

MEMORANDUM OF AGREEMENT BETWEEN
THE NEW HAMPSHIRE NATIONAL GUARD
AND
THE NH DEPARTMENT OF EDUCATION, OFFICE OF STUDENT WELLNESS
FOR
NATIONAL GUARD COUNTERDRUG SUPPORT

AGREEMENT NUMBER: W912TF-18239-013

This is a Memorandum of Agreement (MOA) between The New Hampshire National Guard (NHNG), and the NH Department of Education, Office of Student Wellness (DOE-OSW). When referred to collectively, the New Hampshire National Guard and the DOE-OSW are referred to as the "Parties".

1. BACKGROUND:

- 1.1. Since 1989, the National Guard, working with law enforcement agencies and community based organizations, has performed interdiction and anti-drug activities in the fight against illicit drugs. Approximately 2,500 Soldiers and Airmen support more than 5,000 agencies at the local, state, and federal levels preventing illicit drugs from being imported, manufactured and distributed.
- 1.2. Drug use prevention and early intervention, in the form of community events, prevention briefings, and assisting in counterdrug strategy development aimed at elementary, middle, and high school students is a vital aspect of the NHNG Counterdrug (CD) mission. Educating youth about the dangers of substance abuse improves youth resiliency and empowers them with the confidence to say no to drugs.

2. AUTHORITIES:

- 2.1. Section 112 of Title 32, United States Code (b)(3), Drug Interdiction and Counter-drug Activities
- 2.2. Department of Defense Instruction (DoDI) 4000.19, Support Agreements, 25 April 2013.
- 2.3. Chief National Guard Bureau Instruction (CNGBI) 3100.01A, National Guard Counterdrug Support, 22 June 2015.
- 2.4. National Guard Regulation (NGR) 5-2/Air National Guard Instruction (ANGI) 63-102, National Guard Interservice/Intragovernmental Support Agreements, 14 October 2010

- 3. PURPOSE:** This Memorandum of Agreement (MOA) sets the policies, procedures, and guidelines for the New Hampshire National Guard (NHNG) in support of the DOE-OSW, and parameters for NHNG Counterdrug (CD) support of the DOE-OSW

mission of drug use prevention and early intervention in the context of student education.

4. RESPONSIBILITIES OF THE PARTIES :

4.1. PLANNED DEPLOYMENT

4.1.1. Section 112 of Title 32, United States Code, authorizes the Secretary of Defense (SECDEF) to provide funds to States that receive approval from the SECDEF for plans of National Guard Counterdrug Support to Federal, State and local law enforcement agencies (LEA) and community-based organizations (CBO), which participate in drug interdiction and counterdrug activities. Upon coordination, NHNG personnel and equipment may be deployed on approved missions to support Counterdrug activities of Federal, State and local LEAs and CBOs.

4.1.2. NHNG CD personnel involved in Counterdrug Support Operations are governed by Federal and State law, DoD policy, and National Guard regulatory guidance (CNGBI 3100.01A). The NHNG will provide Counterdrug support to the DOE-OSW in Title 32 or State Active Duty status. National Guard personnel ordered to duty in Title 32 or State Active Duty status may not perform duty outside the territorial limits of the United States.

4.1.3. NHNG CD personnel may not perform Counterdrug support duty outside the jurisdiction of the State of New Hampshire without prior approval of the Governor of the State of New Hampshire and coordination of the notice of intent to conduct interstate operations by the Adjutants General (through their respective CDCs). States that support operational CD missions within the borders of other states will, to the extent required by and IAW the laws of the involved states, establish written MOUs/MOAs between the involved states unless such agreements are already in force under existing interstate compacts. Any Counterdrug support duty outside the State of New Hampshire shall be in accordance with Federal and New Hampshire state law, DoD policy, and National Guard regulatory guidance (CNGBI 3100.01A, and NGR 500-2/ANGI 10-801).

4.2. REPORTING PROCEDURES -

4.2.1. The NHNG CDC or designated representative is responsible for all statistical data reporting requirements set forth by National Guard Bureau.

4.2.2. The DOE-OSW is responsible to report all statistics available, to the extent permitted by law, regarding drug reduction strategies and activities related to NHNG CD supported operations. The CDC and DOE-OSW will maintain liaison to ensure timely communications and reporting.

