

UNSAFE SCHOOL CHOICE OPTION POLICY (USCO)

PROVISIONS I AND II

QUESTIONS AND ANSWERS

Q1: What is the definition of a “school?”

A: For the purposes of the Unsafe School Choice Option (USCO), a school in New Jersey is within the meanings of a “school facility” and “other facilities,” pursuant to *N.J.A.C. 6A:26-1.2*.

School Facility – Under the USCO Policy, the term “school facility” means and includes any structure, building or facility used wholly or in part for educational purposes by a district and facilities that physically support such structures, buildings and facilities, such as district wastewater treatment facilities, power-generating facilities, and steam-generating facilities, but excludes other facilities as defined in *N.J.A.C. 6A:26-1.2*.

Other Facilities – The term “other facilities” means athletic stadiums, swimming pools, any associated structures or related equipment tied to such facilities including, but not limited to, grandstands and night field lights, greenhouses, garages, facilities used for noninstructional or noneducational purposes, and any structure, building or facility used solely for school administration.

Q2: What is the definition of “school grounds?”

A: The definition of “school grounds” described in *N.J.A.C. 6A:16-1.3* applies. Under the USCO Policy, the term “school grounds” means land, portions of land, structures, buildings, and vehicles, when used for the provision of academic or extracurricular programs sponsored by the school district 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.

Q3: Are school bus stops considered school grounds?

A: No. School buses are considered school grounds according to *N.J.A.C. 6A:26-1.2*; however, bus stops are not. All school districts/charter schools are responsible for reporting incidents of violence and vandalism that occur on school buses, but not those that occur at school bus stops. Although incidents that occur at school bus stops are not reported on the Electronic Violence and Vandalism Reporting System (EVVRS), a school district’s/charter school’s code of student conduct, pursuant to *N.J.A.C. 6A:16-7*, may specify consequences

for the student behaviors involved in the incidents and the school may collect incident data for its own purposes.

Q4: Must incidents that occur on field trips be reported on the EVVRS, and do they fall under the definition of school grounds?

A: If a field trip sponsored by a school district/charter school takes place at a facility that is owned by another entity and the school district/charter school has exclusive use of the facility, all incidents of violence and vandalism would be reported. Incidents that occur on “school grounds,” per the definition under question two above, apply to victims of violent criminal offenses under USCO Policy Provision II regardless of whether the offender is enrolled in the same school as the victim. However, incidents that take place at facilities other than the school buildings of the school district or charter school do not apply to the NJDOE’s determination of persistently dangerous or early warning schools under USCO Policy Provision I.

Q5: Must school districts/charter schools report on the EVVRS damage to school grounds that occurs during the time when school is not in session and the perpetrator is not known?

A: Yes. Incidents of vandalism are treated differently from incidents of violence in this regard. Incidents of damage to property, theft and arson that occur when school is not in session and when the offender is unknown must be reported on the EVVRS. However, incidents that take place at facilities other than the school buildings of the school district or charter school do not apply to the NJDOE’s determination of persistently dangerous or early warning schools under USCO Policy Provision I.

Q6: Must school districts/charter schools report on EVVRS an incident of substance abuse possession or sale/distribution that occurs on school grounds during the time when school is not in session or there is no school district/charter school-sponsored event?

A: No. Incidents of this type may be reported to or by the police, but because these incidents do not occur when school is in session or during a school district/charter school-sponsored event, they would not be reported on the EVVRS.

Q7: Must a school district/charter school make a transfer accommodation for a violent incident that occurs on school grounds during an activity sponsored by another group or organization?

A: No. A school district/charter school is only required to make student transfers for incidents *involving only their own enrolled students* that occur on school grounds when they are used for the provision of academic or extracurricular programs *by the school district/charter school*. For complete definitions of “school grounds” and “schools,” see the responses to questions one and two above, which are based on the rules under *N.J.A.C. 6A:16-1.3* and *N.J.A.C. 6A:26-1.2*, which can be found at the following Web sites: <http://www.nj.gov/education/code/current/title6a/chap16.pdf> and <http://www.state.nj.us/education/code/current/title6a/chap26.pdf>.

Q8: Is the school responsible for providing the transfer option for a violent incident that occurs on school grounds when school is not in session?

A: Schools in districts/charters schools must provide the transfer option *only for their own enrolled students* when the incident occurs on school grounds, regardless of the time of day, when the grounds are used for the provision of academic or extracurricular programs sponsored by the school district/charter school.

Q9: What if there is only one school in the school district/charter school, and, therefore, no other school for the student(s) who wants to transfer?

A: When there is only one school in the district/charter school or there is no other school with the same grade level, there is no entitlement to a transfer. However, school districts/charter schools are encouraged, but not required, to explore other appropriate options, such as an agreement with neighboring school districts/charter schools to accept transfer students.

Q10: What if the school is required to offer the transfer option, but an appropriate class in another school is “full?”

A: School districts/charter schools are required to transfer students to another safe school within the school district/charter school. A “full” class does not excuse a school district from providing a transfer for a student. Appropriate and equitable accommodations *must* be made in another school within the school district/charter school to provide educational services to the transferring students. Eligibility to receive funds under any and all titles under the *No Child Left Behind Act* is contingent upon compliance with the USCO Policy.

Q11: For persistently dangerous schools, if other schools exist in the school district/charter school but they are at capacity, do the schools have a defense not to provide transfers?

A: No. School districts/charter schools are required to transfer students to another safe school within the school district/charter school. A school “at capacity” does not excuse the district from providing a transfer for a student. Appropriate and equitable accommodations *must* be made within the school districts/charter schools to provide educational services to the transferring students.

Q12: What if the transfers from persistently dangerous schools cannot be completed by the beginning of the school year?

A: Pursuant to 68 FR 16789, school districts/charter schools *must* complete the transfers by the start of each school year. If the transfers are not completed by the start of the school year, school districts/charter schools are in violation of federal statute and jeopardize their funding allocation under all NCLB titles.

Q13: Is the school required to give the transfer option when it will conflict with the school’s approved desegregation plan?

A: Pursuant to 68 FR 16789, school districts/charter schools *must* complete the transfers by the start of each school year, regardless of the desegregation plan. If the transfers are not completed by the start of the school year, the school districts/charter schools are in violation of federal statute and jeopardize their funding allocation under all NCLB titles.

Q14: If a student elects to transfer to a safe public school, is the transfer permanent or temporary?

A: The transfers may be either permanent or temporary, but must be in effect as long as the student's original school is identified as persistently dangerous. In making the determination of whether the transfer should be permanent or temporary, school districts/charter schools should consider the educational needs of the student, as well as other factors affecting the student's ability to succeed if returned to the transferring school. For example, school districts/charter schools may want to consider allowing a student to complete his or her education through the highest grade level at the receiving school.

Q15: Can a parent exercise the transfer option at a later date?

- A.** 1. Persistently Dangerous Schools - For schools identified as "persistently dangerous" under USCO Policy Provision I, the transfers **must be completed by the start of the school year**. In the event that a student enrolls in the school after the start of the school year, the parent must be notified of the transfer option at the time of enrollment and must be immediately offered the transfer option.
2. Victims of Violent Criminal Offenses - For a victim of a violent criminal offense under USCO Policy Provision II, the transfer must occur within 30 days of the determination that the student was a victim of a violent criminal offense. In addition, school districts/charter schools must provide the transfer option to victims of violent criminal offenses that occurred in the previous school year, if the determination that the student was a victim was made 30 days or fewer before the end of the school year. In this case, the transfer must be completed by the start of the new school year.

Q16: What happens if the victim of a violent criminal offense requests to exercise the choice option after the 30-day period?

A: When the school districts/charter schools offer parents the opportunity for the student to transfer to a safe school within 10 calendar days of the determination that the student was a victim of a violent criminal offense, the school districts/charter schools also must inform parents that the transfer must occur within 30 days of the determination that the student was a victim of a violent criminal offense. While the school is not obligated to provide the transfer after 30 days of the determination, schools are encouraged to take into consideration subsequent circumstances regarding the victimization and the student's school performance and provide appropriate accommodations. These accommodations may include school or school district transfers of the offenders or transfers of the victims to another school or school district and other strategies that will provide the victimized student with a safe and successful school experience.

Q17: If a student elects to transfer to a safe public school within the school district/charter school, are resources available to help cover the costs, (e.g., transportation costs) associated with the transfer?

A: The Unsafe School Choice Option statute does not authorize resources specifically to help cover these costs. However, federal funds may be used under certain circumstances. For

example, funds under the *Safe and Drug-Free Schools and Communities Act* (Title IV, Part A of the *No Child Left Behind Act*) may be used to establish safe zones of passage to and from school to ensure that students travel safely on their way to school and on their way home from school [Section 4115(b)(2)(E)(v)]. In addition, *Safe and Drug-Free Schools and Communities Act (SDFSCA)* funds may be used to help cover costs such as tuition or transportation related to the Unsafe School Choice Option or expansion of public school choice [Section 5121(8) and 5131(12 and (25))]. However, a waiver to the scientifically based program requirement must be submitted for any use of *SDFSCA* funds that are not listed on the Blueprints for Violence Prevention Matrix, which can be found at www.colorado.edu/cspv/blueprints/.

Q18: Is there any option for transferring perpetrators of offenses?

A: There is no provision in the federal Unsafe School Choice Option (USCO) statute and the New Jersey Department of Education’s (NJDOE’s) USCO Policy that authorizes the adoption of school responses for perpetrators. The statute and the policy only authorize the transfer option for students enrolled in persistently dangerous schools and for victims of violent criminal offenses. However, the transfer option could be a strategy for fulfilling the provisions at *N.J.A.C. 6A:16-7.9(a)2iv and v*, which require district boards of education to provide “Appropriate remedial action for a student who commits an act of harassment, intimidation or bullying...” and “Consequences for a student who commits an act of harassment, intimidation or bullying...”

It is important to note that the USCO statute and the USCO policy are not intended to be solutions for all school violence and student conduct problems. Schools are encouraged to develop and implement appropriate strategies for addressing the circumstances that contribute to or support victimization, as well as consistently and proactively manage individuals who have victimized students under locally determined policies and procedures. Specifically, pursuant to *N.J.A.C. 6A:16-7.1*, all school districts/charter schools are required to have a code of student conduct that sets forth, in part:

“A description of student responsibilities...A description of school responses to violations of the behavioral expectations...which must include...a continuum of actions designed to remediate and, where necessary or required by law, to impose sanctions...A description of behaviors that will result in suspension or expulsion...” and...the due process procedures and policies for students and their families....”

In addition, school districts/charter schools are reminded that, pursuant to Section 4114(d) of Title IV-A (NCLB), chief school administrators have assured the NJDOE, as a condition for receiving NCLB funds under the districts’ NCLB Consolidated Formula Subgrant Applications, that they have “appropriate and effective school discipline policies,” and “a code of student conduct policy that...has consequences that are fair, and developmentally appropriate” and “considers the student and the circumstances of the situation.”

Q19: What types of corrective actions may be taken when a school is designated as persistently dangerous or for a school that receives an “early warning” for being persistently dangerous?

A: Corrective actions should be based on an analysis of the problems faced by each school and address the issues that resulted in the school being identified as persistently dangerous. Some examples of corrective actions include the following: hiring additional staff to supervise students in common areas; increasing instructional activities in areas such as conflict resolution; working with law enforcement officials to identify and eliminate gang-related activities; providing in-service training of teachers and administrators concerning consistent enforcement of codes of student conduct and the prevention and defusing of tensions and hostilities; conducting and addressing the findings of school climate assessments; limiting access to campuses; and hiring security personnel or purchasing security equipment.

Q20: Is there additional state money to support implementation of the Unsafe School Choice Option Policy requirements, such as an identified need for increased security

A: While there is no categorical state appropriation for supporting the federal Unsafe School Choice Option requirement, schools may use their state aid and other funds, as appropriate, to address safety and security needs.

Q21: What resources are available to help schools implement corrective actions?

A: Consistent with applicable requirements, such as those contained in the *Safe and Drug-Free Schools and Communities Act (SDFSCA) Principles of Effectiveness (Section 4115 of the No Child Left Behind Act)*, SDFSCA grant funds may be used to implement planned corrective actions. However, a waiver to the scientifically based program requirement must be submitted for any use of SDFSCA funds that are not listed on The Blueprints for Violence Prevention Matrix, which can be found at www.colorado.edu/cspv/blueprints/. School districts/charter schools may consider using the flexibility provided under Section 6123(b) of the *No Child Left Behind Act (NCLBA)*, which provides for the transfer, under certain circumstances, of funds from one NCLBA program to another. Other federal, state and local resources for schools to consider in implementing corrective actions include, but are not limited to, school district allocations of state aid, discretionary federal, private or other grants, consultations with county prosecutors and other county or local agencies (e.g., health and human services agencies) and collaborations with local parent or community organizations (e.g., fraternal or service clubs, faith-based institutions), businesses or charitable groups or individuals.

Q22: How does the USCO policy apply to charter schools?

