

- b. The Comprehensive Drug Reform Act, focusing especially on those provisions affecting juveniles or that are designed to protect children and to displace drug trafficking activities from areas adjacent to schools;
- c. The United States Supreme Court decision in *New Jersey v. T.L.O.* and the *New Jersey School Search Policy Manual*;
- d. Federal and state laws and regulations on the confidentiality of alcohol and drug counseling and treatment;
- e. The warning signs of which school staff members should be aware that indicate a student may be abusing chemical substances or is at risk of committing an act of violence involving firearms or other deadly weapons;
- f. The scope and nature of the problem concerning firearms and other dangerous weapons on school grounds; and
- g. Training needs to support school safety and security and the effective implementation of the Agreement, including the exchange of information regarding the practices of the school district and law enforcement agencies, pursuant to *N.J.A.C. 6A:16-6.2(b)12*.

### **2.3. Safe Schools Resource Officers**

The Attorney General's Education-Law Enforcement Working Group has developed resource material for a Safe Schools Resource Officer Program, recognizing that the presence of a police officer can be a deterrent in fighting drug use and sales and other forms of criminal behavior in schools. School districts and law enforcement agencies will comply with the training requirements of P.L. 2005, c. 276, (*N.J.S.A. 52:17B-71.8*; *N.J.S.A. 18A:17-43.1*) for safe schools resource officers and for the school district liaison to law enforcement, as soon as practicable. Besides enhancing school safety and security and facilitating the handling of delinquency complaints, the assignment of a safe schools resource officer on a full or part-time basis can help to enhance the working relationship between education and law enforcement officials. Most importantly, a Safe Schools Resource Officer program provides these specially trained officers an opportunity to interact with children in positive and constructive ways. It is understood and agreed that the parties to this Agreement shall, during the course of the annual conference convened, pursuant to Article 10 of this Agreement, discuss the feasibility and desirability of implementing this form of relationship.

Pursuant to *N.J.S.A. 40A-146.10*, signed in November 2016, Class Three special law enforcement officers may provide security and may also provide the role of SRO when schools are in session or occupied by students or staff.

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

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

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

#### **3.1. Mandatory Report Offenses Summary**

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

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

- Whenever any school employee has reason to believe a student is in possession of a controlled dangerous substance or related paraphernalia, or is involved or implicated in distribution activities regarding controlled dangerous substances, pursuant to *N.J.A.C. 6A:16-6.3* (Article 3.2);
- Whenever any school employee in the course of his or her employment develops reason to believe that a firearm or other dangerous weapon has unlawfully been possessed on or off school grounds, a weapon was used in an assault against a student

or other school personnel, or that any student or other person has committed an offense with, or while in possession of, a firearm, whether or not such offense was committed on school grounds or during school operating hours, pursuant to *N.J.A.C.* 6A:16-5.5, 5.6(d)4 and 6.3(b) (Article 3.6);

- Whenever any school employee in the course of his or her employment develops reason to believe that anyone has threatened, is planning, or otherwise intends to cause death, serious bodily injury, or significant bodily injury to another person under circumstances in which a reasonable person would believe that the person genuinely intends at some time in the future to commit the violent act or to carry out the threat, pursuant to *N.J.A.C.* 6A:16-6.3(c) through (e) (Article 3.10);
- Whenever any school employee in the course of his or her employment develops reason to believe that a crime involving sexual penetration or criminal sexual contact has been committed on school grounds, or by or against a student during school operating hours or during school-related functions or activities, pursuant to *N.J.A.C.* 6A:16-6.3(d) (Article 3.12);
- Whenever any school employee in the course of his or her employment develops reason to believe that an assault upon a teacher, administrator, other school board employee, or district board of education member has been committed, with or without a weapon, pursuant to *N.J.A.C.* 6A:16-5.7(d)5 (Article 3.14);
- Whenever any school employee in the course of his or her employment develops reason to believe a “bias-related act” has been committed or is about to be committed on or off school grounds, pursuant to *N.J.A.C.* 6A:16-6.3(e) (Article 3.16); and
- Whenever any school employee in the course of his or her employment develops reason to believe a student is potentially missing, abused, or neglected, pursuant to *N.J.A.C.* 6A:16-11.1(a)3i through iii (Article 3.17).

Exceptions apply, as outlined below.

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

Specific response to mandatory reports are noted by offense type in the following sections. A mandatory report to law enforcement does not preclude the law enforcement agency’s ability to investigate the act and decide that no further action is needed, or recommend a stationhouse adjustment, as outlined in Article 4.2.

