

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

1999 Revisions

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

July 23, 1999

*This document is based on the 1992 version of the State Memorandum of Agreement approved by the Department of Law & Public Safety and the Department of Education and referred to in N.J.A.C. 6:29-10.1. A Table of Contents has been added, certain sections have been reordered and/or relabeled to enhance clarity, the materials concerning undercover school operations have been moved to an Addendum, and a new numbering system is employed to make it easier to locate and cite to relevant provisions of the Agreement. In addition, the 1993 version of the "Sample Memorandum of Understanding Concerning Suspected Hate Crimes or Bias Incidents Occurring on School Grounds or Involving Students" has been updated and included in this "Uniform State Memorandum of Agreement" as Addendum 2.

INTERNET ADDRESS OF DOCUMENT: <http://www.state.nj.us/lps/dcj/index.htm>

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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 drug problem as it relates to school-aged children. Regulations promulgated by the State Board of Education and codified at N.J.A.C. 6:29-10.1 establish uniform statewide policies and procedures for ensuring cooperation between education officials and law enforcement agencies, and those policies and procedures are consistent with and complementary to the state Memorandum of Agreement approved by the Department of Law & Public Safety and the Department of Education. The Memorandum of Agreement was revised by the Department of Education and Attorney General in 1992 to account for new developments with respect to the scope and nature of the State's evolving drug and alcohol problem, and to address, for the first time, the problem of firearms and other weapons brought on to school property.

1.2. Nature of the Problem .

The 1988 and 1992 memoranda of agreement were 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 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 property, during operating school hours, or during school-related functions and activities. 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, hate crimes, illegal gambling, vandalism, and theft. It is understood and agreed that the commission of these types of offenses on school property, whether directed at students, school employees, or school property, 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 of school property 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 of 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 are concerned by recent events occurring throughout the nation involving youth violence. The parties further recognize that no school is immune from the disruptive influence of alcohol and other drug abuse and distribution, vandalism, and violence. It is not our intention to cause undue alarm or to overstate the nature or magnitude of the problem. Nor is it our intention in any way to jeopardize the rights of students. To the contrary, we wish to emphasize that our goal is to safeguard the essential right of all students and school employees to enjoy the benefits of a school environment which is conducive to education and which is free of the disruptive influence of crime, violence, intimidation and fear. Accordingly, the parties to this Agreement recognize the need to have in place policies and procedures to deal appropriately and decisively with 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 property and thereby protect the safety and welfare of all members of the school community. In developing these policies, it is understood that it is a crime for any person to knowingly have in his or her possession any firearm in or upon the buildings or grounds of any school without the written authorization of the governing officer of the institution, See N.J.S.A. 2C:39-5e. It is agreed and understood that this statute is designed to protect children and the educational environment, and that violations of this statute are especially serious matters that warrant a prompt referral to and response by law enforcement authorities. It is further understood that it is a crime in this state for any person to knowingly have in his or her possession any gravity knife, switchblade knife, dagger, billy, blackjack, metal knuckle, sling shot, cesti or ballistic knife, without having an explainable lawful purpose, See N.J.S.A. 2C:39-3e. 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 show a juvenile offender has previously committed acts of delinquency outside of school property 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 those 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 as to 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 thought that such ongoing dialogue will enable school officials to understand the likely consequences of a referral involving a given offense. It is also 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 understand and recognize that the problem of the unlawful use of anabolic steroids is a particularly serious one with respect to school-aged children and that this problem is not limited to student athletes, but also involves students who use these especially dangerous substances 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 is also 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 property. Surveys of New Jersey's high school students consistently show that alcohol continues to

be by far the most commonly used substance by school-aged 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 property or during school-related activities, are serious matters that warrant a decisive and predictable response.

