

SCHOOL NOTIFICATIONS TO LAW ENFORCEMENT

A) MANDATORY REPORTING

Obligation to Report Offenses and Preserve Evidence: Mandatory Reports

It is important for school officials to be familiar with the Uniform State Memorandum of Agreement Between Education and Law Enforcement Officials (“the Agreement”) and how it complements the principles of the code of student conduct regulations to establish standards, policies and procedures for positive student development and behavioral expectations (N.J.A.C. 6A:16-7.1).

While the majority of incidents may be addressed solely by school officials, there are specific types of incidents where school officials are required to report a matter to law enforcement. By outlining these mandatory reports, the Agreement helps ensure consistency in our school district.

There are seven (7) offenses that must be reported to law enforcement if they qualify as mandatory reports. These mandatory reports include:

- Whenever any school employee has reason to believe a student is in possession of a **controlled dangerous substance or related paraphernalia**, or is involved or implicated in distribution activities regarding controlled dangerous substances, pursuant to N.J.A.C. 6A:16-6.3;
- Whenever any school employee in the course of his or her employment develops reason to believe that a **firearm or other dangerous weapon** has unlawfully been possessed on or off school grounds, a weapon was used in an assault against a student or other school personnel, 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 or during school operating hours, pursuant to N.J.A.C. 6A:16-5.5, 5.6(d)4 and 6.3(b);
- 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);
- 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, or by or against a student during school operating hours or during school-related functions or activities, pursuant to N.J.A.C. 6A:16-6.3(d);

- Whenever any school employee in the course of his or her employment develops reason to believe that an **assault** upon a teacher, administrator, other school board employee, or district board of education member has been committed, with or without a weapon, pursuant to N.J.A.C. 6A:16-5.7(d)5;
- Whenever any school employee in the course of his or her employment develops reason to believe a **“bias-related act”** has been committed or is about to be committed on or off school grounds, pursuant to N.J.A.C. 6A:16-6.3(e); and
- Whenever any school employee in the course of his or her employment develops reason to believe a student is potentially **missing, abused, or neglected**, pursuant to N.J.A.C. 6A:16-11.1(a)3i through iii.

1) **CONTROLLED DANGEROUS SUBSTANCES**

Requirement to Report Offenses Involving Controlled Dangerous Substances

Subject to the provisions of Article 3.3 of the Agreement and N.J.A.C. 6A:16-6.2(b)9 and 6.3(a), school officials must immediately notify the Bayonne Police Department or the county prosecutor whenever any school employee has reason to believe a student is in possession of a controlled dangerous substance or related paraphernalia, or is involved or implicated in distribution activities regarding controlled dangerous substances, pursuant to N.J.A.C. 6A:16-4.3(a)3i. Per N.J.S.A 24:21-2, "controlled dangerous substance" means a drug, substance, or immediate precursor in Schedules I through V of article 2 of P.L.1970, c.226 (C.24:21-1 et seq.)

Securing Controlled Substances and Paraphernalia

Whenever a school employee seizes or comes upon any substance believed to be a controlled dangerous substance or drug paraphernalia, school officials must immediately advise the Bayonne Police Department and must secure the substance or item pending the response by the police to retrieve and take custody of the substance or paraphernalia, pursuant to N.J.A.C. 6A:16-6.2(b)8 and 6.4. School employees having custody of the substance or item must take reasonable precautions to prevent its theft, destruction or use by any person. In accordance with the requirements of law (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.

Marijuana and Hashish

All forms of the substance that are not regulated cannabis or medical cannabis are treated as “marijuana” or “hashish.” Under the new laws, marijuana and hashish are still defined as “controlled dangerous substances” under N.J.S.A. 2C:35- 2 but are largely decriminalized for non-distribution offenses. The laws eliminate existing prohibitions and create new, more lenient penalties for possession and distribution that remain tiered based on weight.

Possession of Marijuana on School Property

N.J.S.A. 2C:33-15 states that “any person under the legal age to purchase alcoholic beverages, or under the legal age to purchase cannabis items, who knowingly possesses without legal authority or who knowingly consumes any alcoholic beverage, cannabis item, marijuana, or hashish in any school, public conveyance, public place, or place of public assembly, or motor vehicle, shall” be subject to the written warnings.

