



***A Uniform State  
Memorandum of Agreement  
Between Education  
and  
Law Enforcement Officials  
2023 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, 2015, and 2019 versions of the State Memorandum of Agreement approved by the Attorney General and the Commissioner of Education and which is required in *N.J.A.C. 6A:16-6.2(b)13* through 14.

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

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## 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. As needed, a working group, composed of educators and law enforcement officials, convenes to revise this agreement to reflect the current policies and procedures supported by statute and regulation, as well as Department of Education and the Office of the Attorney General guidelines. In 2019, the working group focused on how a student's school-based arrest and subsequent court involvement may impact them. In response, the 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.

### 1.2. 2023 Revisions

In 2021, the Education-Law Enforcement Working Group reconvened to address new laws, policies, and procedures, including the study of potential amendments to reduce disparities in criminal justice referrals and take meaningful steps to close the school-to-prison pipeline. The group was focused by the 2020 Youth Bias Task Force Report titled *An Anti-Bias Vision for the Next Generation*. The Youth Bias Task Force was led by the Department of Law and Public Safety's Division on Civil Rights, which examined the root causes of a rise in youth bias and bias affecting young people. Revisions were made to articles of the Agreement that affect the interaction of students, educators, and police officers to reduce the possibility of bias toward students and improve the reporting of those incidents. The working group has removed extraneous language to clarify and streamline the Agreement.

Following the creation of the [Attorney General Directive 2020-9](#) Establishing "Statewide Handle With Care" Program, an article has been added to explain the policy and procedures of the directive for officers and how schools may respond to the receipt of a handle with care notification.



The use of body worn cameras by officers who work inside of schools, or respond to a school, is addressed in a new article to make clear what policies should be followed by police officers. This article is modeled on the Attorney General Directive 2022-01, which updated the Body Worn Camera Policy.

With the decriminalization of marijuana and the creation of a regulated market for cannabis, the working group discussed how to amend the Agreement to “effectuate the tiered warning system implemented by the legislation and ensuring a drug free school zone.” Articles were updated to define marijuana and cannabis, update mandatory reporting, address changes to medical cannabis policy, explain police procedure for interacting with students, and clarify all articles that mention marijuana.

Additionally, the articles for Harassment, Intimidation, or Bullying (HIB), Cyber-Harassment, Stationhouse Adjustments, Law Enforcement Response to Non-Mandatory Reports, Hazing, and others were updated to reflect new law and policy.

The working group will continue to meet to address new challenges and community concerns. The working group will create recommendations for the Commissioner of Education and Attorney General, and update guidance documents related to and referenced by the Agreement. The working group will reconvene in 2024 to review further revisions and receive feedback on the changes made in this version.

### **1.3. Nature of the Problem**

The 1988, 1992, 1999, 2007, 2011, 2015, and 2019 issues of the 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 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<sup>1</sup>. It is understood and agreed that the commission of certain 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.

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<sup>1</sup>*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.*

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 youth 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 that school officials are required to report to law enforcement. Conduct requiring a mandatory report is outlined in Article 3.

There are other types of incidents that school officials are not required to, but may voluntarily, report to law enforcement. Certain categories of conduct that school officials may voluntarily report are outlined in Article 4. 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 continuum of actions designed to remediate and, where necessary or required by law, to impose sanctions, considering the developmental ages of the student and their history of inappropriate behavior. 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. Both school officials and law enforcement should be aware that a school's voluntary report of student misconduct to law enforcement may not always result in a law enforcement response, investigation, or arrest. If law enforcement deems that 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 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.

### **1.5 Obligation to Enforce This Agreement Without Discrimination**

The Division on Civil Rights (DCR), as part of the Department of Law and Public Safety, under the authority of the Attorney General, is responsible for enforcing New Jersey’s Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49. All schools subject to this Agreement constitute places of public accommodation subject to DCR’s jurisdiction within the meaning of the LAD. School officials should be aware that as employees and agents of a place of public accommodation, they cannot discriminate against or harass students, and must take action to stop bias-based harassment of students if they knew or should have known about it, even if the harassment is perpetrated by a fellow student.

School officials are prohibited under the LAD from enforcing this Agreement in a manner that discriminates based on race, ethnicity, gender, disability, or any other protected characteristic. A school discriminates within the meaning of the LAD if it makes (or fails to make) mandatory referrals under Article 3 of this agreement differently with respect to students of one race, ethnicity, gender, disability status, or any other protected characteristic differently than it does students of another race, ethnicity, gender, disability status, or other protected characteristic. Similarly, a school discriminates within the meaning of the LAD if it chooses to refer (or not to refer) students of one race, ethnicity, gender, disability status, or any other protected characteristic differently under Article 4 of this agreement than it does students of another race, ethnicity, gender, disability status, or other protected characteristic.

Similarly, all law enforcement agencies subject to this Agreement constitute places of public accommodation subject to DCR’s jurisdiction within the meaning of the LAD. Law enforcement officials should be aware that as employees and agents of a place of public accommodation, they likewise cannot discriminate against or harass students. Law enforcement officials discriminate within the meaning of the LAD if they respond to mandatory referrals under Article 3 or non-mandatory referrals under Article 4 of this agreement differently with respect to students of one race, ethnicity, gender, disability status, or any other protected characteristic differently than they do students of another race, ethnicity, gender, disability status, or other protected characteristic.

<b>Article 2. Liaisons; Law Enforcement Units</b>
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#### **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.

School districts and law enforcement agencies will comply with the training requirements of *N.J.S.A. 52:17B-71.8* for safe schools resource officers and for the school district liaison to law enforcement. The Police Training Commission in the Division of Criminal Justice in the Department of Law and Public Safety provides this comprehensive training.

#### **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

It is further understood that school officials may have legitimate concerns about the legal and mental health implications of referring a student to law enforcement. 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**

A “safe schools resource officer” (SRO) is a trained and specially selected law enforcement officer who supports the philosophy of community policing in schools. Security personnel, on the other hand, are not affiliated with the local law enforcement jurisdiction, may or may not be armed, and are employed to monitor and protect the school building and occupants.

The New Jersey Legislature stated that “the job of safe schools resource officer involves great responsibility and highly specialized skills” because “every safe schools resource officer works with and among pupils, teachers and administrators, and many also work with parents” and “by virtue of their daily interaction with pupils, safe schools resource officers invariably make a strong, early impression of the institution of law enforcement,” and found that “the State should provide comprehensive and consistent training for those individuals entrusted with these responsibilities.”

