FLORIDA DEPARTMENT OF EDUCATION
UNSAFE SCHOOL CHOICE OPTION POLICY
TECHNICAL ASSISTANCE PAPER

A. Overview

The Elementary and Secondary Education Act (ESEA) reauthorization includes a new provision related to school safety entitled the Unsafe School Choice Option (USCO), Title IX, Part E., Subpart 2, Section 9532 of Public Law 107-110. This law requires states receiving ESEA funds to identify persistently dangerous schools and provide students in such schools the option of attending a safe school as well as provide students who are victims of certain crimes on school grounds the option of attending another safe school.

The Florida Department of Education (FDOE) has solicited input from the Safe and Drug-Free Schools (SDFS) Advisory Group (consisting of LEA staff in the SDFS area), SDFS coordinators, district school superintendents, the Florida Association of District School Superintendents, the Partnership for School Safety and Security (comprised of school administrators and a teacher, school board association representative, parents, and a law enforcement officer), School Emergency Management Plans Interagency Group; and other stakeholders in the districts and FDOE as well as reviewed other states' policies to develop the state policy required by this new federal provision.

This document is designed to explain how this new provision impacts local school districts, provide the Florida definition of a persistently dangerous school, and provide the policy on alternatives for students who are victims of certain felony crimes on school grounds.

When reviewing this policy, it is important to note that one of the Florida Department of Education's top priorities has been to help school districts in providing Florida's students with a safe and secure place in which to learn. In support of school safety, the state of Florida, through state appropriations and federal dollars, has offered funding and technical assistance to school districts to provide a safe learning environment.

For many years, Florida has placed an emphasis on school safety. In 1983-84, the *Safe Schools Program* received initial funding. In 1986, the Florida Legislature enacted the *Florida Safe Schools Act*, in which funding was based solely on the juvenile crime index and, therefore, went primarily to large urban school districts. This method of allocation continued through the 1992-1993 school year, and the Act was rescinded in 1997. However, beginning in 1994, the Florida Legislature started funding safe schools activities through proviso language in its appropriations act.

The state Safe Schools Appropriation continues to be the major source of funding for school districts to develop, implement, and enforce school safety and security programs and activities. From fiscal years 1996-1997 through 1998-1999, the appropriation remained constant at $50,350,000. In fiscal year 1999-2000, the amount of the Safe Schools Appropriation was increased to $70,350,000, and in 2000-2001, to $75,350,000.

This funding has continued to the present. School districts may use these funds to invest in ensuring a safe learning environment. Districts may spend these dollars on activities which include (1) after-school programs for middle school students; (2) other improvements to enhance the learning environment, including implementation of conflict resolution strategies; (3) alternative school programs for adjudicated youth; and (4) other improvements to make the school a safe place to learn. Each district determines, based on a review of its existing programs and priorities, how much of its total allocation to use for each authorized safe schools activity.

Other state efforts include the Safe Passage Act, which passed during the 2001 legislative session, and requires all school districts to assess their safety and security activities using the Office of Program Policy Analysis and Government Accountability's (OPPAGA) "Best Practices for Safety and Security." These best practices are being used by school districts to conduct security reviews, with any findings reported to the school board and the Commissioner of Education.

In addition to the state dollars, school districts receive federal dollars through Safe and Drug-Free Schools (SDFS) funding, provided by Title IV of the No Child Left Behind Act. For 2002-03, the districts and state received over $23,707,108 in entitlement and state activity funds. Districts are authorized to use these funds for various kinds of educational activities, including substance abuse prevention, conflict resolution, anger management, and violence prevention programs that address the consequences of violent and disruptive behavior and system-wide positive discipline approaches. Such programs might address bullying, sexual harassment, abuse, and victimization associated with prejudice and intolerance. Additionally, many districts offer Student Assistance Programs that provide counseling, mentoring, referral and other assistance to students and families that are having problems.

B. Questions and Answers

I. Federal Requirements

What does Unsafe School Choice Option (USCO), Title IX, Part E., Subpart 2, Section 9532 of Public Law 107-110 state?

Section 9532 Unsafe School Choice Option

(a) UNSAFE SCHOOL CHOICE POLICY – 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 another public elementary or secondary school within the local educational agency, including a public charter school.

(b) CERTIFICATION – As a condition of receiving funds under this Act, a state shall certify in writing to the Secretary that the state is in compliance with this section.

