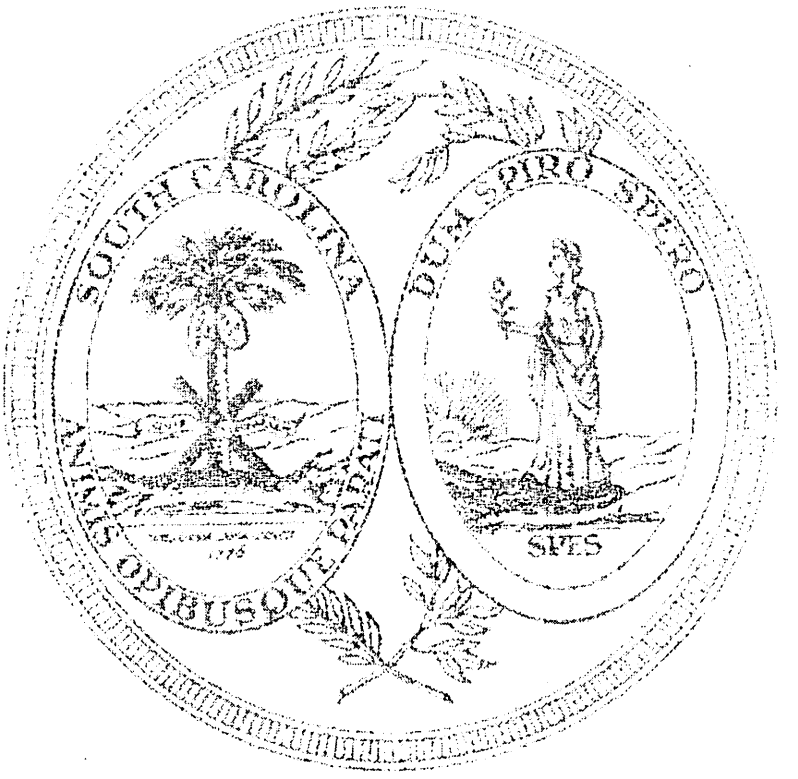
Guidelines for the Unsafe School Choice Option

No Child Left Behind Act of 2001
Title IX, Part E, Subpart 2, Section 9532



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Dr. Mick Zais
State Superintendent

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PART 1

PERSISTENTLY DANGEROUS SCHOOLS

I. INTRODUCTION

The Unsafe School Choice Option—which is mandated by Section 9532 of the Elementary and Secondary Education Act (ESEA) of 1965, as amended by the No Child Left Behind Act of 2001 (20 U.S.C. § 7912)—requires that each state receiving funds under the ESEA establish and implement a statewide policy requiring that a student who attends a "persistently dangerous" public school, as well as a student who becomes the victim of a violent criminal offense while in or on the grounds of any public school that he or she attends, be allowed to attend a safe public school.

II. DEFINITION OF A "PERSISTENTLY DANGEROUS SCHOOL"

A South Carolina public school or charter school will be considered "persistently dangerous" if its conditions expose students to injury from violent criminal offenses for a period of three consecutive years. For the 2002–03 school year, however, the State Department of Education (SDE) will review crime data only from the past two school years, 2001–02 and 2002–03, in making the determination that a school must be designated as persistently dangerous. Beginning in the 2003–04 school year, the SDE will review data from the past three years (2001-02, 2002–03, and 2003-04) to make this determination. After the 2003–04 school year, data from the past three consecutive years will be used.

III. CRITERIA USED TO IDENTIFY A PERSISTENTLY DANGEROUS SCHOOL

A. Violent Criminal Offenses

1. For purposes of identifying persistently dangerous schools, the following categories of violent criminal offenses are used (see appendix A for definitions of these offenses):

   - homicide,
   - forcible sex offenses,
   - kidnapping/abduction,
   - aggravated assault,
   - drug distribution,
   - robbery, and
   - weapons offenses.

2. A public school or charter school will be designated as "persistently dangerous" if any two of the following situations exist for three consecutive years with regard to the occurrence of violent criminal offenses on its grounds. (See the explanation in Section II, immediately above, for the exception regarding the 2002–03 school year.)

