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KEEPING SCHOOLS SAFE – THE IMPLEMENTATION OF NO CHILD LEFT BEHIND'S PERSISTENTLY DANGEROUS SCHOOLS PROVISION

FIELD HEARING

BEFORE THE

SUBCOMMITTEE ON EDUCATION REFORM

OF THE

COMMITTEE ON EDUCATION
AND THE WORKFORCE
U.S. HOUSE OF REPRESENTATIVES

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KEEPING SCHOOLS SAFE – THE IMPLEMENTATION OF NO CHILD LEFT BEHIND'S PERSISTENTLY DANGEROUS SCHOOLS PROVISION

Monday, September 29, 2003
U.S. House of Representatives
Subcommittee on Education Reform
Committee on Education and the Workforce
Denver, Colorado

The subcommittee met, pursuant to call, at 10 a.m., at the State Capitol Building, Old Supreme Court Chamber, Room 220, 200 East Colfax Avenue, Denver Colorado, Hon. Tom Osborne presiding.

Present: Representatives Osborne and Musgrave.

Staff Present: Melanie L. Looney, Counsel and Josh Holly, Director of Media Affairs.

Mr. OSBORNE. Good morning, everyone. A quorum being present, the Subcommittee on Education Reform and the Committee on Education and the Workforce will come to order. We're meeting today to hear testimony on the implementation of the No Child Left Behind's Persistently Dangerous Schools Provision. I'd like to begin by thanking those here at the Colorado State Capitol (inaudible). I appreciate your hospitality, and I'm very pleased to be here.

We're ready to hear from our witnesses, but before I begin, I'm going to ask for the unanimous consent for the hearing record to remain open 14 days to allow member statements and other extraneous material referenced during the hearing to be submitted in the official hearing record. Without objection, so ordered.

I'll now proceed with an opening statement.

STATEMENT OF HON. TOM OSBORNE, A REPRESENTATIVE IN CONGRESS FORM THE STATE OF NEBRASKA

Mr. OSBORNE. My name is Tom Osborne. I am the Vice Chairman of this subcommittee, and I represent Nebraska's third congressional district. On behalf of the Subcommittee on Education Reform, I would like to extend a warm welcome to everyone in the audience today. I would like to thank our distinguished panels for taking part in today's hearing, entitled, "Keeping Schools Safe - The Implementation of No Child Left Behind's Persistently Dangerous Schools Provision."

Today's hearing will focus on an extremely important topic—the protection and safety of America's children. When Congress passed bipartisan "No Child Left Behind Act" on December 31, 2001, it had the well-being of its students in mind. In order to receive funding under this Act, states are required to identify schools that are "persistently dangerous." Students who are enrolled at a school that has been identified by the state as being "persistently dangerous," are subsequently given the option of transferring to a safe school within their local education agency.

Ultimately, the requirements established by No Child Left Behind are intended to provide parents with both knowledge and options when it comes to the safety of their children. The provisions help parents feel secure that they are sending their children to safe, nonthreatening environments in which their children can learn and succeed.

As we consider this issue, it is important to look at this issue from a number of perspectives. We will hear about why this provision was included. We will also hear from two of the state's schools' chiefs—actually one, I believe now—who is from the State of Colorado—on the implementation of this provision at the state level. One of our panelists will provide a broader view of what the other states are doing to implement this provision. Finally, we will hear from a state legislator and a parent on the impact of this provision and its implementation.

Again, the topic at hand is of primary importance to all of us as we seek to ensure the safety and security of our nation's children. I look forward to hearing from our witnesses today.

[The prepared statement of Mr. Osborne follows:]

Statement of Hon. Tom Osborne, a Representative in Congress from the State of Nebraska

Good morning.

My name is Tom Osborne. I am the vice chairman of this subcommittee and I represent Nebraska's third congressional district. On behalf of the Subcommittee on Education Reform, I would like to extend a warm welcome to everyone in the audience today. I would like to thank our distinguished panels for taking part in today's hearing, entitled, Keeping Schools Safe - The Implementation of No Child Left Behind's Persistently Dangerous Schools Provision.

