

Unsafe School Choice Option

Non-Regulatory Guidance



May, 2004

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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 elementary or secondary 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.

The Department of Education has established required implementation deadlines for the USCO provisions. The Notice of Final Deadlines was published in the *Federal Register* on June 16, 2003 (68 Fed. Reg. 35671). That notice requires States to complete identification of persistently dangerous schools in time to permit local educational agencies (LEAs) to offer, at least 14 days before the start of the 2003-2004 school year, and each school year thereafter, the required transfer option to students attending persistently dangerous schools. Beginning with the start of the 2003-2004 school year, LEAs also must offer, at least 14 days before the start of the 2003-2004 school year, and each school year thereafter, the opportunity to transfer to a safe school to students who are victims of violent criminal offenses while in or on the school grounds of a public elementary or secondary school that the student attends.

In Fiscal Year 2002, the Department permitted States to file qualified certifications of their implementation of the USCO requirements. States supplemented these certifications with quarterly updates of their progress toward final implementation. All of the States submitted qualified certifications and have filed the required updates. In September 2003, States that had completed the implementation of the USCO requirements submitted verifications of completion.

A yearly certification of compliance with the USCO requirements must be received before any ESEA funding for the next fiscal year can be awarded to a State.

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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.

In developing USCO policies, States should attempt to identify and remove any communication barriers that may currently exist among school administrators, juvenile justice authorities, and law enforcement officials that might impact implementation of the USCO policy. 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 or a public virtual 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, and the Commonwealth of the Northern Mariana Islands. Additionally, to the extent that the Republic of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau receive grants under the ESEA, each would be considered to be a “state” for the purposes of USCO.

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. Legislators may also establish the policy through legislative means, where permissible under State law.

B. Identifying Persistently Dangerous Schools

B-1. How does a State develop its definition of persistently dangerous schools?

The State educational agency (SEA), in consultation with a representative sample of LEAs, is responsible for developing a definition of persistently dangerous schools in the State. A State may also include parents and community members in the process of developing its definition. Although this guidance 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. What should the SEA consult with its LEAs about?

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

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. Such objective criteria should encompass areas that students and parents would consider in determining a school’s level of safety, including rates of violent offenses as defined by the State.

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 period of time should a State consider in determining whether a school is persistently dangerous?

While many States have defined “persistently dangerous” schools as schools that meet State-established criteria over a period of two to three years, we strongly encourage States to define persistently dangerous schools based on the number of incidents over a shorter period, specifically one school year. Students should not be subjected to violent offenses and activities over a period of years before a transfer option is made available.

B-6. What measures of danger should States consider in determining whether a school is persistently dangerous?

Often-identified measures of danger include number of weapons seized, number of assaults reported by students, and number of homicides. We strongly encourage SEAs to work with local law enforcement officials, including school resource officers, to identify other sources of data and information that can be used to accurately assess whether a school is persistently dangerous. Many current State definitions utilize suspension and expulsion data, which measure disciplinary responses to an incident. We urge SEAs to use data that relate to incidents (numbers of offenses) even when an offender is not apprehended and subsequently disciplined.

B-7. In reporting incidents that will be considered in identifying a school as persistently dangerous, is it permissible for an LEA to reclassify an incident as less serious and therefore not subject to reporting?

No. LEAs are expected to exercise good faith in complying with the requirements of the USCO.

B-8. Can the SEA regularly review and revise its definition of a persistently dangerous school?

We strongly encourage all States to annually review and revise their definition of a persistently dangerous school. This review should take place in conjunction with representatives from local educational agencies, as well as parents and other community members. While we recognize that many States were initially limited by the data they were already collecting and have available for consideration, it is possible to utilize data from other sources, including referrals to the juvenile courts and reports by law enforcement personnel, including school resource officers. Schools should also review and revise their definitions based upon data

that they are required to collect under the Uniform Management and Information Reporting Systems (UMIRS) requirements in Section 4112(c)(3) of the ESEA (see C2).

B-9. Who is responsible for identifying persistently dangerous schools and informing an LEA when one of its schools has been identified?

The SEA is responsible for identifying persistently dangerous schools and informing LEAs about the results of the identification process.

