

No Child Left Behind Act of 2001
Unsafe School Choice Option

Persistently Dangerous Schools
Identification Process and Criteria

Adopted by the Virginia Board of Education
April 29, 2003

**No Child Left Behind Act of 2001 Unsafe School Choice Option
Persistently Dangerous Schools Identification Criteria**

April 29, 2003

LEGISLATIVE AUTHORITY

No Child Left Behind Act of 2001

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.

PROCESS FOR IDENTIFYING PERSISTENTLY DANGEROUS SCHOOLS

The following process will be used to determine whether a public school will be identified as a persistently dangerous school:

- The incidents that will be used to analyze whether a school is persistently dangerous are referenced in the criminal section of the Code of Virginia (Title 18.2) as those crimes and offenses against a person and illegal possession of controlled drugs and substances with intent to distribute, each constituting a felony, as compared to the list of offenses contained in the *Annual Report on Discipline, Crime, and Violence*. Only those incidents that occur during school hours on school property as it is defined by the Code of Virginia, or during school-sponsored events on school property, will be used in determining a school's persistently dangerous status.
- Data collected for the 1999-2000 school year and reported in the *Annual Report on Discipline, Crime, and Violence* will be used as baseline data for determining whether there are persistently dangerous schools. Since the schools must be identified for the first time by June of 2003, the first round of school identification will use available data on reported incidents as defined from the 1999-2000, 2000-2001, and 2001-2002 annual reports. These incidents include homicide, sexual assault offenses, and use of a bomb or explosive device; assault with a firearm or other weapon, actual and attempted robbery, and kidnapping/abduction; and illegal possession of a handgun, rifle/shotgun,

projectile weapon, bomb, or other firearms.

- Beginning with the school year 2003-2004, the *Annual Report on Discipline, Crime and Violence* will be refined to add and to clarify definitions of certain incidents that are felonies and to allow separate tracking of their occurrence. These incidents are malicious wounding without a weapon, aggravated sexual battery, and illegal possession of controlled drugs and substances with intent to distribute or sell.
- Incidents will be placed in three categories, according to degree of harm. Category I incidents include homicide, sexual assault offenses, and use of a bomb or explosive device. Category II incidents include assault with a firearm or other weapon, malicious wounding without a weapon, actual and attempted robbery, aggravated sexual battery, and kidnapping/abduction. Category III incidents include illegal possession of controlled drugs and substances with intent to sell or distribute and illegal possession of a handgun, rifle/shotgun, projectile weapon, bomb, or other firearms.
- Each incident shall be assigned to a category and no incident shall be counted more than once, nor assigned to more than one category.
- The Virginia Board of Education's established thresholds of incidents per year for Category I and points accumulated per school size based on incidents for Categories II and III will be used to identify a persistently dangerous school over a consecutive three year period.

Stages of Identifying Schools as Persistently Dangerous

- A school that meets its Category I threshold of incidents (experiences one or more Category I incidents) or exceeds its annual point threshold for Category II and Category III incidents for one year will be "cautioned."
- A school that meets its Category I threshold of incidents (experiences one or more Category I incidents) or exceeds its annual point threshold for Category II and Category III incidents for two consecutive years will be "on probation."
- A school that meets its Category I threshold of incidents (experiences one or more Category I incidents) or exceeds its annual point threshold for Category II and Category III incidents for three consecutive years will be identified as "persistently dangerous."
- A school is no longer identified as "persistently dangerous" when annual data reported for school crimes indicate that its reported incidents do not include any incidents from Category I and its annual point threshold for Category II and Category III has not been exceeded. However, the Department of Education will continue to monitor the school for the following year.

CRITERIA FOR IDENTIFYING PERSISTENTLY DANGEROUS SCHOOLS

Incidents to Be Considered

- The incidents to be used as measures for determining persistently dangerous public schools are those violent crimes and offenses against a person and the possession of drugs with intent to distribute or sell, all designated as felonies in the criminal section of the Code of Virginia (Title 18.2). These incidents are classified into three categories, according to degree of harm.
- **Category I: Homicide with a firearm or other weapon; sexual assault offenses; use of a destructive bomb.** Homicide includes any death resulting from causes other than natural, accidental, or suicide. A sexual assault offense is defined as sexual penetration without consent and includes statutory rape and carnal knowledge of a minor. Use of bomb includes any explosive device.
- **Category II: Assault with a firearm or other weapon; aggravated sexual battery; malicious wounding without a weapon; actual and attempted robbery; kidnapping/abduction.** Assault with a firearm or other weapon includes the intentional causing of bodily harm to an individual with a weapon. Aggravated sexual battery includes sexual battery and abuse against a person less than fifteen years of age. Malicious wounding without a weapon includes intentionally causing another person bodily injury, with the intent to maim, disfigure, disable, or kill.
- **Category III: Illegal possession of a handgun, rifle/shotgun, projectile weapon, bomb, or other firearms. Illegal possession of controlled drugs and substances with the intent to distribute or sell.** The definition of drugs refers to Schedules I, II, and III of the Drug Control Act (§ 54.1-3400 et seq.) and marijuana.