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Ultimately, the requirements established by No Child Left Behind are intended to provide parents with both knowledge and options when it comes to the safety of their children. The provisions help parents feel secure that they are sending their children to safe, non-threatening environments in which their children can learn and succeed.

As we consider this issue, it is important to look at this issue from a number of perspectives. We will hear about why this provision was included. We will also hear from two state school chiefs—one from my home state of Nebraska and one from here in Colorado—on the implementation of this provision at the state level. One of our panelists will provide a broader view of what the other states are doing to implement this provision. Finally, we will hear from a state legislator and a parent on the impact of this provision and its implementation.

Again, the topic at hand is of primary importance to all of us as we seek to ensure the safety and security of our nation's children. I look forward to hearing from our

witnesses today. At this time, I yield to my distinguished colleague, Representative Musgrave, for any opening comments she might have.

Mr. OSBORNE. And at this time, I yield to my distinguished colleague, Representative Marilyn Musgrave, for any opening comments that she may have.

STATEMENT OF MARILYN N. MUSGRAVE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF COLORADO

Mrs. MUSGRAVE. Thank you. Good morning to all of you. It's like "old home week" to be back here at the State Capitol. And it's very good to see friends and family, I might add.

I also am very delighted to have the opportunity to hold this hearing in our state capitol today. And, Congressman Osborne, I'd like to thank you very much for coming. I will not bring up the topic of football at all; that will not be mentioned today. And I'm just appreciative of the work that you are doing.

I'm certainly glad that we're here today to focus on this extremely important topic. The safety of America's students should be one of our top priorities as a nation, and I am pleased that Congress included the "persistently dangerous schools" provision in the No Child Left Behind Act. As a former school board member, a teacher, and the mother of four grown children, I have spent many years working in our educational system and know the importance that a safe environment plays in a child's ability to learn. But not only is safety a priority due to the educational benefits it provides. Safety is a priority because in this country it is never reasonable nor necessary to send our children into dangerous environments.

The "persistently dangerous schools" provision causes states to evaluate the safety of each school and notify parents when their children are attending a school found to be persistently dangerous. This provision makes it clear that the safety and well-being of our students is to be taken seriously. It provides parents with an educational option by allowing them to send children in such a school to another, safer school.

Even in states like Colorado that offer public-school choice, this provision is important for two reasons. First, it focuses—it forces us to assess the quality of education we are providing by making sure each school meets a safety standard. Second, it empowers parents to make an informed decision regarding their child's education through the notification process.

After a year to prepare for the implementation of this provision, we have just begun to hear back from the states regarding the policies they have established to define a "persistently dangerous school" and how these policies are being implemented.

No schools in Colorado were identified as "persistently dangerous." I would like to commend the Department of Education for the steps it has taken to improve school safety in our state. However, the findings surprise me, and today I would like to learn more about the standards to ensure that they are an accurate reflection of school safety in Colorado.

Colorado is not the only state to determine that there were no persistently dangerous schools in the state. Specifically, I find it interesting that 44 states—including Nebraska, Mr. Osborne—did

not identify any schools as persistently dangerous. More incredulous was the finding that none of the public schools in the urban areas of Los Angeles, Chicago, Miami, Detroit, Cleveland, San Diego, Baltimore and even Washington, D.C. were determined to be persistently dangerous. These findings raise some major concerns.

The finding in Los Angeles was particularly troubling with regard to Banning Senior High School near Los Angeles, because in the 2001-2002 school year it was the scene of 28 batteries, two assaults with a deadly weapon and three sex offenses; and this year an 18-year-old student died of a head injury hours after a fistfight in the school parking lot, and a fellow student was charged with murder.

But safety is not just a concern in our nation's most metropolitan areas. In fact, last week a student brought a gun to Wheat Ridge High School in Colorado. All of us want to prevent another tragic situation like Columbine. It is essential that we accurately evaluate our schools before declaring they are not persistently dangerous.