Please note that there are two options for students under the law—a group option and an individual option. The state assurance must cover both.

1. The Group Option pertains to the definition of a persistently dangerous school and students' option if attending a school that is so designated.

2. The Individual Option pertains to any individual student who becomes a victim of a violent crime as defined by state law on his/her school grounds. For the purposes of this policy, a "violent criminal offense" is defined as a **felony** violation of Florida Statutes found in:

   - Section 782.051, relating to attempted felony murder;
   - Chapter 784, relating to assault, battery, stalking, and culpable negligence;
   - Chapter 787, relating to kidnapping, false imprisonment, luring or enticing a child, and custody offenses;
   - Chapter 794, relating to sexual battery;
   - Chapter 800, relating to lewdness and indecent exposure;
   - Chapter 827, relating to abuse of children;
   - Section 812.13, relating to robbery;
   - Section 812.131, relating to robbery by sudden snatching; or
   - Section 812.133, relating to carjacking.

   However, if the offender is another student at the same school as the victim, Florida law, specifically Section 1006.13(5), Florida Statutes (F.S.), prohibits the offender from attending the same school or riding on the same school bus as the victim or victim's sibling(s), with certain qualifications. Therefore, the victim may choose to remain at his/her school and have the offender (if a fellow student) attend another school within the district.

   More detailed information on the implementation of Section 1006.13(5), F.S., can be found at:

   http://www.firn.edu/doe/dps/dpsmemo02/02-051.htm

   Please note that the federal law and Florida law differ in that the federal law relates to the student of the violent crime being victimized by anyone on school grounds, and allows the victim the option to transfer to another school determined by the school district or to stay at his/her school, while the Florida law pertains only to the student being victimized by a fellow student, regardless of where the violent crime occurred, and having the fellow student, who is the offender, transfer to another school.

II. <u>Group Option Requirements--Identifying Persistently Dangerous Schools</u>

How will it be determined that a Florida public school is persistently dangerous under Section 9532?

A public school in Florida shall receive a “persistently dangerous school” designation if, for three consecutive years, each of the two following conditions persists:

1. The school has a federal Gun-Free Schools Act violation ["Gun-Free Schools Act violation" means a student who is determined to have brought a firearm to a school, or to have possessed a firearm at school based on the federal Gun-Free Schools Act; "firearm" means handgun, rifle, shotgun or other type of firearm (Section 921 of Title 18, *United States Code*)]; <u>and</u>

2. The school has expelled one percent (1%) or more of a student body that is greater than 500 students or five (5) students if the student body is 500 students or less, whichever number is higher, for incidents of crime and violence that are homicide, battery, sexual battery, and/or weapons possession related, as reported to the Florida Department of Education in the School Environmental Safety Incident Report (SESIR) and the student discipline/referral action data collection systems.

   If a school meets the expulsion criterion, then it shall conduct anonymous school-wide climate surveys of students, parents, and school personnel. The Florida Department of Education shall determine the survey instruments to be used. If the majority (51%) of the respondents perceives the school to be unsafe as evidenced by the results of the surveys administered by the school district, then the school meets this criterion.

For Criterion 1, "Gun-Free Schools Act violation" means a student who is determined to have brought a firearm to a school, or to have possessed a firearm at school based on the federal Gun-Free Schools Act. “Firearm" means handgun, rifle, shotgun, or other type of firearm (section 921 of title 18, *United States Code*). Local education agencies (LEAs) receiving federal Elementary and Secondary Education Act funds are required to complete and return the Gun-Free Schools Act (GFSA) Local Education Agency Activities Report to the Department. The Department compiles the results from each district and sends the results to the U.S. Department of Education. To determine if a school meets this criterion for the 2003-04 School Year, data used will be 2000-01, 2001-02, and 2002-03 school year data.

For the second criterion, Section 1003.01(6), F.S., defines “expulsion” as the removal of the right and obligation of a student to attend a public school under conditions set by the district school board, and for a period of time not to exceed the remainder of the term or school year and one additional year of attendance. Expulsions may be imposed with or

without continuing educational services and shall be reported accordingly. School districts should be coding the expulsion data sent to the Department of Education to reflect those students who are actually expelled by school board action, regardless of whether the student receives educational services or not. However, if a student goes through the expulsion process and is alternatively placed, instead of being expelled, then this action would not be considered an expulsion. To determine if a school meets this criterion for the 2003-04 School Year, data used will be 2000-01, 2001-02, and 2002-03 school year data. For 2000-01 and 2001-02, data already submitted to the Department in Survey 5 (SESIR and discipline data) shall be used. For 2002-03 data, districts will need to submit their SESIR data for the four incidents and corresponding discipline data by June 15, 2003.

