

***A UNIFORM STATE
MEMORANDUM OF AGREEMENT
BETWEEN EDUCATION
AND
LAW ENFORCEMENT OFFICIALS***

2011 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 and 2007, 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 15.

*The regulations at N.J.A.C. 6A:16, Programs to Support Student Development are under review. All related statutory language preempts any conflicts or inconsistencies with these regulations.



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*Law Enforcement Activities Occurring on School Grounds
and the Reporting of Suspected Drug and Other Offenses
by School Officials to Law Enforcement*

Article 1. Preamble; Statement of Policy, Findings, and Objectives.

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 15 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 approved by the Attorney General and the Commissioner of Education. The Memorandum of Agreement was revised by the Commissioner of Education and the Attorney General in 1992 and again in 1999 to account for new developments with respect to the scope and nature of the State's evolving alcohol and other drug problem and to address the problem of firearms and other weapons brought on to school grounds. The 2007 revisions, for the first time, addressed school safety and security, harassment, intimidation and bullying, hazing, gang reporting, computer crimes, station house adjustments, school law enforcement units, School Violence Awareness Week and other current issues of concern and provide clarification on issues such as child abuse reporting. The 2011 revisions have been made in response to the Anti-Bullying Bill of Rights Act (P.L.2010, c.122) and to address the assistance provided to attendance officers handling truancy matters.

1.2. Nature of the Problem.

The 1988, 1992, 1999 and 2007 issues of the Memoranda of Agreement have been designed to ensure cooperation between law enforcement and education officials and ultimately to protect the educational environment. The undersigned parties hereby recognize the need to update the Memorandum of Agreement and to reaffirm the commitment to work together as equal partners in addressing evolving problems and emergencies of mutual concern. Recent events in New Jersey and throughout the nation have made clear that while schools are generally safe places for students and staff members, a wide range of offenses are occasionally committed on school grounds,¹ including on school buses or at school-sponsored functions. These offenses against persons or property may involve the actual or threatened infliction of bodily injury, the unlawful use or possession of firearms or other dangerous weapons, arson or fire-setting activities, sexual assault and criminal sexual contact, bias crimes, illegal gambling, vandalism, and theft. It is understood and agreed that the commission of these types of offenses on school grounds, whether directed at students, school employees, or school grounds, not only undermines the educational environment, but can directly endanger the safety and well-being of members of the school community and thus requires an appropriate and decisive response. It is further understood and agreed that there is a demonstrable need for law enforcement and education officials to cooperate and to share information, as appropriate, to address acts of violence or potential acts of violence by students that may occur off school grounds or at times other than during regular school hours, and that may involve victims or potential victims that are not members of the school community. Experience has shown that violent acts committed by children off school grounds can have serious deleterious effects upon the school community, just as acts of violence committed on school grounds can lead to further violence or retaliation at other places.

1.3. Reasons for Special Concern.

The parties to this Memorandum of Agreement are aware of and remain concerned by recent 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

¹ Pursuant to N.J.A.C. 6A:16-1.3, "School grounds" means and includes land, portions of land, structures, buildings, and vehicles, when used for the provision of academic or extracurricular programs sponsored by the school district or community provider and structures that support these 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 local municipalities, private entities or other individuals during those times when the school district has exclusive use of a portion of such land.

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. In developing these policies and procedures, it is understood that it is a crime for any person to knowingly have in his or her possession any firearm on school grounds without the written authorization of the governing officer of the institution, See N.J.S.A. 2C:39-5e and N.J.A.C. 6A:16-5.5(j) and 5.6(j). It is agreed and understood that this statute and these regulations are designed to protect children and the educational environment, and that violations are especially serious matters that warrant a prompt referral to, and response by, law enforcement authorities. Finally, it is understood that it is a crime for any person to dispose of any such weapon, or any firearm unless he or she is licensed or registered to do so. See N.J.S.A. 2C:39-9d.

1.4. Benefit of Referrals to Law Enforcement Authorities.

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

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

The parties to this Agreement understand that in 1991, the New Jersey Commissioner of Health promulgated rules and regulations which classify anabolic steroids as Schedule III controlled dangerous substances. The parties to this Agreement recognize that the problem of the unlawful use of anabolic steroids by school-age children is a particularly serious one, and that this problem is not limited to student athletes, but also involves students who use these especially dangerous substances with the intent to enhance their physical appearance. The parties to this Agreement recognize that these substances often have profound, long-term adverse side effects, and that their unlawful use by children cannot be tolerated. The parties to this Agreement also understand that it is illegal in New Jersey to use, possess, or distribute any stramonium preparation, commonly referred to as "Jimson" weed (see N.J.S.A. 2A:170-77.8 and 2A:170-77.15), 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. (See N.J.S.A. 2C:35-5.2 and 5.3., effective August 8, 1997.)

1.6. Alcohol Consumption.

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

1.7. Prosecution of Drug Offenses.

On May 14, 1998, the Attorney General issued Directive 1998-1 to establish uniform standards and criteria for prosecuting cases under the Comprehensive Drug Reform Act. The Attorney General Directive recognizes that reports of studies indicate that the high rates of drug use by school-age children remain a serious concern. In order to reverse this disturbing trend, the Attorney General Directive made clear that it is a prosecutor's responsibility to deter drug offenses by sending the strongest possible message that there are serious legal consequences for engaging in this form of criminal behavior, and that the law enforcement community is committed to making certain that juvenile drug offenders will be held accountable through the imposition of the mandatory non-incarcerative sanctions prescribed in the Comprehensive Drug Reform Act, including the suspension or postponement of driving privileges, the payment of mandatory Drug Enforcement and Demand Reduction cash penalties based upon the degree of the offense involved, and the requirement that juvenile drug offenders perform at least 100 hours of community service if the offense occurred on or within a drug-free school zone. Attorney General Directive 1998-1 further recognizes that the general and special deterrent effect of these

non-incarcerative sanctions would be seriously eroded if juveniles taken into custody for provable drug offenses were to report to their classmates and friends that these sanctions were not imposed. Moreover, the Directive establishes that it is contrary to public policy and the clearly-expressed intention of the Legislature to foster the appearance that a juvenile is entitled to one "free" drug offense before the statutorily-mandated non-incarcerative sanctions will actually be imposed. Accordingly, the Directive requires prosecutors to seek imposition of these sanctions in all cases, including those that are diverted to a Juvenile Conference Committee, an Intake Services Conference, a Juvenile Family-Crisis Intervention Unit, or any other diversion program.

