

The Elementary and Secondary Schools Act (ESEA), as amended by the Every Student Succeeds Act (ESSA), requires public schools that receive federal funds under ESEA to allow a student to transfer from an unsafe school or when victim of a violent crime. The statutory language in its entirety is as follows:

SEC. 8532 20 U.S.C. 912 UNSAFE SCHOOL CHOICE OPTION.

(a) UNSAFE SCHOOL CHOICE POLICY – Each State receiving funds under this Act shall 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, or who becomes a victim of a violent criminal offense, as determined by State law, while in or on the grounds of a public elementary school or secondary school that the student attends, be allowed to attend a safe public elementary school or secondary school within the local educational agency, including a public charter school.

(b) CERTIFICATION – As a condition of receiving funds under this Act, a State shall certify in writing to the Secretary [of Education] that the State is in compliance with this section.

In accordance, the following policy is established and certified by the Office of the Superintendent of Public Instruction. All public school corporations must provide an assurance in their applications for ESSA funds (e.g. Title I) that they are in compliance with this policy.

Definitions:

- (a) Corrective Action Plan*-a written plan developed by a local school system and adopted by the local board of education for a public school that is identified as a persistently dangerous school for the purpose of remedying the causes that result in this school being identified as persistently dangerous
- (b) Jurisdiction of a public school*-events that are sponsored by a public school and that occur away from the property of the public school over which the public school has direct control or authority
- (c) Persistently dangerous school*-a public school in which for each of the three consecutive years on the property of the public school, or at an event within the jurisdiction of a public school, or at a school sponsored event meets the condition of Section 1.
Persistently Dangerous School
- (d) Property of a Public School*-any building, land, school bus, or other vehicular equipment owned or leased by the school system.
- (e) Victim*-a person against whom a violent, criminal offense has been committed and whose perpetrator has been found by official action to be in violation of a school rule related to violent criminal offense.
- (f) Violent Criminal Offense*-for the purpose of this rule, the following felony transgressions of law as defined in state statute, including murder (IC 35-42-1-1), kidnapping (IC 35-42-3-2), criminal confinement (IC 35-42-3-3), rape (IC 35-42-4-1), criminal deviate conduct (IC 35-42-4-2), child molesting (IC 35-42-4-3), child exploitation (IC 35-42-4-4(b) or IC 35-42-4-4(c)), vicarious sexual gratification (IC 35-42-4-5), sexual battery (IC 35-42-4-

1), child solicitation (IC 35-42-4-6), child seduction (IC 35-42-4-7), sexual misconduct with a minor (IC 35-42-4-9), incest (IC 35-46-1-3), homicide (IC 35-42-1), voluntary manslaughter (IC 35-42-1-3), reckless homicide (IC 35-42-1-5), battery (IC 35-42-2-1), aggravated battery (IC 35-42-2-1.5), robbery (IC 35-42-5-1), carjacking (IC 35-42-5-1), arson (IC 35-43-1-1(a)), burglary (IC 35-43-2-1), human trafficking (IC 35-42-3.5), violence against a school staff member, attempt under IC 35-41-5-1 to commit an offense listed in this subsection, or conspiracy under IC 35-41-5-2 to commit an offense listed in this subsection.

Section 1. Persistently Dangerous School.

An Indiana public elementary or secondary school is “persistently dangerous” if, in each of three consecutive school years, one of the following criteria has been met according to the Discipline Report (ES) collection:

1. The number of incidents committed by (an) unenrolled non-student(s) or (a) currently student(s) on school grounds during school hours or during a school-sponsored activity, plus the number of student expulsions for any of the violations delineated above is greater than one per 100 enrolled students for one or more of the criminal offenses listed in the definition of violent criminal offenses listed in the previous section.

