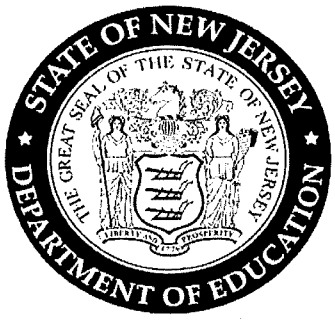

A Uniform State Memorandum of Agreement Between Education and Law Enforcement Officials

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.

Table of Contents

Article 1. Preface **6**
1.1 The Predecessor Agreements 6
1.2. 2019 Revisions 6
1.3. Nature of the Problem. 8
1.4. Reasons for Special Concern. 9
Article 2. Liaisons; Law Enforcement Units **9**
2.1. Liaisons. 9
2.1.1. Benefit of Law Enforcement Liaisons. 10
2.2. Consultation and Information Sharing. 10
2.3. Safe Schools Resource Officers. 11
2.4. Creation of Law Enforcement Units as Authorized by the Family Educational Rights and Privacy Act (FERPA). 12
Article 3. Obligation to Report Offenses and Preserve Evidence: Mandatory Reports **12**
3.1. Mandatory Report Offenses Summary 12
3.2. Requirement to Report Offenses Involving Controlled Dangerous Substances. 13
3.2.1. Anabolic Steroids, "Jimson Weed," and "Date Rape" Drugs. 14
3.2.2. Designer Drugs. 14
3.2.3. Prescription Controlled Dangerous Substances. 15
3.2.4. Opioids. 15
3.3. Exceptions to Mandatory Reports of Offenses Involving Controlled Substances. 16
3.3.1. Non-Applicability to Treatment Program Records and Information 16
3.3.2. Voluntary Self-Report 16
3.3.4. Students Suspected of Being Under the Influence of Alcohol or Other Drugs 17
3.3.5. Possession or Consumption of Alcoholic Beverages 17
3.3.6. Self-Administration of Medication by Students. 18
3.3.7. Compassionate Use Medical Marijuana Act 19
3.4. Securing Controlled Substances and Paraphernalia. 20
3.5. Law Enforcement Response to Mandatory Controlled Substance Reports 20
3.5.1. Exception to Identity Disclosure 20
3.6. Requirement to Report Incidents Involving Firearms and Dangerous Weapons. 21
3.7. Exceptions to Mandatory Firearms and Dangerous Weapons Reports 21
3.8. Securing Firearms, Ammunition and Dangerous Weapons. 22
3.8.1. Advice on Weapons 22
3.9. Law Enforcement Response to Mandatory Firearms and Weapons Reports. 22
3.9.1. Interdiction of Weapons 23
3.10. Requirement to Report Incidents Involving Planned or Threatened Violence. 23
3.11. The New Jersey Office of Homeland and Security Response to Planned or Threatened Violence. 23
3.12. Requirement to Report Sexual Offenses. 24
3.13. Law Enforcement Response to Sexual Offenses. 24
3.14. Requirement to Report Assaults on Board or Education Members or Employees. 24
3.15. Law Enforcement Response to Assaults on District Board or Education Members or Employees. 24
3.16. Requirement to Report Bias-Related Incidents. 25
3.16.1. Considerations when Reporting Bias-Related Acts. 25

3.17. Requirement to Report Potentially Missing, Abused, or Neglected Children 25
3.17.1. Reports of Child Abuse or Neglect to CP&P 26
3.17.2. Notification to Law Enforcement. 26
3.17.4. Law Enforcement Response. 26
3.17.6 Anonymity. 26
3.17.7. Custody Disputes and Potentially Missing Children. 27

Article 4. Reporting other Offenses: Non-Mandatory Reports 27
4.1. Reporting Other Offenses. 27
4.2. Stationhouse Adjustments. 27
4.3. Law Enforcement Response to Non-Mandatory Reports 28
4.4. Harassment, Intimidation, or Bullying (HIB). 28
4.4.2. HIB's Relationship to Criminal Conduct. 29
4.4.3. Reporting of HIB. 30
4.4.5. Reporting of HIB by Law Enforcement to Schools. 31
4.4.6. Coordination of HIB and Criminal Investigations. 31
4.5. Hazing. 33
4.5.1. Statutory Definition. 33
4.5.2. Reporting of Hazing. 34
4.6. Cyber-Harassment. 34
4.6.1. Statutory Definition. 34
4.6.2. Reporting of Cyber-Harassment. 35
4.7. Sexting 35
4.7.1. Reporting of Sexting. 35
4.8 Offenses Involving Computers, the Internet and Technology. 36
4.8.1. Purpose. 36
4.8.2. Unauthorized Access to School Networks, Harassment and Threats via Electronic Media, and the Use of Technology to Facilitate other Crimes. 36
4.8.3. Blogging and Free Speech Issues. 37

Article 5. Notice of Arrests 38
5.1. Arrests of Students on School Grounds. 38
5.2. Arrests of Non-Students on School Grounds. 38
5.3. Arrests of Students off School Grounds During Operating School Hours. 38
5.4. Parental Notification. 38

Article 6. Arrest Protocols. 39
6.1. Requests by School Officials. 39
6.2. Minimizing Disruption of the Educational Process. 39
6.2.1. Arrests to be Conducted in Private. 39
6.2.2. Preferred Use of Plainclothes Officers to Effect Arrest. 39
6.2.3. Cooperation with Arrests on School Property. 39
6.3. Other Spontaneous Arrests. 40
6.3.1. Notice to Building Principal. 40
6.3.2. Minimizing Disruption. 40
6.4. Planned Arrests. 40

Article 7. Law Enforcement Operations 40
7.1. Inquiries Regarding Law Enforcement Operations. 40
7.2. Interrogations and Interviews. 40

7.3. Undercover School Operations. 41
7.3.1. Requests to Conduct Operations. 41
7.3.2. Consultation and Cooperation. 42
7.3.3. Security; Limited Disclosure Agreements; Early Termination. 43
7.3.4. Use of Undercover Officers as School Employees. 44
7.3.5. Limitations on Undercover Officer Conduct. 44
7.3.6. Post-Operation Report. 45
7.3.7. Post-Operation Seminars. 46
7.4. Planned Surveillance. 46
7.4.1. Live Streaming Video. 46
7.4.2. Notice and Consultation. 47
7.4.3. Limitations; Targeted Subjects. 47
7.5. School Searches. 47
7.5.1. Searches Conducted Independently by School Officials. 47
7.5.2. Notice to Law Enforcement of Seizure of Contraband. 47
7.5.3. Law Enforcement Assumption of Responsibility. 47
7.5.4. Legal Questions during Conduct of Law Enforcement Search. 48
7.5.5. Agreement Does Not Constitute a Request to Conduct Searches. 48
7.5.6. Search and Seizure Legal Advice to School Officials. 48
7.5.7. Requests to Use Drug-Detection Canines. 48
7.6. Routine Patrols. 49
7.6.1. Visible Enforcement Plans. 49
7.6.2. Notice to School Officials. 49
7.6.3. On-Site Reporting. 49
7.7. Police Presence at Extra-Curricular Events. 49
7.8. Truancy; Assistance Provided to Attendance Officers. 49
7.9. Dispute Resolution Procedures. 50

Article 8. Confidentiality and School Access to Law Enforcement Information. 50
8.1. Substance Abuse Confidentiality Laws. 50
8.2. Clarification Regarding Confidentiality of Contents of Student Records. 51
8.3. Records of Law Enforcement Units. 51
8.4. Statutory Authority to Disclose Information. 52
8.5. Agreement to Disclose Information Following a Charge. 53
8.6. Agreement to Disclose Information during an Investigation. 53
8.7. Specificity of Disclosed Information. 53
8.8. Disclosure of Adult Student Information. 54
8.9. Law Enforcement Testimony at School Student Conduct Hearings; Required Notice to the County Prosecutor. 54
8.10. Parallel School Student Conduct Proceedings. 54
8.11. Notification of Arrests or Charges Filed Against School Personnel. 55
8.11.1. Applicability Not Limited to Local Jurisdiction. 55
8.11.2. Employment Information. 55
8.11.3. Offenses Requiring Notification. 55
8.11.4. Notification of Emergencies. 55
8.12. Notification to Executive County Superintendent. 55

Article 9. School Safety and Security. 56
9.1. Development of School Safety and Security Plans (SSSPs). 56

9.1.1. Critical Incident Planning. 57
9.1.2. Consultation in Development of SSSPs. 57
9.1.3. Format and Contents of SSSPs. 57
9.1.4. Annual Review of SSSPs. 58
9.1.5. School Staff In-service Training on SSSPs. 58
9.2. Implementation of Approved School Security Task Force Recommendations. 59
9.2.1. Sharing of Model School Security Policies (MSSP). 59
9.3. Gang Threat and Recruiting Information. 59
9.4. Harassment, Intimidation or Bullying Policies. 59
9.5. Law Enforcement Testimony at School Student Conduct Hearings; Required Notices to the County Prosecutor. 59
9.6. "Tiplines" and Crime Prevention Programs. 60
9.7. Unsafe School Choice Option Policy: Victims of Violent Criminal Offenses 60

Article 10. Law Enforcement Participation in Educational Programs 61
10.1. Law Enforcement's Contribution to Substance Abuse Education and Demand Reduction. 61
10.2. School Violence Awareness Week. 62
10.3. Approval and Supervision of Educational Curricula. 62
10.4. Procedures for Inviting, Soliciting or Promoting Police Participation in Educational Programs. 62

Article 11. Maintenance of the Agreement. 63
11.1. Agreement to Remain in Effect 63
11.2. Distribution. 63

Article 12. Annual Review and Revisions of Agreement 63
12.1 Affirmation. 65

Appendix A. Definitions 67
Appendix B. Annual Review 69
Appendix C. Mandatory Reports To Law Enforcement Table 71