Pursuant to N.J.S.A. 40A-146.10, 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. Class Three special law enforcement officers are nonetheless distinct from non-law enforcement security personnel, because they “have all the powers conferred by law on police officers,” including “the apprehension of offenders.” (N.J.S.A. 40A:14-146.10).

The decision whether to employ an SRO, Class Three special enforcement officer, or other security staff rests with each school board of education based upon the needs of the school community. If a school board of education employs an SRO or Class Three special law enforcement officer, it must ensure that the assigned officer has received the training required by law. New Jersey law requires that any “safe schools resource officers” assigned to a public school must complete the safe schools resource officer training course developed pursuant to N.J.S.A. 52:17B-71.8 before they can be assigned by a local board of education to serve as an SRO. (N.J.S.A. 18A:17-43.1.). Any Class Three special law enforcement officer assigned by a local board of education to serve as an SRO is required to comply with the safe schools resource officer training requirements outlined in N.J.S.A. 18A:17-43.1.

If a school board of education employs an armed security officer, it is strongly encouraged that the assigned armed security officer attend the safe schools resource officer training course offered by the Police Training Commission to ensure they receive training to assist them in their role.

#### **2.4. Creation of Law Enforcement Units**

Each school district shall consider designating, but is not required to designate, one or more law enforcement units for the district, as provided under the Federal law, FERPA (Family Education Rights Privacy Act), pursuant to 20 U.S.C. 1232g(a)(4)(ii) and 34 C.F.R. 99.8. Schools that designate one or more law enforcement units for the district shall comply with FERPA, pursuant to 20 U.S.C. 1232g(a)(4)(ii) and 34 C.F.R. 99.8, to ensure the security and privacy of school records.

Pursuant to FERPA, if a school district designates one or more law enforcement units for the district, the records maintained by those units 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.

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.

Schools should refer to Article 8 of this agreement for details on designation of school records and law enforcement records and may need to seek advice of school counsel to determine whether further agreements or guidance are required and for matters requiring a subpoena.

<b>Article 3. Obligation to Report Offenses and Preserve Evidence: Mandatory Reports</b>
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### **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 unlawful possession of a controlled dangerous substance, related paraphernalia, cannabis<sup>2</sup>, or is involved or implicated in distribution activities regarding controlled dangerous substances or cannabis, 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);

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<sup>2</sup> Pursuant to N.J. Stat. § 2C:33-15, any person under the age of 21, who knowingly possesses without legal authority or who knowingly consumes any alcoholic beverage, cannabis item, marijuana, or hashish in any school, public conveyance, public place, or place of public assembly, or motor vehicle shall be subject to consequences.

- 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)* (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.

As a reminder, school officials are prohibited under the LAD from enforcing this Agreement in a manner that discriminates based on race, ethnicity, gender, disability, or any other protected characteristic. A school discriminates within the meaning of the LAD if it makes (or fails to make) mandatory referrals under Article 3 of this agreement differently with respect to students of one race, ethnicity, gender, disability status, or any other protected characteristic differently than it does students of another race, ethnicity, gender, disability status, or other protected characteristic.

### **3.1.1. Law Enforcement Response to Mandatory Reports**

Specific response to mandatory reports are noted by offense type in the following sections. When a mandatory report to law enforcement is made, the law enforcement agency retains full discretion 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 & Cannabis**

Subject to the provisions 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 unlawful possession of a controlled dangerous substance<sup>3</sup>, related paraphernalia, or cannabis<sup>4</sup>, or is involved or implicated in distribution activities regarding controlled dangerous substances or cannabis, pursuant to *N.J.A.C. 6A:16-4.3(a)3i*. 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**

In 1991, the New Jersey Commissioner of Health promulgated rules and regulations which classify anabolic steroids as Schedule III controlled dangerous substances (CDS). The parties to this Agreement 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*). Therefore, a student's possession or distribution of any of these substances are required to be reported to law enforcement (see Article 3.2).

#### **3.2.2. Designer Drugs**

"Designer drugs" are substances that are structurally or functionally similar to banned controlled dangerous substances (CDS) and created to mimic the effects of a CDS, while attempting to avoid the CDS classification and accompanying legal consequences. For example, designer drugs such as "bath salts" (synthetic cathinones) and "synthetic marijuana" (synthetic cannabinoids) were initially created in an attempt to avoid CDS classification. Many "designer drugs" 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.

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<sup>3</sup> "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.), per N.J.S.A 24:21-2. The term shall not include distilled spirits, wine, malt beverages, as those terms are defined or used in R.S.33:1-1 et seq., or tobacco and tobacco products." Included in Schedules I – V are: opiates and opium derivatives, hallucinogenic substances, cannabinoids, coca leaf derivatives (cocaine), methamphetamine, barbiturates (and other sedative drugs), narcotics (codeine), nalorphine, anabolic steroids.

<sup>4</sup> "Cannabis" means all parts of the plant *Cannabis sativa L.*, whether growing or not, the seeds thereof, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds, except those containing resin extracted from the plant, which are cultivated and, when applicable, manufactured in accordance with P.L.2021, c.16 (C.24:61-31 et al.) for use in cannabis products, but shall not include the weight of any other ingredient combined with cannabis to prepare topical or oral administrations, food, drink, or other product. N.J. Stat. § 24:61-33.

Both synthetic cannabinoids and cathinones have been declared as CDS and are therefore required to be reported to law enforcement (see section 3.2). 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](#)). The United States Drug Enforcement Administration followed, subsequently scheduling many synthetic cannabinoids and cathinones as controlled substances, therefore outlawing them. At the time of the release of this Agreement, synthetic cannabinoids and cathinones are the only “designer drugs” designated as CDS and required to be reported to law enforcement.

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.

All designer drugs 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.

### **3.2.3. Prescription Drugs Including Controlled Dangerous Substances**

A student’s possession of a prescription drug classified as a controlled dangerous substance (CDS) prescribed to them is not unlawful, and that possession alone does not trigger school officials’ mandatory obligation to report under Article 3.2. However, a student’s unlawful possession of a prescription prescribed to them may nonetheless violate the school’s applicable code of student conduct, and such violations should be handled in accordance with the district board of education’s approved student code of conduct and any other applicable policies and procedures.

A student’s possession of a prescription drug classified as a CDS only triggers school officials’ mandatory obligation to report under Article 3.2 if possession is unlawful (e.g., not prescribed to them) pursuant to *N.J.A.C. 6A:16-6.3*. A student’s possession of a CDS not prescribed to them does trigger school officials’ mandatory obligation to report under Article 3.2.