### **3.2. Requirement to Report Offenses Involving Controlled Dangerous Substances**

Subject to the provisions of Article 3.3 of this Agreement and *N.J.A.C.* 6A:16-6.2(b)9 and 6.3(a), school officials must immediately notify (*police department and/or prosecutor*) whenever any school employee has reason to believe a student is in possession of a controlled dangerous substance or related paraphernalia, or is involved or implicated in distribution activities regarding controlled dangerous substances, pursuant to *N.J.A.C.* 6A:16-4.3(a)3i. Per *N.J.S.A* 24:21-2, “controlled dangerous substance” means a drug, substance, or immediate precursor in Schedules I through V of article 2 of *P.L.* 1970, c.226 (C.24:21-1 et seq.). A non-exhaustive list of controlled dangerous substances (CDS) are detailed in sections 3.2.1 through 3.2.4.

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

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

### **3.2.2. Designer Drugs**

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

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

#### **3.2.2.1. Considerations when Reporting Designer Drugs to Law Enforcement**

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

All designer drugs, in addition to the two designer drugs noted above that have been declared CDS and must be reported to law enforcement, should be deemed to be a serious matter that should be handled in accordance with the district board of education's approved student code of conduct and any other applicable policies and procedures. With the exception of



synthetic cannabinoids and cathinones, designer drugs are not required by New Jersey law to be reported to law enforcement, but may be required under district policy or procedure to be reported to law enforcement in accordance with the provisions of this Agreement.

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

The Centers for Disease Control and Prevention (CDC) classified prescription drug abuse as the fastest growing drug problem in the United States. Rates of prescription drug misuse (when an individual uses a medication for a reason other than prescribed or in a different manner than prescribed, or when an individual takes a medication not prescribed for him or her) and abuse are increasing at alarming rates, especially among youth. Because these medications are incorrectly believed to be safer because they are manufactured by companies, the dangers and potential for abuse associated with these medications is often overlooked or ignored. Access to prescription CDS is also easier than with traditional CDS, as they are often located in the home medicine cabinet.

The Substance Abuse and Mental Health Services Administration (SAMHSA), a federal health agency, [reported that in 2015](#), 18.9 million people in the United States age 12 or older had misused prescription psychotherapeutic drugs, including CDS such as pain relievers, tranquilizers, stimulants and sedatives, in the past year. Moreover, the prevalence of prescription medication has led to an increase in misuse of prescription CDS stimulants among youth as study aids, and among prescription opioids and benzodiazepines as party drugs. Educators must be mindful that, absent a filed certification and medical plan as described in Article 4.1, students should not be in possession of CDS prescription medication on school grounds. Educators and law enforcement must focus on evidence-based prevention education and be alert for signs and symptoms of misuse and abuse in our students.

#### **3.2.3.1. Considerations when Reporting Prescription Drugs to Law Enforcement**

While possession of a CDS or related paraphernalia and distribution activities regarding CDS are required to be reported to law enforcement (see Article 3.2), students may also misuse or be in possession of prescription drugs that are not CDS. Possession or misuse of any drug should be deemed to be a serious matter that should be handled in accordance with the district board of education's approved student code of conduct and any other applicable policies and procedures. Non-CDS prescription drugs are not required by New Jersey law to be reported to law enforcement, but may be required under district policy or procedure to be reported to law enforcement in accordance with the provisions of this Agreement.

### **3.2.4. Opioids**

In 2018, the [CDC reported](#) that drug overdoses killed 63,632 Americans in 2016 with nearly two-thirds of these deaths (66%) involved a prescription or illicit opioid. In New Jersey, heroin and opioid use has increased to epidemic proportions. One cause of this crisis is the overabundance of prescription opioids, with an estimated four out of five new heroin users beginning their addiction by misusing prescription pain killers. Unfortunately, sports activities, accidents or other causes may also lead to injury and, in rare cases, result in pain that is severe or

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

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

### **3.3. Exceptions to Mandatory Reports of Offenses Involving Controlled Substances**

#### **3.3.1. Non-Applicability to Treatment Program Records and Information**

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

#### **3.3.2. Voluntary Self-Report**

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

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

#### **3.3.3. Overdose Prevention Act**

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



medical assistance for an individual believed to be experiencing a drug overdose, whether the person is seeking assistance for himself/herself or another, the person calling for help and the person experiencing the overdose must not be arrested, charged, prosecuted, or convicted for certain specified criminal offenses enumerated in *N.J.S.A. 2C:35-30(a)(1-6)* and *N.J.S.A. 2C:35-31(a)(1-6)* involving the use or simple possession of controlled dangerous substances. The Act does not limit in any way the ability of law enforcement to investigate, arrest, or prosecute an offense involving the manufacture, distribution, or possession with intent to distribute an illicit substance or paraphernalia or other drug-offenses. Attorney General Directive 2013-1 expanded the immunity provisions of the Act beyond its plain language to encompass the spirit of the law by providing immunity to others present at the scene of the overdose event if those other persons were made aware of and participated in the request for medical assistance, even if only one person actually placed the call to 9-1-1. As Attorney General Directive 2013-1 made clear, the immunity feature of the Act does not extend to simple use or possession drug offenses that come to the attention of law enforcement by independent means.

