



STATE OF NEW JERSEY
DEPARTMENT OF EDUCATION

UNSAFE SCHOOL CHOICE OPTION POLICY

STATUTORY REQUIREMENT

The Unsafe School Choice Option provision (Title VIII, Part F, Subpart 2, SEC. 8532) under the federal *Every Student Succeeds Act* (ESSA) of 2015 sets forth the following:

“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 a safe public elementary school or secondary school within the local educational agency, including a public charter school.”

OVERVIEW

The statute cited above contains two provisions that apply to all local educational agencies (LEAs):

- [Persistently dangerous schools \(Provision I\)](#); and
- [Victims of violent criminal offenses \(Provision II\)](#).

Specifically, effective the beginning of each school year, LEAs receiving ESSA funds must be prepared to complete the transfer of students who choose to exercise Provision I and Provision II of the USCO policy set forth below. Compliance with the policy is a condition of receiving funds under any and all titles under ESSA. Chief school administrators will be required to certify compliance with the USCO policy of the NJDOE in their applications for ESSA funds.

PERSISTENTLY DANGEROUS SCHOOLS (PROVISION I)

INTRODUCTION

A persistently dangerous school is a public elementary or secondary school building (except for Regional Day Schools, Educational Services Commissions and Special Services School Districts) that meets the objective criteria described below for three consecutive years and is part of an LEA. The NJDOE will use the most current available data from the Student Safety Data System (SSDS) to identify persistently dangerous schools (PDS) on or before July 31 of each year.

TYPES OF VIOLENT INCIDENTS FOR DETERMINING PERSISTENTLY DANGEROUS SCHOOLS

Incidents of violence include the following acts, as defined in the [SSDS Guidance](#):

1. A firearms offense set forth by New Jersey Statute
2. An assault upon a member of the school district staff resulting in minor injury*
3. An assault resulting in major** or serious bodily injury***
4. A fight resulting in major** or serious bodily injury***
5. Weapon use
6. Robbery or extortion
7. Sexual assault
8. Criminal threat
9. Arson with a victim
10. Kidnapping

* Minor Injury - Injury such as a cut, abrasion, burn or bruise where the individual was seen by the school nurse and received treatment, e.g., an ice pack, topical preparation, or bandaging; or the individual was referred to a medical practice or facility for observation and/or treatment, and the injury was not considered a major or serious bodily injury.

**Major Injury - Injury which requires professional medical attention. Examples include stab or bullet wounds, concussions, fractured or broken bones, or cuts requiring stitches.

***Serious Bodily Injury - Injury which involves a substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

CRITERIA FOR DETERMINING PERSISTENTLY DANGEROUS SCHOOLS

A school is considered persistently dangerous by the NJDOE when, in each of three consecutive school years, there are:

- More than 3 incidents that meet at least one of the criteria above; **and** an incident rate of at least 1 incident for every 100 students (1%);
or
- 9 or more incidents.

PROCEDURES AND GUIDELINES FOR SCHOOLS DETERMINED TO BE PERSISTENTLY DANGEROUS

When schools are identified as persistently dangerous by the NJDOE, the LEAs will be notified of the designation on or before July 31 of each year. Once the LEAs receive notification, the LEAs must inform all parents of enrolled students of the designation within fifteen calendar days of the date of the notice and offer them the option for their children to transfer to a safe public school within the LEAs by the beginning of the respective school year. LEAs must complete all transfers by the beginning of the school year following the July notification.

Students are not required to accept the transfer option, but they must be afforded the opportunity to do so. Parental notice regarding the status of the schools and the offer to transfer students should be made simultaneously. Parents of enrolled students must be notified of the persistently dangerous designation whether or not there is another school in the LEAs for the transferring students. To the extent possible, LEAs should allow transferring students to transfer to schools that have not been identified as low performing, under the State's ESSA accountability system. In addition, when a transfer school is not available within district, LEAs are strongly encouraged to seek arrangements for students to transfer to the nearest charter school or neighboring district; however, this is not required. LEAs are encouraged to take into account the needs and preferences of the affected students and parents.