A student’s distribution of a prescription drug classified as a CDS always triggers school officials’ mandatory obligation to report under Article 3.2, regardless of whether the CDS was prescribed to the student suspected of distributing it. See *N.J.A.C. 6A:16-6.3*. See *N.J.A.C. 6A:16-6.3*.

Students may also misuse or be in possession of prescription drugs that are not CDS. Possession or misuse of any drug that is not a CDS does not trigger school officials’ mandatory obligation to report under Article 3.2, but should be handled in accordance with the district board of education’s approved student code of conduct and any other applicable policies and procedures.

See Article 3.3.7 regarding the protocols for student possession and use of medical cannabis pursuant to Compassionate Use Medical Cannabis Act (CUMCA).

### 3.2.4. Opioids

Opioids are a controlled dangerous substance (CDS). Consistent with Article 3.2.3, a student's possession of an opioid prescribed to them is not unlawful, and that possession alone does not trigger school officials' mandatory obligation to report under Article 3.2. However, a student's lawful possession of an opioid prescribed to them may nonetheless violate the school's applicable code of conduct, and such violations should be handled in accordance with the district board of education's approved student code of conduct and any other applicable policies and procedures.

A student's possession of opioids only triggers school officials' mandatory obligation to report under Article 3.2 if the student's possession is unlawful (e.g., they are in possession of opioids not prescribed to them) pursuant to *N.J.A.C. 6A:16-6.3*. A student's distribution of opioids always triggers school officials' mandatory obligation to report under Article 3.2, regardless of whether the opioid was prescribed to the student suspected of distributing it. See *N.J.A.C. 6A:16-6.3*.

### 3.2.5. Marijuana, Hashish, and Cannabis

"Marijuana" and "hashish," as defined in *N.J.S.A. 24:21-2*, are controlled dangerous substances. However, *N.J.S.A. 24:21-2* specifically defines "marijuana" and "hashish" to *exclude* "cannabis," "cannabis resin," and "cannabis items," as defined by *N.J.S.A. 24:6I-33*. Accordingly, although marijuana, hashish, and cannabis all originate with the plant *Cannabis sativa L.*, regulated cannabis (i.e., *Cannabis sativa L.* cultivated and manufactured in accordance with *N.J.S.A. 24:6I-31*) *is not* classified as a controlled dangerous substance. It is unlawful for persons under the age of 21 to possess cannabis, marijuana, or hashish at school. *N.J. Stat. § 2C:33-15*.

Accordingly, a student's possession or distribution of cannabis, marijuana, or hashish triggers school officials' mandatory obligation to report under Article 3.2 if a school employee has reason to believe the substance the student possessed or distributed is cannabis, marijuana or hashish. Law enforcement must follow investigative procedures outlined in [guidance from the Office of the Attorney General](#).

Consistent with Article 3.2.3, a student's possession of medical cannabis prescribed to them is lawful, and that possession alone does not trigger school officials' mandatory obligation to report under Article 3.2. However, a student's lawful possession of medical cannabis prescribed to them may nonetheless violate the school's applicable code of conduct, and such violations should be handled in accordance with the district board of education's approved student code of conduct and any other applicable policies and procedures.

A student's distribution of a substance that a school employee has reason to believe is cannabis, marijuana, or hashish, always triggers school officials' mandatory obligation to report under Article 3.2, regardless of whether the cannabis was prescribed to the student suspected of distributing it. See *N.J.A.C. 6A:16-6.3*.

### **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 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, which seeks to ensure uniform statewide enforcement of the law. 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**

School officials should be aware that it is unlawful for a person under the age of 21 to purchase, possess, 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.*). It is also unlawful 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*. School officials may, but need not, report this conduct by youth or adults to law enforcement.

Law enforcement officers, including those assigned to schools, must follow the guidance set forth by the Attorney General for individuals under the age of 21 who possess or consume any amount of alcohol in any public place, including a school with respect to written warnings, searches, and activation of body worn cameras.

#### **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 Cannabis Act**

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

The Office of the Attorney General developed [Enforcement Guidelines](#) to provide law enforcement with guidance and instruction on key provisions of CUMCA.

### **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., cannabis or 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.

Electronic smoking devices alone do not require a mandatory report to law enforcement. The use of electronic smoking devices to deliver nicotine or any other substance that is not a controlled dangerous substance also does not require a mandatory report. 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 controlled dangerous substances, or cannabis (see Article 3.2).

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 Dangerous Substances and Paraphernalia**

Whenever a school employee seizes or comes upon any substance believed to be a controlled dangerous substance, drug paraphernalia, or cannabis, 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, drug paraphernalia, or cannabis except by turning over such substance or item to the responding law enforcement officer.

### **3.5. Law Enforcement Response to Reports of Controlled Dangerous Substances and Cannabis**

The (*law enforcement agency*) must dispatch an officer as promptly as possible to take custody and secure the controlled dangerous substance (CDS), related paraphernalia, or cannabis. 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.

All law enforcement officers, including those assigned to schools, must follow the newly amended underage law, *N.J.S.A.* 2C:33-15, and Attorney General guidance set forth in [Interim Guidance](#)

Regarding Marijuana Decriminalization (Mar 26, 2021). *N.J.S.A. 2C:33-15* requires the following in issuing warnings:

- First offense. Officers shall issue a written warning, which must include the person's name, address, and date of birth. The law was amended on March 26, 2021 (*P.L.2021, c.38*) to require the officer to provide written notification of the violation to the individual's parent or guardian if the individual is under the age of 18.
- Second offense. Officers shall issue a written warning, and also provide the person with informational materials on community treatment services. For individuals under the age of 18, the officer shall provide written notification of the violation to the individual's parent or guardian, including the informational materials.
- Third or subsequent offense. Officers shall issue a written warning and provide the individual with a referral for community treatment services. The officer shall provide notice of the written warning and referral to the community treatment services program regardless of the age of the individual; if the individual is under 18, then the officer shall provide the juvenile's parents or guardian with written notification of the violation and the referral.

Law enforcement officers must also retain and track, with any of the written warnings outlined above, a sworn statement with a description of the factual circumstances that support a finding of the violation. Additionally, officers may not fingerprint individuals under the age of 21 for their first, second, third, or subsequent offenses. However, if an individual under 21 is in possession of more than 6 ounces of marijuana or 17 grams of hashish, that individual is also in violation of *N.J.S.A. 2C:35-10(a)(3)(b)*, a fourth-degree crime, and may be issued a complaint summons and fingerprinted at their first court appearance.