B-10. Can the SEA place schools on a “watch list” if the school meets a portion of the State’s criteria for a persistently dangerous school?

We strongly encourage States to define persistently dangerous schools based on the number of incidents over one school year. However, because many States have elected to define “persistently dangerous” as taking place over a two to three year period, there are schools that meet the criteria for one to two years, but not for the entire required period. In these instances, States have placed these schools on a “watch list” and require that the school implement a corrective action plan.

B-11. 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 from the Department.

B-12. 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 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 report to the Department, States should maintain this list so that it is readily accessible to the Department’s representatives. States are also encouraged to make information about schools identified as persistently dangerous readily available to parents and other community members.

B-13. How long should 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. This review should consider

whether the conditions that led to the school’s designation still exist, as well as the corrective supports that are in place.

C. School Safety and Data Collection

C-1. What procedures should an SEA include in its data collection process for school safety data?

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 (UMIRS) in Title IV, Part A of the ESEA) and, if appropriate, use the 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 collecting those data.

C-2. What are the specific data collection requirements under the UMIRS provisions in Section 4112(c)(3)?

The UMIRS provisions require States to collect the following data:

- truancy rates;
- the frequency, seriousness, and incidence of violence and drug-related offenses resulting in suspensions and expulsions in elementary and secondary schools in the State;
- the types of curricula, programs, and services provided by the State’s chief executive officer, the State educational agency, local educational agencies, and other recipients of funds under the Safe and Drug-Free Schools and Communities Act (SDFSCA) State Grants Program; and
- incidence and prevalence, age of onset, perception of health risk, and perception of social disapproval of drug use and violence by youth in schools and communities.

Information that responds to the first two bullets above must be collected on a school-by-school basis, and information that responds to all four bullets must be made available to the public.

This required information could play an important role in the administration of drug and violence prevention programs in the States, as well as in implementation of the USCO requirements.

These UMIRS requirements set up the minimum requirements. States are encouraged to expand data collection efforts to ensure that incidents that may not result in suspension or expulsion are also captured.

C-3. Can SEAs use SDFSCA State Grant funds to strengthen their data collection efforts?

Yes. SEAs and Governors, as well as LEAs, may use SDFSCA funding to design and implement mechanisms to collect and analyze data related to youth drug use, crime, and violence.

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

D-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:

- (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, which may be a safe public charter school; and
- (3) For those students who accept the offer, complete the transfer.

In addition, an LEA should also consider:

- (4) Developing a corrective action plan; and
- (5) Implementing that plan in a timely manner.

Parental notification regarding the status of the school and the offer to transfer students may be made simultaneously. LEAs are encouraged to complete each of these steps as quickly as possible.

D-2. What is “timely implementation” of these steps?

Generally, although “timely implementation” of these steps depends on the specific circumstances within the LEA, 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.

Although LEAs are encouraged to complete transfers of students as quickly as possible, LEAs must offer students who attend persistently dangerous schools the opportunity to transfer to a safe school at least 14 calendar days before the start of the school year. This requirement will ensure that students who elect to transfer are able to start the new school year in a safe school.

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

While this response provides examples of timely implementation for the LEA responsibilities outlined in question D-1, the Notice of Final Deadlines, published in the June 16, 2003 *Federal Register*, imposes specific deadlines that applied in 2003 and will apply in each year thereafter.

D-3. How can an LEA coordinate its corrective action plan with the SEA?

The SEA can provide technical assistance as the LEA's corrective action plan is developed and implemented, and can also monitor the LEA's timely completion of the corrective action.

D-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 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.

D-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 [section 4115] program funds may be used to implement planned corrective actions. 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 certain ESEA programs to another. Detailed nonregulatory guidance concerning these transferability provisions is available at <http://www.ed.gov/flexibility>.

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

We encourage States to search beyond Title IV funds as issues that contribute to unsafe school environments often go beyond programs designed to address violence, and alcohol and drug prevention. Leadership, teaching, and learning may also need to be part of the discussion.

D-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. The SEA should reassess the school using the agreed upon criteria for the identification of persistently dangerous schools.

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

Yes. All students attending an identified school must be offered the opportunity to transfer to a safe school.

D-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.

D-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?

