Texas Education Agency
2011-2012 Guidance
School Safety Choice Option
*Based upon the USDE Unsafe School Choice Option Non-Regulatory Guidance*

## Introduction:

The Unsafe School Choice Option (USCO) [section 9532 of the Elementary and Secondary Education Act (ESEA) of 1965, as amended by the No Child Left Behind Act of 2001] requires that each State receiving funds under the ESEA establish and implement a statewide policy requiring that students attending a persistently dangerous public elementary or secondary school, or students who become victims of a violent criminal offense while in or on the grounds of a public school that they attend, be allowed to attend a safe public school. In Texas, the USCO policy is designated the School Safety Choice Option (SSCO).

This Guidance is offered to local education agencies (LEAs) in the format of questions and answers.

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A. Texas SSCO Policy:

A-1. What steps has Texas taken to comply with USCO?

Texas has:

- ✓ Established a statewide SSCO policy;
- ✓ Identified the criteria and methodology for identifying persistently dangerous schools;
- ✓ Identified types of offenses to be considered in providing victims of violent criminal offenses a safe school choice option;
- ✓ Provided guidance for transferring victims of violent criminal offenses; and
- ✓ Certified compliance with USCO.

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A-2. What are the statutory policy requirements?

Each State policy must allow students who attend a persistently dangerous school, or students who, while on the school premises or while attending a school-sponsored or school-related activity, become victims of a violent criminal offense to attend a safe public school within the LEA. The safe public school may be a public charter school. [P.L. 107-110, Section 9532 of the Elementary and Secondary Education Act (ESEA) of 1965, as amended by the No Child Left Behind Act of 2001]

B. Persistently Dangerous Schools:

B-1. What criteria does TEA use to identify a persistently dangerous school?

- The campus is coded as a Regular Instructional Campus in AskTED; and
- The campus has fewer than 200 students and has reported to the Public Education Information Management System (PEIMS) 425 Record two (2) or more selected mandatory expulsion incidents in each of the three most recent consecutive years for which data are available; or
- The campus has 200 or more students and has a number of mandatory expellable incidents per year equal to 1% or more of its enrollment in each of the three (3) most recent consecutive years for which data are available.

LEAs report PEIMS data periodically in the summer and fall; therefore, SSCO uses the three previous years' data and not the current year's data to make identifications. The enrollment number or student population figure is the summer PEIMS submission attendance figure, a unique count of the students served at the campus in a given year. For campuses designated as persistently dangerous schools for the 2011-2012 school year, the data will come from school years 2007-2008, 2008-2009, and 2009-2010.

TEA uses the following mandatory expulsion incidents self-reported on the campus PEIMS 425 Record of Incidents as the basis of determination. All incidents related to a continuation action from a prior school year or district are omitted from consideration in designating the watch list or persistently dangerous school.

| Discipline Action Reason Code | Mandatory Expellable Incidents Included in Definition |
|---|---|
| 11 | Used, exhibited, or possessed a firearm |
| 12 | Used, exhibited, or possessed an illegal knife |
| 13 | Used, exhibited, or possessed a club |
| 14 | Used, exhibited, or possessed a weapon |
| 16 | Arson |
| 17 | Murder, attempted murder |
| 18 | Indecency with a child |
| 19 | Aggravated kidnapping |

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| | |
|---|---|
| 29 | Aggravated assault on school employee or volunteer |
| 30 | Aggravated assault on someone other than school employee or volunteer |
| 31 | Sexual assault or aggravated sexual assault on school employee or volunteer |
| 32 | Sexual assault or aggravated sexual assault on someone other than school employee or volunteer |
| 36 | Felony controlled substance |
| 37 | Felony alcohol violation |
| 46 | Aggravated Robbery |
| 47 | Manslaughter |
| 48 | Criminally Negligent Homicide |

- All regular instructional campuses that have at least one of the above mandatory expulsion incidents in any of the most recent three years for which data are available will be included in the pool of campuses analyzed. Each incident is counted once, regardless of the number of students involved.
- In identifying campuses required to implement the SSCO for School Year 2011-2012, data from School Years 2007-2008, 2008-2009, 2009-2010 will be analyzed.

