

RULES AND REGULATIONS

Title 22—EDUCATION

STATE BOARD OF EDUCATION

[22 PA. CODE CH. 10]

Safe Schools

The State Board of Education (Board) adopts Chapter 10 (relating to safe schools), including Appendix A (relating to model memorandum of understanding), as set forth in Annex A. This final-omitted rulemaking is adopted under the authority of section 1302.1-A of the Public School Code of 1949 (code) (24 P. S. § 13-1302.1-A). Notice of proposed rulemaking is omitted under section 1302.1-A of the code.

Purpose

This final-omitted rulemaking is designed to establish and maintain a cooperative relationship between school entities and local police departments in the reporting and resolution of incidents that occur on school property, at a school sponsored activity or on a conveyance providing transportation to or from a school or school sponsored activity.

Background

The act of November 17, 2010 (P. L. 996, No. 104) (Act 104) added section 1302.1-A to the code. Section 1302.1-A(a) of the code directs the Board to promulgate regulations that: include a model memorandum of understanding (MOU) between school entities and local police departments; establish protocol for the immediate notification of police when offenses in section 1303-A(b)(4.1) of the code (24 P. S. § 13-1303-A(b)(4.1)) occur on school property; establish protocol for the notification of police at the discretion of the chief school administrator when offenses in section 1303-A(b)(4.2) of the code occur on school property; establish protocol for emergency and nonemergency response by the police; and establish procedures and protocols for the response and handling of students with a disability.

Section 1302.1-A(a) of the code further requires that the regulations include provisions that: provide for biennial review and revision, as necessary, of the Board's model memorandum of understanding; require school districts to share a copy of their comprehensive disaster response and emergency plans required under 35 Pa.C.S. § 7701(g) (relating to duties concerning disaster prevention) with local police; and, in addressing the handling of students with disabilities, take into account procedures regarding student behavior as required under §§ 14.104 and 14.133 (relating to special education plans; and positive behavior support). Finally, section 1302.1-A(a) of the code directs the Board to promulgate these regulations as a final-omitted rulemaking.

In promulgating the regulations mandated by Act 104, the Board was required under section 1302.1-A(b) of the code to convene and consult with an advisory committee comprised of a police chief, a juvenile public defender, a school superintendent, a school principal, a district attorney, a school district solicitor, a special education supervisor, a special education advocate and an in-school probation officer, and one designee from the Department of Education, the Commission on Crime and Delinquency, the Municipal Police Officers' Education and Training Commission, the Juvenile Court Judges' Commission and

the State Police. The membership of the advisory committee was approved by the Board at a public meeting held March 16, 2011.

From its first meeting on April 14, 2011, through the conclusion of its deliberations on September 7, 2011, the Chapter 10 Advisory Committee (Advisory Committee) worked in conjunction with the Board's School and University Safety Committee. The Advisory Committee also formed a Subcommittee on Students with Special Needs to facilitate focused conversation on the protocols and procedures for the response and handling of students with disabilities. The Board was kept abreast of the Advisory Committee's work through regular reports of the chairperson of the Board's School and University Safety Committee made during the Board's bimonthly meetings.

Following the conclusion of the Advisory Committee's deliberations, an initial draft of Chapter 10 and Appendix A was presented to the Board's School and University Safety Committee at its public meeting on September 20, 2011. Committee members reviewed and provided input on the draft, which was subsequently presented to the full Board for additional comment at its public meeting on September 21, 2011.

The Board thereafter established an unofficial public comment period from September 22 to 30, 2011, soliciting written comments on the draft regulations. The Board considered revisions to the draft regulations based on the public comments received and offered three additional opportunities for public comment during its November 15 and 16, 2011, meetings before taking action to approve this final-omitted rulemaking.

Summary of the Final-Omitted Rulemaking

Chapter 10 addresses the requirements in section 1302.1-A of the code. The major components of the regulations are as follows.

§ 10.11. Memorandum of understanding

This section includes the statutory requirements that schools biennially execute and file with the Department of Education (Department) MOUs with their local police and that the Board develop a model MOU and review and revise the model MOU as necessary every 2 years. This section also directs schools to consult and consider—but does not mandate for schools to adopt—the model MOU developed by the Board. This section further requires a school that executes an MOU that is substantively different from the model MOU in Appendix A to submit a statement of reasons for the differences as part of its filing with the Department. The Department's Office for Safe Schools will monitor and provide feedback to the Board on the filings to inform the Board's statutorily-required biennial review of the model MOU.

§ 10.21. Immediate notification

As directed by the code, this section requires school administrators to immediately notify local police when offenses in section 1303-A(b)(4.1) of the code occur on school property. In addition to notifying law enforcement when an incident occurs, this section provides for school entities to consider requiring students who commit incidents to complete available school-based programs to address the student's behavior, provided that law enforcement is notified of the student's placement in the program. This section clarifies that use of a school-based

program to address a student's behavior does not limit law enforcement's discretion to take appropriate action to address the incident.

§ 10.22. *Discretionary notification*

As directed by the code, this section provides school administrators discretion in engaging law enforcement when offenses in section 1303-A(b)(4.2) of the code occur on school property. This section identifies factors a school administrator may consider in determining whether to notify police of incidents, including: the seriousness of the situation; the school's ability to defuse or resolve the situation; the child's intent; the child's age; and whether the student has a disability, the type of disability and its impact on the student's behavior. This section also provides for school administrators to consider using available school-based diversion programs and available school-wide positive behavior supports to address the behavior of students who have committed an offense over which they have discretion in reporting to the police.

§ 10.23. *Response and handling of a student with a disability*

This section further assists in strengthening communication between public schools and law enforcement by creating opportunities for schools to help law enforcement officers become more knowledgeable about appropriately responding to students with disabilities. This section requires school entities to share copies of their procedures on behavior support services with local police and to invite local police to participate in staff training in the use of positive behavior supports, de-escalation techniques and appropriate responses to student behavior that may require immediate intervention.

