

*Uniform State Memorandum of Agreement Between Education and
Law Enforcement Officials (MOA)*

**Frequently Asked Questions
January 2019**

Acronym	Term
MOA	<i>Uniform State Memorandum of Agreement Between Education and Law Enforcement Officials</i>
SSSP	School Safety and Security Plan
LEU	Law Enforcement Unit
FERPA	<i>Family Educational Rights and Privacy Act</i>
HIB	Harassment, intimidation or bullying
CSA	Chief School Administrator
NJDOE	New Jersey Department of Education

Q: What is the MOA?

A: The MOA is a model agreement that was developed by the Department of Law and Public Safety and the (NJDOE) to ensure cooperation and coordination between law enforcement and education officials. The MOA exemplifies the commitment between the Department of Law and Public Safety and the NJDOE, and other related entities throughout the State, to work together to address school-related issues, problems, and emergencies of mutual concern.

Source: *N.J.A.C. 6A:16-6.2*

Q: Which schools are required to have an MOA?

A: All public school districts serving students in grades kindergarten through 12, charter schools and Renaissance school projects, jointure commissions, educational services commissions, and approved private schools for students with disabilities acting under contract to provide educational services on behalf of New Jersey public school districts are required to have an MOA.

Non-public schools are **not** required to have an MOA. However, a separate version of the uniform MOA has been developed by the New Jersey Catholic Conference, 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. This document may be requested by contacting a Catholic school or the diocesan offices.

Source: *N.J.A.C. 6A:16-6.2*

Q: Who must approve the MOA?

A: A copy of the MOA must be submitted to, approved by, and executed by the county prosecutor, the executive county superintendent, the president of the district board of education, the CSA, and the chief of the police department or the station commander.

Source: *N.J.A.C. 6A:16-6.2*

Q: How often must the MOA be reviewed?

A: On an annual basis, the CSA and appropriate law enforcement officials must establish a process to discuss the implementation of the MOA, as well as the need, if any, to revise the MOA. Revisions, if any, shall be only in addition to, and shall not conflict with, the format and content of the MOA as established by the Department of Law and Public Safety and the NJDOE. This annual review shall include input from the executive county superintendent, community members, and meeting(s) with the county prosecutor and other law enforcement officials designated by the county prosecutor.

Source: *N.J.A.C. 6A:16-6.2*

Q: Are safe school resource officers and/or school liaisons to law enforcement required to receive training?

A: Yes. Pursuant to *N.J.S.A. 18A:17-43.1*, a board of education is prohibited from assigning a safe schools resource officer to a public school, and from assigning an employee to serve as a school liaison to law enforcement, until the designated individuals first complete the safe schools resource officer training course.

Source: *N.J.S.A. 18A:17-43.1*

Q: What is the safe schools resource officer training course?

A: The safe schools resource officer training course was developed by the Police Training Commission in the Division of Criminal Justice in the Department of Law and Public Safety, in consultation with the Attorney General, and provides comprehensive and consistent training in current school resource officer practices and concepts.

Source: *N.J.S.A. 52:17B-71.8*

Q: What is a stationhouse adjustment and when is it used?

A: A stationhouse adjustment is an alternative to the issuance of a criminal complaint and/or the filing of formal criminal/juvenile delinquency charges that law enforcement agencies may utilize to handle first-time juvenile offenders who have allegedly committed minor juvenile delinquency offenses. Although law enforcement agencies shall make stationhouse adjustments available as a method of handling minor juvenile delinquency offenses, law enforcement agencies are not required to use a stationhouse adjustment unless they determine, in their discretion, it is appropriate to do so.

Source: Article 4.2. Stationhouse Adjustments.

Q: What is an LEU and how is it created or established?

A: An LEU is any individual, office, department, division or other component of a school district that is officially authorized or designated to: (a) enforce any local, State, or federal law; (b) refer to appropriate authorities a matter for enforcement of any local, State, or federal law against any individual or organization other than the school district; and/or (c) maintain the physical security and safety of the school district.

An LEU is established by either the local board of education, or by a CSA who is authorized by a local board of education to make such decisions. An LEU is **not** created or established by law enforcement officials or agencies and does not have to be a law enforcement officer.

Source: Article 2.4. Creation of Law Enforcement Units as Authorized by FERPA.