All law enforcement officers, including those assigned to or present inside of a school, are prohibited from engaging in certain actions when investigating an individual under the age of 21 for possession of marijuana, hashish, cannabis, or alcohol, in violation of *N.J.S.A. 2C:33-15(a)(1)*. Importantly, officers who violate these provisions may be charged criminally with depriving the individual of their civil rights, regardless of whether the officer intended to do so. Prohibited conduct includes:

- Officers shall not ask an individual under 21 for consent to search the person to determine a violation of that provision. (However, if the individual is over 18 and the officer reasonably believes that other criminal activity is afoot, the individual may grant consent to search);
- The odor of marijuana, hashish, or alcohol no longer constitutes reasonable articulable suspicion to initiate a stop of an individual under the age of 21, nor does it provide probable cause to search the person's personal property or vehicle to determine a violation of *N.J.S.A. 2C:33-15(a)(1)*.



- The unconcealed possession of an alcoholic beverage, marijuana, hashish, or cannabis item in violation of *N.J.S.A. 2C:33-15(a)(1)* that is observed in plain sight shall not constitute probable cause to initiate a search of an individual under the age of 21 or that individual's personal property or vehicle to determine a violation of any law.
- An individual under the age of 21 who violates *N.J.S.A. 2C:33-15(a)(1)* shall not be arrested, detained, or otherwise taken into custody, and shall not be transported to a police station, police headquarters, or other place of law enforcement operations, except to the extent that detention or custody at or near the location where the incident occurred is required to issue a written warning or collect information necessary to provide notice of a violation to a parent/guardian, unless the person is being arrested, detained, or otherwise taken into custody for also committing another violation of law for which that action is legally permitted or required.

When responding to a violation or suspected violation of *N.J.S.A. 2C:33-15(a)(1)*, all law enforcement officers must activate their body worn cameras, which must remain activated throughout the encounter.

### **3.5.1. Exception to Identity Disclosure**

School officials need not provide law enforcement with identification information related to a student when the student voluntarily turns over a controlled dangerous substance, related paraphernalia, or cannabis 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 if the below criteria are met.

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 also be** notified if school officials seize or come upon any switchblade, gravity, or ballistic knife, stun gun, or metal knuckles, whether or not the weapon was actually used or threatened to be used, pursuant to *N.J.A.C. 6A:16-6.3(b)*.

### **3.7. Exceptions to Mandatory Firearms and Dangerous Weapons Reports**

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

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 until the (*law enforcement agency*) responds and, pursuant to *N.J.A.C. 6A:16-6.2(b)*8 and 6.4, retrieves and takes 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 and guidance from the New Jersey Department of Education.

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 of 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 of Education Members or Employees**

The (*law enforcement agency*) receiving information about an assault on district board of 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)*, it is agreed that (*designated school official*) must promptly notify (*designated law enforcement official*) and the bias investigation officer for the county prosecutor's office whenever any school employee develops reason to believe a "bias-related act," (1) has been committed or is about to be committed on school grounds; (2) has been or is about to be committed by a student on or off school grounds (whether such offense was or is to be committed during operating school hours); or (3) 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. It is further agreed that (*designated school official*) must immediately notify (*designated law enforcement official*) and the bias investigation officer for the county prosecutor's office where there is reason to believe a bias-related act that involves an act of violence has been or is about to be physically committed against a student or there is otherwise reason to believe a life has or will be threatened. 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. In weighing whether a student's conduct meets this definition and triggers a mandatory report, school officials should consider whether the student's conduct was motivated by a protected category. When weighing motive, educators may therefore consider the context of the incident and the age, maturity, and competency of the student(s) implicated in a potential bias-related act, since those factors would be considered by law enforcement and county prosecutors.

A bias-related act need not involve conduct that constitutes a criminal offense to trigger a mandatory report. However, school officials should be aware that certain bias-related acts may also constitute the criminal offense known as "bias intimidation." Pursuant to *N.J.S.A. 2C:16-1(a)*, bias intimidation occurs when an enumerated offense, such as harassment, assault, terroristic threats, criminal mischief, arson, or homicide, is committed with the purpose to intimidate or with knowledge that the offense would intimidate an individual or group of individuals "because of race, color, religion, gender, disability, sexual orientation, gender identity or expression, national origin, or ethnicity." *N.J.S.A. 2C:16-1(a)*

School officials should be aware that the Office of the Attorney General has established uniform law enforcement procedures for the response to, and investigation of, bias incidents<sup>5</sup>. In this guidance to law enforcement, a bias incident is defined as any suspected or confirmed violation of *N.J.S.A. 2C:16-1(a)(1) or (2).1.*, and law enforcement officials are required to report such bias incidents within 24 hours.

School officials should also be aware that bias-related acts that trigger a school's mandatory reporting obligations under this Article will also constitute HIB, triggering a school's obligation under the *Anti-Bullying Bill of Rights Act*. 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. School officials should implement district policies for responding to HIB complaints when an HIB report is received from law enforcement officials.

The Division on Civil Rights (DCR), as part of the Department of Law and Public Safety, under the authority of the Attorney General, is responsible for enforcing New Jersey's Law Against Discrimination (LAD), *N.J.S.A. 10:5-1 to -49*. All schools subject to this Agreement constitute places of public accommodation subject to DCR's jurisdiction within the meaning of the LAD. School officials should be aware that as employees and agents of a place of public accommodation, they cannot discriminate against or harass students, and must take action to stop bias-based harassment of students if they knew or should have known about it, even if the harassment is perpetrated by a fellow student.

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<sup>5</sup> "Revised Bias Incident Investigation Standards Attorney General's Law Enforcement Guideline" (the Standards), [https://www.nj.gov/oag/dcj/agguide/Bias-Invest-Standards\\_040519.pdf](https://www.nj.gov/oag/dcj/agguide/Bias-Invest-Standards_040519.pdf)

School officials are prohibited under the LAD from administering this Agreement in a manner that discriminates based on race, ethnicity, gender, disability, or any other protected characteristic. A school discriminates within the meaning of the LAD if it makes (or fails to make) mandatory referrals under Article 3 of this agreement differently with respect to students of one race, ethnicity, gender, disability status, or any other protected characteristic differently than it does students of another race, ethnicity, gender, disability status, or other protected characteristic.

School and law enforcement officials should be aware that, in some cases, a school's failure to appropriately intervene in and investigate bias-related acts may also constitute a violation of the LAD. When a law enforcement agency is confronted with a suspected or confirmed violation of New Jersey's Law Against Discrimination, the victim shall be informed of the Division on Civil Rights' jurisdiction and referred to the Division, if appropriate, and the Division on Civil Rights shall be contacted.