This section also directs schools to respond to students with disabilities who commit incidents of misconduct in a manner consistent with the school entity's special education plan and behavior support program (as provided for in §§ 14.104 and 14.133) and, for protected handicapped students, in a manner consistent with the student's service agreement (as provided for in § 15.3 (relating to general)). For a student with a disability who does not have a positive behavior support plan and who is referred to law enforcement for committing an incident under section 1303-A(b)(4.1) or (4.2) of the code, this section requires school entities to convene a meeting of the student's individualized education program team to discuss whether a positive behavior support plan should be developed as a next step to address the student's behavior. This section includes a parallel provision addressing protected handicapped students who do not have a positive behavior support plan and who are referred to law enforcement. This section also requires schools to consult with the student's parents to consider whether a positive behavior support plan should be developed as part of the student's service agreement.

§ 10.24. *Emergency and nonemergency response and preparedness*

The Pennsylvania Emergency Management Agency (PEMA) currently provides extensive guidance to school districts in developing a comprehensive disaster response and emergency preparedness plan to comply with 35 Pa.C.S. § 7701(g). This section directs school districts to develop emergency preparedness plans that are consistent with PEMA guidelines and ensures that first responders—local police, fire departments and county emergency management agencies—will be provided with a copy of their local districts' emergency preparedness plans. This section also identifies information that is critical to have

readily accessible in responding to an emergency and directs schools to furnish this information to local police and fire departments annually.

§ 10.25. *Notification to parents/guardians*

This section engages students' parents and guardians as partners in addressing incidents of violence that occur on school property by requiring schools to immediately notify the parent or guardian of a victim or suspect directly involved in an incident listed in section 1303-A(b)(4.1) or (4.2) of the code. As part of this communication, schools shall inform parents whether the police have been, or may be, notified of the incident. This section also recognizes that circumstances may arise in which it is not possible to immediately reach a student's parent or guardian and, therefore, requires schools to document attempts made to reach a parent to show they have made a good faith effort to provide immediate notification.

Appendix A. Model memorandum of understanding

As directed by the code, Chapter 10 includes a model MOU between school entities and local police departments that may serve as a guide for the MOU required to be executed by school entities on a biennial basis. The model MOU defines the working relationship between a school entity and local police in responding to incidents that occur on school property and in ensuring the accuracy of school violence data reported to the Department.

Affected Parties

The final-omitted rulemaking will principally affect the students and professional employees of the public schools in this Commonwealth.

Cost and Paperwork Estimates

The final-omitted rulemaking reflects statutory requirements for school entities to execute MOUs with local police departments biennially and to file these agreements with the Department's Office for Safe Schools. Chapter 10 further requires a school entity that executes an MOU substantially different from the model MOU included in Appendix A to include a statement of reasons for the differences as part of its filing with the Office for Safe Schools and for the Office for Safe Schools to compile this information to help inform the Board's biennial review of the model MOU. This work will be managed through the Department's existing staff complement and does not carry an anticipated cost for State government.

Costs to school entities are estimated to be negligible for several reasons. First, statutory provisions requiring schools to form MOUs with local police departments were initially established by the act of June 30, 1995 (P. L. 220, No. 26) and thus represent an ongoing responsibility for both school entities and local police. Second, Chapter 10 includes a model MOU that can provide guidance for schools in implementing the MOU requirements of the regulations. Third, the recent establishment of the Office for Safe Schools within the Department will make additional resources and technical assistance available to school entities. Fourth, the regulations that provide for consideration of using school-based diversion programs or school-wide positive behavior supports to address a student's behavior reference available programs and do not create a mandate for school entities to establish new programs. Finally, the regulations that require school entities to invite representatives of local police departments to participate in trainings in appropriately responding to students with disabilities reference trainings that schools already are required to provide for school

staff under §§ 14.104 and 14.133 and do not create a mandate for school entities to provide additional trainings.

Effective Date

The final-omitted rulemaking is effective upon publication in the *Pennsylvania Bulletin*.

Sunset Date

The Board will review the effectiveness of Chapter 10 every 4 years in accordance with the Board's policy and practice regarding its regulations. Therefore, a sunset date is not necessary.

Also, in compliance with section 1302.1-A of the code and as provided in § 10.11(e) (relating to memorandum of understanding), the Board will review and revise, as necessary, the model MOU in Appendix A on a biennial basis.

Contact Person

Interested persons may contact John H. Jewett, Acting Executive Director, State Board of Education, 333 Market Street, 1st Floor, Harrisburg, PA 17126, (717) 787-3783, TDD (717) 787-7367, ra-stateboardofed@pa.gov.

Final-Omitted Rulemaking

The Board has promulgated these regulations as a final-omitted rulemaking as directed by section 1302.1-A of the code.

Regulatory Review

Under section 5.1(c) of the Regulatory Review Act (71 P. S. § 745.5a(c)), on March 28, 2012, the Board submitted a copy of the final-omitted rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Education and the Senate Committee on Education. On the same date, the regulations were submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506).

Under section 5.1(j.2) of the Regulatory Review Act, on June 20, 2012, the final-omitted rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on June 21, 2012, and approved the final-omitted rulemaking.

Findings

The Board finds that the adoption of the regulations in the manner provided in this order is appropriate under section 1302.1-A of the code.

Order

The Board, acting under the authority of the code, orders that:

(a) The regulations of the Board, 22 Pa. Code, are amending by adding §§ 10.1, 10.2, 10.11 and 10.21—10.25 and Appendix A to read as set forth in Annex A.

(b) The Acting Executive Director of the Board shall submit this order and Annex A to the Office of the General Counsel and the Office of Attorney General for review and approval as to legality and form as required by law.

(c) The Acting Executive Director of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order is effective upon publication in the *Pennsylvania Bulletin*.

JOHN H. JEWETT,
Acting Executive Director

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 42 Pa.B. 4297 (July 7, 2012).)

Fiscal Note: 6-325. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 22. EDUCATION

PART I. STATE BOARD OF EDUCATION

Subpart A. MISCELLANEOUS PROVISIONS

CHAPTER 10. SAFE SCHOOLS

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GENERAL PROVISIONS

§ 10.1. Purpose.

The purpose of this chapter is to establish and maintain a cooperative relationship between school entities and local police departments in the reporting and resolution of incidents that occur on school property, at a school sponsored activity or on a conveyance as described in the Safe Schools Act, such as a school bus, providing transportation to or from a school or school sponsored activity.