1.8. Liaisons to School Districts and Law Enforcement Agencies.

It is recognized and agreed that without ongoing active communication and cooperation among school and law enforcement officials the goals of this Agreement cannot be achieved. For this reason, Article 2 of this Agreement requires that law enforcement agencies and school districts designate one or more liaisons.

1.9. Training Requirements.

School districts and law enforcement agencies will comply with the training requirements of P.L. 2005, c. 276, (N.J.S.A. 52:17B-71.8; N.J.S.A. 18A:17-43.1) for safe schools resource officers and for school liaisons to law enforcement, as soon as practicable.

1.10. School-based Community Service Programs.

The Education-Law Enforcement Working Group, in consultation with the Administrative Office of the Courts, also has developed a model program whereby schools can serve as community service sites where students can fulfill their court-ordered community service obligations while on school grounds and under the supervision of school staff. By participating in this voluntary program, schools can help to give Family Part judges more disposition options and "intermediate" sanctions to address certain types of delinquent behavior. It is understood and agreed that schools wishing to participate in this voluntary program should contact their county's Probation Division in order to be registered as an approved site.

Article 2. Liaisons; Law Enforcement Units.

2.1. Liaisons.

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

(*The county superintendent*) and (*the local chief school administrator of each school*), pursuant to N.J.A.C. 6A:16-6.2(b)1, shall similarly designate one or more persons to serve as a liaison to the county prosecutor's office and to the respective local law enforcement agency. 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, per N.J.A.C. 6A:15-5.1, and the review of approved model policies of the School Security Task Force.

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

Each school district shall consider designating one or more law enforcement units for the district, as provided under FERPA (Family Education Rights Privacy Act), pursuant to 20 U.S.C. 1232g(a)(4)(ii) and 34 C.F.R. 99.8. The term "law enforcement unit" means any individual, office, department, division or other component of an educational agency or institution, such as a school administrator or a unit of commissioned police officers or non-commissioned security guards, that is officially authorized or designated by that agency or institution to enforce any local, State or Federal law, or refer to appropriate authorities a matter for enforcement of any local, State or Federal law against any individual or organization other than the agency or institution itself; or maintain the physical security and safety of the agency or institution. [34 C.F.R. 99.8(a)(1)]. The law enforcement unit may be only one person, and does not have to be a

law enforcement officer. All school security equipment shall be the responsibility of the law enforcement unit. All school security records, including but not limited to, school security campus or school bus videotapes, records relating to weapons screening devices, visitor logs, and any records of interviews relating to potential violations of the law are created and maintained by the designated law enforcement unit. These records are not deemed to be student records or educational records [20 U.S.C. 1232g(a)(4)(ii)]. See also Article 4.3.3 of this Agreement.

2.3. 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, and that the matter has been referred to the law enforcement agency.

2.4. Stationhouse Adjustments.

Certain minor juvenile delinquency offenses may be resolved by police departments through the means of stationhouse adjustments. This is a voluntary process that, if successful, diverts the case from formal processing, and avoids the creation of a juvenile delinquency record for the juvenile. Since no charge is filed, the school need not be provided notice of a stationhouse adjustment and need not be involved in the process. However, when the school district is a victim of a minor juvenile offense, such as a minor theft or offense involving trespass or the destruction of school grounds, the school shall be notified and should be included in the stationhouse adjustment process, in the same manner as any other victim. Schools are not precluded from providing community service opportunities or other programs for stationhouse adjustment programs.

Article 3. Law Enforcement Operations.

3.1. Definitions

As used in this Agreement:

“*Controlled Dangerous Substance*” shall mean a drug, substance or immediate precursor as defined at N.J.S.A. 2C:35-2, and shall include controlled substance analogs. Pursuant to regulations adopted by the Department of Health, the term includes anabolic steroids, and shall also be deemed to include "Jimson" weed (stramonium preparation; N.J.S.A. 2A:170-77.8) and gamma hydroxybutyrate (GHB), Rohypnol (“roofies”), and flunitrazepam. (See N.J.S.A. 2C:35-5.2 and 5.3.)

“Deadly weapon” means any weapon or device within the meaning of N.J.S.A. 2C:39-1r or 2C:39-3. and includes any device readily capable of lethal use or of inflicting serious bodily injury, including, but not limited to, gravity knives, switchblade knives, daggers, dirks, stilettos, or other dangerous knives, blackjacks, bludgeons, metal knuckles, cesti or similar leather bands studded with metal filings or razor blades embedded in wood 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 (i.e., “mace,” “pepper spray,” “paintball” guns). “Deadly weapon also means any ammunition for a firearm.

“Firearm” means any firearm within the meaning of N.J.S.A. 2C:39-1f, and includes any handgun, rifle, shotgun, machine gun or automatic or semiautomatic rifle regardless of whether such firearm is operable or loaded with ammunition. The term includes “BB” and “air” guns.

“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 (see N.J.S.A. 2C:35-7) for the purposes of observing or deterring any criminal violation or civil disturbance.

