

Responding to Hate Acts and Bias-Related Acts

Preamble

The parties to this Agreement pledge their continuing commitment to work together to address the evolving problem of bias crimes and bias-related acts, as defined in this Addendum, that may occur on school grounds or that may involve students. All suspected or confirmed bias crimes and bias-related acts are serious matters that deserve a prompt, firm, and predictable response. The parties to this Agreement recognize that one of the best hopes for deterring this form of anti-social conduct is to affirm, by word and by deed, that such behavior will not be tolerated. The parties further recognize the need to have in place clearly defined policies and procedures so that all law enforcement officers, school administrators, and professional staff members and other employees of the school district will know what they are expected to do in the event of the commission of a hate crime or bias-related act on school grounds or involving school-aged children.

Section 1 - Statement of Policies, Findings And Objectives

1. Regrettably, bias crimes and bias-related acts occur with alarming frequency in our society. The communities victimized by this form of anti-social behavior are gripped by uncertainty, tension, and conflict. Bias crimes and bias-related acts, by their nature, are confrontational, inflame tensions, and promote social hostility. These acts jeopardize the active and open pursuit of freedom and opportunity. They represent nothing less than a direct attack upon the racial, religious, and ethnic heritage of our citizens.
2. The New Jersey Legislature has adopted criminal laws that provide for enhanced punishment where a person commits a crime with a purpose to intimidate an individual or group of individuals because of race, color, gender, disability, religion, sexual orientation, or ethnicity. These laws are designed to punish conduct, not speech. The parties to this Agreement recognize in this regard that the First Amendment of the United States Constitution and its state constitutional counterpart guarantee freedom of expression, which includes the right to express bigotry, hatred, and ignorance. However, the parties to this Agreement further recognize that the application of First Amendment principles is different with respect to speech or conduct occurring in elementary and secondary schools. Accordingly, it is well-accepted that school administrators have a legitimate interest in preserving the order and decorum of schools, and that certain forms of speech, though otherwise protected under the First Amendment, may impinge on other students' rights, may impermissibly disrupt the

orderly operation of a school and, thus, can materially and substantially interfere with the requirements of appropriate discipline within a school.

3. The parties to this Agreement affirm their belief that bias crimes and bias-related acts are simply incompatible with the basic educational mission and the environment of a school. Although all bias crimes and bias-related acts are serious matters that deserve prompt attention by appropriate law enforcement authorities, the parties to this Agreement recognize that such conduct is especially serious when it occurs on school grounds or involves school-aged children. Bias crimes and bias-related acts by their nature have the great potential to disrupt the educational environment and thereby deprive students and educators of their fundamental rights.
4. The parties further recognize that school-aged children are especially vulnerable to the emotional injury often associated with the commission of bias crimes and bias-related acts. Too often, such acts may have lasting, negative effects on the social development of child victims. Moreover, while bias crimes and bias-related acts are likely to provoke a violent response even when committed against adult victims, the parties to this Agreement recognize that the potential for violent retaliation is even greater when such acts are committed against adolescent victims, who may not yet possess the social skills or maturity to address their frustrations and anger without resorting to violence.
5. The parties to this Agreement recognize that what may at first blush appear to be a minor incident can quickly escalate into an order maintenance problem affecting the public safety. The parties thus recognize that the effects of a given hate crime or bias-related act may extend well beyond the confines of school grounds and may lead, for example, to retaliatory action taken outside of school grounds or outside normal operating school hours.
6. The parties to this Agreement further understand the nature of the so-called “copycat” phenomenon, whereby a given hate crime or bias-related act can lead to the commission of similar incidents. Experience has shown that the problem is exacerbated when the official response to a given hate crime or bias-related act is weak or tentative. The failure to take prompt and decisive action in response to a hate crime or bias-related act may serve unwittingly to encourage the commission of further bias crimes and bias-related acts. The parties further recognize that a prompt response is essential to defuse a potentially volatile situation, to prevent further physical or emotional injury, and to assist in the identification and apprehension of the person or persons who committed the bias-related act or hate crime.