Q: What are the duties and responsibilities of an LEU?

A: An LEU is responsible for creating, maintaining, and storing all school security equipment and records. School security equipment and records that may be created and maintained by the LEU can include, but are not limited to, school security campus or school bus videotapes, records relating to weapons screening devices, visitor logs, and any records of interviews relating to potential violations of the law.

Source: Article 2.4. Creation of Law Enforcement Units as Authorized by FERPA.

Q: Are the records created or maintained by an LEU considered to be student or educational records?

A: No. The records created or maintained by an LEU are not considered to be student or educational records under FERPA and may be voluntarily turned over to law enforcement without a subpoena.

Source: Article 2.4. Creation of Law Enforcement Units as Authorized by FERPA and Article 8.3. Records of Law Enforcement Units.

Q: What is the difference between education (student) and LEU records?

A: FERPA defines education and LEU records as follows:

Education Records – 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.

LEU Records – Records, files, documents and other materials that are:

- a) Created by an LEU;
- b) Created for a law enforcement purpose; and
- c) Maintained by an LEU.

Source: 20 U.S.C. 1232g(a)(3) and Article 8.3. Records of Law Enforcement Units.

Q: What kind of immunity, if any, is afforded by the Overdose Prevention Act, and to whom is it afforded?

A: When a person, in good faith, seeks medical assistance for an individual believed to be experiencing a drug overdose (including him/herself), the caller **and** the person experiencing the overdose shall not be arrested, charged, prosecuted, or convicted for certain specific criminal offenses involving the use or simple possession of a controlled dangerous substance(s). Attorney General Directive 2013-1 further expanded the scope of the immunity provisions of the Overdose Prevention Act to include immunity for others present at the scene *if* they were made aware of, and participated in, the request for medical assistance. This immunity shall be provided to others present even if they did not actually call for medical assistance.

Notwithstanding the immunity afforded by the Overdose Prevention Act and Attorney General Directive 2013-1, individuals can still be arrested, charged with, and prosecuted for other offenses, including simple use or possession, or

possession with intent to distribute, if law enforcement can substantiate this information through independent means.

Source: Article 3.3.3. Overdose Prevention Act.

Q: What kind of immunity, if any, is provided to juveniles who call 9-1-1 regarding an alcohol-poisoning related medical emergency, and to whom is it afforded?

A: Pursuant to the “9-1-1 Lifeline Legislation,” immunity from prosecution for underage use and possession of alcohol (*N.J.S.A. 2C:33-15*) will be provided for an underage person and one or two other persons when 9-1-1 is called for an alcohol-poisoning related medical emergency. However, in order for immunity to apply: (1) one of the underage persons must have called 9-1-1 and reported that another underage person was in need of medical assistance due to alcohol consumption; (2) the underage person who called 9-1-1 and, if applicable, one or two other persons acting in concert with the underage person who called 9-1-1, and provided each of their names to the 9-1-1 operator; (3) the underage person was the first person to make the 9-1-1 report; and (4) the underage person and, if applicable, one or two other persons acting in concert with the underage person who called 9-1-1, remained on scene with the person who needed medical assistance until medical assistance arrived, and cooperated with medical assistance and law enforcement personnel on the scene. The underage person who received medical assistance shall also be immune from prosecution in these circumstances.

Source: Article 4.1.2. Overdose Prevention Act (footnote).

Q: Are students permitted to self-administer medication and, if so, under what circumstances can self-administration occur?

A: Yes, self-administration of medication by a student for asthma or other potentially life-threatening illnesses, or for a life-threatening reaction, is permitted provided that (a) the student’s parent or guardian provides the board of education with written authorization for the self-administration of medication; (b) the student’s parent or guardian provides the board of education with written certification from the student’s physician that the student has asthma or another potentially life-threatening illness, or is subject to a life-threatening allergic reaction, and is capable of, and has been instructed in, the proper method of self-administration of medication; (c) the board of education informs the student’s parent or guardian, in writing, that the district, its employees, and its agents shall incur no liability as a result of the student’s self-administration of medication; and (d) the student’s parent or guardian signs a statement acknowledging that the district, its employees, and its agents shall incur no liability as a result of the

student's self-administration of medication, and that they (the student's parent or guardian) will indemnify and hold harmless the district, its employees, and its agents against claims arising out of the student's self-administration of medication.