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

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

“Spontaneous Arrest,” in distinction to a planned arrest, shall mean an arrest or taking into custody based upon probable cause to believe that an offense is being committed in the arresting officer's presence under circumstances where the officer could not have foreseen with certainty that the specific offense would occur and thus where the arresting officer had no reasonable opportunity to apply for an arrest warrant. The term shall also include any arrest or taking into custody in response to a request by a school official pursuant to Article 7.1 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 Addendum 1 to this Agreement.

3.2. 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. Accordingly, the rules and procedures for approving and implementing an undercover school operation are set out in detail in Addendum 1 to this Agreement, which Addendum is made part of this Agreement as if set out fully herein.

3.3. Planned Surveillance.

3.3.1. 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 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.

3.3.2. 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, including school buildings and school buses, where drug use or trafficking or weapons-related activity is believed to occur frequently.

3.4. Routine Patrols.

3.4.1. 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.

3.4.2. Notice to School Officials.

Where a patrol plan requires an officer periodically to enter onto school grounds, including school buildings and school buses, 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.

3.4.3. 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.

3.5 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)*.

3.6 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.

Article 4. Obligation to Report Offenses and Preserve Evidence: Controlled Dangerous Substances, Firearms, Planned or Threatened Violence, Child Abuse and Other Offenses.

4.1 Requirement to Report Offenses Involving Controlled Substances.

Subject to the provisions of Articles 4.2 and 4.3 of this Agreement and N.J.A.C. 6A:16-6.2(b)9 and 6.3(a), school officials shall promptly notify (*police department and/or prosecutor*) whenever any school employee has reason to believe a violation of the Comprehensive Drug Reform Act has occurred, except when, pursuant to N.J.A.C. 6A:16-6.3(a)3, a student has voluntarily and on his or her own initiative sought treatment or counseling for a substance abuse problem, provided the student was not involved in drug distribution activities and further provided the student participates in an appropriate treatment or counseling program. For the purposes of this Agreement and pursuant to N.J.A.C. 6A:16-6.3(a)3i, an admission by a student of a violation of the Comprehensive Drug Reform Act which is in response to questioning initiated by a law enforcement officer or school employee shall not constitute a voluntary, self-initiated request for counseling and treatment.

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. Pursuant to N.J.A.C. 6A:16-4.3(a)3i, however, school officials shall disclose to law enforcement authorities the identity of a student reasonably believed to be in possession of a controlled dangerous substance or related paraphernalia or a student reasonably believed to be involved or implicated in distribution activities regarding controlled dangerous substances. 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.

4.2 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 referral 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 shall be strictly safeguarded in accordance with applicable state and federal laws and regulations.

4.3 Confidentiality Laws.

4.3.1. 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 the Division of Youth and Family Services (DYFS) 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 new confidentiality statute in no way relieves the duty established pursuant to N.J.S.A. 9:6-8.10, which requires any citizen, including a school administrator, teacher, counselor, school nurse and substance awareness coordinator, to inform both DYFS and a law enforcement agency immediately when there is reasonable cause to believe that a child is or has been abused or neglected.

4.3.2. 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 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. Furthermore, the records of a designated “law enforcement unit” do not constitute student records [20 U.S.C. 1232g(a)(4)(ii)].

4.3.3. Records of Law Enforcement Units.

Records of a “law enforcement Unit” designated pursuant to Article 2.2 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.

4.4. Securing Controlled Substances and Paraphernalia.

Whenever a school employee seizes or comes upon any substance believed to be a controlled dangerous substance or drug paraphernalia, school officials *shall immediately* advise (*the local law enforcement agency having patrol jurisdiction*) and shall 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 shall 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, see N.J.S.A. 2C:35-10c., it is understood that under no circumstances may any person destroy or otherwise dispose of any controlled dangerous substance or drug paraphernalia except by turning over such substance or item to the responding law enforcement officer.

4.5. Prompt Response to Controlled Substance Referrals; Preserving Chain of Custody.

(*The law enforcement agency*) shall dispatch an officer as promptly as possible to take custody and secure the controlled dangerous substance or drug paraphernalia. School officials shall 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, except that school officials need not provide information concerning the identity of a student from whom the controlled dangerous substance or item was obtained where the substance or item was turned over by a student to a substance awareness coordinator or other individual who holds either a school nurse, school nurse/non-instructional, school psychologist, school counselor, school social worker or student personnel service endorsement on the Educational Services Certificate in the course of, or as a result of, school-based intervention, assessment, referral for evaluation, evaluation or referral for treatment, as those terms are defined in N.J.A.C. 6A:16-1.3 and delineated in N.J.A.C. 6A:16-3(a) or participation in a community-based substance abuse treatment program where: 1) the student voluntarily and on his or her own initiative turned over the substance to a school employee; and 2) there is no reason to believe that the student was involved in distribution activities; and 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(a) or community-based alcohol or other drug abuse treatment program. Nothing in this paragraph shall 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 shall be strictly safeguarded in accordance with applicable state and federal laws and regulations.

4.6. Requirement to Report Incidents Involving Firearms.

Subject only to the provisions of Articles 4.2 and 4.3 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, pursuant to N.J.A.C. 6A:16-5.5 and 6.3(b), develops reason to believe that a firearm has unlawfully been brought onto school grounds, or that any student or other person is in unlawful possession of a firearm, 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.

4.7. Securing Firearms, Ammunition and Dangerous Weapons.

Whenever a school employee seizes or comes upon any firearm or dangerous weapon, school officials may in the case of a dangerous weapon other than a firearm, and *shall* in the case of (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, *immediately* advise *(designated law enforcement official)* and secure the firearm, ammunition or weapon pending the response by the *(law enforcement agency)* to retrieve and take custody of the firearm, ammunition or dangerous weapon, pursuant to N.J.A.C. 6A:16-6.2(b)8 and 6.4. School employees having custody of a firearm, ammunition or dangerous weapon shall 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 shall 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.