1.7 Law Enforcement Participation in Substance Abuse Prevention Programs .

In recent years, a number of educational programs, such as D.A.R.E., G.R.E.A.T. (Gang Resistance Education and Training), D.A.D., McGruff (“Take a Bite Out of Crime”) and similar programs and materials have demonstrated that specially trained police officers can provide substance awareness, drug abuse resistance and crime prevention instruction that is effective and beneficial to students. The parties to this Agreement recognize, however, that in providing and promoting such instructional programs, education officials remain ultimately responsible for approving and monitoring all educational curricula. Local education officials also remain responsible for making certain that children receive the approved Core Curriculum Content Standard (CCCS), specifically, Standard 2.3 Alcohol, Tobacco and Other Drugs (ATOD), in accordance with state law and rules, regulations and policies adopted by the State Board of Education and the Commissioner of Education.

1.8 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 recognized that recent studies suggest that the drug problem has worsened among school-aged children. 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 1,000 feet of a school. 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 estab

lishes 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. It is hereby understood and agreed that where juveniles for any reason will not receive the non-incarcerative sanctions specified in Attorney General Directive 1998-1, the county prosecutor or his or her designee will consult with the principal to explain the situation.

1.9. School Resource Officers and School-Based Community Service Programs .

The Attorney General’s Education-Law Enforcement Working Group has developed a model Safe Schools Resource Officer Program, recognizing that the presence of a uniformed police officer can be a deterrent in fighting drug use and sales and other forms of criminal behavior in schools. Besides enhancing school security and facilitating the handling of delinquency complaints, the assignment of a school resource officer on a full or part-time basis can help further to enhance the working relationship between education and law enforcement officials. Most importantly, a Safe School Resource Officer Program provides these specially-trained officers an opportunity to interact with children in positive and constructive way. It is understood and agreed that the parties to this Agreement will during the course of the conference convened pursuant to Article 14 of this Agreement discuss the feasibility and desirability of implementing this form of community policing.

The Education-Law Enforcement Working Group in consultation with the Administrative Office of the Courts has also developed a model program whereby schools can serve as community service sites where students can satisfy their court-imposed 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 the county probation department.

1.10. “Hate” Crimes and “Bias-Related” Acts .

Acts predicated upon racial, ethnic, religious, gender, disability, or sexual orientation prejudice 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 Hate Crimes or Bias Incidents Occurring on School Grounds or Involving Students.” The sample Memorandum of

5Understanding, which explains when school officials should report suspected hate crimes or bias-related acts to law enforcement authorities, was signed by local education and law enforcement officials in many jurisdictions. An updated version of this memorandum is reproduced as Addendum 2 to this Agreement, which addendum is made part of this Agreement as if set out fully herein.

1.11. Bomb Threats, Hostage Situations, and “Drive-By” Shootings .

The parties to this Agreement understand that regrettably, it is not uncommon for persons to call in bomb threats to schools. The parties to this Agreement further understand that it is important for school officials and local police departments and county prosecutors to work together to adopt and implement policies to deal with these disruptive and potentially catastrophic situations, recognizing that it is essential to consider the most appropriate response to these kinds of situations before a crisis develops. It is further understood that in 1995, the Union County Prosecutor’s Office developed a monograph entitled “*Bomb Threat Management Planning for Schools,*” which sets forth detailed guidelines for how school officials should handle a bomb threat. These guidelines follow nationally-recognized standards and practices that have been developed and adopted by the FBI’s Bomb Data Center and the Federal Bureau of Alcohol, Tobacco and Firearms. It is understood and agreed that the parties to this Agreement will during the course of the conference convened pursuant to Article 14 of this Agreement discuss whether it is necessary and appropriate to implement specific policies and procedures such as those described in the aforementioned monograph.

Recent tragic events in another state further highlight the need to develop school-based plans to respond to crisis situations involving gunfire, such as hostage-taking and “drive-by” shootings. These crisis response 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 gunfire. Just as it is necessary to establish protocols and to conduct periodic “drills” to respond 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 so as to restrict the movement of children and to reduce the number of students and faculty who might encounter armed assailants. It is understood and agreed that the parties to this Agreement will, during the course of the conference convened pursuant to Article 14, discuss the need for such crisis response plans and procedures.

Article 2 Liaisons.

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

(The county superintendent) and (the local superintendent of each school) will 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, and
- < coordinate drug and alcohol abuse intervention and prevention efforts.