Law enforcement and educators should also be mindful of P.L. 2009, c.133, the “9-1-1 Lifeline Legislation,” which provides immunity for underage use and possession of alcohol for up to three people (including the individual in need of medical assistance) when 9-1-1 is called for an alcohol poisoning-related medical emergency. To be eligible for the immunity, the underage persons must be the first to place the 9-1-1 call, must provide their names to the 9-1-1 operator, must remain on the scene of the event, and must cooperate with law enforcement and medical responders.

#### **3.3.4. Students Suspected of Being Under the Influence of Alcohol or Other Drugs**

Pursuant to *N.J.A.C. 6A:16-4.3(a)3* and *6.3(a)4*, school officials may, **but need not**, disclose to law enforcement authorities the identity of a student suspected to be under the influence of alcohol or other drugs. In each instance of a report to law enforcement authorities of a student suspected of being under the influence of alcohol or other drugs, pursuant to *N.J.S.A. 18A:40A-12(a)* and *N.J.A.C. 6A:16-4.3(a)*, or of a student suspected of using of anabolic steroids, pursuant to *N.J.S.A. 18A:40A-12(b)* and *N.J.A.C. 6A:16-4.3(b)*, the student must receive the required medical examination, pursuant to *N.J.S.A. 18A:40A-12* and *N.J.A.C. 6A:16-4.3(a)2 et seq.* or *(b)2 et seq.*, as appropriate.

#### **3.3.5. Possession or Consumption of Alcoholic Beverages**

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

It is understood that it is unlawful for a person under the age of 21 to purchase or knowingly consume an alcoholic beverage on school grounds (see *N.J.S.A. 2C:33-15* and

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

### **3.3.6. Self-Administration of Medication by Students**

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

- (i) the student's parent or guardian submits to the board of education a written certification from the student's physician specifying the specific medical condition necessitating self-administration, the medication to be administered, and the fact that the student is capable of and has been instructed in the proper method for self-administration of the medication;
- (ii) the student's parent or guardian submits to the board of education written authorization from the parent or guardian for self-administration of the medication by the student;
- (iii) the board of education informs the student's parent or guardian, in writing, that the district, its employees, and its agents must incur no liability as a result of the student's self-administration of medication; and
- (iv) the student's parent or guardian signs a statement acknowledging that the district, its employees, and its agents must incur no liability as a result of the student's self-administration of medicine, and that they (the student's parent or guardian) will indemnify and hold harmless the district, its employees, and its agents against claims arising out of the student's self-administration of medication.

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



### **3.3.7. Compassionate Use Medical Marijuana Act**

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

The Office of the Attorney General developed Enforcement Guidelines to provide law enforcement with guidance and instruction on key provisions of CUMMA. This document is available at the Division of Criminal Justice website under [Attorney General Guidelines](#). The MMP, in cooperation with the Department of Law and Public Safety, has established an MMP Identification Card validation process. Law enforcement personnel that encounter or have questions regarding the validity of an MMP Identification Card should contact the New Jersey State Police, Regional Operations Intelligence Center (ROIC), for Identification Card validation.

As of January 23, 2018, the MMP has five Alternative Treatment Centers in operation in New Jersey. NJ Exec. Order No. 6 (Jan. 23, 2018), 50 N.J.R. 885(a). They are (1) Compassionate Care Foundation, Inc., in Egg Harbor Township, (2) Greenleaf Compassion Center in Montclair, (3) Garden State Dispensary in Woodbridge, (4) Breakwater Alternative Treatment Center in Cranbury, and (5) Curaleaf NJ, Inc., in Bellmawr. These facilities are presently dispensing medicinal marijuana in raw vegetative form only. They are in the process of developing protocols for the manufacture of lozenge, topical formulations and edible products. These products will be available in the future and will be lawfully dispensed, possessed and utilized by patients that are registered with the MMP. As these products become available, law enforcement will be notified and provided with appropriate instruction on identification. Additional information regarding the Medicinal Marijuana Program is available from the [New Jersey Department of Health](#).

### **3.3.8. Electronic Smoking Devices**

“Electronic smoking device” means an electronic device that can be used to deliver nicotine or other substances (e.g., marijuana) to the person inhaling from the device, including, but not limited to, an electronic cigarette, vape pen, cigar, cigarillo, or pipe. *N.J.S.A.* 26:3D-55 bans the use of electronic smoking devices in public places and workplaces, including, but not limited to public and nonpublic elementary or secondary school buildings, board of education buildings and any area of any building of, or on the grounds of, any public or nonpublic

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

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

### **3.4. Securing Controlled Substances and Paraphernalia**

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

### **3.5. Law Enforcement Response to Mandatory Controlled Substance Reports**

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

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

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

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

pursuant to *N.J.A.C. 6A:16-3.1* or community-based alcohol or other drug abuse treatment program.

Nothing in this paragraph must be construed in any way to authorize or require a referral or transmittal of any information or records in the possession of a school-based alcohol or other drug abuse intervention, referral for evaluation, referral for treatment or continuity of care program or a community-based substance abuse treatment program where such referral or transmittal would constitute a violation of state or federal confidentiality laws or regulations, and such information or records must be strictly safeguarded in accordance with applicable state and federal laws and regulations.

