

**IDAHO UNSAFE SCHOOL CHOICE OPTION POLICY**

**The No Child Left Behind Act of 2001 (ESEA) provides, in part:**

"TITLE IX, PART E, SUBPART 2, SEC. 9532. 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 that the State is in compliance with this section." PL 107-110, 115 Stat. 1425, 1984-1985 (2002)

The State Department of Education consulted with LEAs and associations involved with public education in Idaho to determine a definition. Based on that consultation, the State Department of Education developed the following definition of "persistently dangerous public elementary school or secondary school." This definition will be used in Idaho to (a) establish state compliance with the federal requirement set forth in ESEA, and (b) determine if any Idaho schools are "persistently dangerous", thus invoking the statutorily-set requirement that students in the identified school be allowed to attend a safe public elementary or secondary school within the local education agency. Pursuant to this Act, the State Department of Education adopts this operational definition:

Persistently dangerous public elementary school or secondary school:

In the context of the No Child Left Behind Act of 2001 (ESEA), an Idaho public elementary or secondary school is considered to be persistently dangerous if it meets the following criteria:

In each of three consecutive years, there is one instance of:

- Homicide
- Sexual offense
- Kidnapping

or the school exceeds an expulsion or student conviction rate of:

1% of the student body  
or

3 students, whichever number is greater, for violent criminal offenses or for violations of federal or state gun free schools requirements on school property or at school sponsored events while school is in session.

For the purpose of this definition, a "violent criminal offense" is defined as conduct which could be charged as a felony or misdemeanor involving the threat of or actual physical injury, a sexual offense, homicide, rape, robbery, aggravated assault, aggravated battery, stalking, first degree kidnapping or aggravated arson.

**2003-2010 Persistently Dangerous Incidents** - (Tracking for these incidents was implemented during 2002-03; aggravated arson, stalking and kidnapping incidents were added to the definition June 27, 2003)

|                                  | <u>2003-2004</u> | <u>2004-2005</u> | <u>2005-2006</u> | <u>2006-2007</u> | <u>007-2008</u> | <u>2008-2009</u> | <u>2009-2010</u> |
|----------------------------------|------------------|------------------|------------------|------------------|-----------------|------------------|------------------|
| Aggravated Arson                 | 0                | 1                | 1                | 5                | 1               | 3                | 0                |
| Aggravated Assault               | 1                | 2                | 1                | 2                | 7               | 2                | 9                |
| Aggravated Battery               | 0                | 3                | 10               | 5                | 3               | 9                | 9                |
| Federal Gun-Free Act Violations  | 11               | 9                | 4                | 3                | 6               | 4                | 5                |
| Homicide                         | 0                | 0                | 0                | 0                | 0               | 0                | 0                |
| Kidnapping                       | 0                | 0                | 0                | 0                | 0               | 0                | 0                |
| Sexual Offense                   | 0                | 4                | 1                | 3                | 14              | 10               | 2                |
| Robbery                          | 0                | 1                | 9                | 1                | 8               | 1                | 5                |
| Stalking                         | 0                | 0                | 0                | 1                | 0               | 0                | 0                |
| Threat or Actual Physical Injury | 1                | 14               | 46               | 30               | 37              | 26               | 15               |

## PERSISTENTLY DANGEROUS SCHOOLS GLOSSARY

The definitions of most violent offenses, such as homicide and rape, are commonly understood and do not need further clarification. Other terms, such as aggravated assault, aggravated battery and robbery, are subject to individual state definitions and may be misapplied by those not familiar with their legal definitions. Therefore, for purposes of the Unsafe School Choice Options program, the following definitions taken from Idaho Code shall apply:

**Aggravated Arson.** Burning or damaging by fire or explosion a structure or real or personal property, resulting directly or indirectly, in great bodily harm, permanent disability, permanent disfigurement or death of any person, regardless of intent or lack of intent to cause such harm. Ref.: Idaho Code § 18-805

**Aggravated Assault.** An assault with a deadly weapon or instrument, without the intent to kill, or an assault by any means or force likely to produce great bodily harm. Ref.: Idaho Code § 18-905

**Aggravated Battery.** A battery in which a person:

- (a) causes great bodily harm, permanent disability or permanent disfigurement; or
- (b) uses a deadly weapon or instrument; or
- (c) uses any vitriol, corrosive acid or a caustic chemical of any nature; or
- (d) uses any poison or other noxious or destructive substance or liquid; or
- (e) upon the person of a pregnant female, causes great bodily harm, permanent disability or permanent disfigurement to an embryo or fetus. Ref.: Idaho Code § 18-907

**Federal Gun-Free Act Violations - Firearms** include handguns, rifles or shotguns. The following are included within the definition: (Note: This definition does not apply to items such as toy guns, cap guns, bb guns, and pellet guns.)

- any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive;
- the frame or receiver of any weapon described above;
- any firearm muffler or firearm silencer;
- any destructive device, which includes:
  - (a) any explosive, incendiary or poison gas
    - (1) bomb,
    - (2) grenade,
    - (3) rocket having a propellant charge of more than four ounces,
    - (4) missile having an explosive or incendiary charge of more than one-quarter ounce,
    - (5) mine, or
    - (6) similar device
  - (b) any weapon which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant and which has any barrel with a bore of more than one-half inch in diameter
  - (c) any combination or parts either designed or intended for use in converting any device into any destructive device described in the two immediately preceding examples and from which a destructive device may be readily assembled.

**Homicide.** The unlawful killing of a human being.

**Kidnapping-First Degree.** Any kidnapping committed for the purpose of obtaining money, property or another thing of value for the return or disposition of such kidnapped person, or committed for the purpose of raping, or committing the infamous crime against nature or committing serious bodily injury upon the person kidnapped or committing any lewd and lascivious act upon any child under the age of sixteen.

Ref.: Idaho Code § 18-4502

**Robbery.** The felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear. Ref.: Idaho Code § 18-6501. *Note: Robbery differs from theft because of the physical presence of the victim and the force or fear component used by the perpetrator taking the property from the victim against his will.*

**Sex Offense.** Rape, crime against nature, forcible sexual penetration by use of foreign object, sexual abuse of a child under the age of sixteen, ritualized abuse of a child, sexual exploitation of a child. Includes lewd conduct with a minor child under sixteen, or sexual battery of a minor child sixteen or seventeen years of age. Ref.: Idaho Code § 18-1506

**Stalking.** Willfully, maliciously and repeatedly following or harassing another person. Ref.: Idaho Code § 18-7905

**Threat of or Actual Physical Injury.** To express intent, through word or action, to inflict harm upon another person, coupled with the apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent. Ref.: Idaho Code § 18-901