



Unsafe School Choice Option

Guidelines

**Unsafe School Choice Option Guidelines
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Introduction

Rule 160-4-8-.16 UNSAFE SCHOOL CHOICE OPTION (USCO) [Appendix A] was developed by the Georgia Department of Education with the input of a variety of stakeholders and adopted by the State Board of Education to be in compliance with the Federal *No Child Left Behind Act* of 2001. In developing a process that requires three years before a school can be declared as unsafe, it is the Department's goal to work cooperatively with local education agencies that appear to have schools that are potentially unsafe to develop interventions that will improve student safety.

Definition of a Persistently Dangerous School

Georgia has defined a public school to be persistently dangerous if for each of 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 at least one student enrolled in that school is found by *official action* to have committed an offense in violation of a school rule that involved one or more of the following violent criminal offenses: aggravated battery (O.C.G.A. § 16-5-24); aggravated child molestation (O.C.G.A. § 16-6-4); aggravated sexual battery (O.C.G.A. § 16-6-22.2); aggravated sodomy (O.C.G.A. § 16-6-2); armed robbery (O.C.G.A. § 16-8-41); arson – first degree (O.C.G.A. § 16-7-60); kidnapping (O.C.G.A. § 16-5-40); murder (O.C.G.A. § 16-5-1); rape (O.C.G.A. § 16-6-1); voluntary manslaughter (O.C.G.A. § 16-5-2);

or

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: non-felony drugs (O.C.G.A. § 16-13-2); felony drugs (O.C.G.A. § 16-13-30; 16-13-31; 16-13-32.4); felony weapons (O.C.G.A. § 16-11-127.1); terroristic threats (O.C.G.A. § 16-11-37). Numbers from each category shall not be combined to reach the two percent or minimum of ten, whichever is greater, but should be looked at individually for each category.

or

any combination during the three years of either of the above.

Official action is defined by the rule as an official tribunal held by the school system; a hearing conducted by a disciplinary hearing officer of the school system (O.C.G.A. § 20-2-752 through § 20-2-758); through a waiver process; through an action of the local board of education; or for non-felony drug offenses that result in placement in a drug intervention program.

Included in Appendix B of this document are Official Code of Georgia definitions of the criminal offenses identified in the Unsafe School Choice Option rule: aggravated battery, aggravated child molestation, aggravated sexual battery, aggravated sodomy, armed robbery,

first degree arson, felony drug charge, felony weapons charge, kidnapping, murder, rape, voluntary manslaughter, terroristic threats, and misdemeanor drug charges.

Events must occur on school property during school hours, while at an event on school property, at a school-sponsored event, or while attending an event under the jurisdiction of the school, including sports events at school-owned properties. Typically, events *under the jurisdiction of a public school* include field trips and other events off school property that are sponsored by the school and where faculty members of the school are responsible for student behavior.

Because of the variety of specific instances that include, but are not limited to sports events at playoff competitions, etc, local school systems are encouraged to contact the department's Division of Student Support to seek guidance regarding those instances. An updated listing regarding questions related to the rule and guidelines will be provided on the Department's web site (<http://www.gadoe.org>) and updated appendices to the guidelines will be provided to local superintendents on a regular basis.

For students with an identified exceptionality, including students in psychoeducational centers, instances of misbehavior related to this rule that are manifestations of the individual student's disability, are not to be counted in the system's total.

Alternative schools that have an identified school code number will be exempt from the designation of being classified as a persistently dangerous school. For alternative schools that do not stand as individual entities with an identified code number, the count applies toward the home school.

Record Keeping and Data Transmission

Records should be kept on a yearly basis of the number of students found to be in violation of school rules related to the activities identified in this rule. By June 1 of each year, local boards of education will provide accurate information regarding these numbers to the State Department of Education as a part of the normal data transmission process. This information will be analyzed and local boards of education will be notified by July 1 of each year of individual schools that report situations that place them in danger of being placed on a list of persistently dangerous schools.