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

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, where necessary or required by law, to impose sanctions for continued misbehavior, considering the developmental ages of the student and their history of inappropriate behavior, 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.

As a reminder, school officials are prohibited under the LAD from enforcing this Agreement in a manner that discriminates based on race, ethnicity, gender, disability, or any other protected characteristic. A school discriminates within the meaning of the LAD if it chooses to refer (or not to refer) students of one race, ethnicity, gender, disability status, or any other protected characteristic differently under Article 4 of this agreement than it does students of another race, ethnicity, gender, disability status, or other protected characteristic.

#### **4.2. Stationhouse Adjustments**

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 strive to utilize all available school resources and sanctions prior to making the report, unless a mandatory report is required, and consult with law enforcement if necessary.

The Attorney General Directive 2020-12 Directive Establishing Policies, Practices, and Procedures to Promote Juvenile Justice Reform, repealed and superseded the provisions of Attorney General Law Enforcement Directive No. 2008-2 (Guidelines for Stationhouse Adjustment of Juvenile Delinquency Offenses); the 1998 Attorney General Guidelines on Procedures for Collecting Juvenile Fingerprints and Photographs; and Attorney General Executive Directive No. 1990-1 (Handling of Juvenile Matters by Police and Prosecutors).

The Directive outlines mechanisms available to police officers and prosecutors to divert youth from the juvenile justice system and limit the likelihood of unnecessary detention. The one mechanism that is applicable in the school setting is the stationhouse adjustment. A stationhouse adjustment is

designed to divert a juvenile from the juvenile justice system without the filing of charges. In such situations, an officer typically asks the juvenile and a parent or guardian/caregiver/designee to come to the police station to discuss an alleged offense and work together to develop an appropriate resolution, which is then memorialized in a written agreement. The officer may refer the juvenile for social services and, if property has been stolen or damaged, require the juvenile to make restitution in some form. The goal is to engage the parent or guardian/caregiver/designee—and, where appropriate, the victim—in any resolution, allowing the family and community resources to address the violation rather than the courts.

#### **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.** Law enforcement officials' obligation to respond to a non-mandatory report does not require them to do more than consult with school officials. When a non-mandatory report to law enforcement is made, the law enforcement agency retains full discretion to decide that no further action is needed, or recommend a stationhouse adjustment, as outlined in Article 4.2. 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 Directive 2020-12](#) Directive Establishing Policies, Practices, and Procedures to Promote Juvenile Justice Reform.

#### **4.4. Harassment, Intimidation, or Bullying (HIB)**

Harassment, intimidation, or bullying (HIB) in school settings presents an ongoing challenge throughout New Jersey. HIB acts tear at the fabric of our society, pose grave risks to the physical and emotional well-being of students, and can quickly lead to retaliation, an escalation of violence both on and off school grounds, and even suicide. To address this problem, New Jersey enacted the *Anti-Bullying Bill of Rights Act* on January 5, 2011 (*N.J.S.A. 18A:37-13 et seq.*).

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.

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

#### **4.4.2. Reporting of HIB**

##### **4.4.2.1. Reporting of HIB by Schools to Law Enforcement**

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. However, school officials should be aware that certain HIB acts may also rise to the level of a criminal offense if they constitute bias intimidation, hazing, and cyber-harassment, which are discussed in Articles 3.16, 4.5, and 4.6 of this Agreement, or violate another provision of the Code of Criminal Justice, such as those addressing assault, harassment, threats, robbery, and sexual offenses. Because 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. However, both school officials and law enforcement officials should be aware that a school's notification to law enforcement 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.

#### **4.4.2.2. Reporting of HIB to Division on Civil Rights**

School officials should be aware that incidents of HIB in schools may also implicate the New Jersey Law Against Discrimination, *N.J.S.A. 10:5-1 to -49* (LAD). In some cases, a school district's failure to appropriately intervene in and investigate bias-based HIB incidents may constitute a violation of the LAD. When a law enforcement agency is confronted with a suspected or confirmed violation of New Jersey's Law Against Discrimination, the victim shall be informed of the New Jersey Division on Civil Rights' jurisdiction and referred to the Division, if appropriate, and the Division on Civil Rights shall be contacted.

#### **4.4.3. 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.

#### **4.4.4. 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. When the student is a juvenile, such reports are permissible pursuant to the authority of *N.J.S.A. 2A:4A-60c* and/or *N.J.S.A. 2A:4A-60e*, as outlined in Article 8 of this Agreement. Such notification also must be provided when the alleged offending student is an adult. See Article 8.8 of this Agreement.

#### **4.4.5. Coordination of HIB and Criminal Investigations**

There may be times when HIB conduct is being investigated by both school officials pursuant to the ABR and law enforcement officials pursuant to the Code of Criminal Justice. In such situations, the law enforcement investigation focuses on whether there has been a violation(s) of the Code of Criminal Justice, while an HIB investigation focuses on whether an act has been committed in violation of the ABR. 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, if 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. 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. 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.

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 notice that the school is obligated under the Law Against Discrimination to address student-on-student bias-based harassment, and that the statute of limitations for filing a complaint in the Division on Civil Rights will not be extended 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, and law enforcement wishes to enforce the stay over the parent(s)/guardian(s) objections, 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 set forth above, and pending the outcome of any court orders requested by law enforcement to compel the stay. 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 a court's denial to compel a stay, or upon completion of the law enforcement investigation, and following notification of that denial or 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 for a 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 pending the outcome of law enforcement's application for 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 or until a court denies law enforcement's request to compel a stay. 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, exhausting, and adversely affect the mental or emotional health or dignity of the individual. Activities may also cause bodily injury. 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.

Beginning in March 2022, district boards of education with a middle school or high school and governing boards of a non-public middle or high school must adopt a written policy against hazing that includes the rules, penalties, and the program for enforcing the policy (*N.J.S.A. 18A:37-32.2 and 32.3*). The policy must also be posted on the district's or non-public school's publicly available website. (*N.J.S.A. 18A:37-32.2(c)*).

School officials should be aware that hazing which involves the participation of a coach or a teacher may also constitute child abuse (see Article 3.17). Hazing may also involve sexual offenses (see Article 3.12) or bias-related acts (see Article 3.16). Hazing may also constitute HIB, triggering a school's obligations under the Anti-Bullying Bill of Rights Act (see Article 4.4).

