

INFORMATION MEMORANDUM

DATE: March 25, 2004

TO: MEMBERS, STATE BOARD OF EDUCATION

FROM: Sue Stickel, Deputy Superintendent
Curriculum and Instruction Branch

SUBJECT: No Child Left Behind (NCLB): Title IX, Persistently Dangerous Schools
(PDS) Regulations

This April 2004 information memorandum is being submitted as preparation for an action item to be included on the State Board's May 2004 agenda. The memorandum presents a draft of proposed regulations that set forth guidelines for implementation of the statewide State Board policy definition for designating persistently dangerous public elementary and secondary schools. The State Board on March 10, 2004 adopted a revision to the policy definition that added incidents of firearm violations committed by non-students on school grounds during school hours or during a school sponsored activity to the existing criteria that includes specified student expulsions.

[Attachment 1](#): Proposed Regulations (4 Pages)
[Attachment 2](#): Initial Statement of Reasons (2 Pages)
[Attachment 3](#): Informative Digest (1 Page)

1 (c) Applicable California Education Code violations include:

2 (1) Assault or battery upon a school employee (Section 48915(a)(5));

3 (2) Brandishing a knife (Section 48915(c)(2));

4 (3) Causing serious physical injury to another person, except in self-defense
5 (Section 48915(a)(1));

6 (4) Hate violence (Section 48900.3);

7 (5) Possessing, selling or furnishing a firearm (Section 48915(c)(1));

8 (6) Possession of an explosive (Section 48915(c)(5));

9 (7) Robbery or extortion (Section 48915(a)(4));

10 (8) Selling a controlled substance (Section 48915(c)(3)); and

11 (9) Sexual assault or sexual battery (Section 48915(c)(4)).

12 NOTE: Authority cited: Section 33031, Education Code; Reference: Sections 48900.3,
13 48915(a)(1), 48915(a)(4), 48915(a)(5), 48915(c)(1), 48915(c)(2), 48915(c)(3),
14 48915(c)(4), and 48915(c)(5), Education Code; Public Law 107-110, Title IX, Part E,
15 Subpart 2, Section 9532; 20 USC Section 7911.

16 **§ 11993. Definitions.**

17 (a) “Fiscal year” means the period of July 1 through June 30 (California Education
18 Code Section 37200).

19 (b) “Non-student” means a person, regardless of age, not enrolled in the school or
20 program reporting the violation.

21 (c) “Firearm” means handgun, rifle, shotgun or other type of firearm (Section 921(a)
22 of Title 18, United States Code).

23 (d) “Firearm violation” means unlawfully bringing or possessing a firearm, as defined
24 above, on school grounds or during a school-sponsored activity.

25 (e) “Expulsion” means an expulsion ordered by the local educational agency’s
26 governing board regardless of whether it is suspended or modified.

27 (f) “Assault” means an unlawful attempt, coupled with a present ability, to commit a
28 violent injury on the person of another (California Penal Code Section 240).

29 (g) “Battery” means any willful and unlawful use of force or violence upon the person
30 of another (California Penal Code Sections 242 and 243).

1 (h) “Knife” means any dirk, dagger, or other weapon as defined in California
2 Education Code Section 48915(g).

3 (i) “Serious physical injury” means serious physical impairments of physical
4 condition, such as loss of consciousness, concussion, bone fracture, protracted loss or
5 impairment of function of any bodily member or organ, a wound requiring extensive
6 suturing, and serious disfigurement (this is the same definition as described in “serious
7 bodily injury” in California Penal Code Section 243(f)(4)).

8 (j) “Hate violence” means any act punishable under California Penal Code Sections
9 422.6, 422.7, and 422.75).

10 (k) “Explosive” means a destructive device (Title 18, Section 921, United States
11 Code).

12 (l) “Robbery” means acts described in California Penal Code Sections 211 and 212.

13 (m) “Extortion” means acts described in California Penal Code Sections 71, 518, and
14 519.

15 (n) “Controlled substance” means drugs and other substances listed in Chapter 2 of
16 Division 10 of the California Health and Safety Code (commencing with Section 11053).

17 (o) “Sexual assault” means acts defined in California Penal Code Sections 261,
18 266(c), 286, 288, 288(a), and 289.

19 (p) “Sexual battery” means acts defined in California Penal Code Section 243.4.

20 (q) “Enrolled students” means students included in the most current California Basic
21 Educational Data System (CBEDS) report for the school.

22 NOTE: Authority cited: Section 33031, Education Code; Reference: Sections 37200 and
23 48915(g), Education Code; Sections 11053–11058, Health and Safety Code; Sections
24 71, 211, 212, 240, 242, 243, 243(f)(4), 243.4, 261, 266(c), 286, 288, 288(a), 289, 422.6,
25 422.7, 422.75, 518, and 519, Penal Code; 18 USC Section 921; Public Law 107-110,
26 Title IX, Part E, Subpart 2, Section 9532; 20 USC Section 7911.

