

MIDDLESEX COUNTY PROSECUTOR'S OFFICE

2011

REFERENCE GUIDE TO THE

UNIFORM STATE

MEMORANDUM OF AGREEMENT BETWEEN

EDUCATION

AND

LAW ENFORCEMENT OFFICIALS

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1. **Mandatory Notification of Police – List**

Here is a list of the nine situations in which principals must notify police under the Agreement. (Additional information on each topic is set forth in later sections).

- 1) Drugs, imitation drugs and paraphernalia;
- 2) Guns (Including BB, air, unloaded and inoperable);
- 3) Weapons other than guns;
- 4) Incidents involving planned or threatened violence to others or self;
- 5) Crimes involving sexual penetration or contact;
- 6) Hate crimes;
- 7) Suspected abused, neglected or missing children. (Under the dual reporting requirement for suspected abused, neglected or missing children, principals must notify both the police and the Division of Youth and Family Services (DYFS). The DYFS Child Abuse Hotline is 1-877-652-2873);
- 8) Hazing;
- 9) Catastrophic school incidents;
- 10) Offenses involving computers, the internet and technology.

2. **Presumptive Notification of Police**

In the following three situations, principals “should” notify police:

- 1) bias related acts (which do not constitute hate crimes);
- 2) alcohol offenses;
- 3) offenses committed at school, during school hours or during school activities, other than mandatory notification offenses.

In deciding whether to notify police in presumption notification situations, the principal:

.....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.

3. Drugs, Imitation Drugs and Paraphernalia

New Jersey's drug laws are found in the "Comprehensive Drug Reform Act of 1987." N.J.S. 2C:35 and 36. There are separate crimes for the "use," "possession with intent to distribute" and "distribution" of drugs. "Possession" does not require that the drugs be on the individual's person, however, "possession" requires knowledge and some degree of control or intent to exercise control. Therefore, "possession" may be "actual" (on the person), "joint" (shared, such as in a car), or "constructive" (such as in a school locker). "Distribution" does not require selling, but includes giving drugs to another.

In recognition of the dangers involved in selling and using imitation drugs, it is a crime to distribute, or possess with intent to distribute, these types of substances.

Drug paraphernalia includes empty, clean items used to package, distribute and use drugs, such as small zip-lock baggies, capsules, envelopes, tin foil and clips.

It is important to note that principals shall not identify a pupil who voluntarily seeks treatment when all of the following three conditions are met:

- 1) The request for treatment was initiated by the pupil, not in response to questioning initiated by police or school;
- 2) The pupil was not involved in drug-distribution activities; and
- 3) The pupil agrees to and does participate in an appropriate treatment or counseling program.

Also, principals shall not notify police of information obtained in the course of drug treatment or counseling, with the exception of information regarding suspected child abuse or neglect, which must always be immediately reported to law enforcement and DYFS. It should be noted that information obtained outside of treatment and counseling is not privileged, even though the same information is provided during counseling or treatment. For example, a principal is required to report information received independently of counseling even if the same information is recorded in a treatment record.

Lastly, whenever illegal drugs or paraphernalia are recovered, even when the pupil's identity must remain confidential, the principal must turn over the contraband to the police.

4. Guns - Including BB, Air, Unloaded and Inoperable

New Jersey defines "firearm" broadly to include BB guns, air guns, and unloaded and inoperable guns. Paint ball guns and imitation guns are not "firearms." However, a paintball gun becomes a "weapon" if used against a non-consenting individual or to damage property; and it is a crime to carry an imitation gun under circumstances which suggest criminal activity.

In order to best protect the school, a principal's obligation to notify police extends to knowledge of guns in the community. A principal must immediately notify police whenever there is reason to believe 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.

The principal must identify the student or other individual from whom the gun was discovered, or who may presently possess a gun, to preserve the chain of custody. School officials shall take reasonable precautions with any seized weapon and preserve it until law enforcement arrives on the scene.

5. Weapons other than Guns

The definition of "weapon" is extremely broad, including "anything readily capable of lethal use or of inflicting serious bodily injury."

Principals must notify police whenever any weapon is possessed, used or its use is threatened. With regard to "mere" possession of weapons other than guns, the Agreement appears to give principals discretion in notifying the police.

6. Incidents Involving Planned or Threatened Violence to Others or Self

Under the Agreement, the threshold amount of information which mandates police notification is minimal. The principal must notify police when there is "reason to believe" that a student may commit an act of violence "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....[T]he threatened or planned act of violence need not be imminent."

