

Memorandum of Agreement Between Education and Law Enforcement Officials
Education-Law Enforcement Working Group

Frequently Asked Questions

June 2009

Q1: What is the difference between the *Memorandum of Agreement Between Education and Law Enforcement Officials* (MOA) and the School Safety and Security Plan (SSSP)?

A: The MOA and the SSSP are completely *separate* documents with discrete authorities, purposes and information. The MOA is established pursuant to *N.J.S.A. 18A:37-6* and *N.J.A.C. 6A:16-6.2(b)13-15* and the SSSP is established pursuant to *N.J.S.A. App.A:9-64* and *N.J.A.C. 6A:16-5.1*. The MOA references the SSSPs, as appropriate, since the MOA is intended to explain or reference *all* activities that must be coordinated between education and law enforcement officials. All of the detailed information pertaining to specific requirements and best practices strictly for school safety and security is included in the SSSP, rather than in the MOA.

Q2: Is there a list of items that are required to be included in a School Safety and Security Plan (SSSP)?

A: Although each school district is required to have a SSSP, there are no specific *requirements* for items to be incorporated into a SSSP. The department conducts trainings designed to provide information on best practice recommendations for SSSP formulation.

While not required *components* of the SSSP, pursuant to *N.J.A.C. 6A:16-5.1(a)*, the SSSP, at a minimum, must *provide for*:

- “1. The protection of the health, safety, security and welfare of the school population;
2. The prevention of, intervention in, response to and recovery from emergency and crisis situations;
3. The establishment and maintenance of a climate of civility; and
4. Supportive services for staff, students and their families.”

The department is currently developing a publication tentatively titled, “LEA Minimums,” which describes the specific and minimum required elements that should be included in each LEA’s SSSP. Upon dissemination of the “LEA Minimums,” the department will offer regional technical assistance for all school districts.

Q3: Which documents identified in the *Memorandum of Agreement Between Education and Law Enforcement Officials* (MOA) and the School Safety and Security Plan (SSSP) must be periodically reviewed? When are these documents required to be reviewed?

A: *MOA*

The county prosecutor, working in conjunction with the county superintendent, pursuant to *N.J.A.C. 6A:16-6.2(b)15*, must *not less than once each calendar year*, organize and *conduct a meeting* of representatives from the law enforcement and educational communities to engage in the following activities:

- 1) *Discuss* the implementation of and compliance with the provisions of the MOA, pursuant to *N.J.A.C. 6A:16-6.2(b)13*, throughout the county;
- 2) *Discuss* any other matters of mutual concern; and
- 3) *Recommend revisions* to the MOA, insofar as, pursuant to *N.J.A.C. 6A:16-6.2(b)15ii*, the revisions are in addition to and do not conflict with the format and content established by the Attorney General and the Commissioner of Education and that are in addition to and do not conflict with the policies and procedures established pursuant to *N.J.A.C. 6A:16-6*.

Every chief of police, school building principal and local chief school administrator must be invited to attend, *along with any other persons or representatives* of organizations, who could contribute to or benefit from the proceedings. Following each conference, the county prosecutor must provide a copy of the revised MOA, or the revised section of the MOA, to all participants.

SSSP

The chief school administrator must *consult* with law enforcement agencies, health and social service provider agencies, emergency management planners and school and other community resources, as appropriate, in the *review and updating* of the school district's school safety and security plans, procedures and mechanisms, pursuant to *N.J.A.C. 6A:16-5.1*. Law enforcement officials must, at a minimum, *annually review and, where necessary, provide written comments* to the chief school administrator concerning the required school safety and security plans, pursuant to *N.J.A.C. 6A:16-5.1*. The chief school administrator must, at a minimum, *annually submit a copy of the school district's school safety and security plans or any important revisions to the plans* to law enforcement officials as agreed. The chief school administrator must supply law enforcement officials with *current copies of blueprints and maps* of all schools and school grounds. If at anytime there are changes to the blueprints or maps, the chief school administrator must *forward revised copies* to law enforcement officials as soon as practicable. (Article 8.1.4 of the MOA)

Q4: What is the relationship between the *Memorandum of Agreement Between Education and Law Enforcement Officials* (MOA) and the five model School Security Policies?

A: The MOA explains the reciprocal responsibilities and actions of law enforcement and school administrators and other personnel when law enforcement conducts business inside of the school. It is basically a regulated agreement between law enforcement and school administrators which promotes further understanding of the job functions and responsibilities of both entities.