Hazing only triggers a school's mandatory obligation to report if it involves conduct covered by Article 3 as outlined above. However, school officials should also be aware that hazing is a criminal offense. The written policy required under *N.J.S.A. 18A:37-32.2 and 32.3* should specify under what circumstances hazing conduct will be referred to law enforcement. The criminal law governing hazing, *N.J.S.A. 2C:40-3*, sets forth the following definition for hazing:

A person is guilty of hazing, if, in connection with initiation of applicants to or members of a student or fraternal organization, whose membership is primarily students... the person knowingly or recklessly:

- (1) Causes, coerces, or otherwise induces another person to commit an act that violates federal or State criminal law;
- (2) Causes, coerces, or otherwise induces another person to consume any food, liquid, alcoholic liquid, drug or other substance which subjects the person to a risk of emotional or physical harm or is otherwise deleterious to the person's health;
- (3) Subjects another person to abuse, mistreatment, harassment, or degradation of a physical nature, including, but not limited to, whipping, beating, branding, excessive calisthenics, or exposure to the elements;

- (4) Subjects another person to abuse, mistreatment, harassment, or degradation of a mental or emotional nature, including, but not limited to, activity adversity affecting the mental or emotional health or dignity of the individual, sleep deprivation, exclusion from social contact, or conduct that could result in extreme embarrassment;
- (5) Subjects another person to abuse, mistreatment, harassment, or degradation of a sexual nature; or
- (6) Subjects another person to any other activity that creates a reasonable likelihood of bodily injury to the person. (*N.J.S.A. 2C:40-3(a)*).

Hazing is a crime of the third degree if the act results in death or serious bodily injury and a crime of the fourth degree if the act results in bodily injury. Otherwise, hazing is a disorderly persons offense (*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*).

#### **4.5.1. Reporting of Hazing by School Officials and Law Enforcement**

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

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**

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 crime of the third or fourth degree, depending on the ages of the target and harasser.

*N.J.S.A. 2C:33-4.1* sets forth the following definition for cyber-harassment:

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.



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.

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.

A parent or guardian who fails to comply with a condition imposed by the court pursuant to subsection c. *N.J.S.A. 2C:33-4.1* is a disorderly person and must be fined not more than \$100 for a first offense and not more than \$500 for each subsequent offense.

A parent or guardian having legal custody of a minor who demonstrates willful or wanton disregard in the exercise of the supervision and control of the conduct of a minor adjudicated delinquent of cyber-harassment may be liable in a civil action.

#### **4.6.1. 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 involves the sending of sexually explicit photos by electronic means such as text message.

School officials should be aware that sexting of image or video 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 may trigger a school's reporting obligations related to sexual offenses (see Article 3.12). School officials should also be aware that sexting may involve bias-related acts (see Article 3.16). Sexting may also constitute HIB, triggering a school's obligations under the *Anti-Bullying Bill of Rights Act* (see Article 4.4).

Sexting only triggers a school's mandatory obligation to report if it involves conduct covered by Article 3 as outlined above. However, school officials should also be aware that sexting 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**

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. However, school officials should be aware that 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. 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.

Schools are therefore 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**

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 Article is to recognize some of the areas where law enforcement and educational professionals should cooperate to ensure a unified response to the following conduct by students, teachers, administrators and other school staff:

- 1) Harassment and threats via electronic media.
- 2) Unauthorized access to school networks.
- 3) Use of technology to facilitate other crimes.
- 4) Blogging (free speech).

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

Students may inappropriately utilize technology to harass and threaten other students or individuals. These types of actions may be considered incidents of harassment, intimidation, and bullying (Article 4.4), bias-related incidents (Article 3.16), cyber-harassment (Article 4.6), sexting (Article 4.7), or other misconduct. Bias-related incidents trigger schools' mandatory reporting obligations, and school officials should be guided by the reporting obligations in Article 3.16 if students utilize technology to engage in such conduct. Inappropriate use of technology to engage in other acts of harassment, intimidation, and bullying (Article 4.4), cyber-harassment (Article 4.6), sexting (Article 4.7), or other misconduct does not trigger schools' mandatory reporting obligations, and school officials should be guided by the reporting obligations elsewhere in this agreement, school district policy, and the board attorney (as necessary) to determine the protocol for any violations of the code of student conduct.

Students may also take actions to access a school network, which is unauthorized by the school district. There are instances where school officials may consider unauthorized accessing of a school network to be an internal matter and not advise law enforcement authorities, especially if the nature of unauthorized access does not require investigation regarding the extent of unauthorized access (e.g., when a student accesses a school district network to change a test score).

In situations where the significance of an attack on the integrity of a school computer network has implications for community safety, school officials should notify law enforcement. Accordingly, when notification to law enforcement is appropriate, notification should be made to law enforcement immediately upon learning of unauthorized access.

Should schools make a mandatory report under Article 3 or choose to make a non-mandatory report under Article 4, school officials need to assess the extent of unauthorized access to school systems. When notification to law enforcement is deemed appropriate by educators, the entirety of the investigation should be conducted by law enforcement so as not to compromise the integrity of potential evidence and protect the school community (i.e., educators who may be part of the investigation, victims, etc.).

Financial information, personally identifying information and content, as well as private images may all be contained on a student's computer or personal electronic device. School and law enforcement officials should consult with Article 7.5 regarding any searches and seizures of students and their property.

#### **4.8.2. Blogs, Social Media, and Free Speech Issues**

Blogs and social media 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.

School officials should be aware that blogs or social media posts that involve bias-related acts (see Article 3.16) or threats to cause death, serious bodily injury, or significant bodily injury (see Article 3.10) may trigger mandatory reporting requirements or may constitute HIB, triggering a school's obligations under the *Anti-Bullying Bill of Rights Act* (see Article 4.4).

However, school officials should also be aware that a school's imposition of discipline and county prosecution of blog and social media content can implicate 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.

#### **4.8.3. Reporting of Blogs, Social Media, and Free Speech Issues**

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.

Content on a blog or social media post 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*.

## **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 during an emergency situation. 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 emergency 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, cannabis, 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. Body Worn Cameras by Law Enforcement**

This article addresses body worn camera (BWC) use in schools by law enforcement and the recorded footage obtained from BWCs.



To comply with *P.L.2020, c.129*<sup>6</sup>, while in a school or youth facility (or on school or youth facility property under circumstances where minor children would be in view of the body worn camera), an officer must deactivate their body worn camera, unless they are actively engaging in an investigation of a criminal offense, responding to an emergency call, or if the officer reasonably believes they would be required to use constructive authority or force.