4.8. Law Enforcement Response to Mandatory Referrals.

(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 4.7 of this Agreement *shall immediately* dispatch an officer to take custody and secure the firearm or other weapon. Except as may be specifically provided in Articles 4.2 and 4.3 of this Agreement, school officials shall 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.

4.9. Interdiction of Weapons.

It is understood and agreed that the (*law enforcement agency*) shall 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*) shall scrupulously comply with the notification requirements for planned arrests as set forth in Article 7.4 of this Agreement.

4.10. Requirement to Report Incidents Involving Planned or Threatened Violence.

Notwithstanding any other provision of this Agreement, it is agreed that (*school official*) shall 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 reference the risk management and assessment tools explained in the NJDOE publication titled *School Safety and Security Manual: Best Practices Guidelines*. The school official shall 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 shall 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 shall be liberally construed with a view toward preventing future acts of violence.

4.11. Violence Intervention.

The (*law enforcement agency*) receiving information about a threatened, planned, or intended act of violence pursuant to Article 4.10 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.

4.12. Requirement to Report Sexual Offenses.

Subject only to the provisions of Article 4.2 and 4.3 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 crime involving sexual penetration or criminal sexual contact has been committed on school grounds, pursuant to N.J.A.C. 6A:16-6.3(d).

4.13. Reporting Other Offenses.

Subject to the provisions of Articles 4.2 and 4.3 of this Agreement, it is agreed that *(designated school official)* should notify *(designated law enforcement official)* whenever any school employee develops reason to believe that a criminal offense has been committed on or against school grounds, including on school buses or at school-sponsored functions. 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 shall 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 shall any school employee prevent or discourage the victim of an offense from reporting the offense to a law enforcement agency.

In deciding whether to report the presence or seizure of a non-firearm weapon that was not actually used or threatened to be used in committing an assault or other offense, the *(school official)* shall consider the nature of the weapon and any lawful purposes that it might have, the age of the student, and the student's intent. While it is generally not necessary to report the seizure of small pen knives or Swiss-Army style knives, it is understood and agreed that law enforcement shall be notified of the seizure of any switchblade, gravity, or ballistic knife, stun gun, or metal knuckles. It is further understood and agreed that school officials shall report 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.

4.14. Law Enforcement Response to Voluntary Referrals.

(The law enforcement agency) receiving information about the commission of an offense pursuant to Article 4.6 of this Agreement shall respond promptly and, when there is probable cause to believe that an offense has been committed, shall handle the matter in accordance with the provisions of the Attorney General's Executive Directive 1990-1 Concerning the Handling of Juvenile Matters by Police and Prosecutors. Except as may be specifically provided in Articles 4.2 and 4.3 of this Agreement, school officials should, in the absence of compelling reasons, provide the responding law enforcement officer information necessary to establish the chain of

custody and the circumstances of the seizure or discovery of any dangerous weapon or item, other than a firearm or other weapon dealt with in Article 4.8 of this Agreement or a controlled dangerous substance or drug paraphernalia dealt with in Article 4.5 of this Agreement, which was or may have been unlawfully possessed or used in connection with or derived from criminal activity. Nothing in this paragraph shall 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 substance abuse counseling or treatment program and obtained in the course of providing diagnosis or treatment where such referral or transmittal would constitute a violation of federal or state confidentiality laws or regulations, and such information and/or records shall be strictly safeguarded in accordance with such applicable federal and state laws and regulations.

4.15. Arrest Protocols Following Voluntary Referrals.

It is understood and agreed that the arrest protocols set forth in Article 7 of this Agreement, which are designed to minimize the disruption of the school environment, shall be followed whenever a student is to be arrested on school grounds for any offense, including offenses which do not involve controlled dangerous substances or drug paraphernalia. Similarly, it is understood and agreed that the notification procedures set forth in Article 6 of this Agreement shall be followed whenever a student or non-student is arrested on school grounds, or whenever a student is arrested off school grounds during operating school hours for a violation of any criminal statute, including an offense which does not involve controlled dangerous substances or drug paraphernalia. It also is understood and agreed that the (*police department*) shall at all times comply with the patrol notification and on-site reporting procedures set forth in Articles 3.4.2 and 3.4.3 of this Agreement, whether the purpose of the law enforcement entry onto school grounds, including school buildings or school buses, is to enforce the Comprehensive Drug Reform Act or any other criminal statute.

4.16. Advice on Juvenile Justice System Practices and Procedures.

The (*designated law enforcement official*) and the county prosecutor shall 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 shall provide, on an ongoing basis, information concerning the services and resources available through the Juvenile Justice System to deal with delinquent or at-risk youth and families in crisis, including stationhouse adjustments, referrals to Juvenile Conference Committees, Juvenile-Family Crisis Intervention Units, and other pre-adjudication diversion programs, intervention services, and post-adjudication disposition options that are available in the county.

4.17. 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 shall 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.

4.18. Possession or Consumption of Alcoholic Beverages.

It is understood that it is unlawful for a person under the age of 21 to purchase or knowingly consume an alcoholic beverage on school grounds, including on school buses or at school-sponsored functions. See e.g., N.J.S.A. 2C:33-15 and N.J.A.C. 6A:16-4 et seq. So too, it is an offense for an adult to bring or possess an alcoholic beverage on school grounds without the express written permission of the school board, chief school administrator or building principal. See N.J.S.A. 2C:35-16. It is agreed and understood that these statutes are designed to protect children and the educational environment and that violations of these statutes should be deemed to be serious matters and may be reported to law enforcement, and shall warrant immediate response by law enforcement authorities in accordance with the provisions of this Agreement. Where appropriate, the law enforcement agency or the county prosecutor may elect to forego formal charging prosecution in favor of pursuing school disciplinary proceedings, pursuant to N.J.A.C. 6A:16-7, or other appropriate juvenile justice alternatives, including, but not limited to, a “stationhouse adjustment.”