Identification of Persistently Dangerous Schools

By July 1 of each year schools that are in danger of being placed on a list of persistently dangerous schools will be identified at the first and second year level and will be encouraged to develop interventions that will improve the conditions that have caused them to be placed on the list. Schools that remain on the list for a third year will be placed on a list of persistently dangerous schools and will be required to offer school choice to students within that school and to develop a corrective action plan.

School Choice

Local boards of education shall adopt a policy that facilitates the transfer of students who are victims of violent criminal offenses and who wish to transfer to another school within ten school days of the commission of the violent criminal offense. The policy shall also identify a process for the transfer of students making the request from a school identified as persistently dangerous to a safe school. In addition, the rule shall identify a process to notify parents/guardians in schools identified as persistently dangerous of the process to transfer to a safe public school, including a charter school system within the school system or to a school or charter school in another school system, if such an agreement exists. Local school systems (LSS) are encouraged, but not required to develop agreements with neighboring school systems. The parental notification process shall be written in English and any other language spoken by ten percent or more of the parents of the school and should be sent within ten school days. Transfers from a persistently dangerous school shall be completed within 30 school days of any request from parents/guardians.

To the extent possible, the local board of education policy shall allow students to transfer to a school that is making adequate yearly progress and that has not been identified as being in school improvement, corrective action or restructuring. Transfers from a persistently dangerous school may only be made to a school not on the list of persistently dangerous schools.

The transfers may be temporary or permanent, but must be in effect 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, the LSS 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.

Local school systems are not required to cover the cost of transportation for students who elect to transfer to a safe school beyond the limits identified by federal legislation. For example, Title IV, Part A funds may be used to establish safe zones of passage to and from school to ensure that students travel safely on their way to school and on their way home [section 4115(b)(2)(E)(v)]. In addition, Title V, Part A funds may be used to help cover the costs such as tuition or transportation related to USCO or expansion of public school choice [sections 5121(8) and 5131(12) and (25)]. LSSs are also encouraged to work with local victims' assistance programs to determine if they have funds available for this purpose.

Corrective Action Plans

Schools that have been named as persistently dangerous shall develop a corrective action plan based on an analysis of the problems faced by the school. The plan must address the issues that resulted in the school being identified as persistently dangerous, and outline specific solutions to help lower the incidence of identified problems. Local school systems are encouraged to involve parents, law enforcement officials, and community members to develop the plan. Plans may include a variety of interventions including but not limited to the following:

1. Hiring additional personnel to supervise students in common areas.
2. Increasing instructional activities in areas such as conflict resolution.
3. Working with law enforcement officials to identify and eliminate criminal activity.
4. Training of teachers and administrators concerning consistent enforcement of school discipline policies.
5. Limiting access to campuses.
6. Hiring security personnel or purchasing of security equipment.

Safe and Drug-Free Schools and Communities funds may be used to implement planned corrective actions. LSSs may also consider using the flexibility provided under Section 6123(b) of the ESEA, which provides for the transfer, under certain circumstances, of funds from one ESEA program to another. Detailed information concerning the permissible uses of transferred funds is available in non-regulatory guidance released by the U.S. Department of Education.

Upon completion of its corrective action, the local school system may apply to the Georgia Department of Education (GDOE) to have the school removed from the list of persistently dangerous schools. After ensuring that all corrective action has been completed, the GDOE will reassess the school using the agreed upon criteria for the identification of persistently dangerous schools. A reduction from the percentage or numbers listed in the definition of persistently dangerous will result in the school being removed from the list of persistently dangerous schools for the following school year.

Appendix A

Code: JBCCA(2)

160-4-8-.16 UNSAFE SCHOOL CHOICE OPTION (USCO).

