

# Model State Safe Schools Act



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# Model State Safe Schools Act

## Policy Statement

All students, teachers, and administrators have a compelling right to learn and work in a safe environment — one that is conducive to education and free from drugs, weapons, and violence. In order to preserve such an environment, school officials have a substantial interest in maintaining discipline in the classroom and on the school grounds.

This Act, modeled after legislation from the state of Hawaii, is designed to ensure that school officials have the broad authority, consistent with constitutional requirements, to maintain order and to protect the rights and safety of school children. In particular, this Act codifies the search and seizure provisions of the U.S. Supreme Court decision in *New Jersey v. T.L.O.*, 469 U.S. 325 (1985). The general rule established by the Supreme Court in *T.L.O.* authorizes that school officials may conduct a search of a student and his or her personal effects, provided that the manner in which the search is conducted is reasonable in its scope, intensity, and duration.

School officials are authorized to search a student and his or her effects if they learned that the student was carrying a weapon, was involved in drug distribution, or otherwise was engaging in behavior that threatened the safety or well-being of the student body, teachers, and school employees. While the rights of the student's privacy must be respected, the rights and safety of the school community at large must be protected as well.

This Act requires an appropriate state educational authority, working in consultation with appropriate law enforcement authorities, to establish rules and regulations to implement the general search and seizure policy. This Act does not seek to impose any mandates governing the conduct of local school officials. Rather, this Act leaves the development and implementation of such rules and regulations to state education officials and requires only that any rules or regulations governing searches conducted by school officials not be more restrictive than the constitutional standard of reasonableness outlined by the Court in *T.L.O.* In doing so, this Act recognizes that the United States Supreme Court has already carefully balanced the constitutional rights of students against the need for school officials to maintain order and discipline and to ensure the safety of all students.

Finally, this Act allows students who have voluntarily surrendered any drugs, drug paraphernalia, or alcohol to a public school official and sought treatment or counseling on their own initiative not to be referred to law enforcement. This amnesty provision, based on the New Jersey Attorney General's Executive Directive Concerning Law Enforcement Operations On or Near School Property, is designed to provide students with an avenue through which to seek assistance for their alcohol and other drug problems, not to identify and punish them for seeking help. As with other statutes offered by the Commission, this amnesty provision underscores the Commission's intent to confront the problems of alcohol and other drug abuse and to develop meaningful solutions.



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# Highlights of the Model State Safe Schools Act

## ASSUMPTIONS AND REMEDIAL GOALS

- Recognizes that the eventual success of the state's long term efforts to address this national problem will depend in large measure on programs and initiatives designed to reduce the demand for alcohol and other drugs.
- Recognizes that schools are one of the principal settings where young people are taught personal skills and information that will help them resist the temptation of drugs. For efforts to provide appropriate drug education curricula to be more effective, schools must become safe havens free from the influence of drugs and violence.
- Recognizes that schools also are an important point of intervention to help identify students with alcohol or other drug abuse problems and to refer them to appropriate treatment services.
- Recognizes a need for the continuation, institutionalization, and enhancement of the spirit of cooperation that exists between professional educators and law enforcement officials with respect to alcohol and other drug problems.
- Recognizes that law enforcement officers must recognize and respect the proper role of school officials and administrators to provide for the safety and discipline of students in their charge.

## SPECIFIC RECOMMENDATIONS

- Authorizes that a public school official may conduct a search of the person and the personal effects of a public school student, on school premises or during [local board of education] supervised activities, provided that:

- There are reasonable grounds to suspect that the search will reveal evidence that the public school student has violated or is violating either the law or the student conduct code; and
- The manner in which the search is conducted is reasonably related to the purpose of the search and not excessively intrusive in light of the age, sex, or race of the public school student and the nature of the suspected offense.
- Provides that the [state board of education] establish rules and regulations, drafted in consultation with the [state attorney general, county prosecutors, or other appropriate law enforcement officials], to implement the school search and seizure provisions.
- Provides a limitation of liability for any school official who participates in a search or seizure pursuant to this Act or who participates in any resulting judicial proceeding as long as the official acted in good faith.
- Provides that no evidence seized or obtained by a public school official acting independently of a law enforcement agency or officer be suppressed in any criminal or juvenile delinquency proceeding unless such suppression is required by law.
- Provides that a school official turn over any drugs, drug paraphernalia, or alcohol seized during a school search to the appropriate local law enforcement agency.
- Provides an opportunity for students to voluntarily surrender drugs, drug paraphernalia, or alcohol to public school officials and to seek alcohol or other drug treatment or counseling.



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# Model State Safe Schools Act

## **Section 1. Short Title.**

The provisions of this [Act] shall be known and may be cited as the “Model State Safe Schools Act.”

## **Section 2. Legislative Findings.**

(a) The state seeks to address the problems of alcohol and other drug abuse in a comprehensive, multi-disciplinary manner. Although efforts must continue to reduce the supply and availability of drugs, the eventual success of the state’s long term efforts to address this national problem will depend in large measure on programs and initiatives designed to reduce the demand for alcohol and other drugs.

(b) School age children are especially vulnerable to and influenced by the activities of predatory drug offenders and drug-using peers.

(c) Schools are one of the principal settings where young people are taught personal skills and information that will help them resist the temptation of drugs. For efforts to provide appropriate drug education curricula to be more effective, schools must become safe havens free from the influence of drugs and violence.

(d) Schools also are an important point of intervention to help identify students with alcohol or other drug abuse problems and to refer them to appropriate treatment services. Efforts to address the problems of alcohol and other drugs in schools must enable students to seek help for their problems through amnesty programs, student assistance programs, treatment alternatives, and other avenues designed to foster safe and drug-free school environments and students.

(e) School age citizens of this state have a fundamental right to the advantages of a school environment that is conducive to educational goals and prerogatives and totally free of alcohol and other drug abuse, drug trafficking activities, and violence.

(f) The most effective and efficient response to alcohol and other drug problems in the schools requires pro-

fessional educators and law enforcement officials to coordinate their efforts to address the problems and secure the benefits of safe and drug-free schools. There is a demonstrated need for the continuation, institutionalization, and enhancement of the spirit of cooperation that exists between professional educators and law enforcement officials with respect to alcohol and other drug problems.

(g) Law enforcement officers are required by law to use all reasonable diligence in apprehending and prosecuting offenders against the law. They must also act in a manner designed to promote and safeguard a school environment that is conducive to education. However, law enforcement officers must recognize and respect the proper role of school officials and administrators to provide for the safety and discipline of students in their charge.

## **Section 3. Purpose.**

This [Act] authorizes the [state board of education] to establish uniform statewide policies and procedures for school officials to cooperate with law enforcement operations and activities on or near school grounds to ensure a safe school environment. This [Act] further authorizes the [state board of education] to identify the circumstances under which school officials shall refer suspected violations to local law enforcement agencies for handling, pursuant to rules and regulations to be issued by local school districts.

## **Section 4. Definitions.**

As used in this [Act]:

(a) “Drugs” means controlled substances, as defined in [state controlled substances act].

(b) “Drug paraphrenalia” means paraphrenalia, as defined in [state controlled substances act or drug paraphrenalia act].

(c) “Public school official” means any administrator, counselor, teacher, or employee of a [local board of education], or a person who is a volunteer in a school program, activity, or function established, sanctioned, or approved by a [local board of education], or a person hired by a [local board of education] on a contractual basis and engaged in carrying out an educational function.

(d) “Public school student” means any person attending public school classes, including summer school, in grades kindergarten through twelve, that are operated by a [local board of education], or any person attending programs operated by or under the purview of a [local board of education].

(e) “Student conduct code” means conduct prohibited by [state board of education] administrative rules, or rules established by an appropriate local school authority.

### ***Section 5. Standards for Public School Search and Seizure.***

(a) Except as otherwise provided by law, a public school official may conduct a search of the person and the personal effects of a public school student, on school premises or during [local board of education] supervised activities, provided that all of the following conditions are met:

(1) Based on the attendant circumstances at the time of the search, there are reasonable grounds to suspect that the search will reveal evidence that the public school student has violated or is violating either the law or the student conduct code; and

(2) The manner in which the search is conducted is reasonably related to the purpose of the search and not excessively intrusive in light of the age, sex, or race of the public school student and the nature of the suspected offense.

(b) The [state board of education] shall establish rules and regulations, drafted in consultation with the [state attorney general, county prosecutors, or other appropriate law enforcement officials], to implement the provisions of subsection (a).

