Unsafe School Choice Option

Draft Non-Regulatory Guidance

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DRAFT GUIDANCE

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Introduction

The Unsafe School Choice Option (USCO) (section 9532 of the Elementary and Secondary Education Act (ESEA) of 1965, as amended by the No Child Left Behind Act of 2001) requires that each State receiving funds under the ESEA establish and implement a statewide policy requiring that students attending a persistently dangerous public school, or students who become victims of a violent criminal offense while in or on the grounds of a public school that they attend, be allowed to attend a safe public school. As a condition of receiving ESEA funds, each State must certify in writing to the Secretary that the State is in compliance with these requirements.

This guidance highlights some important aspects of USCO, and provides guidance on some provisions that may be useful in administering these requirements. States may rely on this guidance in administering these requirements. U.S. Department of Education officials, including the Inspector General, will consider State recipients that follow approaches contained in this guidance to be in compliance with the applicable Federal requirements that govern this program.

The Department of Education intends to develop regulations concerning implementation of USCO in the near future, but, in the meantime, States may rely on this guidance.

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A. Establishing a State USCO Policy

A-1. What steps must States take to comply with USCO?

States must:

- Establish a State USCO policy;
- Identify persistently dangerous schools;
- Identify types of offenses that are considered to be violent criminal offenses;
- Provide a safe public school choice option; and
- Certify compliance with USCO.

Efforts should be made by the State to identify whether barriers to communication exist between school administrators, juvenile justice authorities, and law enforcement officials. These barriers may include an inability to share information regarding juvenile offenses. Some states have enacted legislation to address this issue. For example, Colorado now requires law enforcement officials to notify school principals regarding juveniles who commit felonies, class 1 misdemeanors, or offenses such as arson, theft, criminal mischief, disorderly conduct, or weapons possession within three working days after a petition is filed in juvenile court.

A-2. What must a State's USCO policy contain?

Each State's policy must allow students who attend a persistently dangerous school, or students who become victims of a violent criminal offense while in or on the grounds of a public school that they attend, to attend a safe public school within the local educational agency (LEA). The safe public school may be a public charter school.

A-3. What does the term "State" mean for purposes of USCO?

For the purposes of USCO, the term "State" means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands. Additionally, to the extent that each of following freely associated states receives funds under the No Child Left Behind Act, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau are each considered to be a "State" for the purposes of USCO until an agreement for the extension of United States education assistance under the Compact of Free Association for each of the freely associated states becomes effective.

A-4. What State entity is responsible for establishing the USCO policy?

Each State should use its own procedures to determine the entity, such as the State educational agency (SEA) or the State board of education, which has the authority to establish the required Statewide USCO policy.

B. Identifying Persistently Dangerous Schools

B-1. Who is responsible for identifying persistently dangerous schools?

The State educational agency (SEA), in consultation with a representative sample of LEAs, is responsible for identifying persistently dangerous schools in the State. Although this guidance package uses the term "SEA" throughout, States may designate another agency to handle these responsibilities.

B-2. What constitutes a representative sample of LEAs?

A representative sample of LEAs is a sufficient number of LEAs that, when taken as a group, typify the demographic and other characteristics of the LEAs in the State. In determining a representative group, SEAs might consider such factors as urbanicity, enrollment size, and geographic areas in the State, as well as other unique characteristics of the State.

B-3. How does the SEA consult with its representative sample of LEAs?

. The SEA should, at a minimum, consult with its representative sample of LEAs on the criteria to be used in identifying persistently dangerous schools, on the agency's plan to implement the data collection process, and on identification of persistently dangerous schools.

B-4. What criteria does the SEA use to identify a persistently dangerous school?

Each SEA, in conjunction with a representative sample of LEAs, should develop objective criteria to use in identifying persistently dangerous schools. "Objective" generally means not influenced by emotion, surmise, or personal bias. Types of data that could be used as objective criteria include information from records that detail the number of referrals to law enforcement agencies for bringing a firearm to school, results from student surveys about issues such as physical fights on school grounds, or data on gang presence on school grounds. In contrast, subjective information might include data collected in a focus group about community-wide perceptions of safety, or anecdotal information.

Objective information collected to help States identify persistently dangerous schools will need to be attributable to individual school sites, and should be both valid and reliable.

B-5. What procedures should an SEA include in its data collection process?

Some SEAs or State law enforcement agencies may already have a well-established process for collecting a variety of information about school safety issues. These SEAs may integrate the USCO requirements into that existing

system. Other SEAs may need to develop and implement a system to permit their LEAs to collect the objective data necessary to identify persistently dangerous schools in their States.

States are encouraged to identify existing data collection requirements (such as the requirements for the Uniform Management Information and Report System in Title IV, Part A of the ESEA) and, if appropriate, use data collected to meet those requirements in order to minimize burden associated with the annual unsafe school identification process.

In order to ensure that the USCO data are of high quality, current, and comparable across LEAs in the State, SEAs should ensure that LEAs receive appropriate training and technical assistance pertaining to data collection.

B-6. What period of time should a State consider in determining whether a school is persistently dangerous?

States generally should consider a pattern of offenses or incidents within the current or most recent school year in making this determination.

B-7. Must an SEA seek approval from the Secretary for its representative sample of LEAs, its criteria for identifying persistently dangerous schools, and its data collection process?

