

Unsafe School Choice Option

The No Child Left Behind Act of 2001 (Reauthorization of the Elementary and Secondary Education Act) provides in Title IX, Part E, Subpart 2, Sec. 9532, the Unsafe School Choice Option, as follows:

“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.”

Pursuant to this Act, the Colorado Department of Education adopts the following policy:

Safe School Choice Option

Part One – Victims of Crimes of Violence

Any student who becomes a victim of a violent criminal offense while in or on the grounds of a public elementary school or secondary school that the student attends, shall be allowed to attend an available safe public elementary school or secondary school within the school district.

Crimes of Violence

Crimes of violence, as defined by Colorado Revised Statute 18-1.3-406 (2) (a) (I) and (II), are those crimes that have been committed, conspired to be committed, or attempted to be committed by a person during which, or in the immediate flight therefrom, the person:

- (A) Used, or possessed and threatened the use of, a deadly weapon; or
- (B) Caused serious bodily injury or death to any other person except another participant.

Crimes of violence are:

- (A) Any crime against an “at-risk” adult or “at-risk” juvenile;
- (B) Murder;
- (C) First or second degree assault;
- (D) Kidnapping;
- (E) Sexual assault;
- (F) Aggravated robbery;
- (G) First degree arson;
- (H) First degree burglary;
- (I) Escape (from custody or confinement); or
- (J) Criminal extortion.

"Crime of violence" also means any felonious unlawful sexual offense in which the defendant caused bodily injury to the victim or in which the defendant used threat, intimidation, or force against the victim.

Prohibitions regarding the enrollment of expelled students

Districts must comply with the provisions set forth in CRS 22-33-106(4) which require that a student who has been expelled must be prohibited from enrolling or re-enrolling in the same school in which the victim of the offense or member of the victim's immediate family is enrolled or employed when:

- a. the expelled student was convicted of a crime, adjudicated a juvenile delinquent, received a deferred judgment or was placed in a diversion program as a result of committing the offense for which the student was expelled;

- b. there is an identifiable victim of the expelled student's offense; and
- c. the offense for which the student was expelled does not constitute a crime against property.

If the district has no actual knowledge of the name of the victim, the expelled student shall be prohibited from enrolling or re-enrolling only upon request of the victim or a member of the victim's immediate family.

If the district has only one school in which the expelled student can enroll, the district must either prohibit the enrollment or design the expelled student's schedule, to the extent possible, to avoid contact between the expelled student and the victim or victim's family member.

Nothing in this policy or the state law can be construed to require that a victim of a violent crime be transferred to another school.

Part Two – Persistently Dangerous School

Any student who attends a persistently dangerous public elementary school or secondary school, as determined by the State in consultation with a representative sample of local educational agencies, shall be allowed to attend an available safe public elementary school or secondary school within the school district.

Persistently Dangerous School

A school is determined to be "persistently dangerous" if the total number of incidents annually reported to the Colorado Department of Education for:

- (A) alcohol violations, drug violations, assaults/fights, robberies, and "other" felonies as defined by the Automated Data Exchange;
- (B) expulsions for firearms per the Gun-Free Schools Act; and
- (C) the number of reports to CDE of school employees engaging in unlawful behavior, as required by State Board of Education Rules 1-CCR-301-37, 2260.5-R-15.05.

exceed the following numbers per student enrollment per year for two consecutive years, beginning with the 2001/02 school year:

45 for fewer than 299 students	225 for 1,200 – 1,499 students
90 for 300 to 599 students	270 for 1,500 – 1799 students
135 for 600 to 899 students	315 for 1800 – 2099 students
180 for 900 – 1,199 students	360 or more for 2,100 or more students

Procedures for Districts and Schools

Data will be assessed annually. The Colorado Department of Education will notify districts and schools, after the first year, if a school has the potential of being identified as persistently dangerous following the second year. When determined to be persistently dangerous, districts must notify parents about their option(s) for transferring students and complete the transfer(s) upon request.

Refer to Attachment A for more specific details.