Principals and police understand and agree that students who make a credible threat of harm to themselves or others should be taken seriously. The principal's obligation to notify police extends to acts of violence which may occur off school property. Principals are required to provide "all known information relative to the threat, including but not limited to historical or background information concerning the student's behavior or state of mind." Finally, the Agreement "shall be

liberally construed with a view toward preventing future acts of violence.” Note that under the Agreement “planned or threatened violence” includes not only causing death , but also causing serious or significant bodily injury to another.

7. Crimes Involving Sexual Penetration or Contact

Principals must immediately notify law enforcement when there is reason to believe that a crime involving sexual penetration or contact has been committed on school property, or by or against a student during school hours or activities. Further, any report involving a student being the victim of a crime of a sexual nature must be reported to law enforcement.

If a student’s parent or guardian is suspected of committing the offense, they are not to be notified of the pending investigation.

“Sexual Penetration” is defined to mean “vaginal intercourse, cunnilingus, fellatio or anal intercourse between persons or insertion of the hand, finger or object into the anus or vagina either by the actor or upon the actor’s instruction....”

“Sexual contact” means “an intentional touching...either directly or through clothing, of the victim’s or actor’s intimate parts for the purpose of degrading or humiliating the victim or sexually arousing or sexual gratifying the actor. Sexual contact of the actor with himself must be in view of the victim whom the actor knows to be present.”

“Intimate parts” means “sexual organs, genital area, anal area, inner thigh, groin, buttock or breast.” Note that “intimate parts” includes the “area” of the intimate part of the body.

Other crimes, which are often precursors to crimes involving sexual penetration or contact, should be reported to police. Viewing, filming or distributing images of another’s sexual activity or intimate parts without consent, including peeping into restrooms or locker rooms, constitutes the crime of invasion of privacy. Luring or enticing a child, including by electronic means, for the purpose of committing an offense, is a crime.

8. Hate Crimes and Bias Related Acts

“Hate Crimes” are: (1) “any criminal offense” which is, (2) done with a “purpose to intimidate” an individual or group of individuals because of:

1. Race;
2. Color;
3. Religion;
4. Gender;
5. Disability;
6. Sexual Orientation; or
7. Ethnicity.

Principals must immediately notify police when there is reason to believe that a hate crime has or may be committed by or against a student on or off school property.

Bias related acts are “an act...motivated...by...prejudice.” To distinguish bias related acts from hate crimes, bias related acts include non-criminal conduct motivated by prejudice but without a purpose to intimidate. Therefore, bias related acts include a much wider range of conduct. When a bias related act also constitutes a hate crime, notification is mandatory; otherwise, notification is presumptive. When deciding whether to refer a non-criminal bias related act, principals should consider that bias related acts may presage planned or threatened violence...[and] could escalate or result in some form of retaliation.

9. Suspected Abused, Neglected or Missing Children

By law, any person having reasonable cause to believe that a child has been subjected to child abuse...must report the same immediately to the Division of Youth and Family Services by telephone (1-877-652-2873) or otherwise. Moreover, the police must be immediately notified as well.

If a student's parents or guardian is suspected of causing the abuse, they are not to be notified of the pending investigation.

10. 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. It requires newcomers who aspire to join the group to be subjected to humiliating, demeaning, and often dangerous activities in order to be accepted into the group.

If such activities are discovered by school officials to be occurring and are determined to either place another person in danger of bodily injury or in fact cause serious bodily injury, they are to be reported to the police.

11. Gang Recruitment

Gangs have increasingly looked to schools in order to recruit new gang members. Therefore it is important for law enforcement and school officials to engage in ongoing discussions and training in gang prevention in order to be able to recognize signs of gang activity and recruiting within the schools.

Further, school officials shall inform law enforcement officials of any signs of gang activity or recruiting observed on school grounds.

12. Catastrophic School Incidents

A. Incidents Occurring on or Near School Property:

In the event of a catastrophic incident which is defined as follows:

1. The discharge of any firearm on or near school property;
2. The death of any individual which takes place on school property, regardless of whether or not school is in session;
3. A bomb threat received by or discovered by school personnel or brought to their attention by any individual;
4. Serious bodily injury to any student which takes place as the result of an assault on school property which requires the student to be taken directly to a hospital;
5. Any interruption in the school day which causes the lock down or shut down of the school due to any dangerous or hazardous condition;
6. Any gang related violence or threat of violence;

is discovered by school officials to be occurring on or nearby school property, the school principal should notify the catastrophic notification group which consists of the following members:

- a) the Chief of Police
- b) the local superintendent
- c) the County Prosecutor
- d) the County Superintendent of Schools

This group will then decide the appropriate level of response and required services.

