

**BOARD OF EDUCATION**

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**NOTICE OF EMERGENCY AND PROPOSED RULEMAKING**

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The District of Columbia Board of Education ("Board"), pursuant to the authority set forth in D.C. Code, 2001 Edition, Section 38-101 et seq., hereby gives notice of emergency and proposed rulemaking action taken by the Board at its meeting on June 18, 2003 to amend Chapter 38 of the Board Rules, Title 5 of the District of Columbia Municipal Regulations. The amendment enables 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 provisions of this Rulemaking include the establishment of criteria, processes and timelines for the identification of persistently dangerous schools by the SEA, appeals of such designation by the LEAs, notification of parents, the transfer of students from persistently dangerous schools and the transfer of students who have been victims of violent crimes. Students who are determined to be the victim of a pattern of harassment or sexual harassment in or on the grounds of the schools they attend will also be eligible for transfer.

The emergency results from the SEA's need to implement the Rulemaking by July 1, consistent with the requirements of federal legislation. The effective date of the rulemaking is June 18, 2003. This Emergency Rulemaking shall expire within 120 days of June 18, 2003.

The Board also gives notice of its intent to adopt these emergency and proposed rules in not less than thirty (30) days following publication of this notice in the D.C. Register.

Chapter 38 is amended as follows:

**3804 Identification of Persistently Dangerous Schools and Unsafe School Transfer Option**

**3804.1 Identification of Persistently Dangerous Schools**

- (a) 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 3804.1 (c).

- (b) 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.
- (c) 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:
  - 1) 2.5% of the school's official membership, for schools with enrollments of 200 students or more, or
  - 2) five, for schools with enrollments of 200 students or less.
- (d) Juvenile detention facilities are exempt from the provisions of this section.

**3804.2 Persistently Dangerous Schools Transfer Option**

- (a) 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.
- (b) The destination school shall be a public school that
  - 1) is not identified as persistently dangerous;
  - 2) is not in school improvement, under corrective action, or restructuring;
  - 3) is making adequate yearly progress (AYP), and
  - 4) has space to accommodate the student.
- (c) A student shall not be eligible to seek a transfer under §3804.2 (a) if he or she is
  - 1) in a court-ordered educational placement; or
  - 2) in an alternative setting into which he or she has been placed by the LEA pursuant to expulsion from his or her school.
- (d) 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."
- (e) 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.

**3804.3 Local Education Agency (LEA) Notification and Appeals Process**

- (a) No later than June 15, the SEA shall notify the LEAs 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:
  - 1) The school's official membership for the two most recent, consecutive school years, and
  - 2) The number of violent crimes against students on the school grounds, during school operating hours, for the two most recent, consecutive school years.
- (b) 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.
- (c) If, after reviewing the evidence, the SEA determines that the designation is appropriate, it shall issue formal designation, pursuant to §3804.3, that a school is persistently dangerous.
- (d) The LEA or the school administrator shall have the right to appeal a school's designation, in writing, to the State Education Officer within 7 days of notification by the SEA.
- (e) Appeals shall be resolved as follows:
  - 1) Upon receipt of a written appeal, the SEA shall convene representatives from its monitoring office and representatives of the LEA.
  - 2) 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 §3804.3, or official findings that show the reported crime could not be substantiated.
  - 3) The monitoring officer will review the evidence and make a determination if the school's designation is still warranted.
- (f) Appeals shall be resolved within 7 – 10 days by the Superintendent, acting in his or her capacity as State Education Officer, or his or her designee, and he or she shall issue his or her finding on the LEA's

status in writing to the LEA and the administrator of the school in question.

**3804.4 Notification of Parents and Completion of Transfers**

- (a) 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.
- (b) 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.
- (c) Pursuant to § 3804.4 (a), 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 § 3804.5 (a).
- (d) These 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.
- (e) The LEA, pursuant to a parent's written request, shall effect student transfers within twenty-one (21) calendar days following parental notification by the LEA.

**3804.5 Corrective Action for Persistently Dangerous Schools**

- (a) 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.
- (b) 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.
- (c) 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.
- (d) 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
  - 1) less than 2.5% of the school's official membership for schools with enrollments of 200 students or more; or
  - 2) Less than five, for schools with enrollments of 200 students or less.

