- 4.2.3. NHNG CD personnel are responsible for providing the CDC with statistical results of operational activities for inclusion into required National Guard reports/records in accordance with CNGBI 3100.01A.

4.3. **COMMAND AND CONTROL**

- 4.3.1. The NHNG - The Governor of the State of New Hampshire is the Commander-in-Chief of the New Hampshire National Guard. The Governor exercises command authority through the Adjutant General (TAG). TAG exercises authority over the Counterdrug Coordinator (CDC) through the Director of the Joint Staff.
- 4.3.2. While assigned to the DOE-OSW, NHNG CD personnel will be under the supervision of the senior NHNG CD member at the same location. Unless contrary to federal or state law, or National Guard regulations and policies, NHNG CD personnel will comply with DOE-OSW directives, policies, regulations, and procedures, related to the CD support mission. Failure to adhere to the DOE-OSW policies and procedures shall be grounds for removal from the assignment with the DOE-OSW. NHNG CD personnel requesting leave will coordinate that request with the DOE-OSW point of contact to ensure that the requested leave date does not interfere with DOE-OSW operations, request approval from the senior NHNG CD member at the location or a designated NHNG CD representative, and forward the leave form to the CDC or designated representative for final approval. When NHNG CD personnel are unable to report for duty due to sickness, they will notify their DOE-OSW point of contact and the CD NCOIC or CDC at the NHNG CD office.
- 4.3.3. The commissioner of the department of education, or his designee, is the supervisory authority for operations conducted by the DOE-OSW. Operations as it relates to this MOA will focus exclusively on drug use prevention and early intervention in the context of student education.

4.4. **SCOPE OF OPERATIONS**

- 4.4.1. To provide personnel and equipment in support of the DOE-OSW activities located at the DOE-OSW in New Hampshire and at other locations as operationally dictated.
- 4.4.2. To provide CD support as described in the Governor's State plan and Chief National Guard Bureau Instruction CNGBI 3100.01A and NGR 500-2/ANGI 10-801.
 - 4.4.2.1. Any work not directly supporting drug use prevention and early intervention in the context of student education will be deemed outside the scope of this agreement.

- 4.4.3. To coach, facilitate, train, and support the processes that are best known to have the greatest impact on a community's abilities to address their substance misuse concerns, using military-specific knowledge, skills, and abilities.
 - 4.4.3.1. Asset –based community development and the Strategic Prevention Framework will be the basic components of the teaching models implemented.
 - 4.4.3.2. Variations to this model will be discussed and coordinated through all relevant partners.
- 4.4.4. Using military-specific knowledge, skills, and abilities, to provide specific training to community-based coalitions on best practices for implementing an effective Public Affairs program within their community, specific to their substance misuse concerns and initiatives, in the context of education. This may include developing a strategic communications plan, a crisis communications plan, a media relations plan, and developing key messages that will instill confidence within the community and place the coalition in a better position to educate and motivate the public to change.
- 4.4.5. Each operation and assignment must have a counterdrug nexus that is limited to drug use prevention and early intervention in the context of student education. Any questions regarding scope of the mission or type of the support that NHNG CD personnel may offer to the DOE-OSW should be referred to the CDC.
- 4.4.6. Individual community requests and outcomes from technical assistance provided will be communicated to the state through the designated network as outlined in the state's Strategic Plans. Information will be communicated via email so as to track these communications effectively.
- 4.4.7. The NHNG and DOE-OSW will regularly conduct meetings in order to review technical assistance provided to state and local partners through the program and to review relevant changes and updates to available resources and information.

4.5. **PUBLIC AFFAIRS SUPPORT**

- 4.5.1. The DOE-OSW will be responsible for the dissemination of any mission related information to the news media. Media attention directed toward CD personnel will be referred to the New Hampshire National Guard Public Affairs Officer. The New Hampshire National Guard Public Affairs Officer and other National Guard personnel may only disseminate information regarding its general role in operations and will not disclose any information regarding any specific mission or operations to persons not affiliated with the National Guard or the DOE-OSW. Names of National Guard units and personnel participating in drug enforcement support

operations will not be disclosed to the general public by any member of the DOE-OSW without prior consultation with the New Hampshire National Guard Public Affairs Officer.

