



CALIFORNIA STATE BOARD OF EDUCATION

MAY 2004 AGENDA

SUBJECT <i>No Child Left Behind (NCLB) Act of 2001: Approve Commencement of the Rulemaking Process for Persistently Dangerous Public Elementary and Secondary Schools Regulations</i>	<input checked="" type="checkbox"/> Action
	<input checked="" type="checkbox"/> Information
	<input type="checkbox"/> Public Hearing

RECOMMENDATION

Approve the proposed regulations, the Initial Statement of Reasons, and the Notice of Proposed Rulemaking, and direct staff to commence the rulemaking process.

SUMMARY OF PREVIOUS STATE BOARD OF EDUCATION DISCUSSION AND ACTION

In April 2004, the State Board received the proposed regulations package (proposed regulations, Initial Statement of Reasons, and Informative Digest) as an Information Memorandum.

SUMMARY OF KEY ISSUES

The purpose of the regulations is to set forth guidelines for implementation of the State Board definition for designating persistently dangerous public elementary and secondary schools.

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."

In March 2004, the State Board adopted a revision to the definition it adopted in May 2002 for designating persistently dangerous public elementary and secondary schools under the Unsafe School Choice Option (USCO) provisions of Section 9532. The statewide USCO advisory committee, which was convened by the California Department of Education, was instrumental in the development of the initial definition and the definition revision proposal that was adopted by the State Board on March 10, 2004.

Persistently Dangerous School Policy Revision

The existing definition was revised to make it technically clearer and to strengthen it by incorporating incidents of firearm violations committed by non-students on school campuses, as an additional criterion, along with student expulsions, in determining persistently dangerous schools.

SUMMARY OF KEY ISSUES continued

Beginning July 1, 2004, incidents of firearm violations committed by non-students on school grounds during school hours or during a school sponsored activity will be used in determining whether a school is persistently dangerous, along with the nine offenses for which students are expelled that are already being used to identify persistently dangerous schools. Thus, *beginning with the 2004-05 school year*, a school will be considered to be “persistently dangerous if, in each of three-consecutive fiscal years (2004-05, 2003-04, and 2002-03), 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 during a school sponsored activity, plus the number of student expulsions for any of the *California Education Code* violations delineated in the policy, 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 during a school sponsored activity, plus the number of student expulsions for any of the California Education Code violations delineated in the policy, is greater than one per 100 enrolled students or fraction thereof.

For the 2003-04 school year, a school will continue to be designated “persistently dangerous” if for three consecutive fiscal years (2003-04, 2002-03, and 2001-02) the total number of expulsions, for the offenses delineated in the policy, for students enrolled in the school exceeds one of the following rates:

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

State Board approval of the proposed 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)

Fiscal analysis is pending review and will be provided as a Last Minute Memorandum.

ATTACHMENT

[Attachment 1](#): Draft Notice of Proposed Rulemaking for Public Hearings (4 Pages)

[Attachment 2](#): Initial Statement of Reasons (2 Pages)

[Attachment 3](#): Proposed Regulations (4 Pages)

Fiscal analysis is pending review and will be provided as a Last Minute Memorandum.

CALIFORNIA STATE BOARD OF EDUCATION

1430 N Street; Room 5111
Sacramento, CA 95814



TITLE 5. EDUCATION

CALIFORNIA STATE BOARD OF EDUCATION

NOTICE OF PROPOSED RULEMAKING

Defining Persistently Dangerous Public Elementary and Secondary Schools

[Notice published May 21, 2004]

The State Board of Education (State Board) proposes to adopt the regulations described below after considering all comments, objections, or recommendations regarding the proposed action.