No. However, States should maintain appropriate records and be prepared to demonstrate compliance with the law during a U.S. Department of Education monitoring visit or audit, or as a result of a request for information.

B-8. Must States report to the Secretary the names of schools identified as persistently dangerous?

The consolidated application for ESEA formula grant programs establishes performance indicators in a number of areas, including in the area of safe schools. As a result, States will be required annually to provide information about the number of schools identified as persistently dangerous.

While States need not include information about the names of such schools in their response to the consolidated application, States should maintain this list so that it is readily accessible to the Department's representatives.

B-9. How long will a school remain identified as persistently dangerous?

The SEA should annually reassess the school using the agreed upon criteria for the identification of persistently dangerous schools. (For more information, see section E of this document.)

C. Providing a Safe Public School Choice Option to Students Attending Unsafe Public Schools

C-1. What must an LEA do when one or more of its schools have been identified as persistently dangerous?

At a minimum, an 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;
(2) Offer students the opportunity to transfer to a safe public school, including a safe public charter school, within the LEA; and
(3) For those students who accept the offer, complete the transfer.

In addition, an 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.

C-2. 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.

An example of timely development of a corrective action plan and the offer to students of the opportunity to transfer generally is within twenty school days from the time that the LEA learns that the school has been identified as persistently dangerous.

Transfers of students generally should occur within 30 school days.

C-3. Should the LEA submit its corrective action plan to the SEA for approval?

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

C-4. 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, increased instructional activities in areas such as conflict resolution, working with law enforcement officials to identify and eliminate gang-related activities, in-service training of teachers and administrators concerning consistent enforcement of school discipline policies, limiting access to campuses, and hiring of security personnel or purchase of security equipment.

C-5. 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* "Principles of Effectiveness," Safe and Drug-Free Schools and Communities Act 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.

C-6. What does the LEA do when corrective action has been completed?

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

C-7. Must all students attending a persistently dangerous school be offered the opportunity to transfer?

Yes.

C-8. 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.

C-9. If a student attending a public school identified as persistently dangerous elects to transfer to a safe 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 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-10. If a student elects to transfer to a safe public school, is the transfer permanent or temporary?

The transfers 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, LEAs 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, an LEA may want to consider allowing a student to complete his or her education through the highest grade level at the receiving school.

C-11. 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.

D. Identifying Violent Criminal Offenses

D-1. What specific crimes are considered violent criminal offenses?

The specific crimes that constitute violent criminal offenses are determined by each State's law. Each SEA should consult appropriate State attorneys and law enforcement officers in developing a comprehensive list of offenses that the State considers to be "violent criminal offenses."

D-2. Must the State submit its list of violent criminal offenses to the Secretary?

No. But this list should be maintained by the State so that it is readily available to Department of Education representatives.

E. Providing a Safe Public School Choice Option to Students who Have Been Victims of a Violent Criminal Offense

E-1. What should an LEA do when a student has become a victim of a violent criminal offense?

Consistent with the statewide USCO policy, an LEA should offer, generally within ten calendar days, 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.

E-2. 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.

E-3. If a student who has been the victim of a violent crime elects to transfer to a safe 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 school improvement, corrective action, or restructuring. The LEA is encouraged to take into account the needs and preferences of the affected students and parents.

E-4. 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.

E-5. If a student elects to transfer to a safe public school, are resources available to help cover the costs (such as transportation costs) associated with the transfer?

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)]*.

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

F. Certifying Compliance with USCO

F-1. When must States submit certifications of compliance to the Secretary?

Each State must submit a certification of compliance in writing to the Secretary before receiving funding for any ESEA program. A certification form was included in the FY 2002 consolidated application package for SEAs. Completion of this form by each SEA will satisfy the USCO certification requirement. SEAs that elect not to file a consolidated application should contact the Office of Elementary and Secondary Education's Safe and Drug-Free Schools Program staff to request a certification form.

F-2. Is a State eligible to receive ESEA funding if it has not filed a certification?

No. Certification is a condition of receiving ESEA funds.

F-3. What if a State did not fully comply with the requirements on or before July 1, 2002?

If the State has not fully complied with these requirements, it must submit a qualification of its certification no later than August 15, 2002 that indicates what steps remain to be completed and includes a timetable that provides for completing the following steps not later than July 1, 2003:

- Establishing its policy
- Selecting its representative sample of LEAs
- Identifying its objective criteria
- Establishing its data collection process
- Identifying its persistently dangerous schools.

The State must be prepared to implement the required transfers of students no later than the start of the 2003-2004 school year.

If the State qualifies its certification concerning these provisions (see above), it must submit quarterly progress reports, beginning on September 30, 2002, and continuing until the State is in full compliance with the requirements.

The Secretary will not take enforcement action against the State in school year 2002-03 if the State is making good faith progress in carrying out these steps.

Both the qualification and the subsequent quarterly reports should be submitted to William Modzeleski, Director, Safe and Drug-Free Schools Program, U.S. Department of Education, 400 Maryland Avenue SW, Washington, DC 20202-6123.

F-4. How often must a State provide a certification of compliance with the USCO requirements?

After the first certification of compliance in July 2002, each State must submit a yearly certification of compliance. A certification must be received before any ESEA funding can be awarded to the State.

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