§ 10.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Charter school—A charter school or cyber charter school as defined in section 1703-A of the Charter School Law (24 P. S. § 17-1703-A).

Chief school administrator—The superintendent of a public school district, executive director of an area vocational-technical school, executive director of an intermediate unit or chief executive officer of a charter school.

IEP—Individualized education program.

Incident—An instance involving one or more of the following:

(i) An act of violence.

(ii) The possession of a weapon by a person.

(iii) The possession, use or sale of a controlled substance or drug paraphernalia as defined in section 2 of The Controlled Substance, Drug, Device and Cosmetic Act (35 P. S. § 780-102).

(iv) The possession, use or sale of alcohol or tobacco by a person on school property.

(v) Conduct that constitutes an offense under section 1303-A(b)(4.1) or (4.2) of the Safe Schools Act (24 P. S. § 13-1303-A(b)(4.1) and (4.2)).

Local police department—A police department having jurisdiction over school property of the school entity.

Memorandum of understanding—A confirmation of mutually agreed upon terms between two or more parties in the form of a document mutually agreed to by a school

entity and a local police department as required under section 1303-A(c) of the Safe Schools Act.

Positive behavior support plan—A plan for a student with a disability or eligible young child who requires specific intervention to address behavior that interferes with learning. A plan is developed by the IEP team, based on a functional behavior assessment and becomes part of the individual eligible young child's or student's IEP. A plan includes methods that utilize positive reinforcement and other positive techniques to shape a student's or eligible young child's behavior ranging from the use of positive verbal statements as a reward for good behavior to specific tangible rewards. See §§ 14.133 and 711.46 (relating to positive behavior support).

Protected handicapped student—A student who meets the definition of "protected handicapped student" under § 15.2 (relating to definitions), including a protected handicapped student attending a charter school, or for whom an evaluation is pending.

Safe Schools Act—Article XIII-A of the School Code (24 P. S. §§ 13-1301-A—13-1313-A).

School-based diversion program—A program that, in partnership with other stakeholders, diverts youth out of the juvenile justice system. A program may include a youth aid panel in which a panel of community members decides an appropriate resolution to hold a student accountable for the student's actions by, among other options, requiring the student to complete educational activities, community service, restitution and any other related program or service.

School Code—The Public School Code of 1949 (24 P. S. §§ 1-101—27-2702).

School entity—A public school district, intermediate unit, area vocational-technical school or charter school.

School-wide positive behavior support—A school-wide, evidence-based and data-driven approach to improving school behavior that seeks to reduce unnecessary student disciplinary actions and promotes a climate of greater productivity, safety and learning.

Student with a disability—A student who meets the definition of "student with a disability" under § 14.101 (relating to definitions), the definition of "child with a disability" under § 711.1 (relating to definitions) or for whom an evaluation is pending.

MEMORANDUM OF UNDERSTANDING

§ 10.11. Memorandum of understanding.

(a) Each chief school administrator shall execute and update, on a biennial basis, a memorandum of understanding with each local police department having jurisdiction over school property of the school entity.

(b) A memorandum of understanding between a school entity and a local police department, including its development and implementation, must meet the requirements of section 1303-A(c) of the Safe Schools Act (24 P. S. § 13-1303-A(c)).

(c) In developing a memorandum of understanding to execute with a local police department, a school entity shall consult and consider the model memorandum of understanding promulgated by the Board in Appendix A (relating to model memorandum of understanding).

(d) On a biennial basis, a school entity shall file with the Department's Office for Safe Schools a memorandum of understanding with each local police department having jurisdiction over property of the school entity. As part

of its filing with the Department, a school entity shall identify substantive differences between the memorandum of understanding adopted by the school entity and the model memorandum of understanding and provide a statement of reasons for the differences.

(e) The Board, on a biennial basis, will review and, as necessary, revise its model memorandum of understanding in Appendix A. As part of its biennial review, the Board will consider the memoranda of understanding filed by school entities with the Department's Office for Safe Schools and statements explaining school entities' reasons for adopting memoranda of understanding having substantive differences with the model memorandum of understanding.

NOTIFICATION OF INCIDENTS

§ 10.21. Immediate notification.

(a) The chief school administrator, or a designee, shall immediately notify the local police department when an offense listed in section 1303-A(b)(4.1) of the Safe Schools Act (24 P. S. § 13-1303-A(b)(4.1)) occurs on school property, at a school sponsored activity or on a conveyance as described in the Safe Schools Act, such as a school bus, providing transportation to or from a school or school sponsored activity.

(b) Notification shall be made to the local police department by the most expeditious means practicable.

(c) As part of its notification of the incident to the local police department, the chief school administrator or a designee shall provide as much of the information in this subsection as is available at the time of notification. The gathering of information should not unnecessarily delay notification.

(1) Whether the incident is in-progress or has concluded.

(2) Nature of the incident.

(3) Exact location of the incident.

(4) Number of persons involved in the incident.

(5) Names and ages of the individuals involved.

(6) Weapons involved in the incident.

(7) Whether the weapons have been secured and the custodian of the weapons.

(8) Injuries.

(9) Whether emergency medical services or the fire department was notified.

(10) Identity of the school contact person.

(11) Identity of the witnesses.

(12) Whether the incident involves a student with a disability, the type of disability and its impact on the student's behavior.

(13) Other information as is known to the school entity and believed to be relevant to the incident.

(d) In responding to students who commit an incident listed in section 1303-A(b)(4.1) of the Safe Schools Act, a school entity may consider the propriety of utilizing available school-based programs, such as school-wide positive behavior supports, to address the student's behavior and shall notify the local police department of the student's placement in the program. This subsection does not limit law enforcement's discretion.

§ 10.22. Discretionary notification.

(a) The chief school administrator, or a designee, may notify the local police department having jurisdiction when an offense listed in section 1303-A(b)(4.2) of the Safe Schools Act (24 P. S. § 13-1303-A(b)(4.2)) occurs on school property, at a school sponsored activity or on a conveyance as described in the Safe Schools Act, such as a school bus, providing transportation to or from a school or school sponsored activity.