“Constructive authority” shall have the same meaning as defined in the Attorney General’s Use of Force Policy, except that the term shall apply only to the use of the officer’s authority to exert control over a subject when directed against a person who is subject to an investigative detention or arrest (e.g., “show me your hands,” “get out of the vehicle,” etc.), or directed against a person if the officer has un-holstered a firearm or a conducted energy device (e.g., “move out of the way,” “get down,” etc.).

Attorney General Directive No. 2022-1<sup>7</sup> contains a “Body Worn Camera Policy” (the “Policy”) to guide law enforcement. The Policy defines a BWC as a device worn by a law enforcement officer that makes an electronic audio and video recording of activities that take place during any law enforcement action.

Pursuant to section 3.3 (f) of the Policy, “officers assigned to duties within schools or youth facilities as part of the normal daily educational environment, such as School Resource Officers (SROs) and Class III Special Law Enforcement Officers (SLEO IIIs), are not required to wear a BWC. Officers assigned to duties at schools or youth facilities working security or crowd-control functions at special events such as athletic competitions, graduations or similar public events shall be equipped with BWCs but are not required to wear a BWC.”

Pursuant to section 5.4 of the Policy, an officer equipped with a BWC must activate their BWC when responding to or investigating *N.J.S.A. 2C:33-15a(4)*, “possessing or consuming an alcoholic beverage, marijuana, hashish, or a cannabis item.” Additionally, the BWC must remain activated until the encounter has fully concluded and the officer leaves the scene and shall not be deactivated based on a request by a person who is the subject of the suspected violation of *N.J.S.A. 2C:33-15*, or for any other reason.

Pursuant to section 7.1.1 of the Policy, “If an officer is required to de-activate the BWC in accordance with the provisions of this Section, the officer shall narrate the reason for de-activation (e.g., “I am entering a school building where children are present.”). The BWC shall be re-activated as soon as it is safe and practicable to do so if and when the circumstances requiring de-activation no longer exist

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<sup>6</sup> The New Jersey Legislature mandated universal body worn camera (“BWC”) implementation pursuant to *P.L.2020, c.128* and *129*. These two laws require all “uniformed State, county, and municipal patrol law enforcement officers” wear a BWC that electronically records audio and video while acting in the course of their duties, and provide the parameters for the operation of BWCs, including the handling of BWC footage.

<sup>7</sup> <https://www.nj.gov/oag/dcj/agguide/directives/ag-Directive-2022-1.pdf> This Policy updated the 2021-5 Attorney General Directive.

(e.g., the officer is conversing with an adult as part of a criminal investigation while in a place within the school where children would not be in view of the BWC).”

### **7.8.1 Body Worn Camera Footage and FERPA**

Under the Family Education Rights Privacy Act (FERPA), a parent has the right to access, amend, and consent to the release of their child’s education records. The “education records” are records directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution. FERPA prohibits the improper disclosure of personally identifiable information derived from education records. In most cases, footage from BWC is not an educational record under the purview of FERPA, because BWC footage is normally maintained by police departments and not school administration.

FERPA applies to BWC images and video in two scenarios: 1) if a school uses BWC images or video of a student or students and relies upon that as part of a disciplinary action; 2) when a school maintains a BWC video image that is directly related to a particular student or students.

### **7.8.2 Other Records Considerations**

Pursuant to *N.J.S.A. 2A:4A-60*, any images obtained from a law enforcement officers BWC, both audio and video, “. . . pertaining to juveniles charged as a delinquent or found to be part of a juvenile family-crisis, shall be strictly safeguarded from public inspection” and shall not be disclosed to any person, including school personnel, without an order from the court.

Nothing in this provision restricts access of any records, including records of a law enforcement BWC, subject to redaction, to those persons and entities identified in *N.J.S.A. 2A:4A-60a*. In addition, nothing in this provision restricts access to information permitted to be shared with school personnel in accordance with *N.J.S.A. 2A:4A-60c*, *N.J.S.A. 2A:4A-60d*, or *N.J.S.A. 2A:4A-60e*.

For questions or concerns on BWC use in schools or record requests of BWC footage, school districts and chiefs of police should be guided by their county prosecutor and school counsel. It is recommended that individual schools and their law enforcement partners discuss whether the BWC should be employed by SROs or SLEO IIIs, the parameters of their use should they be employed, and how the images and footage should be shared between the agencies.

## **7.9. 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.

#### **7.10. 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 and 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.<sup>8</sup>]***

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<sup>8</sup>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.

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:
  - a. resulted in death or serious bodily injury, or involved an attempt or conspiracy to cause death or serious bodily injury;
  - b. involved the unlawful use or possession of a firearm or other weapon;
  - c. involved the unlawful manufacture, distribution, or possession with intent to distribute a controlled dangerous substance or controlled substance analog;
  - d. 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
  - e. constitutes a crime of the first, second, or third degree.
  - f. *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.

### **8.13. Notification of Handle with Care**

Attorney General Directive 2020-9, the “Statewide Handle With Care (HWC) Directive,” took effect December 31, 2020. The HWC Directive’s goal is to promote communication and partnerships between law enforcement and schools to help provide a safe and supportive academic environment for children who were recently exposed to an adverse childhood experience (ACE) or other traumatic event.

The Directive identifies traumatic events as broadly to include, but not limited to, the following incidents where a child is a victim or witness:

- a house fire or forced displacement from the residence.
- community violence (i.e., fights among gangs or other groups, bullying, shootings).
- the sudden death of an immediate family member or guardian of the child, which the police are made aware.
- A suicide or attempted suicide of an individual who resides in the child’s home where the child is present.
- A drug or alcohol overdose of an individual who resides in the child’s home where the child is present.
- An incident of domestic violence or abuse (physical or sexual).
- Involvement with the Department of Child Protection & Permanency.
- A search warrant executed at the residence.
- The arrest of an individual who resides in the home.

Pursuant to the HWC Directive, law enforcement official must promptly complete a HWC Notice after responding to an incident where the child witnesses or is the victim of a traumatic event. A HWC Notice must be completed for each child that is present, regardless of the age of the child and whether the child attends a public or private school.

To protect the privacy of affected children and families, the HWC Notice shall only include the following information: the child’s name, age, grade, school of enrollment, and date and time of the incident. The HWC Notice shall be sent immediately to the appropriate point of contact at the child’s school of enrollment (prior to the next school day or prior to the child arriving at school, whichever is sooner).

A point of contact identified by the school district or head of the school shall serve as a point of contact (i.e. a School Safety Specialist or other school employee). This individual will be responsible for receiving all HWC Notices for children enrolled in that school(s) and for disseminating the HWC Notices to the appropriate school staff. School officials agree to receive the HWC notice and assess whether the school should take any actions (i.e., postponing assignments, providing breaks, referring to a school counselor) to best provide for the well-being of the student(s). School officials should not inquire with the child about the traumatic event.