4.19. Reports of Child Abuse or Neglect; Potential Missing or Abused 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 the Division of Youth and Family Services (DYFS), New Jersey Department of Children and Families (DCF), as set forth below.

4.19.1 Reports of Child Abuse or Neglect to DYFS.

Any person having reasonable cause to believe that a student has been subjected to child abuse or neglect must immediately report the matter to DYFS 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 DYFS Child Abuse Hotline is to be contacted at 1-877-NJABUSE.

4.19.2. 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 DYFS. It is only required that both notifications are made.

4.19.3. Notification of DYFS 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 DYFS Hotline when the school official confirms that the DYFS Hotline has been contacted by school staff.

4.19.4. Law Enforcement Response.

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

4.19.5. Notification of Parents or Guardians.

Notification to the student's parents or guardians shall **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 shall be contacted. Failure to follow this procedure may compromise the integrity of an investigation and place the child at risk.

4.19.6 Anonymity.

Individuals who report abuse may or may not be entitled to anonymity. While DYFS 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.

4.19.7. 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 referral 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 shall 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.

4.20 Offenses Involving Computers, the Internet and Technology.

4.20.1. Purpose.

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

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

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

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

In addition to accessing computer systems, it has unfortunately become commonplace for juveniles to utilize electronic forms of communication to harass and threaten other students or individuals. The mere fact that the communication is in electronic form, rather than oral or written form is irrelevant. School personnel should be guided by the reporting obligations elsewhere in this agreement. School personnel should be mindful of the fact that forensic computer analysis of an individual computer or network can result in valuable evidence for an investigation. Therefore, when notification to law enforcement is appropriate, the entirety of the investigation should be conducted by law enforcement so as not to compromise the integrity of potential evidence.

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

4.20.3. Blogging and Free Speech Issues.

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

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

Law enforcement officials, while vigilant in the pursuit of criminal activity, is often faced with the issue of "Free Speech" under the Federal and New Jersey Constitutions. Prosecution of individuals who harass or threaten specific groups or individuals is commonplace. However, law enforcement is 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. Whenever a school administrator learns of blogging information which rises to the level of threats or harassment, the school official shall immediately notify law enforcement. Law enforcement authorities have the ability to preserve evidence before the author has an opportunity to alter it. If such information is brought to the attention of law enforcement, a legal determination will be made on whether the information contained in the blog is constitutionally protected and whether it is criminal in nature.

Article 5. School Access to Law Enforcement Information.

5.1. 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 Memorandum of Agreement. *[Optional: Pursuant to § 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.²]*

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, including on school buses or at school-sponsored functions, or was committed against an employee or official of the school;

²This 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.

- 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:
 - resulted in death or serious bodily injury, or involved an attempt or conspiracy to cause death or serious bodily injury;
 - involved the unlawful use or possession of a firearm or other weapon;
 - involved the unlawful manufacture, distribution, or possession with intent to distribute a controlled dangerous substance or controlled substance analog;
 - involved the intimidation of an individual or group of individuals because of race, color, religion, gender, disability, sexual orientation, or ethnicity; or
 - constitutes a crime of the first or second degree.

5.2. 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.

5.3. 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, whether occurring on or away from school grounds, pursuant to N.J.A.C. 6A:16-7.6.

5.4. 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.

5.5. Disclosure of Adult Student Information.

Where a student who has been arrested or is under investigation is eighteen 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 Articles 5.1, 5.2, 5.3, and 5.4 of this Agreement.

5.6. 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, 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.

5.7. 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, 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 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."

5.8. 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 5.8.3 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.

5.8.1. 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.

5.8.2. 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.

5.8.3 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.

5.8.4 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 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.

5.9 Notification to County Superintendent.

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

Article 6. Notice of Arrests.

6.1. 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-60c. See Article 5.1 of this Agreement for a synopsis of those laws.

6.2. 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 5.1 of this Agreement for a synopsis of those laws.

6.3. 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 is 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 5.1 of this Agreement.

6.4. 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)4 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 7. 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.

7.1. 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.

7.2. 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.

7.2.1. 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.

7.2.2. 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.

7.2.3 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.

7.3. Other Spontaneous Arrests.

7.3.1. 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.

7.3.2. 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.

7.4. 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 8. School Safety and Security.

8.1. Development of School Safety and Security Plans.

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, man made, biological and student culture and climate. The school safety and security plans should include procedures for quickly communicating to faculty members that a crisis situation exists, and procedures for minimizing the risk of physical harm to students and faculty by reducing their exposure to all hazards. Just as it is necessary to establish protocols and to conduct periodic "drills" for responding to emergencies that require prompt and orderly evacuation, such as fires (see N.J.S.A. 18A:41-1), so too it is appropriate to develop and rehearse plans and procedures for "locking down" classrooms and buildings to restrict the movement of children and staff and to minimize their exposure to hazardous situations. It is understood and agreed that the parties to this Agreement shall, during the course of the conference convened pursuant to Article 13, discuss issues and concerns regarding school safety and security plans, pursuant to N.J.A.C. 6A:16-5.1 and Article 13.3 of this Agreement.

8.1.1. 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 school safety and security plans, procedures and mechanisms established by school officials, pursuant to N.J.A.C. 6A:16-5.1 and Article 13 of this Agreement, shall be developed in consultation with law enforcement agencies, emergency management planners, health and social services provider agencies and school and other community resources, as appropriate. Pursuant to N.J.A.C. 6A:16-5.1(b), the plans, procedures and mechanisms shall be consistent with the provisions of N.J.A.C. 6A:16-5.1 and the format and content established by the Domestic Security Preparedness Task Force, pursuant to N.J.S.A. App. A:9-64 et seq., and the Commissioner of Education (e.g., the Department of Education confidential publication titled *School Safety and Security Manual: Best Practices Guidelines*), and shall be reviewed annually and updated, as appropriate.