Today we have a wonderful opportunity to hear from leaders in the education policy, and I hope that we can determine where we are in the process of effectively implementing this provision and what steps we can take to better protect our students, better inform our parents and improve the quality of the learning environment for all students.

I am here today to listen to our witnesses and learn what is being done at the state level to implement this provision and how its implementation is viewed by those this provision is intended to help. I would like to thank our distinguished witnesses for their participation today. I look forward to hearing from them and their insights.

Mr. Chairman, I yield back my time.

Mr. OSBORNE. Thank you, Mrs. Musgrave.

[The prepared statement of Mrs. Musgrave follows:]

Statement of Hon. Marilyn N. Musgrave, a Representative in Congress from the State of Colorado

Good morning everyone and thank you for joining us today. I'm Marilyn Musgrave and, as Colorado's only representative on the House Education and Workforce Committee, I am delighted to have the opportunity to be in our state's capitol for this hearing today.

First, I would like to thank Congressman Osborne for taking so much time to come to our state in order to make this hearing possible. I appreciate your willingness to join me in reviewing this very important issue for children across America. I would also like to personally welcome you to Colorado.

Let me begin by saying that I am certainly glad that we are here today to focus on this extremely important topic. The safety of America's students should be one of our top priorities as a nation, and I am pleased that Congress included the "persistently dangerous schools" provision in the No Child Left Behind Act.

As a former school board member, teacher and mother of four grown children, I have spent years working in our education system and know the importance that a safe environment plays in a child's ability to learn. But not only is safety a priority due to the educational benefits it provides, safety is a priority because in this country it is never reasonable nor necessary to send our children into dangerous environments.

The "persistently dangerous schools" provision causes states to evaluate the safety of each school and notify parents when their children are attending a school found to be persistently dangerous. This provision makes it clear that the safety and well-being of students to must be taken seriously. It provides parents with educational options by allowing them to send children in such a school to another, safer school.

Even in states like Colorado that offer public school choice, this provision is important for two reasons. First, it forces us to assess the quality of education we are providing by making sure each school meets a safety standard. Secondly, it empowers parents to make an informed decision regarding their child's education through the notification process.

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Colorado was not the only state to determine that there are no persistently dangerous schools in the state. Specifically, I find it interesting that 44 States, including Nebraska, did not identify any schools as persistently dangerous. More incredulous was the finding that none of the public schools in the urban areas of Los Angeles, Chicago, Miami, Detroit, Cleveland, San Diego, Baltimore and Washington, D.C. were determined to be persistently dangerous. These findings raise some major concerns.

The finding in Los Angeles was particularly troubling with regard to Banning Senior High near Los Angeles which in the 2001–2002 school year was the scene of 28 batteries, two assaults with a deadly weapon and three sex offenses, and where this year an 18-year-old student died of head injuries hours after a fistfight in the school parking lot, and a fellow student was charged with murder.

But safety is not just a concern in our nation's most metropolitan areas. In fact, last week a student brought a gun to Wheat Ridge High School in Colorado. All of us want to prevent another tragic situation like Columbine, therefore, it is essential that we accurately evaluate our schools before declaring they are not persistently dangerous.

Today we have a wonderful opportunity to hear from leaders in education policy and I hope that we can determine where we are in the process of effectively implementing this provision and what steps we can take to better protect our students, better inform our parents and improve the quality of the learning environment for all students.

I am here today to listen to our witnesses and learn what is being done at the state level to implement this provision and how its implementation is viewed by those this provision is intended to help. I would like to thank our distinguished witnesses for their participation today. I look forward to hearing from them and their insights. And with that Mr. Chairman, I yield back my time.

Mr. OSBORNE. Just an additional comment. We know that out of 50 states only 6 have identified any schools that are unsafe. And of those 6 states there are 52 schools. And I believe 28 of those 52 come from Pennsylvania; 27 of the 28 in Pennsylvania come from Philadelphia. So obviously, we have a wide range of what people are determining "unsafe" and what they aren't.

And I've been in Banning High School and in many of the high schools around the country and realize the disparity and the different types of schools that we're dealing with.

So anyway, we appreciate the witnesses coming this morning.