Thus, when a student **under the age of 21** is in possession of marijuana in any school, school officials must immediately advise the Bayonne Police Department and must reasonably secure the substance or item pending the response by the police to retrieve and take custody of the substance or paraphernalia.

The Bayonne Police may issue a written warning pursuant to 2C:33-15. However, if that student is in possession of over 6 ounces, it is a fourth-degree crime under N.J.S.A. 2C:35-10(a)(3)(b) and can be charged.

If the student is 21 or older and in possession of under 6 ounces in a school, the officer cannot charge the individual with N.J.S.A. 2C:35-10(a)(4)(b) because that is no longer a crime and cannot issue a warning under N.J.S.A. 2C:33-15 because the individual is not underage. However, if the student is 21 years of age or older and in possession of over 6 ounces of marijuana in a school, the officer can charge N.J.S.A. 2C:35-10(a)(3)(b), a fourth-degree crime.

Regardless of the age of the student, nothing in the law precludes the school from imposing any administrative disciplinary action for possession of marijuana on school property.

Students Suspected of Being Under the Influence of Alcohol or Other Drugs

Pursuant to N.J.A.C. 6A:16-4.3(a)3 and 6.3(a)4, **school officials may, but need not, disclose** to law enforcement authorities the identity of a student suspected to be under the influence of alcohol or other drugs. In each instance of a report to law enforcement authorities of a student suspected of being under the influence of alcohol or other drugs, pursuant to N.J.S.A. 18A:40A-12(a) and N.J.A.C. 6A:16-4.3(a), or of a student suspected of using anabolic steroids, pursuant to N.J.S.A. 18A:40A-12(b) and N.J.A.C. 6A:16-4.3(b), the student must receive the required medical examination, pursuant to N.J.S.A. 18A:40A-12 and N.J.A.C. 6A:16- 4.3(a)2 et seq. or (b)2 et seq., as appropriate.

Electronic Smoking Devices

“Electronic smoking device” means an electronic device that can be used to deliver nicotine or other substances (e.g., marijuana) to the person inhaling from the device, including, but not limited to, an electronic cigarette, vape pen, cigar, cigarillo, or pipe. N.J.S.A. 26:3D-55 bans the use of electronic smoking devices in public places and workplaces, including, but not limited to public and nonpublic elementary or secondary school buildings, board of education buildings and any area of any building of, or on the grounds of, any public or nonpublic 20 elementary or secondary school, regardless of whether the area is an indoor public place or is outdoors.

Electronic smoking devices should only be reported to law enforcement when there is reasonable suspicion that the device is being used as a nexus for marijuana or other illegal drugs.

Exception to Identity Disclosure

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 student assistance coordinator or other individual who holds either a school nurse, school nurse/non-instructional, school psychologist, school counselor, school social worker or student personnel service endorsement on the Educational Services Certificate in the course of, or as a result of, school-based intervention, assessment, referral for evaluation, evaluation or referral for treatment, as those terms are defined in N.J.A.C. 6A:16-1.3 and delineated in N.J.A.C. 6A:16-3.1 or participation in a community-based substance abuse treatment program where:

- 1) the student voluntarily and on his or her own initiative turned over the substance to a school employee;
- 2) there is no reason to believe that the student was involved in distribution activities;
- 3) the student participates in an appropriate school-based alcohol or other drug abuse intervention, referral for evaluation, referral for treatment or continuity of care program, 21 pursuant to N.J.A.C. 6A:16-3.1 or community-based alcohol or other drug abuse treatment program.

Nothing in this paragraph must be construed in any way to authorize or require a referral or transmittal of any information or records in the possession of a school-based alcohol or other drug abuse intervention, referral for evaluation, referral for treatment or continuity of care program or a community-based substance abuse treatment program where such referral or transmittal would constitute a violation of state or federal confidentiality laws or regulations, and such information or records must be strictly safeguarded in accordance with applicable state and federal laws and regulations.

Non-Applicability to Treatment Program Records and Information

Nothing in the Agreement or in N.J.A.C. 6A:16-6.5 shall be construed in any way to authorize or require a report or transmittal of any information or records in the possession of a substance abuse counseling or treatment program in violation of any state or federal confidentiality law or regulation, and such information or records must be strictly safeguarded in accordance with applicable state and federal laws and regulations.

