

D.C. BOARD OF EDUCATION

NOTICE OF FINAL RULEMAKING

The Executive Director of the D.C. Board of Education, pursuant to the authority set forth in D.C. Code, 2001 edition, Section 38-101 hereby gives notice of final rulemaking action taken by the Board at its meeting held on February 9, 2004, expanding chapter 38 to enable the State Education Agency of the District of Columbia to comply with the Unsafe School Choice Option requirements of Public Law 107-110 (No Child Left Behind). These rules also expand chapter 38 of Title 5 of the District of Columbia Municipal Regulations. These rules establish standards governing the identification of persistently dangerous schools and revise the definition of what makes a school persistently dangerous.

On December 5, 2003, a notice of emergency and proposed rulemaking was published in the DC Register (50 DCR 10414). These proposed rules expand chapter 38 to enable the State Education Agency of the District of Columbia to comply with the Unsafe School Choice Option requirements of Public Law 107-110 (No Child Left Behind).

The Final rulemaking will take effect upon the publication of a Notice of Final Rulemaking in the D.C. Register. Proposed Rulemaking on this subject was published in the D.C. Register on December 5, 2003.

Chapter 38 is amended by adding the following new section, to read as follows:

Chapter 38 STATE EDUCATION AGENCY FUNCTIONS OF THE BOARD OF EDUCATION**3804 Identification of Persistently Dangerous Schools**

- 3804.1 Pursuant to the requirements of P.L.107-110, the District of Columbia Public Schools acting as the State Educational Agency (SEA) shall identify, by July 1 of each year, all public schools within District of Columbia LEAs that are "persistently dangerous" pursuant to criteria established by the SEA and set forth in subsection 3804 (c).
- 3804.2 By July 1, the SEA also shall send a letter of concern to each LEA and school administrator whose statistics for the previous year indicate that his or her schools are at risk of being identified as persistently dangerous the following year.
- 3804.3 A school is determined to be persistently dangerous if the annual number of officially reported violent crimes against students, on the school

grounds, during school operating hours, over a period of two consecutive years is equal to or greater than:

- (a) five, for schools with enrollments of 500 students or less, or
- (b) 1% of the school's official membership, for schools with enrollments of 501 students or more.
- (c) The above criterion is effective beginning with the 2004-2005 school year.

3804.4 Juvenile detention facilities are exempt from the provisions of this section.

3805 Persistently Dangerous Schools Transfer Option

3805.1 A student who is enrolled at a school determined to be persistently dangerous shall have the right to transfer to a destination school within the District of Columbia's LEAs and remain there until the originating school is no longer identified as persistently dangerous, provided such transfer is consistent with all applicable laws, including IDEA.

3805.2 The destination school shall be a public school that

- (a) is not identified as persistently dangerous;
- (b) is not in school improvement, under corrective action, or restructuring;
- (c) is making adequate yearly progress (AYP), and
- (d) has space to accommodate the student.

3805.3 A student shall not be eligible to seek a transfer under §3805.1 if he or she is

- (a) in a court-ordered educational placement; or
- (b) in an alternative setting into which he or she has been placed by the LEA pursuant to expulsion from his or her school.

3805.4 The eligible student's right to seek a transfer pursuant to this section must be exercised within 21 days following parental notification of his or her school's designation as "persistently dangerous."

3805.5 A transfer for reasons under this section shall be in effect until the persistently dangerous school is no longer designated as such, at which point the LEA or the destination school administrator may return the student to his or her neighborhood school.

3806 Local Education Agency (LEA) Notification and Appeals Process

3806.1 (a) No later than June 15 of each year, the SEA shall notify the LEA's about schools that are likely to be designated persistently dangerous and provide

each school with the following data used by the SEA to base its designation:

- 3806.1 (b) The school's official membership for the two most recent, consecutive school years, and
- 3806.3 The number of violent crimes against students on the school grounds, during school operating hours, for the two most recent, consecutive school years.
- 3806.4 The LEA shall have 10 days within which to review the data and submit to the SEA any evidence proving that a school is not persistently dangerous.
- 3806.5 If, after reviewing the evidence, the SEA determines that the designation is appropriate, it shall issue formal designation, pursuant to §3806, that a school is persistently dangerous.
- 3806.6 The LEA or the school administrator shall have the right to appeal a school's designation, in writing, to the Superintendent, acting in his or her capacity as the State Education Officer, within 7 days of notification by the SEA.
- 3806.7 Appeals shall be resolved as follows:
- (a) Upon receipt of a written appeal, the SEA shall convene representatives from its monitoring office and representatives of the LEA.
 - (b) At the meeting, the LEA shall present evidence challenging either the official membership numbers or specific reports of violent crimes, which may include a revised official membership audit for the affected school years, copies of official incident reports from the Metropolitan Police which clarify that the alleged violent crime(s) do not meet criteria established in §3806, or official findings that show the reported crime could not be substantiated.
 - (c) The monitoring officer will review the evidence and make a determination if the school's designation is still warranted.
- 3806.8 Appeals shall be resolved within 7 – 10 days by the Superintendent, or his or her designee, and he or she shall issue a finding on the LEA's status in writing to the LEA and the administrator of the school in question.
- 3807 Notification of Parents and Completion of Transfers**

- 3807.1 The LEA shall notify parents of students at affected schools of their school's status and the option to transfer no later than one month following a school's designation as persistently dangerous.
- 3807.2 The LEA shall notify parents who intend voluntarily to transfer a student into a school that has been identified as persistently dangerous of that school's designation and provide them with a list of alternate schools, if available, to which the student can apply.
- 3807.3 Pursuant to § 3807.1, the SEA will recommend that each LEA provide the parent of the student seeking admission to a school identified as persistently dangerous with a copy of the school's corrective action plan, pursuant to § 3808.1.
- 3807.4 Notices shall be provided in language that is understandable to all parents or guardians of students enrolled in the school, including either written translation or oral interpretation into the native language of the parents and provided by competent interpreters, unless it is clearly not feasible to do so.
- 3807.5 The LEA, pursuant to a parent's written request, shall affect student transfers within twenty-one (21) calendar days following parental notification by the LEA.

3808 Corrective Action for Persistently Dangerous Schools

- 3808.1 Each LEA must develop and submit to the SEA a corrective action plan for all schools within the LEA that have been identified as persistently dangerous within twenty (20) days of a school's final designation as persistently dangerous by the SEA.
- 3808.2 A school shall remain in corrective action for a period of two years, during which time the SEA will provide technical assistance to the school, pursuant to the availability of funds.
- 3808.3 The LEA shall report to the SEA and to parents semi-annually on the progress the persistently dangerous school is making toward the goals of its corrective action plan.
- 3808.4 The SEA shall remove a school's designation as persistently dangerous if the annual number of documented reported violent crimes against students on the school grounds, during school operating hours, over a period of two consecutive years following its designation is
- (a) five, for schools with enrollments of 500 students or less; or

- (b) 1% of the school's official membership for schools with enrollments of 501 students or more.
- (c) The above criterion is effective beginning with the 2004-2005 school year

3808.5 By August 1 of each year, the LEA shall notify parents of affected students when a school is no longer designated as persistently dangerous.

3809 Individual Student Victim Transfer Option

3809.1 A student shall also have the right to transfer to a destination school within the District of Columbia's LEAs if he or she has been the victim of

- (a) a violent crime committed on school grounds, during school operating hours, that has been substantiated by the LEA; or
- (b) a pattern of harassment or sexual harassment pursuant to §2503.2 (g) and (h) of this title, that has been perpetrated on school grounds, during school operating hours, and that has been substantiated by the LEA, pursuant to the filing of a grievance under §2405.4 or §2405.5 of this Title. For purposes of this subsection, a "pattern of harassment or sexual harassment" shall mean one substantiated incident of harassment that has created an intimidating, threatening or abusive environment, or two other substantiated harassment incidents.

3809.2 No later than 48 hours after an allegation pursuant to §3809.1 (1), the LEA shall provide parents with notice of the right to transfer pursuant to this section, the limitations on the right to exercise this option set forth in §3809.4.

3809.3 In the event of the alleged harassment or sexual harassment of a student enrolled in the District of Columbia Public Schools (DCPS), the notice required under §3809.2 shall also include notice of the right to file a grievance under §2405.4 or §2405.5.

3809.4 If the student is alleged to have been the victim of a violent crime perpetrated on school grounds during school operating hours, the LEA shall substantiate the alleged incident, and report its findings to the parent in no more than three days.

3809.5 If a student alleges a pattern of harassment or sexual harassment, the timeline and procedures for resolution of such grievances by the LEA provides in §2405.4 and §2405.5, shall apply.