7. The problem of bias crimes and bias-related acts is an evolving one, and statistics reported by the Attorney General reveal that the problem is growing. It is at least possible that this may be the result of a reporting phenomenon, where more citizens have become more keenly aware of the impact of bias crimes and bias-related acts and are more willing to report such acts because they earnestly expect that public officials will respond appropriately. It is imperative for the parties to this Agreement to take such actions as are necessary and appropriate to ensure and enhance public confidence in the ability and commitment of government officials to take affirmative actions in response to these types of offenses.
8. Statistics compiled as part of the Uniform Crime Reporting System confirm that many bias crimes are committed by children. Often, these youthful offenders are motivated by ignorance as much as by hate, and some offenders seem to be attempting to attract attention to themselves by committing acts that many of them believe to be little more than childish pranks. Even so, the parties to this Agreement recognize that such acts, even if committed out of ignorance more than actual hate, are hurtful and disruptive, and cannot and will not be tolerated.
9. The parties to this Agreement recognize that we all have a responsibility to protect the rights and interests of children and to ensure their emotional well-being. It shall be the overriding policy established in this Agreement to provide students with a safe environment conducive to learning and free of violence, fear, and intimidation.
10. The parties recognize that school provides young citizens with what is likely to be their first exposure to different cultures. Schools provide a natural setting where young people can learn the social skills that will largely determine their future attitudes and beliefs, their respect for the institutions of government, and their tolerance for persons of different religions, races, colors, ethnic backgrounds, sexual orientations, and differing mental and physical abilities.
11. The parties to this Agreement recognize that some bias-related acts committed in schools may warrant a firm and decisive response even though, technically, such acts are not crimes and thus do not invoke the jurisdiction of the criminal and juvenile justice systems. The parties recognize in this regard that the definition of "bias-related act," as set forth herein, is broader than the definition of "hate crime," so that certain bias-related acts, though deserving of condemnation, remediation, or discipline, do not constitute bias crimes that could be prosecuted by police and county prosecutors. The parties to this Agreement further recognize that bias-related acts may presage planned or threatened violence and can provide an

early warning signal of future criminal conduct. (See also Article 4.10 of the Agreement establishing a duty for school officials to report planned or threatened violence.)

12. In responding to the evolving problem of bias crimes and bias-related acts, the parties recognize that they must not focus entirely on responding to those persons who commit these anti-social or criminal acts; rather, the parties recognize the need also to work with the victims of these acts so as to reduce their trauma, as well as to reduce and redress community tensions and fears by reaching out to victims and potential victims.

Section 2 - Definitions

As used in this Addendum:

“Bias Crime” means any criminal offense where the person or persons committing the offense acted with a purpose to intimidate an individual or group of individuals because of race, color, gender, disability, religion, sexual orientation, or ethnicity.

“Bias-Related Act” means an act that is directed at a person, group of persons, private property, or public property that is motivated in whole or in part by racial, gender, disability, religious, sexual orientation, or ethnic prejudice. A bias-related act need not involve conduct that constitutes a criminal offense. Note that all bias crimes are also bias-related acts, but that not all bias-related acts will constitute a hate crime.

In order more fully to explain what conduct constitutes a bias crime or bias-related act, and to more fully distinguish between bias crimes (which must be reported to law enforcement pursuant to § 3(A) of this Addendum) and bias-related acts (which should ordinarily be reported to law enforcement pursuant to § 3(B) of this Addendum), the county prosecutor’s office will make available training materials developed by the New Jersey Division of Criminal Justice, Office of Bias Crimes and Community Relations. See also § 7 (concerning training programs) and § 6(C) (authorizing prosecutors to answer legal questions arising under this Addendum).