### B-2. What period of time does TEA consider in determining whether a school is persistently dangerous?

TEA evaluates campus information annually and uses data from three (3) previous consecutive years to determine persistently dangerous schools. For campuses designated as persistently dangerous schools for the 2011-2012 school year, the data will come from school years 2007-2008, 2008-2009, and 2009-2010.

### B-3. What enrollment number or student population figure does TEA use in the determination?

The enrollment number or student population figure is the summer PEIMS submission attendance figure, a unique count of the students served at the campus in a given year.

### B-4. What measures of danger does TEA consider in identifying a school as persistently dangerous?

TEA currently uses the mandatory expulsion of Disciplinary Action Reason Codes 11, 12, 13, 14, 16, 17, 18, 19, 29, 30, 31, 32, 36, 37, 46, 47, and 48 from the PEIMS 425 Record of Incidents as the basis of determination.

### B-5. In reporting incidents that will be considered in identifying a school as persistently dangerous, is it permissible for an LEA to reclassify an incident as less serious and therefore not subject to reporting?

No. LEAs are expected to exercise good faith in complying with the requirements of SSCO and Chapter 37 of the Texas Education Code.

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B-6. Can TEA regularly review and revise its definition of a persistently dangerous school?

Yes, it is reviewed for possible revision on an annual basis.

B-7. Who is responsible for identifying persistently dangerous schools and notifying an LEA when one of its schools is identified?

TEA identifies schools and notifies an LEA when one of its schools has been identified.

B-8. Will TEA place a school on a "watch list" if the school meets a portion of the SSCO criteria for a persistently dangerous school?

Yes. Watch List for Two Years' Incidents: If a campus meets the incident rates in the definition for the two most recent consecutive years (2008-2009, 2009-2010) the Agency will require the district to submit its most recent Multi-Hazard Plan [TEC 37.108(a)]. The Agency will also request the district's most recently completed School Security Audit Report [TEC 37.108(b)], if available, along with any Corrective Action Plan developed to address any district-wide issues or issues identified on the campus as a result of the audit report.

Watch List for One Year's Incidents: If a campus meets the incident rates in the definition for the most recent year (2009-2010) (but not for the other two years), the Agency will will notify the campus by letter of the watch list status. The district is not required to submit the Multi-Hazard Plan to the agency but to be maintained locally.

B-9. Must TEA seek approval from the Secretary of Education for its representative sample of LEAs, its criteria for identifying persistently dangerous schools, and its data collection process?

No. TEA maintains appropriate records and is prepared to demonstrate compliance with the law during a U.S. Department of Education (USDE) monitoring visit or audit, or as a result of a request for information from the USDE.

B-10. Must TEA report to the Secretary of Education the names of schools identified as persistently dangerous?

TEA must report the number, but not necessarily the names of such schools, in its report to the USDE.

B-11. How long will a school remain identified as persistently dangerous?

TEA annually reassesses the school using the state's criteria for the identification of persistently dangerous schools. This review considers whether the conditions that led to the school's designation still exist, as well as the corrective action plans that have been implemented.

C. School Safety and Data Collection:

C-1. What procedures does TEA use in its data collection?

LEAs report their information to TEA through the PEIMS 425 Record of Incidents.

C-2. What are the specific data collection requirements?

TEA maintains system safeguards to ensure the accuracy of data reported through PEIMS. School district data used by the TEA undergo routine screening to validate data integrity. This routine screening or system

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safeguard procedures may trigger school district data investigations. Safeguards are reviewed and supplemented where necessary to ensure the validity of data used to identify campuses required to implement the SSCO.