A: While the statute permits affected students to be afforded the opportunity to attend a public charter school, in addition to a safe public elementary school or secondary school within the local educational agency, the application of this provision is limited in New Jersey in two ways. In summary, transfers under the policy could only occur as a part of the charter school's "equal opportunity" selection process and among charter schools administered under the same managing authority.

1. Since pursuant to *N.J.S.A. 18A:36A-3* charter schools in New Jersey are considered public school districts, operated independently of a local board of education, transfers may only take place among charter schools within the approved charter school. Therefore,

students may be permitted to transfer to another charter school that is administered under the same managing authority of the charter school, but are not permitted to transfer to a school in the local public school district administered by a local board of education.

2. However, pursuant to *N.J.S.A. 18A:36A-7*, a charter school must be open to all students on a space-available basis and may not discriminate in its admission policies or practices, although it may establish reasonable criteria to evaluate prospective students. Also, in accordance with *N.J.S.A. 18A:36A-8*, if there are more applications to enroll in the charter school than there are spaces available, the charter school must select students to attend using a random selection process for enrollment.

Q23: How do the persistently dangerous schools designation (USCO Policy Provision I) and the victims of violent criminal offenses option (USCO Policy Provision II) apply to students determined to be in need of special education programs and services who attend schools in school districts/charter schools that receive federal NCLB funds?

A: For all students who attend the public schools identified by the NJDOE as persistently dangerous or who become victims of violent criminal offenses, parents must be notified in accordance with the USCO Policy and informed that they may exercise the option of transferring their children to a safe school. Schools/charter schools identified as a persistently dangerous school (PDS) are required to provide transferred special education students with the program required by the student's Individualized Education Program (IEP).

Q24: Is there an appeal process when the school is classified as a persistently dangerous school (PDS)?

A: A school district's board of education or a charter school's governing authority may file a Petition of Appeal with the Commissioner of Education, pursuant to *N.J.A.C. 6A:3-1.1 et seq.*, if it has evidence that the NJDOE's determination was not made in accordance with its published policy.

Q25: Do the provisions for victims of violent criminal offenses (USCO Policy Provision II) apply to incidents from previous school years?

A: Under the federal regulations (68 FR 16789), the policy only applies to offenses that occurred in the 2003–2004 school year and each school year thereafter. Beginning with the 2004–2005 school year, schools are required to provide the option to victims of violent criminal offenses that occurred in the previous school year, when the determination that the student was a victim was made 30 days or fewer before the end of the school year. In this case, the transfer must be completed by the start of the new school year.

Q26: May school districts/charter schools offer students the transfer option when they do not meet the criteria for determining victims of violent criminal offenses under the USCO Policy Provision II?

A: The intent of the USCO Policy Provision II is to provide safety and security for students and to prevent unnecessary or extended interruptions to student learning. Therefore, while not required, schools are encouraged to consider offering the school transfer option as

one response for providing relief to students whose victimization has affected their safety and ability to learn, when it is in the best interests of the victims. Additionally, schools should develop and implement appropriate strategies for addressing the circumstances that contribute to or support victimization, as well as consistently and proactively manage individuals who have victimized students.

Schools should consider applications of the USCO Policy to the legislation (*N.J.S.A. 18A:37-13 et seq.*) enacted in September 2002 and the regulations (*N.J.A.C. 6A:16-7.9*) adopted in August 2005 requiring each district to establish, in cooperation with community representation, a policy prohibiting harassment, intimidation and bullying on school property, at school-sponsored functions and on school buses. Under the statute and regulations, schools are required to establish the range of ways in which a school will respond once an incident of harassment, intimidation or bullying is identified (*N.J.S.A. 18A:37-15(3)(b)(7)* and *N.J.A.C. 6A:16-7.9(a)2ix*), and are encouraged to establish bullying prevention programs and other initiatives involving school staff, students, administrators, volunteers, parents, law enforcement and community members (*N.J.S.A. 18A:37-17(5)(a)* and *N.J.A.C. 6A:16-7.9(d)3*). The transfer option could be one strategy for fulfilling the provision at *N.J.A.C. 6A:16-7.9(a)2(ix)(1)*, which requires district boards of education to provide "...support for victims of harassment, intimidation or bullying and corrective action for documented systemic problems related to harassment, intimidation or bullying...".

To assist each district/charter school in developing policies prohibiting harassment, intimidation and bullying on school property, the legislation also required the Commissioner of Education to develop and issue a model policy applicable to grades kindergarten through 12. The document titled *Model Policy and Guidance for Prohibiting Harassment, Intimidation and Bullying on School Property, at School-Sponsored Functions and on School Buses* can be found on the NJDOE's Web site at <http://www.state.nj.us/education/parents/bully.htm>. The regulations on intimidation, harassment and bullying (*N.J.A.C. 6A:16-7.9*) can be found at <http://www.state.nj.us/njded/code/current/title6a/chap16.pdf>.

