

INFORMATION MEMORANDUM

DATE: January 29, 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)

This February 2004 information memorandum is being submitted as preparation for an action item to be included on the State Board's March 2004 agenda. The memorandum presents a proposed revision to the current State Board policy definition for designating persistently dangerous schools. If approved in March, the revision will affect the criteria for the identification of persistently dangerous schools effective July 2004.

[Attachment 1:](#) Summary of Previous State Board of Education Discussion and Action (1 Page)

[Attachment 2:](#) Summary of Key Issue(s) (3 Pages)

[Attachment 3:](#) Current State Board Policy definition of persistently dangerous schools (2 Pages)

[Attachment 4:](#) Proposed Revision to the current State Board Policy definition (2 Pages)

[Attachment 5:](#) Unsafe School Choice Option Advisory Committee (1 page)

Summary of Previous State Board of Education Discussion and Action

During the State Board's July 2003 meeting, the staff of the California Department of Education (CDE) informed the State Board members that there was no action for them to take in designating persistently dangerous schools. At the time, CDE staff had determined that no public K-12 schools had met the State Board's policy definition for designating schools as "persistently dangerous." The State Board delegated authority to CDE staff for a period of 90 days after this meeting, with the oversight of the Executive Director of the State Board and the No Child Left Behind (NCLB) liaisons, to designate as "persistently dangerous" any late reporting schools that met the persistently dangerous school policy definition.

In August 2003, the CDE staff, via an information memorandum, provided an update on persistently dangerous schools to the State Board. The CDE staff informed the State Board that there were no public K-12 schools that had met the State Board policy definition for designation as "persistently dangerous," as of July 24, 2003. The determination was based on student expulsion information submitted to the CDE by the local educational agencies (LEAs) on the 2003-2004 Consolidated Application (ConApp) for Funding Categorical Aid Programs, Part I.

Federal Statute

Provisions of Title IX, Section 9532 of the NCLB Act require that:

“...a student attending a persistently dangerous public elementary or secondary school, as determined by the State in consultation with a representative sample of local educational agencies,...be allowed to attend a safe public elementary or secondary school within the local educational agency, including a public charter school.”

State Board’s Definition of Persistently Dangerous Schools

Under California’s current policy [condition (2)], a school shall be designated “persistently dangerous” if for three consecutive fiscal years the total number of expulsions, for offenses delineated in the policy, for students enrolled in the school exceeds one of the following rates:

- (a) for a school of 299 enrolled students or less, more than three expulsions, or
- (b) for a larger school of 300 or more enrolled students, more than one expulsion for every 100 enrolled students or fraction thereof.

Attachment 3 provides the full text of the policy definition that was adopted by the State Board in May 2002.

Policy Consultation with State Advisory Committee

The CDE staff developed the current policy definition after extensive consultation meetings with the Unsafe School Choice Option Advisory Committee (a statewide advisory committee composed of representatives from various local agencies); the members of the Advisory Committee are listed in Attachment 5.

Based on a commitment that the CDE staff made to the State Board during its July 2003 meeting, the advisory committee was reconvened for a meeting on October 17, 2003 to reassess the persistently dangerous school policy definition. This reassessment was prompted in part because no schools in California had met the policy definition for designation as “persistently dangerous,” although some schools had been identified as at-risk of becoming persistently dangerous. There have been no subsequent changes in the designation status of persistently dangerous schools.

Various policy-related topics and issues were discussed during the meeting, including a review of the other states’ policies for designating persistently dangerous schools. The following states and territories reported persistently dangerous schools: Nevada (8 schools), New Jersey (7 schools), New York (2 schools), Oregon (1 school), Pennsylvania (28 schools), Texas (6 schools) and Puerto Rico (9 schools). Generally, the committee concluded that California’s policy was comparable to the other states’ policies and in some cases was more stringent. The overall conclusion of the committee was that there is no need to change California’s expulsion rate threshold (approximately 1%) or the length of time (three consecutive fiscal years) necessary to be designated as

persistently dangerous. The three-year period is considered beneficial because it allows sufficient time for the LEAs to identify and address significant safety issues on school campuses to prevent them from becoming persistently dangerous. The committee, however, generally agreed that a few relatively minor changes would help in strengthening the policy and making it clearer. This was reaffirmed in a teleconference call on November 25, 2003, with advisory committee members.