Source: Article 3.3.6. Self-Administration of Medication by Students.

Q: When can a student be in possession of and/or use a prescription controlled dangerous substance on school grounds?

A: If a student has satisfied all the criteria in Article 3.3.6, and as detailed in *N.J.S.A. 18A:40-12.3*, he/she may self-administer such a substance if self-administration is detailed in and authorized by the student's Individualized Health Care Plan and Individualized Emergency Health Care Plan. Absent these conditions, students are prohibited from possessing and/or using controlled dangerous substances, prescription or otherwise, on school grounds.

Source: Article 3.3.6. Self-Administration of Medication by Students.

Q: What is the purpose of the Compassionate Use Medical Marijuana Act (CUMMA)?

A: The purpose of CUMMA is to protect from arrest, prosecution, property forfeiture, criminal and other penalties, those patients who use marijuana to alleviate suffering from debilitating medical conditions, as well as their physicians, primary caregivers, and those who are authorized to produce marijuana for medical purposes.

Additionally, the New Jersey Department of Health has developed regulations for the implementation of CUMMA, and is the lead State agency in developing the Medicinal Marijuana Program.

Source: Article 3.3.7. Compassionate Use Medical Marijuana Act.

Q: Is it lawful, pursuant to CUMMA, for marijuana to be smoked on a school bus or on any school grounds?

A: No. School buses and school grounds are considered, among other locations, to be "protected locations" under CUMMA. Therefore, if an individual smokes lawfully-dispensed medical marijuana on a school bus or on school grounds, even if he/she is a qualifying patient, he/she will be subject to penalties as are provided by law and any disciplinary action that may result according to the school district's student code of conduct.

Notwithstanding the above, it should be noted that it is only “smoking” lawfully-dispensed marijuana that is prohibited, pursuant to CUMMA, on a school bus or on school grounds.

It should also be noted that, pursuant to *N.J.S.A. 26:3d-58*, smoking is prohibited in any area of any building of, or on the grounds of, any public or nonpublic elementary or secondary school, regardless of whether the area is an indoor public place or is outdoors.

Source: Article 3.3.7. Compassionate Use Medical Marijuana Act and *N.J.S.A. 26:3d-58*.

Q: Can law enforcement agencies disclose information to school officials regarding pending matters against students?

A: Yes. A law enforcement or prosecuting agency *may* provide the building principal with information identifying one or more juveniles who are under investigation, or who have been taken into custody for commission of any act that would constitute an offense if committed by an adult, *if* the law enforcement or prosecuting agency determines that the information may be useful to the principal in maintaining order, safety, or discipline in the school, and/or in planning programs relevant to the juvenile’s educational and social development. However, no information provided by a law enforcement or prosecuting agency to the building principal shall be maintained.

At the time of a charge, adjudication, *or* disposition, information regarding the identity of a juvenile charged with an offense, the offense charged, the adjudication, and disposition *shall, upon request*, be disclosed to the building principal of the school where the juvenile is enrolled on a confidential basis. This information shall be used by the principal and such members of the staff and faculty of the school as the principal deems appropriate, for maintaining order, safety, or discipline in the school, and/or to plan programs relevant to the juvenile’s educational and social development. However, no record of such information shall be maintained except as authorized by the NJDOE.

At the time of a charge, adjudication, *or* disposition, a law enforcement or prosecuting agency *shall* send *written* notice to the building principal of the school where the juvenile is enrolled of the identity of the juvenile charged, the offense charged, the adjudication, and the disposition *if* (a) the offense occurred on school property or a school bus, at a school-sponsored function, or was committed against an employee or official of the school; (b) the juvenile was taken into custody as a result of information or evidence provided by school officials; or (c) the offense, if committed by an adult, would constitute a crime, and the offense resulted in death, serious bodily injury, or involved an attempt or

conspiracy to cause death or serious bodily injury; involved the unlawful use or possession of a firearm or other weapon; involved the unlawful manufacture, distribution, or possession with intent to distribute a controlled dangerous substance; was committed by a juvenile who acted with purpose to intimidate an individual or group of individuals because of his/her/their race, color, religion, sexual orientation or ethnicity; or would be a crime of the first, second, or third degree. Information provided to the building principal shall be maintained by the school, and shall be treated as confidential, but may be made available to such members of the staff and faculty of the school as the principal deems appropriate, for maintaining order, safety, or discipline in the school, and/or to plan programs relevant to the juvenile's educational and social development.