   - **homicide:** one or more incidents in the school year
   - **forcible sex offenses:** one or more incidents in the school year

- **kidnapping/abduction:** one or more incidents in the school year
- **aggravated assault:** (a) for a school with fewer than 500 students, five or more incidents in the school year; (b) for a school with 500 or more students, the total number of incidents in the school year represents 1 percent or more of the total student enrollment
- **drug distribution:** (a) for a school with fewer than 500 students, five or more incidents in the school year; (b) for a school with 500 or more students, the total number of incidents in the school year represents 1 percent or more of the total student enrollment
- **robbery:** (a) for a school with fewer than 500 students, five or more incidents in the school year; (b) for a school with 500 or more students, the total number of incidents in the school year represents 1 percent or more of the total student enrollment
- **weapons offenses:** (a) for a school with fewer than 500 students, five or more incidents in the school year; (b) for a school with 500 or more students, the total number of incidents in the school year represents 1 percent or more of the total student enrollment

B. Reporting Requirements

1. The SDE will develop and implement a standard reporting system for the adequate collection and reporting of the required data. All data must be provided to the SDE on a quarterly basis; data for the fourth quarter of the school year must be submitted by June 2.

2. In reporting violent criminal incidents to the SDE, a public school or charter school must also include nonstudent incidents and incidents occurring during extracurricular activities on its grounds.

3. All school districts are required to retain school-level data for the last three consecutive school years.

4. Beginning in 2003, the SDE will notify a local educational agency (LEA) by June 10 each year if one or more of the LEA's schools have been identified as persistently dangerous.

5. Upon initially receiving the designation "persistently dangerous," a school will have five working days to request that the SDE review the determining data.

6. By July 1, the SDE will send final notice of a school's designation as "persistently dangerous."

IV. INTERVENTION FOR AT-RISK SCHOOLS

A. Public schools, including public charter schools, will be designated as "at risk of being persistently dangerous" if any violent criminal offense in the recognized categories (see above, section 3, item A), occurs on their grounds in any two categories in a single school year.

B. The SDE will notify LEAs on an annual basis if one or more of its schools have been identified as "at risk of being persistently dangerous."

C. Within thirty working days from the date of receiving notification from the SDE that a school or schools within a particular LEA are at risk of becoming persistently dangerous, that LEA must submit an intervention plan to the SDE for approval. Guidelines for creating an intervention plan will be developed by the SDE.

D. After an LEA's intervention plan is approved by the SDE, the LEA will implement that plan.

E. Any school identified as "at risk of being persistently dangerous" will be required to evaluate and, if necessary, revise its intervention plan one year after receiving this designation.

V. PROVIDING A SAFE PUBLIC CHOICE OPTION TO STUDENTS

A. Parental Notification

LEAs having one or more schools designated as "persistently dangerous" must notify the parents of each student attending these particular schools that the schools have been given this designation. LEAs must notify parents within ten working days from the date that the LEA receives final notice of the "persistently dangerous" designation from the SDE.

B. Transfer Policy for Students Attending Persistently Dangerous Schools

To the extent possible, LEAs are to offer students attending persistently dangerous schools the opportunity to transfer to a safe public school, including a safe public charter school, within the LEA.

1. Within twenty working days from the date that the LEA receives final notice of the "persistently dangerous" designation from the SDE, the LEA must notify students attending the school and their parents concerning the student's opportunity to transfer.

2. As it is stated in the *Unsafe School Choice Option: Draft Non-Regulatory Guidance* (United States Department of Education, July 23, 2002), "To the extent possible, LEAs should allow transferring students to transfer to a school that is making adequate yearly progress and has not been identified as being in school improvement, corrective action, or restructuring. The LEA is encouraged to take into account the needs and preferences of the affected students and parents."

3. All transfers must be completed within thirty working days from the date that the LEA receives the final notice of the "persistently dangerous" designation from the SDE.

4. The LEA must take into account the needs and preferences of the affected students and parents.

5. If the LEA does not have another school that is appropriate for a transferring student, the LEA is encouraged, but not required, to explore other appropriate options such as an agreement with a neighboring LEA to accept transfer students.

C. Length of Transfer

1. The transfer may be temporary or permanent, but it must be in effect as long as the student's original school is identified as persistently dangerous.

2. In determining whether the transfer should be temporary or permanent, LEAs are to 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.

