

MEMORANDUM OF UNDERSTANDING BETWEEN THE [NAME] SCHOOL DISTRICT & THE [NAME] LAW ENFORCEMENT AGENCY

I. PURPOSE

I.1. This Memorandum of Understanding (“Memorandum,” “MOU,” or “Agreement”) is entered into between the [Name] School District and the [Name] Law Enforcement Agency (“Parties”) for the administration of a School Resource Officer Program (“Program”). **This agreement is adopted pursuant to N.Y. EDUC. LAW § 2801-a(10) (2019).**

I.2. The Parties enter into this understanding in the spirit of mutual cooperation and to strengthen their efforts to safeguard children and the school community.

I.3. The purpose of the Program is to ensure a safe school environment; provide a clear protocol for school officials when responding to nonemergency situations in schools; foster positive interactions between and among students, school officials, and law enforcement; empower educators to respond to conflicts in their schools; reflect a shared commitment to the philosophy of de-escalation; and support a positive educational and social-emotional climate at [Name] School District (“District”) public schools.

I.4. The Parties acknowledge the need to foster safe and supportive schools with a positive school climate. **The Parties also acknowledge that student behavior and the vast majority of school-based discipline matters are best handled by educators and school administrators, and not by law enforcement personnel or the court system.**

II. SCOPE & APPLICABILITY

II.1. This Agreement applies to activities of the Law Enforcement Agency and District on public school grounds and the immediate perimeter thereof; in any areas designated as “safe corridors” between public school grounds and public transportation hubs; on vehicles, such as school busses; on vehicles dedicated for use by the Law Enforcement Agency in its operation of the Program; at all school-sponsored events; and any time student behavior away from school property is governed by the District’s Code of Conduct.

II.2. This Agreement does not govern the role of members of the [Name] Law Enforcement Agency, including School Resource Officers (“SROs”), with regard to illegal behaviors engaged in by non-students.

New York Education Law § 2801-a(10) (eff. July 1, 2019) requires any school district or charter school that employs or contracts with law enforcement or public or private security guards to establish a written MOU that clearly defines the relationship between the school and law enforcement. The MOU must be consistent with the district or charter school code of conduct and must delegate management and control of school discipline to school administration. See Johanna Miller, *New York Wants Police to Stop Arresting Students for Minor Misbehavior* (Apr. 19, 2019), <https://www.nyclu.org/en/news/new-york-wants-police-stop-arresting-students-minor-misbehavior>; see also N.Y. Senate Bill S1509C, N.Y. Assembly Bill A2009C (2019-2020), <https://legislation.nysenate.gov/pdf/bills/2019/S1509C>.

To comply with New York Education Law § 2801-a(10), this MOU must delegate management and control of school discipline to school administration.

III. DEFINITIONS

III.1. “Arrest” means placing a person in police custody, with or without the use of handcuffs or other mechanical restraints. N.Y. CRIM. PROC. LAW § 140.05 et seq. (2019).

III.2. “Biometric record” means a record of one or more measurable biological or behavioral characteristics that can be used for automated recognition of an individual. Examples include fingerprints; retina and iris patterns; voiceprints; DNA sequence; facial characteristics; and handwriting. 34 C.F.R. § 99.3 (2012); 20 U.S.C. § 1232g (2013).

III.3. “Code of Conduct” means the document the board of education or the trustees of the District develops, adopts, enforces, and amends, where appropriate, for the maintenance of order on school property, including a school function, which shall govern the conduct of students, teachers, other school personnel, and visitors. The Code of Conduct contains the District’s behavioral and discipline policies required by New York law and is shared with students and parents. N.Y. EDUC. LAW § 2801 (2012).

III.4. “Federal Immigration Authorities” or “Federal Immigration Enforcement Agency” means any officer, employee, or person otherwise paid by or acting as an agent of the United States Immigration and Customs Enforcement (“ICE”), Homeland Security Investigations (“HSI”), Customs and Border Protection (“CBP”), or Department of Homeland Security (“DHS”), or any division thereof, who is charged with immigration law enforcement.

III.5. “Gender” includes actual or perceived sex, gender identity, and gender expression including a person’s actual or perceived gender-related self-image, appearance, behavior, expression, or other gender-related characteristic, regardless of the sex assigned to that person at birth. NYC Admin. Code § 8-102 (2019).

III.6. “Guidance Intervention” or “Response to Intervention” generally refers to the practice of providing high-quality instruction or intervention to meet the needs of all students through the provision of differentiated instruction in core curriculum and supplemental intervention.

III.7. “Law Enforcement Agency” refers to any police department, sheriff’s office, or other local law enforcement entity that maintains a presence in District schools and is a party to this Agreement.

III.8. “Individualized Education Program Team” (“IEP Team”) refers to a school’s team of qualified professionals who are primarily responsible for the development and review of a child’s Individualized Education Program (“IEP”). At a minimum, the IEP Team shall include the parent of the student, at least one of the student’s general education teachers, the special education teacher, the school psychologist, an individual who can interpret the instructional implications or evaluation results, a representative of the school district who is

qualified to provide or supervise special education and knowledgeable about the general curriculum, the child, or the District's resources, and the student (when appropriate). 34 C.F.R. § 300.321 (2007).

III.9. A "non-criminal violation" is any offense, other than a traffic offense, in the N.Y. Penal Law that does not allow for a term of imprisonment greater than fifteen days.

III.10. "Parent" means a person in parental relation to a student, including the student's parent, legal guardian, or other person legally responsible for a student under New York law. N.Y. EDUC. LAW § 2 (2005); N.Y. GEN. OBLIG. LAW § 5-1551 (2018).

III.11. "Police Officer" means any uniformed employee of the [Name] Law Enforcement Agency.

III.12. "Positive Behavioral Intervention and Supports" ("PBIS") refers to a multi-tiered, evidence-based framework and system of supports that create and maintain positive school climates. PBIS emphasizes the prevention of behavioral and school discipline problems by teaching, modeling, and recognizing positive, appropriate behaviors in schools.

III.13. "Restorative practices" refers to prevention and intervention measures for responding to misbehavior that focus on building relationships, holding students accountable, and creating a sense of community through participatory decision-making and problem solving. Restorative practices include, but are not limited to, collaborative negotiation, circle process, peer mediation, conflict resolution, and formal restorative conferencing.

III.14. "School official" means any school board member or employee of the District, New York State Education Department, or any individual school.

III.15. "School property" means in or within any building, structure, athletic playing field, playground, parking lot, or land contained within the real property boundary line of a public school in the District. "School property" also means in or on a school bus, whether owned and operated by the District or by a carrier that the district contracts with for the transportation of its students.

III.16. "School Resource Officer" ("SRO") means law enforcement officers assigned to schools including school security guards, private security guards, sheriff's deputies, or any uniformed employee of the [Name] Law Enforcement Agency who is assigned on a full or part-time basis to work in a District school or program.

III.17. "School Resource Officer Program" ("Program") refers to all administrative, organizational, and policy components that allow for the placement of SROs or any employee of the [Name] Law Enforcement Agency in the District's schools pursuant to this Agreement.

