

**Statement of the Office of Inspector General for the Secretary's Advisory
Committee Meeting on the Unsafe School Choice Option and the Identification of
Persistently Dangerous Schools
October 23, 2006**

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Thank you for the opportunity to present and discuss the work of the Office of Inspector General (OIG) on the implementation of the Unsafe School Choice Option (USCO), under *Elementary and Secondary Education Act of 1965 (ESEA)*, as amended by the *No Child Left Behind Act of 2001 (NCLB)*.

The issue of safe schools is one we have examined since 1999, and USCO provision of the *ESEA* since 2004. We chose to review the implementation of the USCO for two reasons: it was a new provision to the *ESEA*, and its importance in helping ensure that students have an opportunity to learn in a safe environment.

We have worked closely with the U.S. Department of Education's (Department) Office of Safe and Drug Free Schools (OSDFS) in planning our work in this area, as we with similar reviews of the Safe and Drug Free Schools Act, and the Gun Free Schools Act. We have relied on the expertise and knowledge of OSDFS staff, and appreciate their assistance in our effort to meet the objectives of our audits, fulfill our mission to the Department. And our work in this area was no exception.

For our USCO reviews, we performed audits in five states: California, Georgia, Iowa, New Jersey, and Texas. The objectives of our audits were to:

1. Determine whether the state's USCO policy was in compliance with applicable laws, regulations, and guidance; and
2. Determine whether the policy was adequately implemented at the state and local levels for the audit period selected.

Our audits covered the 2002-03 and 2003-04 school years and encompassed policy development and implementation, the initial determination of Persistently Dangerous

Schools (PDS) in July 2003, and the post-determination processes. In each state, we selected local education agencies and schools to visit; we interviewed state and local officials; and examined documentation related to policy development and implementation, data collection and review. Where applicable, we reviewed parental notification of PDS determination and option to transfer; fulfillment of subsequent transfer requests; and the development and implementation of a corrective action plan. Additionally and where applicable, we reviewed documentation associated with appeals and adjustments submitted by schools determined to be PDS.

Following the completion of our fieldwork, we issued individual audit reports that identified specific issues of concern at the state and local levels, and provided suggested actions to address each concern. Attached you will find a summary of these reports, which are available on our website at: <http://www.ed.gov/about/offices/list/oig/areports.html>.

For the purposes of our presentation before the Advisory Committee, we will cover the overarching issues identified from our audits that we believe are applicable to other states. These issues were brought to the attention of the Department in February 2006, via an OIG Alert Memorandum (State and Local No. 06-02), for its consideration in the administration of its USCO policy. We will also provide examples that show a clear need for strengthening the statutory requirements of the USCO.

We plan to prepare a Perspective Paper on this issue, detailing our findings and proposing corrective actions, and distribute it to the Department and the U.S. Congress for consideration during the *ESEA* reauthorization process. It will also be made available to the general public via our website.

Below are three key areas of concern we identified during our USCO reviews at the five states.

Some States' Policies May Not Meet the Intent of USCO

Four of the five states we reviewed used disciplinary action, such as long-term suspensions or expulsions, to define a USCO incident for the purposes of reporting. We discovered that violent criminal acts might not be factored into states' determination of PDS due to these qualifiers. Likewise, requiring a certain rate of long-term suspensions or expulsions may not be conducive to accurate PDS determinations, as these disciplinary measures are often avoided in favor of other corrective action, such as the transfer to an alternative program. The four states that used disciplinary action qualifiers had no schools that met their criteria for PDS in 2003 or 2004.

The Department's *Unsafe School Choice Option Non-Regulatory Guidance* suggests the use of data that relates to incidents even when an offender is not apprehended and subsequently disciplined (i.e., suspended or expelled). New Jersey's policy was developed in accordance with the guidance, as incidents are to be reported if they meet the criteria of a violent criminal offense, regardless of disciplinary action. This is more in

line with Departmental guidance and, based on the results of our review, more effectively meets the intent of USCO, as New Jersey identified PDS in 2003 and 2004.

USCO Was Not Adequately Implemented at the Local Level

We found that reporting practices and the level of compliance varied significantly across districts in the states included in our review. Due to lack of oversight by the state educational agencies (SEA), issues of non-compliance and inaccurate reporting at the local level were not identified and addressed. Examples include:

- In Georgia, we found there were 44 unreported USCO incidents for the 2002-03 school year, including one aggravated battery, five felony weapons offenses, one terrorist threat, eight felony drug violations, and 29 non felony drug violations.
- In Iowa, we found four weapons violations and seven assaults/fights (including one assault on a teacher) that occurred during school years 2002-03 and 2003-04 went unreported.
- In one New Jersey district, two of the schools we visited reported less than 15 percent of the incidents that occurred in 2002-03. Only one of the four districts we reviewed was found to be in full compliance with USCO reporting requirements.