Where a student who has been arrested or is under investigation is eighteen (18) years old (or older), and is being treated as an adult by the criminal justice system, a law enforcement or prosecuting agency can provide to the principal of the school the same information that could be provided for a juvenile offender.

Source: Article 8.4. Statutory Authority to Disclose Information through Article 8.8. Disclosure of Adult Student Information.

Q: Can law enforcement disclose information to school officials regarding pending matters against school employees?

A: Yes. Whenever a complaint or summons is filed against an individual for an indictable offense, driving while intoxicated, and/or a disorderly persons or petty disorderly persons offense, and law enforcement knows that the individual is employed by a school district or works as a school bus driver, it shall provide notice and a copy of the complaint to the school district no later than the next business day.

It should also be noted that prosecutors are required to provide notification of indictment or conviction of certain public employees to the Division of Criminal Justice. The appropriate public agency is then provided with similar notification.

Source: Article 8.11. Notification of Arrests or Charges Filed Against School Personnel.

Q: What information must be included in a school district's SSSP?

A: A school district's SSSP, which must be reviewed annually and updated as appropriate, must be in written form and provide for the protection of the health, safety, security and welfare of the school population; the prevention of,

intervention in, and recovery from emergency and crisis situations; the establishment and maintenance of a climate of civility; and support services for staff, students, and their families.

To this end, a school district's SSSP must contain, among other things, protocols and procedures for quickly communicating to staff, students, parents, and emergency responders that a crisis situation exists; procedures for minimizing the risk of physical harm to students and staff in the event of exposure to a hazard(s); and protocols for responding to emergencies that require prompt and orderly actions, such as fires. A school district must also conduct regular fire and security drills, such as non-fire evacuations, bomb threats, lockdown, and active shooter situations.

Source: Article 9.1. Development of SSSPs and Article 9.1.1. Critical Incident Planning.

Q: Does the CSA need to consult with any other individual or entity in the development of the SSSP?

A: Yes. The CSA shall consult with law enforcement agencies, health and social service provider agencies, emergency management planners, and school and other community resources, as appropriate, in the development and maintenance of the school district's plans, procedures, and mechanisms for school safety and security.

Source: Article 9.1.1. Critical Incident Planning through Article 9.1.4. Annual Review of SSSPs.

Q: Are school officials required to report *all* incidents of HIB to law enforcement?

A: No. HIB is not, in and of itself, a separately defined criminal offense under New Jersey's Code of Criminal Justice. Therefore, there is no obligation on the part of school personnel to report *all* incidents of HIB to law enforcement. However, incidents of HIB must be reported to law enforcement when the conduct also constitutes a criminal offense that qualifies as a mandatory referral to law enforcement, or if it could also be regarded as "bias intimidation," hazing, cyber-harassment, or sexting. Unlike HIB, bias intimidation, hazing, cyber-harassment, and sexting are separately defined criminal offenses under New Jersey's Code of Criminal Justice.

Bias intimidation focuses on conduct motivated by an alleged victim's race, color, religion, gender, disability, sexual orientation, gender identity or

expression, national origin, or ethnicity. In order to be charged with bias intimidation, there must be an underlying criminal act.

A person may be found guilty of hazing if, in connection with initiation of applicants to or members of a student or fraternal organization, he/she knowingly or recklessly organizes, promotes, facilitates or engages in any conduct, other than competitive athletic events, which places or may place another person in danger of bodily injury.

A person commits cyber-harassment if, while making a communication in an online capacity via any electronic device or through a social networking site, and with the purpose to harass another, the person (1) threatens to inflict injury or physical harm to any person or the property of any person; (2) sends, posts, comments, requests, suggests, or proposes any lewd, indecent, or obscene material to or about a person; or (3) threatens to commit any crime against the person or the person's property.

Sexting is the sending of sexually explicit photos by electronic means, such as text message, and may constitute a criminal act pursuant to New Jersey's child pornography laws. For example, it is a crime to give to someone else, offer to give to someone else, transfer, disseminate, distribute, circulate, or possess pornography depicting a child.

