

CODIFICATION REFERENCE NUMBER: 7436

DATE: February 3, 1999

DRUG FREE WORKPLACE

RESPONSIBILITY:

The Superintendent or his/her designee shall have the responsibility for the implementation of these procedures.

PROCEDURES:

Please refer to procedures developed for policy #9320, COOPERATION WITH LAW ENFORCEMENT AGENCIES, which are also applicable to this policy.

REVISED
SEPTEMBER, 1992

AGREEMENT

between

BERNARDS TOWNSHIP POLICE DEPARTMENT
AND
BERNARDS TOWNSHIP SCHOOL DISTRICT

PROCEDURES FOR BOARD POLICY #7436

THE DRUG FREE SCHOOLS AND COMMUNITIES ACT

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REVISED AGREEMENT
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 co-equal 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 fire-setting 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 1991, 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 I

Liaisons

We, Nicholas L. Bissell, Jr., Somerset County Prosecutor and the Bernards Township Police Department will each designate a person or persons to serve as a liaison to appropriate local and county school officials.

Dr. James H. Mundy, Somerset County Superintendent of Schools, and Dr. Adrienne O'Neill, School District Superintendent, 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 violation 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 or, where appropriate, to the Superintendent of State Police. However, it is understood that the ultimate approval of all undercover school operations can only be granted by Nicholas L. Bissell, Jr, Somerset County Prosecutor, or, where appropriate the Attorney General or his designee.

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 county prosecutor or the Attorney General or his designee 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 county prosecutor or the Statewide

Narcotics Task Force is for any reason unable to comply with a request to undertake an undercover school operation, the county prosecutor or the Attorney General or his designee 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 falling 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 county prosecutor or, where appropriate, the Attorney General or his designee.

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 hour 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 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.

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 non-public schools, 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 counsellor 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 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 county prosecutor or, where appropriate, the Attorney General or his designee. 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

county prosecutor, or, where appropriate, the Attorney General or his designee.

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 measures 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

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It is understood that following the termination of every ~ndercover school operation, the county prosecutor or the Assistant Attorney General in charge of the Statewide Narcotics Task Force 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 encounter. The report will also include recommendations for improved procedures in dealing with potentially recurring problems. The county prosecutor or the Assistant Attorney General in charge of the statewide Narcotics Task Force 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 available officers 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 weapons-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 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. Limitations; 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 narcotics 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 Bernards Township 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 Somerset 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 Bernards Township 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 Bernards Township 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 Bernards Township 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 Nicholas L. Bissell, Jr., Somerset County Prosecutor, or Chief Charles Fortenbacher, 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 Lt. James Alexander or Chief Charles Fortenbacher.

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 Chief Charles Fortenbacher 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 was not involved in drug distribution activities and further 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 Controller Substance 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 Bernards Township Police Department and will secure the substance or item pending the response by Bernards Township 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. Bernards Township 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 Principal of the School should notify Chief Charles Fortenbacher 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. 6:36.1 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 Principal of the School will immediately notify Chief Charles Fortenbacher 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.

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 Capt. Thomas Kelly and secure the firearm or weapon pending the response by the Bernards Township 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.

Bernards Township 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 counselling 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.

Bernards Township 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 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 Bernards Township 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 Bernards Township Police Department shall scrupulously comply with the notification requirements for planned arrests as set forth in Article 2, 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 Bernards Township 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

law enforcement agency or the county prosecutor will, in accordance with the provisions 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 Chief of Police and the 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 chief of police and the 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 pre-adjudication 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, 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 Bernards Township Police Department and the 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 which are so that they may be readily identified by school officials.

15. Possession of 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. 6:296.3(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 law enforcement agency or the 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 Capt. Thomas Kelly or Chief Charles Fortenbacher.

2. It shall be the general policy of Bernards Township 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.

2. 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.

3. Planned Arrests

a. 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 circumstances 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 of 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 any contemplated or ongoing arrest, search or seizure conducted by a law enforcement officer on school property should be directed to the Somerset County Prosecutor, 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.

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 officials' 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 Nicholas L. Bissell, Jr., Somerset County Prosecutor.

J. Interrogations and Interviews

1. 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 Somerset County Prosecutor and the Bernards Township 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

A. So as to foster and institutionalize the spirit of communication and cooperation underlying this Agreement, Dr. Adrienne O'Neill, Superintendent and Chief of Police, Charles Fortenbacher, 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 county prosecutor. It is understood that this program will include a discussion of:

1. The provisions of this Agreement;

2. Attorney General Executive Directive 1988-1;
3. The complementary guidelines issued by the Commissioner 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; and
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 schools 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 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

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 Somerset County Prosecutor Nicholas L. Bissell, Jr. who is hereby authorized to work in conjunction with Somerset County Superintendent of Schools, Dr. James H. Mundy, and, where appropriate, 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 4

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 Bernards Township school district, the Somerset County Superintendent of Schools, the Bernards Township Police Department and the Somerset 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.