As a result of the inconsistent reporting, data used to determine PDS for school years 2002-03 and 2003-04 may not have been sufficiently reliable to provide accurate and equitable PDS determinations across districts in each state.

Districts Could Not Demonstrate that Victims of Violent Crimes Were Offered the Opportunity to Transfer

The school districts reviewed were unable to demonstrate compliance with the USCO provision that requires victims of violent crimes to be offered the opportunity to transfer to a safe school. States were expected to implement this provision as of the 2003-04 school year. Our reviews revealed that the school districts had no formal policies or procedures in place to ensure compliance, and had no alternative documentation to show that affected students were offered the opportunity to transfer.

OIG Suggestions for Interim Steps

In order to ensure the intent of the law is met, our February 2006 Alert Memorandum presented the Department with several suggestions. Specifically, we suggested that the Department require states to:

1. Ensure that violent criminal offenses are factored into the PDS determination, without requiring the offense to be qualified by disciplinary action;

2. Ensure that states' annual certification of USCO compliance is based upon verification from districts that documentation is available to support that incidents have been reported in accordance with the state's policy, and
3. Confirm that districts have implemented policies and procedures to ensure that the transfer option is offered to victims of violent crimes.

The Department concurred with the issues raised in our Alert Memorandum, and indicated that it strongly encourages states to take appropriate action. The Department, however, made it clear that there is no statutory or regulatory requirement in these areas; therefore, it has no means to mandate or enforce these actions without legislative or regulatory change.

In response to the Department's comments, we suggested that the Department prepare a proposal to Congress detailing any changes to the USCO provision deemed necessary, to be considered for the upcoming reauthorization of NCLB. In the interim, we suggested the Department take steps to strengthen the administration of the USCO by seeking ways to strengthen its oversight of USCO compliance. As an example, we suggested the Department could update the annual certification of compliance to encompass the criteria set forth in the non-regulatory guidance, which should include any steps deemed necessary to ensure that state policies are effective for the purpose of (1) identifying unsafe schools, and (2) providing victims of violent crimes the option to transfer to a safe school, at maximum, within 14 days after the student is determined to be a victim of a violent crime.

USCO Provisions in *NCLB* Should Be Strengthened

As previously noted, we found issues related to the determination of PDS in four out of the five states we reviewed which would result in PDS not being identified.¹ Based on our concern that states were not using effective criteria to identify PDS, we conducted additional research on the criteria to determine PDS nationwide. We found that over 50 percent of the states did not follow Departmental non-regulatory guidance for setting the criteria used to determine PDS. We identified common trends in state USCO policies that are not consistent with the non-regulatory guidance, including:

1. Common violent offenses being excluded from the PDS determination;
2. Measuring disciplinary outcomes rather than the occurrence of violent incidents; and
3. Requiring thresholds to be met for two to three consecutive years before identifying a school as PDS.

¹ An index of our findings is provided in the Attachment.

In addition to the information gathered during our five audits, we have been conducting further research in this area in other states, and thus far have found:

- One state requires 2 percent of the student population to have been the victim of a violent crime in each year for two consecutive years before determining the school to be PDS. In addition, there has been indication that a perpetrator would need to be found guilty for an incident to be included in the determination of PDS. According to a media report on this issue, a computer-assisted analysis of reports of trouble in the schools from 2002 through 2005 revealed that one district is home to eight of the state's most dangerous schools. At least one assault, fight, or injury was reported for every 27 students in these eight schools; however, none met the state's criteria for PDS. Under the state's USCO policy, a school with 1,000 students could experience four homicides and seize a weapon from students on 19 occasions each year without qualifying as persistently dangerous.
- In another state, the number of violent incidents is compared to the student population to determine PDS. Set thresholds, per population range, must be met in each of two consecutive years for a school to be determined PDS. A school with over 1,200 students must have more than 225 violent incidents in each of two consecutive years to be designated as a PDS. An average school year is 180 days, therefore, a school would need more than one violent incident per day to occur for two straight years to be determined PDS.
- In yet another case, a district's Office of the Inspector General reported that during the 2003-04 school year, there were more than 1,700 "serious security incidents" in city schools, including 464 weapons offenses. None of the schools, however, have been identified as PDS.
- As another example, a state had a policy that determined PDS based on one year of incident data; however, the policy was apparently discarded because it would have identified 36 schools. In this case a SEA official noted that they were not a big state, and 36 would be a huge number.