III.18. “Student” refers to a person enrolled in a District school or program.

III.19. “Suspension” refers to a student’s temporary prohibition from attending regular classes on either a short-term or a long-term basis in accordance with N.Y. EDUC. LAW § 3214 (2017). A short-term suspension refers to a suspension of a student from either class or school for five days or less. A long-term suspension refers to a suspension of a student from school in excess of five days.

IV. MANAGEMENT OF SCHOOL RESOURCE OFFICERS

IV.1. The principal/designee shall be an equal participant with the Law Enforcement Agency in any decision concerning assignment or removal of an SRO from their school.

IV.2. The principal/designee has the right to request the removal or re-assignment of any SRO for any reasonable cause provided in writing to the Law Enforcement Agency. Reasonable cause may include, but is not limited to, poor quality of work or performance, insubordination, issues related to dishonesty, attendance issues, theft or criminal behavior, sexual harassment, biased-based discrimination, and use of force against students.

IV.3. Prior to placement in a new school, SROs shall meet with the school principal and the highest ranking Police Officer or SRO, if any, currently or previously assigned to the school to discuss their respective roles, the school culture, and any other useful information. Thereafter, the principal/designee shall maintain regular communication with the Law Enforcement Agency and SRO about SRO assignments and physical placement in the school building.

IV.4. The principal/designee shall have the final say in determining how, where, and when SROs are deployed in the school building.

IV.5. SROs shall be integrated into the school’s educational mission. They shall participate in meetings and discussions when the principal/designee requests.

IV.6. SROs shall meet with teacher, parent, and student representatives at least one time per semester to discuss school safety, questions, and concerns.

IV.7. The principal/designee shall produce performance reviews of each SRO assigned to their school at least one time per semester. These reviews shall be submitted to the District and the Law Enforcement Agency.

Principals and SROs must work collaboratively to have a successful SRO Program and to protect the best interests of all students. Therefore, it is important for school officials to have some input into who is assigned to work in their building, how that work is performed, and what the SRO’s specific duties are.

V. SCHOOL RESOURCE OFFICER TRAINING

V.1. All SROs and school officials who work in public school buildings shall be trained on this MOU.

V.2. The District shall not rely on SROs or members of the [Name] Law Enforcement Agency to provide counseling or other functions performed by a trained mental health provider, such as a counselor, social worker, or psychologist.

V.3. Prior to deployment, every SRO shall receive specialized training on the following topics:

- conflict and crisis de-escalation techniques, including techniques for limiting the use of physical force or mechanical or chemical restraint;
- conflict resolution;
- bias-based discrimination and sexual harassment;
- child and adolescent development and psychology;
- the effects of trauma;
- mental health crisis intervention;
- the mental and behavioral health needs of children with disabilities and special needs;
- intimate partner violence among adolescents;
- the collateral consequences of arrests, summonses, court involvement, and out-of-school discipline for students including immigration, higher education, and housing consequences;
- the Individuals with Disabilities Education Act (“IDEA”), and the protections it affords to students with disabilities; and
- **cultural awareness and competence in working with young people and adults of diverse racial, ethnic, national origin, religious, and language backgrounds, and sexual orientations and gender identities.**

V.4. In addition, all SROs shall be familiar with and trained in restorative justice practices, PBIS, guidance interventions, and other support programs in use by the school. Wherever possible, members of the school community, including school personnel, students, parents, and any other interested party shall be invited to attend SRO trainings and provide feedback on the curriculum.

V.5. Every SRO shall participate in annual in-service professional development with school administrators on this MOU and in the topics listed above.

SROs are not an adequate substitution for student access to trained mental health professionals. Counselors, social workers, and psychologists can build trusting relationships with students and have the necessary professional training to provide supportive services to students. See Cops and No Counselors: How the Lack of School Mental Health Staff is Harming Students (2019), https://www.nyclu.org/sites/default/files/field_documents/030119-acluschooldisciplinereport.pdf.

Research indicates that schools that provide culturally competent training to members of the school community in these identified areas are able to reduce both overall suspensions and racial disparities in discipline. See <https://www.newamerica.org/education-policy/edcentral/new-york-city-teachers-may-get-sought-after-training-culturally-responsive-teaching/>.

The National Association of School Resource Officers (“NASRO”) recommends 40-76 hours of specialized training for new SROs, in addition to police training they have already completed. See <https://nasro.org/training/nasro-training-courses/>.

In New York City, members of the School Safety Division attend 17 weeks (595 hours) of training prior to deployment. Part of this training is provided by the NYC Department of Education (“NYC DOE”). See <https://www1.nyc.gov/site/nypd/careers/civilians/school-safety-agents-training.page>.

The Dignity for All Students Act (“DASA”), adopted by New York in 2010, prohibits bullying, discrimination and harassment of students by their peers and school employees. In addition to becoming familiar with the behaviors explicitly prohibited by DASA, we recommend SROs be trained on the school’s protocol for reporting alleged harassment, bullying, and discrimination. See N.Y. EDUC. LAW § 10 et seq. (2012).

Furthermore, the antidiscrimination protections in the New York State Human Rights Law apply to public schools, so SROs should also be trained on the prohibited types of discrimination. See Governor Cuomo Signs Legislation Extending Anti-Discrimination Protections to Cover Public Schools (July 25, 2019), <https://www.governor.ny.gov/news/governor-cuomo-signs-legislation-extending-anti-discrimination-protections-cover-public-schools>; see also N.Y. EXEC. LAW § 290 et seq. (2019).

V.6. Recognized experts in each field shall conduct all trainings described above.

V.7. The training plan for both District employees and Police Officers must include procedures for notifying families about any Police Officer or Federal Immigration Agent's effort to gain information about students and families.

VI. RESPONDING TO STUDENT MISBEHAVIOR

VI.1. School officials are responsible for fostering a positive school climate, administering the Code of Conduct, and responding to normative child and adolescent behaviors.

VI.2. School administrators have the responsibility to ensure consistent enforcement of school rules and policies. Police Officers and SROs shall not act as school disciplinarians, as enforcers of District Code of Conduct violations, nor may they act in place of school officials for classroom management, or in place of school social workers, counselors, psychologists, or psychiatrists on school property or at school-sponsored events.

VI.3. Police Officers and SROs shall not use their police powers to intervene in the following normative child and adolescent behaviors. **School officials shall not request the intervention of Police Officers or SROs when responding to the following normative child and adolescent behaviors:**

- i. disorderly behavior;
- ii. behaving in a rude or disruptive manner;
- iii. making excessive noise;
- iv. hanging out in school hallways or bathrooms;
- v. violating the dress code or uniform policy;
- vi. failing or refusing to provide identification upon request;
- vii. profane, obscene, vulgar, or lewd language, gestures, or behavior;
- viii. use of racial or other slurs;
- ix. bullying, verbal abuse, and/or harassment;
- x. defying school officials, SROs, or Police Officers;
- xi. cutting class, tardiness, and unexcused absence;
- xii. leaving school without permission;
- xiii. entering or attempting to enter a school building before or after school hours¹ (not breaking and entering);
- xiv. vandalism and/or graffiti in a school building; and
- xv. possession or use of a prohibited item under the Code of Conduct that does not violate the N.Y. Penal Law (e.g., cell phones) and is not a weapon as defined in the Code of Conduct.