(c) The [state board of education] shall not establish procedures concerning searches and seizures that are more restrictive than required by the minimum standards set forth in this section or pursuant to the Constitution of the United States or this state, and nothing

in this [Act] shall be construed to prohibit a search or seizure otherwise authorized or permitted under the Constitution of the United States or this state.

#### COMMENT

**The purpose of this section is to codify the search and seizure provisions of the U.S. Supreme Court decision in *New Jersey v. T.L.O.* See *New Jersey v. T.L.O.*, 469 U.S. 325, 331 and 334 (1985). In *T.L.O.*, the United States Supreme Court held that the Fourth Amendment prohibition against unreasonable searches and seizures applies to searches conducted by public school officials. While the Court’s decision thus imposes limitations on the conduct of public school officials, the Court also recognized that these officials have both the authority and the responsibility to maintain order and discipline within the school environment.**

**All students, teachers, and administrators have a compelling right to work and learn in a safe environment — one that is conducive to education and free from drugs and violence. In order to preserve such an environment, school officials have a substantial interest in maintaining discipline in the classroom and on the school grounds. The Supreme Court further recognized that maintaining order and discipline in the classroom has never been an easy task, especially in view of the recent proliferation of drugs and violence that has troubled so many schools in the nation. Even in schools that have been spared the most serious disciplinary problems, the preservation of order and a proper educational environment often requires close supervision of school children.**

**This section is designed to ensure that school officials have the broad authority, consistent with constitutional requirements, to maintain order and to protect the rights and safety of school children to the greatest extent possible. This section is designed to further one of the principal goals of the [Act]: to make certain that schools become “safe havens” where children can learn and play free of the disruptive influence of drugs and violence.**

**Specifically, subsection (a) codifies the general rule established by the Supreme Court in *T.L.O.* that school officials are authorized to conduct a search provided that the manner in which the search is conducted is reasonable in its scope, intensity, and duration.**

**Subsection (b) requires an appropriate educational authority, working in consultation with appropriate law enforcement authorities, to establish rules and regula-**

tions to implement the general search and seizure policy established in subsection (a). As noted in the *T.L.O.* decision, the legality of a search conducted by school officials depends on the reasonableness of the search under all of the attending circumstances. The cornerstone of reasonableness, moreover, is rudimentary common sense. Although it is not possible in a statute to define the contours of common sense with precision, it is both possible and desirable through the rule making process to provide meaningful guidelines with which to assist school officials in complying with the requirements of the Fourth Amendment. These guidelines should help educators in balancing students' Fourth Amendment rights as against the legitimate and compelling need to preserve order, discipline, and safety within the school environment.

Subsection (c) confirms that this [Act] is designed simply to codify the basic principles established in the *T.L.O.* decision. Accordingly, this subsection makes clear that any rules or regulations governing searches conducted by school officials and promulgated pursuant to subsection (b) should not be more restrictive than the constitutional standard of reasonableness outlined by the Court in *T.L.O.* This provision recognizes that the United States Supreme Court has already carefully balanced the constitutional rights of students against the need for school officials to maintain order and discipline and to ensure the safety of all students. In the circumstances, it would be inappropriate as a matter of state policy to prohibit by statute or rule conduct by school officials that would meet the constitutional test of reasonableness.

Despite the Supreme Court ruling in *T.L.O.*, state legislatures can make it more difficult for school officials to conduct search and seizures by codifying specific, more restrictive regulations. This section seeks to limit such restrictions.

### ***Section 6. Limitation of Liability for School Officials.***

Any public school official participating in a search or seizure pursuant to this [Act] or participating in any resulting judicial proceeding shall be presumed to be acting in good faith and, if found to have acted in good faith and in compliance with this [Act], shall be immune from any liability, civil or criminal, that might otherwise be incurred or imposed as a result of actions taken pursuant to this [Act].

#### COMMENT

This section provides immunity from liability for any public school official who in good faith participates in a school search or seizure. This immunity is extended to those individuals in order to encourage proper, good faith intervention in order to uphold the school's rules and code of conduct as well as to protect the safety and interests of the school's student body.

### ***Section 7. Admissibility of Evidence.***

No evidence seized or obtained by a public school official acting independently of a law enforcement agency or officer shall be suppressed in any criminal or juvenile delinquency proceeding unless such suppression is required by the Constitution of the United States or this state.

#### COMMENT

In *New Jersey v. T.L.O.*, the United States Supreme Court chose not to decide whether the exclusionary rule should apply to the fruits of unlawful searches conducted by school officials. See, *New Jersey v. T.L.O.*, 469 U.S. at 333, n. 3. This section makes clear as a matter of state legislative policy that any evidence of a crime found during an unlawful search conducted by school officials should not be suppressed or excluded from any resulting criminal prosecution or juvenile delinquency proceeding.

Where a school official conducts a search on his or her own authority and independently of law enforcement, the purpose of the search would not be to secure evidence for use in a criminal prosecution. Rather, the search would have been based on the independent authority of the school official to enforce the student conduct code and to maintain order and discipline within the school environment. This would be true even where the school official is required to turn over any seized drugs or drug paraphernalia to law enforcement authorities pursuant to Section 8.

In the circumstances, the underlying reason for the exclusionary rule, to deter law enforcement misconduct, would simply be inapplicable. In other words, the threat of the exclusion of evidence in a criminal proceeding would not be rationally related to the school official's motivation for conducting the search, and would therefore serve no benefit. It should be noted, however, that this section would not preclude the exclusion of evidence in a criminal prosecution or juvenile delinquency proceeding where that remedy is held to be required under the state or federal constitution.

***Section 8. Evidentiary Chain of Custody of Seized Illegal Substances.***

Except as otherwise provided in Section 9 of this [Act]:

(a) Pursuant to guidelines to be issued by the [state board of education], whenever a public school official seizes, is given, or comes upon any substance or item believed to be a drug, drug paraphernalia, or alcohol, the public school official shall immediately advise the appropriate local law enforcement agency and shall secure the substance or item pending the response by that law enforcement agency to retrieve and take custody of it. Public school officials having temporary custody of the substance or item must take reasonable precautions, as per [local board of education] procedures, to prevent its theft, destruction, or use by any person. Under no circumstances shall any person destroy or otherwise dispose of any drugs, drug paraphernalia, or alcohol except by turning over such materials to the responding law enforcement officer.

(b) Following the seizure of any drugs or drug paraphernalia discovered during the course of a search conducted by a public school official, the official shall provide to the responding law enforcement officer information necessary to establish the chain of custody and the circumstances of the seizure, including the identity of any person from whom the substance or item was obtained.

COMMENT

**All drugs, drug paraphernalia, and alcohol seized by public school officials must be turned over to law enforcement officials for processing, evidentiary purposes, and eventual disposal. This is done to effect any investigation of illegal activities as well as to insure the proper collection, identification, and destruction of illicit substances seized.**

***Section 9. Opportunity for Alcohol or Other Drug Abusing Students to Seek Assistance.***

Notwithstanding the provisions of Section 8 of this [Act]:

(a) A public school official shall not be required or expected to refer a violation of the [state controlled substances act] to law enforcement in instances where a student has voluntarily surrendered drugs, drug paraphernalia, or alcohol to a public school official and sought treatment or counseling on his or her own initiative in accordance with the policies and procedures set forth in the guidelines issued by the [state board of

education]. Where a student has voluntarily surrendered drugs, drug paraphernalia, or alcohol to a public school official and has sought alcohol or other drug treatment or counseling on his or her own initiative in accordance with the policies and procedures set forth in the guidelines issued by the [state board of education], the public school official shall not be required or compelled to provide the identity of the student to law enforcement authorities, provided that the student was not involved in drug distribution activities. Nothing in this subsection shall be construed to effect the duty established pursuant to Section 8(a) to turn over the surrendered drugs, drug paraphernalia, or alcohol to law enforcement.

(b) An admission by a student of a violation of the [state controlled substances act], or the act of surrendering drugs, drug paraphernalia, or alcohol, shall not be deemed to be voluntary within the meaning of subsection (a) if it is in response to questioning initiated by a law enforcement officer or public school official, or is motivated, in whole or in part, by circumstances that increase the probability of detection or apprehension. Such circumstances may include, but are not limited to, a belief that the drugs, drug paraphernalia, or alcohol would be discovered during an imminent or anticipated search to be conducted by a law enforcement officer or public school official.