(1) 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 a public school over which the public school has direct control or authority.
- (c) **Official action** – an official tribunal held by the school system; a hearing conducted by a disciplinary hearing officer of the school system (O.C.G.A. § 20-2-752 through § 20-2-758); through a waiver process; through an action of the local board of education; or for non-felony drug offenses that result in placement in a drug intervention program.
- (d) **Persistently dangerous school** – a public school in which for each of 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:

1. At least one student enrolled in that school is found by official action to have committed an offense in violation of a school rule that involved one or more of the following criminal offenses.

- (i) Aggravated battery (O.C.G.A. § 16-5-24)
- (ii) Aggravated child molestation (O.C.G.A. § 16-6-4)
- (iii) Aggravated sexual battery (O.C.G.A. § 16-6-22.2)
- (iv) Aggravated sodomy (O.C.G.A. § 16-6-2)
- (v) Armed robbery (O.C.G.A. § 16-8-41)
- (vi) Arson – first degree (O.C.G.A. § 16-7-60)
- (vii) Kidnapping (O.C.G.A. § 16-5-40)
- (viii) Murder (O.C.G.A. § 16-5-1)
- (ix) Rape (O.C.G.A. § 16-6-1)
- (x) Voluntary manslaughter (O.C.G.A. § 16-5-2)

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 criminal offenses:

- (i) Non-felony drugs (O.C.G.A. § 16-13-2)
- (ii) Felony drugs (O.C.G.A. § 16-13-30; 16-13-31; 16-13-32.4)

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- (iii) Felony weapons (O.C.G.A. § 16-11-127.1)
- (iv) Terroristic threats (O.C.G.A. § 16-11-37)

or

- 3. Any combination of paragraphs (1)(d)1 or (1)(d)2.
 - (e) **Property of a public school** - Any building, land, school bus, or other vehicular equipment owned or leased by the local school system.
 - (f) **Student population** – the unduplicated October full-time equivalent (FTE) count.
 - (g) **Unsafe School Choice Option (USCO)** – the process of allowing students who attend a persistently dangerous public school or students who become victims of a violent criminal offense while on the property of a public school in which they are enrolled to transfer to a safe public school.
 - (h) **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 the violent criminal offense.
 - (i) **Violent criminal offense** – for the purposes of this rule, the following felony transgressions of law as defined in state statute, including aggravated battery (O.C.G.A. § 16-5-24), aggravated child molestation (O.C.G.A. § 16-6-4), aggravated sexual battery (O.C.G.A. § 16-6-22.2), aggravated sodomy (O.C.G.A. § 16-6-2), armed robbery (O.C.G.A. § 16-8-41), first degree arson (O.C.G.A. § 16-7-60), felony drug charge (O.C.G.A. § 16-13-32.4), felony weapons charge (O.C.G.A. § 16-11-127.1), kidnapping (O.C.G.A. § 16-5-40), murder (O.C.G.A. § 16-5-1), rape (O.C.G.A. § 16-6-1), voluntary manslaughter (O.C.G.A. § 16-5-2), or terroristic threats (O.C.G.A. § 16-11-37).

(2) REQUIREMENTS.

- (a) Local school systems (LSSs) shall annually report to the Georgia Department of Education on a date and in a manner specified by the Department data regarding students found by official action to be in violation of a school rule related to a criminal offense as identified in paragraphs (1)(d)(1) and 1(d)2. These data shall be used to determine whether a school can be classified as a persistently dangerous school.
- (b) The Georgia Department of Education shall identify by July 1 of each year persistently dangerous public schools using the criteria specified in paragraph (1)(d) and shall notify the LSS superintendent of such identification.
- (c) The LSS shall within ten school days of notification by the Georgia Department of Education notify the parents/guardians of students enrolled in a school that has been classified as a 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 for the transfer of a student to a safe public school, including a charter school, either within the school system or to one located in another school