Schools are encouraged to promote the importance of school safety and respond to the needs of students and staff. The following statutes and regulations that support safe schools have been adopted: *N.J.S.A. 18A:36-5.1* and *N.J.A.C. 6A:16-5.2* – Annual School Violence Awareness Week and *N.J.S.A. 18A:17-46*, *N.J.A.C. 6A:16-5.2(a)4* and *5.3(f)* – Public Hearings on School Violence.

N.J.S.A. 18A:36-5.1, Annual School Violence Awareness Week, designates School Violence Awareness Week in the state of New Jersey. Pursuant to the law, school districts/charter schools are required to provide an opportunity for students, parents and districts and law enforcement personnel to discuss methods for keeping schools safe from violence; to create school safety plans; and to recognize students in need of help. School districts/charter schools are required to organize activities to prevent school violence, including, but not limited to, age-appropriate opportunities for student discussion on conflict resolution, issues of student diversity and tolerance. Law enforcement personnel must be invited to join members of the teaching staff in the discussions. Programs also must be provided for school board employees that are designated to help them recognize warning signs of school violence and to instruct

them on recommended conduct during an incident of school violence. The regulations for the week, *N.J.A.C. 6A:16-5.2* can be found at <http://www.state.nj.us/njded/code/current/title6a/chap16.pdf>.

N.J.S.A. 18A:17-46, Public Hearings on School Violence provides that at a public hearing each year, the chief school administrator must report to the board of education all acts of violence and vandalism which occurred in the school district during the previous school year. Verification of the annual report is required to be a part of state monitoring. The regulations for the hearing, *N.J.A.C. 6A:16-5.2(a)4* and *5.3(f)*, can be found at <http://www.state.nj.us/njded/code/current/title6a/chap16.pdf>.

Q27: May a parent challenge a district's decision that a student was not the victim of a violent criminal offense?

A: Parents may make direct challenges to any school district decision to local school administrators, local school boards of education and the county superintendent based on evidence that the school did not act in accordance with the Criteria for Determining Victims of Violent Criminal Offenses, as set forth in USCO Policy Provision II.

Q28: Does the NJDOE consider the number of special education students in a school when applying the PDS criteria?

A: No. The formula for determining PDS is based on the relative degree of safety and security in schools, as determined by school-reported data on the EVVRS, regardless of educational classification. Whether special education or regular education students commit a larger portion of the reported offenses, the result is the same - unsafe schools.

Q29: Must school districts/charter schools provide the annual public report on violence and vandalism required under *N.J.S.A. 18A:17-46* and *N.J.A.C. 6A:16-5.2* if they reported zero incidents on EVVRS?

A: Yes. The school district/charter school must present a report that is consistent with its Annual Report of Violence and Vandalism at a public hearing each year. The public report would indicate that there were zero incidents.

Q30: Do harassment, intimidation or bullying constitute violent crimes?

A: Harassment, intimidation and bullying are violent crimes of ***bias intimidation only*** when a person commits, attempts to commit, conspires with another to commit or threatens the immediate commission of any of the offenses identified under USCO Policy Provision II in any or all of the following circumstances:

- With a purpose to intimidate a victim or a group of specified victims because of race, color, religion, ancestry, national origin, ethnicity, gender, sexual orientation, gender identity and expression, a mental, physical or sensory disability or any other distinguishing characteristic; **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, ancestry, national

origin, ethnicity, gender, sexual orientation, gender identity and expression, a mental, physical or sensory disability or any other distinguishing characteristic; **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, ancestry, national origin, ethnicity, gender, sexual orientation, gender identity and expression, a mental, physical or sensory disability or any other distinguishing characteristic; or
 - The victim or the victim's property was selected to be the target of the offense because of race, color, religion, ancestry, national origin, ethnicity, gender, sexual orientation, gender identity and expression, a mental, physical or sensory disability or any other distinguishing characteristic.

Q31: In regard to sexual assault, do different criteria apply at different ages?

A: Yes.

1. *Aggravated Sexual Assault* - A person is a victim of an aggravated sexual assault when the actor commits an act of sexual penetration¹ 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 contact² 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 penetration¹ 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.

¹ *“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)]*

² *“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)]*