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

8.1.2. Consultation in Development of School Safety and Security Plans (SSSPs).

It is understood and agreed that, pursuant to Article 13.3 and N.J.A.C. 6A:16-5.1(b), the chief school administrator shall consult with 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, 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.

8.1.3. Format and Contents of SSSPs.

The school safety and security 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. The parties agree that all school safety and security plans 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.

8.1.4. 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 the school district's school safety and security plans, 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 school safety and security plans, 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 school safety and security plans or any important revisions to the plans to law enforcement officials as agreed. 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 anytime 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.

8.1.5. School Staff In-service Training on SSSPs.

School officials shall annually consult with law enforcement personnel regarding the in-service training program required for all district board of education employees, pursuant to N.J.A.C. 6A:16-5.1(d), 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, School Safety and Security.

8.2. Implementation of Approved School Security Task Force Recommendations.

The parties agree to work together to implement the approved recommendations of the Governor's 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.

8.2.1. 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.

8.2.2. Joint Training.

Law enforcement and school personnel may participate in joint training on law enforcement and education school security policies, as needed. Joint training exercises may include, but are not limited to, natural disasters, bomb threats, lockdown procedures and active shooters.

8.3. 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.

8.4. “Bias” Crimes and “Bias-Related” Acts.

Acts predicated upon prejudices, including race color, ethnicity, national origin, ancestry, religion, gender, sexual orientation, gender identity or expression, mental, physical or sensory disability, or by any other distinguishing characteristic tear at the fabric of our society, pose grave risks to the physical and emotional well being of children, and can quickly lead to retaliation and an escalation of violence both on and off school grounds. In 1993 the Department of Law and Public Safety and the Department of Education developed a sample “Memorandum of Understanding Concerning Suspected Bias Crimes or Bias Incidents Occurring on School Grounds or Involving Students.” The sample Memorandum of Understanding, which explains when school officials should report suspected bias crimes or bias-related acts to law enforcement authorities, was signed by local education and law enforcement officials in many jurisdictions.

In January 2011, the Anti-Bullying Bill of Rights Act (N.J.S.A. 18A:37-13 et seq.) was signed into law, amending the previous law adopted in 2002 and amended in 2007 and 2008. Under the new law, the Department of Education was required to aide schools in complying with the statute by revising its model policy and guidance, which is titled *Model Policy and Guidance for Prohibiting Harassment, Intimidation and Bullying on School Property, at School-Sponsored Functions and on School Buses*, and can be found at: <http://www.state.nj.us/njded/parents/bully.htm>. In 2005, the State Board of Education adopted regulations at N.J.A.C. 6A:16-7.1 regarding codes of student conduct. Pursuant to N.J.A.C. 6A:16-7.1(c)7, the code of student conduct must include or be consistent with the board of education’s harassment, intimidation and bullying policy.

8.4.1 Reporting of “Bias” Crimes and “Bias-Related” Acts.

The school district agrees to report all suspected “bias” crimes and “bias-related” acts to law enforcement officials. Law enforcement officials will determine whether they have jurisdiction over the matter and the appropriate law enforcement response.

8.5. Hazing.

Hazing is a separate offense under N.J.S.A. 2C:40-3. Hazing is a disorderly persons offense when the conduct, other than competitive athletic events, may place another person in danger of bodily injury. When serious bodily injury results, the offense is aggravated hazing, which is a crime of the fourth degree. The consent of the person hazed is not a defense. N.J.S.A. 2C:40-4. Any other criminal conduct under the New Jersey Code of Criminal Justice also may be charged. N.J.S.A. 2C:40-5.

Hazing may be considered to be bullying. While bullying is not a separately defined offense under the New Jersey Code of Criminal Justice, the conduct that constitutes bullying frequently constitutes one or more criminal or disorderly persons offenses. Common bullying offenses include assault, harassment, threats, robbery and sexual offenses

8.5.1. Definition.

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 psychologically stressful. These activities can be humiliating, demeaning, intimidating and exhausting, all of which results in physical or emotional discomfort. Hazing is about group dynamics and proving one's worthiness to become a member of a specific group. The newcomer, or victim, is hazed. Once accepted by the group, the victim becomes a bystander and watches others get hazed. Eventually the bystander typically achieves senior status and power, and becomes a perpetrator.

8.5.2 Reporting of Hazing.

The school district agrees to report to law enforcement officials any hazing incident that involves a criminal offense. School officials should be aware that hazing which involves the participation of a coach or a teacher may constitute child abuse in some circumstances.

8.6 Harassment, Intimidation and Bullying

School harassment, intimidation and bullying (HIB) has a potentially devastating effect, on the individual victims, the offenders and the entire educational community. On January 5, 2011, New Jersey enacted the "Anti Bullying Bill of Rights Act." (P.L.2010, c.122.) This act sets forth standards for preventing, reporting, investigating and responding to incidents of HIB of students on school grounds, at any school-sponsored function, on a school bus and off school grounds. Although the act primarily addresses the obligations of schools and school districts and does not create any new criminal offenses, it is important to provide for the coordination of efforts between law enforcement and schools in HIB cases (see Article 13.6), particularly when

the HIB involves conduct that may constitute a crime or a disorderly persons offense under the New Jersey Code of Criminal Justice.