## D. Requirements for LEAS Identified to Implement SSCO:

### D-1. What must an LEA do when one or more of its schools is identified as persistently dangerous?

Upon official identification of a school as persistently dangerous under NCLB, the district is required to implement the School Safety Choice Option (SSCO) and must, in a timely manner:

1. Notify parents at least fourteen (14) calendar days prior to the start of the 2011-2012 school year that the school has been identified as persistently dangerous and that their student(s) enrolled on the identified campus may transfer to a safe school, which may be a public charter school, beginning at the start of the school year.
2. Offer students enrolled at the persistently dangerous school(s) the opportunity to transfer to a safe school at least fourteen (14) calendar days before the start of the school year. The same transfer option must be offered to any subsequently enrolling students throughout the school year at the time of their enrollment. (Note: The notification of parents and the offer of transfer to students may be made simultaneously.)
3. Complete the transfer(s) prior to the beginning of the school year to allow those students who elect to transfer to a safe public school to begin the school year at the new campus.
4. Develop a corrective action plan and provide a copy of the plan to TEA within thirty (30) calendar days from the time that the LEA is officially notified that the school is identified as persistently dangerous.
5. Implement the corrective action plan as the new school year opens.
6. Submit its Multi-Hazard Plan [TEC 37.108(a)] and, if available, its most recent School Security Audit Report [TEC 37.108(b)], along with its Corrective Action Plan, to TEA within thirty (30) calendar days from its official identification as PDS.
7. Require campus administrators and PEIMS personnel to complete an updated PEIMS 425 Record training program before the end of the calendar year in which the campus is identified as persistently dangerous.
8. Collect and maintain documentation of information related to the transfer of students.
9. Collect and maintain documentation of the LEA's required development and implementation of its corrective action plan.
10. Submit quarterly reports to TEA on the district's progress in assuring a safe campus.

### D-2. What is "timely implementation" of these steps?

Although LEAs are encouraged to complete transfers of students as quickly as possible, LEAs must offer students who attend persistently dangerous schools the opportunity to transfer to a safe school at least fourteen (14) calendar days prior to the start of the school year. This requirement ensures that students who elect to transfer are able to start the new school year in a safe school. An example of timely development of a corrective action plan generally is within thirty (30) calendar days from the time that the LEA is officially notified that its school has been identified as persistently dangerous.

### D-3. How can an LEA coordinate its corrective action plan with TEA?

TEA is available to provide technical assistance as the LEA's corrective action plan is developed and implemented, and will also be in contact with the campus to monitor the LEA's timely completion and submission of the corrective action plan. The LEA will submit a quarterly report to TEA, outlining progress

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made in its corrective actions. TEA will determine the schedule for these reports at the time it designates the persistently dangerous school.

### D-4. What types of corrective action may be taken?

Corrective action should be based on an analysis of the needs identified by the school and should address the issues that resulted in the school being identified as persistently dangerous.

Examples of Corrective Actions for a Persistently Dangerous School:

Actions might include, but are not limited to, the following:

a) Hiring additional personnel to supervise students in common areas;
b) Increasing instructional activities in conflict resolution;
c) Working with law enforcement officials to identify and eliminate gang-related activities;
d) Conducting in-service training of teachers and administrators concerning consistent enforcement of school discipline policies;
e) Limiting access to campuses;
f) Hiring security personnel or purchasing security equipment to monitor campuses;
g) Initiating an adult mentor program for students to work with community leaders;
h) Assigning teachers and security personnel to monitor passing periods between classes;
i) Involving parents to assist in the process of improving the atmosphere of safety and security on campus;
j) Promoting involvement of civic and service groups to assure student safety;
k) Hiring security officers to promote campus safety;
l) Training teachers and other school personnel in discipline techniques that work;
m) Creating a proactive rather than a reactive administrative policy to address disciplinary issues.

Note: In its Corrective Action Plan, an LEA must address issues identified as a result of the implementation of its Multi-Hazard Plan; report any adjustments or additions to the LEA's security plans as identified in the School Security Audit Report; and document its data contained in the quarterly reports that the LEA makes to TEA of all corrective actions taken to address school safety and drug abuse problems.