Article 1. Preface

1.1. The Predecessor Agreements

In 1988, the Department of Law & Public Safety and the Department of Education issued a model agreement for use by local law enforcement and education officials. These agreements were eventually signed in communities across the state and documented the commitment by both professional communities to work together as co-equal partners to address the state's alcohol and other drug problems as they relate to school-age children. Regulations promulgated by the State Board of Education and codified at *N.J.A.C.* 6A:16-6.2(b)13 through 14 establish uniform statewide policies and procedures for ensuring cooperation between education officials and law enforcement agencies; these policies and procedures are consistent with and complementary to the Uniform State Memorandum of Agreement Between Education and Law Enforcement Officials (Agreement) approved by the Attorney General and the Commissioner of Education. The Memorandum of Agreement (Agreement) was revised by the Commissioner of Education and the Attorney General in 1992 and again in 1999 to account for new developments with respect to the scope and nature of the State's evolving alcohol and other drug problem and to address the problem of firearms and other weapons brought on to school grounds. The 2007 revisions, for the first time, addressed school safety and security, harassment, intimidation and bullying, hazing, gang reporting, computer crimes, station house adjustments, school law enforcement units, School Violence Awareness Week and other current issues of concern and provide clarification on issues such as child abuse reporting. The 2011 revisions have been made in response to the *Anti-Bullying Bill of Rights Act* (P.L.2010, c.122) and to address the assistance provided to attendance officers handling truancy matters. The 2015 version of the Agreement is in response to new provisions of State law that went into effect after the 2011 Agreement was disseminated, including the Overdose Prevention Act, *N.J.S.A.* 2C:35-30 and *N.J.S.A* 2C:35-31, and cyber-harassment, *N.J.S.A.* 2C:33-4.1. Issues that have been recently brought to the forefront, including Article 4.5, Hazing, and Article 4.4.6, Coordination of HIB and Criminal Investigations, have also been revised and clarified to assist school officials and law enforcement in their efforts. Additionally, relevant laws that had been previously omitted are now included, such as the Compassionate Use Medical Marijuana Act, *N.J.S.A.* 24:6I-1, and self-administration of medication by students for specific medical conditions, *N.J.S.A.* 18A:40-12.3.

1.2. 2019 Revisions

According to federal data released by the U.S. Department of Education Office for Civil Rights, students of color and students with disabilities are referred to law enforcement at a disproportionately higher rate than white students nationwide. Additionally, research shows that students who come in contact with the juvenile justice system, via arrest or court involvement, are more likely to drop out of school, not attend college and be incarcerated again in the future. In light of these national data, the New Jersey Juvenile Justice Commission conducted a study of school-based referrals to law enforcement during the 2015-2016 school year and found that 76% of all school-based referrals were for low-level offenses (4th degree/disorderly persons).

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.

1.3. Nature of the Problem

The 1988, 1992, 1999, 2007, 2011, 2015, and 2019 issues of the Memoranda of Agreement have been designed to ensure cooperation between law enforcement and education officials and ultimately to protect the educational environment. The undersigned parties hereby recognize the need to update the Memorandum of Agreement and to reaffirm the commitment to work together as equal partners in addressing evolving problems and emergencies of mutual concern. While schools are generally safe places for students and staff members, a wide range of offenses are occasionally committed on school grounds[1]. It is understood and agreed that the commission of any offenses on school grounds, whether directed at students, school employees, or school grounds, not only undermines the educational environment, but can directly endanger the safety and well-being of members of the school community and thus requires an appropriate and decisive response. It is further understood and agreed that there is a demonstrable need for law enforcement and education officials to cooperate and to share information, as appropriate, to address acts of violence or potential acts of violence by students that may occur off school grounds or at times other than during regular school hours, and that may involve victims or potential victims that are not members of the school community. Experience has shown that violent acts committed by children off school grounds can have serious deleterious effects upon the school community, just as acts of violence committed on school grounds can lead to further violence or retaliation at other places.

It is important for school officials to be familiar with this Agreement and how it complements the code of student conduct to establish standards, policies and procedures for positive student development and behavioral expectations (*N.J.A.C.* 6A:16-7.1). There are specific types of incidents where school officials are required to report a matter to law enforcement, which are outlined in Article 3.

For non-mandatory reports to law enforcement (i.e., voluntary), school officials are **encouraged** to refer to the school's 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. While the majority of incidents will not rise to the level of a mandatory report and may be addressed solely by school officials, schools are encouraged to consult with law enforcement for any offense that they believe may warrant action outside of school, or should be brought to the attention of law enforcement. If law enforcement deems that

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[1]*Pursuant to N.J.A.C. 6A:16-1.3,* "School grounds" means and includes land, portions of land, structures, buildings, and vehicles, when used for the provision of academic or extracurricular programs sponsored by the school district or community provider. School grounds also includes school buses, school-sponsored functions, structures that support the buildings, such as school district wastewater treatment facilities, generating facilities, and other central service facilities including, but not limited to, kitchens and maintenance shops. School grounds also includes other facilities as defined in *N.J.A.C.* 6A:26-1.2, playgrounds, and recreational places owned by municipalities, private entities or other individuals during those times when the school district has exclusive use of a portion of the land.

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.

2.1.1. Benefit of Law Enforcement Liaisons

It is understood that law enforcement officials have access to confidential information that may document that a juvenile offender has previously committed acts of delinquency outside of school grounds and about which school officials may therefore be unaware. These confidential law enforcement records may concern prior juvenile arrests, adjudications, dispositions, referrals to juvenile conference committees and station house adjustments. For this reason, the failure by school officials to refer a suspected offense to law enforcement authorities may unwittingly prevent the professional actors within the juvenile justice system, including law enforcement and family court officials, from identifying and dealing appropriately with juvenile offenders, and may thus prevent these actors from taking the steps that are necessary and appropriate to intervene, to address the juvenile's problems in a timely fashion and to protect the public safety. In order to enable school officials to make a more informed decision regarding whether to refer a suspected act of delinquency to law enforcement authorities, the parties to this Agreement understand the need for, and benefit of, establishing procedures by which law enforcement officials can explain the workings of the juvenile justice system and the options, services and resources that are available through that system to respond to juveniles' needs. It is expected that such ongoing dialogue will enable school officials to understand the likely consequences of a report involving a given offense. It also is hoped that in this way, law enforcement and school officials can work to dispel many of the myths about the juvenile justice system, and to develop a better understanding of the resources available to address the needs of juveniles who enter into this system or who are at risk of entering the system.

The (*designated law enforcement official*) and the county prosecutor must be available on an ongoing basis to explain to school officials the practices and procedures of the juvenile justice system with respect to the handling of juveniles suspected of, or formally charged with, acts of delinquency. The (*designated law enforcement official*) and the county prosecutor also must provide, on an ongoing basis, information concerning the services and resources available through the New Jersey Juvenile Justice System to deal with delinquent or at-risk youth and families in crisis, including stationhouse adjustments, referrals to Family Crisis Intervention Units, other pre-adjudication diversion programs, intervention services, and post-adjudication disposition options that are available in the county.

2.2. Consultation and Information Sharing

So as to foster and institutionalize the spirit of communication and cooperation underlying this Agreement, (*appropriate school and law enforcement personnel*) agree to participate in ongoing joint consultations. It is understood that the consultations shall include discussions of:

a. The rules and regulations promulgated by the State Board of Education and codified at *N.J.A.C.* 6A:16-6, Law Enforcement Operations for Alcohol, Other Drugs, Weapons and Safety and *N.J.A.C.* 6A:16-5, School Safety and Security, as appropriate;

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.

2.4. Creation of Law Enforcement Units as Authorized by the Family Educational Rights and Privacy Act (FERPA)

Each school district shall consider designating one or more law enforcement units for the district, as provided under FERPA (Family Education Rights Privacy Act), pursuant to 20 U.S.C. 1232g(a)(4)(ii) and 34 C.F.R. 99.8. The term "law enforcement unit" means any individual, office, department, division or other component of an educational agency or institution, such as a school administrator or a unit of commissioned police officers or non-commissioned security guards, that is officially authorized or designated by that agency or institution to enforce any local, State or Federal law, or refer to appropriate authorities a matter for enforcement of any local, State or Federal law against any individual or organization other than the agency or institution itself; or maintain the physical security and safety of the agency or institution. [34 C.F.R. 99.8(a)(1)]. The law enforcement unit may be only one person, and does not have to be a law enforcement officer. All school security equipment shall be the responsibility of the law enforcement unit. All school security records, including but not limited to, school security campus or school bus videotapes, records relating to weapons screening devices, visitor logs, and any records of interviews relating to potential violations of the law are created and maintained by the designated law enforcement unit. These records are not deemed to be student records or educational records [20 U.S.C. 1232g(a)(4)(B)(ii)] and may be voluntarily turned over to law enforcement without a subpoena.

Article 3. Obligation to Report Offenses and Preserve Evidence: Mandatory Reports

3.1. Mandatory Report Offenses Summary

It is important for school officials to be familiar with this agreement and how it complements the principles of the code of student conduct regulations to establish standards, policies and procedures for positive student development and behavioral expectations (*N.J.A.C.* 6A:16-7.1). While the majority of incidents may be addressed solely by school officials, there are specific types of incidents where school officials are required to report a matter to law enforcement. By outlining these mandatory reports, the Agreement helps ensure consistency among school districts.

There are seven offenses that must be reported to law enforcement if they qualify as mandatory reports, as set forth and explained in further detail under Article 3 of this Agreement. These mandatory reports include:

- 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:16-6.3 (Article 3.2);
- Whenever any school employee in the course of his or her employment develops reason to believe that a firearm or other dangerous weapon has unlawfully been possessed on or off school grounds, a weapon was used in an assault against a student

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.

3.2.1. Anabolic Steroids, "Jimson Weed," and "Date Rape" Drugs

The parties to this Agreement understand that in 1991, the New Jersey Commissioner of Health promulgated rules and regulations which classify anabolic steroids as Schedule III CDS. The parties to this Agreement recognize that the problem of the unlawful use of anabolic steroids by school-age children is a particularly serious one, and that this problem is not limited to student athletes, but also involves students who use these especially dangerous substances with the intent to enhance their physical appearance. The parties to this Agreement recognize that these substances often have profound, long-term adverse side effects, and that their unlawful use by children cannot be tolerated. The parties to this Agreement also understand that it is illegal in New Jersey to use, possess, or distribute any stramonium preparation, commonly referred to as "Jimson weed", and that it also is illegal for any person to distribute or possess substances sometimes referred to as "date rape" drugs, including gamma hydroxybutyrate (GHB), Rohypnol (roofies), and flunitrazepam (*N.J.S.A.* 2C:35-5.2 and 5.3, effective August 8, 1997; *N.J.S.A.* 2C:35-2 and 2C:35-10.5).