B. Incidents or Emergencies Occurring Near School Grounds

In the event local law enforcement becomes aware of an emergency affecting the safety of children during school hours, the Chief of Police or station commander shall immediately notify the principal of the effected school. The Chief of Police or Station Commander will also, in his or her discretion, notify the county superintendent of schools or other designee.

13. Offenses Involving Computers, the Internet and Technology

Advances in technology, such as the growth of the internet and local computer networks, specifically through the use of computerized devices such as cell phones, digital cameras, PDAs and desk and lap-top computers, has made information and communication easily accessible to a large percentage of the population, especially juveniles. Unfortunately, along with these advances, it has become commonplace for juveniles to utilize electronic forms of communication to harass and threaten other students or individuals.

Thus, in the event a school suspects that a juvenile may be using a computer to violate the law, law enforcement should be immediately notified by school officials. Moreover, if the school should come into possession of computerized devices that may contain evidence of a crime, these devices should be turned over to law enforcement, and not parents, by school officials.

Further, with the continued popularity of use of "weblogs or blogs," which have become a public forum especially for young people to post a variety of personal information, it is important that school officials immediately notify law enforcement when it is suspected that blogging information rises to the level of threats or harassment. At that time a legal determination will be made on whether the information contained in the blog is constitutionally protected as "free speech" or is in fact criminal in nature.

14. Notification of Principals by Police and Prosecutor

A. By statute, a law enforcement officer or prosecuting agency shall, at the time of a charge, adjudication, or disposition, send written notice to the principal of the school where the juvenile is enrolled of the identity of the juvenile charged, the offense charged, the adjudication and disposition if :

1. 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; or
2. The juvenile was taken into custody as a result of information or evidence provided by school officials; or
3. The offense, if committed by an adult, would constitute a crime, and the offense:
 - a) resulted in death or serious bodily injury or involved an attempt or conspiracy to cause death or serious bodily injury; or
 - b) involved the unlawful use or possession of a firearm or other weapon; or

- c) involved the unlawful manufacture, distribution or possession with intent to distribute a controlled dangerous substance or controlled substance analog; or
- d) was committed by a juvenile who acted with a purpose to intimidate an individual or group of individuals because of race, color, religion, sexual orientation or ethnicity; or
- e) would be a crime of the first, second or third degree.

B. By statute, at the time of a criminal charge, adjudication 'of delinquency', or conviction of any student who is 18 years of age or older and is enrolled in secondary school, the law enforcement or prosecuting agency shall provide written notice to the school principal of the identity of that student, the offense charged, the adjudication, and the conviction if:

- a) 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;
- b) The student was taken into custody as a result of information or evidence provided by school officials; or
- c) The offense constitutes a crime, and the offense:
 - (1) resulted in death or serious bodily injury or involved an attempt or conspiracy to cause death or serious bodily injury;
 - (2) involved the unlawful use of possession of a firearm or other weapon;
 - (3) involved the unlawful manufacture, distribution or possession with intent to distribute a controlled dangerous substance or controlled substance analog;
 - (4) was committed with a purpose to intimidate an individual or group of individuals because of race, color, religion, sexual orientation or ethnicity; or

(5) is a crime of the first, second, or third degree.

Information provided to the principal pursuant to this subsection shall be maintained by the school and shall be treated as confidential but may be made available to such members of the staff and faculty of the school as the principal deems appropriate for maintaining order, safety or discipline in the school or for planning programs relevant to a student's educational and social development.

Moreover, a law enforcement agency who files a complaint or summons for either an indictable offense, DWI, disorderly persons, or a petty disorderly persons offense against an individual who admits or is otherwise known to be a school employee, school bus driver or other outside school employee, shall provide notice and copy of the complaint or summons to the affected school district no later than the next business day.

Further, any time a school district is a victim of a minor offense, such as trespass that is committed by a juvenile, and law enforcement resolves the offense by completing a station house adjustment in lieu of a formal complaint, the district shall be notified and included in this process.

Additionally, police may share information pertaining to an investigation before the complaint is signed when the information may be useful to the principal in maintaining order, safety, or discipline in school or in the planning of programs relevant to the juvenile's educational and social development.