CORRECTIVE ACTION PLANS FOR SCHOOLS IDENTIFIED AS PERSISTENTLY DANGEROUS

For schools identified as persistently dangerous, LEAs are required to submit to the NJDOE documentation of compliance with the parent notification requirement and actions taken to complete the transfer arrangements for all students exercising the option by the first day of the school year. Additionally, LEAs are required to develop and submit for approval corrective action plans to the NJDOE on or before September 30 of the same year, which will apply to the respective school year. The corrective action plans, which must be completed in the format provided by the NJDOE, will describe how the schools will reduce the number of incidents of

violence as determined by the SSDS. The NJDOE will provide schools with guidance for their corrective action plans, as well as monitor schools' timely completion of the approved plans.

In the spring of each following year, the NJDOE will reevaluate the status of the schools identified as persistently dangerous. The NJDOE will: (1) review the schools' progress towards completing their corrective action plans, and (2) compare the current year's incidents of violence, as reported on the SSDS, to the criteria for determining PDS. Schools identified as maintaining the persistently dangerous designation will be notified by the NJDOE on or before July 31 of the respective year and will be required to submit for approval revised corrective action plans by September 30 of that year, which will apply to the respective school year. LEAs must inform all parents of enrolled students of the designation within fifteen calendar days of the date of the notice and offer them the option for their children to transfer to safe public schools by the beginning of the respective school year, in accordance with the "Procedures and Guidelines for Schools Determined to be Persistently Dangerous" described above.

Schools no longer designated persistently dangerous will be notified on or before July 31 of the respective year. The PDS designation will be removed after one or more years contingent upon successful fulfillment of the criteria for removal, as determined by evidence of schools' progress toward successfully completing the approved corrective action plans, and evidence of incidents that no longer meet the criteria for determining PDS, described above, for one school year, the year in which the corrective action plans were in effect.

PROCEDURES AND GUIDELINES FOR EARLY NOTIFICATION AND WARNING OF SCHOOLS

EARLY NOTIFICATION

When schools meet the criteria set forth in this policy for one year, the LEAs will be informed of the types of offenses reported that have led to an early notification. This notification, on or before August 15 of each year, will be informational only.

Schools that no longer meet the criteria for PDS described above for one school year will no longer be considered in early notification status. Schools that meet the criteria for two consecutive years will move into early warning status, as detailed below.

EARLY WARNING

When schools meet the criteria set forth in this policy for two consecutive years, the LEAs will be notified of the pattern of offenses on or before August 15 of each year. LEAs are required to develop and submit for approval school safety plans to the NJDOE on or before September 30 of the same year, which will apply to the respective school year. The school safety plans, which

must be completed in the format provided by the NJDOE, will describe how the schools will reduce the number of incidents of violence as determined by the SSDS. The NJDOE will provide early warning schools with guidance for their school safety plans, as well as monitor schools' timely completion of the approved plans. Schools receiving an "early warning" notice are not required to provide the transfer option to students.

In the spring of the following year, the NJDOE will reevaluate the schools' progress towards completing their school safety plans and compare the current year's incidents of violence, as reported on the SSDS, to the criteria for determining persistently dangerous schools. Schools will be notified of their status on or before July 31 of the respective year.

Schools that no longer meet the criteria for persistently dangerous schools described above for one school year, the year in which the school safety plans were in effect, will no longer be required to submit a school safety plan.

Schools that meet the criteria set forth in this policy for a third consecutive year will be designated as persistently dangerous and required to submit for approval corrective action plans on or before September 30 of that year, which will apply to the respective school year, and provide the transfer option to students in the schools designated as persistently dangerous.

SCHOOLS NOT RECEIVING ESSA FUNDS BUT MEETING THE CRITERIA FOR PDS

School buildings and districts that are not part of an LEA that receives federal funds under ESSA but meet any one of the criteria for persistently dangerous schools will be contacted by the NJDOE and required to develop and submit for approval school safety plans on or before September 30 of the respective year. The school safety plans must be completed in the format provided by the NJDOE and describe how the schools will reduce the number of incidents of violence as determined by the SSDS. The NJDOE will provide schools with guidance for their school safety plans, as well as monitor schools' timely completion of the approved plans.

SPECIAL SCHOOLS MEETING THE CRITERIA FOR PDS

Regional Day Schools, Special Services Districts and Educational Services Commissions that meet the criteria for persistently dangerous schools will not be identified as such but will be contacted by the NJDOE and required to develop and submit for approval school safety plans on or before September 30 of the respective year. The school safety plans must be completed in the format provided by the NJDOE and describe how the schools will reduce the number of incidents of violence as determined by the SSDS. The NJDOE will provide schools with guidance for their school safety plans, as well as monitor schools' timely completion of the approved plans.