The MOA states that the five Model School Security Policies (i.e., lockdown, active shooter, emergency evacuation, bomb threat and public information sharing) must be used when developing critical incident response plans. The Model School Security Policies have been established to standardize law enforcement officials' responses to critical incidents within and around schools in New Jersey, which enhances understanding of law enforcement responsibilities.

The School Security Task Force (SSTF) recognizes that the MOA has been the regulated mechanism for guiding discussions and establishing jurisdiction on policies that impact school security. Therefore, in order to maintain continuity in the use of the MOA and promote simplicity in the achievement of security goals, the MOA requires the annual review of the district's school safety and security plans, pursuant to N.J.A.C. 6A:16-5.1, which must account for the new Model School Security Policies issued by Attorney General Directive 2007-1. Additionally, the SSTF has recommended that fire safety and local emergency management directors join as parties to the MOA; participating not only in the formulation of the MOA, but also in the subsequent reviews of the MOA.

Q5: What is the difference between the department's School Administrator Procedures and Law Enforcement's Model School Security Policies via Attorney General Directive 2007-1?

A. On July 13, 2007, the Attorney General distributed to local law enforcement officials Model School Security Policies that were developed by the School Security Task Force on the topics of bomb threats, active shooter response, school lockdowns, school evacuations and public information. Currently, these policies are strictly for the use of law enforcement personnel; however, since they include recommendations for school administrator's actions, law enforcement officials should discuss with education officials the actions that will be taken by law enforcement officials and the actions appropriate for school officials, as written in the policies.

Per the School Security Task Force's recommendation, the department developed a publication titled *School Administrator Procedures: Responding to Critical Incidents* to provide complementary procedures to those distributed to law enforcement officials. These procedures will enhance communication, cooperation and coordination between law enforcement and school officials, resulting in improved responses to threats.

At this time, there is no mandate that local law enforcement share their procedures with local schools. However, per Commissioner Lucille E. Davy's memo dated October 22, 2007, all local educational agencies were directed to use the new School Administrator Procedures as a model to revise, as needed, their existing procedures. In addition, all policies were to be finalized in consultation with local law enforcement officials. Although it is not mandatory, it would be advantageous for local law enforcement officials to discuss and train local school personnel on key aspects of their responses to critical incidents. However, the policies are confidential and should not be provided in such a way that they will become public documents, for example, at a local board of education meeting.

Q6: Are law enforcement officials permitted to share the Model School Security Policies with school administrators?

A: The Model School Security Policies may be shared on a "need-to-know" basis. For example, information that is important for school officials to know may be shared at annual or other meetings between education and law enforcement officials, but they may not be made available to the public.

Q7: What training requirements are referenced in the *Memorandum of Agreement Between Education and Law Enforcement Officials* (MOA) and which agencies or personnel are required to be involved?

A: The training *requirements* and their citations as well as *permitted* trainings and their citations are identified below:

Required

School districts and law enforcement agencies must comply with the training *requirements* of P.L. 2005, c. 276 (*N.J.S.A. 52:17B-71.8* and *N.J.S.A. 18A:17-43*, and) for safe schools resource officers and for school liaisons to law enforcement. (Section 1.9 of the MOA)

Law enforcement and school officials must engage in ongoing discussions and *training* in gang prevention and intervention, as appropriate, regarding gangs that are thought to be active in the area, gang recruiting and signs of gang activity or recruiting. (Article 8.3 of the MOA)

Recommended

Law enforcement and school personnel may participate in *joint training* on law enforcement and education school security policies, as needed. *Joint training* exercises may include, but are not limited to, natural disasters, bomb threats, lockdown procedures and active shooters. (Article 8.2.2 of the MOA)

Law enforcement and school personnel may participate in any other joint training, as needed.

Q8: What meeting and consultation requirements are established in the *Memorandum of Agreement Between Education and Law Enforcement Officials* (MOA)?