¹The principal or designee should be contacted if there is a question about a student's permission to enter.

Some resources available to schools are:

- Strategies for Youth (<https://strategiesforyouth.org/>)
- National Initiative for Building Community Trust and Justice (<https://trustandjustice.org/>)
- Center for Children's Law and Policy (<https://www.cclp.org/>)
- GLSEN (<https://www.glsen.org/>)
- National Center for Youth Opportunity and Justice (<https://nceoj.policyresearchinc.org/>)
- NY Division of Criminal Justice Services (<https://www.criminaljustice.ny.gov/>)
- National Association of School Resource Officers (<https://nasro.org/>)

School administration can effectively respond to all of these behaviors without SRO or police intervention. Schools and students are not safer when SROs or police intervene in normative, non-dangerous child and adolescent behaviors like these. Unnecessary interactions between students and police can escalate quickly, resulting in overly harsh punishments, like suspension, student handcuffing, or arrest. No young person should be saddled with a criminal record for making a mistake. See, e.g., Alex Zimmerman, *NYC Announces Its First Overhaul of How Police Operate Inside Schools Since Mayor Giuliani* (June 20, 2019), https://chalkbeat.org/posts/ny/2019/06/20/nyc-announces-its-first-overhaul-of-how-police-operate-inside-schools-since-mayor-giuliani/?utm_source=newsletter&utm_medium=email&utm_campaign=cb_bureau_ny.

Surprisingly, this situation leads to many unnecessarily escalated situations between students and SROs, merely because a student forgot something, is waiting for a friend, or is getting help before or after class. Students who are enrolled in a school, even if they are currently suspended, should not be treated as trespassers on school grounds. School personnel should work with SROs to ensure that students are not wrongfully sent away, and that young people feel like they belong and are welcome in their school. See NYCLU & Student Safety Coalition, *Education Interrupted: The Growing Use of Suspensions in New York City's Public Schools 11* (2011), https://www.nyclu.org/sites/default/files/publications/Suspension_Report_FINAL_noSpreads.pdf.

VI.4. School administrators shall respond to the above student behaviors pursuant to the District’s Code of Conduct. These behaviors shall not be treated as violations of the criminal law to be referred to SROs, Police Officers, or the court system.

VI.5. The principal/designee shall make the final determination of how to respond to student behavior, taking the following factors into consideration:

- i. the student’s age and maturity;
- ii. the student’s [Individualized Education Program \(“IEP”\)](#), [Behavioral Intervention Plan \(“BIP”\)](#) and [504 Accommodation Plan](#), if applicable;
- iii. the student’s mental, medical, and emotional needs;
- iv. the student’s disciplinary record (including the nature of any prior misbehavior, the number of prior instances of misbehavior, and the disciplinary and guidance intervention measures applied for each);
- v. the nature, severity and scope of the behavior;
- vi. the circumstances/context in which the conduct occurred;
- vii. the frequency and duration of the behavior; and
- viii. the number of persons involved in the behavior.

VI.6. Whenever responding to alleged student misbehavior, school officials shall seek to de-escalate the situation. If de-escalation is not required, school officials shall make every reasonable effort to respond through guidance interventions, restorative practices, and other means, utilizing the least severe, appropriate disciplinary response, if any disciplinary action is warranted.

These factors are commonly used in codes of conduct and school discipline guidelines to ensure that responses to misbehavior are lawful, fair, age-appropriate, and effective. See, e.g., U.S. Department of Education, *Guiding Principles: A Resource Guide for Improving School Climate and Discipline*, <https://www2.ed.gov/policy/gen/guid/school-discipline/guiding-principles.pdf>.

An IEP is a written statement that outlines the plan for providing an educational program for a student with disabilities based on that student’s unique needs. See, e.g., NYC DOE, *IEP*, <https://www.schools.nyc.gov/special-education/the-iep-process/the-iep>.

A BIP is a plan based on the results of a functional behavioral assessment that includes a description of a student’s behavior and intervention and prevention strategies that include positive behavioral supports and services for the student. For a student with an IEP, the BIP is part of the IEP. See NYSED, *Behavioral Intervention Plans*, <http://www.p12.nysed.gov/specialed/publications/topicalbriefs/BIP.htm>.

A 504 Accommodation Plan refers to the document a school’s 504 Team creates for a child who is eligible for Section 504 accommodations. Section 504 of the Rehabilitation Act of 1973 is a federal law that protects the rights of people with disabilities in any program or activity that receives federal financial assistance, including students with disabilities. Section 504 ensures that students with certain disabilities can participate in school programming activities. See, e.g., NYC DOE, *504 Accommodations*, <https://www.schools.nyc.gov/school-life/health-and-wellness/504-accommodations>

When SROs are adequately trained to deescalate situations, disruption to the individual student’s education is minimized, the chance of injury to students, staff, and SROs themselves is minimized, and other students have the benefit of seeing conflict resolution modeled in a real-world situation. See, e.g., Stephen Sawchuk, *School Police Operations to Get an Overhaul in Two Big-City Districts* (2019), <https://www.edweek.org/ew/articles/2019/07/03/school-police-operations-to-get-an-overhaul.html>.

VI.7. Appropriate disciplinary actions should always minimize disruption to student education and promote the development of a positive school climate.

VI.8. Where a student exhibits a serious emotional, psychiatric, or potential self-harm issue that requires immediate attention, school officials should make every effort to de-escalate the situation. School officials should also make every effort to ensure the student's safety and emotional needs are met without involving police or SROs.

Any response by school officials, police, or SROs must include consideration of the student's IEP, BIP, and 504 Accommodation Plan, if applicable. Students should not be restrained or be subject to physical force by Police Officers or SROs. In these situations, the parent should be contacted immediately. Students who are not injured or experiencing a dangerous condition should not be transferred to Emergency Medical Services without parental notification.

The New York State Attorney General and NYSED have recently issued guidance clarifying that school districts in New York are required by law to ensure that every student has access to a safe and supportive learning environment, free from harassment, bias, or discrimination. Existing law requires districts to comply with due process requirements and not discriminate against students in the disciplinary process. Available at <http://www.p12.nysed.gov/sss/documents/oag-sed-joint-guidance-school-discipline.pdf> (Aug. 2019).

The NYC Mayor's Leadership Team on School Climate and Discipline recommends reducing the number and length of student suspensions to minimize disruption to learning and engagement in the school community. See https://www1.nyc.gov/assets/sclt/downloads/pdf/SCLT_Report_7-21-16.pdf.

It is not appropriate to rely on police or emergency services to respond to the needs of a child in emotional crisis, unless there is a serious and immediate safety risk. This practice, sometimes called "EMS-ing" a student, can traumatize children and degrade trust between students and adults in the school. Data shows that Black children in crisis are far more likely to be handcuffed by police than white children. See *LSNYC Files Lawsuit on Behalf of Schoolchildren Unlawfully Sent to ERs for Alleged Behavior Issues* (2013), <https://www.legalservicesnyc.org/news-and-events/press-room/786-lsnyc-files-lawsuit-on-behalf-of-schoolchildren-unlawfully-sent-to-ers-for-alleged-behavior-issues>.