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.)

"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 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.

“Planned Surveillance” shall mean a planned operation wherein a law enforcement officer(s) enters onto school property or buildings 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 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 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.

“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” (i.e., e.g. multiple arrest) operation.

“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 ¶ 5.1 of this Agreement.

“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.

“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.

“Dangerous weapon” means any weapon within the meaning of N.J.S.A. 2C:39-1r, 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” or “pepper spray” and “paintball guns”). The term shall also include any “destructive device” as defined at N.J.S.A. 2C:39:1-c, which includes any device, instrument, or object designed to explode or produce uncontrolled combustion.

“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.

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. 6:29-10.2a(2) 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 superintendent 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 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 property 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) will maintain at appropriate times a visible police presence within all drug-free school zones, and will 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 property or buildings, the (police department) will advise the appropriate (school building principal and local superintendent). It is understood and agreed that any portion of a patrol plan disclosed to school officials in accordance with this subsection will 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 .

3.5.1. Required Approval of Principal or Superintendent . 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 all major school sporting events. 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 will not be assigned to school functions, and especially those functions occurring within school buildings, except with the approval of the building principal or local superintendent.

3.5.2. Requests for Assignment of Uniformed Officers . It is understood that the purpose for requesting uniformed police presence on school property is not limited merely to the goal of deterring illegal drug use or trafficking activities; rather, police assistance is often requested for the purpose of maintaining order, crowd and traffic control, and other bona fide public safety reasons. All requests by school officials for law enforcement agencies to provide for a uniformed presence at any school event should be directed to (local police or liaison, local chief executive officer of the law enforcement department or agency having patrol jurisdiction).

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

4.1 Requirement to Report Offenses Involving Controlled Substances .

Subject to the provisions of ¶¶ 4.2 and 4.3 of this Agreement, school officials will 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 that school officials are not required to refer a matter to law enforcement where 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 agrees to participate in an appropriate treatment or counseling program. For the purposes of this Agreement, 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.

4.2. Non-Applicability to Treatment Program Records and Information .

Nothing in this Agreement 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 will be strictly safeguarded in accordance with applicable state and federal laws and regulations.

4.3 Confidentiality Laws .

4.3.1 Recent Amendment to 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 new law, codified at N.J.S.A. 18A:40A-7.1 et seq., affords 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 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 new state confidentiality law nonetheless features an important exception to the general rule of preserving confidentiality. Specifically, the new 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, counsellor, school nurse, and substance awareness coordinator, to inform DYFS or a law enforcement agency immediately where 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 Pupil Records . It is understood and agreed that federal and state laws pertaining to the confidentiality of pupil records 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 pupil records. Thus, for example, a teacher, counsellor, 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 pupil 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 pupil 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.

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 *will immediately advise (the local law enforcement agency having patrol jurisdiction)* and will secure the substance or item pending the response by *(law enforcement agency)* to retrieve and take custody of the substance or paraphernalia. School employees having custody of the substance or item will take reasonable precautions as 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) will dispatch an officer as promptly as possible to take custody and secure the controlled dangerous substance or drug paraphernalia. School officials will 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 abuse counselor in the course of or as a result of diagnosis or treatment, or 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 agrees to participate in an appropriate treatment or counseling 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 substance abuse counseling or treatment program where such referral or transmittal would constitute a violation of state or federal confidentiality laws or regulations, and such information or records will 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 ¶¶ 4.2 and 4.3.1 of this Agreement, it is agreed that *(designated school official)* will immediately notify *(designated law enforcement official)* whenever any school employee in the course of his or her employment develops reason to believe that a firearm has unlawfully been brought onto school property, or that any student or other person is in unlawful possession of a firearm, whether on or off school property, 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 property or during operating school hours.

4.7. Securing Firearms and Dangerous Weapons .

Whenever a school employee seizes or comes upon any firearm or dangerous weapon, school officials should in the case of a dangerous weapon other than a firearm, and *shall* in the case of (1) a firearm, or (2) 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 or weapon pending the response by the (law enforcement agency) to retrieve and take custody of the firearm or dangerous weapon. School employees having custody of a firearm or dangerous weapon will take reasonable precautions as 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 will any person destroy or otherwise dispose of any seized or discovered firearm except by turning over such firearm to the responding police officer.