(c) Public school officials shall not provide information concerning the identity of the student from whom drugs or drug paraphernalia was obtained, where the material was turned over to a counselor in the course of or as a result of diagnosis, counseling, or treatment. In addition, information concerning the identity of the student shall not be revealed where the person voluntarily and on his or her own initiative turned over the material to a public school official, provided the student was not involved in distribution activities and the student agrees to participate in an appropriate counseling or treatment program.

COMMENT

**Nothing in this section is intended to supersede or take precedence over federal or state confidentiality laws or regulations, to the extent that they apply. Communications between a student and a student assistance professional, for example, remain confidential, as provided for by federal and state confidentiality laws. However, such confidentiality laws may not apply to many of the situations described in this section and this [Act].**

Under this section, public school officials still have a duty to turn over drugs or drug paraphernalia to law enforcement for proper disposal, whether they have been surrendered to school officials or seized during a search or investigation. However, the disposal of surrendered drugs or drug paraphernalia that have been turned over to law enforcement should be considered an incidental goal to encouraging or enabling drug abusing students to receive counseling or treatment. The primary purpose of this section is to provide students with an avenue through which to seek assistance for their problems, not to identify and punish students who are seeking help for their drug problems.

This section is not intended to be an evidence disposal mechanism for drug distributing students. Every effort should be made to inform students that this provision applies only to those individuals who voluntarily turn over drugs or drug paraphernalia while seeking assistance for problems associated with their drug involvement.

In subsection (b), some of the language used has been taken from the Model Penal Code formulation of “renunciation.” That doctrine allows a person who has attempted to commit a crime to avoid criminal liability by renouncing the purpose to commit the crime. This must be done wholly of the individual’s own volition and not in response to the threat of imminent detection or apprehension. See Model Penal Code, Section 5.01.

***Section 10. Rules and Regulations Ensuring Cooperation Between Local School Officials and Law Enforcement Officials.***

The [state board of education], in consultation with the [state attorney general, county prosecutors, or other appropriate law enforcement officials], shall promulgate rules and regulations offering guidance for local school districts to develop policies and procedures that ensure a safe school environment, enhance cooperation and coordination between local public school officials and law enforcement, and identify the circumstance under which public school officials shall refer violations to the police for handling. The policies and procedures shall address, but need not be limited to:

- (a) The unlawful manufacture, sale, distribution, possession with intent to sell or distribute, possession, or use of any of the following:

- (1) Drugs, as defined in [state controlled substances act];

- (2) Drug paraphernalia, as defined in [state controlled substances act]; and

- (3) Alcohol.

- (b) The planning and conduct of law enforcement activities and operations occurring on school property, including arrest procedures and undercover school operations.

- (c) The designation of liaisons to law enforcement agencies and the prescription of their roles and responsibilities by the district chief school administrator.

- (d) Specific procedures for and responsibilities of public school officials in summoning appropriate law enforcement authorities onto school property for the purpose of conducting law enforcement investigations, searches, seizures, and arrests.

- (e) Specific procedures for and responsibilities of public school officials in promptly referring information or physical evidence to law enforcement authorities concerning suspected violations of the [state controlled substances act].

- (f) Specific procedures for and responsibilities of public school officials in cooperating with arrests made by law enforcement authorities on school property.

- (g) Specific procedures for and responsibilities of staff in initiating or conducting searches and seizures of pupils, their property, and personal effects. All searches and seizures conducted by school staff shall comply with the standards required by Section 5 of this [Act] and by the United States Constitution or the state constitution.

COMMENT

**The policies and procedures suggested in this section are based upon rules and regulations for safe and drug-free schools promulgated by the New Jersey State Board of Education.**

**By requiring the state [Board of Education] to promulgate such rules and regulations, the Commission intends to provide states with the flexibility to develop policies and procedures reflecting the concerns of those states and their localities. This section does not prescribe specific procedures for school searches, seizures, and cooperation with law enforcement agencies, but compels states to develop their own.**

**Also, by requiring consultation with various law enforcement agencies, this section intends to aid the development of the necessary cooperative relationships between the education and law enforcement communities.**

***Section 11. Severability.***

If any provision of this [Act] or application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or application of the [Act] that can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

***Section 12. Effective Date.***

This [Act] shall be effective on [reference to normal state method of determination of the effective date] [reference to specific date].

# Appendix H



*(This model memorandum of understanding between education and law enforcement officials has been implemented in more than ninety percent of the school districts in the state of New Jersey by local and county law enforcement authorities and local school districts. It represents the end product of Section 10 of the Model State Safe Schools Act, which calls upon the state board of education to promulgate rules and regulations offering guidance for local school districts to develop policies and procedures that ensure a safe school environment and cooperation and coordination between local school officials and law enforcement. The rules and regulations should encourage the development of a memorandum of understanding similar to this model.)*

# Memorandum of Understanding Between Education and Law Enforcement Officials

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

## **PREAMBLE**

### **Statement of Policies, Findings and Objectives**

1. Recent History. In 1988, the Department of Law and Public Safety and the Department of Education issued a Model Agreement for use by local law enforcement and education officials. These agreements were eventually signed in every community across the State and documented the commitment by both professional communities to work together to address the State's drug problem as it relates to school-aged children. Since these agreements were first signed, there have been many new developments with respect to the scope and nature of the State's evolving drug and alcohol problem. Accordingly, the undersigned parties hereby recognize the need to update their memorandum of agreement and to reaffirm their commitment to work together as coequal partners in addressing these new and evolving problems.
2. Nature of the Problem. The predecessor memorandum of agreement was designed to ensure cooperation between law enforcement and education officials and ultimately to protect the educational environment. Recent events have made clear that the policies and procedures established in our earlier agreement should not be limited solely to the enforcement of New Jersey's controlled dangerous substance laws. We recognize in this regard that other offenses are occasionally committed on school property, during operating school hours or during school-related functions or activities. These offenses against persons or property may involve violence and the actual or threatened infliction of bodily injury, the unlawful use or possession of firearms or other dangerous weapons, arson or firesetting activities, vandalism and theft. It is understood and agreed that the

commission of serious offenses on school property, whether directed at students, school employees or school property, not only undermines the educational environment, but can directly endanger the safety and well being of members of the school community and thus requires an appropriate and decisive response.

3. Reasons for Special Concern. The parties to this memorandum of agreement are aware of and are concerned by recent events occurring in New Jersey and nearby New York City involving students who were found to be in unlawful possession of firearms and other deadly weapons and who brought such weapons onto school property. It is not our intention to cause undue alarm or to overstate the nature or magnitude of the problem. Nor is it our intention in any way to jeopardize the rights of students. To the contrary, we wish to emphasize that our goal is to safeguard the essential right of all students and school employees to enjoy the benefits of a school environment which is conducive to education and which is free of the disruptive influence of crime, violence, intimidation and fear. Accordingly, the parties to this agreement recognize the need to have in place policies and procedures to deal appropriately and decisively with these inherently dangerous and disruptive situations. It is our hope and expectation that by developing and publicizing the existence of clear policies, we can discourage the commission of serious offenses on school property and thereby protect the safety and welfare of all members of the school community. In developing these policies, it is understood that it is a crime for any person to knowingly have in his or her possession any firearm in or upon the buildings or grounds of any school without the written authorization of the governing officer of the institution. See N.J.S.A. 2C:39-5e. It is agreed and understood that this statute is designed to protect children and the educational environment, and that violations of this statute are especially serious matters which warrant a prompt referral to and response by law enforcement authorities. It is further understood that it is a crime in this State for any person to knowingly have in his or her possession any gravity knife, switchblade knife, dagger, billy, blackjack, metal knuckle, sling shot, cesti or ballistic knife, without having an explainable lawful purpose. See N.J.S.A. 2C:39-3e. Finally, it is understood that it is a crime for any person to dispose of any such weapon, or any firearm unless he or she is licensed or registered to do so. See N.J.S.A. 2C:39-9d.

4. Benefit of Referrals to Law Enforcement Authorities. It is understood that law enforcement officials have access to confidential information which may show that a juvenile offender has previously committed acts of delinquency outside of school property and about which school officials may therefore be unaware. These confidential law enforcement records may concern prior juvenile arrests, adjudications, dispositions, referrals to juvenile conference committees and stationhouse adjustments. For this reason, the failure by school officials to refer a suspected offense to law enforcement authorities may unwittingly prevent the professional actors within the juvenile justice system, including law enforcement and family court officials, from identifying and dealing appropriately with juvenile offenders, and may thus prevent these actors from taking those steps which are necessary and appropriate to intervene, to address the juvenile's problems in a timely fashion and to protect the public safety. In order to enable school officials to make a more informed decision as to whether to refer a suspected act of delinquency to law enforcement authorities, the parties to this agreement understand the need for and benefit of establishing procedures by which law enforcement officials can explain the workings of the juvenile justice system and the options, services and resources which are available through that system to respond to juveniles' needs. It is

thought that such ongoing dialogue will enable school officials to understand the likely consequences of a referral involving a given offense. It is also hoped that in this way, law enforcement and school officials can work to dispel many of the myths about the juvenile justice system, and to develop a better understanding of the resources available to address the needs of juveniles who enter into this system.