### **3.6. Requirement to Report Incidents Involving Firearms and Dangerous Weapons**

Subject only to the provisions of Articles 7.4 and 9 of this Agreement, it is agreed that *(designated school official)* must immediately notify *(designated law enforcement official)* whenever any school employee in the course of his or her employment, pursuant to *N.J.A.C. 6A:16-5.5* and *6.3(b)*, develops reason to believe that a firearm or ammunition has unlawfully been brought onto school grounds, or that any student or other person is in unlawful possession of a firearm or ammunition, whether on or off school grounds, or that any student or other person has committed an offense with, or while in possession of, a firearm, whether or not such offense was committed on school grounds.

In addition, *(designated school official)* must immediately notify *(designated law enforcement official)* whenever any school employee in the course of his or her employment comes upon a non-firearm weapon that was **actually used or threatened to be used** in committing an offense, including weapons used to commit assault upon a teacher, administrator, other school board employee, district board of education member, or another student on school grounds, pursuant to *N.J.S.A. 18A:37-2.2* through *2.5*. Law enforcement **must be** notified when the weapon seized is any switchblade, gravity, or ballistic knife, stun gun, or metal knuckles, whether or not the weapon was actually used or threatened to be used.

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

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

In deciding whether to report the presence or seizure of a non-firearm weapon that was not actually used or threatened to be used in committing an assault or other offense, the *(school official)* and *(designated law enforcement official)* must consider:

- 1) the nature of the weapon;
- 2) any lawful purposes that it might have;
- 3) the age of the student; and
- 4) the student's intent.

It is generally not necessary to report the seizure of small pen knives or Swiss-Army style knives. It is further understood and agreed that school officials should consult with law



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

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

### **3.8. Securing Firearms, Ammunition and Dangerous Weapons**

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

#### **3.8.1. Advice on Weapons**

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

### **3.9. Law Enforcement Response to Mandatory Firearms and Weapons Reports**

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



### **3.9.1. Interdiction of Weapons**

It is understood and agreed that the (*law enforcement agency*) must make every reasonable effort to effect the arrest of any student believed to be in the unlawful possession of a firearm or other dangerous weapon while the student is not on school grounds, to prevent whenever possible the bringing of such firearm or weapon onto school grounds. When this is not feasible, the (*law enforcement agency*) must scrupulously comply with the notification requirements for planned arrests as set forth in Article 6.4 of this Agreement.

### **3.10. Requirement to Report Incidents Involving Planned or Threatened Violence**

Notwithstanding any other provision of this Agreement, it is agreed that (*school official*) must immediately notify (*law enforcement agency*) whenever any school employee in the course of his or her employment develops reason to believe that anyone has threatened, is planning, or otherwise intends to cause death, serious bodily injury, or significant bodily injury to another person under circumstances in which a reasonable person would believe that the person genuinely intends at some time in the future to commit the violent act or to carry out the threat, pursuant to *N.J.A.C. 6A:16-6.3(c)* through (e). In making these determinations, the school official should employ risk management and assessment tools. Chapter 7 of New Jersey Department of Education publication titled [\*School Safety and Security Manual: Best Practices Guidelines\*](#) provides an approach to behavioral assessment and risk determination. Specifically, section 7.2., the Four-Pronged Threat Assessment Model, addresses evaluation of persons making threats.

The school official must provide to the responding law enforcement agency all known information relevant to the threat, including but not limited to any historical or background information concerning the person's behavior or state of mind. For the purposes of this reporting requirement, the threatened or planned act of violence need not be imminent, and the intended victim of the violent act need not be aware of the threat. Nor must it be relevant for the purposes of this reporting requirement that the intended victim is not a student or member of the school community, or that the violent act is not intended to be committed on school grounds. The parties to this Agreement understand and agree that students who make a credible threat of harm to themselves or others should be taken seriously. Accordingly, the provisions of this paragraph must be liberally construed with a view toward preventing future acts of violence.

### **3.11. The New Jersey Office of Homeland and Security Response to Planned or Threatened Violence**

The New Jersey Office of Homeland and Security receiving information about a threatened, planned, or intended act of violence pursuant to Article 3.10 of this Agreement agrees to promptly dispatch an officer, or immediately dispatch an officer where the circumstances so warrant, to undertake an investigation and to take such actions as may be appropriate and necessary to prevent the threatened, planned, or intended act of violence from occurring. Further, under the March 26, 2018, update to Attorney General Directive 2016-7, the law enforcement agency must immediately report any suspicious activity "with a possible nexus to terrorism or other criminal activity related to terrorism," which includes threats of violence

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

### **3.12. Requirement to Report Sexual Offenses**

Subject only to the provisions of Article 7.4 and 9 of this Agreement, it is agreed that *(designated school official) must immediately notify (designated law enforcement official)* whenever any school employee in the course of his or her employment develops reason to believe that a crime involving sexual penetration or criminal sexual contact has been committed on school grounds, or by or against a student during school operating hours or during school-related functions or activities, pursuant to *N.J.A.C. 6A:16-6.3(d)*. When the school official designated as the liaison for law enforcement is the person under investigation, school districts are encouraged to have a plan in place on who should report to law enforcement (e.g., the liaison's supervisor or the chief school administrator).