In 2014, the New York City Department of Education settled a lawsuit with the families of children whose schools sent them to hospital emergency rooms for disruptive behavior. *T.H. et al. v. Fariña, et al.*, 13 Civ. 8777 (S.D.N.Y. Dec. 15, 2014).

Schools should have a protocol in place for when a child with a BIP or IEP engages in potentially criminal conduct. As a best practice, the principal/designee should develop a crisis intervention plan in coordination with the school's IEP Team so that it is clear to all parties who will take lead in a situation where a student with disabilities exhibits behavior that is the subject of a BIP. See, e.g., NYC DOE Regulation of the Chancellor A-411 (2015), <https://pwsauth.nycenet.edu/docs/default-source/default-document-library/a-411-english>; see also 34 C.F.R. § 300.321 (2007).

VI.9. In no circumstance should 911 be called or employed as a disciplinary response or disciplinary measure because of a student’s behavior. 911 should not be used as an alternative to de-escalation strategies, when those strategies can safely be used.

VII. INTERVENTIONS BY MEMBERS OF THE [NAME] LAW ENFORCEMENT AGENCY & SCHOOL RESOURCE OFFICERS

VII.1. Police Officers and SROs are responsible for responding to serious criminal law matters only where there is a clear and present danger of serious physical injury to a student or other member of the school community.

VII.2. Police Officers and SROs shall not arrest students at school for alleged non-school related offenses.

VII.3. Police Officers and SROs shall not respond to and are not responsible for routine disciplinary matters involving students. In the event that an SRO witnesses a student violating school rules, the SRO’s primary responsibility shall be to inform a relevant school official.

This regulation was adopted by the New York City Department of Education to ensure that nonemergency behavioral issues are handled in the school. NYC DOE Regulation of the Chancellor A-411 (2015), <https://pwsauth.nycenet.edu/docs/default-source/default-document-library/a-411-english>.

Through decades of advocacy on behalf of students in New York schools, we’ve heard countless stories of SROs unnecessarily policing students for exhibiting normative child and adolescent behavior that should be handled by school officials. One student was handcuffed and arrested for drawing on a school desk with an erasable marker. Another was body-slammed to the ground by SROs after a principal searched her and found a bottle of orange juice, which was supposedly prohibited by District policy. And another was handcuffed and arrested for trying to walk down a school hallway to pick up her younger sister to walk her home.

Schools and students are not safer when SROs or police involve themselves in non-serious matters that unnecessarily expose a young person to the risk of involvement with the criminal legal system, so we recommend that SROs and police in schools only respond to serious criminal law matters when there is a clear and present danger of serious physical injury.

If students are alleged to have committed a crime unrelated to school, police should not use the school as a convenient location to arrest or interrogate the student. This practice was prohibited by New York City in its 2019 MOU because it encourages young people to skip school, and because arrests in school disrupt everyone’s education and can create a negative and possibly chaotic experience for other students. Matt Barnum, *New Studies Point to a Big Downside for Schools Bringing in More Police* (Feb. 14, 2019), <https://www.chalkbeat.org/posts/us/2019/02/14/police-schools-research-parkland/>.

VII.4. Police Officers and SROs shall not confiscate student belongings that are not defined as weapons in the Code of Conduct.

Schools sometimes rely on police to confiscate contraband that is not dangerous or unlawful, including cell phones, electronics, food, hats, hygiene products, medicines, and other items. While a school can ban use and possession of distracting or disruptive items, it is an inappropriate use of police authority to confiscate these items and creates unnecessary conflict with students and damages their trust in law enforcement. See, e.g., NYCLU & Student Safety Coalition, Education Interrupted: The Growing Use of Suspensions in New York City's Public Schools 16 (2011), https://www.nyclu.org/sites/default/files/publications/Suspension_Report_FINAL_noSpreads.pdf.

VII.5. Although some student behavior may meet the technical definition of a crime or violation under New York law, it is inappropriate to subject students to criminal legal consequences for normative child and adolescent behaviors. The School administration will respond to these as normative child and adolescent behaviors, and students shall not be arrested or subject to criminal prosecution for the following offenses:

- i. Disorderly Conduct (N.Y. PENAL LAW § 240.20);
- ii. Harassment (N.Y. PENAL LAW § 240.26);
- iii. Graffiti (N.Y. PENAL LAW § 145.60);
- iv. Criminal Mischief (N.Y. PENAL LAW § 145.00); and
- v. Obstructing Governmental Administration (N.Y. PENAL LAW § 195.05) or Resisting Arrest (N.Y. PENAL LAW § 205.30) when the underlying offense is listed above or is a behavior listed in paragraph VI.3.

School administration can effectively respond to the behaviors that form the basis of summonses issued for these violations. Schools and students are not safer when SROs or police intervene in normative child and adolescent behavior. School administration, which is responsible for the management of school discipline, is best equipped to respond to these behaviors as school infractions. NYCLU, Criminalizing the Classroom: The Over-Policing of New York City Schools (2007), https://www.nyclu.org/sites/default/files/publications/nyclu_pub_criminalizing_the_classroom.pdf.

VII.6. Under no circumstance shall a summons be issued or an arrest be made of a student on school grounds or at a school-sponsored event based solely on a non-criminal violation of the N.Y. Penal Code or Code of Conduct.

VII.7. In order to arrest a student, a Police Officer or SRO must have: (1) probable cause to believe that the student has committed a misdemeanor or felony that is not conduct listed in paragraph VII.5., and (2) the agreement of the principal that a formal arrest is necessary to preserve student safety.

VII.8. In situations where a warrant directs that an arrest of a student be carried out at school, the execution of the warrant shall be planned in conjunction with the principal/designee. Police Officers, SROs, and school officials shall make every effort to respect students' privacy rights. Absent emergency circumstances, the warrant shall not be executed in a public location such as a classroom, hallway, or cafeteria, to minimize disruption and exposure to other students.

Arrests in school take students away from their lessons, teachers, and peers, and subject them to humiliation and frustration. It also contributes to disruption and a culture of fear and mistrust among other students. Absent emergency circumstances, students should not be arrested or escorted in view of other students. NYCLU, Criminalizing the Classroom: The Over-Policing of New York City Schools (2007), https://www.nyclu.org/sites/default/files/publications/nyclu_pub_criminalizing_the_classroom.pdf.

VII.9. When Police Officers or SROs are executing the arrest of a student, school officials shall immediately contact the students' parent. Police officers and SROs shall not transport a student to a police precinct without the express consent of the students' parent.

VII.10. Students need to feel safe in school. Physical force should never be used against students except in those circumstances where there is a clear and present danger of serious physical injury.

VII.11. SROs shall not be armed with firearms or nonlethal weapons, including TASERS and pepper spray.