5. Anabolic Steroids. The parties to this agreement understand that in 1992, the New Jersey Commissioner of Health promulgated rules and regulations which classify anabolic steroids as Schedule III controlled dangerous substances. The parties to this agreement understand and recognize that the problem of the unlawful use of anabolic steroids is a particularly serious one with respect to school-aged children and that this problem is not limited to student athletes, but also involves students who use these especially dangerous substances to enhance their physical appearance. The parties to this agreement recognize that these substances often have profound, long term adverse side effects and that their unlawful use by children cannot be tolerated.

6. Alcohol Consumption. The parties to this agreement recognize that public attention has been focused on the problem of alcohol consumption on school property. The most recent survey of New Jersey's high school students confirms that alcohol continues to be by far the most commonly used substance by school-aged children. The parties to this agreement recognize and reaffirm that alcohol remains an illicit substance for underaged persons, and that alcohol offenses, especially those occurring on school property or during school-related activities, are serious matters which warrant a decisive and predictable response.

7. Law Enforcement Participation in Substance Abuse Prevention Programs. In recent years, a number of educational programs, such as D.A.R.E., D.A.D., McGruff ("Take a Bite Out of Crime") and similar programs have demonstrated that specially trained police officers can provide substance awareness, drug abuse resistance and crime prevention instruction which is effective and beneficial to students. The parties to this agreement recognize, however, that in providing and promoting such innovative instructional programs, education officials remain ultimately responsible for approving and monitoring all educational curricula. Local education officials also remain responsible for making certain that children receive the approved K-12 chemical awareness curricula in accordance with State law and rules, regulations and policies adopted by the State Board of Education and the Commissioner of Education.

### **Article 1 - Liaisons**

The Union County Prosecutor's Office and the Plainfield Police Department will each designate a person or persons to serve as a liaison to appropriate local and county school officials. The Union County Superintendent of Schools and the Superintendent of Schools of Plainfield will similarly designate a person to serve as a liaison to the county prosecutor's office and to the respective local law enforcement agency. The roles and functions of these liaisons are to:

- Facilitate communication and cooperation;
- Identify issues or problems that arise in the implementation of this Agreement and facilitate the resolution of any such problems;
- Act as the primary contact person between the schools and the affected law enforcement agencies;

- Act together in developing joint training and other cooperative efforts, including information exchanges and joint speaking engagements, and
- Coordinate drug and alcohol abuse intervention and prevention efforts.

## **Article 2 - Law Enforcement Operations**

### **A. Definitions.** As used in this Agreement:

“Controlled Dangerous Substance” shall mean a drug, substance or immediate precursor as defined at N.J.S.A. 2C:35-2, and shall include controlled substance analogs. Pursuant to regulations adopted by the Department of Health, the term also includes anabolic steroids.

“Undercover School Operation” shall mean a planned operation undertaken by a law enforcement agency wherein a law enforcement officer(s) is placed in a school community and poses as a member of the school community for the purpose of identifying and eventually apprehending persons engaged in the illegal distribution of controlled dangerous substances or the unlawful use, possession or distribution of firearms or dangerous weapons.

“Planned Surveillance” shall mean a planned operation wherein a law enforcement officer(s) enters onto school property or buildings in plainclothes during operating school hours for the purpose of observing or participating in activities associated with the use, possession or distribution of any controlled dangerous substance or firearms or dangerous weapons. This term shall not include observations made by a law enforcement officer, whether in uniform or in plainclothes, from any place or property not owned by a school or school board.

“Routine Patrol” shall mean activities undertaken by a law enforcement officer whether in uniform or in plainclothes and whether on foot or in a marked or unmarked vehicle, to patrol areas within a drug-free school zone (see N.J.S.A. 2C:35-7) for the purposes of observing or deterring any criminal violations or civil disturbance.

“Planned Arrest” shall mean an arrest or taking into custody based upon probable cause which was known to a law enforcement officer sufficiently in advance of the time of the actual arrest, whether as a result of an undercover school operation, planned surveillance, or otherwise, so that there was sufficient opportunity for the arresting officer or any other law enforcement officer to apply for and obtain an arrest warrant, even though an arrest warrant may not have been sought or issued. The term shall also include arrests made pursuant to a “clean sweep” (*i.e., e.g., multiple arrest*) operation as prescribed by Guideline 5.4 of the Attorney General’s Statewide Narcotics Action Plan (SNAP).

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

“Operating School Hours” shall include the time in which a school is in session or when students are engaged in school-related activities under the supervision of professional school staff.

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

“Deadly weapon” means any weapon within the meaning of N.J.S.A. 2C:39-1r, and includes any device readily capable of lethal use or of inflicting serious bodily injury, including but not limited to gravity knives, switchblade knives, daggers, dirks, stilettos, or other dangerous knives, blackjacks, bludgeons, metal knuckles, cesti or similar leather bands studded with metal filings or razor blades embedded in wood and any weapon or other device which projects, releases or emits tear gas or any other substance intended to produce temporary physical discomfort or permanent injury through being vaporized or otherwise dispensed in the air.

## **B. Undercover School Operations.**

### **1. Requests to Conduct Operations.**

- a. All requests by school officials to undertake an undercover school operation in a particular school or school district will be directed to the local chief of police. However, it is understood that the ultimate approval of all undercover school operations can only be granted by the Union County Prosecutor.
- b. A request to undertake an undercover school operation will not be made public by either the requesting school official or the law enforcement agency receiving the request.
- c. The Union County Prosecutor will make a good faith effort to comply with all reasonable requests to initiate an undercover operation, considering the scope and nature of the substance abuse or weapons-related problem in the school or district and the availability of law enforcement resources.
- d. Where the Union County Prosecutor is for any reason unable to comply with a request to undertake an undercover school operation, the Union County Prosecutor will promptly notify the requesting school officials.
- e. The decision to decline a request to undertake an undercover school operation shall not be made public by either the requesting school official(s) or the law enforcement agency receiving the request.
- f. Nothing in this agreement shall be construed to preclude law enforcement officials from initiating a request to conduct an undercover school operation pursuant to Section 2 of this Article.

### **2. Consultation and Cooperation.**

- a. As a practical matter, a successful undercover school operation cannot take place without the assent and continuing cooperation of the building principal and local school superintendent, and, except as may be expressly provided herein, none shall be attempted without such assent and continuing cooperation. Accordingly, prior to the placement of any undercover officer in a school, the school building principal and the local superintendent will be consulted unless there are compelling reasons not to consult with either of these

officials. Where the Attorney General determines that compelling reasons exist, an alternative school official or officials will be designated who will be consulted in lieu of the building principal or local superintendent prior to the placement of an undercover officer in a school and throughout the course of the operation.

b. In any case where the undercover school operation has not been requested by an appropriate school official, the law enforcement agency proposing the operation will advise the building principal and local superintendent of the nature of the proposed operation and will, to the extent possible, explain the reasons why the operation is necessary and appropriate. This explanation should include a description of the extent and nature of the suspected drug trafficking or weapons-related activities occurring within the school environment which would justify the operation. It is understood and agreed that law enforcement officials will not be required or permitted to divulge any information received in confidence, whether from an informant or otherwise, or which would violate the laws or court rules governing the disclosure of juvenile offender information, grand jury information or information derived from electronic surveillance.

c. It is understood and agreed that undercover school operations should not be necessarily limited to schools failing within any particular region or demographic setting (*i.e.*, *e.g.*, rural, suburban, urban center, etc.), or any particular district factoring group (*i.e.*, a composite measure of socioeconomic status within a geographic area). Rather, subject to the availability of resources, undercover school operations should be proposed and conducted where the designated law enforcement and school officials determine that such operations would be beneficial.

d. Information provided by law enforcement to the building principal or local superintendent will be kept strictly confidential and will not be divulged by the building principal or local superintendent to any other person without the express approval of the Union County Prosecutor.

e. No law enforcement officer will disclose the fact that an undercover school operation has been proposed, requested or is being or has been considered with respect to any particular school or school district.

f. The building principal and the local superintendent will be afforded the opportunity to offer specific concerns regarding the conduct of any proposed undercover school operation, and will also be given the opportunity to make general or specific recommendations as to how to minimize the impact of the proposed operation on the educational environment, existing substance abuse counseling programs and the relationship between school authorities, the law enforcement community and the student population. In developing an undercover school operation plan and throughout the course of the operation, the law enforcement agency conducting the operation will give due consideration to the concerns and recommendations offered by the building principal and local superintendent. Furthermore, these school officials will be advised whenever the law enforcement agency conducting the undercover school operation is for any reason unable or unwilling to follow any proposed recommendation. However, it is understood that the law enforcement agency responsible for conducting the undercover operation shall maintain control of the logistics of any operation once begun.

g. The law enforcement agency conducting the undercover school operation will provide to the building principal and local superintendent a detailed briefing concerning the logistical and recordkeeping requirements associated with successfully placing an officer undercover. The building principal and local superintendent may contact the designated liaison who will be available on a 24 hours basis to respond to any problems or inquiries.