Examples of Corrective Actions for Victims of Violent Criminal Offenses:

If the district does not have another public grade-appropriate campus and is unable to make an agreement with a neighboring district, the district should consider other alternatives. Such alternatives might include, but are not limited to the following:

a) Assigning student an adult mentor;
b) Assigning an adult to observe or to accompany student during passing periods between classes;
c) Involving parents to assist in the process of improving the atmosphere of safety and security on campus;
d) Promoting involvement of civic and service groups to assure student safety;
e) Hiring security officers to promote campus safety;
f) Training teachers and other school personnel in discipline techniques that work; and
g) Creating a proactive rather than a reactive administrative policy to address disciplinary issues.

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D-5. What resources are available to help schools implement corrective action?

LEAs may consider using the flexibility provided under Section 6123(b) of NCLB which provides for the transfer, under certain circumstances, of funds from certain NCLB programs to another. Detailed non-regulatory guidance concerning these transferability provisions is available at: http://www.ed.gov/nclb/freedom/local/flexibility. State and local resources may also be used to help schools implement corrective action. Section 9532 of NCLB does not authorize resources specifically to help cover transportation costs when a student elects to transfer to a safe, grade-appropriate public school. However, under certain circumstances Federal funds may be used. In addition, LEAs are encouraged to work with local victims' assistance units to determine if they have funds available if the student who is transferring has been a victim of a violent criminal incident.

D-6. How does the LEA let TEA know when corrective actions have been completed?

The LEA communicates with TEA through its quarterly reports.

D-7. Must all students attending a persistently dangerous school be offered the opportunity to transfer?

Yes. All students attending an identified school must be offered the opportunity to transfer to a safe school.

D-8. Are students at persistently dangerous schools required to transfer to another school in the LEA?

No. Students are not required to transfer, but they must be offered the opportunity to do so.

D-9. If a student attending a public school identified as persistently dangerous elects to transfer to a safe public school, how is the school selected?

In transferring students to safe public schools, LEAs should allow transferring students to transfer to a safe school that is making adequate yearly progress (AYP) and has not been identified as being in Title I School Improvement, Corrective Action, or Restructuring. The LEA is encouraged to take into account the needs and preferences of the affected students and parents. If transferring students are entitled to special services under other Federal statutes (e.g. free appropriate public education (FAPE) for children with disabilities or services for children with limited English proficiency), LEAs must make those services available to eligible children in a safe public school.

D-10. If a student elects to transfer to a safe public school, is the transfer permanent or temporary?

Transfers may be temporary or permanent, but the student must be allowed to remain in his/her new school for as long as the student's original school is identified as persistently dangerous. In making the determination of whether the transfer should be temporary or permanent, LEAs should consider the educational needs of the student, as well as other factors affecting the student's ability to succeed if returned to the transferring school. For example, an LEA should consider allowing a student to complete his/her education through the highest grade-level at the receiving school.

D-11. If a student elects to transfer to a safe public school, are resources available to help cover the costs (such as transportation costs) associated with the transfer?

The USCO statute does not authorize resources specifically to help cover costs associated with transferring a student from a persistently dangerous school. However, under certain circumstances Federal funds may

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be used. In addition, LEAs are encouraged to work with local victims' assistance units to determine if they have funds available if the student who is transferring has been a victim of a violent criminal incident.

### D-12. What if there is not another school in the LEA for the transferring student(s)?

LEAs are encouraged, but not required, to explore other appropriate options such as an agreement with a neighboring LEA to accept transfer students. LEAs should consider other alternative actions that might include the following:

a) assigning homeroom teachers, coaches, or counselors to mentor student groups;
b) assigning teachers or security personnel to maintain oversight during passing periods between classes;
c) increasing parental involvement to assist in process of promoting school safety;
d) encouraging civic and service groups to assure student safety;
e) hiring security officers to promote campus safety;
f) training teachers and other school personnel in discipline techniques and classroom management skills;
g) creating a proactive rather than a reactive administrative policy to address disciplinary issues.