Just as an incident of HIB may also constitute the criminal offense of bias intimidation, hazing, cyber-harassment, and/or sexting (and, therefore, require a referral from school officials to law enforcement), the criminal offense of bias intimidation, hazing, cyber-harassment, and/or sexting may also constitute an incident of HIB (and, therefore, require a referral from law enforcement to school officials). As a result, law enforcement agrees to notify the building principal of the school at which a student is enrolled when he/she is alleged to be the perpetrator or victim of bias intimidation, hazing, cyber-harassment, and/or sexting. Upon receipt of this information, a determination can be made as to whether the act also constitutes HIB.

Source: Article 4.4. Harassment, Intimidation or Bullying through Article 4.7. Sexting.

Q: When *must* incidents of HIB be reported to law enforcement?

A: Incidents of HIB must be reported to law enforcement when they also constitute a criminal offense under New Jersey's Code of Criminal Justice, and fall within the ambit of a mandatory referral. Mandatory referral criminal offenses include: (1) whenever any school employee has reason to believe a violation of the Comprehensive Drug Reform Act has occurred; (2) whenever any

school employee in the course of his or her employment, pursuant to *N.J.A.C.* 6A:16-5.5 and *N.J.A.C.* 6A:16-6.3(b), develops reason to believe that a firearm has unlawfully been brought onto school grounds, or that any student or other person is in unlawful possession of a firearm, whether on or off school grounds, or that any student or other person has committed an offense with, or while in possession of, a firearm, whether or not such offense was committed on school grounds; (3) whenever any school employee in the course of his or her employment develops reason to believe that anyone has threatened, is planning, or otherwise intends to cause death, serious bodily injury, or significant bodily injury to another person under circumstances in which a reasonable person would believe that the person genuinely intends at some time in the future to commit the violent act or to carry out the threat, pursuant to *N.J.A.C.* 6A:16-6.3(c) through (e); and (4) whenever any school employee in the course of his or her employment develops reason to believe that a crime involving sexual penetration or criminal sexual contact has been committed on school grounds, pursuant to *N.J.A.C.* 6A:16-6.3(d).

As noted above, if an incident of HIB could also be regarded as “bias intimidation,” hazing, cyber-harassment, or sexting, it should similarly be reported to law enforcement.

Source: Article 3.1 Mandatory Report Offenses Summary; and Article 8.4. Harassment, Intimidation or Bullying through Article 8.8. Sexting.

Q: Can law enforcement report an incident of HIB to the New Jersey Division on Civil Rights?

A: Yes. If law enforcement believes that conduct may violate the New Jersey Law against Discrimination, it may voluntarily report a potential violation to the New Jersey Division on Civil Rights.

Source: Article 4.4.3.2. Reporting of HIB to Division on Civil Rights.

Q: What are the obligations of school officials regarding the preservation of evidence of HIB?

A: Whenever a school official seizes a document, an electronic device, or other item that the official believes may contain evidence of HIB, reasonable precautions shall be taken to prevent its theft, destruction, or unlawful use by any other person. Under no circumstances is any person permitted to alter, destroy, or otherwise dispose of any such evidence. Such evidence must be maintained in a locked and secure location, and the handling of such evidence must be documented in order to provide a record that no one has had an opportunity to tamper with the evidence.

Source: Article 4.4.4. Preservation of Evidence and Chain of Custody.

Q: How should school officials and law enforcement proceed when a school district is conducting an HIB investigation at the same time that law enforcement is conducting a criminal investigation of the same incident?

A: When a school district learns that law enforcement is conducting a separate, but simultaneous, criminal investigation of an HIB incident that it is also investigating, the school district's investigation should be suspended or stayed only *when deemed appropriate and requested by law enforcement*. It is only when law enforcement affirmatively requests that a school district suspend or stay its HIB investigation that such an investigation should be suspended or stayed. If law enforcement does not affirmatively request a suspension or stay of an HIB investigation, a school district must comply with all applicable timeframes for its investigation. If law enforcement has not affirmatively requested a stay or suspension of an HIB investigation, but a school district believes that the HIB incident may also constitute a criminal offense(s), it should contact law enforcement to inquire as to whether law enforcement may want to investigate the matter and, thereby, stay or suspend the school district's HIB investigation.