- 3809.6 In the event that the LEA finds that a violent crime alleged under §3809.1(1) is not substantiated, the LEA's notice to parents shall include notification of the student's right to file a grievance pursuant to §2405.4.
- 3809.7 The parent shall have three weeks from the date of the completion of the LEA's substantiation of allegations made under §3809.1(1) or (2) to request a transfer under the provisions of this subsection.
- 3809.8 The LEA shall file a cumulative report of incidents reported under this section annually with the SEA.

3899 Definitions:

Adequate Yearly Progress (AYP)

Making acceptable progress toward the goals defined by the State's accountability and assessment plan.

Corrective Action

Action taken to eliminate the conditions that have led to a school's designation as persistently dangerous.

Corrective Action Plan

A plan submitted by the LEA to the SEA describing the corrective action to be taken by a persistently dangerous school, which shall include, at a minimum analysis of the conditions under which the violent crimes occurred and specific activities planned to mitigate those conditions.

Official Membership

A school's official enrollment on October 5 of each year, as certified by the State Education Office.

School Operating Hours

The regular operating hours established by a school, when classes are in session and/or a school-sponsored event takes place on school grounds.

School Year

For purposes of this Regulation, the school year is defined as beginning on the first official day of school and ending on June first of the following year.

Students

Pre-K – 12 students who are currently enrolled in a school.

Violent Crime

Any of the following offenses, documented by an official police report, that is designated a "crime of violence" under Section 22-4501(f) of the DC Code: murder; manslaughter; first degree sexual abuse; second degree sexual abuse; malicious disfigurement of

another; abduction; kidnapping; any assault with intent to kill, commit first degree sexual abuse, second degree sexual abuse, or child sexual abuse or robbery; assault with a dangerous weapon; assault with intent to commit any offense punishable by imprisonment; extortion or blackmail accompanied by threats of violence or aggravated assault.

School Grounds:

LEA-owned or leased building and land surrounding the school building.

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS AND ETHICS**

NOTICE OF FINAL RULEMAKING

The District of Columbia Board of Elections and Ethics hereby gives notice of final rulemaking action to adopt the following amendments to 3 DCMR Chapter 7, "Vote Casting Procedures: Regular Ballot."

The District of Columbia Board of Elections and Ethics at its regular meeting on Wednesday, March 3, 2004 took final action to adopt the following amendments to 3 DCMR Chapter 7, "Election Procedures."

No comments were received; and no changes were made to the text of the proposed rules as published in the Notice of Emergency and Proposed Rulemaking (50 DCR 11082: December 26, 2003).

Section 713, "Vote Casting Procedures: Regular Ballot," shall be amended to read as follows:

- 713.10 The designated polling official shall be responsible for the following:
- (a) Receiving the Voter Card;
 - (b) Twice announcing clearly and publicly the name, and in a primary election, the party on the Voter Card;
 - (c) Ascertaining whether the voter will vote using the optical scan voting equipment or the direct recording electronic (DRE) voting equipment;
 - (d) Issuing to voters selecting the optical scan voting equipment the ballots to which they are entitled, and issuing to voters selecting the DRE voting equipment the electronic voter cards to which they are entitled; and
 - (e) Depositing the Voter Card in a container provided for that purpose.
- 713.11 In the event that a voter chooses to use the Board's optical scan voting machines, the voter will complete his or her ballot and submit such ballot according to instructions which will be provided at the polling place.
- 713.12 In the event that the optical scan machine becomes inoperable for any reason during the election process, voters will place voted ballots into the auxiliary bin ballot slot of the ballot box. All ballots deposited in this auxiliary slot will be tabulated at the close of polls, either at the polling place if the machine regains operability, or at the Board's counting center, if not.

- 713.13 In the event that a voter chooses to use the Board's direct recording electronic (DRE) voting equipment, the voter will be given an electronic voting card for the purpose of voting and will complete his or her ballot according to instructions which will be provided at the polling place.
- 713.14 In the event that the DRE voting equipment becomes inoperable for any reason during the election process voters will be directed to use the optical scan voting equipment and submit their ballots in the manner prescribed in subsection 713.11 or, if applicable, 713.12.
- 713.15 Any repairs conducted on either the optical scan voting equipment or DRE equipment will be performed in the presence and view of:
- (a) an election official who shall note in writing all repair activity, and;
 - (b) designated poll watchers who will be provided with any available information pertaining to system activity.

Section 723, "Closing The Polls," shall be amended to read as follows:

- 723.1 Immediately after the last voter has voted, the Precinct Captain or his or her designee(s), shall in the presence and view of designated poll watchers:

