

UNSAFE SCHOOL CHOICE OPTION POLICY
New Jersey Department of Education
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For the 2009-2010 School Year

Statutory Requirement

The Unsafe School Choice Option provision (*Title IX, Part E, Subpart 2, SEC. 9532*) under the federal *No Child Left Behind Act (NCLB) of 2001* sets forth the following:

“Each State receiving funds under this Act shall establish and implement a statewide policy requiring that a student attending a *persistently dangerous public elementary school or secondary school*, as determined by the State in consultation with a representative sample of local educational agencies, or who becomes a *victim of a violent criminal offense, as determined by State law*, while in or on the grounds of a public elementary school or secondary school that the student attends, be allowed to attend a safe public elementary school or secondary school within the local educational agency, including a public charter school.” (*italics added*)

The intent of the statute and the New Jersey Department of Education’s (NJDOE) policy is to provide safety and security for students and to prevent unnecessary or extended interruptions to student learning.

Overview

The statute cited above contains two provisions that apply to all local educational agencies (LEAs):

- 1) Persistently dangerous schools (Provision I); and
- 2) Victims of violent criminal offenses (Provision II).

The required policy for these school safety requirements are provided below.

Specifically, effective the beginning of each school year (**by September 8 in 2009**), LEAs receiving NCLB funds must be prepared to complete the transfer of students who choose to exercise Provision I and Provision II of the Unsafe School Choice Option (USCO) policy set forth below. Compliance with the policy is a condition of receiving funds under any and all titles under NCLB. Chief school administrators will be required to certify compliance with the USCO policy of the NJDOE in their applications for NCLB funds.

Additionally, the USCO Policy is consistent with and supportive of the regulation at *N.J.A.C. 6A:16-5.3(i)*, which sets forth that:

“Each district board of education shall submit and implement corrective action plans for high incidences of violence, vandalism or alcohol or other drug abuse upon notification by the Commissioner of Education.”

USCO POLICY PROVISION I PERSISTENTLY DANGEROUS SCHOOLS

Introduction

A persistently dangerous school is a public elementary or secondary school building (except for Regional Day Schools, Educational Services Commissions and Special Services School Districts) that meets the objective criteria described below for three consecutive years and is part of an LEA. The NJDOE will use the most current available data from the Electronic Violence and Vandalism Reporting System (EVVRS) to identify persistently dangerous schools on or before **July 31** of each year, in compliance with federal regulations (68 *FR* 16789).

Types of Violent Incidents for Determining Persistently Dangerous Schools

Incidents of violence include the following acts, as defined in the Incident Detail section of the EVVRS User Manual.

Category A offenses are as follows:

1. A firearms offense set forth by New Jersey statute in accordance with the federal Gun-Free Schools Act.
2. An aggravated assault upon a student.
3. An assault with a weapon upon a student.
4. Any assault upon a member of the school district staff.

Category B offenses are as follows:

1. Simple Assault on a student.
2. Possession or sale of a weapon other than a firearm.
3. Gang Fight.
4. Robbery or Extortion.
5. Sex Offense.
6. Criminal Threat.
7. Arson.
8. Sale and Distribution of Drugs (excluding possession with intent).
9. Harassment, Intimidation, Bullying or Threat.

Criteria for Determining Persistently Dangerous Schools

The following criteria will be used by the NJDOE to determine a persistently dangerous school. A school that meets any of the two criteria in each of three consecutive school years and is part of an LEA will be determined to be persistently dangerous.

- The school has seven or more Category A offenses;

or

- The school has a score of 1.0 or greater on the index of Category B offenses where the index is defined as the result of dividing the number of Category B offenses by the square root of the school's enrollment.

Procedures and Guidelines for Schools Determined to be Persistently Dangerous

When schools are identified as persistently dangerous by the NJDOE, the LEAs will be notified of the designation on or before **July 31** of each year. Once the LEAs receive notification, the LEAs **must inform all parents** of enrolled students of the designation within **fifteen calendar days** of the date of the notice and offer them the option for their children to transfer to a safe public school within the LEAs by the **beginning of the respective school year**. LEAs must **complete** all transfers **by the beginning of the school year** following the July notification.

Students are not required to accept the transfer option, but they must be afforded the opportunity to do so. Parental notice regarding the status of the schools and the offer to transfer students should be made simultaneously. Parents of enrolled students must be notified of the persistently dangerous designation whether or not there is another school in the LEAs for the transferring students.

To the extent possible, LEAs should allow transferring students to transfer to schools that are making adequate yearly progress and have not been identified as being in need of school improvement, corrective action or restructuring. LEAs are encouraged to take into account the needs and preferences of the affected students and parents.

Corrective Action Plans for Schools Identified as Persistently Dangerous

For schools identified as persistently dangerous, LEAs are required to submit to the NJDOE on or before **August 21** **documentation of compliance with the parent notification requirement and actions taken** to complete the transfer arrangements for all students exercising the option **by the first day of the school year**. Additionally, LEAs are required to develop and submit for approval **corrective action plans** to the NJDOE on or before **September 30** of the same year, which will apply to the respective school year. The corrective action plans, which **must be completed in the format provided by the NJDOE**, will describe how the schools will reduce the number of incidents of violence as determined by the EVVRS. The NJDOE will provide

schools with guidance for their corrective action plans, as well as monitor schools' timely completion of the approved plans.

In the spring of each following year, the NJDOE will reevaluate the status of the schools identified as persistently dangerous. The NJDOE will review the schools' progress towards completing their corrective action plans and compare the current year's incidents of violence, as reported on the EVVRS, to the criteria for determining persistently dangerous schools (PDS). Schools identified as maintaining the persistently dangerous designation will be notified by the NJDOE on or before **July 31** of the respective year and will be required to submit for approval revised corrective action plans by **September 30** of that year, which will apply to the respective school year. LEAs **must inform all parents** of enrolled students of the designation within **fifteen calendar days** of the date of the notice and offer them the option for their children to transfer to safe public schools **by the beginning of the respective school year**, in accordance with the Procedures and Guidelines for Schools Determined to be Persistently Dangerous described above.

Schools no longer designated persistently dangerous will be notified on or before **July 31** of the respective year. The persistently dangerous school designation will be removed after one or more years contingent upon successful fulfillment of the criteria for removal, as determined by evidence of schools' progress toward successfully completing the approved corrective action plans, and evidence of incidents that no longer meet the Criteria for Determining Persistently Dangerous Schools, described above, for one school year, the year in which the corrective action plans were in effect.

Procedures and Guidelines for Early Warning of Schools

Effective in 2004, when schools meet the criteria set forth in this policy for two consecutive years, the LEAs will be notified of their pattern of offenses on or before **August 15** of each year. LEAs are required to develop and submit for approval **school safety plans** to the NJDOE on or before **September 30** of the same year, which will apply to the respective school year. The school safety plans, which **must be completed in the format provided by the NJDOE**, will describe how the schools will reduce the number of incidents of violence as determined by the EVVRS. The NJDOE will provide the schools with guidance for their school safety plans, as well as monitor schools' timely completion of the approved plans. **Schools receiving an "early warning" notice are *not* required to provide the transfer option to students.**

In the spring of each following year, the NJDOE will reevaluate the schools' progress towards completing their school safety plans and compare the current year's incidents of violence, as reported on the EVVRS, to the criteria for determining persistently dangerous schools. Schools will be notified of their status on or before **July 31** of the respective year.

Schools that have successfully completed their school safety plans and reported violent incidents that no longer meet the Criteria for Determining Persistently Dangerous Schools described above for one school year, the year in which the school safety plans were in effect, will no longer be required to submit a school safety plan.

Schools that do not successfully complete their school safety plans and that meet the criteria set forth in this policy for a third consecutive year will be designated as persistently dangerous and

required to submit for approval corrective action plans on or before **September 30** of that year, which will apply to the respective school year, and provide the transfer option to students in the schools designated as persistently dangerous.

Schools Not Receiving NCLB Funds but Meeting the Criteria for PDS

School buildings and districts that are not part of an LEA that receives federal funds under NCLB but meet any one of the criteria for persistently dangerous schools will be contacted by the NJDOE and required to develop and submit for approval **school safety plans** on or before **September 30** of the respective year. The school safety plans must be **completed in the format provided by the NJDOE** and describe how the schools will reduce the number of incidents of violence as determined by the EVVRS. The NJDOE will provide schools with guidance for their school safety plans, as well as monitor schools' timely completion of the approved plans.

Special Schools Meeting the Criteria for PDS

Regional Day Schools, Special Services Districts and Educational Services Commissions that meet any one of the criteria for persistently dangerous schools will not be identified as such but will be contacted by the NJDOE and required to develop and submit for approval **school safety plans** on or before **September 30** of the respective year. The school safety plans must be **completed in the format provided by the NJDOE** and describe how the schools will reduce the number of incidents of violence as determined by the EVVRS. The NJDOE will provide schools with guidance for their school safety plans, as well as monitor schools' timely completion of the approved plans.

USCO POLICY PROVISION II VICTIMS OF VIOLENT CRIMINAL OFFENSES

Introduction

The Unsafe School Choice Option provision (*Section 9532 of Title IX*) under the *No Child Left Behind Act (NCLB) of 2001* sets forth, in part, the following which applies to all school buildings that are a part of an LEA:

“... a student ... who becomes a *victim of a violent criminal offense*, as determined by *State law*, while in or on the grounds of a public elementary school or secondary school that the student attends, be allowed to attend a safe public elementary school or secondary school within the local educational agency, including a public charter school.” (*italics added*)

The individual victim provision of the USCO policy attempts to fulfill the requirement for LEAs to provide relief to students who have been victimized, while providing schools with a *practical* means for making determinations on incidents of victimization that are within the purview of LEAs. The individual victim policy has been crafted to enable school staff to make reasonable determinations and actions regarding the policy. LEAs are strongly encouraged, however, to consult with their school board attorneys and communicate with designated local and/or county law enforcement authorities, per the provisions of the *Uniform State Memorandum of Agreement Between Education and Law Enforcement Officials* and *N.J.A.C. 6A:16-6.2(b)13*, on questions and issues that arise in the implementation of the individual victims of violent criminal offenses policy. A copy of the model *Uniform State Memorandum of Agreement Between Education and Law Enforcement Officials* may be obtained at the following web site: <http://www.nj.gov/education/schools/security/regs/agree.pdf>.

Criteria for Determining Victims of Violent Criminal Offenses

The following criteria **must be used to determine when an enrolled student has become a victim of a violent criminal offense** while in or on the grounds of a public elementary or secondary school that the student attends. These criteria only apply to a student who has become a victim of one or more of the violent criminal offenses enumerated below.

A student is considered a victim of a violent criminal offense when:

- 1) A referral has been made to law enforcement officials for suspicion that one of the violent criminal offenses enumerated below has occurred; **and**
- 2) One or more of the following applies:
 - Law enforcement officials have filed formal charges against the perpetrator(s) for commission of the violent crime; **or**
 - The perpetrator(s) of the violent crime has received sanctions in accordance with the district board of education’s code of student conduct, pursuant to *N.J.A.C. 6A:16-7*; **or**

- The perpetrator(s) of the violent crime either has not been identified or is not an enrolled student(s), but it is clear that the student (victim) has become a victim of a violent criminal offense based on objective indicators such as physical evidence, eyewitness testimony, and/or circumstantial evidence; or
- The pre-existence of a restraining order against the perpetrator(s) of the violent crime.

Procedures and Guidelines

Effective the first day of each school year (by **September 8 in 2009**), LEAs must be prepared to begin the transfer of any student who chooses to exercise the individual choice option provision. **An LEA must offer, within 14 calendar days of the incident, an opportunity to transfer** to a safe public school within the LEA to **any student who has become a victim of a violent criminal offense** while in or on the grounds of a public school that the student attends. While the student must be offered the opportunity to transfer, the student may elect to remain at the school.

To the extent possible, LEAs should allow any transferring student to transfer to a school that is making adequate yearly progress and has not been identified as being in need of school improvement, corrective action or restructuring. LEAs are encouraged to take into account the needs and preferences of the affected student and his or her parent(s). **Transfers must occur within 30 days of the determination** that the student was a victim of a violent criminal offense.

Violent Criminal Offenses

The violent criminal offenses under New Jersey statutes that apply to the individual victim provision described above are identified and explained below. The offenses apply to **completed offenses**, as well as **threats and attempts** to commit the offenses. The offenses and attempts to commit the offenses apply only when they occur **in or on the school grounds, as defined in N.J.A.C. 6A:16-1.3***, of a school that the student attends. The offenses apply whether they occur **wholly or in part** in or on the grounds of a school that the student attends.

The offenses apply only to acts or attempts that are directed at a **person** (victim) or a **group of specified individuals** (victims), rather than acts that indiscriminately affect the entire school population or non-specified individuals or groups. For the purposes of the Unsafe School Choice Option policy, the term victim **shall not** include a student who purposely, knowingly or recklessly **provokes** the conduct constituting the criminal incident against him or her.

* "School grounds" means and includes land, portions of land, structures, buildings, and vehicles, when used for the provision of academic or extracurricular programs sponsored by the school district or community provider and structures that support these buildings, such as school district wastewater treatment facilities, generating facilities, and other central service facilities including, but not limited to, kitchens and maintenance shops. School grounds also includes other facilities as defined in N.J.A.C. 6A:26-1.2, playgrounds, and recreational places owned by local municipalities, private entities or other individuals during those times when the school district has exclusive use of a portion of such land.

Applicable Violent Criminal Offenses

Provided below is a description of each applicable violent criminal offense that is based upon New Jersey statutes and references to statutory citations that provide complete explanations of each designated offense. The descriptions provided below are **not intended to be a complete explanation of each offense** or a substitute for the actual provisions of the authorizing statutes. Instead, the descriptions are provided as an aid in facilitating understanding of the general intent and practical applications of the violent criminal offenses that pertain to the Unsafe School Choice Option policy.

Homicide [N.J.S.A. 2C :11-2]

A student is a victim of a homicide when he or she is the child, sibling or other relative of a decedent, resulting from someone purposely¹, knowingly² or recklessly³ causing the death of the student's parent, sibling or relative in or on school grounds.

¹ "Purposely." A person acts purposely with respect to the nature of his or her conduct or a result thereof if it is his or her conscious object to engage in conduct of that nature or to cause such a result. A person acts purposely with respect to attendant circumstances if he or she is aware of the existence of such circumstances or he or she believes or hopes that they exist. [N.J.S.A. 2C:2-2(b)(1)]

² "Knowingly." A person acts knowingly with respect to the nature of his conduct or the attendant circumstances if he or she is aware that his or her conduct is of that nature, or that such circumstances exist, or he or she is aware of a high probability of their existence. A person acts knowingly with respect to a result of his or her conduct if he or she is aware that it is practically certain that his or her conduct will cause such a result. [N.J.S.A. 2C:2-2(b)(2)]

³ "Recklessly." A person acts recklessly with respect to a material element of an offense when he or she consciously disregards a substantial and unjustifiable risk that the material element exists or will result from his or her conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him, its disregard involves gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation. [N.J.S.A. 2C:2-2(b)(3)]

Assault [N.J.S.A. 2C:12-1(a)(1) and 2C:12-1(b)(1)]

A person is a victim of an assault when the actor:

- Purposely¹, knowingly² or recklessly³ causes bodily injury⁴ to the victim. [N.J.S.A. 2C:12-1(a)(1)]
- Negligently⁵, recklessly³, knowingly² or purposely¹ causes bodily injury to the victim with a deadly weapon⁶. [N.J.S.A. 2C:12-1(a)(2), N.J.S.A. 2C:12-1(b)(2) and N.J.S.A. 2C:12-1(b)(3)]
- Attempts by physical menace to put the victim in fear of imminent serious bodily injury⁷ [N.J.S.A. 2C:12-1(a)(3)]
- Knowingly points a firearm⁸ at or in the direction of the victim, whether or not the actor believes it to be loaded. [N.J.S.A. 2C:12-1(d)(4)]

⁴ “Bodily injury” means physical pain, illness or any impairment of physical condition. [N.J.S.A. 2C:11-1(a)]

⁵ “Negligently.” A person acts negligently with respect to a material element of an offense when he or she should be aware of a substantial and unjustifiable risk that the material element exists or will result from his or her conduct. The risk must be of such a nature and degree that the actor’s failure to perceive it, considering the nature and purpose of his or her conduct and the circumstances known to him or her, involves a gross deviation from the standard of care that a reasonable person would observe in the actor’s situation. [N.J.S.A. 2C:2-2(b)(4)]

⁶ “Deadly weapon” means any firearm or other weapon, device, instrument, material or substance, whether animate or inanimate, which in the manner it is used or is intended to be used, is known to be capable of producing death or serious bodily injury or which in the manner it is fashioned would lead the victim reasonably to believe it to be capable of producing death or serious bodily injury. [N.J.S.A. 2C:11-1(c)]

⁷ “Serious bodily injury” means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ. [N.J.S.A. 2C:11-1(b)]

⁸ “Firearm” means any handgun, rifle, shotgun, machine gun, automatic or semi-automatic rifle, or any gun, device or instrument in the nature of a weapon from which may be fired or ejected any solid projectile ball, slug, pellet, missile or bullet, or any gas, vapor or other noxious thing, by means of a cartridge or shell or by the action of an explosive or the igniting of flammable or explosive substances. It shall also include, without limitation, any firearm which is in the nature of an air gun, spring gun or pistol or other weapon of a similar nature in which the propelling force is a spring, elastic band, carbon dioxide, compressed or other gas or vapor, air or compressed air, or is ignited by compressed air, and ejecting a bullet or missile smaller than three-eighths of an inch in diameter, with sufficient force to injure a person.[N.J.S.A. 2C:39-1(f)]

Sexual Assault [N.J.S.A. 2C:14-2]

1. *Aggravated Sexual Assault* - A person is a victim of an aggravated sexual assault when the actor commits an act of sexual penetration⁹ with the victim under any of the following circumstances:

- The victim is less than 13 years old.
- The victim is at least 13 but less than 16 years old; and
 - the actor is related to the victim by blood or affinity to the third degree; or
 - the actor has supervisory or disciplinary power over the victim by virtue of the actor’s legal, professional or occupational status; or
 - the actor is a foster parent, a guardian or stands in loco parentis within the household.
- The act is committed on the victim during the commission, or attempted commission, whether alone or with one or more persons, of robbery, kidnapping, homicide, aggravated assault on another, burglary, arson or criminal escape.
- The actor is armed with a weapon or any object fashioned in such a manner as to lead the victim to reasonably believe it to be a weapon and threatens by word or gesture to use the weapon or object on the victim.
- The actor is aided or abetted by one or more other persons and the actor uses physical force or coercion on the victim.

- The actor uses physical force or coercion and severe personal injury is sustained by the victim.
- The victim is one whom the actor knew or should have known was physically helpless, mentally defective or mentally incapacitated.

2. *Sexual Assault* - A person is a victim of a sexual assault when:

- The actor commits an act of sexual contact¹⁰ with a victim who is less than 13 years old and the actor is at least four years older than the victim.
- The actor commits an act of sexual penetration⁹ with a victim under any of the following circumstances:
 - The actor uses physical force or coercion, but the victim does not sustain severe personal injury.
 - The victim is at least 16 but less than 18 years old.
 - The actor has supervisory or disciplinary power of any nature or in any capacity over the victim.
 - The victim is at least 13 but less than 16 years old and the actor is at least four years older than the victim.

⁹ “Sexual penetration” means vaginal intercourse, cunnilingus, fellatio or anal intercourse between persons or insertion of the hand, finger or object into the anus or vagina either by the actor or upon the actor’s instruction. The depth of the insertion is not relevant to the question of the commission of the crime. [N.J.S.A. 2C:14-1(c)]

¹⁰ “Sexual contact” means an intentional touching by the victim or actor, either directly or through clothing, of the victim’s or actor’s intimate parts for the purpose of degrading or humiliating the victim or sexually arousing or sexually gratifying the actor. Sexual contact of the actor with himself or herself must be in view of the victim whom the actor knows to be present. [N.J.S.A. 2C:14-1(d)]

Bias Intimidation [N.J.S.A. 2C:16-1(a)]

A person is a victim of the crime of bias intimidation when an actor commits, attempts to commit, conspires with another to commit or threatens the immediate commission of an offense specified in *Chapters 11 through 18 of Title 2C of the New Jersey Statutes; N.J.S.A. 2C:33-4; N.J.S.A. 2C:39-3; N.J.S.A. 2C:39-4 or N.J.S.A. 2C:39-5* in the following circumstances:

- With a purpose to intimidate a victim or a group of specified victims because of race, color, religion, gender, handicap, sexual orientation or ethnicity; or
- Knowing that the conduct constituting the offense would cause a victim or a group of specified victims to be intimidated because of race, color, religion, gender, handicap, sexual orientation or ethnicity; or

- Under circumstances that caused any victim of the underlying offense to be intimidated and the victim, considering the manner in which the offense was committed, reasonably believed either that –
 - The offense was committed with a purpose to intimidate the victim or any person or entity in whose welfare the victim is interested because of race, color, religion, gender, handicap, sexual orientation or ethnicity; or
 - The victim or the victim’s property was selected to be the target of the offense because of race, color, religion, gender, handicap, sexual orientation or ethnicity.

Terroristic Threat [N.J.S.A. 2C:12-3(a) and 2C:12-3(b)]

A person is a victim of a terroristic threat when the actor threatens to commit one of the violent criminal offenses enumerated under the USCO Policy Provision II against the victim with the purpose to put the student in imminent fear of one of the violent crimes enumerated in the USCO Policy Provision II under circumstances reasonably causing the victim to believe the immediacy of the threat and the likelihood that it will be carried out. The definition of terroristic threat applies to *N.J.S.A. 2C:12-3(a)* insofar as the threat was directed at a person (victim) or a group of specified individuals (victims).

Robbery [N.J.S.A. 2C:15-1]

A person is a victim of a robbery when the actor, in the course of committing a theft, inflicts bodily injury; or uses force upon the victim; or threatens the victim with or purposely puts the victim in fear of immediate bodily injury.

Kidnapping [N.J.S.A. 2C:13-1]

A person is a victim of a kidnapping when the actor unlawfully removes the victim from the school or school grounds; or the actor unlawfully confines the victim with the purpose of holding the victim for ransom or reward as a shield or hostage; or the actor unlawfully removes the victim from the school or school grounds or a substantial distance from where he or she is found in school or on school grounds; or if the actor unlawfully confines a student for a substantial period of time with any of the following purposes: to facilitate commission of a crime or flight thereafter, or to inflict bodily injury on or terrorize the victim.

Arson [N.J.S.A. 2C:17-1]

A person is a victim of arson when the actor purposely or knowingly starts a fire or causes an explosion in or on the grounds of a school whereby the victim or group of specified victims are in danger of death or bodily injury; or with the purpose of destroying or damaging the victim’s or group of specified victim’s property that is in the school or on school grounds.