8.6.1 Differing Terminology and Approaches

It is important to clarify the differing terminology and approaches used by education and law enforcement in order to avoid confusion. First, although harassment, intimidation and bullying (HIB) is defined in the “Anti-Bullying Bill of Rights Act,” there is no such definition in the New Jersey Code of Criminal Justice, and there is no criminal offense of “bullying” that can be charged or prosecuted as juvenile delinquency. In order for a law enforcement agency to investigate or prosecute a course of conduct that constitutes “bullying” there must be conduct that violates one or more provisions of the Code of Criminal Justice. Common bullying offenses include assault, harassment, threats, robbery and sexual offenses. However, HIB can exist without conduct that rises to the level of a violation of the Code of Criminal Justice. Furthermore, in investigating HIB under the “Anti-Bullying Bill of Rights Act” schools are not bound by the “beyond a reasonable doubt” standard of proof that is required in criminal or juvenile delinquency proceedings. Law enforcement investigations must focus on determining whether conduct violates one or more sections of the Code of Criminal Justice. School investigations of HIB must determine whether conduct meets the definition of HIB that is set forth in the “Anti-Bullying Bill of Rights Act.” (N.J.S.A. 18A:37-14.)

8.6.2 Definition of Harassment, Intimidation or Bullying

The “Anti-Bullying Bill of Rights Act” sets forth the definition to be used by schools:

"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. (N.J.S.A. 18A:37-14.)

8.6.3 Consultations Regarding Adoption of Policy

The “Anti-Bullying Bill of Rights Act” requires each school district to adopt a policy prohibiting harassment, intimidation or bullying on school property, at a school-sponsored function, on a school bus and off school grounds under certain circumstances. (N.J.S.A. 18A:37-15a and 15.3.) The act further requires that the policy 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 shall make available a representative to participate in this process (see Article 13.6).

8.6.4 Information Sharing; Obligation to Report Offenses and Preserve Evidence

8.6.4.1 Disclosing Reports of Bullying to Schools

In addition to the obligations to share law enforcement information with schools set forth in Article 5 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 harassment, intimidation or bullying, as defined in the “Anti-Bullying Bill of Rights Act.” (N.J.S.A. 18A:37-14; see Article 8.6.2.)

Such reports are permissible pursuant to the authority of N.J.S.A. 2A:4A-60c, where a juvenile who is a student has been charged with an offense, or pursuant to N.J.S.A. 2A:4A-60e, which permits a law enforcement agency to verbally notify the principal of the school at which the juvenile is enrolled where the juvenile is under investigation or has been taken into custody but has not been formally charged with the commission of any act that would constitute an offense if committed by an adult, provided that the information may be useful in maintaining order, safety, or discipline in the school or in planning programs relevant to the juvenile’s educational and social development. Such notification also shall be provided when the alleged offending student is an adult. (See Article 5.5 of this Agreement.)

8.6.4.2 Reporting Harassment, Intimidation or Bullying to Law Enforcement

Since “bullying” is not a criminal offense, there is no obligation on the part of school personnel to report all “bullying” investigations to a law enforcement agency. However, since the conduct that may constitute harassment, intimidation or bullying (HIB) may include an offense under the Code of Criminal Justice, such offenses must be reported to law enforcement when the conduct constitutes offenses that qualify as mandatory referrals under Article 4 of this

Agreement. Other offenses may be reported to law enforcement pursuant to the voluntary referral provisions of Article 4.13 of this Agreement. When making mandated or voluntary reports, school officials agree to indicate any suspicions or evidence that the conduct was bias-related or 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.

8.6.4.3 Preservation of Evidence; Chain of Custody

Whenever a school employee seizes a document, an electronic device or other item, which school officials may believe contains evidence of harassment, intimidation or bullying, school employees having custody of the document, electronic device or other item shall take reasonable precautions to prevent its theft, destruction or unlawful use by any person. It is understood and agreed that under no circumstances shall any person alter, destroy or otherwise dispose of any such evidence. Such evidence shall be maintained in a locked and secure location and the handling of such evidence shall be documented in order to provide a record that no one has had an opportunity to tamper with the evidence.

8.6.5 Coordination of Investigations

It has been the usual practice that when a criminal investigation is being conducted, schools suspend any disciplinary investigations arising out of the same incident in order to avoid hampering the ongoing criminal investigation. However, the “Anti-Bullying Bill of Rights Act” provides mandatory time frames for the completion of school investigations and hearings, and contains no provisions suspending those requirements while a criminal investigation is pending. (N.J.S.A. 18A:37.15.)

In order to accommodate the needs of both school districts and law enforcement agencies, the parties acknowledge that harassment, intimidation or bullying (HIB) investigations must be completed by schools within the statutory 10-school-day time frame. (N.J.S.A. 18A:37-14a.) However, the purposes of school and law enforcement investigations are different, and efforts can and must be coordinated in order to avoid hampering the efforts of either party. Law enforcement investigations focus on whether there has been a violation of the Code of Criminal Justice. School investigations must determine whether HIB has occurred pursuant to the definition contained in the “Anti-Bullying Bill of Rights Act.” (N.J.S.A. 18A:37-14.) This definition does not require that a school district establish whether or not the conduct also violates the Code of Criminal Justice.

To better coordinate these investigations, school and law enforcement officials should jointly review these matters as they plan or proceed with their respective investigations. In keeping with these differing obligations, law enforcement agencies may request that schools not interview certain witnesses or not seek to obtain certain evidence in order to avoid interfering with an ongoing criminal investigation. Law enforcement agencies also may request that a victim or witnesses not provide statements to school investigators when such statements may be detrimental to an ongoing criminal investigation. The school shall complete its investigation using the information that is available within the statutory 10-school-day period. In the event that additional information is forthcoming upon the completion of a criminal investigation, the “Anti-Bullying Bill of Rights Act” permits the school anti-bullying specialist to amend the original report of the results of the investigation to reflect the information. (N.J.S.A. 18A:37-14a.) School officials agree to share information from the investigation with law enforcement agencies, as appropriate.

8.6.6. 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 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. (See also Article 5.6 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 shall notify the County Prosecutor of the proposed list of witnesses at least 5 days prior to the hearing.

Article 9. School Searches.