Attachment A

Safe School Choice Option Procedures for “Persistently Dangerous” Schools

Annual data reporting: Colorado districts are required to submit schools’ safety and disciplinary data to the Colorado Department of Education (CDE) by mid-June of each year in accordance with the Automated Data Exchange procedures. CDE will analyze the annual reports in late June to determine if any school meets the policy criteria.

Opportunity to resubmit data: Each school that preliminarily meets the criteria will be notified in writing in July. The timing of such notice coincides with the “verification of data” process allowed by the Automated Data Exchange procedures. Districts must verify accuracy, no later than early August, regarding the safety and disciplinary data submitted. If there are discrepancies districts will notify the Data and Research Unit at CDE that a resubmission of data is necessary. Personnel from this Unit will assist the district in resubmitting its data.

Exception for year of inception: The first year of data analysis is the 2001-2002 school year. The opportunity to verify data for that year closed in August of 2002. Therefore, a school implicated by the policy which was first established in the spring of 2003 will not have an opportunity to revise the 2001-2002 safety and discipline incidents report.

Identification of “potentially identifiable” schools: Unless already determined to be persistently dangerous in the immediate prior year, CDE will notify in writing, by certified mail, each school principal, superintendent, and school board president of the schools that meet the criteria set forth in the policy that it has the potential of being identified as “persistently dangerous” should it meet the criteria in a second consecutive year.

Identification of “persistently dangerous” schools: Schools that meet the criteria set forth in the policy for a second consecutive year will be identified as persistently dangerous.

Notification to parents: Upon written notification from CDE by certified mail to the schools, districts, and board presidents, the districts must, at a minimum:

- (1) Notify parents of each student attending the school that the state has identified the school as persistently dangerous; and
- (2) Offer students the opportunity to transfer to a safe public school within the district; and
- (3) For those students who accept the offer, complete the transfer.

Timeline for transferring students: The Non-Regulatory Guidance issued by the US Department of Education suggests a general timeline for the above steps. The Guidance recommends that the above steps be completed within 30 days, beginning from the time the district receives notice from CDE.

Unavailable options for transfers: Per the Non-Regulatory Guidance, if there is not another school within the district that can receive transferring students, districts are encouraged, though not required, to explore other appropriate options such as an agreement with a neighboring district to accept transfer students.

Use of other local data: Along with the notice and transfer option, school officials may present other objective data to parents regarding school environments so parents may make an informed decision about their child’s enrollment. Examples of objective data include:

- Reliable and valid survey results of students’, employees’, and parents’ perception of the school climate
- Reliable and valid prevalence survey results regarding safety-related behaviors

Continuation of “persistently dangerous” status: A school will continue to be identified as persistently dangerous each consecutive year that it meets the criteria. In that case, parents must annually be given the option for having their children attend a safe public elementary or secondary school in the district.

Attachment B

Safe School Choice Policy Definitions

Definitions Referenced in Part One – Violent Crimes

Source: Colorado Revised Statutes

"Bodily injury" means physical pain, illness, or any impairment of physical or mental condition, as set forth in section 18-1-901(3) (c).

"Serious bodily injury" means bodily injury which, either at the time of the actual injury or at a later time, involves a substantial risk of death, a substantial risk of serious permanent disfigurement, a substantial risk of protracted loss or impairment of the function of any part or organ of the body, or breaks, fractures, or burns of the second or third degree, as set forth in 18-1-901 (3) (p).

"At-risk adult" means any person who is sixty years of age or older or any person who is eighteen years of age or older and is a person with a disability (as defined in 18-6.5-102 (3)), as set forth in section 18-6.5-102 (1).

"At-risk juvenile" means any person who is under the age of eighteen years and is a person with a disability (as defined in 18-6.5-102 (3)), as set forth in section 18-6.5-102 (1.5).

"Deadly weapon" means any of the following which in the manner it is used or intended to be used is capable of producing death or serious bodily injury: a firearm, whether loaded or unloaded; a knife; a bludgeon; or any other weapon, device, instrument, material, or substance, whether animate or inanimate, as set forth in section 18-1-901(3) (e).