Proposed Policy Changes

The advisory committee's consensus is that the current policy should be revised to incorporate incidents of firearm violations committed by non-students on school campuses as an additional criterion, along with student expulsions, in determining persistently dangerous schools. The inclusion of non-student firearm violations raises the issue of counting other violent acts committed by non-students on school campuses. It was decided not to include these "other" violent acts for two reasons: (1) the advisory committee recommended limiting the influence of community crimes on school statistics to only firearm violations; and (2) it is a goal of the CDE to use existing data collection systems as much as possible, thus reducing additional workload for schools.

Under the proposed revision, a school would be considered to be "persistently dangerous" if...*"in each of three-consecutive fiscal years, one of the following criteria has been met:*

- (a) for a school of fewer than 300 enrolled students, the number of incidents of firearm violations committed by non-students on school grounds during school hours or after school hours during a school sponsored activity, plus the number of student expulsions for any of the California Education Code violations delineated below, is greater than three;*

- (b) for a larger school, the number of incidents of firearm violations committed by non-students on school grounds during school hours or after school during a school sponsored activity, plus the number of student expulsions for any of the California Education Code violations delineated below, is greater than one per 100 enrolled students or fraction thereof."*

The proposed revision is technically clearer than the existing policy. Moreover, because of the significance of incidents involving firearms being brought on to school campuses by non-students, the revision includes these incidents – along with expulsions – in the criteria for identifying persistently dangerous schools. Under the revised policy, there would continue to be only one school (at this time) that is identified as being "at-risk" of becoming persistently dangerous based on information supplied for the 2001-2002 and 2002-2003 school years. This school may be designated as "persistently dangerous" depending on the information supplied for the 2003-2004 school year.

The proposed revision also incorporates clarifying language and other changes pertinent to the new policy provisions:

Addition of a definition for the location and reporting of non-student firearm incidents. They will be reported when occurring “*on school grounds during school hours or after school hours during a school sponsored activity.*” This specificity is helpful in avoiding the reporting of incidents that may be beyond the control of the school officials.

Deletion of the definitions for “gun-free school violation” and “violent criminal offense.” These definitions are not relevant to the provisions of this proposal.

Addition of definitions for “firearm violation” and “serious physical injury”.
“Firearm violation” — means unlawfully bringing or possessing a firearm on school grounds or during a school sponsored activity.

“Serious physical injury” — means “*serious physical impairments of physical condition, such as loss of consciousness, concussion, bone fracture, protracted loss or impairment of function of any bodily member or organ, a wound requiring extensive suturing, and serious disfigurement (this is the same definition as given for “serious bodily injury” in California Penal Code, section 243[f][4]).*” Although the committee generally did not have concerns in distinguishing offenses involving assault or battery that are included in the existing policy, it was recommended that further clarification would be beneficial in determining offenses “causing serious physical injury to another person.”

Attachment 4 provides the complete text of the proposed revision to the current State Board-adopted policy definition of persistently dangerous schools.

“Persistently Dangerous” Schools

No Child Left Behind Act of 2001
TITLE IX, PART E, SUBPART 2, SEC. 9532. UNSAFE SCHOOL CHOICE OPTION

In the context of this Act, a California public elementary or secondary school is considered to be “persistently dangerous” if each of the following two conditions exists for three-consecutive fiscal years:

- (1) the school has a federal or state gun-free schools violation or a violent criminal offense has been committed by a student or a non-student on school property, and
- (2) the school has expelled students, under *California Education Code*, for any of the following offenses:
 - assault or battery upon any school employee—Section 48915(a)(5)
 - brandishing a knife—Section 48915(c)(2)
 - causing serious physical injury to another person, except in self-defense—Section 48915(a)(1)
 - hate violence—Section 48900.3
 - possessing, selling, or furnishing a firearm—Section 48915(c)(1)
 - possession of an explosive—Section 48915(c)(5)
 - robbery or extortion—Section 48915(a)(4)
 - selling a controlled substance—Section 48915(c)(3)
 - sexual assault or sexual battery—Section 48915(c)(4)

The number of expulsions for these offenses must exceed one of the following rates:

- (a) for a school of fewer than 300 enrolled students, three expulsions
- (b) for a larger school, one expulsion for every 100 enrolled students or fraction thereof