Source: Article 4.4.6. Coordination of HIB and Criminal Investigations.

Q: What must a school district do if law enforcement requests a suspension or stay of a school district's HIB investigation?

A: If a stay or suspension of an HIB investigation is requested by law enforcement, a school district must immediately memorialize this request, in writing, and advise the parent(s)/guardian(s) of the alleged perpetrator(s) and alleged victim(s) of law enforcement's request. Notice to the parents must include the fact that the time limit on filing a complaint in the Division on Civil Rights shall not be delayed due to law enforcement's request. If the parent(s)/guardian(s) objects, either orally or in writing, to the suspension or stay of the school district's HIB investigation, law enforcement must seek appropriate legal assistance from the county prosecutor's office to obtain a formal court order compelling the stay.

Source: Article 4.4.6. Coordination of HIB and Criminal Investigations.

Q: What if law enforcement’s request for a stay or suspension precedes the start of a school district’s HIB investigation, i.e., the school district has not yet initiated its HIB investigation?

A: If a stay or suspension is requested before the school district has started its investigation, a school district shall, nonetheless, initiate its investigation, but solely for the purpose of safeguarding the health and welfare of its students (i.e., ensuring there is no ongoing threat to student safety), and not for the purpose of determining whether HIB occurred. The school district’s HIB investigation shall remain open and stayed during the pendency of law enforcement’s investigation. Upon completion of the law enforcement investigation, and following notification of that completion from the county prosecutor, the anti-bullying specialist shall immediately resume the school’s HIB investigation. In this instance, the anti-bullying specialist shall have ten school days to complete its HIB investigation.

Source: Article 4.4.6. Coordination of HIB and Criminal Investigations.

Q: What if law enforcement’s request for a stay or suspension occurs after a school district has started its HIB investigation, but before the district has completed its investigation?

A: If a stay or suspension is requested after a school district has started its investigation, but before it has been completed, the school shall immediately cease and stay its HIB investigation at the request of law enforcement while following the parental/victim notification requirements and seeking court orders to stay (as necessary). Notwithstanding the stay or suspension, the school district shall still be required to safeguard the health and welfare of its students (i.e., ensure there is no ongoing threat to student safety). The school district’s HIB investigation shall remain open and stayed during the pendency of law enforcement’s investigation. Upon completion of the law enforcement investigation, and following notification of that completion from the county prosecutor, the anti-bullying specialist shall immediately resume the school’s HIB investigation. In this instance, the anti-bullying specialist shall have the number of days remaining in the ten school day timeframe to complete its HIB investigation (e.g., if law enforcement directs a school district to cease its investigation on day three, then the school district shall have seven school days, following clearance from the county prosecutor, to complete its HIB investigation).

Source: Article 4.4.6. Coordination of HIB and Criminal Investigations.

Q: What if law enforcement’s request for a stay or suspension occurs after a school district has completed its HIB investigation?

A: If the school district has already completed its HIB investigation, the ten school day timeframe shall be unaffected. However, in the event that additional information is available upon the completion of a criminal investigation, the *Anti-Bullying Bill of Rights Act* permits the school anti-bullying specialist to amend the original report of the results of the investigation to reflect the information (*N.J.S.A. 18A:37-14a*). The anti-bullying specialist should review this additional information, and promptly determine whether the original report should be amended.

Source: Article 4.4.6. Coordination of HIB and Criminal Investigations.

Q: What if law enforcement’s request for a stay or suspension occurs at any other time?

A: If law enforcement’s request occurs at any other time, including prior to the reporting of the results of the HIB investigation to the CSA or the board of education, the reporting of information to the parent(s)/guardian(s) of the alleged perpetrator(s) and alleged victim(s), a parental request hearing before the board of education, or prior to the issuance of the board of education’s written decision, the school district shall comply with this request while following the parental/victim notification requirements and seeking court orders to stay (as necessary). All school district action shall be stayed during the pendency of law enforcement’s request. Following notification of that completion from the county prosecutor, the school district shall immediately resume any and all remaining action(s) required under law and regulation.

Source: Article 4.4.6 Coordination of HIB and Criminal Investigations.