

2/20/2019

14-R-19

A RESOLUTION

**Authorizing the City Manager to Execute an
Intergovernmental Agreement with the Board of Education of Evanston
Township High School District No. 202**

**NOW BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF
EVANSTON, COOK COUNTY, ILLINOIS:**

SECTION 1: That the City Manager is hereby authorized and directed to sign, and the City Clerk is hereby directed to attest on behalf of the City, the Intergovernmental Agreement with the Evanston Township High School District No. 202 (the "Agreement"), attached hereto as Exhibit 1 and incorporated herein by reference.

SECTION 2: The City Manager is hereby authorized and directed to negotiate any additional conditions of the Agreement that he deems to be in the best interests of the City.

SECTION 3: This resolution shall be in full force and effect from and after its passage and approval, in the manner provided by law.



Stephen H. Hagerty, Mayor

Attest: 

Devon Reid, City Clerk

Approved as to form:


Michelle L. Masoncup, Corporation
Counsel

Adopted: February 25, 2019

EXHIBIT 1

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF EVANSTON AND
THE BOARD OF EDUCATION OF THE EVANSTON TOWNSHIP HIGH SCHOOL
DISTRICT NO. 202**

INTERGOVERNMENTAL AGREEMENT
FOR USE OF BODY WORN CAMERAS BY POLICE ON SCHOOL DISTRICT
PROPERTY

THIS INTERGOVERNMENTAL AGREEMENT is by and between the BOARD OF EDUCATION OF EVANSTON TOWNSHIP HIGH SCHOOL DISTRICT NO. 202, Cook County, Illinois (“ETHS”), and the CITY OF EVANSTON, an Illinois municipal corporation and home rule unit as described in the Illinois Constitution (“City”), collectively referred to as the “Parties”.

I. BACKGROUND

A. Pursuant to Section 10 of Article VII of the Illinois Constitution of 1970, and the Illinois Intergovernmental Cooperation Act, 5 ILCS 220/1 et seq. public agencies may contract or otherwise associate among themselves, or transfer any power or function, in any manner not prohibited by law or ordinance.

B. The Parties are “public agencies” within the meaning of the Illinois Intergovernmental Cooperation Act.

C. The Law Enforcement Officer-Worn Body Camera Act (50 ILCS 706/10-1 *et seq.*) was recently enacted into law enabling police officers to utilize body worn cameras in certain situations.

D. The City and ETHS recognize both the merit and potential problems that may arise from a police officer’s use of a BWC while on ETHS property.

E. The parties desire to enter into this Agreement to enable City police officers to utilize BWCs in accordance with law and subject to the restrictions contained in this Agreement.

F. This Agreement shall be executed in addition and shall have no effect upon any other mutual aid agreements or other agreements between the parties.

II. COOPERATION AND AUTHORITY

A. The Parties agree to cooperate fully, to execute all supplementary documents, and to take all additional actions which are consistent with and which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.

B. The City Manager, or his designee, shall administer this Agreement on behalf of the City and the Superintendent, or his designee, shall administer this Agreement on behalf of ETHS.

1. The Superintendent will provide the City Manager with a list of administrators (“School Officials”) to be contacted as needed. The list will contain regular and emergency telephone and mobile numbers (if applicable), and identify which administrators are to be contacted for various types of problems and the order in which the administrators are to

be contacted. The administrators identified shall be considered the "Appropriate School Officials" for purposes of § 1-7(a)(8) of the Juvenile Court Act.

2. The City Manager will provide the Superintendent with the names and titles of a primary and two back up contacts ("Police Officials") responsible for implementing this Agreement. The officers shall provide their regular and emergency telephone and pager numbers (if applicable).
3. The Superintendent and City Manager may, as they deem necessary and upon written notice, designate different persons to the respective positions of School Official and Police Official.
4. School Officials and Police Officials will meet to facilitate and review implementation of this Agreement as often as necessary.