A: The meeting and consultation *requirements* and their citations as well as *recommended* meetings and consultations and their citations are identified below:

REQUIRED

The county prosecutor, in conjunction with the county superintendent, pursuant to *N.J.A.C. 6A:16-6.2(b)15*, must *at least 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 the MOA, pursuant to *N.J.A.C. 6A:16-6.2(b)13*, throughout the county, to *discuss* any other matters of mutual concern, and to *recommend revisions* to the MOA, insofar as, pursuant to *N.J.A.C. 6A:16-6.2(b)15ii*, the revisions are in addition to and do not conflict with the format and content established by the Attorney General and the Commissioner of Education and that are in addition to and do not conflict with the policies and procedures established pursuant to *N.J.A.C. 6A:16-6*. (Article 16 of the MOA)

Law enforcement and school officials must participate in *ongoing joint consultations* to foster and *institutionalize the spirit* underlying the MOA. The *ongoing consultations* must include *discussions* on (Article 8.1 and 13.1 of the MOA):

- *N.J.A.C. 6A:16-6*, Law Enforcement Operations for Alcohol, Other Drugs, Weapons and Safety, as appropriate;
- *N.J.A.C. 6A:16-5*, School Safety and Security, as appropriate;
- The Comprehensive Drug Reform Act, focusing especially on those provisions affecting juveniles or that are designed to protect children and to displace drug trafficking activities from areas adjacent to schools;
- The United States Supreme Court decision in *New Jersey v. T.L.O.* and the “*New Jersey School Search Policy Manual*;”
- Federal and state laws and regulations on the confidentiality of alcohol and drug counseling and treatment;
- The warning signs of which school staff members should be aware that indicate a student may be abusing chemical substances or is at risk of committing an act of violence involving firearms or other deadly weapons;
- The scope and nature of the problem concerning firearms and other dangerous weapons on school grounds; and
- Training needs to support school safety and security and the effective implementation of the MOA, including the exchange of information regarding the practices of the education and law enforcement agencies, pursuant to *N.J.A.C. 6A:16-6.2(b)12*.

The law enforcement official designated in the MOA and the county prosecutor must 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 law enforcement official designated in the MOA and the county prosecutor also *must provide, on an ongoing basis, information* concerning the services and resources available through the Juvenile Justice System to deal with delinquent or at-risk youth and families in crisis, including stationhouse adjustments, referrals to Juvenile Conference Committees, Juvenile-Family Crisis Intervention Units, and other pre-adjudication diversion programs, intervention services, and post-adjudication disposition options that are available in the county. (Article 4.16 of the MOA)

The law enforcement agency designated in the MOA and the county prosecutor must be *available on an ongoing basis to provide school officials with information and advice* about weapons and their prevalence in the district or in the county so that they may be readily identified by school officials. (Article 4.17 of the MOA)

Dispute Resolution

Any dispute or objection to any proposed or ongoing law enforcement operation or activity on school grounds will be consistent with *N.J.A.C. 6A:16-6.2(b)14*, and *must be directed* by the appropriate school official to the chief executive officer of the law enforcement agency involved. Where the chief executive officer of the agency is for any reason unable to satisfactorily resolve the dispute or objection, the matter will be referred to the county prosecutor, who is authorized to work in conjunction with the county superintendent of schools and, where appropriate, the Division of Criminal Justice, to take appropriate steps to resolve the matter. Any dispute that cannot be resolved at the county level will be resolved by the Attorney General, whose decision will be binding. (Article 14 of the MOA)

Legal Questions Regarding Law Enforcement Activities

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 grounds *should be directed to* the county prosecutor, pursuant to *N.J.A.C. 6A:16-6.2(b)5ii*, or in the case of an arrest, search or seizure undertaken by a member of the Statewide Narcotics Task Force, to the Assistant Attorney General in charge, pursuant to *N.J.A.C. 6A:16-6.2(b)5vii*.

Planned Arrests

Whenever a planned arrest is to occur on school grounds, the building principal or local chief school administrator must be *advised and consulted* before the arrest occurs. (Article 7.4 of the MOA)

Stationhouse Adjustment Notification

When the school district is a victim of a minor juvenile offense, such as a minor theft or offense involving trespass or the destruction of school grounds, the school must be *notified* and should be *included in the stationhouse adjustment process*, in the same manner as any other victim. (Article 2.4 of the MOA)

Harassment, Intimidation and Bullying Policies

The district board of education's policies and procedures prohibiting harassment, intimidation and bullying must be developed *in consultation with law enforcement officials*, parents and other community members, including appropriate community-based social and health provider agencies and other school employees, pursuant to *N.J.A.C. 6A:16-7.9(a)1*. (Article 8.4 of the MOA)

School Violence Awareness Week

School officials *must invite law enforcement officials* to join school staff in the student discussions organized to observe School Violence Awareness Week, which occurs the week beginning with the third Monday in October of each year, pursuant to *N.J.S.A. 18A:36-5.1* and *N.J.A.C. 6A:16-5.2*. *Upon invitation* and as appropriate to the district's plans, law enforcement officials may assist with the student discussions required during School Violence Awareness Week. (Article 13.2 of the MOA)