### **3.13. Law Enforcement Response to Sexual Offenses**

The *(law enforcement agency)* receiving information about sexual penetration or criminal sexual contact pursuant to Article 3.12 of this Agreement must promptly dispatch an officer, or immediately dispatch an officer where the circumstances so warrant, to undertake an investigation and to take such actions as may be appropriate and necessary to prevent future sexual offenses from occurring.

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

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

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

The *(law enforcement agency)* receiving information about an assault on district board or education members or employees pursuant to Article 3.14 of this Agreement agrees to promptly dispatch an officer, or immediately dispatch an officer where the circumstances so warrant, to undertake an investigation and to take such actions as may be appropriate and necessary to prevent future assaults.



### **3.16. Requirement to Report Bias-Related Incidents**

In accordance with *N.J.A.C. 6A:16-6.3(e)*, school employees must notify the principal and chief school administrator when they develop reason to believe a “bias-related act”<sup>2</sup>, has been committed or is about to be committed on school grounds, or has been or is about to be committed by a student on or off school grounds, and whether such offense was or is to be committed during operating school hours, or a student enrolled in the school has been or is about to become the victim of a bias-related act on or off school grounds, or during operating school hours. The principal and chief school administrator, in turn, should promptly notify the local law enforcement agency and the bias investigation officer for the county prosecutor’s office.

A “bias-related act” means an act that is directed at a person, group of persons, private property, or public property that is motivated in whole or in part by race, color, national origin, ethnicity, gender, gender identity or expression, disability, religion, or sexual orientation. A bias-related act need not involve conduct that constitutes a criminal offense. Note that all hate crimes and bias-intimidation crimes are also bias-related acts, but that not all bias-related acts will constitute a hate crime or bias-intimidation crime. A “hate crime”<sup>3</sup> is defined as any criminal offense in which the person or persons committing the offense acted with a purpose to intimidate an individual or group of individuals because of race, color, gender, gender identity or expression, disability, religion, sexual orientation, ethnicity, or national origin.

#### **3.16.1. Considerations when Reporting Bias-Related Acts**

*N.J.A.C. 6A:16-6.3(e)* requires schools to notify the law enforcement agency and the county prosecutor’s office of bias-related acts (whether committed or about to be committed) as described above. Under the authority of a separate agreement entitled [Responding to Hate Crimes and Bias-Related Acts](#), the principal of the school, or his or her designee, should consider the nature and seriousness of the conduct and the risk that the conduct posed to the health, safety, or well-being of any student, school employee, or member of the general public when making the notification to the law enforcement agency and the county prosecutor’s office.

Bias-related acts may also constitute HIB. Law enforcement officials agree to notify the principal of the school at which a student is enrolled when a student or a student’s parent or guardian reports to the law enforcement agency that a student may be the victim of HIB, as defined in the ABR.

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

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<sup>2</sup> For the purposes of this document, “bias related act” includes and is used interchangeably with the term “bias incident”. The term “bias incident” is utilized in the 2000 Attorney General’s Guidelines on Bias Incident Investigation Standards and in the training of law enforcement officers. The term “bias related act” is utilized in *N.J.A.C. 6A:16-6.3(e)* and includes two categories that the 2000 Guidelines does not – gender and disability. It is the intention to update these Guidelines to bring it in accordance with *N.J.A.C. 6A:16-6.3(e)*. Law enforcement are currently trained utilizing the term “bias incident” but with the inclusion of gender and disability.

<sup>3</sup> For the purposes of this document, a “hate crime” is the same thing as a “bias crime” as utilized in the 2000 Attorney General’s Guidelines on Bias Incident Investigation Standards.

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

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

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

#### **3.17.2. Notification to Law Enforcement**

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

#### **3.17.3. Notification of CP&P by Law Enforcement**

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

#### **3.17.4. Law Enforcement Response**

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

#### **3.17.5. Notification of Parents or Guardians**

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

#### **3.17.6 Anonymity**

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



to anonymity for these reports. Furthermore, there is no anonymity when incidents are reported to law enforcement authorities.

### **3.17.7 Custody Disputes and Potentially Missing Children**

It is recognized by all parties to this agreement that custody disputes between parents often have a detrimental effect upon the children. Sudden requests for school records accompanied by suspicious absences should result in a heightened scrutiny within the school. Therefore, to the extent that a report to law enforcement will not violate student record confidentiality, if it comes to the attention of a school administrator that the absence of a child from school may be due to a parental kidnapping or custodial interference, the school administrator must immediately contact law enforcement authorities. Concerns that a child may be unlawfully removed from the jurisdiction should be immediately brought to the attention of local law enforcement officials.