Section 3 - Referral Procedures for Reporting Bias Crimes and Bias-Related Acts

B. Mandatory Referral of Suspected Bias Crimes

Whenever any school employee in the course of his or her employment develops reason to believe that:

(1) a hate crime has been committed or is about to be committed on school grounds, or has been or is about to be committed by any student, whether on or off school grounds, and whether or not such offense was or is to be committed during operating school hours; or,

(2) a student enrolled in the school has been or is about to become the victim of a hate crime, whether committed on or off school grounds or during operating school hours, the school employee shall immediately notify the building principal and chief school administrator, who, in turn, shall promptly notify the local police department and the bias investigation officer for the county prosecutor's office. However, the building principal or chief school administrator *will immediately notify* the local police department or the county prosecutor's office bias officer where there is reason to believe that a hate crime that involves an act of violence has been or is about to be physically committed against a student, or there is otherwise reason to believe that a life has been or will be threatened.

C. *Voluntary Referral of Suspected Bias-Related Acts*

Except as may otherwise be provided in subsection A of this section, whenever any school employee in the course of his or her employment develops reason to believe that a bias-related act has been committed or is about to be committed on school grounds, or has been or is about to be committed by any student, whether on or off school grounds and whether or not such bias-related act was or is to be committed during operating school hours, the school employee should immediately notify the building principal and chief school administrator, who, in turn, should promptly notify the local police department.

In deciding whether to refer the matter to the police department or county prosecutor's office, the principal of the school or his or her designee should consider the nature and seriousness of the conduct and the risk that the conduct posed to the health, safety, or well-being of any student, school employee, or member of the general public. The building principal and chief school administrator should also consider that the local police department or the county prosecutor's office may possess or have access to other information that could put the suspected bias-related act in proper context, could shed light on the motivation for the act, or may help to identify the person who committed the suspected bias-related act or some other unsolved hate crime. Furthermore, the building principal and chief school administrator should consider the possibility that the suspected bias-related act could escalate or result in some form of retaliation that might occur within or outside school grounds.

D. *Nature of Referral*

It is understood and agreed that a mandatory or voluntary referral to the local police department or county prosecutor's office pursuant to this Addendum is only a transmittal of information that might be pertinent to a law enforcement investigation. The parties understand and agree that a referral pursuant to this section is *not* an accusation or formal charge. Accordingly, it is understood and agreed that a referral pursuant to this section is predicated on the basis of a reasonable suspicion, which is less than probable cause to believe that a hate crime or bias-related act has been committed, less than the proof necessary to sustain an adjudication of delinquency or a finding of guilt in a court of law, and less than the proof sufficient to justify the imposition of school discipline. Accordingly, and given the nature and purpose of a referral, the parties hereby agree and understand that all doubts should be resolved in favor of referring a matter to the local police department or the county prosecutor's office.

E. Concurrent Jurisdiction

Unless the local police department or the county prosecutor's office requests otherwise, it is understood and agreed that school officials may continue to investigate a suspected hate crime or bias-related act occurring on school grounds, and may take such actions as are necessary and appropriate to redress and remediate any such act. The parties to this Agreement understand that school officials have an independent authority to conduct investigations and to discipline students who violate school rules, regulations, or codes of conduct that may include but need not be limited to the imposition of an in-school suspension. The parties understand that the imposition of such discipline does not in any way constitute "double jeopardy" or otherwise limit, preempt, or preclude any appropriate action by a law enforcement agency, a Juvenile Conference Committee or a Juvenile Court.

Where the local police department or the county prosecutor's office believes that the continuing conduct of a concurrent investigation or the imposition of any form of school discipline would in any way jeopardize an ongoing law enforcement investigation, or otherwise endanger the public safety, the local police department or the county prosecutor's office *shall immediately notify* the school principal and the chief school administrator, whereupon the school principal and chief school administrator *will immediately discontinue* any ongoing school investigation, and will take no further action without providing notice to and receiving the assent of the police department or the county prosecutor's office.

Section 4 - Preservation of Evidence

The parties to this Agreement understand and appreciate the importance of delicately balancing the need to preserve physical evidence so that persons who commit bias crimes or bias-related acts can be quickly apprehended and fully and fairly prosecuted as against the need to minimize the harm associated with the continued exposure to children of bias-based graffiti and other forms of physical evidence of a hate crime or bias-related act.