9.1. 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.

9.2. Notice to Law Enforcement of Seizure of Contraband.

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

9.3. 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.

9.4. 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 Statewide Narcotics Task Force, to the Assistant Attorney General in charge, pursuant to N.J.A.C. 6A:16-6.2(b)5vii.

9.5. 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.

9.6. 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 designee*). Pursuant to the provisions of Chapter 14.6 of the “*New Jersey School Search Policy Manual*,” a school official is encouraged also to seek legal advice from the school district’s attorney. The manual can be found at <http://www.state.nj.us/lps/dcj/school>.

9.7. Requests to Use Drug-Detection Canines.

It is understood and agreed that all inspections of lockers, desks, or other objects or 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 (1998); 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. 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 4.1 and 4.4 of this Agreement.

Article 10. 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. 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.

Article 11. “Tiplines” and Crime Prevention Programs.

Any “tiplines” that may be established for the reporting of suspicious activity occurring on school grounds, including on school buses or at school-sponsored functions, or within Drug-Free School Zones, or for the reporting of any other crimes or planned or threatened acts of violence, shall be staffed by law enforcement officers, and it is understood that the role of school officials with respect to the operation of such tiplines is limited to publicizing to members of the school community the existence and purpose of these tiplines. The (*school official*) hereby agrees to post notice of any such law enforcement 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.

Article 12. Law Enforcement Participation in Educational Programs.

12.1. 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.

12.2. 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 12.1 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, interpersonal and life skills), 2.3 (Drugs and Medicines – medicines, alcohol, tobacco, and other drugs and dependency/addiction and treatment), 2.4 (Human Relationships and Sexuality – physical, emotional and social aspects of human relationships and sexuality) and Standard 9.2 (Consumer, Family and Life Skills – 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.

12.3. 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 county superintendent of schools, 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 13. Joint Consultation.

13.1. 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 education and law enforcement agencies, pursuant to N.J.A.C. 6A:16-6.2(b)12.

13.2. 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.

13.3. School Safety and Security Consultations.

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) and stipulated in Articles 8.1.5 and 8.2.2. of this agreement. Examples of school safety and security training that could involve law enforcement officials include providing guidance on the approved model policies of the School Security Task Force; reviewing scenarios for school safety and security drills; addressing internet safety, cyber-bullying and gangs; and reviewing the ten key findings reported by the United States Secret Service in the publication titled *Threat Assessment in Schools: A Guide to Managing Threatening Situations and to Creating Safe School Climates*. Law enforcement officials shall identify school safety and security issues and concerns and advise the county prosecutor and chief school administrator, as appropriate.

13.4. School Safety and Security Planning.

It is further understood and agreed that, pursuant to Article 13.3, Article 8 and 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. It is understood and agreed that law enforcement officials shall review and, where necessary, provide written comments to the chief school administrator concerning the required school safety and security plans 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 school safety and security plan 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 13.5 the conferees shall discuss the feasibility and desirability of implementing a Safe Schools Resource Officer program.

13.5. Safe Schools Resource Officers.

The Attorney General's Education-Law Enforcement Working Group has developed resource material for a Safe Schools Resource Officer Program, recognizing that the presence of a police officer can be a deterrent in fighting drug use and sales and other forms of criminal behavior in schools. Besides enhancing school safety and security and facilitating the handling of delinquency complaints, the assignment of a safe schools resource officer on a full or part-time basis can help to enhance the working relationship between education and law enforcement officials. Most importantly, a Safe Schools Resource Officer Program provides these specially trained officers an opportunity to interact with children in positive and constructive ways. It is understood and agreed that the parties to this Agreement shall, during the course of the annual conference convened pursuant to Article 16 of this Agreement, discuss the feasibility and desirability of implementing this form of community policing.

13.6. Harassment, Intimidation and Bullying Policies.

It also is understood that, pursuant to N.J.A.C. 6A:16-7.9(a)1, the harassment, intimidation and bullying policies required pursuant to N.J.S.A. 18A:37-13 et seq. and N.J.A.C. 6A:16-7.9, 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:16-7.9(d). It also is understood that the county superintendent of schools shall maintain a current file copy of the harassment, intimidation and bullying policies for review by both education and law enforcement officials, upon request.

Article 14. 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)14, 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 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 15. Maintenance of the Agreement.

15.1 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 (*county superintendent of schools*), the (*police department*), and the (*county prosecutor*). Pursuant to N.J.A.C. 6A:16-6.2(b)15ii, 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.

15.2 Ongoing Communication.

The parties to this Agreement recognize the value of cooperation and communication with respect to drug, weapons, violence and school security problems as they relate to students and school grounds, and believe that entering into this Agreement will help them to be more effective in managing these problems and in making certain that schools are safe havens for law abiding children, and not convenient marketplaces or resorts for drug dealers and users. It is the intent of the parties to this Agreement to take all steps as may be appropriate and lawful to fulfill the applicable regulations at N.J.A.C. 6A:16, Programs to Support Student Development and the mission of the New Jersey State Board of Education, in collaboration with the New Jersey Department of Education, to establish policy and provide leadership in the development of exceptional learning opportunities for New Jersey's public school students for the purpose of enabling them to obtain a superior education.

15.3 Distribution.

Copies of this agreement shall be provided to the County Prosecutor's Office, the County Superintendent of Schools, the Chief School Administrator, the Law Enforcement Chief Executive of the Police Department or State Police Unit, and each Principal in the school district.

³ADDENDUM 1 - UNDERCOVER SCHOOL OPERATIONS

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 designee.

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 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 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.

³The term “undercover school operation,” as defined in Article 3.1 of the attached Agreement, means 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 or the unlawful use, possession, or distribution of firearms or dangerous weapons.

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 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.

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.

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.

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 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 designee.

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 county superintendent and the Commissioner of Education.

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.