C. The Parties recognize that ETHS has authority over the educational environment.

1. Collaboration between ETHS and the City and respect for the important role each party plays with the community's youth is essential to the success of the mission of both Parties.
2. The City recognizes the responsibility and authority of School Officials to manage the educational environment.
3. Both Parties recognize that disciplining students for violations of the Student Code of Conduct is appropriate for School Officials to manage.
4. ETHS recognizes that discretion regarding whether to investigate or charge a student or other individual with an ordinance, criminal, or traffic violation lies with Police Officials; provided that when dealing with a student that is suspected of violating a law, Police Officials will first use restorative actions as an alternative to arresting students unless the Police Official reasonably believes that there is imminent danger to students, employees, the Police Official, or other third parties.
5. The Parties seek to implement a partnership that creates effective and positive school student discipline that (a) is part of ETHS' larger effort to address school safety and climate; (b) includes proactive and restorative methods rather than only punitive; and (c) is clear, consistent, and equitable.
6. Both Parties understand the privacy protections of federal and state law in the disclosure of student records. ETHS may refuse disclosure requests by Police Officials without a warrant, court order, or other exception enumerated by the Illinois School Student Records Act, 105 ILCS 10/, and

the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g or that is not in accordance with this Agreement.

D. The Parties acknowledge that each Party shall bear their own cost and expenses incurred to comply with the terms of this IGA.

E. Each year, the Superintendent or designee and City Manager or designee shall meet to review compliance with this Agreement, the working relationship of the parties, opportunities for joint programming, set goals for the Agreement, and agree on methods to monitor progress toward the established goals (e.g. data, surveys).

F. The term of the Agreement shall commence on the effective date as set forth in Section IV.M and end June 30, 2024 (the "IGA Term").

III. BODY WORN CAMERA USAGE

A. Each school resource officer ("SRO") assigned to ETHS shall be equipped with a body BWC and shall utilize the BWC as provided by law in accordance with Evanston Police Department policies for the usage of body worn cameras.

B. The Parties agree that for purposes of the Law Enforcement Officer-Worn Body Camera Act, an SRO is performing a community caretaking function when engaged in his/her role as an SRO. Therefore, an SRO's BWC shall not record during the school day unless and until the SRO has reason to believe that a crime has been, or is in the process of being, committed. 50 ILCS 706/10-20(a)(4.5). In the event an SRO is in a hostile situation or perceives that a complaint will be raised, in the SRO's discretion, the BWC can begin recording.

C. If a BWC is turned on for any reason during the school day, the SRO shall promptly notify the ETHS Principal.

D. If a student is recorded by an SRO during the school day by a BWC, the SRO shall be considered a law enforcement unit of the school such that the records created by the SRO for law enforcement shall not be considered educational records.

E. The City may, if not otherwise prohibited by law or Evanston Police Department policy, provide to ETHS copies of any such filming upon school property, upon request for such copies by ETHS, as a law enforcement record. If the City receives advice that providing a copy of such videos is prohibited, the City agrees to utilize its best efforts to facilitate the availability of its officer(s) that made the video to testify, upon request by ETHS, in any school disciplinary hearing concerning the officer's knowledge of the facts and circumstances of the videoed incident. Any such film or video taken by, and kept in the possession of the City's officers may be considered *law enforcement records* under the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. sec. 1232g and 34 C.F.R. Sec. 99.8 and the School Student Records Act (ISSRA), 105 ILCS 10/2(d). Any copy of such film or video, if permitted by law to be provided to ETHS, may become an *educational record* of ETHS. The City's officers shall recognize and

comply with the confidentiality of student and education records and may only seek such records in accordance with the requirements of Board policy and this Agreement.

F. The provisions of this Agreement shall apply to any City police officer when using a BWC, even if the police officer is not an assigned SRO to ETHS.

IV. OTHER TERMS AND CONDITIONS

A. This Agreement sets forth all the covenants, conditions, and promises between the Parties. There are no covenants, promises, agreements, conditions or understandings between the Parties, either oral or written, other than those contained in this Agreement.