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- 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 No Child Left Behind Act of 2001, LSSs shall allow students to transfer to a school that is making adequate yearly progress and has not been identified as being in school improvement, corrective action, or restructuring. 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 is enrolled, while attending a school-sponsored event that occurs on the property of a public 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 making adequate yearly progress and has not been identified as being in school improvement, corrective action, or restructuring.
 - (e) A local board of education with one or more of its schools identified as persistently dangerous is not required to cover the cost of transportation to a safe public school beyond the levels identified by federal legislation.
 - (f) LSSs shall develop and local boards of education shall adopt a corrective action plan for each school identified by the Georgia 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 LSS shall submit to the Georgia Department of Education for approval the corrective action plan. This plan shall be submitted within 20 school days after the Georgia Department of Education notifies the local school system that a school has been classified as a persistently dangerous school.
 - 1. Upon completion of its planned corrective action, a LSS may apply to the Georgia 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 Georgia Department of Education shall reassess the school using the criteria for persistently dangerous schools as specified in paragraph (1)(d) of this rule.

Authority O.C.G.A. §§ 3-3-23; 16-5-1; 16-5-2; 16-5-24; 16-5-40; 16-6-1; 16-6-2; 16-6-4; 16-6-22.2; 16-7-60; 16-8-41; 16-11-37; 16-11-106; 16-11-127.1; 16-13-2; 16-13-30; 16-13-31; 16-13-32.4; 20-2-240; 20-2-752; 20-2-753; 20-2-754; 20-2-755; 20-2-756; 20-2-757; 20-2-758.

Appendix B

Definitions

Aggravated battery (Georgia Code Section 16-5-24)

A person commits the offense of aggravated battery when he or she maliciously causes bodily harm to another by depriving him or her of a member of his or her body, by rendering a member of his or her body useless, or by seriously disfiguring his or her body or a member thereof.

Aggravated child molestation (Georgia Code Section 16-6-4)

A person commits the offense of child molestation when he or she does any immoral or indecent act to or in the presence of or with any child under the age of 16 years with the intent to arouse or satisfy the sexual desires of either the child or the person. A person commits the offense of aggravated child molestation when such person commits an offense of child molestation which act physically injures the child or involves an act of sodomy. (This category is for students charged with felony offenses.)

Aggravated sexual battery (Georgia Code Section 16-6-22.2)

A person commits the offense of aggravated sexual battery when he intentionally penetrates with a foreign object the sexual organ or anus of another person without the consent of that person.

Aggravated sodomy (Georgia Code Section 16-6-2)

A person commits the offense of sodomy when he or she performs or submits to any sexual act involving the sex organs of one person and the mouth or anus of another. A person commits the offense of aggravated sodomy when he or she commits sodomy with force and against the will of the other person or when he or she commits sodomy with a person who is less than ten years of age.

Armed robbery (Georgia Code Section 16-8-41)

A person commits the offense of armed robbery when, with intent to commit theft, he or she takes property of another from the person or the immediate presence of another by use of an offensive weapon, or any replica, article, or device having the appearance of such weapon. The offense of robbery by intimidation shall be a lesser included offense in the offense of armed robbery.

Arson – first degree (Georgia Code Section 16-7-60)

A person commits the offense of arson in the first degree when, by means of fire or explosive, he knowingly damages or knowingly causes, aids, abets, advises, encourages, hires, counsels, or procures another to damage:

(1) Any dwelling house of another without his consent or in which another has a security interest, including but not limited to a mortgage, a lien, or a conveyance to secure debt, without the consent of both, whether it is occupied, unoccupied, or vacant;

(2) Any building, vehicle, railroad car, watercraft, or other structure of another without his consent or in which another has a security interest, including but not limited to a mortgage, a lien, or a conveyance to secure debt, without the consent of both, if such structure is designed for use as a dwelling, whether it is occupied, unoccupied, or vacant;

(3) Any dwelling house, building, vehicle, railroad car, watercraft, aircraft, or other structure whether it is occupied, unoccupied, or vacant and when such is insured against loss or damage by fire or explosive and such loss or damage is accomplished without the consent of both the insurer and the insured;

(4) Any dwelling house, building, vehicle, railroad car, watercraft, aircraft, or other structure whether it is occupied, unoccupied, or vacant with the intent to defeat, prejudice, or defraud the rights of a spouse or co-owner; or

(5) Any building, vehicle, railroad car, watercraft, aircraft, or other structure under such circumstances that it is reasonably foreseeable that human life might be endangered.