(b) In determining whether to notify the local police department of an incident described in subsection (a), the chief school administrator, or a designee, may consider the following factors:

- (1) The seriousness of the situation.
- (2) The school's ability to defuse or resolve the situation.
- (3) The child's intent.
- (4) The child's age.
- (5) Whether the student has a disability, the type of disability and its impact on the student's behavior.
- (6) Other factors believed to be relevant.

(c) In making a determination whether to notify law enforcement when an offense listed in section 1303-A(b)(4.2) of the Safe Schools Act occurs on school property, at a school sponsored activity or on a conveyance as described in the Safe Schools Act, such as a school bus, providing transportation to or from a school or school sponsored activity, and to the extent that it has authority, a school entity may consider addressing the student's behavior through the use of available school-based diversion programs and available school-wide positive behavior supports.

(d) Upon notification of the incident to the local police department, the chief school administrator or a designee shall provide as much of the information in this subsection as is available at the time of notification. The gathering of information should not unnecessarily delay notification.

- (1) Whether the incident is in-progress or has concluded.
- (2) Nature of the incident.
- (3) Exact location of the incident.
- (4) Number of persons involved in the incident.
- (5) Names and ages of the individuals involved.
- (6) Weapons involved in the incident.
- (7) Whether the weapons have been secured and the custodian of the weapons.
- (8) Injuries.
- (9) Whether emergency medical services or the fire department was notified.
- (10) Identity of the school contact person.
- (11) Identity of the witnesses.
- (12) Whether the incident involves a student with a disability, the type of disability and its impact on the student's behavior.
- (13) Other information known to the school entity and believed to be relevant to the incident.

§ 10.23. Response and handling of a student with a disability.

(a) A school entity shall provide to each local police department having jurisdiction over property of the school entity a copy of its procedures on behavior support services (see § 14.104 (relating to special education plans)) by September 30, 2012. Thereafter, a school entity shall provide to each local police department a copy of its procedures on behavior support services each time the procedures are revised by the school entity.

(b) A school entity shall invite representatives of each local police department having jurisdiction over property of the school entity to participate in trainings in the use of positive behavior supports, de-escalation techniques and appropriate responses to student behavior that may require immediate intervention, as provided by the school entity's special education plan (see § 14.104) and the school entity's positive behavior support program (see §§ 14.133 and 711.46 (relating to positive behavior support)).

(c) When a student with a disability commits an incident listed in section 1303-A(b)(4.1) or (4.2) of the Safe Schools Act (24 P. S. § 13-1303-A(b)(4.1) and (4.2)), the school entity shall respond in a manner that is consistent with the training provided in accordance with the school entity's special education plan (see § 14.104) and, if applicable, with the procedures, methods and techniques defined in the student's behavior support plan (see §§ 14.133 and 711.46).

(d) When a protected handicapped student commits an incident listed in section 1303-A(b)(4.1) or (4.2) of the Safe Schools Act, the school entity, including a charter school, shall respond in a manner that is consistent with the student's service agreement (see §§ 15.2 and 15.7 (relating to definitions; and service agreement)).

(e) For a student with a disability who has a positive behavior support plan, upon notification to a local police department that a student with a disability has committed an incident listed in section 1303-A(b)(4.1) or (4.2) of the Safe Schools Act, a school entity shall act in accordance with § 14.133(h) or § 711.46(h).

(f) For a protected handicapped student whose service agreement includes a positive behavior support plan, upon notification to a local police department that a protected handicapped student has committed an incident listed in section 1303-A(b)(4.1) or (4.2) of the Safe Schools Act, a school entity, including a charter school, shall act in accordance with § 15.3 (relating to general).

(g) For a student with a disability who does not have a positive behavior support plan, upon notification to a local police department that a student with a disability has committed an incident listed in section 1303-A(b)(4.1) or (4.2) of the Safe Schools Act, the school entity shall convene the student's IEP team. At this meeting, the IEP team shall consider whether a positive behavior support plan should be developed to address the student's behavior.

(h) For a protected handicapped student whose service agreement does not include a positive behavior support plan, upon notification to a local police department that a protected handicapped student has committed an incident listed in section 1303-A(b)(4.1) or (4.2) of the Safe Schools Act, the school entity, including a charter school, in consultation with the student's parents, shall consider whether a positive behavior support plan should be developed as part of the service agreement to address the student's behavior.

§ 10.24. Emergency and nonemergency response and preparedness.

(a) Each school district, in cooperation with the local emergency management agency and the Pennsylvania Emergency Management Agency, shall develop and implement a comprehensive disaster response and emergency preparedness plan as required under 35 Pa.C.S. § 7701(g) (relating to duties concerning disaster prevention). The plan shall be reviewed annually and modified as necessary.

(b) A school district’s comprehensive disaster response and emergency preparedness plan shall be consistent with the guidelines developed by the Pennsylvania Emergency Management Agency and other applicable State requirements as required under 35 Pa.C.S. § 7701(g).

(c) In developing a comprehensive disaster response and emergency preparedness plan, a school district shall consider the framework presented in the National Incident Management System.

(d) A school district shall provide the emergency management agency of every county of which the school district is a part a copy of the district’s comprehensive disaster response and emergency preparedness plan as required under 35 Pa.C.S. § 7701(g).

(e) A school district shall provide to each local police department and each local fire department having jurisdiction over geographic territory of which the school district is a part a copy of the district’s comprehensive disaster and response emergency preparedness plan.

(f) In an emergency, a school district shall follow the procedures in its comprehensive disaster response and emergency preparedness plan adopted under 35 Pa.C.S. § 7701(g).

(g) By September 30 of each year, a school entity shall assemble and make ready for immediate deployment to the Incident Command Post, that is, a physical location established in accordance with the school entity’s plan adopted under 35 Pa.C.S. § 7701(g) to manage an emergency incident or disaster, the following information for the purpose of assisting local police and fire departments in responding to an emergency:

- (1) Blueprints or floor plans of the school buildings.
- (2) Aerial photo, map or layout of the school campus, adjacent properties and surrounding streets or roads.
- (3) Locations of predetermined or prospective command posts.
- (4) Current teacher/employee roster.
- (5) Current student roster.
- (6) Most recent school yearbook.
- (7) School fire-alarm shutoff location and procedures.
- (8) School sprinkler system shutoff location and procedures.
- (9) Gas/utility line layouts and shutoff valve locations.
- (10) Cable/satellite television shutoff location and procedures.
- (11) Other information the school entity deems pertinent to assist local police and fire departments in responding to an emergency.