"Unlawful sexual offense", as set forth in section 18-3-411 (1), means enticement of a child, as described in section 18-3-305, sexual assault, as described in section 18-3-402, when the victim at the time of the commission of the act is a child less than fifteen years of age, sexual assault in the first degree, as described in section 18-3-402, as it existed prior to July 1, 2000, when the victim at the time of the commission of the act is a child less than fifteen years of age; sexual assault in the second degree, as described in section 18-3-403 (1) (a), (1) (b), (1) (c), (1) (d), (1) (g), or (1) (h), as it existed prior to July 1, 2000, when the victim at the time of the commission of the act is a child less than fifteen years of age, or as described in section 18-3-403 (1) (e), as it existed prior to July 1, 2000, when the victim is less than fifteen years of age and the actor is at least four years older than the victim; unlawful sexual contact, as described in section 18-3-404 (1) (a), (1) (b), (1) (c), (1) (d), (1) (f), or (1) (g), when the victim at the time of the commission of the act is a child less than fifteen years of age; sexual assault in the third degree, as described in section 18-3-404 (1) (a), (1) (b), (1) (c), (1) (d), (1) (f), or (1) (g), as it existed prior to July 1, 2000, when the victim at the time of the commission of the act is a child less than fifteen years of age; sexual assault on a child, as described in section 18-3-405; sexual assault on a child by one in a position of trust, as described in section 18-3-405.3; aggravated incest, as described in section 18-6-302; trafficking in children, as described in section 18-6-402; sexual exploitation of a child, as described in section 18-6-403; procurement of a child for sexual exploitation, as described in section 18-6-404; indecent exposure, as described in section 18-7-302, soliciting for child prostitution, as described in section 18-7-402; pandering of a child, as described in section 18-7-403; procurement of a child, as described in section 18-7-403.5; keeping a place of child prostitution, as described in section 18-7-404; pimping of a child, as described in section 18-7-405; inducement of child prostitution, as described in section 18-7-405.5; patronizing a prostituted child, as described in section 18-7-406; or criminal attempt, conspiracy, or solicitation to commit any of the acts specified in this subsection (1).

Definitions Referenced in Part Two – Persistently Dangerous Schools

Sources: CDE's Automated Data Exchange, Colorado Revised Statutes, U.S. Codes

Assaults/Fights: Student behavior on school grounds that if committed by an adult would be considered criminal assault. This category includes acts considered first and second degree assault, as defined by state statutes or

municipal ordinances, but does not include acts considered third degree assault. (If fights and other third degree assaults violate the local code of conduct, they are reported by school districts in the "other violation" category of the Automated Data Exchange.)

18-3-202. Assault in the first degree.

- (1) A person commits the crime of assault in the first degree if:
- (a) With intent to cause serious bodily injury to another person, he causes serious bodily injury to any person by means of a deadly weapon; or
 - (b) With intent to disfigure another person seriously and permanently, or to destroy, amputate, or disable permanently a member or organ of his body, he causes such an injury to any person; or
 - (c) Under circumstances manifesting extreme indifference to the value of human life, he knowingly engages in conduct which creates a grave risk of death to another person, and thereby causes serious bodily injury to any person;

Refer to the statute for more specifics about assaults against peace officers, fire fighters, employees of the court and detention centers, or other youth service providers. First degree assault is almost always a felony. "Serious bodily injury" is defined on the previous page.

18-3-203. Assault in the second degree.

- (1) A person commits the crime of assault in the second degree if:
- (a) Repealed.
 - (b) With intent to cause bodily injury to another person, he or she causes such injury to any person by means of a deadly weapon; or
 - (c) With intent to prevent one whom he or she knows, or should know, to be a peace officer or firefighter from performing a lawful duty, he or she intentionally causes bodily injury to any person; or
 - (d) He recklessly causes serious bodily injury to another person by means of a deadly weapon; or
 - (e) For a purpose other than lawful medical or therapeutic treatment, he intentionally causes stupor, unconsciousness, or other physical or mental impairment or injury to another person by administering to him, without his consent, a drug, substance, or preparation capable of producing the intended harm;

Refer to the statute for more specifics about assaults against peace officers, fire fighters, employees of the court and detention centers, and other youth service providers. "Bodily injury" is defined on the previous page.