Presently, pursuant to Section 1006.09(6), F.S., school principals are responsible for accurately reporting their school safety and discipline data to the Department of Education. Additionally, the new federal No Child Left Behind law requires the Department to gather school-level data on numbers of violence-related or weapons-related expulsions (as well as suspensions).

For this policy, expulsions for four serious SESIR incidents (homicide, battery, sexual battery, and weapons possession) will be part of Criterion 2 in determining if a school is persistently dangerous**.** Below are the SESIR definitions for Homicide, Battery, Sexual Battery, and Weapons Possession:

- **Homicide** (murder, manslaughter)—the killing of one human being by another.
- **Battery** (physical attack/harm)—the physical use of force or violence by an individual against another. To distinguish from fighting, an incident is reported as battery only when the force or violence is carried out against a person who is not fighting back.
- **Sexual Battery** (attempted or actual)—forced or attempted oral, anal, or vaginal penetration by using a sexual organ or an object simulating a sexual organ, or the anal or vaginal penetration of another by any body part or object.
- **Weapons Possession** (possession of firearms and other instruments which can cause harm)—possession of any instrument or object (as defined by s. 790.001, F.S., or district code of conduct) that can inflict serious harm on another person or that can place a person in reasonable fear or apprehension of serious harm.

In determining the one-percent expulsion rate, schools with 500 or fewer students may use five (5) expulsions as the threshold criterion. Schools with more than 500 students should use the formula below to calculate their current rate of violence-related or weapons-related expulsions.

$$\frac{\text{\# of expulsions for homicide/battery/sexual battery/and/or weapons possession}}{\text{\# of students enrolled in the school}} = ___\%$$

Although expulsion data will be an indicator for one of the criteria, it is critical for principals to be able to accurately report these data without fear of retribution. Inaccurate data collection and reporting will not help schools improve, nor students achieve, if a school does not use these data to make decisions to improve its learning environment.

For a school to meet Criterion 2, its expulsion data and climate survey data must both be met. For example, if the average of the students, parents, and school personnel climate survey results indicate that the majority (51%) of the respondents perceive the school to be safe, but the school expelled one percent of its student body for homicide, battery, sexual battery, and/or weapons possession, then the school would not meet this criterion as both conditions must exist for it to be designated as such. This would ensure that a single act of violence that resulted in one percent of the population being expelled for a specific incident would not result in the school being persistently dangerous. The key word here is "persistently."

For those schools meeting the one-percent expulsion criterion, the Department will designate school-wide climate surveys to be conducted. School districts shall decide whether to survey all or a random sampling of parents, students, and school personnel (instructional/non-instructional) at the school. However, if school districts choose random sampling, then they must ensure that they follow valid random sampling procedures. The districts must ensure a response rate from each group that is statistically sound to provide reliable data. As the SEA, the Department will exercise appropriate oversight. Therefore, the DOE must validate the survey administration process pertaining to these surveys. The Department shall provide guidelines on reliable survey administration procedures to those schools meeting the one-percent expulsion criterion.

For the school years 2000-01, 2001-02, 2002-03, school climate surveys used for the school improvement planning process will suffice. Beginning, 2003-04, schools meeting the expulsion criterion shall use climate surveys determined by the Department. The school-wide climate surveys shall consist of items relating to overall school safety. The benefits of administering these surveys include gathering meaningful data for school administrators to use to improve safety-related issues in their school improvement plans and providing the school with another indicator, other than expulsion data only, to determine if the school is persistently dangerous.

Who shall decide that a school is persistently dangerous?

Federal law states that the state educational agency is responsible for identifying persistently dangerous schools. For the state to do so, school districts must provide the appropriate data to make this identification in a timely manner. Therefore, each school district shall collect the appropriate data for the federal Gun-Free Schools Act report violation, expulsions for the specified SESIR incidents (homicide, battery, sexual battery, and weapons possession), and climate surveys (if meeting the one percent

expulsion rate for the four SESIR incidents), on a regular basis throughout the year. This information will be sent to the Department as directed by the DOE. In order to meet the immediate need to identify whether a school has met the persistently dangerous school criteria, the Department will survey the school districts prior to July 1, 2003, to receive data for the 2002-2003 school year. School districts will continue to report SESIR and discipline data to the Department through Survey 5 as well.