Without any further comments, I'd like to begin and call the gentlewoman from Colorado to introduce the witnesses, and we'll proceed after that.

Mrs. MUSGRAVE. First of all, there's Dr. William J. Moloney as our Commissioner of Education in Colorado. When I was in the legislature—I have had a great deal of respect for you and I certainly enjoyed working with you. So I'm happy to have you here today.

Previously, Dr. Moloney served as the superintendent of schools for the Calvert County Public School District in Maryland. Prior to that, he was superintendent of schools in the Easton Area School

District of Pennsylvania. Currently, Dr. Moloney serves as a member of the Governor's cabinet and secretary to the state board of education and as an advisor to the general assembly.

Also on the distinguished panel today, we have Mr. David Smith. I have worked with him previously and have a great deal of respect for him also. He is the director of Prevention Initiatives for the Colorado Department of Education, and he served on the committee that created Colorado's definition of a "persistently dangerous school."

Prior to this, Mr. Smith was the supervisor of the Colorado Preschool Project and also the Dropout Prevention Project for the Colorado Department of Education. He currently assists local communities in developing an integrated approach to serving high-risk students. And it's good to have you here today.

Mr. OSBORNE. Thank you, Mrs. Musgrave.

And I would like to ask the witnesses to limit their statements to 5 minutes—which is very difficult in political offices to limit it to 5 minutes, but we would appreciate that. Your entire testimony will be included in the official hearing record.

And so, Dr. Moloney, we thank you for coming this morning, and we will begin with you.

STATEMENT OF WILLIAM J. MOLONEY, COMMISSIONER OF EDUCATION, COLORADO DEPARTMENT OF EDUCATION

Dr. MOLONEY. Thank you very much, Chairman Osborne. And it's good to see you again, Congressman Musgrave, bringing back recollections of shared values and projects when you were more frequently beneath the Golden Dome here.

Let me just preface my remarks by saying—speaking of the importance of the subject which we're going to address today. Thirty-eight years ago, I was a young congressional intern. I was present for the passage of the Elementary and Secondary Education Act of 1965. As a school administrator in six states, I have been intimately connected with the implementation of this for most of those 38 years. I think it's fair to say, as Congressman Boehner has pointed out, that there were some things that were left to be desired as to how well it turned out, particularly when Congress began to look at what had happened with the reauthorization of 1994.

Another hat I wear is as Chairman of the Education Leaders Council—a group, I believe, known to you for its strong commitment to reform and playing a very key and supportive role to Secretary Paige in the implementation of the No Child Left Behind Act. In fact, this week before last, I was honored to share a press conference with Senator Bill Frist in Nashville defending No Child Left Behind from its legion of critics. I would just say of that, that probably the best evidence to be found that this law that you passed is making a difference is in fact the criticism that it received. And it's our strong hope here in Colorado—and I think we're all friends for reform across the country—that it would stay the course.

Understandably, in the passage of such a monumental statute—the most important Federal education legislation probably in the history of the republic—there are elements of compromise, which

are inevitable—in fact, a healthy part of the process. I was honored to testify before the House Education and Workforce Committee more than once at a time when our Congressman Tancredo and Congressman Musgrave's predecessor, Congressman Chaif, who were—were on that panel.

We in Colorado relative to No Child Left Behind—in general—and "persistently dangerous schools"—in particular—have insisted on two things: One, the cause is so great and the end so worthy that the strongest good-faith effort must be made. Criticism of the law before the race is even begun will have the most deleterious effect. In working closely with our minority community here in Colorado, our Closing the Learning Gap Coalition, which is headed by the senior members of the republican and democratic party in the state, Governor Owens, and Attorney General Salazar—one thing we've been very much aware of—and that is an apprehension among those who represent our most vulnerable children—that in fact the voices of criticism would say: This is too hard. We can't do it. We can't get there. That must not be allowed.