4.6. SAFETY

4.6.1. The DOE-OSW and the NHNG shall ensure NHNG CD personnel remain in a support role and shall ensure National Guard personnel are not exposed to any direct law enforcement operations. NHNG Counterdrug personnel will complete and submit to the CDC a DD Form 2977 (Deliberate Risk Assessment) prior to the start of any mission. The DD Form 2977 should identify all risks associated with the mission including daily travel to and from the office location of the DOE-OSW. Safety will remain a top priority at all times for all parties.

4.7. SECURITY CLEARANCE

4.7.1. Upon the DOE-OSW request, NHNG CD personnel considered for assignment to the DOE-OSW shall possess, at a minimum, clearances for access to national security information at the SECRET or INTERIM CLEARANCE level based on a National Agency Check with Inquires (NACI) or more in-depth type of background investigation. This includes personnel to be assigned as criminal analysis and liaison officers. Security approval for members of the NHNG to access the DOE-OSW facilities and information will be provided in accordance with the DOE-OSW security provisions.

4.8. SPECIFIC RESPONSIBILITIES OF THE PARTIES

4.8.1. The NHNG will:

- 4.8.1.1. Perform Counterdrug support missions in support of the DOE-OSW as approved by the U.S. Secretary of Defense within the Governor's State Plan.
- 4.8.1.2. Minimize the turnover of NHNG CD personnel assigned to Counterdrug support functions of the DOE-OSW.
- 4.8.1.3. Participate in team meetings as available for the purpose of increasing and sharing knowledge of current and emerging trends and challenges from the program's perspective.
- 4.8.1.4. Assume full responsibility for salary, benefits, and the administration of personnel records and any other administrative duties of NHNG CD personnel assigned to the DOE-OSW.

- 4.8.1.5. Not charge any direct or indirect costs to the DOE-OSW for administration or implementation of this agreement.
 - 4.8.1.6. Ensure that NHNG CD personnel wear appropriate attire while working in the DOE-OSW office and at other locations as operationally dictated.
 - 4.8.1.7. Screen NHNG CD personnel for Counterdrug support duty in accordance with CNGBI 3100.01A and provide the DOE-OSW their current security clearance status.
 - 4.8.1.8. NHNG CD personnel will provide the CDC with statistical results of operational activities for inclusion into required National Guard reports/records in accordance with CNGBI 3100.01A.
 - 4.8.1.9. Information provided to or gained by the NHNG in connection with DOE-OSW operations will not be maintained by the NHNG or stored in NHNG files or facilities.
 - 4.8.1.10. NHNG CD personnel will not initiate contact with any prosecutor's office.
 - 4.8.1.11. NHNG CD personnel will not seek warrants or permits related to this mission.
- 4.8.2. The DOE-OSW will:
- 4.8.2.1. Ensure that requests for NHNG Counterdrug support under this MOA originate either from the commissioner of the department of education or his/her designee. Counterdrug support will not exceed drug use prevention and early intervention in the context of student education.
 - 4.8.2.2. Submit annual requests at the beginning of September in writing for NHNG Counterdrug support to the New Hampshire National Guard, Attn: Counterdrug Coordinator.
 - 4.8.2.3. Within current and existing division resources, to include office space and computer equipment, provide workspace and equipment necessary for NHNG CD personnel to carry out support duties pursuant to this MOA.
 - 4.8.2.4. As determined by the DOE-OSW and subject to funding availability provide DOE-OSW necessary training for NHNG CD personnel in support of the DOE-OSW Counterdrug operations specifically, drug use prevention and early intervention in the context of student education.

- 4.8.2.5. Upon determination by the DOE-OSW, qualified NHNG CD personnel may be issued identification documentation including, but not limited to, building access or other passes as required to fulfill Counterdrug support duties.
- 4.8.2.6. Maintain all information in support of Counterdrug operations to include written DOE-OSW reports authored by NHNG CD personnel.