If a notice must be sent to a school outside of a law enforcement agency's area of responsibility, the responding officer completes the HWC Notice and sends it immediately to the local law enforcement agency where an affected child's school is located. The receiving local law enforcement agency shall be responsible for sending the completed HWC Notice to the school's appropriate point of contact. If a HWC Notice is returned because the child is not enrolled at the school it was delivered to, the law enforcement agency must make a good faith effort to identify the child's correct school of enrollment.

## **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 guidance from the New Jersey Department of Education. 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, 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 (21<sup>st</sup> 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 Agreement, or the revised section of the Agreement, 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

**\*\*\*School districts and law enforcement are encouraged to attach a list of potential contact names and information to support communication between all parties (e.g., school district liaison, principal, law enforcement officers assigned to schools).**

## Appendix A: Definitions

As used in this Agreement:

*“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.), per N.J.S.A. 24:21-2. The term shall not include distilled spirits, wine, malt beverages, as those terms are defined or used in R.S.33:1-1 et seq., or tobacco and tobacco products, and cannabis and cannabis items as those terms are defined in section 3 of P.L. 2021, c.16 (C.24:6I-33). Included in Schedules I-V are: opiates and opium derivatives, hallucinogenic substances, cannabinoids, coca leaf derivatives (cocaine), methamphetamine, barbiturates (and other sedative drugs), narcotics (codeine), nalorphine, anabolic steroids.

*“Cannabis”* means all parts of the plant *Cannabis sativa L.*, whether growing or not, the seeds thereof, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds, except those containing resin extracted from the plant, which are cultivated and, when applicable, manufactured in accordance with P.L.2021, c.16 (C.24:6I-31 et al.) for use in cannabis products, but shall not include the weight of any other ingredient combined with cannabis to prepare topical or oral administrations, food, drink, or other product. N.J. Stat. § 24:6I-33. Cannabis does not include medical cannabis dispensed to registered qualifying patients pursuant to the “Jake Honig Compassionate Use Medical Cannabis Act,” P.L. 2009, c.307.

*“Deadly weapon”* means any firearm or other weapon, device, instrument, material, or substance, whether animate or inanimate, which in the manner it is used or is intended to be used, is known to be capable of producing death or seriously bodily injury or which in the manner it is fashioned would lead the victim reasonably to believe it to be capable of producing death or serious bodily injury. N.J. Stat. § 2C:11-1

*“Firearm”* means any handgun, rifle, shotgun, machine gun, automatic or semi-automatic rifle, or any gun, device or instrument in the nature of a weapon from which may be fired or ejected any solid projectable ball, slug, pellet, missile or bullet, or any gas, vapor or other noxious thing, by means of a cartridge or shell or by the action of an explosive or the igniting of flammable or explosive substances. It shall also include, without limitation, any firearm which is in the nature of an air gun, spring gun or pistol or other weapon of a similar nature in which the propelling force is a spring, elastic band, carbon dioxide, compressed or other gas or vapor, air or compressed air, or is ignited by compressed air, and ejecting a bullet or missile smaller than three-eighths of an inch in diameter, with sufficient force to injure a person.

N.J. Stat. § 2C:39-1

*“Medical cannabis”* means cannabis dispensed to registered qualifying patients pursuant to the “Jake Honig Compassionate Use Medical Cannabis Act,” P.L.2009, c.307 (C.24:6I-1 et al.) and P.L.2015, c.158 (C.18A:40-12.22 et al.). “Medical cannabis” does not include any cannabis or cannabis item which is cultivated, produced, processed, and consumed in accordance with P.L.2021, c.16 (C.24:6I-31 et al.). N.J. Stat. § 24:6I-33.

*“Operating School Hours”* shall include the time in which a school is in session or when students are engaged in school related activities under the supervision of professional school staff.

*“Planned Arrest”* shall mean an arrest or taking into custody based upon probable cause which was known to a law enforcement officer sufficiently in advance of the time of the actual arrest, whether as a result of an undercover school operation, planned surveillance, or otherwise, so that there was sufficient opportunity for the arresting officer or any other law enforcement officer to apply for and obtain an arrest warrant, even though an arrest warrant may not have been sought or issued. The term shall also include arrests made pursuant to a “clean sweep” (e.g., multiple arrest) operation.

*“Planned Surveillance”* shall mean a planned operation wherein a law enforcement officer(s) enters onto school grounds, including school buildings and school buses, in plainclothes during operating school hours for the purpose of observing or participating in activities associated with the use, possession or distribution of any controlled dangerous substance, alcoholic beverages or firearms or dangerous weapons. This term shall not include observations made by a law 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”* 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 or organ N.J.S.A. 2C:11-1b.

*“Significant bodily injury”* 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. N.J.S.A. 2C:11-1d

*“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.

*“Weapon”* means anything readily capable of lethal use or of inflicting serious bodily injury. The term includes, but is not limited to, all (1) firearms, even though not loaded or lacking a clip or other component to render them immediately operable; (2) components which can be readily assembled into a weapon; (3) gravity knives, switchblade knives, daggers, dirks, stilettos, or other dangerous knives, billies, blackjacks, bludgeons, metal knuckles, sandclubs, slingshots, cesti or similar leather bands studded with metal filings or razor blades imbedded in wood; and (4) stun guns; and any weapon or other device which projects, releases, or emits tear gas or any other substance intended to produce temporary physical discomfort or permanent injury through being vaporized or otherwise dispensed in the air. N.J. Stat. § 2C:39-1



## 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:
  - a. Discuss the implementation of and the need for revising the MOA; and
  - b. 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.

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

<ul style="list-style-type: none"> <li>• 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</li> </ul>	
<ul style="list-style-type: none"> <li>• Send a copy to each district principal and any district participant at annual revision meeting</li> </ul>	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 [SafeSupportiveSchools@doe.nj.gov](mailto:SafeSupportiveSchools@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.

<b>Mandatory Report Offenses</b>
<b>Controlled and Dangerous Substances</b>
Whenever any school employee has reason to believe a student is in unlawful possession of a controlled dangerous substance, related paraphernalia, cannabis, 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).
<b>Firearms and Dangerous Weapons</b>
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).
<b>Planned or Threatened Violence</b>
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).
<b>Sexual Offenses</b>
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).

**Mandatory Report Offenses**

**Assaults on District Board of 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).