§ 10.25. Notification to parents/guardians.

(a) A school entity shall immediately notify, as soon as practicable, the parent or guardian of a victim or suspect directly involved in an incident listed in section 1303-

A(b)(4.1) or (4.2) of the Safe Schools Act (24 P.S. § 13-1303-A(b)(4.1) and (4.2)). In making the notification, the school entity shall inform the parent or guardian as to whether the local police department having jurisdiction over property of the school entity has been, or may be, notified of the incident.

(b) A school entity shall document attempts made to reach the parent or guardian of a victim or suspect directly involved in an incident listed in section 1303-A(b)(4.1) or (4.2) of the Safe Schools Act.

**APPENDIX A
MODEL MEMORANDUM OF UNDERSTANDING
MEMORANDUM OF UNDERSTANDING
BETWEEN**

(Law Enforcement Authority)

and

(School Entity)

(Date)

I. Introduction

A. Parties

The following Law Enforcement Authority or Authorities agree to follow the policies and procedures contained in this Memorandum of Understanding (hereinafter “Memorandum”):

The following School Entity or Entities agree to follow the policies and procedures contained in this Memorandum:

B. This Memorandum establishes procedures to be followed when certain incidents—described in Section II below—occur on school property, at any school sponsored activity, or on a conveyance as described in the Safe Schools Act (such as a school bus) providing transportation to or from a school or school sponsored activity. This Memorandum does not cover incidents that are outside of those school settings and create no substantial disruption to the learning environment.

C. The parties seek to foster a relationship of cooperation and mutual support and to maintain a safe school environment.

D. Legal Authority

1. The parties make this agreement as required by Article XIII-A of the Public School Code of 1949, popularly known as the “Safe Schools Act,” as amended, 24 P.S. §§ 13-1301-A—13-1313-A.

2. In so recognizing this legal authority, the parties acknowledge their respective duties pursuant to the Safe Schools Act and hereby agree to support and cooperate with one another in carrying out their joint and several responsibilities thereunder.

3. Information From Student Records

a. The Law Enforcement Authority shall be governed by the following reporting and information exchange guidelines:

i. Criminal History Record Information Act, 18 Pa.C.S. § 9101 et seq.

ii. The prohibition against disclosures, specified in section IV(C)(5) of this Memorandum.

b. When sharing information and evidence necessary for the Law Enforcement Authority to complete its investigation, the School Entity shall:

i. Comply with the Family Educational Rights and Privacy Act (hereinafter “FERPA”), 20 U.S.C. § 1232g, and its implementing regulations at 34 C.F.R. § 99.1 et seq., and 22 Pa. Code §§ 12.31-12.33, including any amendments thereto.

ii. Comply with the requirements of the Safe Schools Act, 24 P.S. §§ 13-1303-A and 13-1313-A, and any amendments thereto.

iii. Complete reports as required by section 1303-A of the Safe Schools Act, 24 P.S. § 13-1303-A, and any amendments thereto.

c. The School Entity may disclose personally identifiable information from an educational record of a student to the Law Enforcement Authority if a health or safety emergency exists and knowledge of that information is necessary to protect the health or safety of the student or other individuals. In determining whether a health or safety emergency exists, the School Entity may take into account the totality of the circumstances pertaining to a threat to the health or safety of a student or other individuals. If the School Entity determines that there is an articulable and significant threat to the health or safety of a student or other individuals, it may disclose information from education records to the Law Enforcement Authority, if knowledge of that information is necessary for the Law Enforcement Authority to protect the health or safety of the student or other individuals. The School Entity must record the articulable and significant threat to the health or safety of a student or other individuals so that it can demonstrate—to parents, students and the Family Policy Compliance Office¹—what circumstance led it to determine that a health or safety emergency existed and why the disclosure was justified.

E. Priorities of the Law Enforcement Authority

1. Help the School Entity prevent delinquent acts through preventive measures, including referrals to support services, diversionary programs, restorative practices, school-wide positive behavior supports, education and deterrence.

2. Investigate as appropriate all incidents reported to have occurred on school property, at any school sponsored activity, or on a conveyance as described in the Safe Schools Act (including a school bus) providing transportation to or from a school or school sponsored activity. The investigation of all reported incidents shall be conducted in the manner that the Law Enforcement Authority, in its sole discretion, deems appropriate; but any investigation shall be conducted so as to involve as little disruption to the school environment as is practicable.

3. Identify those responsible for the commission of the reported incident and, where appropriate, apprehend and prosecute those individuals. Identification and apprehension procedures shall involve as little disruption to the school environment as is practicable.

4. Establish and maintain a cooperative relationship with the School Entity in the reporting and resolution of all incidents described in Section II of this document.

¹ Questions related to FERPA should be directed to the Family Policy Compliance Office within the U.S. Department of Education.

F. Priorities of the School Entity

1. Help law enforcement prevent delinquent acts through preventive measures, including referrals to support services, diversionary programs, restorative practices, school-wide positive behavior supports, education and deterrence.

2. Create a safe learning environment.

3. Establish and maintain a cooperative relationship with the Law Enforcement Authority in the reporting and resolution of all incidents described in Section II of this document.

4. Provide the Law Enforcement Authority with all relevant information and required assistance in the event of a reported incident.

5. The School Entity shall give the Law Enforcement Authority a copy of the School Entity's behavior support services procedures and invite Law Enforcement Authority representatives to behavior support trainings.

II. Notification of Incidents to Law Enforcement

The School Entity is required to notify law enforcement in specific situations listed in subsection A of this section, and has discretion over whether to notify law enforcement about incidents listed in subsection B of this section. Law enforcement's decision to investigate and file charges may be made in consultation with school administrators.