27 **§ 11994. Data Collection.**

28 Local educational agencies will submit to the California Department of Education the
29 number of incidents of non-student firearm violations and student expulsion violations
30 specified in Section 11992 above for determining persistently dangerous schools. The

1 California Department of Education will use the information collected to designate
2 persistently dangerous schools, in coordination with the California State Board of
3 Education, in accordance with these regulations.

4 NOTE: Authority cited: Section 33031, Education Code; Reference: Public Law 107-
5 110, Title IX, Part E, Subpart 2, Section 9532; 20 USC Section 7911.

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INITIAL STATEMENT OF REASONS

SECTION 11991. PURPOSE OF REGULATIONS DEFINING PERSISTENTLY DANGEROUS PUBLIC ELEMENTARY AND SECONDARY SCHOOLS

SECTION 11992. POLICY PROVISIONS

SECTION 11993. DEFINITIONS

SECTION 11994. DATA COLLECTION

SPECIFIC PURPOSE OF THE REGULATIONS.

The purpose of the regulations is to clarify and provide guidance on the implementation of the statewide policy definition for designating persistently dangerous schools as required by the federal No Child Left Behind Act of 2001 and to establish related data reporting requirements for public elementary and secondary schools, including charter schools.

NECESSITY/RATIONALE.

The Unsafe School Choice Option provisions of the federal No Child Left Behind Act of 2001 (Title IX, Part E, Subpart 2, Section 9532; 20 USC Section 7911), was signed into law in January 2002. The provisions include the requirement that each State receiving funds under this Act must establish and implement a state wide 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 (LEAs), be allowed to attend a safe public elementary school or secondary school within the local educational agency, including a public charter school. As a condition of receiving funds under this Act, a State must certify in writing to the Secretary that the State is in compliance with this Section.

In April 2002, the California Department of Education (CDE) convened an advisory committee of representatives from approximately 20 LEAs around the state, both small and large, that helped develop California's statewide policy definition for designating "persistently dangerous" schools. The California State Board of Education adopted the definition in May 2002. It requires all LEAs, including public charter schools, to submit annually to the CDE specified student expulsion information that will be used in conjunction with student enrollment to designate persistently dangerous schools in coordination with the State Board. The Notice of Final Deadlines for Implementation of the USCO provisions included in the June 16, 2003 Federal Register (Vol. 68, No. 115), published by the U.S. Department of Education, requires States to identify persistently dangerous schools in sufficient time to allow an affected LEA to offer the required transfer option to students at least 14 days before the start of the 2003-04 school year, and before the start of each school year annually thereafter.

To ensure compliance with this requirement, the CDE began requiring all of the LEAs to electronically submit pertinent student expulsion data retroactively for each school to the CDE on a reporting form included in the 2003-04 Consolidated Application for Funding Categorical Aid Programs, Part I. In March 2004, the State Board adopted a revision to the persistently dangerous school policy definition that had been recommended by the USCO advisory committee. The revision strengthens the policy by adding incidents of non-student firearm violations to the criteria for designating persistently dangerous schools. Implementation of the revised policy provisions begins July 1, 2004.

These regulations are being proposed to:

- specify provisions of the State Board policy definition for designating persistently dangerous schools.
- clarify and define language pertinent to the interpretation and implementation of the policy definition.
- identify the relevant violent offenses that must be reported annually to the CDE by school districts, county offices of education, and charter schools in accordance with the policy definition.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS.

The State Board of Education relied on the recommendations of the statewide USCO advisory committee, that were supported by the CDE staff, in adopting the statewide policy definition for designating persistently dangerous K-12 public schools.

REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES.

Because federal law requires the identification of persistently dangerous schools by the state, regulations must be adopted. Other definitions of persistently dangerous were considered, but they were rejected as requiring new and costly data collection systems or because they would not have been as accurate in identifying persistently dangerous schools.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS.

The State Board of Education has not identified any adverse impact on small business that would necessitate developing alternatives to the proposed regulatory action.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS.

This proposal affects schools only. No requirements are placed on small businesses.

INFORMATIVE DIGEST

The Unsafe School Choice Option (USCO) provisions in the federal No Child Left Behind Act of 2001 require that each State receiving funds under this Act must establish and implement a statewide policy that allows students attending a persistently dangerous public elementary or secondary school to attend a safe public elementary school or secondary school within the local educational agency (LEA), including a public charter school. USCO also requires that the State implement a method of identifying such persistently dangerous schools.

The California State Board of Education has adopted a policy to be used in designating persistently dangerous public schools. Such designations will be based on student expulsion information, as specified in the policy, and incidents of non-student firearm violations. Guidance published by the United States Department of Education with regard to the USCO provisions require States to identify persistently dangerous schools in sufficient time to allow an affected local educational agency to offer the required transfer option to students at least 14 days before the start of the school year, and before the start of each school annually thereafter.

The purpose of these regulations is to clarify and provide guidance on the implementation of the statewide policy definition for designating persistently dangerous schools and to establish related data reporting requirements for public elementary and secondary schools, including charter schools.

3-22-04