4.8. Prompt Law Enforcement Response to Required Referrals .

(The law enforcement agency) receiving information about the existence of an unlawful firearm on school property or the actual or threatened use of a non-firearm dangerous weapon pursuant to ¶ 4.7 of this Agreement *will immediately* dispatch an officer to take custody and secure the firearm or other weapon. Except as may be specifically provided in ¶¶ 4.2 and 4.3 of this Agreement, school officials will 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. 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 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 state or federal confidentiality laws or regulations, and such information or records will be strictly safeguarded in accordance with such applicable state or federal laws and regulations.

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 property, so as to prevent whenever possible the bringing of such firearm or weapon onto school property. When this is not feasible, the (law enforcement agency) shall scrupulously comply with the notification requirements for planned arrests as set forth in ¶ 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*) will immediately notify (*law enforcement agency*) whenever any school employee in the course of his or her employment develops reason to believe that a student 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 student genuinely intends at some time in the future to commit the violent act or to carry out the threat. (See also § 3 of Addendum 2 to this Agreement concerning the duty to report suspected hate crimes and bias-related acts.) 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 student'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 property or during regular school hours. 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 ¶ 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 ¶¶ 4.2 and 4.3.1 of this Agreement, it is agreed that (*designated school official*) will 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 property, or by or against a student during operating hours or during school-related functions or activities.

4.13. Presumption to Report Other Offenses .

Subject to the provisions of ¶¶ 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 property, during operating hours or during school-related functions or activities. 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 will be notified of the seizure of any switchblade, gravity, or ballistic knife, stun gun, metal knuckles, or any destructive device. It is further understood and agreed that school officials will 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. Nothing in this paragraph shall be construed in any way to relieve the duty to report a violation of the Comprehensive Drug Reform Act as required by ¶¶ 4.1 and 4.4 of this Agreement and regulations promulgated by the State Board of Education. See N.J.A.C. 6:29-10.4. Nor shall this paragraph be construed in any way to relieve the duty to report a planned or threatened act of violence pursuant to ¶ 4.8 of this Agreement, to report the presence or possession of a firearm pursuant to ¶¶ 4.6 or 4.7 of this Agreement, to report the actual or threatened use of a non-firearm dangerous weapon pursuant to ¶ 4.7, to report a sexual offense pursuant to ¶ 4.12 of this Agreement, to report a "hate" crime pursuant to the provisions of Addendum 2 to this Agreement, or to notify appropriate law enforcement and child welfare authorities when a potential missing or abused child situation is detected, as required by N.J.S.A. 18A:36-25 and N.J.S.A. 9:6-8.10.

4.14. Law Enforcement Response to Presumptive Referrals .

(The law enforcement agency) receiving information about the commission of an offense pursuant to ¶ 4.6 of this Agreement will respond promptly and, when there is probable cause to believe that an offense has been committed, will 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 Pros-

16ecutors. Except as may be specifically provided in ¶¶ 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 ¶ 4.8 of this Agreement or a controlled dangerous substance or drug paraphernalia dealt with in ¶ 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 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 will be strictly safeguarded in accordance with such applicable federal and state laws and regulations.

4.15. Arrest Protocols Following Presumptive 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, will be followed whenever a student is to be arrested on school property 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 will be followed whenever a student or non-student is arrested on school property, or whenever a student is arrested off of school property 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 is also understood and agreed that the (police department) will at all times comply with the patrol notification and on-site reporting procedures set forth in ¶ 3.4.2 of this Agreement, whether the purpose of the law enforcement entry onto school property or buildings is to enforce the Comprehensive Drug Reform Act or any other criminal statute.

4.16. Advice as to 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 shall also 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 preadjudication diversion programs, intervention services, and post-adjudication disposition options that are available in the county.