3.2.2. Designer Drugs

Over the years, modifications to CDS have resulted in the creation of "designer drugs." Structurally or functionally similar to banned CDS, designer drugs are created to mimic the effects of a CDS, while initially avoiding the CDS classification and therefore giving the illusion of legality to these products. In recent years, designer drugs such as "bath salts" (synthetic cathinones) and "synthetic marijuana" (synthetic cannabinoids) have increased in popularity, resulting in initial widespread availability. Many of these products were and continue to be falsely labeled as "not for human consumption," "for novelty use only," "plant food" or "bath salts" to conceal from law enforcement their true nature.

Due to the danger of these products, especially among youth in New Jersey, the Division of Consumer Affairs acted to ban synthetic cannabinoids (see February 29, 2012 Order of Thomas Calcagni, former Director of the Division of Consumer Affairs). The United States Drug Enforcement Administration followed, subsequently scheduling many synthetic cannabinoids and cathinones as controlled substances, therefore outlawing them.

3.2.2.1. Considerations when Reporting Designer Drugs to Law Enforcement

The manipulation of chemical compounds to avoid the controlled substance designation while providing the same effects as the banned substances continues, and both educators and law enforcement must be mindful of designer drugs in school settings and among our youth. At the time of the release of this MOA, only designer drugs such as synthetic cannabinoids and cathinones have been declared as CDS and are required to be reported to law enforcement (see section 3.2.2).

All designer drugs, in addition to the two designer drugs noted above that have been declared CDS and must be reported to law enforcement, 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. With the exception of

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

long-lasting enough to require a prescription opioid painkiller. According to the New Jersey State Interscholastic Athletic Association, about a third of young people studied obtained pills from their own previous prescriptions (i.e., an unfinished prescription used outside of a physician's supervision), and 83 percent of adolescents had unsupervised access to their prescription medications. Nationally, it is estimated that an American dies every 19 minutes from an overdose of heroin or prescription opioids. Between 2014 and 2015, drug overdose deaths increased by nearly 22 percent, and nearly 1,600 people lost their lives to narcotics in New Jersey. This scenario has played out in New Jersey and across the country without regard to race, gender, age, or social class.

Another cause of this crisis is the early use by children of CDS and other illicit substances, with evidence showing that if a child tries any drug by the age of 13, he or she has a 70% probability of developing an addiction by the age of 20. An estimated 20% of adolescents who have current prescriptions for opioid medications report using those medications intentionally to get high or increase the effects of alcohol or other drugs.

3.3. Exceptions to Mandatory Reports of Offenses Involving Controlled Substances

3.3.1. Non-Applicability to Treatment Program Records and Information

Nothing in this Agreement or in *N.J.A.C.* 6A:16-6.5 shall be construed in any way to authorize or require a report or transmittal of any information or records in the possession of a substance abuse counseling or treatment program in violation of any state or federal confidentiality law or regulation, and such information or records must be strictly safeguarded in accordance with applicable state and federal laws and regulations.

3.3.2. Voluntary Self-Report

Pursuant to *N.J.A.C.* 6A:16-6.3(a)3, reporting to law enforcement is not mandatory when a student has voluntarily and on his or her own initiative sought treatment or counseling for a substance abuse problem, provided the student was not involved in drug distribution activities and further provided the student participates in an appropriate treatment or counseling program.

For the purposes of this Agreement and pursuant to N.J.A.C. 6A:16-6.3(a)3i, an admission by a student of a violation of the Comprehensive Drug Reform Act which is in response to questioning initiated by a law enforcement officer or school employee does not constitute a voluntary, self-initiated request for counseling and treatment.

3.3.3. Overdose Prevention Act

School officials and law enforcement officers must also be mindful of the immunity provisions of the Overdose Prevention Act, codified at *N.J.S.A.* 2C:35-30 and *N.J.S.A.* 2C:35-31, and Attorney General Law Enforcement Directive 2013-1, seeking to ensure uniform statewide enforcement of the law. On May 13, 2013, Governor Christie signed the Act into law, the overarching purpose of which is to encourage individuals to seek medical assistance whenever a drug overdose occurs. Specifically, the Act provides that when a person, in good faith, seeks

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

N.J.A.C. 6A:16-4 et seq.). So too, it is an offense for an adult to bring or possess an alcoholic beverage on school grounds without the express written permission of the school board, chief school administrator or building principal. See *N.J.S.A.* 2C:33-16. It is agreed and understood that these statutes are designed to protect children and the educational environment and that violations of these statutes should be deemed to be serious matters and may be reported to law enforcement, and any reporting must warrant immediate response by law enforcement authorities in accordance with the provisions of this Agreement.

3.3.6. Self-Administration of Medication by Students

Law enforcement and educators should be aware that, pursuant to *N.J.S.A.* 18A:40-12.3, self-administration of medication by students is permitted for specific medical conditions, including asthma, life-threatening allergies and other potentially life-threatening medical conditions. The student must be permitted to self-administer medication provided that

(i) the student's parent or guardian submits to the board of education a written certification from the student's physician specifying the specific medical condition necessitating self-administration, the medication to be administered, and the fact that the student is capable of and has been instructed in the proper method for self-administration of the medication;

(ii) the student's parent or guardian submits to the board of education written authorization from the parent or guardian for self-administration of the medication by the student;

(iii) the board of education informs the student's parent or guardian, in writing, that the district, its employees, and its agents must incur no liability as a result of the student's self-administration of medication; and

(iv) the student's parent or guardian signs a statement acknowledging that the district, its employees, and its agents must incur no liability as a result of the student's self-administration of medicine, and that they (the student's parent or guardian) will indemnify and hold harmless the district, its employees, and its agents against claims arising out of the student's self-administration of medication.

In addition, the school nurse must maintain the student's Individualized Health Care Plan (IHCP) and Individualized Emergency Health Care Plan (IEHCP) documenting the student's medical needs and the need for self-administration of the specified medication, pursuant to *N.J.A.C.* 6A:16-2.3(b)3xii. For example, students with asthma who meet the above criteria may carry an inhaler such as a rapid-acting bronchodilator. Likewise, students with life-threatening allergies may carry one or two epinephrine auto-injector mechanisms and an oral or lingual form of Benadryl (antihistamine), if they too meet the above criteria. Students with diabetes may carry either an insulin pump or injectable insulin, if they similarly meet the above criteria. Students with other life-threatening medical conditions may have a medication order for other specific medication which may, if the above criteria are met, be self-administered.

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

elementary or secondary school, regardless of whether the area is an indoor public place or is outdoors.

Schools are encouraged to develop policies surrounding the use and/or possession of electronic smoking devices. Electronic smoking devices should only be reported to law enforcement when there is reasonable suspicion that the device is being used as a nexus for marijuana or other illegal drugs.

3.4. Securing Controlled Substances and Paraphernalia

Whenever a school employee seizes or comes upon any substance believed to be a controlled dangerous substance or drug paraphernalia, school officials *must immediately* advise the (*local law enforcement agency having patrol jurisdiction*) and must secure the substance or item pending the response by (*law enforcement agency*) to retrieve and take custody of the substance or paraphernalia, pursuant to *N.J.A.C.* 6A:16-6.2(b)8 and 6.4. School employees having custody of the substance or item must take reasonable precautions, per local board of education procedures, to prevent its theft, destruction or use by any person. In accordance with the requirements of law (*N.J.S.A.* 2C:35-10c, it is understood that under no circumstances may any person destroy or otherwise dispose of any controlled dangerous substance or drug paraphernalia except by turning over such substance or item to the responding law enforcement officer.

3.5. Law Enforcement Response to Mandatory Controlled Substance Reports

The (*law enforcement agency*) must dispatch an officer as promptly as possible to take custody and secure the controlled dangerous substance or drug paraphernalia. School officials must provide to the responding law enforcement officer information necessary to establish the chain of custody and the circumstances of the seizure, including the identity of any person(s) from whom the substance or item was obtained.

3.5.1. Exception to Identity Disclosure

School officials need not provide information concerning the identity of a student from whom the controlled dangerous substance or item was obtained where the substance or item was turned over by a student to a student assistance coordinator or other individual who holds either a school nurse, school nurse/non-instructional, school psychologist, school counselor, school social worker or student personnel service endorsement on the Educational Services Certificate in the course of, or as a result of, school-based intervention, assessment, referral for evaluation, evaluation or referral for treatment, as those terms are defined in *N.J.A.C.* 6A:16-1.3 and delineated in *N.J.A.C.* 6A:16-3.1 or participation in a community-based substance abuse treatment program where:

1) the student voluntarily and on his or her own initiative turned over the substance to a school employee;
2) there is no reason to believe that the student was involved in distribution activities;
3) the student participates in an appropriate school-based alcohol or other drug abuse intervention, referral for evaluation, referral for treatment or continuity of care program,

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

enforcement regarding the seizure of a utility or "box-cutter" knife where the unlawful use of such knives as weapons is a serious problem in the school and where the student has no explainable lawful purpose for possessing such an instrument.

Procedures to secure this weapon are handled the same as below.

3.8. Securing Firearms, Ammunition and Dangerous Weapons

Whenever a school employee seizes or comes upon (1) a firearm, (2) ammunition for a firearm, or (3) a non-firearm weapon that was actually used or threatened to be used in committing an offense the school officials *must* , *immediately* advise (*designated law enforcement official*) and secure the firearm, ammunition or non-firearm weapon pending the response by the (*law enforcement agency*), and pursuant to *N.J.A.C.* 6A:16-6.2(b)8 and 6.4, retrieve and take custody of the firearm, ammunition or non-firearm weapon. School employees having custody of a firearm, ammunition or dangerous weapon must take reasonable precautions, per local board of education procedures, to prevent its theft, destruction or unlawful use by any person. It is understood and agreed that under no circumstances may any person destroy or otherwise dispose of any seized or discovered firearm, ammunition or non-firearm weapon except by turning over such firearm, ammunition or non-firearm weapon to the responding police officer.