The second part of our approach to this has been our recognition that no statute is perfect—certainly not one of the vast scope of No Child Left Behind—and that as with all such statutes, No Child Left Behind will evolve over time in the interest of meeting its most admirable goals. When we looked at No Child Left Behind and the "persistently dangerous school" aspect, we took literally what the law said, which indicated that each state had to work this out by the best lines available to them. There was not a preconception or a notion that we must strive for a result that would make us look good or avoid legislative intent, but rather to make a good-faith effort.

As I think was indicated by Congressman Musgrave's remarks, like 43 other states we reached a result that very candidly looked a little peculiar in the eyes of many onlookers. Many of those onlookers, who were anything but friendly to the legislation, took this occasion to say, "Ah-hah." One commentator among that group said, "See? See? It's a farce." And what is disturbing about that is that a good-faith effort, let's say, made by people like those of us in Colorado, should be used as a club to beat the purposes and the prospects of this piece of legislation.

So we continue to, as Mr. Smith will make clear, soldier on in this regard. As I think we all are aware—and this state suffered the horrendous tragedy of Columbine—safety in schools is not a cause to which we are indifferent. So if there are disagreements as to the implementation, they're perhaps disagreements that will require some adaptation on our part and perhaps also some adaptation to bring more clear and specific the intent of Congress.

So I'll stop there and prepare to entertain any questions you have either before or after Mr. Smith's remarks. Thank you.

Mr. OSBORNE. Thank you very much, Dr. Moloney.

[The prepared statement of Dr. Moloney follows:]

Statement of William J. Moloney, Commissioner of Education, Colorado Department of Education

Chairman Osborne, on behalf of the Colorado State Board of Education I wish to extend a warm welcome to Colorado. My name is William J. Moloney and I am the Commissioner of Education for Colorado.

The issue of safe schools where children and youth can achieve high academic standards is central to our mission. We take the challenge to identify any school in our state that is persistently dangerous for our students as serious work. We understand the importance of providing parents with accurate information so that they can make wise choices for their children.

Quite frankly, we have taken this commitment to assure that schools are a safe place for students to learn, quite seriously, long before the No Child Left Behind legislation. Our Colorado legislature has a history of funding services that focus on students who engage in behavior that is considered to be dangerous to their fellow students. Dangerous behavior results in expulsion. We have model programs in our state that focus on the expelled student in order to prevent further violence and disruption to the classroom.

We are here today to respond to your request for information about the process that Colorado utilized to comply with the requirements of No Child Left Behind. To that end I have asked Dave Smith from the Colorado Department of Education to outline for you how we developed our criteria. Dave was a member of a team of people who worked on this issue and will be able to respond directly to you request.

I look forward to responding to any questions that you may have. Again, welcome to Colorado.

Mr. OSBORNE. We will hear testimony from both, and then we will address a few questions to you.

And so, Mr. Smith, why don't you go ahead and give your testimony at this time.

STATEMENT OF DAVID SMITH, DIRECTOR OF PREVENTION INITIATIVES, COLORADO DEPARTMENT OF EDUCATION

Mr. SMITH. Chairman Osborne and Representative Musgrave, welcome to Colorado—welcome back.

When faced with the charge of defining "persistently dangerous schools," the first step we took in the Colorado Department of Education was to form a Safe Schools Committee. The legislation required us to develop this definition in consultation with local school districts. We developed a process that actually increased the input to other people within the educational community.

On that committee the following roles were represented: A president of a local, rural school board; an executive director of student services from a suburban school district; a representative from the Colorado Association of School Executives; a principal from an alternative school serving both rural and city areas—Greeley; a high school counselor from an urban school district; and the educational-policy analyst from the Governor's office; a representative of the Colorado Congress of Parents and Teachers, and a representative from the Colorado Association of School Boards. The Department of Education staffed this committee.

When the committee convened, it took a look at the charge of the legislation, and it took a look at the data that was already available around suspension, expulsion, drug offenses—the kind of data that we already collect—and made it available on the report cards that each individual school must issue to the community and to their parents. So the data was there, and it existed. And because we were collecting existing data rather than new data, in order to be able to look at 2 years' worth of data, we had to look at data that was already present in our system in order to be able to look at the second year to get the 2-year qualification of a "persistently dangerous." That was the purpose of those definitions.