A. Mandatory Notification

1. The School Entity shall immediately notify the Law Enforcement Authority having jurisdiction where the offense occurred by the most expeditious means practicable of any of the following incidents occurring on school property, at any school sponsored activity, or on a conveyance as described in the Safe Schools Act (including a school bus) providing transportation to or from a school or school sponsored activity:

a. The following offenses under 18 Pa.C.S (relating to crimes and offenses):

i. Section 908 (relating to prohibited offensive weapons).

a. The term “offensive weapon” is defined by section 908 of the Crimes Code as “[a]ny bomb, grenade, machine gun, sawed-off shotgun with a barrel less than 18 inches, firearm specially made or specially adapted for concealment or silent discharge, any blackjack, sandbag, metal knuckles, dagger, knife, razor or cutting instrument, the blade of which is exposed in an automatic way by switch, push-button, spring mechanism, or otherwise, any stun gun, stun baton, taser or other electronic or electric weapon or other implement for the infliction of serious bodily injury which serves no common lawful purpose.” See 18 Pa.C.S. § 908(c) (relating to definitions).

b. Consistent with section 908(b) of the Crimes Code (relating to exceptions), this reporting requirement does not apply to one who possessed or dealt with an offensive weapon solely as a curio or in a dramatic performance, or to one who possessed an offensive weapon briefly in consequence of having found it or taken it from an aggressor, or under circumstances similarly negating any intent or likelihood that the weapon would be used unlawfully.

ii. Section 912 (relating to possession of weapon on school property).

a. The term “weapon” is defined by section 912 of the Crimes Code to include, but is not limited to, a knife,

cutting instrument, cutting tool, nunchuck stick, firearm, shotgun, rifle and any other tool, instrument or implement capable of inflicting serious bodily injury.

b. Consistent with section 912(c) of the Crimes Code (relating to defense), this reporting requirement does not apply to a weapon that is: (a) possessed and used in conjunction with a lawful supervised school activity or course; or (b) is possessed for other lawful purpose.

- iii. Chapter 25 (relating to criminal homicide).
- iv. Section 2702 (relating to aggravated assault).
- v. Section 2709.1 (relating to stalking).
- vi. Section 2901 (relating to kidnapping).
- vii. Section 2902 (relating to unlawful restraint).
- viii. Section 3121 (relating to rape).
- ix. Section 3122.1 (relating to statutory sexual assault).
- x. Section 3123 (relating to involuntary deviate sexual intercourse).
- xi. Section 3124.1 (relating to sexual assault).
- xii. Section 3124.2 (relating to institutional sexual assault).
- xiii. Section 3125 (relating to aggravated indecent assault).
- xiv. Section 3126 (relating to indecent assault).
- xv. Section 3301 (relating to arson and related offenses).
- xvi. Section 3307 (relating to institutional vandalism), when the penalty is a felony of the third degree.
- xvii. Section 3502 (relating to burglary).
- xviii. Section 3503(a) and (b)(1)(v) (relating to criminal trespass).
- xix. Section 5501 (relating to riot).
- xx. Section 6110.1 (relating to possession of firearm by minor).

b. The possession, use or sale of a controlled substance, designer drug or drug paraphernalia as defined in “The Controlled Substance, Drug, Device and Cosmetic Act,” as amended, 35 P. S. §§ 780-101—780-144, popularly known as the “Drug Act.” For purposes of this Memorandum, the terms “controlled substance”, “designer drug” and “drug paraphernalia” shall be defined as they are in section 102 of the Drug Act. See 35 P. S. § 780-102 (relating to definitions).

c. Attempt, solicitation or conspiracy to commit any of the offenses listed in paragraphs 1 and 2 of this subsection.

d. An offense for which registration is required under 42 Pa.C.S. § 9795.1 (relating to registration).

2. In responding to students who commit an incident listed under section 1303-A(b)(4.1) of the Safe Schools Act (24 P. S. § 13-1303-A(b)(4.1)), a school entity may consider the propriety of utilizing available school-based programs, such as school-wide positive behavior supports, to address the student’s behavior. Nothing in this provision shall be read to limit law enforcement’s discretion.

B. Discretionary Notification

1. The School Entity may notify the Law Enforcement Authority having jurisdiction where the incident occurred of any of the following incidents occurring on school property, at any school sponsored activity, or on a convey-

ance as described in the Safe Schools Act (including a school bus) providing transportation to or from a school or school sponsored activity:

- a. The following offenses under 18 Pa.C.S (relating to crimes and offenses):
 - i. Section 2701 (relating to simple assault).
 - ii. Section 2705 (relating to recklessly endangering another person).
 - iii. Section 2706 (relating to terroristic threats).
 - iv. Section 2709 (relating to harassment).
 - v. Section 3127 (relating to indecent exposure).
 - vi. Section 3307 (relating to institutional vandalism), when the penalty is a misdemeanor of the second degree.
 - vii. Section 3503(b)(1)(i), (ii), (iii) and (iv), (b.1) and (b.2) (relating to criminal trespass).
 - viii. Chapter 39 (relating to theft and related offenses).
 - ix. Section 5502 (relating to failure of disorderly persons to disperse upon official order).
 - x. Section 5503 (relating to disorderly conduct).
 - xi. Section 6305 (relating to sale of tobacco).
 - xii. Section 6306.1 (relating to use of tobacco in schools prohibited).

xiii. Section 6308 (relating to purchase, consumption, possession, or transportation of liquor or malt or brewed beverages by a person under 21 years of age).

b. Attempt, solicitation or conspiracy to commit any of the offenses listed in subsection (a).

2. In exercising its discretion to determine whether to notify law enforcement of such incidents, the School Entity may consider the following factors: the seriousness of the situation, the school’s ability to defuse or resolve the situation, the child’s intent, the child’s age, whether the student has a disability and, if so, the type of disability and its impact on the student’s behavior, and other factors believed to be relevant.

C. Law Enforcement Response to Notification

1. When notified of an incident listed in subsections A or B, law enforcement’s decision to investigate and file charges, at the sole discretion of the Law Enforcement Authority, may be made in consultation with school administrators.