PUBLIC HEARING

Program staff will hold a public hearing beginning at **9:00 a.m. on July 6, 2004**, at 1430 N Street, Room 1101, Sacramento. The room is wheelchair accessible. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the Informative Digest. The State Board requests that any person desiring to present statements or arguments orally notify the Regulations Coordinator of such intent. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a summary of their statements. No oral statements will be accepted subsequent to this public hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Regulations Coordinator. The written comment period ends at **5:00 p.m. on July 5, 2004**. The Board will consider only written comments received by the Regulations Coordinator or at the Board Office by that time (in addition to those comments received at the public hearing). Written comments for the State Board's consideration should be directed to:

Debra Strain, Regulations Coordinator
California Department of Education
LEGAL DIVISION
1430 N Street, Room 5319
Sacramento, CA 95814
Email: dstrain@cde.ca.gov
Telephone: (916) 319-0860
FAX: (916) 319-0155

AUTHORITY AND REFERENCE

Authority: Section 33031, *Education Code*

Reference: Sections 48900.3, 48915(a)(1), 48915(a)(4), 48915 (c)(1), 48915 (c)(2), 48915 (c)(3), 48915 (c)(4), and 48915 (c)(5), *Education Code*; Sections 11063-11058, *Health and Safety Code*; Sections 71, 211, 212, 240, 242, 243, 243(f)(4), 243.4, 261, 2669c), 286, 288, 288(a), 289, 422.6, 422.7, 422.75, 518, and 519, *Penal Code*; Public Law 107-110, Title IX, Part E, Subpart 2, Section 9532; 18 USC Section 921; 20 USC Section 7911.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

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 school 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 definition 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 definition for designating persistently dangerous schools and to establish related data reporting requirements for public elementary and secondary schools, including charter schools.

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: TBD

Cost or savings to any state agency: TBD

Costs to any local agency or school district that must be reimbursed in accordance with *Government Code* Section 17561: TBD

Other non-discretionary cost or savings imposed on local educational agencies: TBD

Cost or savings in federal funding to the state: TBD

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: TBD.

Cost impacts on a representative private person or on businesses: TBD

Adoption of these regulations will not:

- (1) create or eliminate jobs within California;
- (2) create new businesses or eliminate existing businesses within California; or
- (3) affect the expansion of businesses currently doing business within California.

Significant effect on housing costs: TBD.

Effect on small businesses: There is no effect on small businesses because the proposal pertains only to schools. No requirements are placed on small businesses.

CONSIDERATION OF ALTERNATIVES

In accordance with *Government Code* Section 11346.5(a)(13), the State Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the State Board, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The State Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

CONTACT PERSONS

Inquiries concerning the substance of the proposed regulations should be directed to:

Jerry Hardenburg, Consultant
California Department of Education
Safe and Healthy Kids Program Office
1430 N Street, 6th Floor
Sacramento, CA 95814
Telephone: (916) 319-0920
E-mail: jhardenb@cde.ca.gov

Requests for a copy of the proposed text of the regulations, the Initial Statement of Reasons, the modified text of the regulations, if any, or other technical information upon which the rulemaking is based or questions on the proposed administrative action may be directed to the Regulations Coordinator, or to the backup contact person, Najia Rosales, at (916) 319-0860.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Regulations Coordinator will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at her office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the initial statement of reasons. A copy may be obtained by contacting the Regulations Coordinator at the above address.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the public hearing and considering all timely and relevant comments received, the State Board may adopt the proposed regulations substantially as described in this notice. If the State Board makes modifications that are sufficiently related to the originally proposed text, the modified text (with changes clearly indicated) will be available to the public for at least 15 days before the State Board adopts the regulations as revised. Requests for copies of any modified regulations should be sent to the attention of the Regulations Coordinator at the address indicated above.

The State Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, a copy of the Final Statement of Reasons may be obtained by contacting the Regulations Coordinator at the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Rulemaking, the Initial Statement of Reasons, the text of the regulations in underline and strikeout, and the Final Statement of Reasons, can be accessed through the California Department of Education's Web site at <http://www.cde.ca.gov/regulations>.

