

IDAHO UNSAFE SCHOOL CHOICE OPTION POLICY

The No Child Left Behind Act of 2001 (ESEA) provides, in part:

"TITLE IX, PART E, SUBPART 2, SEC. 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 a safe public elementary school 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." PL 107-110, 115 Stat. 1425, 1984-1985 (2002) (emphasis added).

The Department of Education consulted with LEAs and associations involved with public education in Idaho to determine a definition. Based on that consultation, the Department of Education developed the following definition of "persistently dangerous public elementary school or secondary school." This definition will be used in Idaho to (a) establish state compliance with the federal requirement set forth in ESEA, and (b) determine if any Idaho schools are "persistently dangerous", thus invoking the statutorily-set requirement that students in the identified school be allowed to attend a safe public elementary or secondary school within the local education agency.

Pursuant to this Act, the Department of Education adopts this operational **definition**:

"Persistently dangerous public elementary school or secondary school":

In the context of the No Child Left Behind Act of 2001 (ESEA), an Idaho public elementary or secondary school is considered to be persistently dangerous if it meets the following criteria:

In each of three consecutive years, there is one instance of:

Homicide
Sexual offense
Kidnapping

or the school exceeds an expulsion or student conviction rate of:

1% of the student body

or

3 students, whichever number is greater, for violent criminal offenses or for violations of federal or state gun free schools requirements on school property or at school sponsored events while school is in session.

For the purpose of this definition, a "violent criminal offense" is defined as conduct which could be charged as a felony or misdemeanor involving the threat of or actual physical injury, a sexual offense, homicide, rape, robbery, aggravated assault, aggravated battery, stalking, first degree kidnapping or aggravated arson.

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I. Identification of Persistently Dangerous Schools

SDE is responsible for identification of persistently dangerous schools using the objective criteria contained within the definition. The U.S. Department of Education requires annual accounting from SDE regarding the number of schools determined to have met the state's definition of persistently dangerous (individual schools are not identified). Data collection for this purpose will be through the Safe and Drug-Free Schools Incident Tracking Report, submitted to SDE by schools each year in June.

Any school meeting the criteria for three consecutive years must submit a corrective action plan for approval. Upon completion of a planned corrective action, the LEA must apply to SDE to have the school removed from the list of persistently dangerous schools. SDE will use the criteria contained in the definition of persistently dangerous schools to determine whether the school should be removed from the list.

II. Providing a Safe Public School Choice Option

A local education agency (LEA) identified as a persistently dangerous school must:

- 1) Notify parents of each student attending the school the state has identified as persistently dangerous. Notification to parents should be within ten school days from the time the LEA is notified by SDE that the school has been identified;
- 2) Offer all students the opportunity to transfer to a safe public school within the LEA. The offer to transfer students should occur within twenty school days from the time that the LEA is notified by SDE that the school has been identified as persistently dangerous. If there is not another school in the LEA, the LEA is encouraged, but not required, to explore other options, such as an agreement with a neighboring LEA to accept transfer students;
- 3) Complete the transfer for those students who accept the offer. Transfer of students should occur within 30 school days following parental notification.

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

In the case of transfers:

- 1) LEAs should allow students to transfer to a school that is making adequate yearly progress and is not identified as being in need of school improvement, corrective action, or restructuring.
- 2) Transfers may be temporary or permanent, but must be in effect as long as the original school is identified as persistently dangerous.
- 3) When there is not another school in the LEA for the transferring student(s), LEAs are encouraged, but not required, to explore other options, such as an agreement with a neighboring LEA to accept the students(s). (Idaho Code 33-1402 and 33-1404 Enrollment Options)

III School Intervention Action Plan

Any school meeting the criteria a second consecutive year will be required to identify the problems and implement an intervention action plan to ensure a safe school environment for students, faculty, and other staff. The intervention action plan shall 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 intervention action include but are not limited to, 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, and limiting access to campuses. The intervention action plan must be submitted to the SEA for approval within 30 school days of reaching the criteria in the second consecutive year. The SEA may provide technical assistance as the plan is implemented if requested by the school. The SDE will monitor the LEA's intervention action plan throughout the process.

IV Safe School Option for Victim(s)

LEAs must provide safe school options to a student who has been a victim of a violent criminal offense while in or on the grounds of a public school in session that the student attends:

- 1) The LEA should, within ten school days, offer an opportunity to transfer to a safe public school within the LEA;
- 2) When another school is not available within the LEA, it is encouraged, but not required, that the LEA seek other appropriate options such as an agreement with a neighboring LEA to accept the student. (Idaho code 33-1402 and 33-1404 Enrollment Options)

LEAs are also encouraged to work with the local victim assistance programs to determine if they have services or funds available to help students in these circumstances. LEAs should contact their local county attorney's office to locate such programs in their area.

Appendix A

DEFINITIONS:

The definitions of most violent offenses, such as homicide and rape, are commonly understood and do not need further clarification. Other terms, such as aggravated assault, aggravated battery, and robbery, are subject to individual state definitions and may be misapplied by those not familiar with their legal definitions. Therefore, for purposes of the Unsafe School Choice Options program, the following definitions taken from Idaho Code shall apply:

Aggravated Assault. An aggravated assault is an assault with a deadly weapon or instrument, without the intent to kill, or an assault by any means or force likely to produce great bodily harm.

Ref.: Idaho Code § 18-905

Aggravated Battery. An aggravated battery is a battery in which a person:

- (a) causes great bodily harm, permanent disability or permanent disfigurement; or
- (b) uses a deadly weapon or instrument; or
- (c) uses any vitriol, corrosive acid, or a caustic chemical of any nature; or
- (d) uses any poison or other noxious or destructive substance or liquid; or
- (e) upon the person of a pregnant female, causes great bodily harm, permanent disability or permanent disfigurement to an embryo or fetus.

Ref.: Idaho Code § 18-907

Robbery. Robbery is the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear.

Ref.: Idaho Code § 18-6501

Note: Robbery differs from theft because of the physical presence of the victim and the force or fear component involved in the perpetrator taking the property from the victim against his will.

Homicide. The unlawful killing of a human being.

Threat of or Actual Physical Injury. To express an intent, through word or action to inflict harm upon another's person, coupled with the apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent.

Ref.: Idaho Code § 18-901

Aggravated Arson. Burning or damaging by fire or explosion a structure or real or personal property, resulting directly or indirectly, in great bodily harm, permanent disability, permanent disfigurement or death of any person, regardless of intent or lack of intent to cause such harm.

Ref.: Idaho Code § 18-805

Kidnapping-First Degree. Any kidnapping committed for the purpose of: obtaining money, property or another thing of values for the return or disposition of such person, - raping, or committing the infamous crime against nature; -committing serious bodily injury upon the person kidnapped; - committing any lewd and lascivious act upon any child under the age of sixteen.

Ref.: Idaho Code § 18-4502

Stalking. Any person who willfully, maliciously and repeatedly follows or harasses another person.

Ref.: Idaho Code § 18-7905

Sex Offense— Rape, crime against nature forcible sexual penetration by use of foreign object, sexual abuse of a child under the age of sixteen, ritualized abuse of a child, sexual exploitation of a child. Lewd conduct with a minor child under sixteen, or sexual battery of a minor child sixteen or seventeen years of age.