VICTIMS OF VIOLENT CRIMINAL OFFENSES (PROVISION II)

INTRODUCTION

The Unsafe School Choice Option provision (Title VIII, Part F, Subpart 2, SEC. 8532) under the federal Every Student Succeeds Act (ESSA) of 2015 sets forth, in part, the following which applies to all school buildings that are a part of an LEA:

“... a student ... 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 a safe public elementary school or secondary school within the local educational agency, including a public charter school.”

The individual victim provision of the USCO policy attempts to fulfill the requirement for LEAs to provide relief to students who have been victimized, while providing schools with a practical means for making determinations on incidents of victimization that are within the purview of LEAs. The individual victim policy has been crafted to enable school staff to make reasonable determinations and actions regarding the policy. LEAs are strongly encouraged, however, to consult with their school board attorneys and communicate with designated local and/or county law enforcement authorities, per the provisions of the [Uniform State Memorandum of Agreement Between Education and Law Enforcement Officials](#) and N.J.A.C. 6A:16-6.2(b)13, on questions and issues that arise in the implementation of the individual victims of violent criminal offenses policy.

CRITERIA FOR DETERMINING VICTIMS OF VIOLENT CRIMINAL OFFENSES

The following criteria must be used to determine when an enrolled student has become a victim of a violent criminal offense while in or on the grounds of a public elementary or secondary school that the student attends. These criteria only apply to a student who has become a victim of one or more of the violent criminal offenses enumerated below.

A student is considered a victim of a violent criminal offense when:

- A referral has been made to law enforcement officials for suspicion that one of the violent criminal offenses enumerated below has occurred; and
- One or more of the following applies:
 - Law enforcement officials have filed formal charges against the offender(s) for commission of the violent crime; or
 - The offender(s) has received sanctions in accordance with the district board of education’s code of student conduct; or

- The offender(s) either has not been identified or is not an enrolled student(s), but it is clear that the student (victim) has become a victim of a violent criminal offense based on objective indicators such as physical evidence, eyewitness testimony, and/or circumstantial evidence; or
- The pre-existence of a restraining order against the offender(s).

PROCEDURES AND GUIDELINES

Effective the first day of each school year, LEAs must be prepared to begin the transfer of any student who chooses to exercise the individual choice option provision. An LEA must offer, within 14 calendar days of the incident, an opportunity to transfer to a safe public school within the LEA to any student who has become a victim of a violent criminal offense while in or on the grounds of a public school that the student attends. While the student must be offered the opportunity to transfer, the student may elect to remain at the school.

To the extent possible, LEAs should allow transferring students to transfer to schools that have not been identified as low performing, under the State’s ESSA accountability system. In addition, when a transfer school is not available within district, LEAs are strongly encouraged to seek arrangements for students to transfer to the nearest charter school or neighboring district; however, this is not required. LEAs are encouraged to take into account the needs and preferences of the affected student and his or her parent(s). Transfers must occur within 30 days of the determination that the student was a victim of a violent criminal offense.

VIOLENT CRIMINAL OFFENSES

The violent criminal offenses under New Jersey statutes that apply to the individual victim provision described above are identified below. The offenses apply to completed offenses, as well as attempts to commit the offenses. The offenses and attempts to commit the offenses apply only when they occur in or on the school grounds, as defined in *N.J.A.C. 6A:16-1.3*, of a school that the student attends. The offenses apply whether they occur wholly or in part in or on the grounds of a school that the student attends. The offenses apply only to acts or attempts that are directed at a person (victim) or a group of specified individuals (victims), rather than acts that indiscriminately affect the entire school population or non-specified individuals or groups.

APPLICABLE VIOLENT CRIMINAL OFFENSES

Provided below is a description of each applicable violent criminal offense that is based upon New Jersey statutes and references to statutory citations that provide complete explanations of each designated offense. The descriptions provided below are not intended to be a complete

explanation of each offense or a substitute for the actual provisions of the authorizing statutes. Instead, the descriptions are provided as an aid in facilitating understanding of the general intent and practical applications of the violent criminal offenses that pertain to the USCO policy.

