

PROVIDING A SAFE PUBLIC SCHOOL CHOICE TO STUDENTS WHO HAVE BEEN VICTIMS OF A VIOLENT CRIMINAL OFFENSE

I. Introduction

The Unsafe School Choice Option (Section 9532 of the Elementary and Secondary Education Act (ESEA) of 1965, as amended by the No Child Left Behind (NCLB) Act of 2001) requires that students attending a persistently dangerous public school, or students who become victims of a violent criminal offense while in or on the grounds of a public school that they attend, be allowed to attend a safe public school within the District (including public charter schools) if such choice is available in that public school.

Pursuant to the Unsafe School Choice Option, New York State law and Commissioner's Regulations, the option of a safe public school will not be available in districts where there are no other safe public schools within the district at the same grade level.

II. Notification Of Parents That A Student Has Been Determined To Be The Victim Of A Violent Criminal Offense:

A. The Superintendent has the responsibility to determine if a student has been the victim of a violent criminal offense.

1. Violent criminal offense means a crime that:

- a. Involves infliction of a serious physical injury¹ upon another as defined in the State Penal Law;
- b. A sex offense that involves forcible compulsion; or
- c. Any other offense defined in the Penal Law that involves the use or threatened use of a deadly weapon².

2. Before the Superintendent determines that a student is the victim of a violent criminal offense, he or she must consult with any law enforcement agency investigating the alleged violent criminal incident and consider any reports or records provided by such agency. However, the Superintendent may determine that a student is the victim of a violent criminal offense

¹ Penal Law §10.00(10) defines "serious physical injury" as a "physical injury which creates a substantial risk of death, or which causes death or serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ."

² Penal Law §10.00(12) defines "deadly weapon" as "any loaded weapon from which a shot, readily capable of producing death or other serious physical injury, may be discharged, or a switchblade knife, gravity knife, pilum ballistic knife, metal knuckles knife, dagger, billy, blackjack, or metal knuckles."

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whether or not the perpetrator is charged, convicted or acquitted by a court of law.

3. The Superintendent may also consult with the school district's attorney prior to making a determination that a student has been the victim of a violent criminal offense.
 4. The District is also required to complete and maintain a Violent and Disruptive Incident Report (VADIR) for each violent or disruptive incident that occurs.
- B.
1. Where the Superintendent determines that the student is not the victim of a violent criminal offense, the parent of, or persons in parental relation to, such student shall be notified of such determination.
 2. If the parent of, or persons in parental relation to, the student wish to challenge such determination, they may file a timely appeal with the Commissioner of Education (copy to the Superintendent).
- C.
1. Where the Superintendent determines that the student is a victim of a violent criminal offense, as defined above, the District shall notify the parents of, or persons in parental relation to, such student of his or her right to transfer to a public school within the District (including public charter schools) and the procedures for such transfer, if such transfer is not otherwise precluded by the Every Student Succeeds Act.
 2. Notification of the right to transfer shall not be required when:
 - a. there are no other public schools within the District at the same grade level; or
 - b. such transfer to a safe school is otherwise impossible.
 3. Such notice shall occur within twenty-four hours of the Superintendent's determination.
 4. Such notice shall be, to the extent practicable, provided in the dominant language or mode of communication used by the parents or persons in parental relationship to such student.
- D. The District's Code of Conduct has established procedures governing the notification of law enforcement officials of code violations that constitute crimes.

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- E. Notwithstanding any other provision of law to the contrary, the determination of the Superintendent shall not have collateral estoppel effect in any student disciplinary proceeding brought against the alleged victim or perpetrator of the alleged offense.

III. Designating a Safe Public School or Schools

- A. When a student has been determined to be a victim of a violent criminal offense that occurred on the grounds of a public elementary or secondary school that the student attends, it shall be the responsibility of the District to designate a safe public school or schools within the District (including public charter schools) to which such student may transfer.
- B. However, a District is not required to designate a safe public school where there are no other public schools within the District at the same grade level or such transfer to a safe public school within the District is otherwise impossible; or if the District has only one public school within the District or only one public school at each grade level.
- C. A safe public school is defined as a public school that has not been designated by the Commissioner of Education as a persistently dangerous public elementary or secondary school.
- D.
 - 1. In designating a safe public school or schools the district shall utilize objective criteria. The District may also take into account the needs and preferences of the affected student and parents/persons in parental relation.
 - 2. Such school or schools must be at the same grade level as the school from which the student is transferring. To the extent possible, students should be transferred to schools that are making adequate yearly progress and have not been identified as requiring school improvement, corrective action or restructuring.
- E. The District shall make every reasonable effort to offer the parents of, or persons in parental relation to, a student who has been determined to be a victim of a violent criminal offense an opportunity to transfer the child to a safe public school within the District within ten (10) calendar days of such determination.
- F. The parent of, or persons in parental relation to, the student who has been determined to be the victim of a violent criminal offense and who has been offered the choice to transfer to a safe public school within the District may

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accept such transfer or elect to have the student continue at his or her present school.

- G. A student who transfers to a safe public school pursuant to this policy shall be enrolled in the classes and other activities of the public school in the same manner as all other children at such school.
- H. Any student who transfers to a safe public school pursuant to this policy shall be permitted to remain in such safe public school until the student has completed the highest grade level in such school, or for such other period prescribed by the United States Department of Education, whichever is less.
- I. The District shall provide transportation for any student permitted to transfer to the safe public school with the District it has designated, within the transportation limits established pursuant to Section 3635 of the Education Law.

IV. Documentation

The Superintendent shall maintain appropriate documentation regarding consultations with law enforcement officials and procedures utilized for parental notification and student transfer.

Waterville Central School District

Legal Ref: Chapter 425 of the Laws of 2002 relevant to Unsafe School Choice, Provisions of Part 120 of the Commissioner's Regulations relevant to Unsafe School Choice

Adopted: 12/17/02

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