4.17. Advice as to Weapons .

It is understood that new weapons have evolved and proliferated that are readily concealable and easily disguised. By way of example, small single-shot fire-arms have been produced so as to resemble a remote paging device or “beeper.” Similarly, dangerous knives can be disguised as belt buckles and other seemingly innocuous items. Accordingly, the (*designated law enforcement agency*) and the county prosecutor will 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 of or Consumption of Alcoholic Beverages by Minors .

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 property or during school sponsored activities. See e.g., N.J.S.A. 2C:33-15 and N.J.A.C. 6:29- 6.3(a). So too, it is an offense for an adult to bring or possess an alcoholic beverage on school property without the express written permission of the school board 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 that would ordinarily warrant a referral to and prompt response by law enforcement authorities in accordance with the provisions of ¶ 4.11 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 or other appropriate juvenile justice alternatives, including, but not limited to, a “station house adjustment,” subject to the requirements of law and the Attorney General’s Executive Directive Concerning the Handling of Juvenile Matters by Police and Prosecutors.

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.

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. [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.¹]

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 property or a school bus, occurred at a school-sponsored function, or was committed against an employee or official of the school;
- < the juvenile was taken into custody as a result of information or evidence provided by school officials. whether or not on school property;
- < 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;

¹This provision is optional. The parties to the Agreement may delete this sentence or may modify it to limit the "blanket" request to specified delinquency charges.

- * involved the unlawful manufacture, distribution, or possession with intent to distribute a controlled dangerous substance or controlled substance analog;
- * 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 will 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 will be provided orally rather than in writing, will be kept confidential, will not be maintained by the school as part of the juvenile's pupil records, and will only be used 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 disciplinary proceeding.

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; (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 pretrial 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 §§ 5.1, 5.2, 5.3, and 5.4 of this Agreement.

5.6. Law Enforcement Testimony at School Disciplinary 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 expulsion or suspension hearing before the Board of Education 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 Disciplinary Proceedings .

It is understood and agreed that school officials have an independent right and responsibility to initiate and pursue disciplinary proceedings or to remove a student from the regular educational program under certain circumstances, including but not limited to those specified in the “Zero Tolerance for Guns Act,” Chapter 127 of the laws of 1995. It is further understood and agreed that all school-based disciplinary 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 disciplinary 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.”

Article 6 Notice of Arrests.

6.1. Arrests of Students on School Grounds .

Whenever a student has been arrested on school property, the law enforcement officer or agency involved will, as soon as practicable, notify the building principal. Whenever possible, such notice will be given before the student has been taken off of school property. Where the student is a juvenile, all information concerning the circumstances of the arrest will 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 ¶ 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 property, the building principal will 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 ¶ 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 of school property 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 will 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 will 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 ¶ 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 board policy regarding parental notification, contact a parent or guardian of the student. It is understood that the law enforcement agency making the arrest is also 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 property, 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 will be given by the law enforcement officer assigned to make the arrest to the specific recommendations of the building principal or local superintendent as to the time, place, and manner for effecting the arrest. It is understood and agreed that school officials may not provide sanctuary from arrest to any student, and that school officials may not interfere with or impede any law enforcement officer in the performance of his or her duties.

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.

7.3. Other Spontaneous Arrests .

7.3.1. *Notice to Building Principal* . In those 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 superintendent, or where a law enforcement officers observes the occurrence of an offense on school property during operating school hours which would justify a warrantless arrest, or where a person subject to arrest retreats onto school property during operating school hours, the arresting law enforcement officer will 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 will wherever feasible be notified before the student is taken from school grounds.

7.3.2. *Minimizing Disruption* . When effecting any spontaneous arrest on school property during operating school hours, every reasonable precaution will 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 property, the building principal or local superintendent will be advised and consulted before the arrest occurs.

Article 8 RESERVED

Article 9 School Searches.

9.1. Searches Conducted Independently by School Officials .

No law enforcement officer will 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.

9.2. Notice to Law Enforcement of Seizure of Contraband .

School officials will 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 will 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 will 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 property should be directed to the (*appropriate county prosecutor*), 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.

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.

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.