## **Article 4. Reporting other Offenses: Non-Mandatory Reports**

### **4.1. Reporting Other Offenses**

When contemplating a non-mandatory (i.e., voluntary) report, the Department of Education encourages school officials to refer to the code of student conduct and provide a graduated response to misconduct that provides a continuum of actions designed to remediate and impose more severe sanctions for continued misbehavior prior to referring the incident to law enforcement. Research has demonstrated that students who have contact with the juvenile justice system, including a single arrest, are at increased risk of dropping out of school and having further involvement with the juvenile and adult criminal justice system.

Subject to the provisions of Articles 7.4 and 9 of this Agreement, it is agreed that (*designated school official*) may, but need not, notify (*designated law enforcement official*) whenever any school employee develops reason to believe that a non-mandatory report offense has been committed on or against school grounds. In deciding whether to refer the matter to the designated law enforcement agency, the principal of the school or his or her designee should consider the nature and seriousness of the offense and the risk that the offense posed to the health or safety of other students, school employees, or the general public and must be mindful that offenses committed on school grounds by or against students may lead to an escalation of violence or retaliation that may occur on school grounds or at other locations. Under no circumstances may any school employee prevent or discourage the victim of an offense from reporting the offense to a law enforcement agency. Schools are encouraged to consult with law enforcement concerning a non-mandatory report offense to discuss the appropriate level of intervention and available resources.

### **4.2. Stationhouse Adjustments**

All municipal and other law enforcement agencies having patrol jurisdiction within the State of New Jersey shall make stationhouse adjustments available as a method of handling minor juvenile delinquency offenses within their jurisdiction. See Attorney General Directive

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

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

#### **4.3. Law Enforcement Response to Non-Mandatory Reports**

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

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

Harassment, intimidation, or bullying (HIB) in school settings presents an ongoing challenge throughout New Jersey. Acts motivated either by any actual or perceived characteristic, such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical or sensory disability, or by any other distinguishing characteristic, tear at the fabric of our society, pose grave risks to the physical and emotional well-being of children, and can quickly lead to retaliation, an escalation of violence both on and off school grounds, and even suicide. HIB may take a myriad of forms, encompassing even common activities such as the photographing or recording of one student by another.

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

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

The ABR also mandates that New Jersey's Department of Education aid schools in complying with the law by revising its model policy and guidance. The Department complied with this requirement by promulgating *Model Policy and Guidance for Prohibiting Harassment, Intimidation and Bullying on School Property, at School-Sponsored Functions and on School Buses* (most recently revised in April 2011).

#### **4.4.1. Statutory Definition**

The *Anti-Bullying Bill of Rights Act* sets forth the following definition for HIB (*N.J.S.A. 18A:37-14*):

“Harassment, intimidation or bullying” means any gesture, any written, verbal or physical act, or any electronic communication, whether it be a single incident or a series of incidents, that is reasonably perceived as being motivated either by any actual or perceived characteristic, such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical or sensory disability, or by any other distinguishing characteristic, that takes place on school property, at any school-sponsored function, on a school bus, or off school grounds as provided for in section 16 of P.L.2010, c.122 (C.18A:37-15.3), that substantially disrupts or interferes with the orderly operation of the school or the rights of other students and that:

- a. a reasonable person should know, under the circumstances, will have the effect of physically or emotionally harming a student or damaging the student's property, or placing a student in reasonable fear of physical or emotional harm to his person or damage to his property;
- b. has the effect of insulting or demeaning any student or group of students; or
- c. creates a hostile educational environment for the student by interfering with a student's education or by severely or pervasively causing physical or emotional harm to the student.

School investigations of HIB must determine whether conduct meets this definition.

#### **4.4.2. HIB's Relationship to Criminal Conduct**

Significantly, the ABR does not criminalize HIB. In fact, there is no criminal offense for HIB in the New Jersey Code of Criminal Justice. This creates a potentially



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

#### **4.4.3. Reporting of HIB**

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

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

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

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

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

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

#### **4.4.4. Preservation of Evidence and Chain of Custody**

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



destroy or otherwise dispose of any such evidence. Such evidence must be maintained in a locked and secure location and the handling of such evidence must be documented in order to provide a record that no one has had an opportunity to tamper with the evidence.

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

In addition to the obligations to share law enforcement information with schools set forth in Article 9 of this Agreement, the law enforcement agency agrees to notify the principal of the school at which a student is enrolled when a student or a student's parent or guardian reports to the law enforcement agency that a student is the victim of HIB, as defined in the ABR.