For the purpose of this definition—“fiscal year” means the period of July 1 through June 30 (*California Education Code*, section 37200); “gun-free schools violation” means a student who is determined to have brought a firearm to a school, or to have possessed a firearm at school (federal Gun-Free Schools Act); “firearm” means handgun, rifle, shotgun or other type of firearm (section 921 of title 18, *United States Code*); “violent criminal offense” means all of the offenses identified in condition (2) above; “expulsion” means an expulsion ordered regardless of whether it is suspended or modified; “assault” means an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another (*California Penal Code*, section 240); “battery” means

any willful and unlawful use of force or violence upon the person of another (*California Penal Code*, section 243), “knife” means any dirk, dagger, or other weapon as defined in *California Education Code*, section 48915[g]); “hate violence” means any act punishable under *California Penal Code*, sections 422.6, 422.7, 422.75; “explosive” means a destructive device (section 921 of title 18, *United States Code*); “robbery” means acts described in *California Penal Code*, sections 211, 212; “extortion” means acts described in *California Penal Code*, sections 71, 518, 519; “controlled substance” means drugs and other substances listed in Chapter 2 of Division 10 of the *California Health and Safety Code* (commencing with Section 11053); “sexual assault” means acts defined in *California Penal Code*, sections 261, 266(c), 286, 288, 288(a), 289; “sexual battery” means acts defined in *California Penal Code*, section 243.4; “enrolled students” means students included in the most current California Basic Educational Data System (CBEDS) report for the school.

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- (a) for a school of fewer than 300 enrolled students, the number of incidents of firearm violations committed by non-students on school grounds during school hours or after school hours during a school sponsored activity, plus the number of student expulsions¹ for any of the *California Education Code* violations delineated below, is greater than three;
- (b) for a larger school, the number of incidents of firearm violations committed by non-students on school grounds during school hours or after school during a school sponsored activity, plus the number of expulsions¹ for any of the *California Education Code* violations delineated below, is greater than one per 100 enrolled students or fraction thereof.

- ~~(1) the school has a federal or state gun-free schools violation or a violent criminal offense has been committed by a student or a non-student on school property, and~~
- ~~(2) the school has expelled students, under *California Education Code*, for any of the following offenses:~~

Pertinent *California Education Code* Violations

- assault or battery upon any school employee—Section 48915(a)(5)
- brandishing a knife—Section 48915(c)(2)
- causing serious physical injury to another person, except in self-defense—Section 48915(a)(1)
- hate violence—Section 48900.3
- possessing, selling, or furnishing a firearm—Section 48915(c)(1)
- possession of an explosive—Section 48915(c)(5)
- robbery or extortion—Section 48915(a)(4)

¹ There are rare occasions when a firearm violation cannot result in an expulsion (e.g. suicide). In that case the incident should be reported as a non-student firearm violation.

- selling a controlled substance—Section 48915(c)(3)
- sexual assault or sexual battery—Section 48915(c)(4)

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for a school of fewer than 300 enrolled students, three expulsions

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Unsafe School Choice Option Advisory Committee

(Meetings held in October 17, 2003; December 3, April 30, April 16, and April 2, 2002)

Each of the following people attended at least one meeting:

Antelope Valley Union High

Larry Freise

Elk Grove Unified

Matt Collier

Fresno Unified

Kevin Torosian

Galt Jt. Union High

Craig Murray

Bill LaPlante

Hanford Elementary

Yvonne Wester

Liz Simas

Joe Camara

Nancy White

Jefferson Union High

Rick Boitano

Konocti Unified

Glenn White

Long Beach Unified

Karen Hilburn

Los Angeles Unified

Willie Crittendon

Tim Buresh

Modesto City Schools

Jim Pfaff

Randy Fillpot

North Sacramento Elementary

Debbie Morris

Oakland Unified

Janine Saunders

Aaron Dorsey

Stevan Alvarado

Quinta Seward

Norma Brooks

Tamara Teichgraeber

Palm Springs Unified

Craig Borba

Round Valley Unified

Kathy Britton

Sacramento County Office of Education

Joe Taylor

Sacramento City Unified

Randy Hood

John Lagomarsino

Glenn White; formerly w/ Konocti Unified

Susan Berg

**San Bernardino County Office of
Education**

Sherman Garnett

Julian Weaver

San Francisco Unified

Susan Wong

Victoria Li

Santa Ana Unified

Peggy Adin

Jim Miyashiro

Stockton Unified

Roger Deschenes

Ivar Kent

Jose Valles