but it is clear that the student (victim) has become a victim of a violent criminal offense based on objective indicators such as physical evidence, eyewitness testimony, and/or circumstantial evidence; **or**
 - The pre-existence of a restraining order against the perpetrator(s) of the violent crime.

Article 10. Law Enforcement Participation in Educational Programs

10.1. Law Enforcement's Contribution to Substance Abuse Education and Demand Reduction

The parties to this Agreement understand and accept that the only viable, long-term solution to the nation's drug epidemic is to reduce the public's demand for illicit substances, and that education emerges as one of the most promising means available by which to provide a generation of students with information, skills and incentives to resist the temptation to experiment with and use chemical substances. The parties further understand that the contributions of the law enforcement community to the goal of a drug-free New Jersey need not and should not be limited merely to disrupting the supply of illicit drugs; rather the law enforcement community can help to reduce the demand for drugs, not only by holding drug users accountable for their unlawful conduct, but also by actively participating in public awareness and prevention programs and educational initiatives. To this end, a number of programs have been developed by numerous organizations in which specially trained police officers participate directly in school-based educational programs. These programs are designed to teach students

information concerning the nature and availability of law enforcement instructional programs should be directed to (*designated law enforcement liaison*) with notice of the request provided to the county prosecutor. All requests by a law enforcement agency seeking an invitation to provide an instructional program, or seeking to demonstrate the desirability of providing such an instructional program, should be directed to (*designated school official*), with notice given to the county prosecutor working in cooperation with the executive county superintendent, who will be responsible for coordinating all such invitations or requests for invitations to participate in law enforcement instructional programs. The county prosecutor further agrees to serve on an ongoing basis as an information clearinghouse to provide school officials with information concerning the availability and benefits of such law enforcement instructional programs.

Article 11. Maintenance of the Agreement

11.1. Agreement to Remain in Effect

This Agreement shall remain in full force and effect until such time as it may be modified. Modification of this Agreement shall be effected only with the mutual consent of the (*school district*), the (executive *county superintendent*), the (*police department*), and the (*county prosecutor*). Pursuant to *N.J.A.C. 6A:16-6.2(b)14ii*, all revisions shall be only in addition to, and shall not conflict with, the format and content established by the Attorney General and the Commissioner of Education and shall be in addition to and shall not conflict with the policies and procedures established pursuant to *N.J.A.C. 6A:16-6*. Modifications required by a change in state or federal law, rules or regulations or applicable guidelines or executive directives shall be made on the effective date of such revisions of law, regulations, guidelines or directives. All parties to this Agreement shall notify the other parties immediately regarding any such legal or regulatory changes.

11.2. Distribution

Copies of this agreement shall be provided to the County Prosecutor's Office, the executive county superintendent, the chief school administrator, the law enforcement chief executive of the Police Department or State Police Unit, the president of the district board of education, and each principal in the school district.

Article 12. Annual Review and Revisions of Agreement

It is understood that (*county prosecutor*), working in conjunction with the (executive *county superintendent*), pursuant to *N.J.A.C. 6A:16-6.2(b)14*, shall not less than once each calendar year, organize and conduct a meeting of representatives from the law enforcement and educational communities to discuss the implementation of and compliance with the provisions of this Agreement, pursuant to *N.J.A.C. 6A:16-6.2(b)13*, throughout the county, to discuss any other matters of mutual concern, and to recommend revisions to this Agreement, insofar as, pursuant to *N.J.A.C. 6A:16-6.2(b)14ii*, the revisions are in addition to and do not conflict with the format and content established by the Attorney General and the Commissioner of Education and that are

12.1 Affirmation

As an expression of our mutual concern and commitment to students, and to the level of cooperation and understanding described in this Agreement, the undersigned parties do hereby affirm and agree to abide by the standards, procedures, principles and policies set forth in this document.

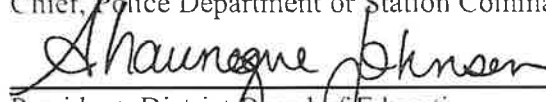
On this day and month of _____ in the Year of _____



Chief School Administrator



Chief, Police Department or Station Commander



President, District Board of Education

Executive County Superintendent of Schools

County Prosecutor

enforcement officer, whether in uniform or in plainclothes, from any place or property not owned or used by a school or school board.