D. Transportation

An LEA with one or more of its schools identified as persistently dangerous is not required to cover the cost of a student's transportation to a safe public school.

E. Corrective Action Plan

1. LEAs with one or more schools identified as persistently dangerous must develop a corrective action plan that is based on an analysis of the problems faced by each school in that particular LEA and that addresses the conditions that resulted in the school's being identified as persistently dangerous. The corrective action plan must be submitted to the SDE for approval within forty-five days after the LEA receives the final notice of the "persistently dangerous" designation.

2. After the corrective action plan has been approved by SDE, the LEA must implement the approved plan in a timely matter.

VI. TECHNICAL ASSISTANCE

As the approved corrective action plan or intervention plan is implemented, the SDE will provide technical assistance to LEAs with one or more schools designated as "persistently dangerous" or "at risk of being persistently dangerous." The SDE will also monitor the LEA's timely implementation of the plans.

VII. REMOVAL OF DESIGNATION

A. Upon the full implementation of its approved corrective action plan, an LEA may apply to the SDE to have the designated school(s) removed from the list of persistently dangerous schools.

B. After ensuring that all corrective action has been completed, the SDE will annually reassess the designated school(s) using the criteria for the identification of persistently dangerous schools. If a designated school does not meet any of these criteria in the proceeding year, the designation will be removed.

Part 2

Students Who Become Victims of Violent Criminal Offenses

I. TRANSFER OF STUDENTS

A. A student who becomes the victim of a violent crime as defined by S.C. Code Ann. § 16-1-60 (2001) while in or on the grounds of a public school that he or she attends must be offered the opportunity to transfer to a safe public school, including a public charter school, in the particular LEA within ten calendar days. (See the appendix B for the violent offenses that are defined in Title 16 of the Code of Laws of South Carolina.)

B. As it is stated in the *Unsafe School Choice Option: Draft Non-Regulatory Guidance* (United States Department of Education, July 23, 2002), "To the extent possible, LEAs should allow transferring students to transfer to a school that is making adequate yearly progress and has not been identified as being in school improvement, corrective action, or restructuring. The LEA is encouraged to take into account the needs and preferences of the affected students and parents."

C. LEAs are to take into account the needs and preferences of the affected students and parents.

D. If the LEA does not have another school that is appropriate for a transferring student, the LEA is encouraged, but not required, to explore other appropriate options such as an agreement with a neighboring LEA to accept transfer students.

II. LENGTH OF TRANSFER

A. The transfer may be temporary or permanent.

B. In determining whether the transfer should be temporary or permanent, LEAs are to consider the educational needs of the student who has become the victim of a violent criminal offense as well as other factors affecting the student's ability to succeed if returned to the transferring school.

III. TRANSPORTATION

If a student who becomes a victim of a violent criminal offense as defined in S.C. Code Ann. § 16-1-60 (2001) exercises the option to transfer to another public school, the LEA is not required to cover the cost of a student's transportation to a safe public school.

The SDE will review and update these guidelines as needed.

APPENDIX A

Offenses Defined

For the purpose of identifying persistently dangerous schools, the categories and definitions for criminal offenses to be reported are the same as those reported for the *School Crime Incident Report for South Carolina Public Schools* and by the State Law Enforcement Division for the National Incident-Based Reporting System (NIBRS). The NIBRS categories and definitions are used to uniformly classify crimes committed throughout the United States. In order to be reported to the State Department of Education, an incident must occur in or on the grounds of a public school or a public charter school. (The term *incident* is defined as any occurrence or event that could result in criminal charges being brought.)

aggravated assault. An unlawful attack by one person upon another wherein the offender uses a weapon or displays it in a threatening manner or the victim suffers obvious severe or aggravated bodily injury involving apparent broken bones, loss of teeth, possible internal injury, severe laceration, or loss of consciousness. This category includes attempted murder. A weapon can be a commonly known weapon, such as a gun or knife, or any other item which, although not usually thought of as a weapon, becomes one when used in a manner that could cause severe bodily injury (e.g., baseball bat, metal chain, large stick). A "severe laceration" is one that should receive medical attention. A "loss of consciousness" must be the direct result of force inflicted on the victim by the offender.

homicide. The killing of one human being by another. Do not include here vehicular manslaughter or attempted murder.