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), and 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. 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*) will 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 ¶¶ 4.1 and 4.4 of this Agreement.

Article 10 Interrogations and Interviews.

No law enforcement officer will 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, will 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.

Article 11 “Tiplines” and Crime Prevention Programs.

Any “tiplines” that may be established for the reporting of suspicious activity occurring on school property or buses or within Drug-Free School Zones, or for the reporting of any other crimes or planned or threatened acts of violence , will 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 Joint Training.

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 a joint training program that will be developed in conjunction with the Division of Criminal Justice, the Department of Education and county prosecutor. It is understood that the program will include a discussion of:

- a. the provisions of this Agreement;
- b. the rules and regulations promulgated by the State Board of Education and codified at N.J.A.C. 6:29-10.1;
- c. 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;
- d. the United States Supreme Court decision in New Jersey v. T.L.O. and the “*New Jersey School Search Policy Manual*”;
- e. federal and state laws and regulations on the confidentiality of alcohol and drug counseling and treatment;
- f. the warning signs that school staff members should be aware of that indicate that a student may be abusing chemical substances or is at risk of committing an act of violence involving firearms and resource materials developed by the United States Department of Education and by the University of Medicine and Dentistry of New Jersey; and,

- g. the scope and nature of the problem concerning firearms and other dangerous weapons on school property.

Article 13 Law Enforcement Participation in Educational Programs.

13.1. 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. These initiatives include, but are not limited to, the D.A.R.E. program (Drug Abuse Resistance Education), G.R.E.A.T. (Gang Resistance Education and Training), D.A.D. (Defenders Against Drugs), and the McGruff materials developed by the Crime Prevention Officers Association.

13.2. 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 ¶ 13.1 of this Agreement. It is also 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., the New Jersey Department of Education's Chemical Health Education Guide (N.J.A.C. 6:29-6.6), relevant Core Curriculum Content Standards and, specifically, Standard 2.3 Alcohol,

Tobacco and Other Drugs (ATOD), 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 chemical awareness curricula and related courses of instruction.

13.3. 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, or the G.R.E.A.T. course of instruction has otherwise been approved 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, including but not limited to D.A.R.E., G.R.E.A.T., D.A.D., McGruff, etc. 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 14 Revisions and Periodic Conferences.

It is understood that (*county prosecutor*), working in conjunction with the (*county superintendent*) will not less than once each calendar year organize and conduct a meeting of representatives from the law enforcement and educational communities to discuss the implementation of and compliance with the provisions of this Agreement throughout the county, to discuss any other matters of mutual concern, and to recommend revisions to this Agreement. It is further understood and agreed that pursuant to ¶ 1.9, the conferees will discuss the feasibility and desirability of implementing a school resource officer program. In addition, pursuant to ¶ 1.11, the conferees will consider whether it is necessary and appropriate to establish specific policies and procedures to respond to bomb threats, hostage situations, “drive-by” shootings, and other emergencies involving explosives and gunfire. It is understood that every chief of police, school building principal and local superintendent should be invited to attend, along with any other persons or organization representatives who could contribute to or benefit from the proceedings. Following each conference,

the (*county prosecutor*) will issue a report to the Attorney General as to the results of the meeting, which will include a discussion of any general or specific recommendations concerning the need for revisions to this Agreement.

Article 15 Dispute Resolution Procedures.

It is understood and agreed that any dispute or objection as to any proposed or ongoing law enforcement operation or activity on school property will 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 will 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 will be binding.

Article 16 Maintenance of the Agreement.

This Agreement shall remain in full force and effect until such time as it may be modified. Modification of this Agreement will be effected only with the mutual consent of the (*school district*), the (*county superintendent of schools*), the (*police department*), and the (*county prosecutor*). 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 will notify the other parties immediately regarding any such legal or regulatory changes.

The parties to this Agreement recognize the value of cooperation and communication with respect to the drug, weapons, and violence problem as it relates to students and school grounds, and believe that entering into this Agreement will help them to be more effective in dealing with 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 achieve the goal established by the Safe and Drug-Free Schools and Communities Act and adopted by the State Board of Education to ensure that, “[e]very school in New Jersey will be free of drugs and violence and offer a safe, disciplined environment conducive to learning.”