3.8.1. Advice on Weapons

It is understood that new weapons have evolved and proliferated that are readily concealable and easily disguised. For example, dangerous knives can be disguised as belt buckles and other seemingly innocuous items. Accordingly, the (*designated_law enforcement agency*) and the county prosecutor must be available on an ongoing basis to provide school officials with information and advice about such weapons and their prevalence in the district or in the county so that they may be readily identified by school officials.

3.9. Law Enforcement Response to Mandatory Firearms and Weapons Reports

The (*law enforcement agency*) receiving information about the existence of an unlawful firearm on school grounds or the actual or threatened use of a non-firearm deadly weapon pursuant to Article 3.6 of this Agreement *must immediately* dispatch an officer to take custody and secure the firearm or other weapon. Except as may be specifically provided in Articles 7.4 and 9 of this Agreement, school officials must provide to the responding law enforcement officer information necessary to establish the chain of custody and the circumstances of the seizure or discovery of the firearm or other weapon, including the identity of any person(s) from whom the firearm or other weapon was obtained.

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

directed at schools, to the appropriate County Terrorism Coordinators and the Counterterrorism Watch Section of the New Jersey Office of Homeland Security.

3.12. Requirement to Report Sexual Offenses

Subject only to the provisions of Article 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 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). 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).

3.13. Law Enforcement Response to Sexual Offenses

The (*law enforcement agency*) receiving information about sexual penetration or criminal sexual contact pursuant to Article 3.12 of this Agreement must 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 future sexual offenses from occurring.

3.14. Requirement to Report Assaults on District Board or Education Members or Employees

Subject only to the provisions of Articles 7.4 and 9 of this Agreement, it is agreed that (*designated school official*) *shall immediately notify* (*designated law enforcement official*) whenever any school employee in the course of his or her employment develops reason to believe that a student committed assault, as defined under *N.J.S.A.* 2C:12-1(a)1, not involving the use of a weapon or firearm, upon a teacher, administrator, other school board employee, or district board of education member, with or without a weapon, pursuant to *N.J.A.C.* 6A:16-5.7(d)5.

3.15. Law Enforcement Response to Assaults on District Board or Education Members or Employees

The (*law enforcement agency*) receiving information about an assault on district board or education members or employees pursuant to Article 3.14 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 future assaults.

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

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[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.*

New Jersey statutes (*N.J.S.A.* 18A:36-25 and 9:6-8.10) require reporting by school officials of a potential missing or abused child to **both** law enforcement officials and Child Protection and Permanency (CP&P), New Jersey Department of Children and Families (DCF), as set forth below.

3.17.1. Reports of Child Abuse or Neglect to CP&P

Any person having reasonable cause to believe that a student has been subjected to child abuse or neglect must immediately report the matter to CP&P by telephone or otherwise, pursuant to *N.J.S.A.* 9:6-8.10 and *N.J.A.C.* 6A:16-11.1(a)2. The CP&P Child Abuse Hotline is to be contacted at 1-877-NJABUSE.

3.17.2. Notification to Law Enforcement

Notification of a potential missing or abused or neglected student also must be made to law enforcement officials by the person who is designated to report child abuse cases on behalf of the school district, such as the chief school administrator, principal, assistant principal or other designated school official, in accordance with *N.J.S.A.* 18A:36-25 and *N.J.A.C.* 6A:16-11.1(a)3. Each school district may establish individual procedures for the notification. It is not necessary for the same person to contact law enforcement and CP&P. It is only required that both notifications are made.

3.17.3. Notification of CP&P by Law Enforcement

Pursuant to the *DCF/Law Enforcement Model Coordinated Response Protocol* promulgated February 2007 by the Attorney General and the Commissioner of the Department of Children and Families, a law enforcement agency receiving a report of child abuse from the designated school official, need not notify the CP&P hotline when the school official confirms that the CP&P hotline has been contacted by school staff.

3.17.4. Law Enforcement Response

The law enforcement agency receiving a report of child abuse or a potential missing child must respond in accordance with the policies established by their County Prosecutor's Office.

3.17.5. Notification of Parents or Guardians

Notification to the student's parents or guardians must **not** be made by school officials when it is suspected that either parent or guardian is responsible for the suspected abuse. Law enforcement officials do not need the permission of a parent or guardian to speak to any student who is not the target of an investigation. It is the sole responsibility of law enforcement officials to determine when or whether a parent of any student must be contacted. Failure to follow this procedure may compromise the integrity of an investigation and place the child at risk.

3.17.6 Anonymity

Individuals who report abuse may or may not be entitled to anonymity. While CP&P allows anonymous child abuse reporting for the general public, school staff may not be entitled

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

2008-2, Attorney General Guidelines for Stationhouse Adjustment of Juvenile Delinquency Offenses. A stationhouse adjustment is an alternative method that law enforcement agencies may use in their discretion to handle first-time juvenile offenders who have committed minor juvenile delinquency offenses within their jurisdiction. The availability of a stationhouse adjustment as a method of handling minor juvenile delinquency offenses does not require law enforcement agencies to use it unless they determine it is appropriate to do so. The intent of the stationhouse adjustment program is to provide for immediate consequences, such as community service or restitution and a prompt and convenient resolution for the victim, while at the same time benefitting the juvenile by avoiding the stigma of a formal juvenile delinquency record. In many instances, this early intervention will deter the youth from continuing their negative behavior and divert the youth from progressing further into the juvenile justice system.

Though a report to law enforcement allows officers to remain vigilant to the possibility of a criminal act occurring off school grounds, law enforcement is not required to file a formal complaint against a juvenile for any offense. In response to reports to law enforcement by schools, stationhouse adjustments should be employed whenever appropriate to avoid the stigma of a formal juvenile delinquency record. When considering whether to report an offense to law enforcement, schools should ensure that all available school resources and sanctions are employed prior to making the report.

4.3. Law Enforcement Response to Non-Mandatory Reports

The (*law enforcement agency*) receiving information about the commission of an offense pursuant to Article 4 of this Agreement shall respond promptly **by telephone or in person, and where appropriate, discuss with school officials whether further action is needed before contacting or involving the student.** When there is probable cause to believe that an offense has been committed, the (*law enforcement agency*) shall handle the matter in accordance with the provisions of the Attorney General's Executive Directive 1990-1 Concerning the Handling of Juvenile Matters by Police and Prosecutors.

4.4. Harassment, Intimidation, or Bullying (HIB)

Harassment, intimidation, or bullying (HIB) in school settings presents an ongoing challenge throughout New Jersey. Acts 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, tear at the fabric of our society, pose grave risks to the physical and emotional well-being of children, and can quickly lead to retaliation, an escalation of violence both on and off school grounds, and even suicide. HIB may take a myriad of forms, encompassing even common activities such as the photographing or recording of one student by another.

To address this problem, New Jersey enacted the *Anti-Bullying Bill of Rights Act* (ABR) on January 5, 2011 (*N.J.S.A.* 18A:37-13 et seq.). The ABR sets forth standards and procedures for preventing, reporting, investigating, and responding to incidents of HIB of students that occur on school grounds, at school-sponsored functions, on school buses, and off school grounds. The

ABR further requires that polices 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

confusing situation: behavior that constitutes HIB may — but does not necessarily — comprise a criminal offense under New Jersey law. HIB is criminal only if the underlying conduct violates a provision of the Code of Criminal Justice. These criminal provisions may include not only bias intimidation, hazing, and cyber-harassment, which are discussed in Articles 3.16, 4.5, and 4.6 of this Agreement, but also assault, harassment, threats, robbery, and sexual offenses.

4.4.3. Reporting of HIB

4.4.3.1. Reporting of HIB by Schools to Law Enforcement

As set forth in Article 4.4.2 of this Agreement, HIB does not by itself constitute a criminal offense. Accordingly, there is no obligation on the part of school personnel to report HIB investigations to a law enforcement agency unless the conduct rises to the level of mandatory report, as outlined in Article 3.

An HIB event that occurs in school on a Friday can precipitate another event outside of school on a Saturday. Reporting these offenses allows law enforcement to remain vigilant, but does not require that any formal action be taken by law enforcement in response to the non-mandatory report. When making mandatory or non-mandatory reports, school officials agree to indicate any suspicions or evidence that the conduct was gang-related.

Victims of HIB also should be informed that they may report an alleged offense to the appropriate law enforcement agency; however, school officials should avoid expressing any opinion to victims as to whether the alleged conduct constitutes an offense under the Code of Criminal Justice. Under no circumstances shall any school employee prevent or discourage the victim of an offense from reporting the offense to a law enforcement agency.

4.4.3.2. Reporting of HIB to Division on Civil Rights

Incidents of HIB in schools may also implicate the New Jersey Law Against Discrimination, *N.J.S.A.* 10:5-1 to -49, if a school district's failure to reasonably address HIB has the effect of denying to a student any of a school's accommodations, advantages, facilities or privileges based on actual or perceived race, creed, color, national origin, ancestry, marital status, civil union status, domestic partnership status, pregnancy or breastfeeding, sex, gender identity or expression, affectional or sexual orientation, disability, or liability for service in the Armed Forces of the United States or nationality of such person. If law enforcement or school officials believe that incidents of HIB may implicate the school's obligations under the New Jersey Law Against Discrimination, they may voluntarily report the incidents to the New Jersey Division on Civil Rights, contact information available at www.njcivilrights.gov.

4.4.4. Preservation of Evidence and Chain of Custody

Whenever a school official receives from school employees or directly seizes a document, an electronic device or any other item that the official believes may contain evidence of HIB, reasonable precautions must be taken to prevent its theft, destruction or unlawful use by any person. It is understood and agreed that under no circumstances may any person alter,

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

constitute a criminal offense(s), it should contact law enforcement to inquire as to whether law enforcement may want to investigate the matter and, thereby, stay or suspend the school district's HIB investigation.