The DOE shall review such information to determine if the conditions listed above exist within any given school. In the first year that the Department determines that the conditions exist in a given school, it shall notify the district of this determination so that proper corrective action may be taken.

If the Department determines that the conditions exist in a given school for a third year, the data and information provided by the school district shall be reviewed by the DOE for its final determination of whether the school should be identified as persistently dangerous. The final determination by the Department shall constitute final agency action and the district may contest such designation within 30 days of such action.

What is the definition of a school?

Section 1003.01(2), F.S., defines “school” as an organization of students for instructional purposes on an elementary, middle or junior high school, secondary or high school, or other public school level authorized under rules of the State Board of Education. For the purposes of this policy, a school is any school with a school number, excluding DJJ facilities.

III. Local Education Agency (LEA) Responsibilities

Note: The following LEA responsibilities were outlined in the U.S. Department of Education's Unsafe School Choice Option Draft Non-Regulatory Guidance.

What must the LEA do when one or more of its schools have been identified as persistently dangerous?

At a minimum, the LEA that has one or more schools identified as persistently dangerous must, in a timely manner:

(1) notify parents of each student attending the school that the state has identified the school as persistently dangerous (generally within ten days);
(2) offer students the opportunity to transfer to a safe public school, including a safe public charter school, within the LEA (generally within 20 days); and
(3) complete the transfer for those students who accept the offer (generally within 30 days).

In addition, the LEA should also:

(4) develop a corrective action plan; and
(5) implement that plan in a timely manner.

Parental notification regarding the status of the school and the offer to transfer students may be made simultaneously.

What is "timely implementation" of these steps?

Although "timely implementation" depends on the specific circumstances within the LEA, generally, an example of timely notification to parents or guardians is within ten school days from the time that the LEA learns that the school has been identified as persistently dangerous.

Generally, within 20 school days from the time that the LEA learns that the school has been identified as persistently dangerous, there should be timely development of a corrective action plan and the offer to students of the opportunity to transfer. Transfers of students generally should occur within 30 school days.

Should the LEA submit its corrective action plan to the Department for approval?

Yes. In addition, after approving the LEA's corrective action plan, the Department should provide technical assistance as the plan is implemented and should monitor the LEA's timely completion of the approved plan.

What types of corrective action may be taken?

Corrective action should be based on an analysis of the problems faced by the school and address the issues that resulted in the school being identified as persistently dangerous. Some examples of corrective action include: hiring additional personnel 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 implementing a positive behavioral support system to address school-wide discipline policies, limiting access to campuses, hiring security personnel, or purchasing of security equipment. These are just some examples and LEAs are not limited to these examples only.

What resources are available to help schools implement corrective action?

Consistent with applicable requirements such as those contained in the *Safe and Drug-Free Schools and Communities Act (SDFSCA)* "Principles of Effectiveness," SDFSCA state grant program funds may be used to implement planned corrective actions *[section 4115].* LEAs may also consider using the flexibility provided under Section 6123(b) of the ESEA, which provides for the transfer, under certain circumstances, of funds from one ESEA program to another.

State and local resources may also be used to help schools implement corrective action.

What does the LEA do when corrective action has been completed?

Upon completion of its planned corrective action, the LEA may apply to the Department to have the school removed from the list of persistently dangerous schools. After ensuring that corrective action has been completed, the Department should reassess the school using the agreed upon criteria for the identification of persistently dangerous schools.

Must all students attending a persistently dangerous school be offered the opportunity to transfer?

Yes.

Are students at persistently dangerous schools required to transfer to another school in the LEA?

No. Students are not required to transfer, but must be offered the opportunity to do so.

If a student attending a public school identified as persistently dangerous elects to transfer to another public school, how is the school selected?

To the extent possible, the LEA 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 (per the Unsafe School Choice Option, Draft Non-Regulatory Guidance, July 23, 2002, DRAFT GUIDANCE, U.S. Department of Education). The LEA is encouraged to take into account the needs and preferences of the affected students and parents. However, the LEA shall make the final determination as to which schools students will be transferred.

If a student elects to transfer to another public school, is the transfer permanent or temporary?