Such reports are permissible pursuant to the authority of *N.J.S.A. 2A:4A-60c*, where a juvenile who is a student has been charged with an offense, or pursuant to *N.J.S.A. 2A:4A-60e*, which permits a law enforcement agency to verbally notify the principal of the school at which the juvenile is enrolled where the juvenile is under investigation or has been taken into custody but has not been formally charged with the commission of any act that would constitute an offense if committed by an adult, provided that the information may be useful in maintaining order, safety, or discipline in the school or in planning programs relevant to the juvenile's educational and social development. Such notification also must be provided when the alleged offending student is an adult. See Article 8.8 of this Agreement.

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

When a criminal investigation is initiated by law enforcement, but a school district has already initiated its own disciplinary investigation for the same incident or conduct, a school district generally agrees to suspend its own investigation until law enforcement has concluded its investigation. This best practice avoids hampering ongoing criminal investigations. Although the *Anti-Bullying Bill of Rights Act* (ABR) provides a ten school day timeframe to complete an HIB investigation, this investigation should be suspended or "stayed" when deemed appropriate and requested by law enforcement. The suspension or stay of a school district's HIB investigation may be appropriate when, among other things, there is a concern that witness statements and/or evidence could be adversely affected or detrimental to an ongoing criminal investigation.

Although, a law enforcement investigation focuses on whether there has been a violation(s) of the Code of Criminal Justice, an HIB investigation focuses on whether an act has been committed in violation of the ABR. In an effort to avoid hampering the independent efforts, and objectives, of both law enforcement and school officials, when law enforcement deems it appropriate for a school district to suspend or stay its HIB investigation because its own investigation could be compromised by a simultaneous or concurrent HIB investigation, it may request that the school district suspend or stay its HIB investigation. It is only when law enforcement affirmatively requests a school district to suspend or stay its HIB investigation that such an investigation should be suspended or stayed. If law enforcement does not affirmatively request a suspension or stay of an HIB investigation, a school district must comply with all applicable ABR timeframes. If law enforcement has not affirmatively requested a stay or suspension of an HIB investigation, but a school district believes that the action(s) involved may

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

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

- If law enforcement requests a suspension or stay of an HIB investigation, but the school district has not yet initiated its investigation, the school district must initiate its investigation but solely for the purpose of safeguarding the health and welfare of its students, and not for the purpose of determining whether HIB occurred. The school district's HIB investigation must remain open and stayed during the pendency of law enforcement's investigation. Upon completion of the law enforcement investigation, and following notification of that completion from the county prosecutor, the anti-bullying specialist must immediately resume the school's HIB investigation. In this instance, the anti-bullying specialist must have the ten school days to complete its HIB investigation.
- If law enforcement requests a suspension or stay of an HIB investigation, but the school district has already initiated its investigation, the school must immediately cease and stay its HIB investigation at the request of law enforcement while following the parental/victim notification requirements and seeking court orders to stay requirements set forth above. However, the school district must still be required to safeguard the health and welfare of its students. The school district's HIB investigation must remain open and stayed during the pendency of law enforcement's investigation. Upon completion of the law enforcement investigation, and following notification of that completion from the county prosecutor, the anti-bullying specialist must immediately resume the school's HIB investigation. In this instance, the anti-bullying specialist must have the number of days remaining in the ten school day timeframe to complete its HIB investigation (e.g., if law enforcement directs a school district to cease its investigation on day three, then the school district must have seven days, following clearance from the county prosecutor, to complete its HIB investigation).
- If law enforcement requests a suspension or stay of an HIB investigation, but the school district has already completed its investigation, the ten school day timeframe must be unaffected. However, in the event that additional information is available upon the completion of a criminal investigation, the ABR permits the school anti-bullying specialist to amend the original report with the results of the investigation to reflect the additional information (*N.J.S.A. 18A:37-15b(6)a*). The anti-bullying specialist should

review this additional information, and promptly determine whether the original report should be amended.

- If law enforcement requests a suspension or stay of school district action at any other point, including prior to the reporting of the results of the investigation to the chief school administrator or the board of education; the reporting of information to the parent(s)/guardian(s) of the alleged perpetrator(s) and alleged victim(s); a parental request hearing before the board of education; or prior to the issuance of the board of education's written decision; the school district must comply with this request while following the parental/victim notification requirements and seeking court orders, if necessary, to stay requirements set forth above. All school district action must be stayed during the pendency of law enforcement's request. Following notification of that completion from the county prosecutor, the school district must immediately resume any and all remaining action(s) required under law and regulation.

#### **4.5. Hazing**

Hazing is a process, based on tradition that is used by groups to maintain a hierarchy (*i.e.*, a pecking order) within the group. Regardless of consent, the rituals require individuals to engage in activities that are physically and/or psychologically stressful. These activities can be humiliating, demeaning, intimidating, and exhausting, all of which results in physical or emotional discomfort. Hazing is about group dynamics and proving one's worthiness to become a member of a specific group. The newcomer, or victim, is hazed. Once accepted by the group, the victim may become a bystander, watch others get hazed, achieve senior status, and ultimately become a perpetrator of hazing.