The New York State Education Department has long maintained a position that law enforcement officers may not remove a student from school property or interrogate a student without the consent of the student's parent except in the very limited situation when law enforcement officers have a valid warrant or when a crime has been committed on school property. See also N.Y. FAM. CT. ACT § 305.2 (2010); Matter of Jimmy D., 15 N.Y.3d 417 (2010).

Given the diverse arrangements school districts across New York have with SROs, some police in schools are certified law enforcement officers, and as such are equipped with these weapons and more. In an effort to reduce force used against students, we recommend that the majority of school officers not regularly carry these weapons.

In New York City, School Safety Officers do not carry weapons. Other school districts across the state also employ unarmed security. See, e.g. Meghan Finnerty, *Hilton District Nixes Plan to Arm School Security Guards* (Oct. 24, 2018), <https://www.democratandchronicle.com/story/news/local/communities/2018/10/24/hilton-school-district-nixes-plan-arm-security-guards/1749293002/>.

Even some TASER manufacturers warn that these weapons should not be used on children because they "increase the risk of death or serious injury." See Rebecca Klein, *Set to Stun* (Aug. 11, 2016), <https://hechingerreport.org/set-to-stun/>; see also NYCLU, *Taking Tasers Seriously: The Need for Better Regulation of Stun Guns in New York* (2011).

VII.12. Under no circumstance shall a Police Officer or SRO use mechanical restraints on students for purposes of administrative convenience, punishment, or de-escalation. Mechanical restraints include but are not limited to: metal, plastic, or Velcro handcuffs or shackles; restraint chairs; helmets; prone or face-down restraints; or the act of being physically locked in a room. To determine if it is appropriate to use mechanical restraints, the Police Officer or SRO must take into consideration the safety of the student, the Police Officer or SRO, and other members of the school community; the age and physical stature of the student; the type of offense alleged and whether weapons were used; the presence of the student's parent and/or school employees; the number of students being arrested; the judgment of the principal or designee; and the student's demeanor.

VII.13. Under no circumstances shall a Police Officer or SRO use aversive behavioral interventions, such as pepper spray and other noxious sprays, or pain or pressure point compliance devices or other types of painful or intrusive stimuli.

VII.14. For children with disabilities, the principal/designee, in collaboration with the school's IEP Team, shall develop an agreed upon response when a child's behavior is a manifestation of their disability. Whenever they have knowledge of a student's disabilities and accommodations, **Police Officers and SROs shall consider the student's disabilities in interactions with the student.**

Physical restraints cannot be used as a substitute when more appropriate behavioral interventions are available. 8 N.Y.C.R.R. § 200.22(d).

Excessive and inappropriate use of restraints by police in schools, especially on younger children, has been the subject of litigation across the country and causes damage to police-community relationships. Handcuffs should never be used when a student is not under arrest, and even then, police and school officials should use common sense in determining whether handcuffs are necessary for the safety of the student and others.

See also Joanna Rothkopf, *New York State Police Handcuff Special-Needs 5-Year-Old* (2015), https://www.salon.com/2015/05/04/new_york_state_police_handcuff_special_needs_5_year_old/; Taryn Finley, *99% of Students Handcuffed in School By NYPD in 2016 Were Black or Latinx* (2017), https://www.huffpost.com/entry/99-of-students-handcuffed-in-school-by-nypd-were-black-or-hispanic_n_5913332ae4b0a58297e17224.

See 8 N.Y.C.R.R. § 19.5(b), 200.22(e) (2019) (prohibiting corporal punishment and aversive interventions and providing program standards for behavioral interventions).

Students' disabilities, special education status, and accommodations provided by the school are confidential pursuant to federal law. See FERPA, 20 U.S.C. § 1232g (2013) *et seq.* (2000). In many cases, a Police Officer working in a school will not have knowledge or information about a student's special needs. However, when the officer knows that information, they should always consider it in their interactions with the student; for example, medical devices, injuries, or sensitive areas on the student's body, aversion to touch, sensory processing disabilities, and many other disabilities can affect how a student responds to instructions or physical contact with an officer. Whenever possible, the officer should defer to specialists in the school who can meet the child's needs.

VIII. QUESTIONING STUDENTS

VIII.1. Absent a clear and present danger of serious physical injury to a member of the school community, Police Officers and SROs shall not question students (including but not limited to students who are suspects) about their involvement in or knowledge of suspected criminal or non-criminal activity unless the following criteria are met:

- i. the student's parent has been given an opportunity to be present and has given consent for the questioning;
- ii. [the student and parent have been properly informed of the student's Miranda rights](#); and
- iii. the questioning occurs at a time in the school day when it will have a minimal impact on the student's learning.

VIII.2. If the parent of a student who is a victim or witness (not a suspect) cannot be reached, Police Officers and SROs may not question the student unless there is a continued threat of clear and present serious physical injury to a member of the school community that warrants questioning, and the principal is notified as soon as possible.

VIII.3. If the parent of any student who is subject to questioning cannot be present, the principal/designee shall remain with the student during the questioning, [or the student may be permitted to request the presence of another adult in the school](#).

VIII.4. Police Officers and SROs shall not ask school officials to question a student for them in an effort to circumvent these protections. Under no circumstance may the principal/designee compel or coerce a student to submit to questioning by Police Officers or SROs.

VIII.4. Police Officers and SROs shall not ask school officials to question a student for them in an effort to circumvent these protections. Under no circumstance may the principal/designee compel or coerce a student to submit to questioning by Police Officers or SROs.

VIII.5. [The Law Enforcement Agency shall provide language assistance services in the form of interpretation, translation, or monolingual conversation for students and parents with a primary language other than English.](#)

VIII.6. Pursuant to the Family Educational Rights and Privacy Act ("FERPA"), student education records shall not be released to law enforcement absent a court order or applicable statutory exception. 20 U.S.C. § 1232g(b)(1) (2013).

The United States Supreme Court, in *J.D.B. v. North Carolina*, 564 U.S. 261 (2011), held that age is relevant for determining whether a person is in police custody and therefore entitled to hearing *Miranda* rights before interrogation. For a summary of this case and what it means, see Nina Totenberg, *High Court: Age Must Be Considered in Interrogation*, NPR (June 16, 2011), <https://www.npr.org/2011/06/17/137236801/high-court-age-must-be-considered-in-interrogation>.

This provision was adopted in New York City's 2019 MOU. It is intended to foster trusting relationships between students and teachers in the school by permitting a student to be supported by any teacher with whom they have a good relationship. A copy of the 2019 NYC MOU is available at https://drive.google.com/file/d/1cWr_oXdguo4u00gCTkOFOi8sFkLyPEyNu/view. For a summary of the NYC MOU's new provisions, see Alex Zimmerman, *NYC Announces Its First Overhaul of How Police Operate Inside Schools Since Mayor Giuliani* (June 20, 2019), <https://chalkbeat.org/posts/ny/2019/06/20/nyc-announces-its-first-overhaul-of-how-police-operate-inside-schools-since-mayor-giuliani/>.

The New York Attorney General recommends that Law Enforcement Agencies that receive federal funds and have populations that require language assistance should use language lines, employ bilingual officers, and utilize language cards to adequately address the language needs and services. See https://ag.ny.gov/sites/default/files/language_access_brochure.pdf.