The committee itself decided to support the expansion of even their involvement. To meet that end, we held a 1-day meeting that included parents, students, law enforcement officers, principals, teachers, local school board members, the executive director of the regional office of the U.S. Department of Education, school counselors, and local safe and drug-free schools and community coordinators. All were invited for a full-day meeting to provide input into the definition of "persistently dangerous school." That day primarily was like small groups facilitated by people other than people on the committee in order to keep the process fair and impartial. The outcome of that particular day was to come up with a set of principles to guide us in the actual definition.

The kinds of things we heard that day include: A value of identifying schools that were truly and "persistently dangerous"—as opposed to schools where some unsafe behaviors occur but overall are basically safe; a desire to direct more assistance toward schools in the greatest need of addressing school-safety issues provided within the resources by the Act; the need for the data to be objective; the need to use indicator data that was already collected by CDE in order to notify schools by the 2003/2004 school year if they are potentially identifiable to be "persistently dangerous"; the desire to create a system that encourages more accurate reporting rather than dealing with discipline problems that don't necessarily rise to the level of danger to self and others.

Utilizing those principles, the following outcomes occurred: One, the state board adopted a policy on victims of violent crime. Essentially that policy gave parents the right—if any of these violent crimes which are defined in my testimony—and in the interest of time, I'll skip over those—but if any of those things occurred within the school, the parent would not have a way (inaudible). In other words, those incidences rose to a level so serious that parents could choose at that point to make their own determination if the school is unsafe and move their child or youth.

Part two, the definition of "persistently dangerous school." The definition was arrived at by looking over some things that I had mentioned earlier that's already on a "student report card." Those things include: "alcohol violations, drug violations, assaults/fights, robberies, and 'other' felonies as defined by the Automatic Data Exchange"; expulsions for firearms per the Gun-Free Schools Act; and the third component was the number of reports to the Department of Education of school employees engaged in unlawful behavior, as required by the State Board of Education Rules.

With that, we decided the incidence rate based upon the population of students in schools. Essentially, the incidence rate would require 15 percent of the students to engage in the described behaviors. And the way that I most—it's most helpful to me to understand is that there would have to be 180 incidences for a school of 900 to 1,199, and that would be approximately 1 day.

The reason for those—and the most problematic in this whole process for us in our discussions (inaudible) with a larger community was the term "persistently dangerous." That word assumes—or actually taken from Webster's dictionary—means "continuous and ongoing."

In Colorado, when we ran—we set the criteria. It was approved by the board. We did our first data run to see how many schools in fact would qualify. Based on that data run, we had 20 schools that would qualify as "persistently dangerous" under that criteria—that outline.

Mr. OSBORNE. Mr. Smith, thank you. We've run out of time, so we'll begin the questioning at this point. And I'm sure you'll have a chance to amplify some of the points that you're bringing up at a later time.

[The prepared statement of Mr. Smith follows:]

Statement of David B. Smith, Director, Prevention Initiatives, Colorado Department of Education

Good morning Chairman Osborne. My name is David Smith and I am with the Colorado Department of Education. My official title is Director of Prevention Initiatives. In response to your request I will be addressing the process that the Colorado Department of Education (CDE) utilized in developing persistently dangerous schools criteria as required by the No Child Left Behind Act. My testimony will include the definition that was arrived at through this process and the subsequent findings based upon data submitted by local school districts to the department.

The No Child Left Behind Act of 2001 required each state to identify a method for determining a persistently dangerous public school. The first step in our process was to establish a Safe Schools Committee. Members of this committee represented the following roles: a president of a local, rural school board (Buffalo School Board), an executive director of student services from a suburban school district (Lewis–Palmer), a representative from the Colorado Association of School Executives (CASE), a principal from an alternative school serving students from both rural and city areas (Greeley), a high school counselor from an urban school district (Denver), the educational policy analyst from the governor's office, a representative from the Colorado Congress of Parents and Teachers and a representative from the Colorado Association of School Boards (CASB). The committee was staffed by CDE members who represented No Child Left Behind and Safe and Drug Free Schools.