### D-13. Must charter schools that use a lottery to select their students accept students transferring from persistently dangerous schools?

No. If a charter school has a lottery admissions policy, students electing to transfer under the SSCO would have to enter the lottery and, upon selection, could enroll in the public charter school. Transferring students would have to meet any minimum qualifications for admission in order to be included in the lottery.

## E. Victims of Violent Criminal Offenses:

### E-1. What specific crimes are considered violent criminal offenses?

In Texas, violent criminal acts include the following:

1) Attempted murder under Texas Penal Code Sections 19.02, 19.03, and 15.01 (reported under PEIMS 425 Action Reason Code 17).
2) Indecency with a child under Texas Penal Code Section 21.11 (reported under PEIMS 425 Action Reason Code 18).
3) Aggravated kidnapping under Texas Penal Code Section 20.04 (reported under PEIMS 425 Action Reason Code 19).
4) Aggravated assault on district employee or volunteer under Texas Penal Code Section 22.02 (reported under PEIMS 425 Action Reason Code 29).
5) Aggravated assault on someone other than a district employee or volunteer under Texas Penal Code Section 22.02 (reported under PEIMS 425 Action Reason Code 30).
6) Sexual assault or aggravated sexual assault against a district employee or volunteer under Texas Penal Code Section 22.011 and 22.021 (reported under PEIMS 425 Action Reason Code 31).
7) Sexual assault or aggravated sexual assault against someone other than a district employee or volunteer under Texas Penal Code Sections 22.011 and 22.021 (reported under PEIMS 425 Action Reason Code 32), and
8) Aggravated robbery – TEC §37.007(a)(2)(F) (reported under PEIMS 425 Action Reason Code 46).

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### E-2. Must a perpetrator be convicted before schools can offer a transfer to the victim of a violent criminal offense?

No. Texas permits victims of violent criminal offenses to transfer to a safe public school, whether or not the offenses eventually result in convictions.

### E-3. Must TEA submit its list of violent criminal offenses to the Secretary of Education?

No. TEA maintains appropriate records and is prepared to demonstrate compliance with the law during a USDE monitoring visit or audit, or as a result of a request for information.

### E-4. In Texas, must the violent criminal offenses be committed on school property in order to make a victimized student eligible for transfer to a safe public school?

A student who is the victim of a violent criminal offense committed on a campus or on any school property, while attending a school-sponsored or school-related activity, must be offered an opportunity to transfer to a safe public school.

## F. SSCO for a Student Who Has Been a Victim of a Violent Criminal Offense:

### F-1. What should an LEA do when a student has become a victim of a violent criminal offense?

Each district and charter school must have in place a local policy to guide transfers for students who are victims of a violent criminal act while at any LEA campus or on LEA grounds. The locally developed policy must include each of the following:

a) Timelines and procedures under which parents are offered transfers, generally within 14 calendar days of the incident;
b) Timelines and procedures for processing and approving transfer requests within 14 calendar days of the date the request for transfer is made known to the district;
c) Description of duration for which a transfer is approved and procedures for renewal of a transfer;
d) A statement of assurance that collection and maintenance of victim data information (e.g. date the incident occurred, incident number, and identity of perpetrator, if known) will be maintained for a minimum of five (5) years for auditing purposes;
e) A statement of assurance that collection and maintenance of documentation to show that victims' parents were offered the SSCO transfer option; and
f) A statement of assurance that documentation will be maintained reflecting when a transfer was requested and completed.

### F-2. Is a student who has become the victim of a violent criminal offense required to transfer to another school in the LEA?

No. The student must be offered the opportunity to transfer; but the student may elect to remain at the school.

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### F-3. If a student has become a victim of sexual assault, under Section 22.011, Penal Code; or aggravated sexual assault, under Section 22.021, Penal Code, and does not wish to transfer to another campus or district, what action must the LEA take?