When law enforcement requests a suspension or stay of an HIB investigation, school officials must immediately memorialize this request, in writing, and advise the parent(s)/guardian(s) of the alleged perpetrator(s) and alleged victim(s) of law enforcement's request. Notice to the parents must include the fact that the time limit on filing a complaint in the Division on Civil Rights must not be delayed due to law enforcement's request. If the parent(s)/guardian(s) objects, either orally or in writing, to the suspension or stay of the school district's HIB investigation, law enforcement must seek appropriate legal assistance from the County Prosecutor's Office to obtain a formal court order compelling the stay. In addition, and more specifically:

- If law enforcement requests a suspension or stay of an HIB investigation, but the school district has not yet initiated its investigation, the school district must initiate its investigation but solely for the purpose of safeguarding the health and welfare of its students, and not for the purpose of determining whether HIB occurred. The school district's HIB investigation must remain open and stayed during the pendency of law enforcement's investigation. Upon completion of the law enforcement investigation, and following notification of that completion from the county prosecutor, the anti-bullying specialist must immediately resume the school's HIB investigation. In this instance, the anti-bullying specialist must have the ten school days to complete its HIB investigation.

- If law enforcement requests a suspension or stay of an HIB investigation, but the school district has already initiated its investigation, the school must immediately cease and stay its HIB investigation at the request of law enforcement while following the parental/victim notification requirements and seeking court orders to stay requirements set forth above. However, the school district must still be required to safeguard the health and welfare of its students. The school district's HIB investigation must remain open and stayed during the pendency of law enforcement's investigation. Upon completion of the law enforcement investigation, and following notification of that completion from the county prosecutor, the anti-bullying specialist must immediately resume the school's HIB investigation. In this instance, the anti-bullying specialist must have the number of days remaining in the ten school day timeframe to complete its HIB investigation (e.g., if law enforcement directs a school district to cease its investigation on day three, then the school district must have seven days, following clearance from the county prosecutor, to complete its HIB investigation).

- If law enforcement requests a suspension or stay of an HIB investigation, but the school district has already completed its investigation, the ten school day timeframe must be unaffected. However, in the event that additional information is available upon the completion of a criminal investigation, the ABR permits the school anti-bullying specialist to amend the original report with the results of the investigation to reflect the additional information (*N.J.S.A.* 18A:37-15b(6)a). The anti-bullying specialist should

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-

3(b)). The consent of the person hazed is not a defense (*N.J.S.A.* 2C:40-4). Any other criminal conduct under the New Jersey Code of Criminal Justice also may be charged (*N.J.S.A.* 2C:40-5).

4.5.2. Reporting of Hazing

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

Hazing 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.*

4.6. Cyber-Harassment

As of January 17, 2014, cyber-harassment constitutes a separate criminal offense in New Jersey (*N.J.S.A.* 2C:33-4.1). The law targets online communications that threaten to inflict a crime, an injury, physical harm, or are made with the intent to emotionally harm a reasonable person or to place a reasonable person in fear of physical or emotional harm. The offense of cyber-harassment may be charged as either a third or fourth degree felony, depending on the ages of the target and harasser.

4.6.1. Statutory Definition

The statute sets forth the following definition for cyber-harassment:

> 1.a. A person commits the crime of cyber-harassment if, while making a communication in an online capacity via any electronic device or through a social networking site and with the purpose to harass another, the person:
>
> (1) threatens to inflict injury or physical harm to any person or the property of any person;
> (2) sends, posts, comments, requests, suggests, or proposes any lewd, indecent, or obscene material to or about a person; or
> (3) threatens to commit any crime against the person or the person's property.
>
> b. Cyber-harassment is a crime of the fourth degree, unless the person is 21 years of age or older at the time of the offense and impersonates a minor for the purpose of cyber-harassing a minor, in which case it is a crime of the third degree.
>
> c. If a minor under the age of 16 is adjudicated delinquent for cyber-harassment, the court may order as a condition of the sentence that the minor, accompanied by a parent or guardian, complete, in a satisfactory manner, one or both of the following:
>
> (1) a class or training program intended to reduce the tendency toward cyber-harassment behavior; or

(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.

Sexting may be also constituting 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.*

4.8 Offenses Involving Computers, the Internet and Technology

4.8.1. Purpose

Computerized devices such as cell phones, smart phones, digital cameras, PDAs, laptop computers and desktop computers have become a part of our daily lives. The growth of the Internet and local computer networks makes information and communication immediately accessible. However, access to this technology and information potentially can be used for harmful purposes that can cause great disruption in a school. In 2003, a series of laws were passed allowing for the prosecution of new crimes, such as unauthorized computer access and damage which such access may cause. In addition, digital cameras, digital photos, digital videos, cell phones, e-mail and the Internet are increasingly used to commit crimes. The purpose of this section of the Agreement is to recognize some of the areas where law enforcement and educational professionals should cooperate to ensure a unified response to the illicit and harmful use of technology by students, teachers, administrators and other school staff. These areas include:

1) Unauthorized access to school networks.
2) Harassment and threats via electronic media.
3) Use of technology to facilitate other crimes.
4) Blogging (free speech).
5) Limitation of electronic devices, such as cell phones, pagers and cameras, on school grounds.

4.8.2. Unauthorized Access to School Networks, Harassment and Threats via Electronic Media, and the Use of Technology to Facilitate Other Crimes

Unauthorized access to school networks is a prosecutable offense under *N.J.S.A.* 2C:20-23 et seq. Any damage to the network may result in more severe penalties. School officials may consider unauthorized accessing of a school network to be an internal matter and not advise law enforcement authorities. However, law enforcement personnel are specially trained in forensic computer analysis. The ability to accurately assess the level of intrusion into a computer system is best handled by law enforcement professionals. Often the significance of an attack on the integrity of a school computer network can extend into the community. The ability of law enforcement to quantify any unauthorized use or access can bring peace of mind to concerned citizens in the community. Accordingly, when notification to law enforcement is appropriate, notification should be made to law enforcement immediately upon learning of unauthorized access.

In addition to accessing computer systems, it has unfortunately become commonplace for juveniles to utilize electronic forms of communication to harass and threaten other students or

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

legal determination will be made on whether the information contained in the blog is constitutionally protected and whether it is criminal in nature.

Article 5. Notice of Arrests

5.1. Arrests of Students on School Grounds

Whenever a student has been arrested on school grounds, the law enforcement officer or agency involved shall, as soon as practicable, notify the building principal. Whenever possible, such notice shall be given before the student has been taken off school grounds. Where the student is a juvenile, all information concerning the circumstances of the arrest shall be provided to the building principal on a confidential basis and in accordance with the provisions of *N.J.S.A.* 2A:4A-60d(3). See Article 8.4 of this Agreement for a synopsis of those laws.

5.2. Arrests of Non-Students on School Grounds

Where a person other than an enrolled student is arrested on school grounds, the building principal shall be advised as to the circumstances of the offense and the identity of the offender, provided that where the person arrested is a juvenile, it is understood that the law enforcement agency or officer involved is not permitted to divulge any information that would violate the laws governing the disclosure of juvenile information. See Article 8.4 of this Agreement for a synopsis of those laws.

5.3. Arrests of Students off School Grounds During Operating School Hours

When a student is arrested off school grounds during operating school hours, or under circumstances that would lead the arresting officer to believe that a school official was responsible for the care and custody of the student at the time of the arrest, or where the arresting officer reasonably believes that the student was in transit between school and his home at the time of arrest, the arresting officer shall, as soon as practicable, notify the building principal of the school in which the student is enrolled. All information concerning the basis and circumstances of the arrest shall be provided to the building principal on a confidential basis and in accordance with the provisions of *N.J.S.A.* 2A:4A-60, as summarized in Article 8.4 of this Agreement.

5.4. Parental Notification

When the building principal is advised of a student's arrest, pursuant to the provisions of this Agreement, the principal or his or her designee will, as soon as practicable, and in accordance with *N.J.A.C.* 6A:16-6.2(b)3 and 11 and the associated board of education policies and procedures regarding parental notification, contact a parent or guardian of the student. It is understood that the law enforcement agency making the arrest also is required to attempt to contact the student's parent or guardian pursuant to *N.J.S.A.* 2A:4A-33.

It is agreed that the (*school official*) shall at the request of the (*law enforcement agency*) and/or the County Prosecutor's Office provide information concerning the efforts by the principal or school staff to contact and notify the student's parent(s) or guardian.

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.

6.3. Other Spontaneous Arrests

6.3.1. Notice to Building Principal

In cases in which a law enforcement agency responds during operating school hours to a suspected offense reported by someone other than the building principal or local chief school administrator, or where a law enforcement officer observes the occurrence of an offense on school grounds during operating school hours which would justify a warrantless arrest, or where a person subject to arrest retreats onto school grounds during operating school hours, the arresting law enforcement officer shall notify the building principal as soon as it is practical to do so. Where the arrest involves a student enrolled in the school, the building principal shall, wherever feasible, be notified before the student is taken from school grounds.

6.3.2. Minimizing Disruption

When effecting any spontaneous arrest on school grounds during operating school hours, every reasonable precaution shall be taken to minimize the disruption of the school environment to the greatest extent possible, consistent with the requirements of public safety.

6.4. Planned Arrests

Whenever a planned arrest is to occur on school grounds, the building principal or local chief school administrator shall be advised and consulted before the arrest occurs.

Article 7. Law Enforcement Operations

7.1. Inquiries Regarding Law Enforcement Operations

All inquiries or complaints received by school personnel regarding interviews, investigations, arrests or other operations conducted by sworn law enforcement officers shall be directed to the appropriate law enforcement agency. This shall apply to inquiries from parents, guardians, the press or any other sources. A school official receiving such an inquiry or complaint shall also notify the appropriate law enforcement agency of the nature of the inquiry or complaint (*N.J.A.C.* 6A:16-6.3).

7.2. Interrogations and Interviews

No law enforcement officer shall direct, solicit, encourage, attend or otherwise participate in the questioning of any juvenile by school officials unless such questioning 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 interrogations and interviews. All information obtained by school employees concerning the commission of an offense, whether obtained as a result of the questioning of a student or otherwise, shall be referred to the appropriate law enforcement agency, provided however, that nothing in this Agreement shall 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. 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. The decision to decline a request to undertake an undercover school operation shall not be made public by either the requesting school officials or the law enforcement agency receiving the request.

f. Nothing herein shall be construed to preclude law enforcement officials from initiating a request to conduct an undercover school operation pursuant to Section 2 of this Addendum.