The Safe School Committee began meeting in August of 2002. It was the role of CDE to provide the committee with information requested that included data on expulsions and suspensions, data collected from schools per the Safe Schools Act and safe school data sent to parent's homes by way of the school accountability reports. The committee helped the department staff develop a Safe Schools Forum in order to seek broader input from schools and communities from throughout Colorado. This was a full day meeting held in October of 2002. Approximately 60 people attended this meeting and included the following representation: students, law enforcement officers, principals, parents, teachers, local school board members, the executive director of the regional office of the U.S. Department of Education, school counselors, and local safe and drug free schools and communities coordinators. The majority of the day was spent in small group sessions facilitated by independent volunteers. Department staff and members of the committee were intentionally excluded from the discussions in order to keep the input from local representatives as objective as possible. This allowed committee members to hear from a broad spectrum of people on issues related to persistently dangerous schools. The department absorbed the cost of this Forum as well as committee member participation over several months which amounted to $7,046.

The outcome of the Forum included many suggestions about school safety as it relates to persistently dangerous schools. In addition to taking these suggestions under consideration, the Safe School committee also utilized guiding principles as follows:

- A value of identifying schools that are truly and persistently dangerous as opposed to schools where some unsafe behaviors occur, but overall are basically safe.
- A desire to direct more assistance toward schools in greatest need of addressing school safety issues within resources provided by the Act.
- The need for data to be objective.
- The need for the indicators to be measurable and based on standardized definitions.
- The need to use indicator data that is already collected by CDE in order to notify schools by the 2003/2004 school year if they are potentially identifiable as persistently dangerous.

- The desire to create a system that encourages more accurate reporting rather than dealing with disciplinary problems that don't rise to the level of dangerous to self or others.

The Safe School Committee then set about developing criteria to be utilized in identifying a persistently dangerous school. After much discussion and several drafts the following Safe School Choice Option policy was adopted by the Colorado State Board of Education in January of 2003:

PART ONE: VICTIMS OF CRIMES OF VIOLENCE

Any student who becomes a victim of a violent criminal offense while in or on the grounds of a public elementary school or secondary school that the student attends, shall be allowed to attend an available safe public elementary school or secondary school within the school district.

Crimes of Violence

Crimes of violence, as defined by Colorado Revised Statute 18–1.3–406(2)(a)(I) and (II), are those crimes that have been committed, conspired to be committed, or attempted to be committed by a person during which, or in the immediate flight there from the person:

A Used, or possessed and threatened the use of, a deadly weapon; or
B Caused serious bodily injury or death to any other person except another participant.

Crimes of violence are:

(A) Any crime against an "at risk" adult or "at risk" juvenile:
(B) Murder;
(C) First or second degree assault;
(D) Kidnapping;
(E) Sexual assault;
(F) Aggravated robbery;
(G) First degree arson;
(H) First degree burglary;
(I) Escape(from custody or confinement); or
(J) Criminal extortion.

"Crime of violence" also means any felonious unlawful sexual offense in which the defendant caused bodily injury to the victim or in which the defendant used threat, intimidation, or force against the victim.

In addition, local school must follow the prohibitions regarding the enrollment of expelled students as set forth in CRS 22–33–106(4). This law requires that a student who has been expelled must be prohibited from enrolling or re-enrolling in the same school in which the victim of the offense or member of the victim's immediate family is enrolled.

PART TWO: PERSISTENTLY DANGEROUS SCHOOL

Any student who attends a persistently dangerous public elementary school or secondary school, as determined by the State in consultation with a representative sample of local educational agencies, shall be allowed to attend an available safe public elementary school or secondary school within the school district.