IX. SEARCHING STUDENTS

IX.1. In order to search students and their belongings, **Police Officers or SROs (1) must have probable cause to suspect that the search will reveal evidence that the student has committed or will commit a criminal offense, and (2) the scope of the search must be reasonably related to the objectives of the search and not excessively intrusive in light of the student's age and sex and nature of the infraction. The principal/designee shall be present during all searches of students. Searches that arise from a metal detector scan are discussed in Section XI.**

IX.2. Police Officers and SROs shall obtain the permission of the principal/designee prior to conducting a search of a student. If such permission is granted, the principal/designee shall immediately notify the student's parents. The principal/designee's permission to search a student is not required when there is a clear and present danger of serious physical injury. In such cases, the principal/designee and the student's parent shall be notified immediately following the search.

IX.3. Wherever possible, when a search will require physical contact with the student, the officer conducting the search shall be of the gender and gender identity and expression preferred by the student.

IX.4. Police Officers and SROs shall not ask school officials to search students or their belongings in an effort to circumvent these protections.

IX.5. Police Officers and SROs may not be present or participate in a search of a student with regard to a suspected discipline issue, including those matters included in paragraph VI.3.

IX.6. Strip searches of students are prohibited. A strip search is any search where a student is directed to remove or lift clothing revealing a part of the body that would normally be covered in school.

While school officials have been held to a reduced 4th Amendment standard because of the unique needs of the school environment (the "reasonable suspicion" standard), this usually only contemplates the role of school officials, without the involvement of law enforcement. The possible consequences of a police search are far more severe than the consequences of a search by a school official. Because New York law endeavors to separate out the severe (and usually permanent) consequences of police action from school discipline practices (meant to be restorative and teach kids how to make better choices), we recommend that police in schools respect the same 4th Amendment rights as police outside of schools and thus utilize the "probable cause" standard.

Pursuant to New York Education Law § 2801-a (10) Police should not be conducting searches of students' persons or their belongings for school discipline purposes.

The Supreme Court has held that in-school strip searches are extreme, intrusive, and degrading, and as such must be supported by equally extreme circumstances. *Safford Unified Sch. Dist. #1 et al. v. Redding*, 557 U.S. 364 (2009). Strip searches can be traumatizing to children and have been the subject of litigation, most recently in Binghamton, New York. See *I.S. et al. v. Binghamton City School District et al.*, No. 3:19-cv-00513 (N.D.N.Y. Apr. 29, 2019). Because of the complex law on this issue and the likelihood of abuse and harm to students, we recommend prohibiting strip searches.

Many school districts, including New York City, prohibit strip searches outright. NYC DOE Regulation of the Chancellor A-432, <https://www.schools.nyc.gov/docs/default-source/default-document-library/a-432-english#:~:targetText=It%20sets%20forth%20the%20standards,individually%20and%20by%20metal%20detectors.&targetText=This%20regulation%20supersedes%20and%20replaces,from%20unreasonable%20searches%20and%20seizures>.

X. STUDENT PRIVACY

X.1. Absent a health or safety emergency, a District principal/designee shall not release information from a student's education records except pursuant to a court order or lawfully issued subpoena, on the informed written consent of the student's parent or the student if the student is 18 years of age or older, or if the requested information falls under a statutory exception to FERPA. See 34 C.F.R. §§ 99.30-99.39.

X.2. The District shall refuse all voluntary information sharing with law enforcement authorities, including Federal Immigration Authorities, to the fullest extent possible under the law.

X.3. Certain categories of information about a student or their family members are deemed sensitive and confidential, and shall not be shared with any non-school officials for any non-educational purpose absent parental consent or a valid court order. Sensitive and confidential information includes, but is not limited to:

- i. Actual or perceived national origin;
- ii. Actual or perceived immigration or citizenship status, including a student's social security number or information contained in a student's passport, birth certificate, or residency or citizenship-related documents;
- iii. Actual or perceived religion;
- iv. Actual or perceived gender or gender identity or expression;
- v. Actual or perceived sexual orientation;
- vi. Records of criminal allegations, arrests, convictions, or adjudications;
- vii. School discipline records;
- viii. Health or medical information;
- ix. Status as a recipient of public assistance; and
- x. All information included in a student's household's income tax records.

X.4. The District shall not initiate communication with any Law Enforcement Agency, including any Federal Immigration Enforcement Agency, regarding a student's or family member's "sensitive and confidential" information described above.

X.5. The District and its SROs shall not enter into agreements to share student information with local law enforcement or Federal Immigration Authorities except as required by law.

X.6. If a District principal/designee receives a subpoena for student records, including an ICE Administrative Subpoena, they must immediately notify the District's General Counsel to make a determination whether to grant or refuse access to the records based on the District's general policy against sharing student records for any purpose that is not education-related. Upon receipt of any subpoena for student records, including an ICE Administrative Subpoena, the principal/designee must immediately notify the student's parent.

Under New York State and federal law, school districts are prohibited from the unauthorized release of students' personally identifiable information. See FERPA 20 U.S.C. § 1232g (2013) et seq.; 34 C.F.R. § 99 et seq.; N.Y. EDUC. LAW § 2-d (2015).

The New York Attorney General and NYSED have issued guidance that clarifies that an SRO's access to or disclosure of a student's educational records may violate FERPA and jeopardize the district's federal funding. Available at <http://www.p12.nysed.gov/sss/documents/oag-sed-joint-guidance-ice-sros-in-schools.pdf> (Aug. 2019).

Under New York and federal law, school districts are prohibited from the unauthorized release of students' personally identifiable information. See 20 U.S.C. § 1232g et seq.; 34 C.F.R. § 99.1 et seq.; N.Y. EDUC. LAW § 2-d (2015).

While federal law requires the school to obtain parental consent before releasing student information, the school is allowed to release student information to comply with a lawfully issued subpoena. See 34 C.F.R. § 99.36.

XI. METAL DETECTORS & SURVEILLANCE TECHNOLOGY

XI.1. No school shall install metal detectors or surveillance equipment without first determining that less intrusive means are unavailable to protect student safety.

XI.2. Metal detectors and/or surveillance equipment shall not be installed in a school except at the request of the principal and after members of the school community, including school personnel, students, parents, and any other interested parties have been given notice and an opportunity to offer their views. Members of the community shall be given the opportunity to submit comments on the proposal to install such equipment to be kept on file at the school and the District.

XI.3. **The purpose of metal detector scanning is only to uncover weapons.** Cellular phones, electronic devices, food, personal care items, and school supplies shall not be confiscated based on metal detector scanning.

XI.4. Metal detectors shall be accompanied by clear signage, using text in appropriate languages and graphics, explaining what students should do and expect, including if they should remove belts or shoes. School officials shall ensure the availability of sufficient dressing areas for students before and after the scanning process.

XI.5. School officials and SROs shall make all necessary efforts to expedite the metal detector scanning process to avoid unnecessary delays and loss of class time. At least one school administrator shall be present at the metal detector during all times that metal detector scanning takes place and shall play an active role in de-escalating any conflicts between students and/or SROs.