Identification Methods

- To be identified “persistently dangerous,” a school would have experienced one or more Category I incidents and/or exceeded its annual point threshold for Category II and Category III incidents for three consecutive years.
- A school’s annual threshold of incidents is determined in the following ways:

Category I Threshold: Regardless of school size, one Category I incident during a year of a sexual assault offense, homicide, or use of a bomb or explosive (absolute threshold)

OR

Category II and III Threshold: The accumulation during a year of the equivalent of **one point per 100 students enrolled** for incidents in Category II and Category III (point threshold, per

enrollment to address school size)

Accumulation of threshold points from Category II and Category III

- Each incident from Category II is assigned two points. Each incident from Category III is assigned one point.
- The accumulated point threshold of incidents for each school, each year, is the equivalent of one point per 100 students enrolled based on any combination of Category II and Category III incidents (e.g., 1 point per 100 students is equivalent to 2.5 points per 250 students, 10 points per 1000 students, 25 points per 2500 students, or for any school $0.01 \times$ student enrollment).

Example of Exceeding Point Threshold: If a school of 1000 students experienced 5 incidents of possession of a weapon and 3 incidents of assault against a student with a weapon during a school year, it would have accumulated 11 points for the year (5 incidents \times 1 point plus 3 incidents \times 2 points); and, therefore, exceeded the annual threshold of 10 incidents per 1000 students enrolled.

- Data from schools will be analyzed annually by the Department of Education to determine if the annual threshold for Category I has been met and/or the point threshold for Category II and Category III incidents has been exceeded in that year.

REQUIREMENTS FOR SCHOOLS IDENTIFIED AS CAUTIONED, ON PROBATION, OR PERSISTENTLY DANGEROUS

- Beginning with school year 2002-2003, schools that meet or exceed the threshold of incidents for Category I and/or Categories II and III, respectively, for one year (beginning with 2001-2002) will receive a caution for the school year and must develop a corrective action plan (CAP) to increase safety in the school environment and reduce the number of incidents. The school's corrective action plan will be developed for the remainder of the current school year and carry over into the following one (2003-2004 for the first round of school identification). The plan must include periodic review of school crime and violence data throughout the year by school officials.
- Schools that are required to develop a CAP will have their incident data for the following year reviewed by the Department of Education. If after implementing the CAP for one year, the number of incidents reported for the school continues to meet or exceed the threshold of incidents for Category I and/or Categories II and III, respectively, the school will be placed on probation and be required to review corrective actions taken to date and identify further corrective action plans.
- Any school division with a school that has been cautioned, placed on probation, or designated as persistently dangerous must use Title IV, Part A, Safe and Drug-Free Schools and Communities monies to assist the school. For example, divisions with cautioned, on probation, or persistently dangerous schools may not transfer Safe and Drug-Free Schools and Communities funds to other programs included under the *NCLB* act.

- Any school that is designated as cautioned, on probation, or persistently dangerous must submit a copy of its annual comprehensive safety audit to the Department of Education.
- The Department of Education will provide ongoing technical assistance to schools that are designated cautioned, on probation, or persistently dangerous.
- Any school with a persistently dangerous designation must provide its students with the opportunity to transfer to a public school within the school division that is not designated as “persistently dangerous.”

ATTACHMENT

PERSISTENTLY DANGEROUS SCHOOLS CRITERIA

A school identified as “Cautioned,” “On Probation,” or “Persistently Dangerous” would have experienced one or more Category I incidents and/or exceeded its annual point threshold for Category II and Category III incidents for one, two, or three consecutive years, respectively.

Category I Threshold

- Regardless of school size, one Category I incident of a sexual assault offense, homicide, or use of a bomb or explosive (Absolute threshold)

OR

Category II and III Threshold

- The accumulation of the equivalent of one point per 100 enrolled students for incidents in Category II and Category III (Point threshold)

Degree of Harm	Description of Crime	Points Per Incident
Category I	Homicide Sexual assault offenses Use of destructive bomb or explosive	No points are assigned under this category; however, a minimum of one incident in this category per school year, regardless of school size, meets the threshold for that year.
Category II	Assault with a firearm or other weapon Actual and attempted robbery Kidnapping/Abduction <i>Malicious wounding without a weapon*</i> <i>Aggravated sexual battery*</i>	Each incident per school year equals 2 points
Category III	Illegal possession of: Handgun, rifle, or shotgun Other projectile/weapon Bomb Other firearms <i>Illegal possession of controlled drugs and substances with intent to distribute or sell*</i>	Each incident per school year equals 1 point

*Incidents in italics are to be added in school year 2003-04, after modification of the *Annual Report of Discipline, Crime, and Violence*