"Routine Patrol" shall mean activities undertaken by a law enforcement officer whether in uniform or in plainclothes and whether on foot or in a marked or unmarked vehicle, to patrol areas within a drug-free school zone (*N.J.S.A. 2C:35-7*) for the purposes of observing or deterring any criminal violation or civil disturbance.

"Serious Bodily Injury" shall have the same meaning as that term is used in *N.J.S.A. 2C:11-1b* and means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or the protracted loss or impairment of the function of any bodily member.

"Significant bodily injury" shall have the same meaning as that term is used in *N.J.S.A. 2C:11-1d*, and means bodily injury which creates a temporary loss of the function of any bodily member or organ or temporary loss of any one of the five senses.

"Spontaneous Arrest," in distinction to a planned arrest, shall mean an arrest or taking into custody based upon probable cause to believe that an offense is being committed in the arresting officer's presence under circumstances where the officer could not have foreseen with certainty that the specific offense would occur and thus where the arresting officer had no reasonable opportunity to apply for an arrest warrant. The term shall also include any arrest or taking into custody in response to a request by a school official pursuant to Article 6.1 of this Agreement.

"Undercover School Operation" shall mean a planned operation undertaken by a law enforcement agency wherein a law enforcement officer(s) is placed in a school community and poses as a member of the school community for the purpose of identifying and eventually apprehending persons engaged in the illegal distribution of controlled dangerous substances, alcoholic beverages or the unlawful use, possession or distribution of firearms or dangerous weapons. The procedures for planning and approving an undercover school operation are set forth in Article 6.3. of this Agreement.

- Chief(s) of the police department or the station commander(s), as appropriate;
- Executive county superintendent; and
- County prosecutor.

Therefore, each of these officials must sign and receive a signed copy of the MOA annually. At a minimum, **five signed copies of the MOA** must be processed each year, subsequent to the annual discussion.

Procedures to Facilitate the Annual Review and Approval of the MOA

Each county prosecutor's office and county office of education may have an established procedure for obtaining the signatures and copies subsequent to the annual discussion. To further support the annual review and signature process, please consult the list of suggested activities below.

Suggested Activity	Person Responsible
<ul style="list-style-type: none"> • Schedule meetings with the Chief of Police or Station Commander, as appropriate, to discuss the revised MOA 	Chief School Administrator
<ul style="list-style-type: none"> • Meet to discuss and review the MOA • After the meeting, both individuals sign five (5) copies of the MOA <ul style="list-style-type: none"> • Note: Attach any additional approved MOA provisions and contact information to each signed copy of the MOA • Forward the five (5) signed copies to the Executive County Superintendent 	Chief School Administrator, Chief of Police or Station Commander
<ul style="list-style-type: none"> • Review, approve and sign the five (5) copies of the MOA • Forward the signed copies to the County Prosecutor 	Executive County Superintendent
<ul style="list-style-type: none"> • Review, approve and sign the five (5) copies of the MOA • Retain one (1) original copy of signed MOA for his/her file • Forward one (1) original copy of signed MOA to Chief of Police or Station Commander • Return three (3) copies of signed MOA to Executive County Superintendent 	County Prosecutor
<ul style="list-style-type: none"> • Retain one (1) original copy of signed MOA for his/her file • Forward one (1) original copy of signed MOA to Chief School Administrator and one (1) original copy of signed MOA to president of district board of education 	Executive County Superintendent
<ul style="list-style-type: none"> • Send a copy to each district principal and any district participant at annual revision meeting 	Chief School Administrator

More information and resources are available on the NJDOE [Uniform State Memorandum of Agreement Between Education and Law Enforcement Officials webpage](#). Should you have additional questions, please contact the Office of Student Support Services at EdLawMOA@doe.nj.gov or 609-376-9109.

Bias-Related Incidents
Whenever any school employee in the course of his or her employment develops reason to believe a “bias-related act” has been committed or is about to be committed on or off school grounds, pursuant to <i>N.J.A.C. 6A:16-6.3(e)</i> (Article 3.16).
Potentially Missing, Abused, or Neglected Children
Whenever any school employee in the course of his or her employment develops reason to believe a student is potentially missing, abused, or neglected, pursuant to <i>N.J.A.C. 6A:16-11.1(a)3i through iii</i> (Article 3.17).