In transferring students to safe public schools, LEAs should allow transferring students to transfer to a safe 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. If transferring students are entitled to special services under other Federal statutes (e.g. free appropriate public education (FAPE) for children with disabilities or services for children with limited English proficiency), LEAs must make those services available to eligible children at a safe public school.

D-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 the student must be allowed to remain in his or her new school for 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 should consider allowing a student to complete his or her education through the highest-grade level at the receiving school.

D-11. 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 costs associated with transferring a student from a persistently dangerous school. However, under certain circumstances Federal funds may be used. For example, ESEA Title IV, Part A [*section 4115(b)(2)(E)(v)*] 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. In addition, Title V, Part A [*sections 5121(8) and 5131(12) and (25)*] funds may be used to help cover costs such as tuition or transportation related to USCO or expansion of public school choice.

D-12. 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-13. Must charter schools that use a lottery to select their students accept students transferring from persistently dangerous schools?

No. If a charter school has a lottery admissions policy, students electing to transfer under the USCO would have to enter the lottery and, upon selection, could enroll in the public charter school. Transferring students would have to meet any minimum qualifications for admission in order to be included in the lottery.

D-14. May States establish a different definition of persistently dangerous for alternative schools that serve students who have been removed from their regular educational placements because of behavioral problems?

The statute does not specifically address public alternative schools that serve students removed from regular educational placements because of behavioral problems. Because the content of each State's USCO policy is to be determined by the States, it is up to the SEA in consultation with a representative sample of LEAs to determine whether public alternative schools will be required to meet a different definition in order to be considered persistently dangerous.

E. Identifying Violent Criminal Offenses

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

Each State's law determines the specific crimes that constitute violent criminal offenses. 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."

E-2. Must a perpetrator be convicted before schools can offer a transfer to the victim of a violent criminal offense?

No. States are encouraged to permit victims of violent criminal offenses to transfer to a safe public school, whether or not the offenses eventually result in convictions. Judicial officials may decline to prosecute a case, a prosecution may be delayed for some period of time, or no perpetrator may be identified. Allowing victims to transfer prior to a conviction ensures that the victim is able to attend a safe school rather than continuing in a school where the victim feels unsafe.

E-3. Must the State submit its list of violent criminal offenses to the Secretary?

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.

E-4. Where must violent criminal offenses be committed in order to make a victimized student eligible for transfer to a safe public school?

A student who is the victim of a violent criminal offense committed in or on the grounds of a public elementary or secondary school that the student attends must be offered an opportunity to transfer to a safe public school. Existing State education codes or regulations may already include definitions of the terms "in school" or "on school grounds." If such terms are not defined in State codes or regulations, a State should consider including definitions in its policy so that the scope of the policy is clear to administrators, teachers, parents, and students.

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

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

Consistent with the statewide USCO policy, an LEA must offer an opportunity to transfer to a safe public school (which may be a public charter school) 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 elementary or secondary school that the student attends. Generally, this offer to transfer should occur within 14 calendar days after it has been determined that a student has become the victim of a violent criminal offense at the school.

F-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. Additionally, some States have laws that require the transfer of the perpetrator rather than the victim. USCO does not override those State laws, but should be read in a manner consistent with those laws.

F-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?

In transferring a student to a safe public school, LEAs should allow transferring students to transfer to a safe 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. If transferring students are entitled to special services under other Federal statutes (e.g. free appropriate public education (FAPE) for children with disabilities or services for children with limited English proficiency), LEAs must make those services available to eligible children at a safe public school.

F-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.

F-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 the costs associated with the transfer of a student who has been the victim of a violent criminal offense. However, under certain circumstances Federal funds may be used. For example, ESEA Title IV, Part A [section 4115(b)(2)(E)(v)] 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. In addition, Title V, Part A funds [sections 5121(8) and 5131(12) and (25)] may be used to help cover costs such as tuition or transportation related to USCO or expansion of public school choice. In addition, LEAs are encouraged to work with local victims assistance units to determine if they have funds available for this purpose.

G. Certifying Compliance with the USCO

G-1. How frequently must a State certify its compliance with the USCO requirements?

A yearly certification of compliance with the USCO requirements must be received from a State before any ESEA funding for the next fiscal year can be awarded to the State.