Crime Prevention

The County Prosecutor's Office and the law enforcement agency designated in Article 11 of the MOA must *assist school officials* who wish to develop and implement student-oriented crime prevention and awareness programs. (Article 11 of the MOA)

Law Enforcement Instructional Programs

The County Prosecutor must *serve on an ongoing basis* as an information clearinghouse to *provide school officials with information* concerning the availability and benefits of law enforcement instructional programs. (Article 12.3 of the MOA)

School Safety and Security Plans

The chief school administrator (CSA) is required to *consult* with law enforcement agencies, health and social service provider agencies, emergency management planners and school and other community resources in *reviewing and updating* the school district's safety and security plans, procedures and mechanisms (*N.J.A.C. 6A:16-5.1*). (Articles 8.1.1 and 8.1.2 of the MOA)

Law enforcement officials must, at a minimum, *annually review* and, where necessary, *provide written comments* to the CSA concerning the required school safety and security plans. The CSA must, at a minimum, *annually submit a copy* of the school district's school safety and security plans or any important revisions to the plans to law enforcement officials, as agreed. The CSA must *provide law*

enforcement officials with current copies of blueprints and maps of all schools and school grounds, and anytime there are changes to the blueprints or maps, the CSA must *forward revised copies* to law enforcement officials as soon as practicable. (Articles 8.1.4 and 13.4 of the MOA)

The Model School Security Policies for law enforcement agencies issued pursuant to the Attorney General's Law Enforcement Directive No. 2007-1 on the topics of bomb threats, active shooter response, school lockdowns, school evacuations and public information policies must serve as templates for the development of local law enforcement policies. Local law enforcement officials *must discuss the policies* which they adopt on these topics with school administrators from the school district or districts within their jurisdiction. School administrators must *share their procedures* for critical incidents, developed in accordance with the policies issued by the Commissioner of Education, with local law enforcement officials. (Article 8.2.1 of the MOA)

Law enforcement officials must identify school safety and security issues and concerns and *advise* the county prosecutor and chief school administrator, as appropriate. (Article 13.3 of the MOA)

School officials must *annually consult* with law enforcement personnel regarding the in-service training program required for all district board of education employees, pursuant to *N.J.A.C. 6A:16-5.1(d)*, to enable them to recognize and appropriately respond to safety and security concerns, including emergencies and crises, consistent with the school district's plans, procedures and mechanisms for school safety and security and the provisions of *N.J.A.C. 6A:16-5*. (Article 13.3 of the MOA)

Gang Prevention and Intervention

Law enforcement and school officials must engage in *ongoing discussions* and training in gang prevention and intervention, as appropriate, regarding gangs that are thought to be active in the area, gang recruiting and signs of gang activity or recruiting. (Article 8.3 of the MOA)

Sharing Delinquency Information

The revised juvenile confidentiality laws, P.L. 1994, c. 56, permit law enforcement or prosecuting agencies to *disclose information* regarding juveniles who are under investigation when that information may be useful in maintaining order, safety, or discipline in the school or in planning programs relevant to the juvenile's educational and social development. The revised law further contains a provision that authorizes a principal to *request information* concerning juvenile delinquency charges that have been filed against a student enrolled in the school. These requests may either be made on a case-by-case basis or in accordance with procedures that could be agreed to as part of the MOA. (Article 5.1 of the MOA)

The law enforcement agency designated in the MOA agrees, upon the request of the school official designated in the MOA, to make *available officer(s) to testify* as appropriate in any suspension or expulsion hearing before the Board of Education, pursuant to *N.J.S.A. 18A:37.1 et seq.* and *N.J.A.C. 6A:16-7*, or other appropriate school authority as may be necessary to satisfy the due process rights of a student subject to school discipline. (Article 5.6 of the MOA)

In the absence of compelling or exigent circumstances, as will be determined by the county prosecutor or the Attorney General or his designee, no planned narcotics surveillance operation as defined in MOA may be conducted during operating school hours without first *consulting with the building principal or local chief school administrator* of the school involved. (Article 3.3.1 of the MOA)

All requests by school officials to undertake an undercover school operation in a particular school or school district will be *directed to the local chief of police* or, where appropriate, to the Superintendent of State Police. However, the ultimate approval of all undercover school operations can only be granted by the school official designated in the MOA and the county prosecutor or, where appropriate, the Attorney General or his designee. (Addendum 1, Article 1 of the MOA)