Felony drug charge (Georgia Code Section 16-13-30; 16-13-31; 16-13-32.4)

It shall be unlawful for any person to manufacture, distribute, dispense, or possess with intent to distribute a controlled substance or marijuana in, on, or within 1,000 feet of any real property owned by or leased to any public or private elementary school, secondary school, or school board used for elementary or secondary education.

Felony weapons charge (Georgia Code Section 16-11-127.1)

(1) "School safety zone" means in, on, or within 1,000 feet of any real property owned by or leased to any public or private elementary school, secondary school, or school board and used for elementary or secondary education and in, on, or within 1,000 feet of the campus of any public or private technical school, vocational school, college, university, or institution of postsecondary education.

(2) "Weapon" means and includes any pistol, revolver, or any weapon designed or intended to propel a missile of any kind, or any dirk, bowie knife, switchblade knife, ballistic knife, any other knife having a blade of two or more inches, straight-edge razor, razor blade, spring stick, metal knucks, blackjack, any bat, club, or other bludgeon-type weapon, or any flailing instrument consisting of two or more rigid parts connected in such a manner as to allow them to swing freely, which may be known as a nun chahka, nun chuck, nunchaku, shuriken, or fighting chain, or any disc, of whatever configuration, having at least two points or pointed blades which is designed to be thrown or propelled and which may be known as a throwing star or oriental dart, or any weapon of like kind, and any stun gun or taser as defined in subsection (a) of Code Section 16-11-106. This paragraph excludes any of these instruments used for classroom work authorized by the teacher.

Kidnapping (Georgia Code Section 16-5-40)

A person commits the offense of kidnapping when he abducts or steals away any person without lawful authority or warrant and holds such person against his will.

Murder (Georgia Code Section 16-5-1)

1. A person commits the offense of murder when he unlawfully and with malice aforethought, either express or implied, causes the death of another human being.

2. Express malice is that deliberate intention unlawfully to take the life of another human being which is manifested by external circumstances capable of proof. Malice shall be implied where no considerable provocation appears and where all the circumstances of the killing show an abandoned and malignant heart.

3. A person also commits the offense of murder when, in the commission of a felony, he causes the death of another human being irrespective of malice.

Non-felony drug charge (Georgia Code Section 16-13-2)

Any person who is charged with possession of marijuana, which possession is of one ounce or less, shall be guilty of a misdemeanor.

Rape (Georgia Code Section 16-6-1)

A person commits the offense of rape when he has carnal knowledge of:

(1) A female forcibly and against her will; or

(2) A female who is less than ten years of age.

Carnal knowledge in rape occurs when there is any penetration of the female sex organ by the male sex organ.

Terroristic threats (Georgia Code Section 16-11-37) A person commits the offense of a terroristic threat when he threatens to commit any crime of violence or to burn or damage property with the purpose of terrorizing another or of causing the evacuation of a building, place of assembly, or facility of public transportation or otherwise causing serious public inconvenience, or in reckless disregard of the risk of causing such terror or inconvenience. No person shall be convicted under this subsection on the uncorroborated testimony of the party to whom the threat is communicated.

Voluntary Manslaughter (Georgia Code Section 16-5-2)

A person commits the offense of voluntary manslaughter when he causes the death of another human being under circumstances which would otherwise be murder and if he acts solely as the result of a sudden, violent, and irresistible passion resulting from serious provocation sufficient to excite such passion in a reasonable person; however, if there should have been an interval between the provocation and the killing sufficient for the voice of reason and humanity to be heard, of which the jury in all cases shall be the judge, the killing shall be attributed to deliberate revenge and be punished as murder.