School officials hereby agree to secure and preserve any such graffiti or other evidence of a suspected hate crime or bias-related act pending the arrival of the local police department or the

county prosecutor's office. Where feasible, such graffiti or other evidence should be covered or concealed in a manner designed to minimize the harm and continued exposure to students of such evidence, but that will not permanently damage or destroy such evidence or otherwise limit its utility in an ongoing investigation or prosecution.

The local police department and the county prosecutor's office agree to photograph or otherwise document the location and content of any such graffiti or other bias-based evidence as soon as possible, so that such graffiti or other evidence may be permanently painted over, sandblasted, or otherwise removed or eliminated at the earliest opportunity.

Section 5 - Law Enforcement Response to Mandatory and Voluntary Referrals

F. Prompt Response

The local police department and the county prosecutor's office agree to treat all matters involving suspected or confirmed bias crimes or bias-related acts occurring on school grounds or involving school-aged children as serious matters that warrant a prompt, decisive, and thorough law enforcement response. The local police department and/or the county prosecutor's office agree to respond promptly to any referral made pursuant to Section 3 of this Addendum provided, however, that the police department or the prosecutor's office *will immediately dispatch* an officer to the scene of a suspected school-based hate crime or bias-related act where the building principal or chief school administrator has conveyed the fact that the suspected act involved actual violence against a student or involves a threat against the life of a student, school employee, or any other person. Furthermore, the police department and the county prosecutor's office agree to respond as soon as possible to any suspected incident involving bias-based graffiti or other such evidence so that such graffiti or other evidence can be photographed or otherwise documented in accordance with the provisions of Section 4 of this Addendum so that the graffiti or other evidence can be removed or otherwise destroyed at the earliest possible opportunity in order to minimize continued exposure and harm to the student population. Any suspected or confirmed hate crime reportable as a "bias incident" under the New Jersey Bias Incident Investigation Standards promulgated by the Attorney General shall be reported by the local police department or the county prosecutor's office to the Office of Bias Crimes and Community Relations, Division of Criminal Justice, and to the State Police Uniform Crime Reporting Unit or the State Police Central Security Unit, as required by the standards.

G. Protective Services

The local police department and the county prosecutor's office are available on request and, subject to the availability of resources, to provide protective services to any victim or potential victim of a hate crime. The police department and the prosecutor's office agree to take such steps as are necessary and appropriate in the circumstances to prevent further violence or harm committed against a victim, or to prevent a violent retaliation or any other physical or psychological harm directed against any student or any person. The responding law enforcement officer shall evaluate the circumstances of the suspected or confirmed hate crime or bias-related

act and shall immediately report to his or her superiors the need for providing any such protective services to or on behalf of any victim or potential victim.

H. Full Investigation

The local police department and/or the county prosecutor's office shall upon receipt of any information pursuant to Section 3 of this Addendum conduct a full and thorough investigation in accordance with the Bias Incident Investigation Standards promulgated by the Attorney General.

I. Advice as to Bias Incident Investigation Standards and Juvenile Justice System Practices and Procedures

The local police department and the county prosecutor's office shall be available on an ongoing basis to explain to school officials the provisions and requirements of the Bias Incident Investigation Standards promulgated by the Attorney General and the practices and procedures of the juvenile justice system with respect to the handling of juveniles suspected of or formally charged with acts of bias-based delinquency. The local police department and the county prosecutor's office shall also provide, on an ongoing basis, information concerning the services and resources available within the juvenile justice system to deal with bias-based acts of delinquency, including stationhouse adjustments, referrals to Juvenile Conference Committees, and other pre-adjudication diversion programs, and post-adjudication disposition options that are available in the county.

Section 6 - Services Provided by County Prosecutor

J. Availability of Services

The county prosecutor's office maintains a victim/witness unit that provides services to all victims of crime. The county prosecutor's office remains available to provide counseling and other services to the victims or potential victims of bias crimes and bias-related acts. Requests for victim/witness services should be directed by the building principal or local chief school administrator to the county prosecutor's office.