**3. Security; Limited Disclosure Agreements; Early Termination.**

a. The building principal and local superintendent will be informed as to the identity of any person assigned to an undercover investigation unless there are compelling reasons, as shall be determined by the Attorney General, not to inform either of these officials. The building principal and local superintendent, and any other school officials or employees who may be informed as to the identity of the undercover officer, will safeguard the identity of that officer and will not disclose the existence of a contemplated or ongoing undercover school operation to any person.

b. In the event that the building principal, local superintendent or any other school official or employee who may have been informed as to the existence of the operation subsequently learns of any information which suggests that the true identity of the undercover officer has been revealed, or that any person has questioned the identity or status of the undercover officer as a bona fide member of the school community, or that the integrity of the operation has been in any other way compromised, such information will be immediately communicated to the law enforcement agency conducting the operation or to the Union County Prosecutor.

c. The school principal and local superintendent will be advised whenever an undercover school operation has been suspended or terminated or whenever the undercover officer is permanently removed from the school environment.

**4. Use of Undercover Officers as School Employees.** It is understood that no undercover school operation may be conducted which entails the placement of an undercover officer as a certified member of the school community without prior written approval of the Attorney General with notice given to the Commissioner of Education, or in the case of a non-public school, the chief school officer. It is understood that the Attorney General will base his approval upon a finding that 1) other law enforcement methods would not be effective, and 2) there is a reasonable articulable suspicion that adult school employee(s) or other non-student member(s) of the school community are engaged in drug trafficking or unlawful weapons-related activities. In that event, and upon such findings, the underlying purpose of the operation would not be to identify or to apprehend student offenders, but rather to identify and to apprehend suspected adult or non-student offenders. Furthermore, the law enforcement agency involved will develop in consultation with the building principal and local superintendent those steps which will be taken to minimize the undercover officer's contact with and impact upon the student population. It is understood that no undercover officer will be permitted to teach a formal class of instruction without the approval of the Attorney General and local superintendent, and that in no event will an undercover officer posing as a non-student member of the school community be permitted to establish or to simulate any confidential, trust or counselor relationship with any student.

**5. Limitations on Undercover Officer Conduct.**

- a. **Entrapment.** No undercover officer will encourage or counsel any student to purchase or use alcohol or any controlled dangerous substance.
- b. **Confidentiality of Treatment Records.** Federal regulations and State policies concerning the confidentiality of treatment and substance abuse counseling program records and information will be strictly safeguarded. No law enforcement activity will be permitted in any way to interfere with, intrude upon or in any way compromise the integrity of any substance abuse counseling or treatment program.
- c. **Treatment.** No undercover officer will discourage any student from seeking drug or alcohol abuse treatment or counseling, or from reporting his or her own alcohol or substance abuse problem or dependency.
- d. **Non-Participation in Treatment.** No undercover officer will in any way participate in or attend any drug or alcohol abuse treatment or counseling program. In the event that an undercover officer is referred to or recommended to participate in a counseling or treatment program by a teacher or school staff member, the undercover officer will report the circumstances of that referral or recommendation to his or her superiors and will decline such referral or recommendation.
- e. **Preservation of Teacher Trust Relationships.** No undercover officer will engage in any activity or conversation which would require any teacher or school official to violate or compromise a trust relationship with any student.
- f. **Use and Distribution Prohibition.** No undercover officer will ingest or inhale (other than passive inhalation) any controlled dangerous substance; nor will any undercover officer be permitted to distribute or dispense any controlled dangerous substance without the express approval of the Union County Prosecutor. Under no circumstances will an undercover officer sell or transfer a firearm on school property or to a student without the express prior approval of the Union County Prosecutor.
- g. **Disciplinary Infractions.** It is understood that an undercover officer cannot be expected to pose as a model student. Nonetheless, no undercover officer will engage in any activities which unduly disrupt the educational environment, or which amount to disciplinary infractions of such a nature and magnitude so as to prevent other students from enjoying the full benefits of that educational environment. An undercover officer will at all times respect the rights of teachers and other students.
- h. **Romantic Involvement.** No undercover officer will encourage or participate in any romantic relationship with any student during the course of an undercover operation.
- i. **Firearms Policy.** It is understood that undercover work concerning drug trafficking activities is inherently dangerous. Accordingly, it is understood and agreed that law enforcement will take all measure which are necessary and appropriate to protect the undercover officer, as well as to protect all students with whom the undercover officer may come into contact, and to avoid potentially violent confrontations whenever possible. In general, an undercover officer will not carry a firearm or otherwise bring onto or maintain

a firearm on school property. An exemption from the general rule prohibiting the carrying or bringing onto school property of a firearm will only be granted with the express approval of the officer's immediate superior, unless otherwise specified in the plan approval process for good cause shown. Any firearm brought onto school property will ordinarily be contained in a closed and fastened case locked in the trunk of an automobile operated by the undercover officer. It is assumed, moreover, that any exemption from the general weapons carrying policy agreed to herein will only be rarely sought, and approval to carry a firearm onto school property will only be granted where alternative means of providing adequate security or support are not feasible.

**6. Post-Operation Report.** It is understood that following the termination of every undercover school operation, the Union County Prosecutor will prepare a post-operation report which will be transmitted to the Attorney General. The report will discuss the results and impact of the operation and any logistical or policy problems which were encountered. The report will also include recommendations for improved procedures in dealing with potentially recurring problems. The Union County Prosecutor will solicit the comments and recommendations of the building principal and local superintendent, and these comments and recommendations will be included in the post-operation report. The contents of a post-operation report will be publicly disclosed, and a copy will be provided to the building principal, local and county superintendents and the Commissioner of Education.

**7. Post-Operation Seminars.** To maximize the deterrent impact of an undercover school operation, the law enforcement agency conducting the operation will make officers available to participate in seminars which, upon the invitation of appropriate school officials, may be held in the school in which the operation was conducted. The purpose of these seminars will be to discuss with teachers, parents and/or students the nature of the completed operation, the steps taken to minimize the intrusion into the educational environment, and to discuss the substance abuse or weapon-related problem from a law enforcement perspective. It is our agreed upon policy to promote the frank and open discussion of issues concerning the need for such operations, and to solicit opinions and recommendations from teachers, parents, students and members of the community-at-large.

**C. Planned Surveillance.**

**1. Notice and Consultation.** In the absence of compelling or exigent circumstances, as shall be determined by the Union County Prosecutor or the Attorney General or his designee, no planned narcotics surveillance operation as defined in this Agreement will be conducted during operating school hours without first consulting with the building principal or local superintendent of the school involved.

**2. Limitation; Targeted Subjects.** Nothing in this Agreement shall be construed to prevent any law enforcement officer from making any observations from any place or property not owned by a school or school board, except that a planned surveillance or any other form of observation should, wherever possible, be limited to observing 1) those specific individuals or groups of individuals who are believed to be involved in drug trafficking or weapons-related activities, or 2) those specific areas or places on school property where drug use or trafficking or weapons-related activity is believed to occur frequently.

**D. Routine Patrols.**

1. **Aggressive Enforcement Plans.** The Plainfield Police Department will maintain at appropriate times a visible police presence within all drug-free school zones, and will file and periodically update a confidential report with the Union County Prosecutor detailing how these zones are to be patrolled.
2. **Notice to School Officials.** Where a patrol plan requires an officer periodically to enter onto school property or buildings, the Plainfield Police Department will advise the appropriate school building principal and local superintendent. It is understood and agreed that any portion of a patrol plan disclosed to school officials in accordance with this subsection will be kept strictly confidential.
3. **On-Site Reporting.** Except when responding to an emergency, no on-duty police officer will enter any school building without first complying with the procedures established by the school for the reporting of visitors. It shall be the responsibility of the Plainfield Police Department to make certain that all officers are familiar and comply with the reporting policies established by each school within the law enforcement agency's jurisdiction.