Except as may be expressly provided in the MOA, no undercover school operation may be attempted without the *assent and continuing cooperation* of the building principal and chief school administrator. Prior to the placement of any undercover officer in a school, the school building principal and the local chief school administrator will be *consulted* unless there are compelling reasons not to *consult* with either of these officials. (Addendum 1, Article 2 of the MOA)

RECOMMENDED

Substantial weight will be given by the law enforcement officer assigned to make student arrests on school grounds to the *specific recommendations* of the building principal or local chief school administrator as to the time, place, and manner for effecting the arrests. (Article 7.2 of the MOA)

The school official designated in the MOA must, at the request of the law enforcement agency designated in the MOA and/or the County Prosecutor's Office, *provide information* concerning the efforts by the principal or school staff to contact and notify the student's parent(s) or guardian of the student's arrest. (Article 6.4 of the MOA)

Q9: Who is responsible for planning, organizing and implementing the required and recommended trainings, meetings and consultations?

A: The plans for organizing and implementing required and recommended trainings, meetings and consultations must be determined as part of the annual

process for the chief school administrator and local law enforcement officials to discuss the implementation and need for revising the MOA (*N.J.A.C. 6A:16-6.2(b)13*), and to review the effectiveness of the school's policies and procedures developed pursuant to *N.J.A.C. 6A:16*, Law Enforcement Operations for Alcohol, Other Drugs, Weapons and Safety.

Q10: May the *Memorandum of Agreement Between Education and Law Enforcement Officials* (MOA) be modified?

A: Modification of the MOA may be effected only with the *mutual consent* of the school district, the county superintendent of schools, the police department, and the county prosecutor. Pursuant to *N.J.A.C. 6A:16-6.2(b)15ii*, all revisions may be only in addition to, and may not conflict with the format and content established by the Attorney General and the Commissioner of Education and shall be in addition to, and may not conflict with the policies and procedures established pursuant to *N.J.A.C. 6A:16-6*. All parties to the MOA must *notify the other parties* immediately regarding any such legal or regulatory changes. (Article 15.1 of the MOA)

Q11: Who is responsible for making the final determination on when students may return to school following bomb threats?

A: When a school has been evacuated due to a bomb threat and a device has not been found, it is the responsibility of the school administrator to order the re-occupancy of the school, based upon information provided by law enforcement officials.

Q12: Why would police not provide information to school administrators on all station house adjustments, per section 2.3 of the *Memorandum of Agreement Between Education and Law Enforcement Officials* (MOA)?

A: Law enforcement officials may choose not to inform school administrators regarding a stationhouse adjustment *due to the particular circumstances of the situation*. This may be the case, for example, when police receive a complaint regarding a youth party but are unable to determine whether one or more youth have engaged in illegal behavior, such as underage drinking. In this instance, law enforcement officials might choose not to notify school officials because no charges are filed.

However, when the school district is a victim of a minor juvenile offense, such as minor theft or an offense involving trespass or the destruction of school grounds, law enforcement officials must notify school officials and include school officials in the stationhouse adjustment process, in the same manner as any other victim.

Q13: How are Law Enforcement Units created?

A: Law Enforcement Units (LEU) are *voluntarily established by the local school district* to enforce Federal, State or local laws; to refer to appropriate authorities a matter for enforcement of any Federal, State or local law against any individual or organization other than the school district; or to maintain the physical safety and security of the district. LEUs are established by either the local board of education or the chief school administrator authorized by the board of education to make these types of decisions. LEUs are *not established by law enforcement officials* or agencies. Once LEUs are created, school officials should notify local law enforcement officials of their existence. (Section 2.2 and 4.3.3 of the MOA)

Q14: What information can be recorded by Law Enforcement Units?

A: Law Enforcement Units (LEU) may record any information that is created and maintained by the LEUs to enforce any Federal, State or local law or to maintain the physical security and safety of the school district. Examples of records that may be created and maintained by the LEUs include school security campus or school bus videotapes, records relating to weapons screening devices, visitor logs and any records of interviews relating to potential violations of the law. (Section 2.2 and 4.3.3 of the MOA)

Q15: What is the difference between law enforcement unit records and education records (i.e., student records)?

A: The Family Educational Rights and Privacy Act (FERPA) defines “education records” and “law enforcement unit records” as follows:

Education Records – These are records, files, documents and other materials which:

- a) contain information directly related to a student; and
- b) are maintained by an educational agency or institution or by a person acting for the agency or institution.