The transfer may be temporary or permanent, 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 temporary or permanent, the LEA 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, the LEA may want to consider allowing a student to complete his or her education through the highest grade level at the receiving school.

What if there is not another school in the LEA for the transferring student(s)?

LEAs are encouraged, but not required, to explore other appropriate options such as an agreement with a neighboring LEA to accept transfer students.

IV. Individual Option for Students who Become Victims of Violent Criminal Offenses

What specific crimes are considered violent criminal offenses?

For the purposes of a student who has been victimized being allowed to transfer to another school, the following offenses meet the standard of a "violent criminal offense."

A "violent criminal offense" is defined as a **felony** violation of Florida Statutes found in:

- Section 782.051, relating to attempted felony murder;
- Chapter 784, relating to assault, battery, stalking, and culpable negligence;
- Chapter 787, relating to kidnapping, false imprisonment, luring or enticing a child, and custody offenses;
- Chapter 794, relating to sexual battery;
- Chapter 800, relating to lewdness and indecent exposure;
- Chapter 827, relating to abuse of children;
- Section 812.13, relating to robbery;
- Section 812.131, relating to robbery by sudden snatching; or
- Section 812.133, relating to carjacking.

NOTE: *Some of the statutes listed above include both misdemeanors and felony offenses. The violent crimes listed in the policy refer only to* ***felony*** *offenses or offenses that would be a felony if committed by an adult.*

In order to be considered a violent criminal offense for the purposes of transferring to another school, it is necessary that the incident be reported to the appropriate law enforcement agency. The parent of the victim of any such felony may invoke the transfer option once the state attorney files charges against the offender.

However, if the offender is another student at the same school, Section 1006.13(5), F.S., prohibits the offender from attending the same school or riding on the same school bus as the victim or victim's sibling(s) with certain qualifications. Therefore, the victim may choose to remain at his/her school and have the offender attend another school within the district.

What should the LEA do when a student becomes a victim of a violent criminal offense as defined above?

Consistent with the statewide USCO policy, an LEA should offer, generally within ten calendar days after the school district superintendent has been notified of the offender being charged with the offense, an opportunity to transfer to a safe public school (including public charter schools) within the LEA to any student who has become the victim of a violent criminal offense while in or on the grounds of a public school that the student attends.

Parents of the victimized student should request the transfer within 20 days of the date when the State Attorney’s Office files charges against the offender. The transfer must occur in an expedient manner (generally within 30 days of the parents’ request) and in a way that does not result in loss of academic credit, reduction in grades, or any other academic or other penalty to the victimized student.

When communicating with parents, districts need to ensure that all home communication be written in the home language, whenever feasible.

However, if the victim’s offender is another student at the same school, Section 1006.13(5), F.S., prohibits the offender from attending the same school or riding on the same school bus as the victim or victim’s sibling(s) with certain qualifications. Therefore, the victim may choose to remain at his/her school and have the offender attend another school within the district.

Is a student who has become the victim of a violent criminal offense required to transfer to another school in the LEA?

No. The student must be offered the opportunity to transfer; however, the student may elect to remain at the school.

If a student who has been the victim of a violent crime elects to transfer to another public school, how is the school selected?

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 need of school improvement, corrective action, or restructuring. The LEA is encouraged to take into account the needs and preferences of the affected students and parents. However, the ultimate decision as to which school the student shall be transferred lies with the district.

What if there is not another safe school in the LEA for the transferring student?

LEAs are encouraged, but not required, to explore other appropriate options such as an agreement with a neighboring LEA to accept transfer students.

If a student elects to transfer to another public school, are resources available to help cover the costs (such as transportation costs) associated with the transfer?

Per the U.S. Department of Education’s Unsafe School Choice Option Draft Non-Regulatory Guidance document, the USCO statute does not authorize resources specifically to help cover these costs. However, under certain circumstances, federal funds may be used. For example, Title IV, Part A funds 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 *[section 4115(b)(2)(E)(v)]*. In addition, Title V, Part A funds may be used to help cover costs such as tuition or transportation related to USCO or expansion of public school choice *[sections 5121(8) and 5131(12) and (25)].*

Additionally, LEAs are encouraged to work with local victims' assistance units to determine if they have funds available for this purpose.

How can someone get additional information about the Unsafe School Choice Option Policy?

Contact : Office of Safe Schools, 850-245-0416/Suncom 205-0416