Texas law [HB 308, 79th Leg.] requires districts to develop and implement a transfer system for students involved in sexual abuse, sexual assault or aggravated sexual assault who are, at the time the offense occurs, assigned to the same campus.

HB 308 amends the Texas Education Code by adding Section 25.0341, which applies only to a student:

- who has been convicted of continuous sexual abuse of young child or children under Section 21.02, Penal Code, or convicted of or placed on deferred adjudication for the offense of sexual assault under Section 22.011, Penal Code, or aggravated sexual assault under Section 22.021, Penal Code, committed against another student who, at the time the offense occurred, was assigned to the same campus as the student convicted or placed on deferred adjudication;

- who has been adjudicated under Section 54.03, Family Code as having engaged in such conduct;

- whose prosecution under Section 53.03, Family Code, for engaging in such conduct, has been deferred;

  OR

- who has been placed on probation under Section 54.04(d)(1), Family Code, for engaging in such conduct;

  AND is the victim of such conduct.

Upon the request of the student victim's parent or guardian, the district must transfer the student who is the victim of sexual assault to a different campus in the district or, if there is only one campus in the district, to another district. If the victim does not want a transfer, the district must transfer the student who engaged in the offensive conduct, according to the provisions described above, to a district campus other than the campus to which the victimized student is assigned, or to the district's Disciplinary Alternative Education Program (DAEP) or Juvenile Justice Alternative Education Program (JJAEP), if there is only one campus in the district serving the grade level in which the student who engaged in the conduct is enrolled.
In either case, the district is not required to provide transportation to the student who transfers. The length of a transfer to a DAEP or JJAEP under this provision is unlimited.

### F-4. If a student who has become the victim of a violent criminal offense elects to transfer to a safe public school, how is the school selected?

In transferring students to safe public schools, LEAs should allow transferring students to transfer to a safe school that is making adequate yearly progress and has not been identified as being in Title I School Improvement, Corrective Action, or Restructuring. The LEA is encouraged to take into account the needs and preferences of the affected students and parents. If transferring students are entitled to special services under other Federal statutes (e.g. free appropriate public education (FAPE) for children with disabilities or services for children with limited English proficiency), LEAs must make those services available to eligible children in a safe public school.

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F-5. What if there is not another safe school in the LEA for the transferring student?

A. LEAs are encouraged, but not required, to explore other appropriate options such as an agreement with a neighboring LEA to accept transfer students.
B. If the district does not have another public grade-appropriate campus and is unable to make an agreement with a neighboring district, the district should consider other alternatives. Such alternatives might include, but are not limited to, the following:

1. Assigning student an adult mentor;
2. Assigning an adult to observe or to accompany student during passing periods between classes;
3. Involving parents to assist in the process of improving the atmosphere of safety and security on campus;
4. Promoting involvement of civic and service groups to assure student safety;
5. Hiring security officers to promote campus safety;
6. Training teachers and other school personnel in discipline techniques that work; and
7. Creating a proactive rather than a reactive administrative policy to address disciplinary issues.

F-6. If a student elects to transfer to a safe public school, are resources available to help cover the costs (such as transportation costs) associated with the transfer?

The USCO statute does not authorize resources specifically to help cover costs associated with transferring a student from a persistently dangerous school. However, under certain circumstances Federal funds may be used. In addition, LEAs are encouraged to work with local victims' assistance units to determine if they have funds available if the student who is transferring has been a victim of a violent criminal incident.

F-7. May a district extend the transfer option to sibling(s) of victims of violent criminal acts when the sibling(s) would otherwise be required to attend the campus on which the violent criminal act occurred?

Yes. Districts are encouraged to create a local policy to allow administrators, at their discretion, to allow sibling(s) of a victim of a violent criminal act to transfer to another grade-appropriate campus if they deem it to be in the child's best interest to ensure a safe school environment.

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