Law Enforcement Unit Records – These are records, files, documents and other materials that are:

- a) created by a law enforcement unit;
- b) created for a law enforcement purpose; and
- c) maintained by the law enforcement unit. (Section 2.2 and 4.3.3 of the MOA).

Q16: How are Law Enforcement Unit records created?

A: Law Enforcement Unit (LEU) records are created and maintained by the designated LEU to enforce Federal, State or local laws; to refer to appropriate authorities a matter for enforcement of any Federal, State or local law against any individual or organization other than the school district; or to maintain the physical safety and security of the district. (Section 2.2 and 4.3.3 of the MOA)

Q17: Which student and school records may be shared with law enforcement officials or Law Enforcement Units and under which conditions may they be shared?

A: The parameters for the release of educational records to law enforcement are provided below.

Law Enforcement Officials

There are three situations in New Jersey that do not require parental consent for disclosing student records to law enforcement officers or to law enforcement units whose members are not designated as “school officials” with “legitimate educational interests:”

- 1) Situations deemed emergency or necessary to protect the health or safety of the student or other persons. This exception applies to criminally prosecutable offenses. This exception is limited to the period of the emergency and generally does not permit a blanket release of personally identifiable information from a student’s education records.
- 2) Situations where the school district employs campus police or have officers assigned to school grounds, and records are maintained solely for law enforcement purposes. (These records do not constitute educational records.)
- 3) Under Court order or subpoena. Still, the school administrator must make a reasonable effort to notify the student or the student’s parents before complying.

Law Enforcement Units

When school districts designate law enforcement units (LEUs) according to the requirements of the Family Educational Rights and Privacy Act (FERPA) and designate LEU officials as “school officials” with “legitimate educational interests,” investigative reports and other records created and maintained by these LEUs are not considered educational records subject to FERPA. Accordingly, schools may disclose information from LEU records to anyone, including outside law enforcement authorities, without parental consent.

FERPA neither requires nor prohibits the release of LEU records, but allows schools to follow their own policies or applicable State law. The LEU officials designated as school officials with legitimate educational interests may be given access to personally identifiable information from students’ education records; however, LEU officials must protect the privacy of education records they receive

and may disclose them only in compliance with FERPA. *For that reason, it is advisable that LEU records be maintained separately from education records.*

FERPA does not protect the confidentiality of information in general, and, therefore, does not apply to the disclosure of information derived from a source other than education records, even when education records exist which also contain that information. FERPA does not prohibit a school official from disclosing information about a student when the information is obtained through the school official's personal knowledge or observation, and *not* from the student's education records. For example, when a teacher overhears a student making threatening remarks to other students, FERPA does not protect that information, and the teacher may disclose what he or she overheard to appropriate authorities.

If a school has a LEU with a dual role or function of enforcing institutional rules of student conduct related to safety and security and referring potential or alleged violations of law to governing authorities, the records of that LEU created and maintained for law enforcement purposes are considered records of the LEU and, therefore, are excluded from the definition of "education record" under FERPA. Where a LEU also performs non-law enforcement functions, the records created and maintained by that unit are considered LEU records, even where those records were created for dual purposes (e.g., for purposes of both law enforcement and violations of the district board of education's codes of student conduct).

Conversely, education records, and personally identifiable information contained in education records that are shared with the school's LEU do not lose their status as "education records" and must be protected as such in the possession of the LEU. Accordingly, when a school's LEU receives personally identifiable information from a student's education records, the information must be protected under FERPA and not be disclosed, unless authorized under FERPA. Any party, including a "school official," that receives educational records may use the information only for the purposes for which the disclosure was made and may not re-disclose the information to any other party without prior written consent, except as authorized under FERPA.

In regard to when student witness statements and reports made by school security staff should be considered law enforcement records and when they should be considered education records subject to FERPA, it depends on who created the records, for what purpose the records were created and who maintains the records. If a LEU initiates an investigation into a school campus incident relating to a possible violation of law, the record created and maintained by the LEU in connection with this investigation is a LEU record, whether or not it is ever referred to local police authorities. If, however, the same LEU or individual responsible for law enforcement investigates the incident for the purposes of internal actions for violations of the code of student conduct and created the

records exclusively for the purpose of possible actions against the student under the code of student conduct, the record would not be considered a record of a LEU and would be an “education record” subject to FERPA.

Should an officer of a local police department interview a student on the school campus and then depart with the police department’s records regarding the interview, there is no FERPA implication. That is because the notes taken and maintained by the police officer are not maintained by the school district or a party (e.g., LEU) acting for the school district. Conversely, if a student is interviewed by school security staff and the records are maintained by the LEU, those records could be education records if they were not created for a law enforcement purpose.