2. In determining whether to file charges, the Law Enforcement Authority is encouraged to consult with the District Attorney. Where appropriate under the law, part of this consultation may include a discussion about the availability or propriety of utilizing a diversionary program as an alternative to filing charges.

D. Notification of the Law Enforcement Authority when incident involves children with disabilities

1. If a child with a disability commits an incident of misconduct, school administrators and the Law Enforcement Authority should take into consideration that the child’s behavior may be a manifestation of the disability and there may be no intent to commit an unlawful act. A child with a disability under this subsection shall mean a student with an IEP, a protected handicapped student with a service agreement that includes a behavior support plan, or such student for whom an evaluation is pending under 22 Pa. Code §§ 14.123 (relating to evaluation), 15.5 (relating to school district initiated evaluation and provision of services), 15.6 (relating to parent initi-

ated evaluation and provision of services), or Chapter 711 (relating to charter school and cyber charter school services and programs for children with disabilities).

2. In the event a child with a disability commits a mandatory notification offense under Subsection A, the School Entity must provide immediate notification to the Law Enforcement Authority regardless of the disability. Such notification will state that the child has an IEP or a service agreement that includes a behavior support plan and may include the School Entity's recommendation that police intervention may not be required and advisement that the School Entity will act to address the student's behavior need as required by applicable federal and state law and regulations, including 22 Pa. Code §§ 14.133 (relating to positive behavior support), 15.3 (relating to protected handicapped students—general) or 711.46 (relating to positive behavior support). The Law Enforcement Authority may take the recommendation under advisement but reserves the right to investigate and file charges.

3. In the event a child with a disability commits a discretionary offense under Subsection B and the School Entity does not believe that police intervention is necessary, the School Entity will address the student's behavior need as required by applicable federal and state law and regulations, including 22 Pa. Code §§ 14.133, 15.3 or 711.46.

4. In accordance with 34 CFR 300.535 (relating to referral to and action by law enforcement and judicial authorities), nothing will prohibit the School Entity from reporting an offense committed by a child with a disability to the Law Enforcement Authority, and nothing will prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

5. The School Entity, when reporting an offense committed by a child with a disability, should ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to the Law Enforcement Authority to whom the incident was reported.

6. The School Entity, when reporting an incident under this section, may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by FERPA.

[Describe any specific procedures to be followed for incidents involving a student with a disability having an IEP as required by 22 Pa. Code § 14.104 (relating to special education plans) or 22 Pa. Code Chapter 711 (relating to charter school and cyber charter school services and programs for children with disabilities)]

E. Upon notification of the incident to the Law Enforcement Authority, the School Entity shall provide as much of the following information as is available at the time of notification. In no event shall the gathering of information unnecessarily delay notification:

1. Whether the incident is in-progress or has concluded.
2. Nature of the incident.
3. Exact location of the incident.
4. Number of persons involved in the incident.

5. Names and ages of the individuals involved.
6. Weapons, if any, involved in the incident.
7. Whether the weapons, if any, have been secured and, if so, the custodian of the weapons.
8. Injuries involved.
9. Whether EMS or the Fire Department have been notified.
10. Identity of the school contact person.
11. Identity of the witnesses to the incident, if any.
12. Whether the incident involves a student with a disability and, if so, the type of disability and its impact on the student's behavior.
13. Other such information as is known to the school entity and believed to be relevant to the incident.

F. No later than September 30 of each year, the School Entity shall assemble and make ready for immediate deployment to its Incident Command Post the following information for the purpose of assisting the Law Enforcement Authority in responding to an emergency:

1. Blueprints or floor plans of the school buildings.
2. Aerial photo, map or layout of the school campus, adjacent properties and surrounding streets or roads.
3. Location(s) of predetermined or prospective command posts.
4. Current teacher/employee roster.
5. Current student roster.
6. Most recent school yearbook.
7. School fire-alarm shutoff location and procedures.
8. School sprinkler system shutoff location and procedures.
9. Gas/utility line layouts and shutoff valve locations.
10. Cable/satellite television shutoff location and procedures.
11. Other information the School Entity deems pertinent to assist local police departments in responding to an emergency.

III. Law Enforcement Authority Response

A. Depending on the totality of the circumstances, initial response by the Law Enforcement Authority may include:

1. For incidents in progress:
 - a. Meet with contact person and locate scene of incident.
 - b. Stabilize incident.
 - c. Provide/arrange for emergency medical treatment, if necessary.
 - d. Control the scene of the incident.
 - i. Secure any physical evidence at the scene.
 - ii. Identify involved persons and witnesses.
 - e. Conduct investigation.
 - f. Exchange information.
 - g. Confer with school officials to determine the extent of law enforcement involvement required by the situation.
2. Incidents not in progress:
 - a. Meet with contact person.

- b. Recover any physical evidence.
- c. Conduct investigation.
- d. Exchange information.
- e. Confer with school officials to determine the extent of law enforcement involvement required by the situation.

3. Incidents initially reported to the Law Enforcement Authority

If any incident described in sections IIA or IIB is initially reported to the Law Enforcement Authority, the Law Enforcement Authority shall proceed directly with its investigation, shall immediately notify the School Entity of the incident, and shall proceed as outlined in sections IIA through IIE.

B. Custody of Actors

1. Students identified as actors in reported incidents may be taken into custody at the discretion of the investigating law enforcement officer under any of the following circumstances:

- a. The student has been placed under arrest.
- b. The student is being placed under investigative detention.
- c. The student is being taken into custody for the protection of the student.
- d. The student's parent or guardian consents to the release of the student to law enforcement custody.

2. The investigating law enforcement officer shall take all appropriate steps to protect the legal and constitutional rights of those students being taken into custody.

IV. Assistance of School Entities

A. In Loco Parentis

1. Teachers, Guidance Counselors, Vice Principals and Principals in the public schools have the right to exercise the same authority as a parent, guardian or person in parental relation to such pupil concerning conduct and behavior over the pupils attending a school during the time they are in attendance, including the time required in going to and from their homes.

2. School authorities' ability to stand in loco parentis over children does not extend to matters beyond conduct and discipline during school, school activities, or on a conveyance as described in the Safe Schools Act providing transportation to or from school or a school sponsored activity.