7.3.2. Consultation and Cooperation

a. As a practical matter, a successful undercover school operation cannot take place without the assent and continuing cooperation of the building principal and local chief school administrator and, except as may be expressly provided herein, none shall be attempted without such assent and continuing cooperation. Accordingly, prior to the placement of any undercover officer in a school, the school building principal and the local chief school administrator will be consulted unless there are compelling reasons not to consult with either of these officials. Where the Attorney General determines that compelling reasons, exist, an alternative school official or officials will be designated who will be consulted in lieu of the building principal or local chief school administrator prior to the placement of an undercover officer in a school and throughout the course of the operation.

b. In any case where the undercover school operation has not been requested by an appropriate school official, the law enforcement agency proposing the operation will advise the building principal and local chief school administrator of the nature of the proposed operation and will, to the greatest extent possible, explain the reasons why the operation is necessary and appropriate. This explanation should include a description of the extent and nature of the suspected drug trafficking or weapons-related activities occurring within the school environment that would justify the operation. It is understood and agreed that law enforcement officials will not be required or permitted to divulge any information received in confidence, whether from an informant or otherwise, or that would violate the laws or court rules governing the disclosure of juvenile offender information, grand jury information, or information derived from electronic surveillance.

c. It is understood and agreed that undercover school operations should not necessarily be limited to schools falling within any particular region or demographic setting e.g., rural, suburban, urban center, or any particular district factoring group (i.e., a composite measure of socioeconomic status within a geographic area). Rather, subject to the availability of resources, undercover school operations should be proposed and conducted in any district or school where the designated law enforcement and school officials determine that such operations would be beneficial.

d. Information provided by law enforcement to the building principal or local chief school administrator will be kept strictly confidential and will not be divulged by the building principal or local chief school administrator to any other person without the express approval of the county prosecutor or, where appropriate, the Attorney General or his or her designee.

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.

7.3.4. Use of Undercover Officers as School Employees

It is understood that no undercover school operation may be conducted that entails the placement of an undercover officer as a certified member of the school community without prior written approval of the Attorney General with notice given to the Commissioner of Education, or in the case of non-public schools, the chief school officer. It is understood that the Attorney General will base his approval upon a finding that 1) other law enforcement methods would not be effective, and 2) there is a reasonable articulable suspicion that adult school employees or other non-student member(s) of the school community are engaged in drug trafficking or unlawful weapons-related activities. In that event, and upon such findings, the underlying purpose of the operation would not be to identify or to apprehend student offenders, but rather to identify and to apprehend suspected adult or non-student offenders. Furthermore, the law enforcement agency involved will develop, in consultation with the building principal and local chief school administrator, those steps that will be taken to minimize the undercover officer's contact with, and impact upon, the student population. It is understood that no undercover officer will be permitted to teach a formal class of instruction without the approval of the Attorney General and local chief school administrator, and that in no event will an undercover officer posing as a non-student member of the school community be permitted to establish or to simulate any confidential, trust or counselor relationship with any student.

7.3.5. Limitations on Undercover Officer Conduct

a. *Code of Student Conduct Infractions*. It is understood that an undercover officer cannot be expected to pose as a model student. Nonetheless, no undercover officer will engage in any activities that unduly disrupt the educational environment, or that amount to code of student conduct infractions of such a nature and magnitude so as to prevent other students from enjoying the full benefits of that educational environment. An undercover officer will at all times respect the rights of teachers and other students.

b. *Confidentiality of Treatment Records*. Federal regulations and state policies concerning the confidentiality of treatment and substance abuse counseling program records and information will be strictly safeguarded. No law enforcement activity will be permitted in any way to interfere with, intrude upon, or compromise the integrity of any substance abuse counseling or treatment program.

c. *Entrapment*. No undercover officer will encourage or counsel any student to purchase or use alcohol or any controlled dangerous substance.

d. *Firearms Policy*. It is understood that undercover work concerning drug trafficking activities is inherently dangerous. Accordingly, it is understood and agreed that law enforcement will take all measures that are necessary and appropriate to protect the undercover officer, as well as to protect all students with whom the undercover officer may come in contact, and to avoid potentially violent confrontations whenever possible. In general, an undercover officer will not carry a firearm or otherwise bring onto, or maintain, a firearm on school grounds. An exemption from the general rule prohibiting the carrying or bringing onto school grounds of a firearm will only be granted with the express approval of the officer's immediate superior, unless otherwise specified in the plan approval process for good cause shown. Any firearm brought

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.

7.3.7. Post-Operation Seminars

To maximize the deterrent impact of an undercover school operation, the law enforcement agency conducting the operation will make available officers to participate in seminars which, upon the invitation of appropriate school officials, may be held in the school in which the operation was conducted. The purpose of these seminars will be to discuss with teachers, parents and/or students the nature of the completed operation, the steps taken to minimize the intrusion into the educational environment, and to discuss the substance abuse or weapons-related problem from a law enforcement perspective. It is the agreed upon policy of the parties to the attached Agreement to promote the frank and open discussion of issues concerning the need for such operations, and to solicit opinions and recommendations from teachers, parents, students and members of the community-at-large.

7.4. Planned Surveillance

7.4.1. Live Streaming Video

Pursuant to *N.J.S.A.* 18A:41-9, if at least one school building of a school district is equipped with video surveillance equipment that is capable of streaming live video wirelessly to a remote location, the board of education and local law enforcement shall enter into a memorandum of understanding which provides the authorities with the capacity to activate the equipment and view the live streaming video.

The memorandum of understanding, at a minimum, shall include:

1. A list of designated persons, including contact information, position, rank, and supervisor's contact information, of those who are authorized to activate the equipment to view the live streaming video. The list may be executed as a confidential attachment to the memorandum of understanding.
2. Description of the circumstances under which the designated individuals could activate and view the live streaming video.
3. A detailed plan for preventing and detecting unauthorized access to live streaming video.

In the case of a school building that is located in a municipality in which there is no municipal police department, the board shall enter into a memorandum of understanding with an entity designated by the Superintendent of State Police.

In the event that the parties to the memorandum of understanding are unable to reach an agreement regarding any provision required [(1) – (3) above)] , the County Prosecutor shall make the final determination regarding that provision.

Nothing in this section shall be construed as requiring installation of video surveillance equipment capable of streaming live video wirelessly to a remote site.

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.

7.5.4. Legal Questions during Conduct of Law Enforcement Search

Any questions by school officials concerning the legality of any contemplated or ongoing arrest, search or seizure conducted by a law enforcement officer on school grounds should be directed to the (***appropriate county*** *prosecutor*), pursuant to *N.J.A.C.* 6A:16-6.2(b)5ii, or in the case of an arrest, search or seizure undertaken by a member of the State Police, Division of Criminal Justice, or federal law enforcement officer to the Director of Criminal Justice.

7.5.5. Agreement Does Not Constitute a Request to Conduct Searches

Nothing in this Agreement shall be construed in any way to require any school official to actively participate in any search or seizure conducted or supervised by a law enforcement officer; nor shall this Agreement be construed to direct, solicit or encourage any school official to conduct any search or seizure on behalf of law enforcement, or for the sole purpose of ultimately turning evidence of a crime over to a law enforcement agency. Rather, it is understood that any search or seizure conducted by school officials shall be based on the school officials' independent authority to conduct reasonable investigations as provided in New Jersey v. T.L.O and, pursuant to *N.J.A.C.* 6A:16-6.2(b)5.

7.5.6. Search and Seizure Legal Advice to School Officials

Any question by a school official concerning the law governing searches conducted by school officials may be addressed to the (*county prosecutor or his or her designee*).

7.5.7. Requests to Use Drug-Detection Canines

It is understood and agreed that all inspections of lockers, desks, or other objects or personal property on school grounds involving the use of law enforcement drug-detection canines shall be conducted in accordance with the policies and procedures established in the *New Jersey School Search Policy Manual*; shall comply with the "Special Rules and Procedures Governing the Use of Law Enforcement Canines to Conduct Suspicionless Examinations" set forth in Chapter 4.5 F of that manual; and shall conform to *N.J.A.C.* 6A:16-6.2(b)5vi. No such operation shall be undertaken without the express permission of the county prosecutor or the Director of the Division of Criminal Justice or his or her designee in the New Jersey Department of Law and Public Safety. It is further understood and agreed that the (*designated school official*) shall not invite or approve the use of a privately-owned drug-detection canine without first providing notice of the intention to use any such private service to the (*law enforcement agency*) and the county prosecutor, and it is further understood and agreed that if any such private drug-detection canine alerts to the presence of a controlled dangerous substance, any substance, paraphernalia, or other evidence of an offense seized by any person pursuant to such alert shall be turned over to (*law enforcement agency*) or the County Prosecutor's Office in accordance with the provisions of Articles 3.2 and 3.4 of this Agreement.

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

motor vehicle checks or criminal background checks for attendance officers. Law enforcement officers should also keep in mind that when accompanying an attendance officer to a home, they have no additional authority to demand entry to the home if the occupants do not consent and there is no emergency that would justify entry into the home.

7.9. Dispute Resolution Procedures

It is understood and agreed that any dispute or objection to any proposed or ongoing law enforcement operation or activity on school grounds will be consistent with *N.J.A.C.* 6A:16-6.2(b)15, and shall be directed by the appropriate school official to the chief executive officer of the law enforcement agency involved. Where the chief executive officer of the agency is for any reason unable to satisfactorily resolve the dispute or objection, the matter shall be referred to the (***county*** *prosecutor*), who is hereby authorized to work in conjunction with the (*executive county superintendent of schools*) and, where appropriate, the Division of Criminal Justice, to take appropriate steps to resolve the matter. Any dispute that cannot be resolved at the county level shall be resolved by the Attorney General whose decision shall be binding.