2) FIREARMS AND DANGEROUS WEAPONS

Requirement to Report Incidents Involving Firearms and Dangerous Weapons

Subject only to the provisions of Articles 7.4 and 9 of the Agreement, it is agreed that a school official must immediately notify the Bayonne Police Department whenever any school employee in the course of his or her employment, pursuant to N.J.A.C. 6A:16-5.5 and 6.3(b), develops reason to believe that a firearm or ammunition has unlawfully been brought onto school grounds, or that any student or other person is in unlawful possession of a firearm or ammunition, 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.

In addition, the school official must immediately notify the Bayonne Police Department whenever any school employee in the course of his or her employment comes upon a non-firearm weapon that was actually used or threatened to be used in committing an offense, including weapons used to commit assault upon a teacher, administrator, other school board employee, district board of education member, or another student on school grounds, pursuant to N.J.S.A. 18A:37-2.2 through 2.5. Law enforcement must be notified when the weapon seized is any switchblade, gravity, or ballistic knife, stun gun, or metal knuckles, whether or not the weapon was actually used or threatened to be used.

Exceptions to Mandatory Firearms and Dangerous Weapons Reports

Whenever a school employee seizes a dangerous weapon that was not actually used or threatened to be used in committing an offense, the school employee may, but need not consult the Bayonne Police Department to decide whether the offense warrants law enforcement action. In deciding whether to report the presence or seizure of a non-firearm weapon that was not actually used or threatened to be used in committing an assault or other offense, the school official and designated law enforcement official must consider:

- 1) the nature of the weapon;
- 2) any lawful purposes that it might have;
- 3) the age of the student; and
- 4) the student's intent.

It is generally not necessary to report the seizure of small pen knives or Swiss-Army style knives. It is further understood and agreed that school officials should consult with law enforcement regarding the seizure of a utility or "box-cutter" knife where the unlawful use of such knives as weapons is a serious problem in the school and where the student has no explainable lawful purpose for possessing such an instrument. Procedures to secure this weapon are handled the same as below.

Securing Firearms, Ammunition and Dangerous Weapons

Whenever a school employee seizes or comes upon (1) a firearm, (2) ammunition for a firearm, or (3) a non-firearm weapon that was actually used or threatened to be used in committing an offense the school officials must , immediately advise the Bayonne Police Department and secure the firearm, ammunition or non-firearm weapon pending the response by the police, and pursuant to N.J.A.C. 6A:16-6.2(b)8 and 6.4, retrieve and take custody of the firearm, ammunition or non-firearm weapon. School employees having custody of a firearm, ammunition or dangerous weapon must take reasonable precautions to prevent its theft, destruction or unlawful use by any person. It is understood and agreed that under no circumstances may any person destroy or otherwise dispose of any seized or discovered firearm, ammunition or non-firearm weapon except by turning over such firearm, ammunition or non-firearm weapon to the responding police officer.

3) PLANNED OR THREATENED VIOLENCE

Requirement to Report Incidents Involving Planned or Threatened Violence

Notwithstanding any other provision of the Agreement, it is agreed that the school official must immediately notify the Bayonne Police Department 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). In making these determinations, the school official should employ risk management and assessment tools.

The school official must provide to the responding law enforcement agency all known information relevant to the threat, including but not limited to any historical or background information concerning the person's behavior or state of mind. For the purposes of this reporting requirement, **the threatened or planned act of violence need not be imminent**, and the intended victim of the violent act need not be aware of the threat. **Nor must it be relevant for the purposes of this reporting requirement that the intended victim is not a student or member of the school community, or that the violent act is not intended to be committed on school grounds.** The parties to the Agreement understand and agree that **students who make a credible threat of harm to themselves or others should be taken seriously.** Accordingly, the provisions of this paragraph must be liberally construed with a view toward preventing future acts of violence.

4) SEXUAL OFFENSES

Requirement to Report Sexual Offenses

Subject only to the provisions of Article 7.4 and 9 of the Agreement, it is agreed that the designated school official must immediately notify the Bayonne Police Department 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, or by or against a student during school operating hours or during school related functions or activities, pursuant to N.J.A.C. 6A:16-6.3(d). When the school official designated as the liaison for law enforcement is the person under investigation, school districts are encouraged to have a plan in place on who should report to law enforcement (e.g., the liaison's supervisor or the chief school administrator).