Images of students captured on security videotapes that are maintained by the LEU are not considered education records under FERPA. Accordingly, these videotapes may be shared with parents or students whose images are on the video and with outside law enforcement authorities, as appropriate.

Last, FERPA permits the nonconsensual disclosure of education records when the disclosure is made in compliance with a lawfully issued subpoena or Court order if the educational agency makes a reasonable attempt to notify the parent or eligible student of the order or subpoena in advance of compliance. (Section 2.2 and 4.3.3 of the MOA)

Q18: What information on Law Enforcement Units (LEU) must be included in the district’s annual notification to parents of elementary and secondary school students of their rights with respect to student records under the Family Educational Rights and Privacy Act (FERPA)?

A: In its annual notification of rights under FERPA, the district must include criteria that would include the LEU officials as “school officials” with “legitimate educational interest.” Additionally, the notice should explain that the records created by the school district’s LEU(s) that meet the description of “law enforcement records,” would be LEU records and, as such, may be shared with outside third parties, including the local police department and the county prosecutor’s office. (Section 2.2 and 4.3.3 of the MOA)

Q19: In the *Memorandum of Agreement Between Education and Law Enforcement Officials* (MOA) section 5.8.4, Notification of Emergencies, what is meant by the phrase “...as soon as practicable.” in reference to when law enforcement officials must first notify and subsequently update school officials of an emergency affecting the safety of children during school hours?

A: The phrase applies to when notification is capable of occurring or being done. There are instances when an emergency arises that has the potential to threaten a school, but law enforcement officials are unable to *immediately* notify school officials because they are actively engaged in responding to the emergency. For example, police could be in pursuit of a suspected robber who is in the vicinity of a school. The police can not stop to immediately notify school officials without terminating the pursuit and increasing the chances that the school and community could be placed in danger by the suspect.

Notification also can depend upon the nature and timing of the threat. Sometimes a threat occurs during the weekend, in which case law enforcement officials will notify school officials either after confirming the threat to the school; as soon as law enforcement are able to locate school officials; or when school resumes its schedule, depending upon the characteristics and immediacy of the threat.

Q20: Why is there a delay in notifying school administrators of offenses by school personnel, per *Memorandum of Agreement Between Education and Law Enforcement Officials* (MOA) sections 5.8 and 5.8.3, during the period between the filing of a complaint and an indictment, creating a period of time during which school administrators may be unaware of charges pending against school personnel?

A: It is important to note that section 5.8 *does not require* that there be a delay between the filing of a complaint and an indictment; rather, it is part of a lead-in to the MOA provisions that follow, and is only an *acknowledgement* that there is a delay between charges being filed and an indictment, which is different from the ancillary requirement for law enforcement officials to notify school officials of indictments or convictions.

The section establishes that the requirement for law enforcement officials to notify school district officials of complaints against school employees is not limited to the school district in which the law enforcement agency is located. The requirement directs that notice must be given to any school district or nonpublic school within the state of New Jersey where the accused is employed.

However, there may be instances when an employee in school district X, is arrested for an indictable offense (e.g., a crime such as drug possession or a sexual offense) in school district Y, which is apart from the employee's school district X. In these cases, the police report does not identify the teacher's place of employment, making it impossible for law enforcement to inform school officials, and law enforcement officials are not obligated to investigate or verify the employment of every person arrested or charged with an offense. In instances of complaints, law enforcement officials are only required to notify school officials in circumstances where the accused admits to employment in a school district or nonpublic school, or when this information is otherwise available to the law

enforcement agency. Therefore, the individual's place of employment may not become known until there is an indictment, at which time law enforcement officials will be able to fulfill their obligation to notify school officials.

Once school officials receive the information, it is expected that they will act in accordance with the district's policies, procedures and contractual agreements and in the interests of the health, safety and welfare of the students, staff and school grounds of the school district. For example, school district officials might prohibit a bus driver from driving a school bus upon notification of a DWI charge against the employee, pending the results of the investigation (e.g., whether or not there was substantiating evidence) or pending the status of the charges (e.g., whether or not the charges were found to be indictable).

Q21: The previous version of the *Memorandum of Agreement Between Education and Law Enforcement Officials* (MOA) issued in 1999 included an addendum on bias crimes that is not included in the MOA version issued in 2007. Does this removed addendum remain in effect?

