

## 2415.06 UNSAFE SCHOOL CHOICE OPTION

The New Jersey Department of Education (NJDOE) is required to establish an Unsafe School Choice Option (USCO) Policy per the Elementary and Secondary Act (ESEA) of 1965, as reauthorized under the Federal Every Student Succeeds Act of 2015 (ESSA). The USCO Policy requires that students who attend a persistently dangerous public elementary or secondary school as determined by the NJDOE, or become victims of a violent criminal offense while in or on school grounds of a public school that they attend, be allowed to attend a safe public school within the district. The USCO provision under the ESSA contains two provisions that apply to school districts that receive funds under ESSA: Provision I - Persistently Dangerous Schools and Provision II - Victims of Violent Criminal Offenses.

Effective the beginning of each school year, school districts receiving ESSA funds must be prepared to complete the transfer of students who choose to exercise Provision I and Provision II of this USCO Policy. Compliance with the Policy is a condition of receiving funds under any and all titles under ESSA. The Superintendent is required to certify compliance with this USCO Policy to the NJDOE in the application for ESSA funds.

### USCO Policy Provision I - Persistently Dangerous Schools (PDS)

#### 1. Criteria for Determining PDS.

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 determined by the NJDOE for three consecutive years and is part of a school district that receives funds under ESSA. The NJDOE will use the most current available data from the Student Safety Data System (SSDS) to identify PDS on or before July 31 of each year.

#### 2. Procedures and Guidelines for Schools Determined to be Persistently Dangerous.

A school district will be notified by the NJDOE on or before July 31 of each year if a school(s) in the school district has been identified as a PDS. Once the district receives notification a school is identified as persistently dangerous, the district must inform all parents of enrolled students in the school of the designation within fifteen calendar days of the date of the

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notice and offer them the option for their children to transfer to a safe public school within the district by the beginning of the respective school year. The district 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 school 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 within the district for the transferring students.

To the extent possible, the district will allow transferring students to transfer to schools that have not been identified as low performing under the State's ESSA accountability system. When a transfer school is not available within the school district, the district may seek arrangements for students to transfer to the nearest charter school or neighboring district; however, this is not required. The district may take into account the needs and preferences of the affected students and parents.

### 3. Corrective Action Plan for a School Identified as Persistently Dangerous.

If a school in the district is identified by the NJDOE as persistently dangerous, the district will 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, the district is required to develop and submit for approval a corrective action plan to the NJDOE on or before September 30 of the same year, which will apply to the respective school year. The corrective action plan, which must be completed in the format provided by the NJDOE, will describe how the school will reduce the number of incidents of violence as determined by the SSDS. The NJDOE will provide the school with guidance for its corrective action plan, as well as monitor the school district's timely completion of the approved plan.

In the spring of each following year, the NJDOE will re-evaluate the status of a school identified as persistently dangerous. The NJDOE will review the school's progress towards completing its corrective action plan and compare the current year's incidents of violence, as reported on the SSDS, to the criteria for determining PDS. A school 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 a revised corrective action plan by September 30 of that year, which will apply to the respective school year. The school district must

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inform all parents of enrolled students in the school of the designation within fifteen calendar days of the date of notice and offer them the option for their children to transfer to a safe public school by the beginning of the respective school year in accordance with 2. above.

A school no longer designated persistently dangerous will be notified on or before July 31 of the respective year. The persistently dangerous designation will be removed after one or more years contingent upon successful fulfillment of the criteria for removal, as determined by evidence of the school's progress toward successfully completing the approved corrective action plan, 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 plan was in effect.

#### 4. Procedures and Guidelines for Early Warning of Schools.

When a school meets the criteria set forth in this Policy for one year, the district 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. A school that no longer meets the criteria for PDS for one year will no longer be considered in early notification status. A school that meets the criteria for two consecutive years will move into early warning status outlined below.

