

MEMORANDUM OF UNDERSTANDING

Safe School Zones

I. Introduction

It is the intention of the Londonderry Police Department (the Police Department) and the Londonderry School District (the District) to work in a joint, cooperative effort to provide a safe and healthy school environment for the students, staff, and visitors. This Memorandum of Understanding is established to comply with the provisions of RSA 193-D:4, I(a)-(c) (See RSA 193-D “Safe School Zones”) and to further outline how the District and the Police Department will coordinate their response to incidents of juvenile delinquency and/or criminal behavior in school, on school grounds, and at school-sponsored events. To the extent possible, precautions will be taken by both the Police Department and school officials at all times to ensure the education process is not disrupted.

The District and the Police Department agree to coordinate these efforts with prosecutorial authorities (Municipal Prosecutor or County Attorney’s Office, as applicable) and the New Hampshire Department of Education.

The Police Department and the School District agree to provide their employees with training relative to this Memorandum of Understanding, its purpose, and anticipated results. The parties further agree to maintain regular and open communication to evaluate the effect of this Memorandum and suggest improvements and adjustments that may be necessary.

This Agreement will remain in effect until terminated, in writing, by either party. In the event either the District or the Police Department desires to amend this Memorandum, the agency seeking changes will arrange for a meeting with the other.

II. School Resource Officers

At the present time, there are four school resource officers. Three of these officers are assigned to specific schools. The fourth school resource officer is primarily assigned to patrol multiple schools to provide law enforcement presence and security.

The school resource officers are under the supervision of the Police Department. There are no financial arrangements between the School District and the Police Department; the Police Department is solely responsible for training, equipping, and paying the school resource officers. The School District agrees to supply each school resource officer with suitable space, if requested by the Police Department. Additionally, if the School District desires the school resource officers to monitor or utilize School District radio communications or video surveillance, the School District shall supply each school resource officer with the appropriate equipment and access.

Without limiting their roles, school resource officers may serve in the following roles:

- Building security, deterrence, and response to emergencies;
- Perform law enforcement activities as permitted or required under applicable law, as limited by this Memorandum of Understanding;

- Act as a liaison between the Police Department, school, parents, and students;
- Be available as a resource to teachers, students, parents, and staff on numerous issues;
- Promote a safe and orderly environment;
- Assist in violence prevention programs;
- Teach specialized classes with mutual agreement and approval;
- Be a resource to students, teachers, parents and staff concerning internet safety and awareness;
- Assist with issues pertaining to the Safe School Zone Act, Child Protection Act, and RSA 631:7 (Student Hazing);
- Serve as a resource for laws and procedures concerning vaping, smoking, drugs, alcohol, and violence; and
- Other tasks as assigned, with mutual agreement of the parties.

III. Health and Safety Exception

The District recognizes that in cases of an articulable and significant threat to the health or safety of a student or other individuals where access to education records is needed in order to protect the health or safety of the student or other individual, the Police Department and the District may act without regard to this Memorandum. 34 C.F.R. 99.36. Nothing contained in this Memorandum is intended to limit the events that may be reported to the Police Department or limit school employees from requesting police assistance under such circumstances.

IV. Applicable Law

It is recognized that there are two sources of regulation that apply to the sharing of information between schools and law enforcement: state law and federal law. Where there is a conflict between these two sources, federal law controls.

V. Definitions

The following terms, as defined in RSA 193-D:1 apply to this Memorandum.

“Mandatory Reportable Offense” means:

- Capital Murder (RSA 630:1);
- First Degree Murder (RSA 630:1-a);
- Second Degree Murder (RSA 630:1-b);
- Manslaughter (RSA 630:2);
- Aggravated Felonious Sexual Assault (RSA 632-A:2);
- Felonious Sexual Assault (RSA 632-A:3);
- Sexual Assault (RSA 632-A:4);
- Kidnapping (RSA 633:1);
- Incest (RSA 639:2);
- Endangering the Welfare of a Child or Incompetent (RSA 639:3);
- Indecent Exposure or Lewdness in the presence of a child who is less than 16 years of age (RSA 645:1, II or III);
- Prostitution & Related Offenses (RSA 645:2);
- Possession of Child Sexual Abuse Images (RSA 649-A:3);