REASONABLE ACCOMMODATION FOR ANY INDIVIDUAL WITH A DISABILITY

Pursuant to the *Rehabilitation Act of 1973*, the *Americans with Disabilities Act of 1990*, and the *Unruh Civil Rights Act*, any individual with a disability who requires reasonable accommodation to attend or participate in a public hearing on proposed regulations, may request assistance by contacting Jerry Hardenburg, Safe and Healthy Kids Program Office, 1430 N Street, Sacramento, CA, 95814; telephone, (916) 319-0920; fax, (916) 319-0218. It is recommended that assistance be requested at least two weeks prior to the hearing.

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 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 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 (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 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 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 definition for designating persistently dangerous schools;
- clarify and define language pertinent to the interpretation and implementation of the definition; and
- 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 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 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 schools 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.

1 Title 5. EDUCATION

2 Division 1. State Department of Education

3 Chapter 11. Special Programs

4
5 Add Subchapter 23, Sections 11991, 11992, 11993, and 11994 to read:

6
7 **Subchapter 23. Defining Persistently Dangerous Public Elementary and**
8 **Secondary Schools**

9 **§ 11991. Purpose.**

10 The purpose of these regulations is to set forth guidelines for implementation of the
11 statewide policy definition for designating persistently dangerous public elementary and
12 secondary schools. The establishment of this policy is a requirement of the Unsafe School
13 Choice Option Provisions in Public Law 107-110, Title IX, Part E, Subpart 2, Section 9532,
14 as amended by the No Child Left Behind Act of 2001.

15 NOTE: Authority cited: Section 33031, Education Code; Reference: Public Law 107-
16 110, Title IX, Part E, Subpart 2, Section 9532; 20 USC Section 7911.

17 **§ 11992. Policy Provisions.**

18 A California public elementary or secondary school is considered to be “persistently
19 dangerous” if, in each of three consecutive fiscal years, one of the following criteria has
20 been met:

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

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

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 (d) In instances where a student has committed a California Education Code violation,
13 but has not been expelled because the student has died, that violation must be reported
14 as a non-student firearm violation.

15 NOTE: Authority cited: Section 33031, Education Code; Reference: Sections 48900.3,
16 48915(a)(1), 48915(a)(4), 48915(a)(5), 48915(c)(1), 48915(c)(2), 48915(c)(3),
17 48915(c)(4), and 48915(c)(5), Education Code; Public Law 107-110, Title IX, Part E,
18 Subpart 2, Section 9532; 20 USC Section 7911.

19 **§ 11993. Definitions.**

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

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

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

26 (d) "Firearm violation" means unlawfully bringing or possessing a firearm, as defined
27 above, on school grounds or during a school-sponsored activity.

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

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

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

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

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

12 (j) “Hate violence” means any act punishable under California Penal Code Sections
13 422.6, 422.7, and 422.75).

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

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

17 (m) “Extortion” means acts described in California Penal Code Sections 71, 518, and
18 519.

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

21 (o) “Sexual assault” means acts defined in California Penal Code Sections 261,
22 266(c), 286, 288, 288(a), and 289.

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

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

26 NOTE: Authority cited: Section 33031, Education Code; Reference: Sections 37200 and
27 48915(g), Education Code; Sections 11053–11058, Health and Safety Code; Sections
28 71, 211, 212, 240, 242, 243, 243(f)(4), 243.4, 261, 266(c), 286, 288, 288(a), 289, 422.6,
29 422.7, 422.75, 518, and 519, Penal Code; 18 USC Section 921; Public Law 107-110,
30 Title IX, Part E, Subpart 2, Section 9532; 20 USC Section 7911.

1 **§ 11994. Data Collection.**

2 Local educational agencies will submit to the California Department of Education the
3 number of incidents of non-student firearm violations and student expulsion violations
4 specified in Section 11992 above for determining persistently dangerous schools. The
5 California Department of Education will use the information collected to designate
6 persistently dangerous schools, in coordination with the California State Board of
7 Education, in accordance with these regulations.

8 NOTE: Authority cited: Section 33031, Education Code; Reference: Public Law 107-
9 110, Title IX, Part E, Subpart 2, Section 9532; 20 USC Section 7911.

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30