B. Notification of Parent or Guardian

1. Parents or guardians of all victims and suspects directly involved in an incident listed under Section IIA or IIB shall be immediately notified of the involvement, and they shall be informed about any notification regarding the incident that has been, or may be, made to the Law Enforcement Authority.

2. The School Entity shall document attempts made to reach the parents or guardians of all victims and suspects directly involved in incident listed under Section IIA or IIB.

C. Scope of School Entity's Involvement

1. General Principles: Once the Law Enforcement Authority assumes primary responsibility for a matter, the legal conduct of interviews, interrogations, searches, seizures of property, and arrests are within the purview of the Law Enforcement Authority. The School Entity shall defer to the Law Enforcement Authority on matters of

criminal and juvenile law procedure, except as is necessary to protect the interests of the School Entity. The Law Enforcement Authority will keep the chief school administrator, or his designees, informed of the status of pending investigations.

2. Victims

a. The School Entity shall promptly notify the parent or guardian of a victim when the Law Enforcement Authority interviews that victim. The Law Enforcement Authority shall follow its policies and procedures when interviewing a victim to ensure the protection of the victim's legal and constitutional rights.

b. In the event a victim is interviewed by Law Enforcement Authority on school property, a guidance counselor or similar designated personnel may be present during the interview.

3. Witnesses

a. The School Entity shall promptly notify the parent or guardian of a witness when the Law Enforcement Authority interviews that witness. The Law Enforcement Authority shall follow its policies and procedures when interviewing a witness to ensure the protection of the witness's legal and constitutional rights.

b. In the event a witness is interviewed by the Law Enforcement Authority on school property, a guidance counselor or similar designated personnel should be present during the interview.

4. Suspects and Custodial Interrogation

a. The School Entity shall help the Law Enforcement Authority to secure the permission and presence of at least one parent or guardian of a student suspect before that student is interrogated by law enforcement authorities.

b. When a parent or guardian is not present, school authorities shall not stand in loco parentis (in the place of the parent/guardian) during an interview.

c. If an interested adult cannot be contacted, the School Entity shall defer to the investigating Law Enforcement Authority, which will protect the student suspect's legal and constitutional rights as required by law.

5. Conflicts of Interest

a. The parties to this Memorandum recognize that if a School Entity employee, contractor, or agent of the School Entity is the subject of an investigation, a conflict of interest may exist between the School Entity and the adult suspect.

b. Neither the individual that is the subject of the investigation, nor any person acting as his/her subordinate or direct supervisor, shall be present during Law Enforcement Authority's interviews of student co-suspects, victims or witnesses by the Law Enforcement Authority.

c. Neither the individual who is the subject of the investigation, nor his/her subordinate(s) and/or direct supervisor(s), shall be informed of the contents of the statements made by student co-suspects, victims or witnesses, except at the discretion of the Law Enforcement Authority or as otherwise required by law.

D. Reporting Requirements

All school entities are required to submit an annual report, which will include violence statistics and reports, to the Department of Education's Office for Safe Schools. This annual report must include all new incidents de-

scribed in Sections IIA and IIB. Before submitting the required annual report, each chief school administrator and each police department having jurisdiction over school property of the School Entity shall do the following:

a. No later than thirty days prior to the deadline for submitting the annual report, the chief school administrator shall submit the report to the police department with jurisdiction over the relevant school property. The police department shall review the report and compare the data regarding criminal offenses and notification of law enforcement to determine its accuracy.

b. No later than fifteen days prior to the deadline for submitting the annual report, the police department shall notify the chief school administrator, in writing, whether the report accurately reflects police incident data. Where the police department determines that the report accurately reflects police incident data, the chief of police shall sign the report. Where the police department determines that the report does not accurately reflect police incident data, the police department shall indicate any discrepancies between the report and police incident data.

c. Prior to submitting the annual report, the chief school administrator and the police department shall attempt to resolve discrepancies between the report and police incident data. Where a discrepancy remains unresolved, the police department shall notify the chief school administrator and the office in writing.

d. Where a police department fails to take action as required under clause a or b, the chief school administrator shall submit the annual report and indicate that the police department failed to take action as required under clause a or b.

e. Where there are discrepancies between the School Entity's incident data and the police incident data, the following shall occur:

[Describe procedure to be followed for the resolution of school violence data discrepancies prior to filing the annual report]

V. General Provisions

A. This Memorandum does not create any contractual rights or obligations between the signatory Law Enforcement Authority, the signatory School Entity, any other signatory authorities or entities, or their respective officers, employees, agents or representatives.

B. This Memorandum may be amended, expanded or modified at any time upon the written consent of the

parties. It must be reviewed and re-executed within two years of the date of its original execution and every two years thereafter.

C. If changes in state or federal law require changes to this Memorandum, the parties shall amend this Memorandum.

D. All parties to this Memorandum will communicate fully and openly with each other in order to resolve any problems that may arise in the fulfillment of the terms of this Memorandum.

_____ Chief School Administrator	_____ School Entity
_____ Chief Law Enforcement Authority	_____ Law Enforcement Authority
_____ Building Principal	_____ School Building

[Pa.B. Doc. No. 12-1339. Filed for public inspection July 20, 2012, 9:00 a.m.]

Title 58—RECREATION

**PENNSYLVANIA GAMING CONTROL BOARD
[58 PA. CODE CHS. 555, 563, 639a AND 647a]**

[Correction]

Table Game Rules for Caribbean Stud Poker and Texas Hold 'Em Bonus Poker

Typographical errors occurred in the ordering language of the final-form rulemaking published at 42 Pa.B. 4320, 4322 (July 7, 2012). References to Chapters 639a and 647a were printed incorrectly. The correct version of the ordering language is as follows, with ellipses referring to the existing text:

Order

The Board, acting under 4 Pa.C.S. Part II, orders that:

(a) The regulations of the Board, 58 Pa. Code, are amended by deleting §§ 555.1—555.14 and 563.1—563.13 and by adding §§ 639a.1—639a.13 and 647a.1—647a.13 to read as set forth in Annex A.

* * * * *

[Pa.B. Doc. No. 12-1289. Filed for public inspection July 6, 2012, 9:00 a.m.]