- **murder and nonnegligent manslaughter.** The willful (nonnegligent) killing of one human being by another. Attempted murder should be reported as aggravated assault.
- **negligent manslaughter.** The killing of another person through negligence. This offense does not include vehicular manslaughter.
- **justifiable homicide.** The killing of a perpetrator of a serious criminal offense by a peace officer in the line of duty or the killing, during the commission of a serious criminal offense, of the perpetrator by a private individual.

drug distribution. Except as authorized by state law, it is unlawful for any person (1) to manufacture, distribute, dispense, deliver, or purchase; or to aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase; or to possess with intent to manufacture, distribute, dispense, deliver, or purchase a controlled substance and (2) to create, distribute, dispense, deliver, or purchase; or to aid, abet, attempt, or conspire to create, distribute, dispense, deliver, or purchase; or to possess with intent to distribute, dispense, deliver, or purchase a counterfeit substance.

kidnapping/abduction. The unlawful seizure, transportation, and/or detention of a person against his or her will or of a minor without the consent of his or her custodial parent(s) or legal guardian. This category includes hostage-taking.

robbery. Taking or attempting to take anything of value under confrontational circumstances from the control, custody, or care of another person by force or threat of force or violence and/or by putting the victim in fear of immediate harm. Because some type of assault is an element of the crime of robbery, an assault should not be reported as a separate crime if it is performed in furtherance of the robbery. If an injury occurring during a robbery results in death, the crime should be listed as a homicide.

sex offenses, forcible. Any sexual act directed against another person, forcibly and/or against that person's will, or not forcibly or against the person's will where the victim is incapable of giving consent. This definition includes forcible rape, forcible sodomy, sexual assault with an object (to use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will, or not forcibly or against the person's will where the victim is incapable of giving consent because of his or her youth or because of his or her temporary or permanent mental or physical incapacity), and/or forcible fondling (child molesting).

weapons offenses. The violation of laws prohibiting any person, except law enforcement officers or personnel authorized by school officials, to carry on his or her person, while on any elementary or secondary school property, a knife with a blade over two inches long, a blackjack, a metal pipe or pole, firearms, or any other type of weapon, device, or object that may be used to inflict bodily injury or death. This category also includes carrying in a concealed manner a dirk, slingshot, metal knuckles, razor, or other deadly weapon usually used for the infliction of personal injury.

APPENDIX B

From Title 16 of the Code of Laws of South Carolina

SECTION 16-1-60. Violent crimes defined.

For purposes of definition under South Carolina law, a violent crime includes the offenses of murder (Section 16-3-10); criminal sexual conduct in the first and second degree (Sections 16-3-652 and 16-3-653); criminal sexual conduct with minors, first and second degree (Section 16-3-655); assault with intent to commit criminal sexual conduct, first and second degree (Section 16-3-656); assault and battery with intent to kill (Section 16-3-620); kidnapping (Section 16-3-910); voluntary manslaughter (Section 16-3-50); armed robbery (Section 16-11-330(A)); attempted armed robbery (Section 16-11-330(B)); carjacking (Section 16-3-1075); drug trafficking as defined in Sections 44-53-370(e) and 44-53-375(C); arson in the first degree (Section 16-11-110(A)); arson in the second degree (Section 16-11-110 (B)); burglary in the first degree (Section 16-11-311); burglary in the second degree (Section 16-11-312 (B)); engaging a child for a sexual performance (Section 16-3-810); homicide by child abuse (Section 16-3-85(A)(1)); aiding and abetting homicide by child abuse (Section 16-3-85(A)(2)); inflicting great bodily injury upon a child (Section 16-3-95(A)); allowing great bodily injury to be inflicted upon a child (Section 16-3-95(B)); abuse or neglect of a vulnerable adult resulting in death (Section 43-35-85(F)); abuse or neglect of a vulnerable adult resulting in great bodily injury (Section 43-35-85(E)); accessory before the fact to commit any of the above offenses (Section 16-1-40); attempt to commit any of the above offenses (Section 16-1-80); and taking of a hostage by an inmate (Section 24-13-450). Only those offenses specifically enumerated in this section are considered violent offenses.