XI.6. Students shall not be marked tardy as a result of delays in the scanning process, and must be allowed to make up any missed work.

XI.7. Students waiting to pass through metal detectors should not be made to stand outside in excessive cold, heat, or in inclement weather. Where students would be required to stand outside in harsh weather conditions they should be allowed to stand inside the building in line. Whenever there are students waiting in line at a metal detector, additional personnel shall be deployed to expedite the process.

We do not recommend that schools use metal detector screening except in exigent and limited circumstances. Specifically, metal detectors should only be used as a short-term tool, when there is data or other evidence to indicate they will have a significant positive effect on safety. Permanent daily metal detector scanning is damaging to school climate and to student-adult relationships. The Federal Commission on School Safety, created after the Parkland shooting found that the “impact of...metal detectors on school violence is questionable, with at least one study concluding that metal detectors have no apparent effect on reducing violence on school grounds.” <https://www2.ed.gov/documents/school-safety/school-safety-report.pdf>.

In New York City, where metal detectors are in about 90 schools, they are responsible for recovery of only 1/3 of dangerous items. Much more commonly, it is students working with trusted adults that leads to the confiscation of dangerous items. Selim Algar, Numbers Show Increased Weapons Busts at NYC Schools, NY Post (Apr. 29, 2019), <https://nypost.com/2019/04/29/numbers-show-increased-weapons-busts-at-nyc-schools/#:~:targetText=Weapons%20busts%20in%20city%20schools.%2D2014%2C%20the%20figures%20show.>

The use of metal detectors should be continually monitored and evaluated for its impact on school climate, and the school should work to put in place more effective long-term strategies.

Pursuant to New York Education Law § 2801-a(10), school discipline is the province of school employees, not police.

Schools are permitted to use metal detectors to uncover weapons, but not other items. Particular students may not be searched, in addition to passing through a metal detector, unless there is reasonable suspicion that the student is in possession of a weapon. See NYC DOE Regulation of the Chancellor A-432 (procedures governing the use of metal detectors to ensure students are protected from unreasonable searches and seizures).

XI.8. In schools where fixed metal detectors and/or surveillance equipment are in use, their effectiveness and continued use shall be reviewed on at least an annual basis. Representatives from the school's administration and faculty, SRO Program, student body, parent organizations, and interested members of the community shall conduct the review. Data on the use of metal detectors shall be provided bi-annually pursuant to Section XII.5 of this Agreement. The review shall include an analysis of the impact of the metal detectors on student attendance, retention, and drop-out rates, school climate, and class time. Special consideration shall be given to whether certain student populations have been disproportionately impacted by the metal detectors.

XI.9. After such review, if it is determined that the use of such equipment is negatively affecting school climate (e.g., increase in student tardiness, decrease in student attendance) and that less intrusive means are available to protect student safety, the use of fixed metal detectors and/or surveillance equipment shall be discontinued.

XI.10. After the annual review, metal detectors and/or surveillance equipment shall be removed from a school when the principal has decided that they are no longer needed. Once the principal decides the metal detectors and/or surveillance equipment are no longer needed, the detectors and equipment will be removed within 30 calendar days.

XI.11. Metal detectors at all schools in the District shall be calibrated to the same sensitivity level (to be determined by the District in consultation with the Law Enforcement Agency). The sensitivity shall be set at a level that does not expose students to unnecessary intrusions of their privacy.

XI.12. The District will not obtain, retain, access or use any **biometric surveillance system** that collects Biometric Records, including facial recognition technology, and will not respond to any requests by a Police Officer or SRO or other law enforcement entity to employ such technologies or share information obtained from such technologies.

Biometric surveillance is the use of a biological characteristic such as facial recognition or fingerprints to monitor behavior. Though not in widespread use in New York, biometric surveillance is inappropriate in a school setting.

Facial recognition technology has been found to be so inaccurate, biased, and harmful that its use, especially on young people, is unethical. See <https://www.theverge.com/2019/6/27/18761084/axon-taser-facial-recognition-ban-ethics-board-recommendation>. It has been banned by the City of San Francisco for all purposes. See <https://www.nytimes.com/2019/05/14/us/facial-recognition-ban-san-francisco.html>.

In addition, the maintenance of a biometric surveillance database exposes school districts to liability for hacking, sharing, and misuse of the most sensitive data. There is currently NY state law pending that would create a moratorium on the use of this technology due to the risks involved.

XII. RECORDKEEPING, ACCOUNTABILITY & TRANSPARENCY

XII.1. SROs shall provide monthly written reports to school administrators detailing all activities conducted during the month. Daily activity reports shall be maintained and summarized in these monthly reports. SROs shall also provide a comprehensive annual report to be reviewed by the principal.

XII.2. The principal/designee shall notify the Superintendent and enter a written incident report the same day of any law enforcement activity, including immigration enforcement, involving a District student. The principal/designee shall document any such activity when any Law Enforcement Agency: requests access to school property, student records, or students; interviews a student on school grounds; or detains a student on school grounds.

XII.3. Incident reports created by the principal/designee must be maintained by the school and accessible to students and their parents as an education record and must be stored in such a way that will protect the individual student's identity and privacy.

XII.4. All incident reports must record the school site, nature of incident or offense, race, ethnicity, gender and gender identity or expression, disability (if applicable), age of the student or students involved in the incident, and whether the incident was or was not school-related.

XII.5. Data on handcuffing, arrests, and summonses of students in each school and the use of surveillance technologies and metal detectors shall be provided bi-annually to parents and community members at District board of education meetings. The data must be disaggregated by age, race, gender, grade level, special education status, and English language proficiency, and structured in a way that will protect the identities of individual students.

XII.6. Both the District and the Law Enforcement Agency shall provide the public with the following information by posting the information on the agencies' websites, updated on an annual basis unless stated otherwise:

- i. Regulations, policies, and protocols governing the SROs, including any changes made in the prior year;
- ii. Training materials for SROs;
- iii. Budget information for all aspects of the SRO program, including SRO training costs, and sources of funding and expenditures;
- iv. Number of SROs deployed to each school in the District;
- v. Number of times that any Police Officer or SRO used mechanical restraints on students during the prior school year, including:
 - a. a description of the student's behavior and actions taken by the Law Enforcement Agency and District; and
 - b. the student's age, race, gender, grade level, special education status, English language proficiency, and socioeconomic status; and
- vi. Number and types of complaints against SROs, including their assigned school at the time of the complaint, and the disposition of each complaint.

Providing information on the activities of police in schools, and school safety in general, is important for maintaining parent and student trust with school districts.

In New York City, a local law known as the Student Safety Act, N.Y.C. Admin. Code § 14-152, mandates quarterly public reporting by the NYPD on school safety and disciplinary issues, including incidents involving arrests and suspensions of students. This provides the public with raw data to study the impact of disciplinary practices. See <https://www.nyclu.org/en/student-safety-act>.

Nationally, nearly all school districts provide similar information to the US DOE Civil Rights Data Report every two years. It is likely your school district is already collecting this information and it would not be burdensome to also report it locally in a format that is useful to parents and students. To access this information, you can look it up online by going to this website: <https://ocrdata.ed.gov/>.

