pennsylvania
DEPARTMENT OF EDUCATION

Model Memorandum of Understanding

Memorandum of Understanding
Between

Upper Merion Township Police Department

(Law Enforcement Authority)

and

Agora Cyber Charter School

(School Entity)

August 2, 2022

(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):

Upper Merion Township Police Department
175 W. Valley Forge Road
King of Prussia, PA 19406

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

Agora Cyber Charter School
1018 W. 8th Avenue
King of Prussia, PA 19406

B. This Memorandum establishes procedures to be followed when certain incidents – described in Section II below – occur on school property, at any 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. § 1901 *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 13-303-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 Office[1] – 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.

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.

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

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 charged 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 any 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 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 the 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 student 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 program, 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 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 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 and 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 ofservices), 15.6 (relating to parent-initiated 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 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.

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 assume 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. Witness

   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 described 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 that 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 notify the chief school administrator and the office in writing.

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 indicate data, the CEO of Agora and the chief of police will work to reconcile.

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. Describe what modifications have been made to this Memorandum of Understanding. If you have not made any modifications or amended it in any way, please enter "Not Applicable" in the space provided.

C. If changes in state or federal law require changes to the 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

Agora Cyber Charter School
School Entity

Chief Law Enforcement Authority

Upper Merion Township
Police Department
Law Enforcement Authority

Building Principal

Agora Cyber Charter School
School Building

Updated, February 1, 2019