Or

2. Two percent or more of the student population or ten students, whichever is greater, are found, by official action to have committed an offense in violation of a school rule that involved one or more of the following offenses:
 - i. Non-Felony Drugs
 - ii. Felony Drugs
 - iii. Felony Weapons
 - iv. Terroristic Threats
 - v. Violence Against a Teacher

Requirements

- (a) Local Education Agencies (LEAs) shall annually report to the Indiana Department of Education, on a date and in a manner specified by the Department, the data regarding students found by official action to be in violation of a school rule related to a criminal offense as identified in paragraphs one or two through the Discipline Report (ES).
- (b) The Indiana Department of Education shall identify by July 1 of each year persistently dangerous public schools using the criteria specified in paragraph one or two and shall notify the LEA superintendent of such identification.
- (c) The LEA shall within ten school days of notification of the Indiana Department of Education notify the parents/guardians of students enrolled in a school that has been classified as persistently dangerous school. This parental notification shall be written in English and any other language prevalent in the student population of that school. This notification shall also specify the process adopted by the local board of education to be

used to transfer a student to a safe public school, including a charter school, either within the school system or to one located in another school system with which the system has an agreement, upon the request of a parent/guardian or by a student, if the student has reached the age of 18. Following student transfer guidelines consistent with the Elementary and Secondary Education Act (ESEA) as currently reauthorized, LEAs shall allow students to transfer to a school that is in compliance with current state and/or federal accountability. Student transfers to safe schools within the school system or to a safe school within another school system with which the school system has an agreement shall be completed within 30 school days of the request.

- (d) Any student who is the victim of a violent criminal offense that occurs on the property of a public school in which the student enrolled, while attending a school sponsored event that occurs on the property of the school, or while attending an event under the jurisdiction of a public school shall be permitted to attend a safe public school, including a charter school. Each local board of education shall adopt a policy that facilitates the transfer of students who are victims of violent criminal offenses. This policy shall provide that the transfer shall occur within ten school days of the commission of the violent criminal offense, and to the extent possible, shall allow victims to transfer to a school that is in compliance with current state and/or federal accountability requirements.
- (e) School corporations are encouraged to enter into agreements-with neighboring school corporations for transfers to the neighboring corporation where there is no choice of schools within the corporation of legal settlement because there is no other school at the particular grade level, no safe school at the particular grade level, or no space at a safe school at the particular grade level. Such an agreement may include a method for determining the amount of transfer tuition, if any, which shall be paid to the neighboring school corporation.
- (f) In the case of a transfer to another school corporation, the corporation of legal settlement may provide financial assistance to a family to cover transfer costs.
- (g) A student who has transferred from a school no longer considered to be persistently dangerous loses the option to transfer due to this policy. Local governing boards may include in their policies the option of allowing a student to continue attending the school to which the student transferred.
- (h) A school that meets the persistently dangerous school criteria for two consecutive years will be put on watch status. The Indiana Department of Education will provide technical assistance as requested to help the school address school safety issues. A school on watch status will be required to submit expulsion and crime victim data to the Department of Education on a monthly basis.
- (i) If the persistently dangerous school criteria are met for a third consecutive year, a panel consisting of local and state school safety experts shall be convened to make the determination as to whether the school should be considered persistently dangerous.
- (j) A school designated as persistently dangerous must amend its School Safety Plan by adding a corrective action plan that addresses the cause(s) for the school's identification as a persistently dangerous school. The school shall submit the plan for approval by the

Department of Education. The Department of Education shall provide technical assistance, as needed, to develop the corrective action plan.

- (k) LEAs shall develop and local boards of education shall adopt a corrective action plan for each school identified by the Indiana Department of Education as a persistently dangerous school. The corrective action plan shall be based on an analysis of the problems faced by the school and address the issues that resulted in the school being identified as persistently dangerous. The LEA shall submit to the Indiana Department of Education for approval of the corrective action plan. This plan shall be submitted 20 days after the Indiana Department of Education notifies the local school system has been classified as a persistently dangerous school.
 - a. The corrective action plan from the board of education must have stakeholder input from:
 - i. A school safety professionals from at least two outside districts
 - ii. At least two teachers and two parents/guardians participating if a school has less than 300 students; and at least four teachers and four parents/guardians present if the school has more than 300 students.
 - iii. The local police or school resource officer
 - iv. The school counselor and/or school social worker on staff, when possible.
 - v. The school administrators (principal and assistant principal, preferably).
- (l) A school's designation as persistently dangerous will be removed after the school does not meet the criteria for identification as a persistently dangerous school for three (3) consecutive years.
- (m) Upon completion of its planned corrective action, an LEA may apply to the Indiana Department of Education to have the school removed from the list of persistently dangerous schools. After ensuring that all corrective action has been completed, the Indiana Department of Education shall reassess the school using the criteria for persistently dangerous schools as specified in paragraphs one, two, and three of this rule.