If a school meets the criteria set forth in this Policy for two consecutive years, the district will be notified of the pattern of offenses on or before August 15 of each year. If notified, the district will develop and submit for approval a school safety plan to the NJDOE on or before September 30 of the same year, which will apply to the respective school year. The school safety plan, which must be completed in the format provided by the NJDOE, will describe how the school will reduce the number of incidents of violence as determined by the SSDS. The NJDOE will provide an early warning school with guidance for its school safety plan, as well as monitor the school's timely completion of the approved plan. A school receiving an "early warning" notice is not required to provide the transfer option to students.

In the spring of each following year, the NJDOE will reevaluate the school's progress towards completing its school safety plan and compare the current year's incidents of violence, as reported on the SSDS, to the criteria for determining PDS. The school will be notified of its status on or before July 31 of the respective year.

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A school that no longer meets the criteria for PDS for one school year, the year in which the school safety plan was in effect, will no longer be required to submit a school safety plan.

A school that meets the criteria for PDS for a third consecutive year will be designated persistently dangerous and will be required to submit for approval a corrective action plan 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 school designated as persistently dangerous.

## 5. Schools Not Receiving ESSA Funds, but Meeting the Criteria for PDS.

School buildings and districts that are not part of a local education agency (LEA) that receives Federal funds under ESSA but meet any one of the criteria for PDS will be contacted by the NJDOE and be required to develop and submit for approval a school safety plan on or before September 30 of the respective year. The school safety plan must be completed in the format provided by the NJDOE and describe how the school will reduce the number of incidents of violence as determined by the SSDS. The NJDOE will provide the school with guidance for its school safety plan, as well as monitor the school's timely completion of the approved plan.

## USCO Policy Provision II – Victims of Violent Criminal Offenses

The Unsafe School Choice Option provision under the ESSA requires 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 or secondary school that the student attends, be allowed to attend a safe public elementary or secondary school within the district, including a public charter school.

The individual victim provision of this Policy attempts to fulfill the requirement for the school district to provide relief to students who have been victimized, while providing a school with a practical means for making determinations on incidents of victimization that are within the purview of the school district. The individual victim section of this Policy has been crafted to enable school staff to make reasonable determinations and actions regarding this Policy. The Superintendent will consult with the Board attorney 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 section of this Policy.

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## 1. 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. A referral has been made to law enforcement officials for suspicion that one of the violent criminal offenses enumerated below has occurred; and
- b. One or more of the following applies:
  - (1) Law enforcement officials have filed formal charges against the offender(s) for commission of the violent crime; or
  - (2) The offender(s) has received sanctions in accordance with the Board of Education's Code of Student Conduct; or
  - (3) 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
  - (4) The pre-existence of a restraining order against the offender(s).

## 2. Procedures and Guidelines

Effective the first day of each school year, the district must be prepared to begin the transfer of any student who chooses to exercise the individual choice option provision. The district must offer, within fourteen calendar days of the incident, an opportunity to transfer to a safe public school within the district 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.

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To the extent possible, the district will allow any transferring student to transfer to a school that has not been identified as low performing, under the State's ESSA accountability system. In addition, when a transfer school is not available within the district, the district may seek arrangements for a student to transfer to the nearest charter school or neighboring district; however, this is not required. The district may take into account the needs and preferences of the affected student and his or her parent(s). Transfers must occur within thirty days of the determination that the student was a victim of a violent criminal offense.

### 3. Violent Criminal Offenses

The violent criminal offenses under New Jersey statutes that apply to the individual victim provision of this Policy are identified and explained 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 the school that the student attends. The offenses apply whether they occur wholly or in part in or on the grounds of the 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.

### 4. Applicable Violent Criminal Offenses

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 this Policy.

- a. 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.
- b. 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

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injury to the victim with a deadly weapon; attempts by physical menace to put the victim in fear of imminent serious bodily injury; or knowingly points a firearm at or in the direction of the victim, whether or not the actor believes it to be loaded.