Sexting- See "Sexting" under Non-Mandatory Reporting.

5) ASSAULTS ON DISTRICT BOARD OF EDUCATION MEMBERS OR EMPLOYEES

Requirement to Report Assaults on District Board or Education Members or Employees

Subject only to the provisions of Articles 7.4 and 9 of the Agreement, it is agreed that a designated school official shall immediately notify the Bayonne Police Department whenever any school employee in the course of his or her employment develops reason to believe that a student committed assault, as defined under N.J.S.A. 2C:12-1(a)1, not involving the use of a weapon or firearm, upon a teacher, administrator, other school board employee, or district board of education member, with or without a weapon, pursuant to N.J.A.C. 6A:16- 5.7(d)5.

6) BIAS INCIDENTS

Requirement to Report Bias-Related Incidents

In accordance with N.J.A.C. 6A:16-6.3(e), school employees must notify the principal and chief school administrator when they develop reason to believe a “bias-related act” has been committed or is about to be committed on school grounds, or has been or is about to be committed by a student on or off school grounds, and whether such offense was or is to be committed during operating school hours, or a student enrolled in the school has been or is about to become the victim of a bias-related act on or off school grounds, or during operating school hours. The principal and chief school administrator, in turn, should promptly notify the Bayonne Police Department and the bias investigation officer for the county prosecutor’s office.

A “**bias-related act**” means an act that is directed at a person, group of persons, private property, or public property that is motivated in whole or in part by race, color, national origin, ethnicity, gender, gender identity or expression, disability, religion, or sexual orientation. A bias related act need not involve conduct that constitutes a criminal offense. Note that all hate crimes and bias-intimidation crimes are also bias-related acts, but that not all bias-related acts will constitute a hate crime or bias-intimidation crime. A “**hate crime**” is defined as any criminal offense in which the person or persons committing the offense acted with a purpose to intimidate an individual or group of individuals because of race, color, gender, gender identity or expression, disability, religion, sexual orientation, ethnicity, or national origin.

Considerations when Reporting Bias-Related Acts

N.J.A.C. 6A:16-6.3(e) requires schools to notify the law enforcement agency and the county prosecutor’s office of bias-related acts (whether committed or about to be committed) as described above. Under the authority of a separate agreement entitled Responding to Hate Crimes and Bias-Related Acts, the principal of the school, or his or her designee, should consider the nature and seriousness of the conduct and the risk that the conduct posed to the health, safety, or well-being of any student, school employee, or member of the general public

when making the notification to the law enforcement agency and the county prosecutor's office. Bias-related acts may also constitute HIB.

7) **MISSING, ABUSED, or NEGLECTED CHILDREN**

Requirement to Report Potentially Missing, Abused, or Neglected Children

New Jersey statutes (N.J.S.A. 18A:36-25 and 9:6-8.10) require reporting by school officials of a potential missing or abused child to both law enforcement officials and Child Protection and Permanency (CP&P), New Jersey Department of Children and Families (DCF), as set forth below.

Reports of Child Abuse or Neglect to CP&P

Any person having reasonable cause to believe that a student has been subjected to child abuse or neglect must immediately report the matter to CP&P by telephone or otherwise, pursuant to N.J.S.A. 9:6-8.10 and N.J.A.C. 6A:16-11.1(a)2. The CP&P Child Abuse Hotline is to be contacted at 1-877-NJABUSE.

Notification to Law Enforcement

Notification of a potential missing or abused or neglected student also must be made to law enforcement officials by the person who is designated to report child abuse cases on behalf of the school district, such as the chief school administrator, principal, assistant principal or other designated school official, in accordance with N.J.S.A. 18A:36-25 and N.J.A.C. 6A:16-11.1(a)3. It is not necessary for the same person to contact law enforcement and CP&P. It is only required that both notifications are made.

Notification of Parents or Guardians

Notification to the student's parents or guardians must not be made by school officials when it is suspected that either parent or guardian is responsible for the suspected abuse. Law enforcement officials do not need the permission of a parent or guardian to speak to any student who is not the target of an investigation. **It is the sole responsibility of law enforcement officials to determine when or whether a parent of any student must be contacted.** Failure to follow this procedure may compromise the integrity of an investigation and place the child at risk.