B. In the event of any substantive breach of the terms and conditions of this Agreement, the aggrieved party shall notify the party alleged to be in breach of the nature of the breach. The party alleged to be in breach shall have ten (10) days to cure the breach; if the nature of the breach is such that a cure cannot reasonably be affected within ten (10) days, the party alleged to be in breach shall not be held in default so long as it commences a cure in the ten (10) day period and diligently pursues completion thereof. Upon default of this Agreement, the non-defaulting party shall have all legal and equitable remedies arising from the breach.

C. Indemnification:

1. To the extent authorized by the laws of the State of Illinois, the City shall indemnify and hold harmless ETHS, its Board and its members, employees, volunteers, agents, their successors, and assigns, in their individual and official capacities (the "School Indemnified Parties") from and against any and all liabilities, loss, claim, demand, lien, damage, penalty, fine, interest, cost and expense, including without limitation, reasonable attorneys' fees and litigation costs, incurred by the School Indemnified Parties arising out of any activity of the City in performance of this Agreement, or any act or omission of the City or of any employee, agent, contractor or volunteer of the City (the "City Indemnitors"), but only to the extent caused in whole or in part by any negligent or willful and wanton act or omission of the City Indemnitors.
2. Nothing contained in Section V.C or in any other provision of this Agreement is intended to constitute nor shall it constitute a waiver of the defenses available to ETHS or the City under the Illinois Local Governmental and Governmental Employees Tort Immunity Act.

D. All notices required to be given hereunder shall be in writing and shall be properly served on the date delivered by courier or on the date deposited, postage prepaid, with the U. S. Postal Service for delivery *via* certified mail, return receipt requested, addressed:

If to City:

Wally Bobkiewicz
City Manager
City of Evanston
2100 Ridge Avenue
Evanston, IL 60201

Demitrous Cook
Chief of Police
City of Evanston
1454 Elmwood
Evanston, IL 60201

Michelle Masoncup
Corporation Counsel
City of Evanston
2100 Ridge Avenue
Evanston, IL 60201

If to ETHS:

Dr. Eric Witherspoon
Superintendent
1600 Dodge Avenue
Evanston, IL 60201

Mary Rodino
Chief Financial Officer
1600 Dodge Avenue
Evanston, IL 60201

Brian P. Crowley
Franczek P.C.
300 South Wacker, Ste. 3400
Chicago, IL 60606

E. This Agreement shall be binding on the Parties and their respective successors, including successors in office.

F. This Agreement is governed by and shall be construed in accordance with the laws of the State of Illinois without regard to conflict of law principles. Jurisdiction and venue for all disputes hereunder shall be the Circuit Court located in Cook County, Illinois, or the federal district court for the Northern District of Illinois.

G. No amendment, waiver, or modification of any term or condition of this Agreement shall be binding or effective for any purpose unless expressed in writing and adopted by each of the Parties as required by law.

H. This Agreement expresses the complete and final understanding of the Parties with respect to the subject matter as of the date of its execution. The Parties acknowledge that no representations have been made which have not been set forth herein.

I. If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

J. This Agreement may not be assigned by either Party without the prior written consent of the other Party, which consent will be granted or denied at the Party's sole discretion.

K. This Agreement is for the benefit of the Parties and no other person is intended to or shall have any rights, interest, or claims under this Agreement or be entitled to any benefits under or because of this Agreement as a third-party beneficiary or otherwise.

L. The undersigned represent that they have the authority of their respective governing authorities to execute this Agreement.

M. This Agreement shall be deemed dated and become effective on the date the last of the Parties signs as set forth below the signature of their duly authorized representatives.

N. The Parties hereto have caused this Agreement to be executed by the Superintendent of the Evanston Township High School District No. 202 and the City Manager of the City of Evanston. Their signatures are attested to by the respective clerk and secretary of these public bodies.

**BOARD OF EDUCATION OF
EVANSTON TOWNSHIP HIGH SCHOOL
DISTRICT NO. 202:**

By: _____
Superintendent

Attest: _____

Date: _____

CITY OF EVANSTON:

By: _____
City Manager

Attest: _____
City Clerk

Date: _____

[Seal]