XII.7. Students, parents, administrators, and school personnel who believe that any District officials are violating the terms of this Agreement, or that any SRO or Police Officer has engaged in misconduct, [may file a complaint with the District Superintendent](#) within 120 days of the alleged violation. The Superintendent will investigate the complaint. Within two calendar days of receiving a complaint, the District will acknowledge receipt of the complaint in writing, and in writing also provide anticipated actions and timeline for addressing the allegations of the complaint. The Superintendent shall report to each complainant the results of the investigation no later than 20 calendar days after acknowledging receipt of the complaint and if any new information is obtained.

XIII. PROHIBITION AGAINST IMMIGRATION ENFORCEMENT ON SCHOOL CAMPUS OR AT SCHOOL EVENTS

XIII.1. [The District has a constitutional obligation to provide a free public education to all students, including immigrant and noncitizen students.](#) To satisfy this obligation, the District shall not enter into agreements with state or local law enforcement agencies, or any Federal Immigration Authority, to use District resources, including personnel, to conduct or support immigration enforcement activities.

Generally, students and parents are knowledgeable about how to navigate their school district's hierarchy if they are having a problem at school. But school-police partnerships can be less transparent, and this can lead to the district missing important information about its SROs' performance and relationships with students. We recommend districts adopt a transparent and responsive system for investigating and tracking complaints of SRO misconduct in order to maintain a healthy system and increase trust across the board. See e.g., State Ed Adopts New Rules for SRO Contracts (2019), <https://dailygazette.com/article/2019/08/01/state-ed-adopts-new-rules-for-sro-contracts>.

The AG and NYSED have issued three guidance letters regarding the rights of immigrant students in New York public schools and the role of SROs and immigration agents.

The first letter clarifies that all school districts have a duty to safeguard the rights of all students, including undocumented children, who have the right to receive a public education. Available at https://ag.ny.gov/sites/default/files/2017-02-15_oag-sed_letter_re_ice_2.25.17_final.pdf (Feb. 2017).

The second letter outlines a district's duty to safeguard the rights of all students to receive public education and clarifies that NYSED guidance prohibits law enforcement from interrogating or removing a student from school property without parental consent. Available at <http://www.p12.nysed.gov/sss/documents/oag-sed-joint-guidance-school-discipline.pdf> (Aug. 2019).

The third letter clarifies the role of SROs in safeguarding student rights. The AG and NYSED warn that an SRO's detention or interrogation of a student to determine the student's immigration status may expose the school district to a lawsuit. The guidance also clarifies that an SRO's access to or disclosure of a student's educational records may violate FERPA and jeopardize the district's federal funding. Available at <http://www.p12.nysed.gov/sss/documents/oag-sed-joint-guidance-ice-sros-in-schools.pdf> (Aug. 2019).

The United States Supreme Court held in *Plyler v. Doe* that school districts must provide a free public education to all students regardless of their citizenship status. 457 U.S. 202 (1982). Any action by the school that creates a chilling effect denying access to public education on the basis of a student's citizenship status violates the Constitution.

XIII.2. Police Officers and SROs shall not: hold individuals in custody on detainers issued by Federal Immigration Authorities, respond to notification or transfer requests from Federal Immigration Authorities, make arrests based on civil immigration warrants, or otherwise facilitate the use of campus facilities for immigration enforcement purposes.

XIII.3. Any requests by Federal Immigration Authorities and non-SRO law enforcement for access to school property, student information, or school events shall be immediately forwarded to the District's Superintendent and the District's General Counsel. The District Superintendent and District General Counsel shall review the request and make a decision on whether facilitating such access will conflict with District policies and compliance with the law.

XIII.4. When law enforcement officers, including Federal Immigration Enforcement Agents, request access to a school site or to interview a student for a non-school-related purpose, the District Superintendent and/or District General Counsel shall ask for: (1) the officer's credentials; (2) the reason for the request; and (3) a warrant signed by a federal or state judge. If officers are unable to provide such written authority and warrant, the Superintendent and/or General Counsel shall deny their request for access to District property unless otherwise required by law, as determined by the General Counsel. If the law enforcement officers satisfy the above criteria, the school site principal or his/her designee shall monitor the officers' investigation and ensure the officers are not given access to information, records, and areas beyond that specified in the warrant.

XIII.5. The District shall deny all requests by law enforcement officers, including Federal Immigration Authorities, for access to a school site or to interview a student regarding non-school-related matters.

The ICE Sensitive Locations policy, which remains in effect, provides that immigration enforcement actions at sensitive locations, like schools, places of worship, health care facilities, and public demonstrations, should generally be avoided (whether the target of that enforcement is a child or a parent), absent formal approval from an appropriate supervisory official or exigent circumstances. See U.S. ICE Policy Number 10029.2, *Enforcement Actions at or Focused on Sensitive Locations* (Oct. 24, 2011), <https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf>; see also ICE, FAQ on Sensitive Locations and Courthouse Arrests (2018), <https://www.ice.gov/ero/enforcement/sensitive-loc>.

This policy has been adopted by the NYC DOE to ensure that students and families feel safe coming to school. See NYC DOE, Letter from the Chancellor on Protecting Immigrant Families (June 2019), <https://www.schools.nyc.gov/school-life/support/supporting-immigrant-families/letter-from-the-chancellor-on-protecting-immigrant-families-june-2019>.

XIV. IMPLEMENTATION OF MOU

XIV.1. Prior to the adoption of this MOU, the [Name] District and [Name] Law Enforcement Agency must affirmatively seek input from stakeholders, including but not limited to, parents, students, school administrators, teachers, collective bargaining units, parent and student organizations, and community members. See N.Y. EDUC. LAW § 2801-a(10) (2019).

XIV.2. Within 90 days of the signing of this MOU, the District Superintendent shall ensure that this MOU is distributed to all District teachers, administrators, and other staff, and that appropriate training regarding the provisions of this MOU and the responsibilities of District employees under the MOU is provided to District employees.

XIV.3. Within 90 days of the signing of this MOU, the [Name] Law Enforcement Agency shall ensure that this Memorandum is distributed to all of its officers, including SROs, and that appropriate training regarding the provisions of this Memorandum and their responsibilities under the MOU has been provided to the officers.

XIV.4. The District Superintendent shall create in-language versions of the Memorandum and distribute it to all District students and families.

XV. DURATION OF MOU

XV.1. This MOU shall become effective immediately upon execution by signature and remain effective for five calendar years. Thereafter, all Parties must renew it annually. Such renewal may be undertaken only after at least one public hearing that provides for the participation of the school community, including school personnel, parents, students, and any other interested parties.

XV.2. Any extension, amendment, or cancellation of this document shall be completed only after at least one public hearing that provides for the participation of the school community, including school personnel, parents, students, and any other interested parties. Termination or failure to renew by any Party shall eliminate the presence of SROs at [Name] District schools.

XVI. SIGNATURES

[Superintendent Name]
Superintendent,
[Name] School District

[Police Commissioner Name]
Commissioner,
[Name] Law Enforcement Agency

Date: [Date]
[City], New York