While police and prosecutors may only provide written and oral information confidentially to the principal, the principal may share it with "such members of the staff and faculty of the school as the principal deems appropriate for maintaining order, safety or discipline in the school or for planning programs relevant to the juvenile's educational and social development."

15. Searches by Educators

Educators may conduct searches based on "reasonable suspicion." This standard is less stringent than for law enforcement officers, who are required to have probable cause.

In order for the less stringent requirements to apply, educators may not act as "agents" of the police in conducting a search. A principal acts independently of police even though the police may have provided the information which forms the basis of the principal's search and even though the principal will turn over to the police any contraband which is recovered. Therefore, while officers should inform principals of suspected criminal activity, officers should not request or encourage the principal to conduct a search or be present during the search, unless probable cause and an exception to the requirement of a warrant exists. For example, an officer may conduct a search without a

warrant under the "emergency aid" doctrine, when the officer reasonably conducts a search not to discover evidence, but because immediate action is required to protect people.

School lockers, being the property of the school, may be randomly searched by the principal "so long as students are informed in writing at the beginning of each school year that inspections may occur." N.J.S. 18A:26-19.2.

16. Questioning of Pupils by Educators

As long as an educator is not acting on behalf of a law enforcement officer, the educator may question a pupil without first advising the pupil of his or her Miranda rights and without having a parent present. The fact that an educator is acting on information provided by an officer, or will turn over incriminating evidence to an officer, does not make the principal the agent of the police or convert the questioning to a law enforcement interrogation, which usually requires the Miranda warnings, and, in the case of juveniles, a good faith attempt to procure a parent's presence.

As in the case of searches by school administrators, the presence of a law enforcement officer during questioning by an administrator, while a factor to be considered, does not automatically transform the questioning into law enforcement interrogation. For example, the officer may be present under the "emergency aid" doctrine to ensure the safety of all.

17. Creation of Law Enforcement Units/Liaisons

Every school district shall, in its discretion, consider designating one or more law enforcement units within the school district. This unit may be comprised of one or more individuals who are either law enforcement officers working within a school, or any other school official or employee, whose responsibilities will include the enforcement of any local, state, or federal law, referral to appropriate authorities a matter for enforcement of any local, state, federal law except against the agency or institution itself, as well as maintaining the physical security and safety of the institution.

All school security equipment shall be the responsibility of the unit and all school security records including videotapes, logs, and records of interviews relating to potential violations of law, are to be created and maintained by the unit. These records will not be considered students records and shall be disclosed to the appropriate agency involved in the investigation of the violation of law.

All inquiries received by school personnel concerning investigations, arrests or other operations conducted by sworn law enforcement shall be directed to the appropriate law enforcement agency and not the law enforcement unit.

In addition to the above, the county Prosecutor and local law enforcement agency shall continue to designate one or more persons to serve as a liaison to appropriate local and county school officials. Similarly, the county superintendent and local chief school administrator of each school shall designate one or more persons to serve as a liaison to the County Prosecutor's

Office and local law enforcement agency. This practice will facilitate communication and cooperation between schools and law enforcement.

17. School Safety and Security

Law enforcement and school officials agree that it is appropriate to meet regularly to discuss, develop plans, rehearse/train in the areas of Active Shooter, Bomb Threats, Evacuation, Lockdown, Media/Public Information, Gang Issues (prevention, intervention, recruiting activities), Bias/Bullying, and Hazing.

Law enforcement and school officials agree that their policies/procedures addressing Active Shooter, Bomb Threats, Evacuation, Lockdown and Media/Public Information shall be in compliance with the Attorney Generals Directives.

Law enforcement and school officials agree to meet annually and to review all policies/procedures/plans and provide written comments concerning School Safety & Security Plans (SSSPs).

School officials agree to annually submit copies of their SSSPs to law enforcement, including plans, blueprints/floor plans/maps of school facilities and school grounds. Any changes occurring to facilities during the course of the year shall trigger a new set of blueprints/floor plans being sent to law enforcement.

All disciplines (law enforcement, OEM planners, health officials, school officials and other community resources) shall meet regularly, maintain open communications, share policies, provide input and conduct joint training regarding school security issues and agree to work together to implement the recommendations of School Security Task Force.

All disciplines (law enforcement, OEM planners, health officials, school officials and other community resources) agree to keep SSSPs/policies/related materials confidential and not share them with the public.