A: Yes. While the addendum included in its entirety in previous versions of the MOA is not contained in the new MOA, it is referenced in the MOA in Article 8.4, "Bias" Crimes and "Bias-Related" Acts, and, therefore, is in effect. The sample document titled *Memorandum of Understanding Concerning Suspected Bias Crimes or Bias Incidents Occurring on School Grounds or Involving Students* developed by the New Jersey Department of Law and Public Safety and the New Jersey Department of Education can be found at <http://www.nj.gov/oag/dcj/obccr/pdfs/biasagree.pdf>.

Q22: The *Memorandum of Agreement Between Education and Law Enforcement Officials* (MOA) requires reporting to law enforcement whenever any school employee has reason to believe that a crime involving sexual penetration or criminal sexual contact has been committed on school grounds. (Section 4.12 of the MOA) Does this mean that allegations of improper relationships between a student and a school staff person can be handled administratively, if there is no allegation of sexual activity occurring on school grounds?

A: No. Allegations of improper relationships between a student and a school staff member, including volunteer staff, must be reported immediately both to law enforcement and to the Division of Youth and Family Services (DYFS), Department of Children and Families as potential child abuse, pursuant to MOA section 4.19 *et seq.*, even when the alleged improper activity did not occur on school grounds. An improper relationship is not limited to sexual penetration or criminal sexual contact, and may also include any communications, such as conversations, e-mails, text messages or the transmission of photographs of a sexual nature. Attempting to conduct an administrative investigation using school

staff prior to reporting such allegations is a violation of State statute and regulations, will alert the alleged offender and will provide both the alleged offender and the student with an opportunity to destroy critical evidence, such as e-mails or text messages.

Q23: May local school and law enforcement officials amend the *Memorandum of Agreement Between Education and Law Enforcement Officials* (MOA) to include the requirement for local police departments to notify school officials when teenagers are convicted of committing a Graduated Driver Licensing (GDL) law or traffic violation?

A: Yes. Pursuant to *N.J.A.C. 6A:16-6.2(b)15ii* and Article 15.1 of the MOA, school and law enforcement officials may revise the MOA, when the revisions are only in addition to, and do not conflict with, the format and content established by the Attorney General and the Commissioner of Education, and are in addition to, and do not conflict with, the policies and procedures established pursuant to *N.J.A.C. 6A:16-6*. Therefore, the MOA may be modified, by assent of local school and law enforcement officials, to include the requirement for local police departments to notify school officials when teenagers are convicted of committing a Graduated Driver Licensing law or traffic violation. The reporting requirement could be a complement to district boards of education that choose to adopt policies and procedures designed to remove school parking privileges as a deterrent to violating the Graduated Driver Licensing law or traffic law.

Q24. Are nonpublic schools required to have a *Memorandum of Agreement Between Education and Law Enforcement Officials* (MOA)?

A: No. The requirements at *N.J.A.C. 6A:16-6*, Law Enforcement Operations for Alcohol, Other Drugs, Weapons and Safety, including the requirements for a MOA, apply only to public school districts, charter schools, jointure commissions, educational services commissions and approved private schools for the disabled. However, a separate version of the Uniform MOA has been developed by the New Jersey Catholic Conference, available by contacting a Catholic school or the diocesan offices, which is based on the MOA issued by the Attorney General and the Commissioner of Education. The diocese requires the diocesan superintendent, the chief school administrator and appropriate law enforcement officials to annually review and sign the MOA.

Q25. Which schools are required to have a *Memorandum of Agreement Between Education and Law Enforcement Officials* (MOA)

A: The MOA requirement, pursuant to *N.J.A.C. 6A:16-6.2(b)13*, applies to all public school districts serving students in grades kindergarten through twelve,

charter schools, jointure commissions, educational services commissions and approved private schools for the disabled acting under contract to provide educational services on behalf of New Jersey public school districts. All of these schools also must comply with all of the regulations at *N.J.A.C. 6A:16-6*, Law Enforcement Operations for Alcohol, Other Drugs, Weapons and Safety, including the requirements for an annual process for the chief school administrator and appropriate law enforcement officials to discuss the implementation and need for revising the MOA, and to review the effectiveness of the school's policies and procedures developed pursuant to *N.J.A.C. 6A:16-6*. The annual review must include input from the county superintendent, community members and meetings with the county prosecutor and other law enforcement officials designated by the county prosecutor. The MOAs must be annually approved by the district board of education or governing authority and submitted to and approved by the county superintendent of schools and the county prosecutor.