Anonymity

Individuals who report abuse may or may not be entitled to anonymity. While CP&P allows anonymous child abuse reporting for the general public, school staff may not be entitled to

anonymity for these reports. Furthermore, there is no anonymity when incidents are reported to law enforcement authorities.

Custody Disputes and Potentially Missing Children

It is recognized by all parties to the Agreement that custody disputes between parents often have a detrimental effect upon the children. Sudden requests for school records accompanied by suspicious absences should result in a heightened scrutiny within the school. Therefore, to the extent that a report to law enforcement will not violate student record confidentiality, if it comes to the attention of a school administrator that the absence of a child from school may be due to a parental kidnapping or custodial interference, the school administrator must immediately contact law enforcement authorities. Concerns that a child may be unlawfully removed from the jurisdiction should be immediately brought to the attention of the Bayonne Police Department.

B) ADDITIONAL MANDATORY LAW ENFORCEMENT NOTIFICATIONS:

1) HOMICIDE AND SUDDEN DEATH SURVIVORS

The sudden and unexpected death of a family member is one of the most traumatic events that can affect an individual during a lifetime. Assuring that the needs of survivors are identified and that every effort is made to meet these needs are indeed monumental tasks. The need for a compassionate and dignified notification procedure, as well as access to information regarding the death have been consistently identified as basic requirements for alleviating the trauma which results from the sudden and unexpected death of a loved one.

School officials shall immediately notify the Bayonne Police Department regarding incidents of sudden death and/or homicide on school property.

As per the NJ Attorney General's Homicide and Sudden Death Survivor Guideline, the Hudson County Prosecutor's Office and/or the Bayonne Police Department will be responsible for notifying the next of kin in all sudden death and homicide incidents.

If there is a sudden death or homicide incident outside of the school, and a Bayonne school district employee or student is the next of kin, the Hudson County Prosecutor's Office and/or the Bayonne Police Department will be responsible for notifying that next of kin.

C) NON-MANDATORY REPORTS

Reporting Other Offenses

It is agreed that a school official may, but need not, notify the Bayonne Police Department whenever any school employee develops reason to believe that a non-mandatory report offense has been committed on or against school grounds.

In deciding whether to refer the matter to the Bayonne Police Department, 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 and must be mindful that offenses committed on school grounds by or against students may lead to an escalation of violence or retaliation that may occur on school grounds or at other locations.

Under no circumstances may any school employee prevent or discourage the victim of an offense from reporting the offense to a law enforcement agency. Schools are encouraged to consult with law enforcement concerning a non-mandatory report offense to discuss the appropriate level of intervention and available resources.

While the majority of incidents will not rise to the level of a mandatory report and may be addressed solely by school officials, schools are encouraged to consult with law enforcement for any offense that they believe may warrant action outside of school, or should be brought to the attention of law enforcement.

1) SEXTING

Sexting, or the sending of sexually explicit photos by electronic means such as text message, may constitute a criminal act pursuant to New Jersey's child pornography laws. For instance, 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, defined as a person younger than 18 (N.J.S.A. 2C:24-4). Penalties for violating such laws include not only significant time in prison but also mandatory registration as sex offenders.

Reporting of Sexting

Sexting has become increasingly common among both pre-teens and teens who may be unaware that it can compromise not only their social reputation, but their digital reputation as well. Once a photograph has been sent out, it becomes difficult, if not impossible, to know how many people have saved it, tagged it, shared it, etc. Unfortunately, the photograph could resurface years after it was taken and posted. Working proactively with law enforcement is often the best way to quickly ascertain who has a digital copy of the photograph and to destroy it before it can be further circulated.

School officials agree to immediately report to law enforcement officials any sexting incident that rises to the level of a mandatory report. In addition, schools are encouraged to consult with law enforcement for any incident that may require outside investigation. New Jersey has created an alternative to criminal prosecution for teens charged with child pornography as a result of sexting (N.J.S.A. 2A:4A-71.1). If the court deems it appropriate, these teens may be ordered to participate in an educational program or counseling in lieu of prosecution. Both the creator and subject of the sexting image must be younger than 18 to be eligible for this program.