**E. Police Presence at Extra-curricular Events.**

1. It is our agreed upon policy that the Plainfield Police Department, working in conjunction with the appropriate school officials, should, whenever possible, provide for the presence of uniformed police officer(s) at all major school sporting events. In the absence of compelling reasons as may be determined by the Union County Prosecutor or the Plainfield Police Department, it is understood and agreed that uniformed police officers will not be assigned to school functions, and especially those functions occurring within school buildings, except with the approval of the building principal or local superintendent.
2. It is understood that the purpose for requesting uniformed police presence on school property is not limited merely to the goal of deterring illegal drug use or trafficking activities; rather, police assistance is often requested for the purpose of maintaining order, crowd and traffic control, and other bona fide public safety reasons. All requests by school officials for law enforcement agencies to provide for a uniformed presence at any school event should be directed to the local police liaison or the Chief of the Plainfield Police Department.

**F. Referrals and Evidence Pick-Up.**

1. **Procedures Concerning Required Referrals Involving Controlled Substances.** Subject to the provisions of subsection 2 of this section, school officials will promptly notify the Plainfield Police Department whenever any school employee develops reason to believe a violation of the Comprehensive Drug Reform Act has occurred, except that school officials are not required to refer a matter to law enforcement where a student has voluntarily and on his or her own initiative sought treatment or counseling for a substance abuse problem, provided the student agrees to participate in an appropriate treatment or counseling program. For the purposes of this Agreement, an admission by a student of a violation of the Comprehensive Drug Reform Act which is in response to questioning initiated by a law enforcement officer or school employee shall not constitute a voluntary, self-initiated request for counseling and treatment.

**2. Non-Applicability to Treatment Program Records and Information.** Nothing in this Agreement shall be construed in any way to authorize or require a referral or transmittal of any information or records in the possession of a substance abuse counseling or treatment program, and such information or records will be strictly safeguarded in accordance with applicable federal regulations and state policies.

**3. Securing Controlled Substances and Paraphernalia Pending Referral and Pick-Up.** Wherever a school employee seizes or comes upon any substance believed to be a controlled dangerous substance or drug paraphernalia, school officials will immediately advise the Plainfield Police Department and will secure the substance or item pending the response by the Plainfield Police Department to retrieve and take custody of the substance or paraphernalia. School employees having custody of the substance or item will take reasonable precautions as per local board of education procedures to prevent its theft, destruction or use by any person. In accordance with the requirements of law, see N.J.S.A. 2C:35-10c., it is understood that under no circumstances may any person destroy or otherwise dispose of any controlled dangerous substance or drug paraphernalia except by turning over such substance or item to the responding law enforcement officer.

**4. Prompt Response to Controlled Substance Referrals and Request for Pick-Up; Preserving Chain of Custody.** The Plainfield Police Department will dispatch an officer as promptly as possible to take custody and secure the controlled dangerous substance or drug paraphernalia. School officials will provide to the responding law enforcement officer information necessary to establish the chain of custody and the circumstances of the seizure, including the identity of any person from whom the substance or item was obtained, except that school officials need not provide information concerning the identity of a student from whom the controlled dangerous substance or item was obtained where the substance or item was turned over by a student to a substance abuse counselor in the course of or as a result of diagnosis or treatment, or where: 1) the student voluntarily and on his or her own initiative turned over the substance to a school employee; and 2) there is no reason to believe that the student was involved in distribution activities; and 3) the student agrees to participate in an appropriate treatment or counseling program. Nothing in this section shall be construed in any way to authorize or require a referral or transmittal of any information or records in the possession of a substance abuse counseling or treatment program, and such information or records will be strictly safeguarded in accordance with applicable federal regulations and state policies.

**5. Procedures Concerning Permissive Referrals.** Subject to the provisions of subsections 2 and 6 of this section, it is agreed that the Substance Abuse Counselor should notify the Captain of the Criminal Investigation Bureau whenever any school employee develops reason to believe that a criminal offense has been committed on or against school property, during operating hours or during school-related functions or activities. In deciding whether to refer the matter to the designated law enforcement agency, the principal of the school or his or her designee should consider the nature and seriousness of the offense and the risk that the offense posed to the health or safety of other students, school employees or the general public. Nothing in this subsection shall be construed in any way to relieve the duty to report a violation of the Comprehensive Drug Reform Act as required by subsection 1 of this section and regulations promulgated by the State Board of Education. See N.J.A.C. 6:3-6.1 et. seq. Nor shall this subsection

be construed in any way to relieve the duty to notify appropriate law enforcement and child welfare authorities when a potential missing or abused child situation is detected, as required by N.J.S.A. 18A:36-25.

**6. Required Referrals Involving Firearms.** Subject only to the provisions of subsection 2 of this section, it is agreed that the Substance Abuse Counselor will immediately notify the Captain of the Criminal Investigation Bureau whenever any school employee in the course of his or her employment develops reason to believe that a firearm has unlawfully been brought onto school property, or that any student or other person is in unlawful possession of a firearm, whether on or off school property, or that any student or other person has committed an offense with or while in possession of a firearm, whether or not such offense was committed on school property or during operating school hours. It is understood that as a matter of rudimentary common sense, school employees should always exercise extreme caution before attempting to seize a known or suspected firearm or other deadly weapon from the control or immediate possession of a student, taking into account not only the rules governing searches and seizures conducted by education officials, but also the safety risks which a physical confrontation with an armed student might pose to the employee, the student involved and all other members of the school community. School officials should therefore consider in each case whether it would be more appropriate to await the arrival of law enforcement officers summoned pursuant to the requirements of this paragraph, and to allow responding law enforcement authorities to assume responsibility for conducting any search or seizure in accordance with the provisions of section I (3) of this Article.

**7. Securing Firearms and Dangerous Weapons Pending Referral and Pickup.** Whenever a school employee seizes or comes upon any firearm or dangerous weapon, school officials should in the case of a dangerous weapon other than a firearm, and shall in the case of a firearm, immediately advise the Captain of the Criminal Investigation Bureau and secure the firearm or weapon pending the response by the Plainfield Police Department to retrieve and take custody of the firearm or dangerous weapon. School employees having custody of a firearm or dangerous weapon will take reasonable precautions as per local board of education procedures to prevent its theft, destruction or unlawful use by any person. It is understood and agreed that under no circumstances will any person destroy or otherwise dispose of any seized or discovered firearm except by turning over such firearm to the responding police officer.

**8. Law Enforcement Response to Permissive Referrals.** The Plainfield Police Department receiving information about the commission of an offense pursuant to subsection 5 of this section will respond promptly and, when there is probable cause to believe that an offense has been committed, will handle the matter in accordance with the provisions of the Attorney General's Executive Directive Concerning the Handling of Juvenile Matters by Police and Prosecutors. Except as may be specifically provided in subsection 2 of this section, school officials should in the absence of compelling reasons provide the responding law enforcement officer information necessary to establish the chain of custody and the circumstances of the seizure or discovery of any dangerous weapon or item, other than a firearm dealt with in subsection 9 of this section or a controlled dangerous substance or drug paraphernalia dealt with in subsection 3 of this section, which was or may have been unlawfully possessed or used in connection with or derived from criminal activity. Nothing in this subsection shall be construed in any

way to authorize or require a referral or transmittal of any information or records in the possession of a substance abuse counseling or treatment program and obtained in the course of providing diagnosis or treatment where such referral or transmittal would constitute a violation of federal confidentiality regulations, and such information or records will be strictly safeguarded in accordance with such applicable federal regulations and state policies.

**9. Prompt Law Enforcement Response to Required Referrals.** The Plainfield Police Department receiving information about the existence of an unlawful firearm on school property pursuant to subsection 6 of this section will immediately dispatch an officer to take custody and secure the firearm. Except as may be specifically provided in subsection 2 of this section, school officials will provide to the responding law enforcement officer information necessary to establish the chain of custody and the circumstances of the seizure or discovery of the firearm, including the identity of any person from whom the firearm was obtained. Nothing in this subsection shall be construed in any way to authorize or require a referral or transmittal of any information or records in the possession of a substance abuse counseling or treatment program and obtained in the course of providing diagnosis or treatment where such referral or transmittal would constitute a violation of federal confidentiality regulations, and such information or records will be strictly safeguarded in accordance with such applicable federal regulations and state policies.