HOMICIDE [N.J.S.A. 2C :11-2] A student is a victim of a homicide when he or she is the child, sibling or other relative of a decedent, resulting from someone purposely, knowingly or recklessly causing the death of the student's parent, sibling or relative in or on school grounds.

ASSAULT [N.J.S.A. 2C:12-1(A)(1-3) AND 2C:12-1(B)(1-4)] A person is a victim of an assault when the actor:

- Purposely, knowingly or recklessly causes bodily injury to the victim.
- Negligently, recklessly, knowingly or purposely causes bodily injury to the victim with a deadly weapon.
- Attempts by physical menace to put the victim in fear of imminent serious bodily injury
- Knowingly points a firearm at or in the direction of the victim, whether or not the actor believes it to be loaded.

SEXUAL ASSAULT [N.J.S.A. 2C:14-2] A student is a victim of a sexual assault when the student is a victim of an act of sexual contact with a victim who is less than 13 years old and the actor is at least four years older than the victim, or the student is a victim of an act of sexual penetration under any of the following circumstances:

- The victim is less than 13 years old.
- The victim is at least 13 but less than 16 years old; and the actor is at least four years older than the victim.
- The victim is at least 16 but less than 18; and the actor has supervisory or disciplinary power over the victim.
- The actor uses physical force or coercion.
- The victim is one whom the actor knew or should have known was physically helpless, mentally defective or mentally incapacitated.

BIAS INTIMIDATION [N.J.S.A. 2C:16-1(A)] A person is a victim of the crime of bias intimidation when an actor commits, attempts to commit, conspires with another to commit or threatens the immediate commission of an offense specified in Chapters 11 through 18 of Title 2C of the New Jersey Statutes; *N.J.S.A. 2C:33-4*; *N.J.S.A. 2C:39-3*; *N.J.S.A. 2C:39-4* or *N.J.S.A. 2C:39-5* in the following circumstances:

- With a purpose to intimidate a victim or a group of specified victims because of race, color, religion, gender, handicap, sexual orientation or ethnicity; or
- Knowing that the conduct constituting the offense would cause a victim or a group of specified victims to be intimidated because of race, color, religion, gender, handicap, sexual orientation or ethnicity; or

- Under circumstances that caused any victim of the underlying offense to be intimidated and the victim, considering the manner in which the offense was committed, reasonably believed either that:
 - The offense was committed with a purpose to intimidate the victim or any person or entity in whose welfare the victim is interested because of race, color, religion, gender, handicap, sexual orientation or ethnicity; or
 - The victim or the victim's property was selected to be the target of the offense because of race, color, religion, gender, handicap, sexual orientation or ethnicity.

TERRORISTIC THREAT [N.J.S.A. 2C:12-3(A) AND 2C:12-3(B)] A person is a victim of a terroristic threat when the actor threatens to commit one of the violent criminal offenses enumerated under the USCO Policy Provision II against the victim with the purpose to put the student in imminent fear of one of the violent crimes enumerated in the USCO Policy Provision II under circumstances reasonably causing the victim to believe the immediacy of the threat and the likelihood that it will be carried out. The definition of terroristic threat applies to *N.J.S.A. 2C:12-3(a)* insofar as the threat was directed at a person (victim) or a group of specified individuals (victims).

ROBBERY [N.J.S.A. 2C:15-1] A person is a victim of a robbery when the actor, in the course of committing a theft, inflicts bodily injury; or uses force upon the victim; threatens the victim with or purposely puts the victim in fear of immediate bodily injury.

KIDNAPPING [N.J.S.A. 2C:13-1] A person is a victim of a kidnapping when the actor unlawfully removes the victim from the school or school grounds; or the actor unlawfully confines the victim with the purpose of holding the victim for ransom or reward as a shield or hostage; or the actor unlawfully removes the victim from the school or school grounds or a substantial distance from where he or she is found in school or on school grounds; or if the actor unlawfully confines a student for a substantial period of time with any of the following purposes: to facilitate commission of a crime or flight thereafter, or to inflict bodily injury on or terrorize the victim.

ARSON [N.J.S.A. 2C:17-1] A person is a victim of arson when the actor purposely or knowingly starts a fire or causes an explosion in or on the grounds of a school whereby the victim or group of specified victims are in danger of death or bodily injury; or with the purpose of destroying or damaging the victim's or group of specified victim's property that is in the school or on school grounds.