In 2003, the U.S. House of Representatives Committee on Education and the Workforce Subcommittee on Education Reform held a hearing on the issue of PDS. The hearing was held in Denver, Colorado. In his opening remarks, Subcommittee Vice Chairman Tom Osborne stated that as of September 2003, "only 6 states have identified any schools that are unsafe. And of those 6 states there are 52 schools. And I believe 28 of those 52 come from Pennsylvania; 27 of the 28 in Pennsylvania come from Philadelphia. So obviously, we have a wide range of what people are determining "unsafe" and what they aren't."² Three years later, that sentiment appears to hold true. Data collected by the Department on the 2004/05 school year indicates that while the number of states reporting PDS has increased to 7, the number reported for PDS has decreased to 36 schools. The full table can be found as Attachment 2.

² Transcript of Field Hearing, House Education & the Workforce Committee, September 29, 2003, page 5

Based on issues identified through our audits, and with information we continue to gather from the states on their USCO policy, it is imperative that statutory changes be considered to strengthen the USCO. We encourage the Department and the U.S. Congress to considering amending the USCO provision of the NCLB to require states to ensure that their USCO policies meet three basic requirements:

1. That all violent incidents, according to state code, are factored into the PDS determination, without the use of disciplinary action qualifiers;
2. That benchmarks for determining PDS are set at reasonable levels that are supported by objective and reliable data;³ and
3. That PDS are identified based upon the most current year of data.

OIG Perspective Paper on USCO Statutory Change

Our audits are conducted in compliance with applicable laws, regulations, and guidance specific to the type of work being conducted. In multi-state reviews, such as USCO, where we identify issues that require statutory change, we prepare a Perspective Paper detailing our findings and suggest specific changes necessary to amend the law or regulations. As stated above, we provide the Paper to the Department and the U.S. Congress for consideration, as well as make it available to the general public via our website. We look to finalize the Perspective Paper on USCO by the end of the year.

³ Departmental guidance discusses the use of objective and reliable data to determine PDS in Section B-4.

Summary of Audits and Findings by State

California Department of Education’s (CDE) Compliance with the Unsafe School Choice Option (USCO) Provision ACN A09E0025

Finding No. 1 – Local Educational Agencies (LEAs) Did Not Report All USCO Incidents to CDE

Finding No. 2 – LEAs Interpreted “Serious Physical Injury” Differently When Evaluating Incidents

Finding No. 3 – LEAs Have Not Adequately Implemented the USCO Transfer Option

Georgia Department of Education’s (GDOE) Compliance with the Unsafe School Choice Option Provision ACN A04E0007

Finding No. 1 – LEAs Did Not Report All Student Criminal Offenses For GDOE To Consider In Determining Persistently Dangerous Schools

Finding No. 2 – LEAs Did Not Offer the USCO Transfer Option

Iowa Department of Education’s (IDE) Compliance with the Unsafe School Choice Option Provision ACN A07E0027

Finding No. 1 – LEAs Did Not Report All USCO Incidents Resulting in 10-Day Suspensions or Expulsions

Finding No. 2 – LEAs Did Not Offer the USCO Transfer Option

New Jersey Department of Education’s (NJDOE) Compliance with the Unsafe School Choice Option Provision ACN A03E0008

Finding No. 1 – NJDOE May Not Have Identified Some Schools that Met the Persistently Dangerous Schools Criteria

Finding No. 2 – Inaccurate, Incomplete, and Inconsistent Reporting of Incidents of Violence by the School Districts

Finding No. 3 – Special Schools Were Not Identified As Persistently Dangerous

Texas Department of Education’s (TEA) Compliance with the Unsafe School Choice Option Provision ACN A06-E0028

Finding No. 1 – TEA and LEAs Inadequately Implemented the USCO Transfer Option

Finding No. 2 – TEA Did Not Establish Procedures to Report Violent Criminal Offenses Committed By Unknown Perpetrators

Finding No. 3 – LEAs Did Not Report All USCO Incidents and Incorrectly Reported Incidents to TEA

Finding No. 4 – LEAs’ Inadequate Documentation of Drug Incidents Made It Impossible to Determine if All USCO Drug Incidents Were Reported

USCO Results Reported to the U.S. Department of Education

School Year	States that Identified PDS	Number of PDS
2002-03	New Jersey	7
	New York	2
	Oregon	1
	Pennsylvania	28
	Puerto Rico	9
	Total	47
2003-04	New Jersey	10
	Pennsylvania	14
	South Dakota	2
	Puerto Rico	15
	Total	41
2004-05	Georgia	2
	Maryland	6
	New Jersey	4
	New York	5
	Pennsylvania	9
	Puerto Rico	8
	Texas	2
	Total	36