



# CALIFORNIA STATE BOARD OF EDUCATION

## JULY 2004 AGENDA

<b>SUBJECT</b>  <i>No Child Left Behind (NCLB) Act of 2001: Title IX Persistently Dangerous Public Elementary and Secondary Schools: Adopt Title 5 Regulations</i>	<input checked="" type="checkbox"/> <b>Action</b>  <input checked="" type="checkbox"/> <b>Information</b>  <input type="checkbox"/> <b>Public Hearing</b>
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### **RECOMMENDATION**

Consider comments received during the public comment period and at the public hearing and take action to adopt the Title 5 regulations on Persistently Dangerous Public Elementary and Secondary Schools.

### **SUMMARY OF PREVIOUS STATE BOARD OF EDUCATION DISCUSSION AND ACTION**

On May 12, 2004, the State Board approved the commencement of the rulemaking process for proposed regulations for implementation of the State Board definition for designating persistently dangerous public elementary and secondary schools. The California Department of Education published the attached Notice of Proposed Rulemaking and proposed regulations and made them available to the public on May 21, 2004, for a 45-day review period.

### **SUMMARY OF KEY ISSUES**

A public hearing will be held on the proposed regulations by program staff on July 6, 2004. Department staff will present any public comments received to the State Board as a Last Minute Memorandum. State Board adoption of the regulations will facilitate implementation of the statewide definition for designating persistently dangerous public elementary and secondary schools by the local educational agencies.

### **FISCAL ANALYSIS (AS APPROPRIATE)**

The Economic and Fiscal Impact Analysis completed by the Fiscal and Administrative Services Division pertaining to these regulations indicates that adoption of the regulations does not impose a local cost mandate or costs upon the state. The regulations do not impact local business or individuals. The analysis was included in information submitted to the State Board for the agenda item on the proposed regulations at the May 2004 State Board meeting.

### **ATTACHMENT(S)**

[Attachment 1](#): Proposed Regulations (4 pages)

A summary of comments received during the public comment period and at the public hearing will be provided in a Last Minute Memorandum.

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**Title 5. EDUCATION**  
**Division 1. State Department of Education**  
**Chapter 11. Special Programs**

*Add Subchapter 23, Sections 11992, 11993, and 11994 to read:*

**Subchapter 23. Defining Persistently Dangerous Public Elementary and  
Secondary Schools**

**§ 11992. Provisions.**

(a) A California public elementary or secondary school is “persistently dangerous” if, in each of three consecutive fiscal years, one of the following criteria has been met:

(1) 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 during a school-sponsored activity, plus the number of student expulsions for any of the violations delineated in subsection (b), is greater than three:

(2) For a larger school, the number of incidents of firearm violations committed by non-students on school grounds during school hours or during a school-sponsored activity, plus the number of student expulsions for any of the violations delineated in subsection (b) is greater than one per 100 enrolled students or a fraction thereof.

(b) Applicable violations include:

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

(2) Brandishing a knife (Education Code Section 48915(c)(2));

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

(4) Hate violence (Education Code Section 48900.3);

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

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

1 (7) Robbery or extortion (Education Code Section 48915(a)(4));

2 (8) Selling a controlled substance (Education Code Section 48915(c)(3)); and

3 (9) Sexual assault or sexual battery (Education Code Section 48915(c)(4)).

4 (c) In instances where a student has committed a violation in subsection (b),  
5 but cannot otherwise be expelled, that violation must e reported as a non-student  
6 firearm violation.

7 NOTE: Authority cited: Section 33031, Education Code; Reference: Sections  
8 48900.3, 48915(a)(1), 48915(a)(4), 48915(a)(5), 48915(c)(1), 48915(c)(2),  
9 48915(c)(3), 48915(c)(4), and 48915(c)(5), Education Code; Public Law 107-110,  
10 Title IX, Part E, Subpart 2, Section 9532; 20 USC Section 7911.

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12 **§ 11993. Definitions.**

13 (a) "Fiscal year" means the period of July 1 through June 30 (California  
14 Education Code Section 37200).

15 (b) "Non-student" means a person, regardless of age, not enrolled in the  
16 school or program reporting the violation.

17 (c) "Firearm" means handgun, rifle, shotgun or other type of firearm (Section  
18 921(a) of Title 18, United States Code).

19 (d) "Firearm violation" means unlawfully bringing or possessing a firearm, as  
20 defined in subsection (c), on school grounds or during a school-sponsored  
21 activity.

22 (e) "Expulsion" means an expulsion ordered by the local educational agency's  
23 governing board regardless of whether it is suspended or modified.

24 (f) "Assault" means an unlawful attempt, coupled with a present ability, to  
25 commit a violent injury on the person of another (California Penal Code Section  
26 240).

27 (g) "Battery" means any willful and unlawful use of force or violence upon the  
28 person of another (California Penal Code sections 242 and 243).

29 (h) "Knife" means any dirk, dagger, or other weapon with a fixed, sharpened  
30 blade fitted primarily for stabbing, a weapon with a blade fitted primarily for  
31 stabbing, a weapon with a blade longer than 3 ½ inches, a folding knife with a  
32 blade that locks into place, or a razor with an unguarded blade.

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

6 (j) "Hate violence" means any act punishable under California Penal Code  
7 sections 422.6, 422.7, and 422.75).

8 (k) "Explosive" means a destructive device (Title 18, Section 921, United  
9 States Code).

10 (l) "Robbery" means acts described in California Penal Code sections 211 and  
11 212.

12 (m) "Extortion" means acts described in California Penal Code sections 71,  
13 518, and 519.

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

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

19 (p) "Sexual battery" means acts defined in California Penal Code Section  
20 243.4.

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

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

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30 **§ 11994. Data Collection.**

31 Local educational agencies will submit to the California Department of  
32 Education the number of incidents of non-student firearm violations and student

1 expulsion violations specified in Section 11992 above for determining persistently  
2 dangerous schools. The California Department of Education will use the  
3 information collected to recommend the names of schools that meet the criteria to  
4 the California State Board of Education for designation as persistently dangerous.  
5 NOTE: Authority cited: Section 33031, Education Code; Reference: Public Law  
6 107-110, Title IX, Part E, Subpart 2, Section 9532; 20 USC Section 7911.

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