18-3-204. Assault in the third degree.

A person commits the crime of assault in the third degree if he knowingly or recklessly causes bodily injury to another person or with criminal negligence he causes bodily injury to another person by means of a deadly weapon. Assault in the third degree is a class 1 misdemeanor.

Example: Two middle school boys begin to physically fight on the landing of a staircase during a passing period. One of the boys is pushed into a girl student, causing her to fall down onto the flight of stairs below. This causes her to sprain her ankle and severely bruises her thigh. The sprained ankle and bruise is considered "bodily injury". The knocking down onto the stairs was due to reckless behavior and not intentional. This may be classified as a third degree assault.

Drug & Alcohol Abuse: Use, possession or sale of alcohol or drugs on school grounds, in school vehicles, or at school activities or sanctioned events. (Violations occurring outside of these events and venues should be reported in the "other violation" category as determined by school policy.)

Expulsions for Firearms, according to the federal Gun-Free Schools Act:

Handgun. A firearm which has a short stock and is designed to be held and fired by the use of a single hand; and any combination of parts from which a firearm described previously can be assembled as defined in Title 18 United States Code 921(a).

Rifle/Shotgun. A rifle is a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of an explosive to fire only a single projectile through a rifled bore for each single pull of the trigger. A short-barreled rifle is a rifle having one or more barrels less than sixteen inches in length and any weapon made from a rifle (whether by alteration, modification, or otherwise) if such weapon, as modified, has an overall length of less than twenty-six inches as defined in Title 18 United States Code 921(a). (Continued, next page.)

Rifle/Shotgun, continued.

A shotgun is a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of an explosive to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger. A short-barreled shotgun is a shotgun having one or more barrels less than eighteen inches in length and any weapon made from a shotgun (whether by alteration, modification or otherwise) if such a weapon as modified has an overall length of less than twenty-six inches as defined in Title 18 United States Code 921(a).

Other Firearm. Definition of "other firearms" according to the Gun-Free Schools Act

Firearms other than handguns, rifles or shotguns as defined in 18 USC 921. According to Section 921, the following are included within the definition:

- any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive;
- the frame or receiver of any weapon described above;
- any firearm muffler or firearm silencer;
- any destructive device, which includes:
 - (a) any explosive, incendiary, or poison gas
 - (1) Bomb,
 - (2) Grenade,
 - (3) Rocket having a propellant charge of more than four ounces,
 - (4) Missile having an explosive or incendiary charge of more than one-quarter ounce,
 - (5) Mine, or
 - (6) Similar device
 - (b) any weapon which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter
 - (c) any combination or parts either designed or intended for use in converting any device into any destructive device described in the two immediately preceding examples, and from which a destructive device may be readily assembled.

(Note: This definition does not apply to items such as toy guns, facsimilies, cap guns, bee-bee guns, and pellet guns.)

Other Felonies: Commission of an act on school grounds that, if committed by an adult, would be considered a felony. (Refer to specific state statutes or municipal codes, per offense, to determine if the actions of the offender and circumstances rise to the level of a felony.) In essence, the greater the injury in crimes against persons, or the greater loss of dollar value in crimes against property, the greater the penalty and the more likely an offense would be classified as a felony.

Robbery: Commission of an act on school grounds that, if committed by an adult, would be considered robbery. Robbery is a class four felony.

18-4-301. Robbery.

- (1) A person who knowingly takes anything of value from the person or presence of another by the use of force, threats, or intimidation commits robbery.

Example: A 12-year old student approaches another student on the playground and in a very threatening manner demands the younger student's lunch money. When the student refuses to hand over the money, the older student pushes the younger student to the ground and forcefully takes the money from his shirt pocket. This would be considered a robbery because a thing of value (the lunch money) was taken from the person (his shirt pocket) by the use of force (pushing to the ground.)

Example: A high school student left his back pack unattended momentarily and when he retrieved it, he discovered that his portable CD player had been stolen. This is not a robbery because it did not occur in the presence of another person. It is, however, a theft.

Note: It is advisable to consult with local law enforcement officials and prosecuting attorneys who will establish if the elements of crimes have been met and the respective classification.