K. Predisposition Impact Statement

In the event that a hate crime or bias-related act results in a criminal conviction or adjudication of delinquency, the county prosecutor's office should solicit information from all victims, potential victims and other members of the school community who were in any way harmed or traumatized by the unlawful act. Such information should be included in a "community impact statement" that can be provided to the court by the county prosecutor and that would serve to advise the court as to the true impact of the offense and its effect on schoolchildren and the residents of the affected community, so as to begin the difficult healing process following the conviction or adjudication of delinquency. The prosecutor's office should solicit the input and assistance of the building principal, the local chief school administrator, and other appropriate school employees as may be designated by the building principal or local chief school administrator, to ensure the prompt preparation of a thorough and accurate community impact statement for use by the courts. No student shall be solicited for input in the development or preparation of a community impact statement without a representative of the prosecutor's office first providing notice to the building principal and local chief school administrator.

L. Legal Advice

The county prosecutor's office shall be available on a 24-hour basis to answer any questions posed by the building principal or the local chief school administrator regarding New Jersey's laws concerning bias crimes or bias-related acts, the Bias Incident Investigation Standards promulgated by the Attorney General, or the implementation of this Addendum. Nothing in this section shall be construed in any way to preclude the building principal, local chief school administrator, or any other school official from soliciting legal advice from the school board attorney or any other attorney representing the school district.

M. Seminars and Public Education Concerning Bias Crimes and Bias-Related Acts

Representatives from the local police department and the county prosecutor's office will be available upon invitation of the building principal and local chief school administrator to address students, teachers and/or parents concerning the nature, prevalence, and impact of bias crimes and bias-related acts.

N. Instruction to Students

The parties to this Agreement understand and accept that education emerges as one of the most promising means available by which to promote racial, ethnic, disability, sexual orientation, and religious tolerance and by which to prevent the commission of bias crimes and bias-related acts. Toward that end, a number of innovative programs and curricula have been developed by numerous organizations that are designed to teach students about the nature and history of discrimination. For example, the Department of Education and the Attorney General's Office of Bias Crime and Community Relations has developed a Prejudice Reduction Education Program (PREP). It is understood and agreed that education officials are at all times ultimately responsible for providing, supervising, monitoring, evaluating, and otherwise ensuring the consistent high quality of all educational curricula and instructional programs provided to students, whether the instruction is to be provided generally to the student population as part of the regular curriculum or is to be provided to select students who are subject to in-school suspension or any other form of school-based discipline. It is understood and agreed that no law enforcement officer shall be permitted to provide a course of instruction to students or to address students on the subject of bias crimes or bias-related acts in an assembly, unless the officer has been invited or requested to provide such course of instruction or address by the building principal or local chief school administrator, or the course of the instruction has otherwise been approved by an appropriate school official.

Section 7 - Training

The parties to this agreement recognize that the enlightened principles, policies and procedures established herein to address the evolving problem of bias crimes and bias-related acts occurring on school grounds or involving school students can only work where steps are taken to make certain that all school employees, including but not limited to professional staff members, are aware of the rights and responsibilities established in this Addendum. So as to foster and institutionalize the spirit of communication and cooperation underlying this Addendum, the chief school administrator hereby agrees to establish a training program, to be developed in conjunction with the local police department and the county prosecutor's office, for the purpose of making available instruction and orientation to all appropriate school district employees concerning the need for and provisions of this Addendum. This instruction and orientation program should stress the importance of responding promptly, decisively, and predictably to all suspected or confirmed bias crimes or bias-related acts occurring on school grounds or involving students. The local police department and the county prosecutor's office remain available to assist in any way necessary in developing or providing this orientation to school staff. In addition, the Office of Bias Crimes and Community Relations in the New Jersey Division of Criminal Justice has training material and a seminar available to assist districts in providing training for both teachers and students. The Office of Bias Crimes and Community Relations may be contacted at (609) 984-1936.