Article 8. Confidentiality and School Access to Law Enforcement Information

8.1. Substance Abuse Confidentiality Laws

The New Jersey Legislature on January 12, 1998 adopted P.L. 1997, c. 362, in accordance with the Governor's conditional veto recommendations. The law, codified at *N.J.S.A.* 18A:40A-7.1 et seq., and the supportive regulations at *N.J.A.C.* 6A:16-3.2(a)2 and 6.5, afford confidentiality protections to a public or private secondary school pupil who is participating in a school-based drug or alcohol abuse counseling program where that pupil provides information during the course of the counseling session that indicates that the pupil's parent or guardian or other person residing in the pupil's household is dependent upon or illegally using a controlled dangerous substance. The New Jersey confidentiality statute is broader than the federal confidentiality statute and regulations (42 C.F.R. Part 2) in that it applies to any student who is participating in a school-based alcohol or drug abuse counseling program, even if the student is not personally abusing substances, but rather is seeking counseling to deal with the problems related to the substance abuse of another. The federal law, in contrast, only provides confidentiality protections to persons who are "patients," that is, persons who are receiving counseling for their own substance abuse problem. The state confidentiality law nonetheless features an important exception to the general rule of preserving confidentiality. Specifically, the State law is expressly subject to the provisions of *N.J.S.A.* 9:6-8.10, and thus does not prevent school officials from disclosing information to Child Protection and Permanency (CP&P) or to a law enforcement agency "if the information would cause a person to reasonably suspect that the secondary school pupil or another child may be an abused or neglected child." Accordingly, it is understood and agreed that the confidentiality statute in no way relieves the duty established pursuant to *N.J.S.A.* 9:6-8.10, which requires any citizen, including school district employees, volunteers or interns, to inform both CP&P <u>and</u> a law

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.

8.4. Statutory Authority to Disclose Information

New Jersey's juvenile confidentiality laws were amended by P.L. 1994, c. 56 to make it easier for law enforcement agencies to share information with schools. The revised law provides for three categories of disclosure to schools as follows: (1) permissive disclosure during an investigation (*N.J.S.A.* 2A:4A-60e); (2) disclosure following a charge at the principal's request (*N.J.S.A.* 2A:4A-60c(3)); and (3) required disclosure following a charge in certain circumstances (*N.J.S.A.* 2A:4A-60d). In addition, a law enforcement agency is authorized to disclose certain information to the victim of an offense committed by a juvenile. Pursuant to *N.J.A.C.* 6A:16-5.4, the board of education confirms its obligation to adopt and implement policies and procedures protecting the access to information related to juvenile justice proceedings, according to the requirements of *N.J.S.A.* 2A:4A-60.

The revised law permits law enforcement or prosecuting agencies to disclose information regarding juveniles who are under investigation when that 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. This information may then be shared by the principal with appropriate school staff, provided, however, that where the information relates only to an investigation, and where no formal charges have been filed against the student, the statute prohibits this pre-charge information from being maintained by school officials. Accordingly, this information should be provided orally by law enforcement officers, rather than in writing, so as to avoid inadvertent retention or disclosure of such information.

The revised law further contains a provision that authorizes a principal to request information concerning juvenile delinquency charges that have been filed against a student enrolled in the school. These requests may either be made on a case-by-case basis or in accordance with procedures that could be agreed to as part of this Agreement. ***[Optional: Pursuant to Article 5.2 of this Agreement, the (law enforcement agency) hereby agrees automatically to disclose to the principal this information regarding any juvenile delinquency charge filed against any student enrolled in the school.[4]]***

Law enforcement and prosecuting agencies are *required* to advise the principal of the school where the student is enrolled when:

- the offense occurred on school grounds or was committed against an employee or official of the school;
- the juvenile was taken into custody as a result of information or evidence provided by school officials, whether or not on school grounds;
- the offense, if committed by an adult, would constitute a crime, and the offense:
    - resulted in death or serious bodily injury, or involved an attempt or conspiracy to cause death or serious bodily injury;
    - involved the unlawful use or possession of a firearm or other weapon;

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[4]*This provision is optional. The parties to the Agreement may delete this sentence or may modify it to limit the "blanket" request to specified delinquency charges.*

- 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.

Such information may include but need not be limited to: (1) the specific type of drug found as determined by field tests and/or laboratory analysis; (2) the amount, purity, and value of the drug found; (3) how the drug was packaged; (4) whether cash was found or whether there were indications that the drug was intended to be sold or distributed; (5) where precisely the drug or other contraband was found; (6) what type of weapon was found; (7) whether a seized firearm was operable or loaded; or 8) whether the suspected offense involved or was directed at another enrolled student. It is understood and agreed that it is especially important for law enforcement agencies to promptly share information as may be authorized by law concerning the identity of a victim who is enrolled at the same school as the juvenile charged with or suspected of committing the offense so that school officials can take appropriate steps to protect the victim from further attack, to enforce a restraining order or condition of probation or pre-trial release that the juvenile have no contact with the victim, or to prevent retaliation or an escalation of violence.

8.8. Disclosure of Adult Student Information

Where a student who has been arrested or is under investigation is 18 years old or older, or otherwise is being treated as an adult by the criminal justice system, the *(law enforcement agency)* and/or the County Prosecutor's Office agrees to provide to the principal of the school at which the student is enrolled all information that would otherwise be provided pursuant to the provisions of Article 8 of this Agreement.

8.9. Law Enforcement Testimony at School Student Conduct Hearings; Required Notice to the County Prosecutor

The (*law enforcement agency*) agrees, upon the request of (*school official*), to make available officer(s) to testify as appropriate in any suspension or expulsion hearing before the board of education, pursuant to *N.J.S.A.* 18A:37.1 et seq. and *N.J.A.C.* 6A:16-7.1 et seq., or other appropriate school authority as may be necessary to satisfy the due process rights of a student subject to school discipline, provided, however, that it is understood and agreed that any information provided by means of such testimony shall not be made public but rather shall be kept confidential in accordance with the requirements of *N.J.S.A.* 2A:4A-60, and further provided that the County Prosecutor's Office shall be given prior notification and a right to preclude the giving of such testimony where the testimony may interfere with or jeopardize any ongoing investigation or prosecution of any person.

8.10. Parallel School Student Conduct Proceedings

It is understood and agreed that school officials have an independent right and responsibility to initiate and pursue student conduct proceedings, pursuant to *N.J.S.A.* 18A:37.1 et seq. and *N.J.A.C.* 6A:16-7.1 et seq., or to remove a student from school under certain circumstances including, but not limited to, those specified in the "Zero Tolerance for Guns Act," *N.J.S.A.* 18A:37-7 through 12 and *N.J.A.C.* 6A:16-5.5, 5.6, 5.7 and *N.J.A.C.* 6A:7. It is further understood and agreed that all school-based student conduct proceedings are separate and distinct from any juvenile or adult criminal prosecution; that law enforcement agencies shall not require or request school officials to undertake a student conduct action against a student; and

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

The Chief of Police or Station Commander will, at his or her discretion, notify the executive county superintendent of schools, or his or her designee. This notification will contain a recommendation on which additional schools should be notified by the executive county superintendent's office. The executive county superintendent shall decide which, if any, additional schools to notify, and shall make the appropriate notifications.

Article 9. School Safety and Security

9.1. Development of School Safety and Security Plans (SSSPs)

Recent tragic events in the nation's schools highlight the need for developing and maintaining up-to-date school-based safety and security plans for responding to crisis situations involving all-hazards, such as natural, technological, manmade, and biological, and student culture and climate. The district's school safety and security plans (SSSPs) should include protocols and procedures for quickly communicating to staff, students, parents, and emergency responders that a crisis situation exists. In addition, procedures for minimizing the risk of physical harm to students and staff should be initiated to reduce their exposure to any hazards. Just as it is necessary to establish protocols for responding to emergencies that require prompt and orderly actions, such as fires (see *N.J.S.A.* 18A:41-1), so too it is required to conduct monthly security drills, such as non-fire evacuations, bomb threats, lockdown, and active shooter (see *N.J.S.A.* 18A:41-6), to exercise plans that test the procedures and minimize exposure to hazardous situations, both from within and outside school facilities.

School officials shall consult with law enforcement officials, as appropriate, in planning the required school safety and security in-service training program for school staff, pursuant to *N.J.A.C.* 6A:16-5.1(d). Examples of school safety and security training that could involve law enforcement officials include providing guidance on the approved model policies of the Governor's K-12 School Security Task Force; reviewing scenarios for school safety and security drills; addressing internet safety, cyber-bullying and gangs; and reviewing the ten key findings reported by the United States Secret Service in the publication titled *Threat Assessment in Schools: A Guide to Managing Threatening Situations and to Creating Safe School Climates.* Law enforcement officials shall identify school safety and security issues and concerns and advise the county prosecutor and chief school administrator, as appropriate.

It is understood and agreed that, pursuant to *N.J.A.C.* 6A:16-5.1(b), the conferees, including the chief of police and other representatives of law enforcement agencies, emergency management planners, fire officials, local chief school administrator, all school building principals, representatives of health and social services provider agencies and other school staff (e.g., counselors, psychologists, social workers, nurses, security, maintenance, facilities, grounds, school resource officers, food services) and community resources, as appropriate, shall provide consultation to school officials, at a minimum annually, in the development 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. There is nothing in the Agreement or New Jersey Administrative Code that precludes students from contributing to the

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

The SSSPs, procedures and mechanisms shall be consistent with the provisions of *N.J.A.C.* 6A:16-5.1. The parties agree that all SSSPs shall include defined communication and decision-making protocols (e.g., Incident Command System) and the minimum requirements for the format and contents of the plans, as determined by the Commissioner of Education and the Domestic Security Preparedness Task Force.

9.1.4. Annual Review of SSSPs

The chief school administrator shall consult with law enforcement agencies, health and social service provider agencies, emergency management planners and school and other community resources, as appropriate, in the review and updating of the school district's SSSPs, procedures and mechanisms, pursuant to *N.J.A.C.* 6A:16-5.1. It is understood and agreed that law enforcement officials shall, at a minimum, annually 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, at a minimum, annually submit a copy of the school district's SSSPs or any important revisions to the plans 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, the chief school administrator agrees to forward revised copies to law enforcement officials as soon as practicable.