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

Dated:

School District Superintendent

Chief, Police Department

President
District Board of Education

Approved by:

County Superintendent of Schools _____
County Prosecutor

ADDENDUM 1 - UNDERCOVER SCHOOL OPERATIONS²

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 § 2 of this Addendum.

²The 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 school superintendent, 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 superintendent 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 superintendent 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 superintendent 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 i.e., e.g. rural, suburban, urban center, etc., 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 superintendent will be kept strictly confidential and will not be divulged by the building principal or local superintendent 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 superintendent 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 superintendent. 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 superintendent a detailed briefing concerning the logistical and record keeping requirements associated with successfully placing an officer undercover. The building principal and local superintendent 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 superintendent 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 superintendent, 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 superintendent 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 en-

forcement agency conducting the operation or to the county prosecutor.

c. The school principal and local superintendent 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 superintendent 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 superintendent, 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. *Entrapment.* No undercover officer will encourage or counsel any student to purchase or use alcohol or any controlled dangerous substance.

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. 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.

d. 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.

e. 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.

f. 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 property or to a student without the express prior approval of the county prosecutor, or, where appropriate, the Attorney General or his designee.

g. Disciplinary 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 disciplinary 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.

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

i. 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 into 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 property. An exemption from the general rule prohibiting the carrying or bringing onto school property of a firearm will only be granted with the express approval of the officer's immediate supe-

rior, unless otherwise specified in the plan approval process for good cause shown. Any firearm brought onto school property 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 property will only be granted where alternative means of providing adequate security or support are not feasible.

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 superintendent, 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, local and county superintendents 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.

ADDENDUM 2 - RESPONDING TO HATE CRIMES AND BIAS-RELATED ACTS

Preamble

The parties to this Agreement pledge their continuing commitment to work together to address the evolving problem of hate 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 hate 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, hate 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. Hate 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 hate crimes and bias-related acts are simply incompatible with the basic educational mission and the environment of a school. Although all hate 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. Hate 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 hate crimes and bias-related acts. Too often, such acts may have lasting, negative effects on the social development of child victims. Moreover, while hate 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 hate 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 hate 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 hate 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 hate 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 hate 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 hate 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:

“Hate 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 hate 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 hate crime or bias-related act, and to more fully distinguish between hate 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 Hate Crimes and Bias-Related Acts

A. abMandatory Referral of Suspected Hate 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 property, or has been or is about to be committed by any student, whether on or off school property, 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 property or during operating school hours,

the school employee shall immediately notify the building principal and superintendent, 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 superintendent of schools 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.

B. *Presumptive 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 property, or has been or is about to be committed by any student, whether on or off school property 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 superintendent, 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 superintendent 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 superintendent 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 property.

C. *Nature of Referral*

It is understood and agreed that a mandatory or presumptive 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.

D. *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 property, 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 superintendent of schools, whereupon the school principal and superintendent *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 hate 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 Presumptive Referrals

A. *Prompt Response*

The local police department and the county prosecutor's office agree to treat all matters involving suspected or confirmed hate crimes or bias-related acts occurring on school property 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 school superintendent 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.

B. *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.

C. *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.

D. *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

A. *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 hate crimes and bias-related acts. Requests for victim/witness services should be directed by the building principal or local superintendent of schools to the county prosecutor's office.

B. *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 superintendent of schools, and other appropriate school employees as may be designated by the building principal or local superintendent, 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 superintendent.

C. *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 superintendent of schools regarding New Jersey's laws concerning hate 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 superintendent, or any other school official from soliciting legal advice from the school board attorney or any other attorney representing the school district.

D. *Seminars and Public Education Concerning Hate 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 school superintendent to address students, teachers and/or parents concerning the nature, prevalence, and impact of hate crimes and bias-related acts.

E. *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 hate 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 hate 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 superintendent, 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 hate crimes and bias-related acts occurring on school property 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, to make 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 hate crimes or bias-related acts occurring on school property 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.