**10. Interdiction of Weapons.** It is understood and agreed that the Plainfield Police Department will make every reasonable effort to effect the arrest of any student believed to be in the unlawful possession of a firearm or other dangerous weapon while the student is not on school property, so as to prevent whenever possible the bringing of such firearm or weapon onto school property. When this is not feasible, the Plainfield Police Department shall scrupulously comply with the notification requirements for planned arrests as set forth in Article 2, section G(3) of this Agreement.

**11. Arrest Protocols Following Permissive Referrals.** It is understood and agreed that the arrest protocols set forth in Article 2, section G of this Agreement, which are designed to minimize the disruption of the school environment, will be followed whenever a student is to be arrested on school property for any offense, including offenses which do not involve controlled dangerous substances or drug paraphernalia. Similarly, it is understood and agreed that the notification procedures set forth in Article 2, section H of this Agreement will be followed whenever a student or non-student is arrested on school property, or whenever a student is arrested off of school property during operating school hours, for a violation of any criminal statute, including an offense which does not involve controlled dangerous substances or drug paraphernalia. It is also understood and agreed that the Plainfield Police Department will at all times comply with the patrol notification and on-site reporting procedures set forth in Article 2, section D(2) and (3) of this Agreement, whether the purpose of the law enforcement entry onto school property or buildings is to enforce the Comprehensive Drug Reform Act or any other criminal statute.

**12. Notification to School Officials.** Where a formal complaint is filed against a student for any offense which if committed by an adult would be an indictable crime, the police department filing the complaint or the Union County Prosecutor will, in accordance with the provi-

sions of N.J.S.A. 2A:4A-60c, provide information on a confidential basis to the building principal of the school at which the student is enrolled concerning the offense charged and any resulting adjudication or disposition.

**13. Advice as to Juvenile Justice System Practices and Procedures.** The Captain of the Criminal Investigation Bureau and the Union County Prosecutor shall be available on an ongoing basis to explain to school officials the practices and procedures of the juvenile justice system with respect to the handling of juveniles suspected of or formally charged with acts of delinquency. The Captain of the Criminal Investigation Bureau and the Union County Prosecutor shall also provide on an ongoing basis information concerning the services and resources available through the juvenile justice system to deal with delinquent or at-risk youth and families in crisis, including stationhouse adjustments, referrals to Juvenile Conference Committees and other preadjudication diversion programs, and post-adjudication disposition options which are available in the county.

**14. Advice as to weapons.** It is understood that new weapons have evolved and proliferated which are readily concealable and easily disguised. By way of example, small, single shot firearms have been produced so as to resemble a remote paging device or "beeper." Similarly, dangerous knives can be disguised as belt buckles and other seemingly innocuous items. Accordingly, the Captain of the Criminal Investigation Bureau and the Union County Prosecutor will be available on an ongoing basis to provide school officials with information and advice about such weapons and their prevalence in the district or in the county so that they may be readily identified by school officials.

**15. Possession or Consumption of Alcoholic Beverages by Minors.** It is understood that it is unlawful for a person under the age of 21 to purchase or knowingly consume an alcoholic beverage on school property or during school sponsored activities. See e.g., N.J.S.A. 2C:33-15 and N.J.A.C. 6:29-6.3(a). So too, it is an offense for an adult to bring or possess an alcoholic beverage on school property without the express written permission of the school board or building principal. See N.J.S.A. 2C:35-16. It is agreed and understood that these statutes are designed to protect children and the educational environment, and that violations of these statutes should be deemed to be serious matters which would ordinarily warrant a referral to and prompt response by law enforcement authorities in accordance with the provisions of subsections 5 and 8 of this section. Where appropriate, the Plainfield Police Department or the Union County Prosecutor may elect to forego formal charging or prosecution in favor of pursuing school disciplinary proceedings or other appropriate juvenile justice alternatives, including but not limited to a "stationhouse adjustment," subject to the requirements of law and the Attorney General's Executive Directive Concerning the Handling of Juvenile Matters by Police and Prosecutors.

**G. Arrest Protocols.** For the purpose of this Agreement, the term "arrest" shall include the taking into custody of a juvenile for any offense which if committed by an adult would constitute a crime or disorderly persons offense.

1. **Requests by School Officials.** All requests by any school official to summon a law enforcement officer for the purpose of making an arrest on school property, whether for a suspected

violation of the Comprehensive Drug Reform Act or for a suspected violation of any other criminal statute, should be directed to the designated police liaison or the Chief of the Plainfield Police Department.

2. It shall be the general policy of the Plainfield Police Department when effecting any arrest on school grounds to minimize the disruption of the school environment to the greatest extent possible consistent with the requirements of public safety. Accordingly, substantial weight will be given by the law enforcement officer assigned to make the arrest to the specific recommendations of the building principal or local superintendent as to the place and manner for effecting the arrest.

a. So as to minimize any disruption of the educational environment, every reasonable effort should be made to effect the arrest in the building principal's office, or in some other designated area away from the general student population.

b. Where feasible, the responding law enforcement officer(s) should be in plainclothes, use unmarked police vehicle(s) and refrain from using a siren or flashing overhead lights. In addition, the number of responding officers should be kept to a minimum consistent with the requirements of public safety.

3. Other Spontaneous Arrests.

a. In those cases in which a law enforcement agency responds during operating school hours to a suspected offense reported by someone other than the building principal or local superintendent, or where a law enforcement officer observes the occurrence of an offense on school property during operating school hours which would justify a warrantless arrest, or where a person subject to arrest retreats onto school property during operating school hours, the arresting law enforcement officer will notify the building principal as soon as it is practical to do so. Where the arrest involves a student enrolled in the school, the building principal will wherever feasible be notified before the student is taken from school grounds.

b. When effecting any spontaneous arrest on school property during operating school hours, every reasonable precaution will be taken to minimize the disruption of the school environment to the greatest extent possible consistent with the requirements of public safety.

4. Planned Arrests. Whenever a planned arrest is to occur on school property, the building principal or local superintendent will be advised and consulted before the arrest occurs.

#### **H. Notice of Arrests.**

1. **Arrests of Students on School Grounds.** Whenever a student has been arrested on school property, the law enforcement officer or agency involved will, as soon as practicable, notify the building principal. Whenever possible, such notice will be given before the student has been taken off of school property. Where the student is a juvenile, all information concerning the circumstances of the arrest will be provided to the building principal on a confidential basis and in accordance with the provisions of N.J.S.A. 2A:4A-60c.

2. **Arrests of Non-Students on School Grounds.** Where a person other than an enrolled student is arrested on school property, the building principal will be advised as to the circum-

stances of the offense and the identity of the offender, provided that where the person arrested is a juvenile, it is understood that the law enforcement agency or officer involved is not permitted to divulge any information which would violate the laws governing the disclosure of juvenile information.

**3. Arrests of Students Off School Grounds During Operating School Hours.** Where a student is arrested off school property during operating school hours, or under circumstances which would lead the arresting officer to believe that a school official was responsible for the care and custody of the student at the time of the arrest, or where the arresting officer reasonably believes that the student was in transit between school and his home at the time of arrest, the arresting officer will as soon as is practicable notify the building principal of the school in which the student is enrolled. All information concerning the basis and circumstances of the arrest will be provided to the building principal on a confidential basis and in accordance with the provisions of N.J.S.A. 2A:4A-60c.

#### **I. School Searches.**

1. No law enforcement officer will direct, solicit, encourage or otherwise actively participate in any specific search conducted by a school official unless such search could be lawfully conducted by the law enforcement officer acting on his or her own authority in accordance with the rules and procedures governing law enforcement searches. Nothing in this Agreement shall be construed to preclude a law enforcement officer from taking custody of any item or substance seized by any school employee.
2. School officials will immediately notify law enforcement officers whenever a school employee comes into possession, whether as a result of a search or otherwise, of any substance or item believed to be a controlled dangerous substance, drug paraphernalia or firearm.
3. School officials will permit law enforcement officers upon their arrival to the scene to assume responsibility for conducting any search, in which event the standards governing searches conducted by law enforcement officers will prospectively apply.
4. Any questions by school officials concerning the legality of any contemplated or ongoing arrest, search or seizure conducted by a law enforcement officer on school property should be directed to the Union County Prosecutor.
5. Nothing in this Agreement shall be construed in any way to require any school official to actively participate in any search or seizure conducted or supervised by a law enforcement officer; nor shall this agreement be construed to direct, solicit or encourage any school official to conduct any search or seizure on behalf of law enforcement, or for the sole purpose of ultimately turning evidence of a crime over to a law enforcement agency. Rather, it is understood that any search or seizure conducted by school officials shall be based on the school official's independent authority to conduct reasonable investigations as provided in New Jersey v. T.L.O.
6. Any question by a school official concerning the law governing searches conducted by school officials should be addressed to the Union County Prosecutor or his designee.