9.1.5. School Staff In-service Training on SSSPs

District board of education employees must participate in an annual in-service training on school safety and security to enable them to recognize and appropriately respond to safety and security concerns, including emergencies and crises, consistent with the school district's plans, procedures and mechanisms for school safety and security and the provisions of *N.J.A.C.* 6A:16-5 and *N.J.S.A.* 18A:41. School officials shall annually consult with law enforcement personnel regarding training. The instruction must include school security drills, and be conducted collaboratively by the school district and law enforcement, fire and emergency medical services personnel in order to identify weaknesses in school safety and security policies and procedures and increase the effectiveness of emergency responders. The training shall utilize various formats such as drills, functional exercises, and tabletop exercises. Joint training exercises may include, but are not limited to, natural disasters, bomb threats, lockdown procedures and active shooters. A law enforcement officer must be present at a minimum of one school security drill in each school year in order to make recommendations on any improvements or changes to school security drill procedures, pursuant to *N.J.S.A.* 18A:41-1.

9.1.6. Other Training on SSSPs

It is recommended that school districts train students on school safety procedures **prior to** a drill or lockdown, taking into consideration students' developmental levels, disabilities, ability to understand the English language and any additional awareness or capacity issues.

Additionally, it is further recommended that substitute teachers, college students fulfilling practicum or other student teaching requirements, and any person with regular student contact, including volunteers and contractors, be trained on the non-confidential elements of the 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

The law enforcement agency agrees, upon the request of designated school officials, to make available officer(s) to testify, as appropriate, in any suspension or expulsion hearing before the board of education, pursuant to *N.J.S.A.* 18A:37.1 et seq., or a hearing regarding harassment, intimidation or bullying, pursuant to *N.J.S.A.* 18A:37.15d, or other appropriate school authority as may be necessary to satisfy the due process rights of a student subject to school discipline, provided, however, that it is understood and agreed that any information provided by means of such testimony must not be made public, but rather must be kept confidential in accordance with the requirements of *N.J.S.A.* 2A:4A-60, and further provided that the County Prosecutor's Office must be given prior notification and a right to preclude the giving of such testimony where the testimony may interfere with or jeopardize any ongoing investigation or prosecution of any person. See also Article 9.5 of this Agreement.

For any school hearing pursuant to the *Anti-Bullying Bill of Rights Act*, if the principal has been notified by law enforcement officials that juvenile delinquency or criminal charges are pending against one or more of the alleged offenders, the school district must notify the county prosecutor of the proposed list of witnesses at least 5 days prior to the hearing.

9.6. "Tiplines" and Crime Prevention Programs

Any school who wishes to establish "tiplines" for the reporting of suspicious activity occurring on school grounds, or within Drug-Free School Zones, or for the reporting of any other crimes or planned or threatened acts of violence, shall coordinate with the appropriate law enforcement agency and the county prosecutor's office on the creation and implementation of the tiplines. The (*school official*) hereby agrees to post notice of any such tiplines on bulletin boards and/or other appropriate places to alert students to the existence of this means of reporting suspected or future crimes on an anonymous and confidential basis.

The County Prosecutor's Office and the *(law enforcement agency)* will assist school officials who wish to develop and implement student-oriented crime prevention and awareness programs.

9.7. Unsafe School Choice Option Policy: Victims of Violent Criminal Offenses

The Unsafe School Choice Option (USCO) provision (*Section 9532 of Title IX*) under the *No Child Left Behind Act (NCLB) of 2001* sets forth, in part, the following which applies to all school buildings that are a part of a local education agency (LEA):

"... a student ... who becomes a *victim of a violent criminal offense*, as determined by *State law*, while in or on the grounds of a public elementary school or secondary school that the student attends, be allowed to attend a safe public elementary school or secondary school within the local educational agency, including a public charter school." *(Italics added)*

The individual victim provision of the USCO policy attempts to fulfill the requirement for LEAs to provide relief to students who have been victimized, while providing schools with a *practical* means for making determinations on incidents of victimization that are within the purview of LEAs. The individual victim policy has been crafted to enable school staff to make reasonable determinations and actions regarding the policy. LEAs are strongly encouraged,

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

about the nature and dangers of substance abuse, methods to enhance students' self-esteem, and proven techniques and skills for resisting peer pressure to experiment with drugs or engage in other dangerous activities and should support the Core Curriculum Content Standards, pursuant to *N.J.A.C.* 6A:8-2.

10.2. School Violence Awareness Week

School officials shall invite law enforcement officials to join school staff in the student discussions organized to observe School Violence Awareness Week, which occurs the week beginning with the third Monday in October of each year, pursuant to *N.J.S.A.* 18A:36-5.1 and *N.J.A.C.* 6A:16-5.2. Upon invitation and as appropriate to the district's plans, law enforcement officials may assist with the student discussions required during School Violence Awareness Week.

10.3. Approval and Supervision of Educational Curricula

It is understood and agreed that education officials are at all times ultimately responsible for approving, supervising, monitoring, evaluating and otherwise ensuring the consistent high quality of all educational curricula and instructional programs provided to students, whether the instruction is provided by certified school employees or by specially trained law enforcement officers invited into the schools pursuant to Article 10.1 of this Agreement. It also is understood and agreed that local school officials remain ultimately responsible for making certain that all substance awareness instructional programs are developed and provided in a manner which is consistent with the requirements of *N.J.S.A.* 18A:40A-1 et seq., *N.J.A.C.*6A:16-3, Comprehensive Alcohol, Tobacco and Other Drug Abuse Programs, the New Jersey Department of Education's Core Curriculum Content Standards in Comprehensive Health and Physical Education, pursuant to *N.J.A.C.* 6A:8, specifically, the indicators under Standards 2.1 (Wellness – health promotion concepts and skills), 2.2 (Integrated Skills – health enhancing personal and interpersonal skills), 2.3 (Drugs and Medicines –alcohol, tobacco, and other drugs and medicines), 2.4 (Human Relationships and Sexuality – physical, emotional and social aspects of human relationships and sexuality) and Standard 9 (21st Century Life and Careers– addressing significant related areas, such as critical thinking, self-management, interpersonal communication, character development, ethics and safety) and the subjects of conflict management, problem solving, personal responsibility and cooperation under each of these strands, and any and all applicable rules, regulations and policies adopted by the State Board of Education or the Commissioner of Education concerning the development, review, monitoring, approval and implementation of K-12 alcohol, tobacco and other drug prevention education curricula and related courses of instruction.

10.4. Procedures for Inviting, Soliciting or Promoting Police Participation in Educational Programs

It is understood and agreed that no law enforcement officer shall be permitted to provide a course of instruction to students unless the officer has been invited or requested to provide such course of instruction by the appropriate school official. In order to enhance cooperation between law enforcement and education authorities, it is agreed that all requests by school officials for

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

in addition to and do not conflict with the policies and procedures established pursuant to *N.J.A.C.* 6A:16-6.

It is understood that every chief of police, school building principal and local chief school administrator shall be invited to attend, along with any other persons or representatives of organization who could contribute to or benefit from the proceedings. Following each conference, the (***county*** *prosecutor*) shall provide a copy of the revised MOA, or the revised section of the MOA, to all participants.

- During this meeting, schools and law enforcement shall discuss the content of the Agreement, with a special focus on:
- Which acts are mandatory reports to law enforcement and which acts are non-mandatory reports to law enforcement
- 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
- How law enforcement will respond to such calls
- The process by which law enforcement may call schools to report an act outside of school
- How schools will respond to such calls

Appendix B details the Annual Review Guidelines.

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.

Appendix B: Annual Review

Guidance on the Annual Review and Approval Of The Uniform State Memorandum of Agreement Between Education and Law Enforcement Officials

The following information is intended to clarify the requirements for the annual review and approval of the *Uniform State Memorandum of Agreement Between Education and Law Enforcement Officials* (MOA) and describe general procedures for facilitating the annual review and approval. The annual adoption and implementation of the MOA is required by all of the following:

- Public school districts;
- Charter schools and renaissance school projects;
- Jointure commissions;
- Educational services commissions; and
- Approved private schools for students with disabilities.

Annual Review Process

- District board of education's policies and procedures must include an annual process for the chief school administrator and appropriate law enforcement officials to do the following:
  - Discuss the implementation of and the need for revising the MOA; and
  - Review the effectiveness of the policies and procedures adopted by the district board of education and implemented by the school district in accordance with *N.J.A.C.* 6A:16-6.
- There is no set time period for the review, but it must occur annually.
- The annual review must include input from the executive county superintendent, community members (which could include board of education members) and meeting(s) with the county prosecutor and the law enforcement officials designated by the county prosecutor.
- There is no requirement or provision for an annual, one-page update form, unless a local update form is used to formally document the annual review and signatures.
- In the case of educational agencies without district boards of education (e.g., charter schools, renaissance school projects, approved private schools for students with disabilities), the authorized officer of the educational agency's governing body would sign where indicated for the president of the district board of education.

Signatures and Copies

The MOA must be approved by the following school and law enforcement officials:

- President of the district board of education;
- Chief school administrator (includes charter school and renaissance school project lead persons and administrators of approved private schools for students with disabilities);

- 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
• Schedule meetings with the Chief of Police or Station Commander, as appropriate, to discuss the revised MOA	Chief School Administrator
• Meet to discuss and review the MOA • After the meeting, both individuals sign five (5) copies of the MOA • **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
• Review, approve and sign the five (5) copies of the MOA • Forward the signed copies to the County Prosecutor	Executive County Superintendent
• 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
• 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
• 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.

Appendix C: Table of Mandatory Reports to Law Enforcement

This table provides a brief description of the seven mandatory reports to law enforcement that are detailed in Article 3. Further details, exceptions to the mandatory report of these offenses, and law enforcement response are noted by offense type in Article 3. 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.

Mandatory Report Offenses
Controlled and Dangerous Substances
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:16-6.3 (Article 3.2).
Firearms and Dangerous Weapons
Whenever any school employee in the course of his or her employment develops reason to believe that a firearm or other dangerous weapon has unlawfully been possessed on or off school grounds, a weapon was used in an assault against a student 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).
Planned or Threatened Violence
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).
Sexual Offenses
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).
Assaults on District Board or Education Members or Employees
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).

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 *N.J.A.C.* 6A:16-6.3(e) (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 *N.J.A.C.* 6A:16-11.1(a)3i through iii (Article 3.17).