4.9. LIABILITY

- 4.9.1. The DOE-OSW and the NHNG acknowledge that the United States is liable for the negligent or wrongful acts or omissions of its agents and employees while acting within the scope of their employment to the extent permitted by the Federal Tort Claims Act (FTCA), 28 U.S.C. 2671-2680.
- 4.9.2. The DOE-OSW also acknowledges that the United States is liable to its employees for workers compensation benefits to the extent permitted by the Federal Employees Compensation Act, 5 U.S.C. 8101-8150.
- 4.9.3. Both parties agree to contact the other party as soon as possible to report damage caused to the equipment of the other. To the extent permitted by the FTCA and other applicable law and regulations, each party acknowledges its liability for damage to equipment of the other party, caused by the actions or omissions of the borrowing party's agents and employees, while acting within the scope of their employment.
- 4.9.4. This MOA is an internal agreement between the DOE-OSW and the New Hampshire National Guard and does not confer any right or benefit on any third person or party, private or public. Additionally, nothing in this MOA is intended to restrict the authority of either signatory to act as provided by law, statute, or regulation, or to restrict the DOE-OSW from enforcing any laws within its authority or jurisdiction.
- 4.9.5. The DOE-OSW will be vigilant in its efforts to ensure that safety is of primary importance in all issues dealing with National Guard personnel and equipment

5. **PERSONNEL:** Each Party is responsible for all costs of its personnel, including pay and benefits, support, and travel. Each Party is responsible for supervision and management of its personnel.

6. GENERAL PROVISIONS:

6.1. **POINTS OF CONTACT:** The following points of contact will be used by the Parties to communicate in the implementation of this MOA. Each Party may change its point of contact upon reasonable notice to the other Party.

6.1.1. For the New Hampshire National Guard:

6.1.1.1. Primary: Counterdrug Coordinator
NH National Guard/Joint Force Headquarters

6.1.1.2. Alternate: Director of Operations
NH National Guard/Joint Force Headquarters

6.1.2. For the DOE-OSW:

6.1.2.1. Primary: Michelle Myler
Administrator
Bureau of Student Wellness
NH Department of Education

6.1.2.2. Alternate: Helene Anzolone
Prevention Coordinator
NH Department of Education

6.2. **CORRESPONDENCE:** All correspondence to be sent and notices to be given pursuant to this MOA will be addressed, if to the NH National Guard, to:

6.2.1. New Hampshire National Guard
ATTN: Counterdrug Coordinator
1 Minuteman Way
Concord, NH 03301

and, if to the DOE-OSW, to:

6.2.2. NH Dept. of Education, Office of Student Wellness
ATTN: Michelle Myler
101 Pleasant Street
Concord, NH 03301

6.3. **FUNDS AND MANPOWER:** This MOA does not document nor provide for the exchange of funds or manpower between the Parties nor does it make any commitment of funds or resources.

6.4. **MODIFICATION OF MOA:** This MOA may only be modified by the written agreement of the Parties, duly signed by their authorized representatives. This MOA will be reviewed annually on or around the anniversary of its effective date, and triennially in its entirety.

- 6.5. **DISPUTES:** Any disputes relating to this MOA will, subject to any applicable law, Executive order, directive, or instruction, be resolved by consultation between the Parties or in accordance with DoDI 4000.19. The Parties agree that they will not seek to enforce the terms of this MOA in any court of law.
- 6.6. **TERMINATION OF UNDERSTANDING:** This MOA may be terminated, in writing, by either Party. If the annual requests are not submitted for 2 consecutive FYs IAW paragraph 4.9.2.2. of this MOA, this MOA will be terminated, effective 30 September of the second FY.
- 6.7. **TRANSFERABILITY:** This MOA is not transferable except with the written consent of the Parties.
- 6.8. **ENTIRE UNDERSTANDING:** It is expressly understood and agreed that this MOA embodies the entire understanding between the Parties regarding the MOA's subject matter.
- 6.9. **EFFECTIVE DATE:** This MOA takes effect beginning on the day after the last Party signs.
- 6.10. **EXPIRATION DATE:** This MOA will remain in effect for a period of nine (9) years from the day after the last party signs, unless terminated under paragraph 6.6, or revised, in writing, by mutual consent. This agreement will be reviewed annually and the review documented by the CDC with DOE-OSW to ensure they meet support agreements.

DAVID J. MIKOLAITIES
Brigadier General
The Adjutant General
New Hampshire National Guard

Date

FRANK EDELBLUT
Commissioner
Department of Education

Date

EUGENE R. MOZZONI
Lieutenant Colonel
Counterdrug Coordinator
New Hampshire National Guard

Date

BRIAN C. ELBERT, Col, USAF
USPFO for New Hampshire

Date