**J. Interrogations and Interviews.** No law enforcement officer will direct, solicit, encourage, attend or otherwise participate in the questioning of any juvenile by school officials unless such questioning could be lawfully conducted by the law enforcement officer acting on his or her own authority in accordance with the rules and procedures governing law enforcement interrogations and interviews. All information obtained by school employees concerning the commission of an offense, whether obtained as a result of the questioning of a student or otherwise, will be referred to the appropriate law enforcement agency, provided however, that nothing in this Agreement shall be construed to authorize or require a school employee to divulge information or records subject to the confidentiality requirements of 42 C.F.R. Part 2, or any other applicable regulation, law or rule of evidence concerning confidential and privileged communications.

**K. “Tiplines” and Student Watch Groups.**

1. Any “tiplines” which may be established for the reporting of suspicious activity occurring on school property or buses or within Drug-Free School zones will be staffed by law enforcement officers, and it is understood that the role of school officials with respect to the operation of such tiplines is limited to publicizing to members of the school community the existence and purpose of these tiplines.
2. It is understood that the Narcotics Crime Prevention and Public Awareness Working Group, which was created by the Attorney General, has prepared in conjunction with the School Zone Narcotics Enforcement Working Group a model student watch program. The Union County Prosecutor and the Plainfield Police Department will assist school officials who wish to develop and implement such watch groups or similar student-oriented crime prevention and awareness programs.

**Article 3 - Joint Training**

So as to foster and institutionalize the spirit of communication and cooperation underlying this Agreement, the Substance Abuse Counselor and the Captain of the Criminal Investigation Bureau agree to participate in a joint training program which will be developed in conjunction with the Division of Criminal Justice, the Department of Education and the Union County Prosecutor’s Office. It is understood that this program will include a discussion of:

1. The provision of this Agreement;
2. Attorney General Executive Directive 1988-1;
3. The complementary rules and regulations issued by the State Board of Education;
4. The Comprehensive Drug Reform Act, focusing especially on those provisions affecting juveniles or which are designed to protect children and to displace drug trafficking activities from areas adjacent to schools;
5. The Attorney General’s Statewide Narcotics Action Plan;
6. The United States Supreme Court decision in New Jersey v. T.L.O. and the Attorney General’s School Search Guidelines;
7. The federal regulations on confidentiality for counseling and treatment; and

8. The scope and nature of the problem concerning firearms and other dangerous weapons on school property.

### **Article 3.1 - Law Enforcement Participation in Educational Programs**

#### **A. Law Enforcement's Contribution to Substance Abuse Education and Demand Reduction.**

The parties to this Agreement understand and accept that the only viable, long-term solution to the nation's drug epidemic is to reduce the public's demand for illicit substances, and that education emerges as one of the most promising means available by which to provide a generation of students with information, skills and incentives to resist the temptation to experiment with and use chemical substances. However, the parties further understand that the contributions of the law enforcement community to the goal of a drug-free New Jersey need not and should not be limited merely to disrupting the supply of illicit drugs; rather, the law enforcement community can help to reduce the demand for drugs, not only by holding drug users accountable for their unlawful conduct, but also by actively participating in public awareness and prevention programs and educational initiatives. To this end, a number of innovative and highly successful programs have been developed by numerous organizations in which specially trained police officers participate directly in school-based educational programs. These programs are designed to teach students about the nature and dangers of substance abuse, methods to enhance students' self-esteem and proven techniques and skills for resisting peer pressure to experiment with drugs or engage in other dangerous activities. These initiatives include, but are not limited to, the D.A.R.E. program (Drug Abuse Resistance Education), D.A.D. (Defenders Against Drugs), and the McGruff program sponsored by the Crime Prevention Officers Association.

**B. Approval and Supervision of Educational Curricula.** It is understood and agreed that education officials are at all times ultimately responsible for approving, supervising, monitoring, evaluating and otherwise ensuring the consistent high quality of all educational curricula and instructional programs provided to students, whether the instruction is provided by certified school employees or by specially trained law enforcement officers invited into the school pursuant to section C of this Article. It is also understood and agreed that local school officials remain ultimately responsible for making certain that all substance awareness instructional programs are developed and provided in a manner which is consistent with the requirements of N.J.S.A. 18A:40A-1 et seq., the New Jersey Department of Education's Chemical Health Education Guide (N.J.A.C. 6:29-6.6), and any and all applicable rules, regulations and policies adopted by the State Board of Education or the Commissioner of Education concerning the development, review, monitoring, approval and implementation of K-12 chemical awareness curricula and related courses of instruction.

**C. Procedures for Inviting, Soliciting or Promoting Police Participation in Educational Programs.** It is understood and agreed that no law enforcement officer shall be permitted to provide a course of instruction to students unless the officer has been invited or requested to provide such course of instruction by the appropriate school official, or the course of instruction has otherwise been approved by the appropriate school official. In order to enhance cooperation between law enforcement and education authorities, it is agreed that all requests by school officials for information concerning the nature and availability of law enforcement instructional programs such as D.A.R.E., D.A.D., McGruff, etc. should be directed to the designated law enforcement liaison, with notice of the request provided to the Union County Prosecutor. All requests by a law enforcement

agency seeking an invitation to provide any such law enforcement instructional program, or seeking to demonstrate the desirability of providing such an instructional program, should be directed to the Substance Abuse Counselor, with notice given to the Union County Prosecutor. The Union County Prosecutor, working in cooperation with the Union County Superintendent of Schools, shall be responsible for coordinating all such invitations or requests for invitations to participate in law enforcement instructional programs. The Union County Prosecutor further agrees to serve on an ongoing basis as an information clearinghouse to provide school officials with information concerning the availability and benefits of such law enforcement instructional programs.

#### **Article 4 - Revisions and Periodic Conferences**

It is understood that the Union County Prosecutor, working in conjunction with the Union County Superintendent of Schools, will not less than once each calendar year organize and conduct a meeting of representatives from the law enforcement and educational communities to discuss the implementation of and compliance with the provisions of Attorney General Executive Directive 1988-1 throughout the county, to discuss any other matters of mutual concern, and to recommend revisions to the Attorney General Executive Directive and to this Agreement. It is understood that every chief of police, school building principal and local superintendent will be invited to attend, along with any other persons or organization representatives who could contribute to or benefit from the proceedings. Following each conference, the Union County Prosecutor will thereafter issue a report to the Attorney General as to the results of the meeting, which will include a discussion of any general or specific recommendations concerning the need for revisions to the Attorney General Executive Directive and to this Agreement.

#### **Article 5 - Dispute Resolution Procedures**

It is understood and agreed that any dispute or objection as to any proposed or ongoing law enforcement operation or activity on school property will be directed by the appropriate school official to the chief executive officer of the law enforcement agency involved. Where the chief executive office of the agency is for any reason unable to satisfactorily resolve the dispute or objection, the matter will be referred to the Union County Prosecutor who is hereby authorized to work in conjunction with the Union County Superintendent of Schools and, where appropriate, the Division of Criminal Justice, to take appropriate steps to resolve the matter. Any dispute which cannot be resolved at the county level shall be resolved by the Attorney General, whose decision will be binding.

#### **Article 6 - Maintenance of the Agreement**

This Agreement shall remain in full force and effect until such time as it may be modified. Modification of this Agreement will be effected only with the mutual agreement of the Plainfield school district, the Union County Superintendent of Schools, the Plainfield Police Department and the Union County Prosecutor. Modifications required by a change in state or federal law, rules or regulations or applicable guidelines or executive directives shall be made on the effective date of such revisions of law, regulations, guidelines or directives. All parties to this Agreement will notify the other parties immediately regarding any such legal or regulatory changes.

The parties to this Agreement recognize the value of cooperation and communication with respect to the drug and weapons problem as it relates to students and school grounds, and believe that entering into this Agreement will help them to be more effective in dealing with these problems and in making certain that schools are safe havens for law abiding children, and not convenient marketplaces or resorts for drug dealers and users.

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