- Distribution of Child Sexual Abuse Images (RSA 649-A:3-a);
- Manufacture of Child Sexual Abuse Images (RSA 649-A:3-b);
- Child Computer Pornography/Online Solicitation of Conduct with Minors (RSA 649-B:3);
- Certain Uses of Computer Services Prohibited/Using a Computer to Solicit a Minor to Commit Certain Acts (RSA 649-B:4);
- Any violation or any attempted violation of RSA 650:2 where the act involves a child in material deemed obscene;
- Any first or second degree assault under RSA 631;
- Subject to Section V(1), below, criminal mischief under RSA 634:2;
- Unlawful possession or sale of a firearm or other dangerous weapon under RSA 159;
- Arson under RSA 634:1;
- Burglary under RSA 635;
- Robbery under RSA 636;
- Subject to Section V(1), below, theft under RSA 637;
- Illegal sale or possession of a controlled drug under RSA 318-B; and
- Criminal threatening under RSA 631:4.

“**Safe School Zone**” means an area inclusive of any school property or school buses.

“**School**” means any public or private elementary, secondary, or secondary vocational-technical school in New Hampshire. It shall *not* include home schools under RSA 193-A.

“**School Employee**” means any school administrator, teacher, or other employee of the District, or the School Administrative Unit, or any person providing, or performing continuing contract services for any School, the District, or the School Administrative Unit. It shall not include a School Resource Officer; however, a School Resource Officer is considered “other school officials” for purposes of FERPA. *See* 20 U.S.C. 1232g(b)(1)(A); 34 C.F.R. 99.31(a)(1)(i).

“**School property**” means all real property, physical plant and equipment used for school purposes, including, but not limited to, school playgrounds and buses, whether owned/operated by the District or on its behalf.

“**School purposes**” means school-sponsored programs, including but not limited to educational or extra-curricular activities.

VI. Reporting Required

Communication and sharing of information is a prerequisite to any cooperative effort. As required by law, it is agreed that every school employee who has witnessed, or who has information from the victim of an act of theft, destruction, or violence in a safe school zone shall report such act in writing immediately to a supervisor. A supervisor receiving such a report shall immediately forward such information to the school principal who shall file it with the local law enforcement authority. Such report shall be made by the Principal to the local law enforcement authority immediately, by telephone or otherwise, and shall be followed within 48 hours by a report in writing. If the alleged victim is a student, the principal shall also immediately notify the person responsible for the victim’s welfare, as defined in RSA 169-C:3, XXII, that a report was made to the local law enforcement authority.

The written report required above should be waived by law enforcement officials when there is a law enforcement response at the time of the incident, which results in a written police report. In such cases, the District will instruct school employee witnesses to cooperate with the police investigation subject to constitutional protections and state and federal statutory requirements.

As a result of New Hampshire RSA 193-D:7, school employees are relieved of concerns regarding confidentiality. It states:

Notwithstanding any other provision of law, it shall be permissible for any law enforcement officer and any school administrator to exchange information relating only to acts of theft, destruction, or violence in a safe school zone regarding the identify of any juvenile, police records relating to a juvenile, or other relevant information when such information reasonably relates to delinquency or criminal conduct, suspected delinquency or suspected criminal conduct, or any conduct which would classify a pupil as a child in need of services under RSA 169-D or a child in need of protection under RSA 169-C.

The initial report to law enforcement, shall include:

- (a) Identification of the act of theft, destruction, or violence as defined in RSA 193-D:1 that was allegedly committed.
- (b) The name and home address, if known, of any witness to the act of theft, destruction, or violence in a safe school zone.
- (c) The name and home address, if known, of any persons suspected of committing an act of theft, destruction, or violence in a safe school zone.

(1) Mandatory Reportable Acts: In accordance with the provisions of RSA 193-D, the Safe School Zone Act, Mandatory Reportable Offenses, as defined above, occurring in a safe school zone, regardless of the age of the perpetrator or the victim, must be reported as required above. Additionally:

- Any death shall be immediately reported to law enforcement officials, regardless of the suspected cause.
- Any sexual contact with a person who is under 13 years of age will be reported.
- Any unlawful possession or sale of a firearm or other dangerous weapon as defined in RSA 159, on school grounds or at school functions.
- While all criminal mischief that occurs in a safe school zone is technically reportable to the Police Department, the parties agree that not all criminal mischief needs to be reported to the Police Department. For example, low level vandalism, such as a student writing an initial in ink on school property may technically be reportable, but would not be prosecuted; such acts are better be addressed with school level discipline. Therefore, the parties agree that any criminal mischief or vandalism which causes damage in excess of \$50 will be reported to the Police Department.
- Theft is the unauthorized taking of someone else's property with a purpose to deprive the owner. While any theft committed on school property is technically reportable to the police, thefts involving an insignificant value or thefts involving extremely young children will not be

prosecuted and should be handled by the District. Thefts will not be reported to the Police Department in the following situations:

- The value of the property is less than \$50; or
- The students are in third grade or lower.
- Although going beyond the legal requirement, reports will be made if any student is found to possess any substance, other than food, that affects the way your mind and body work, excepting legally prescribed medications, which should be recorded with the appropriate administrative school personnel.
- It is agreed the District shall report any suspected abuse or neglect to the Police Department.

Each of the above acts shall be considered a Mandatory Reportable Offense for purposes of this Agreement.

NOTE: School personnel and law enforcement officers have separate, mandatory reporting obligations to report suspected abuse to NH DCYF.

(2) Discretionary Reportable Acts: The following incidents may be reported to the Police Department when, in the opinion of the school administrator, it is of serious proportion:

- a. Refusal or neglect to conform to reasonable rules of the school or to clear directives given by staff member; and
- b. Pupil Safety and Violence Prevention Under RSA 193-F:4. At the discretion of the building Principal, and taking into consideration of the District's disciplinary policies and code of conduct, reports may be filed with the Police Department based on allegations of bullying and/or cyberbullying.

(3) Response to Reported Acts: The school administration recognizes that prompt investigation by the Police Department is an effective way to protect the safety of students and staff and to arrive at the truth as to allegations of misconduct. Obtaining the truth consistent with constitutional and statutory protections is the mutual objective of all parties.

Both parties recognize and acknowledge the duties to investigate misconduct promptly and effectively. The parties agree to work cooperatively to assist each other in meeting their needs for prompt, effective, and efficient investigations.

(A) School Response to Reported Acts:

1. For Mandatory Reportable Offenses, the Principal shall:
 - a. Notify the Police Department directly or through their representatives on school grounds (School Resource Officer) and the student's parent/guardian, and inform them of the nature of the incident;
 - b. Subject to Section VII, below, turn over any physical evidence seized to the Police Department; and
 - c. Initiate disciplinary action in accordance with District policies.

- d. This process may be modified with respect to allegations of abuse and neglect, as needed to protect the safety of the student.
2. For Discretionary Reportable Acts, the Principal shall:
 - a. Determine if the police and parent/guardian should be notified and, if so, make the calls as soon as reasonable possible. Any incident reported to the Police Department shall also be reported to the student's parent/guardian; and
 - b. Initiate disciplinary action in accordance with District policies.

(B) Police Response to Reported Acts:

1. The Police Officer will make contact with the school as soon as possible after receiving a report from the Principal to investigate the incident, or take any other appropriate action.
2. During the investigation, the Police Officer may meet with the Principal, the student, the student's parent/guardian and appropriate persons with knowledge or pertinent facts, if required.
3. The Police Department will provide information regarding its investigation to the School District as may be lawful, appropriate, and necessary to allow the School District to process disciplinary actions against the alleged perpetrator or to protect the health and safety of other students or staff.
4. If at the conclusion of the investigation, the student is found to have committed the alleged offense, the Police Officer may initiate the formal legal process.

(C) Police Department Reports to School

1. The following information shall be reported by the Police Department to the School Administration.
 - a. An arrest made by the Police Department of a student, when such information is relevant to the safety of that student, or of other students in the school, where the law allows.
2. The following information may be shared with School Administration by the Police Department, subject to applicable statutes and regulations governing confidentiality:
 - a. The arrest and filing of a delinquency complaint against any student under the age of 18 years.
 - b. Other criminal or non-criminal activity that the Police Department deems pertinent to the student's well-being, including but not limited to threatening to attempt suicide, victimization of the student by a parent, caretaker or other individual.