In New Jersey, hazing is a separate criminal offense under *N.J.S.A. 2C:40-3*. School officials should be aware that hazing which involves the participation of a coach or a teacher may also constitute child abuse. Hazing may also involve other predicate crimes, such as sexual assault. Hazing may also constitute HIB. As noted in Article 4.4.2, although HIB is not a separately defined criminal offense, the conduct that constitutes bullying may constitute one or more criminal or disorderly person offenses, including assault, harassment, threats, robbery and sexual offenses.

##### **4.5.1. Statutory Definition**

The statute sets forth the following definition for hazing:

A person is guilty of hazing, a disorderly persons offense, if, in connection with initiation of applicants to or members of a student or fraternal organization, he/she knowingly or recklessly organizes, promotes, facilitates or engages in any conduct, other than competitive athletic events, which places or may place another person in danger of bodily injury (*N.J.S.A. 2C:40-3(a)*).

A person is guilty of aggravated hazing, a crime of the fourth degree, if he/she commits an act defined as hazing that results in serious bodily injury to another person (*N.J.S.A. 2C:40-*



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

#### **4.5.2. Reporting of Hazing**

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

Hazing may also constitute HIB. Law enforcement officials agree to notify the principal of the school at which a student is enrolled when a student or a student's parent or guardian reports to the law enforcement agency that a student may be the victim of HIB, as defined in the *Anti-Bullying Bill of Rights Act*.

#### **4.6. Cyber-Harassment**

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

##### **4.6.1. Statutory Definition**

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

1.a. A person commits the crime of cyber-harassment if, while making a communication in an online capacity via any electronic device or through a social networking site and with the purpose to harass another, the person:

- (1) threatens to inflict injury or physical harm to any person or the property of any person;
- (2) sends, posts, comments, requests, suggests, or proposes any lewd, indecent, or obscene material to or about a person; or
- (3) threatens to commit any crime against the person or the person's property.

b. Cyber-harassment is a crime of the fourth degree, unless the person is 21 years of age or older at the time of the offense and impersonates a minor for the purpose of cyber-harassing a minor, in which case it is a crime of the third degree.

c. If a minor under the age of 16 is adjudicated delinquent for cyber-harassment, the court may order as a condition of the sentence that the minor, accompanied by a parent or guardian, complete, in a satisfactory manner, one or both of the following:

- (1) a class or training program intended to reduce the tendency toward cyber-harassment behavior; or

- (2) a class or training program intended to bring awareness to the dangers associated with cyber-harassment.
- d. A parent or guardian who fails to comply with a condition imposed by the court pursuant to subsection c. of this section is a disorderly person and must be fined not more than \$25 for a first offense and not more than \$100 for each subsequent offense (*N.J.S.A. 2C:33-4.1*).

#### **4.6.2. Reporting of Cyber-Harassment**

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

Cyber-harassment may also constitute HIB. Law enforcement officials agree to notify the principal of the school at which a student is enrolled when a student or a student's parent or guardian reports to the law enforcement agency that a student may be the victim of HIB, as defined in the *Anti-Bullying Bill of Rights Act*.

#### **4.7. Sexting**

Sexting, or the sending of sexually explicit photos by electronic means such as text message, may constitute a criminal act pursuant to New Jersey's child pornography laws. For instance, it is a crime to give to someone else, offer to give to someone else, transfer, disseminate, distribute, circulate, or possess pornography depicting a child, defined as a person younger than 18 (*N.J.S.A. 2C:24-4*). Penalties for violating such laws include not only significant time in prison but also mandatory registration as sex offenders.

##### **4.7.1. Reporting of Sexting**

Sexting has become increasingly common among both pre-teens and teens who may be unaware that it can compromise not only their social reputation, but their digital reputation as well. Once a photograph has been sent out, it becomes difficult, if not impossible, to know how many people have saved it, tagged it, shared it, etc. Unfortunately, the photograph could resurface years after it was taken and posted. Working proactively with law enforcement is often the best way to quickly ascertain who has a digital copy of the photograph and to destroy it before it can be further circulated.

School officials agree to immediately report to law enforcement officials any sexting incident that rises to the level of mandatory report, as outlined in Article 3. In addition, schools are encouraged to consult with law enforcement for any incident that may require outside investigation. New Jersey has created an alternative to criminal prosecution for teens charged with child pornography as a result of sexting (*N.J.S.A. 2A:4A-71.1*). If the court deems it appropriate, these teens may be ordered to participate in an educational program or counseling in lieu of prosecution. Both the creator and subject of the sexting image must be younger than 18 to be eligible for this program.

Sexting may be also constituting HIB. Law enforcement officials agree to notify the principal of the school at which a student is enrolled when a student or a student's parent or guardian reports to the law enforcement agency that a student may be the victim of HIB, as defined in the *Anti-Bullying Bill of Rights Act*.

#### **4.8 Offenses Involving Computers, the Internet and Technology**

##### **4.8.1. Purpose**

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

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

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

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

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