- c. 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 when the victim is less than thirteen 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:
- (1) The victim is less than thirteen years old.
  - (2) The victim is at least thirteen, but less than sixteen years old; and the actor is at least four years older than the victim.
  - (3) The victim is at least sixteen years old, but less than eighteen years old; and the actor has supervisory or disciplinary power over the victim.
  - (4) The actor uses physical force or coercion.
  - (5) The victim is one whom the actor knew or should have known was physically helpless, mentally defective, or mentally incapacitated.
- d. 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:
- (1) 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
  - (2) 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

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- (3) 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:
    - (a) 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
    - (b) 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.
- e. 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 this Policy against the victim with the purpose to put the student in imminent fear of one of the violent crimes enumerated in this Policy 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).
- f. 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.
- g. 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.



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- h. 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.

## Miscellaneous Provisions of USCO

### 1. Transfer Time Period – PDS

The transfer will be temporary and will be in effect as long as the student's original school is identified as persistently dangerous.

The transfer may be in effect longer and the district will 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. (i.e. The school district may allow a student to complete his or her education through the highest grade level at the receiving school if the student would otherwise be required to return to their original school.)

### 2. Charter School Transfer Option

While ESSA permits affected students to be afforded the opportunity to attend a public charter school, in addition to a safe public elementary school or secondary school within the school district, the application of this provision in New Jersey is limited. Transfers to a charter school can only occur as a part of the charter school's "equal opportunity" selection process and among charter schools administered under the same managing authority (i.e., charter schools within the charter school district).

Since charter schools in New Jersey are considered public local education agencies (LEA's), pursuant to N.J.S.A. 18A:36A-3, operated independently of a local board of education, transfers may only take place among charter schools within the LEA. Therefore, students may be permitted to transfer to another charter school that is administered under the same managing authority of the charter school but are not permitted to transfer to a school in the local public school district administered by a local board of education.

However, pursuant to N.J.S.A. 18A:36A-7, a charter school must be open to all students on a space available basis and may not discriminate in its admission policies or practices (although it may establish reasonable criteria to evaluate prospective students), and in accordance with N.J.S.A.

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18A:36A-8, if there are more applications to enroll in the charter school than there are spaces available, the charter school must select students to attend using a random selection process for enrollment.

## 3. Funding Sources for USCO

The USCO statute does not authorize resources specifically to help cover USCO costs associated with transferring a student from a PDS. However, under certain circumstances Federal funds may be used. For example, ESEA Title IV, Part A [Section 4115(b)(2)(E)(v)] 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, ESEA Title IV, 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 the USCO or expansion of public school choice.

## 4. Special Education Students

The district will provide transferred special education students with the program required by the student's Individualized Education Program (IEP).

## 5. Transfer Schools

In the event there is not another school within the school district for a transferring student, the district will explore other appropriate options such as an agreement with a neighboring school district to accept transfer students.

The district will use the school choice option as one response to incidents of victimization. Additionally, the district will develop and implement appropriate strategies for addressing the circumstances that contribute to or support victimization, as well as consistently and proactively manage individuals who have victimized students. The district will promote the importance of school safety and respond to the needs of students and staff. Pursuant to the law, the district will provide an opportunity for students, parents and school district and law enforcement personnel to discuss methods for keeping schools safe from violence; to create school safety plans; and to recognize students in need of help. The district will organize activities to prevent school violence, including, but not

limited to, age-appropriate opportunities for student discussion on conflict resolution, issues of student diversity and tolerance. Law enforcement personnel will be invited to join members of the teaching staff in the discussions. Programs shall also be provided for school district employees that are designated to help school district employees recognize warning signs of school violence and to instruct school district employees on recommended conduct during an incident of school violence.

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In accordance with the provisions of N.J.S.A. 18A:17-46, two times each school year, between September 1 and January 1 and between January 1 and June 30, at a public hearing, the Superintendent shall report to the Board of Education all acts of violence; vandalism; and harassment, intimidation, and bullying which occurred during the previous reporting period.

Title VIII, Part F, Subpart 2, SEC. 8532  
Every Student Succeeds Act (ESSA) of 2015

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