VII. Delinquency Proceedings

It is acknowledged that, absent a serious threat to school safety as defined in RSA 169-B:2, XIV, the Police Department is prohibited from initiating a delinquency case based upon a report made by a School Employee for acts committed on school grounds during the school day, unless information is included in the delinquency petition which shows that:

- The District has sought to resolve the expressed problem through available educational approaches, including the school discipline process, if appropriate;
- That the school has sought to engage the parents or guardian in solving the problem but they have been unwilling or unable to do so; and
- That the minor has not responded to such approaches and continues to engage in delinquent behavior, and that court intervention is needed.

It is further acknowledged that under FERPA, the District is not able to share this information without parental consent or without a subpoena, search warrant, or court order. The parties agree to cooperate with respect to the narrow category of cases that do not qualify as a “serious threat to school safety” in order to either seek parental consent or to obtain court authorization to obtain the required information.

VIII. Treatment of “Education Records” under FERPA

With certain exceptions, the Family Educational Rights and Privacy Act prohibits schools from sharing student education records with third parties, including law enforcement. “Education records” are records: “directly related to a student; and maintained by an educational agency or institution, or by a party acting for the agency or institution.” 34 CFR § 99.3. The parties agree to cooperate in complying with FERPA to the fullest extent possible, both to safeguard student privacy and to protect the integrity of any possible prosecution.

What someone sees or hears is not an “education record.” Therefore, FERPA is not violated if reports to the Londonderry Police Department are based upon first-hand information, or if reports do not include or refer to written education records. The initial report required by Section V of this Agreement should therefore be as bare-bones as possible. If the report is used solely to identify the act or offense; the suspected perpetrator; and any witnesses or persons with first-hand information, the report will not violate FERPA.

Under FERPA, School Resource Officers occupy a unique role. They are police department employees and are sworn police officers, but they are considered “school officials” with access to education records, including electronic access to attendance and discipline records, and security cameras, **solely to promote school safety and for the physical security of the students.** In order to maintain this access, FERPA requires that SROs:

1. Are under the “direct control” of the District with respect to the use and maintenance of the education records (this is satisfied if there is a Memorandum of Understanding addressing SROs’ use and access);
2. Are subject to FERPA’s re-disclosure requirements; and

3. Are referred to in the District's annual FERPA disclosure as having a "legitimate educational interest," and such disclosure notifies parents how the District determines who constitutes a "school official" and what constitutes a "legitimate educational interest."

SROs will therefore have access to information that other police officials may not access (absent a FERPA exception). This is because SROs can only access this information to promote school safety and for the physical security of students. In order to comply with FERPA, the parties will ensure that SROs sign an appropriate re-disclosure document acknowledging that education records may not be shared with other police department employees or otherwise used "to make a case," or for other criminal or juvenile justice purposes (absent a separate FERPA exception).

If access to education records is required for criminal or juvenile justice purposes (as opposed to for legitimate educational purposes), one of the following FERPA exceptions must apply:

1. The information is needed to screen a student for diversion or other pre-conviction disposition (in other words, to see if a conviction can be avoided), 20 U.S.C. 1232g(b)(1)(E);
2. "[I]n connection with an emergency . . . if the knowledge of such information is necessary to protect the health or safety of the student or other persons." This requires an "articulable and significant threat to the health or safety of a student or other individuals[.]" 34 C.F.R. 99.36; or
3. In response to a subpoena or court order. 1232g(b)(1)(J)(i).

In the training required to be provided by both parties under this Agreement, District and Police Department employees will be encouraged to involve their respective attorneys in evaluating whether a FERPA exception applies.

Law enforcement unit records are specifically excluded from the definition of "education records" under FERPA; therefore, no exception is required to use them for law enforcement purposes. A law enforcement unit is defined as an individual, office, department, division, or other component of an educational agency or institution, that is officially authorized or designated to enforce local, state or federal law, or to refer violations of the law to appropriate authorities, or to maintain the physical security and safety of the educational agency or institution.

The parties agree to designate a law enforcement unit, to be comprised of the SROs.

Law enforcement unit records are records that are:

1. Created by a law enforcement unit;
2. Created for a law enforcement purpose; and
3. Maintained by the law enforcement unit.

IX. Miscellaneous

Londonderry Police Department shall keep records concerning the performance of its obligations and activities under this Agreement, as required by applicable policy(ies).

LONDONDERRY SCHOOL BOARD

1st Reading to Amend: April 6, 2021
2nd Reading to Amend: April 20, 2021
3rd Reading to Amend: May 4, 2021

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