Persistently Dangerous School

A school is determined to be "persistently dangerous" if the total number of incidents annually reported to the Colorado Department of Education for:

(A) alcohol violations, drug violations, assaults/fights, robberies, and "other" felonies as defined by the Automated Data Exchange;
(B) expulsions for firearms per the Gun–Free Schools Act; and
(C) the number of reports to CDE of school employees engaging in unlawful behavior, as required by State Board of Education Rules 1–CCR–301–37, 2260.5–R–15.05.

exceed the following numbers per student enrollment per year for two consecutive years, beginning with the 2001/2002 school year:

45 for fewer than 299 students
90 for 300 to 599 students
135 for 600 to 899 students
180 for 900 to 1,199 students
225 for 1,200 to1499 students
270 for 1,500 to 1799 students
315 for 1800 to 2099 students
360 or more for 2,100 or more students

Procedures for Districts and Schools

Data will be assessed annually. The Colorado Department of Education will notify districts and schools after the first year, if a school has the potential of being identified as persistently dangerous following the second year. When determined to be persistently dangerous, districts must notify parents about their option(s) for transferring students and complete the transfer(s) upon request.

Identification of schools

The Colorado State Board of Education approved the policy in January 2003. The first data run to determine schools that met year one criteria was completed in May of 2003. As a result 20 schools were identified as meeting the criteria for year one. In accordance with state policy those schools were notified. Year two data from the 2002–2003 school year was submitted to the department on June 30, 2003. The data run was completed in August of 2003. None of the 20 schools met the criteria for year two. The primary reason for this was the decline in numbers under the category of assault/fights. Schools indicated that they had been reporting all fights including those that did not meet the state's definition. When using the state definition for the second year of analysis the number of assaults declined.

This concludes my testimony. Thank you for your time and attention. I look forward to responding to any questions that you may have.

Mr. OSBORNE. So, first of all, Dr. Moloney, we want to thank you for being here today. And I'd like to know the process that Colorado used to build on its definition of "persistently dangerous school"—and Mr. Smith addressed some of these issues—and whether that process included a review of school crime statistics and input from parents. So can you explain that to us, because we think the parental involvement is certainly a big part of this, too.

And one of the real concerns that I have is that—and maybe you can correct me if I'm wrong—a school of 300 students, if they had incidents at the rate that you would feel they would need to have over a 2-year period, this means that literally one out of six students would have been assaulted or involved in some type of serious incident—which seems pretty high to me—and at that level of involvement and still to be called a "safe school." You know, I would not feel good if I was sending a child to a school with those kinds of odds.

So anyway, if—it's kind of a rambling question, but if you could address that to your ability.

Dr. MOLONEY. OK. I'll try not to be too rambling in my answer.

Mr. OSBORNE. Good.

Dr. MOLONEY. At the heart of this problem—and always has—is the unreliability of statistics. I well recall, as a high school principal, often being accused of running a, let's say, "nonsafe" school because I had such a high suspension rate. I was at pains to contradict that judgment by saying, No, it is precisely because of our strictness, our careful recordkeeping, and our follow-up that this is a very safe school.

The reality most recently validated, when we introduced a "state report card," is that sometimes the schools that on paper look the safest are the most dangerous, and the ones that on paper look the most dangerous are the safest. This issue of "how do you define things" has plagued us yearlong.

Mr. OSBORNE. Could you explain that a little more thoroughly to me—"the most dangerous being the safest on paper."

Dr. MOLONEY. Well, let me—my deputy superintendent in Rochester, New York—(inaudible) is well known to us—and he said, Building administrators knew that if there were statistics that

made them look bad—statistics which might get in the media—that might negatively impact their careers. So there was a tendency—a very human tendency to downplay what was going on. And so notoriety would not come to some enterprising reporter or an angry parent who—you know—ripped the mask off of that circumstance.

Conversely, we had folks who did the opposite; who came as close to a zero-tolerance policy as they could. And that meant reporting a lot of fights, a lot of suspensions, a lot of expulsions. But these were the schools that parents wanted their children in, because they knew that there was an administration who was very serious.

So there was a contrast between what the statistics say and what is the reality, and that is what our committee under Mr. Smith's direction had to wrestle with. And, of course, it creates a problem of perception, and it creates problems for folks in your circumstance who have to kind of look at this mound of paper from 50 states and say: What is going on here?

Mr. OSBORNE. So you're saying one of the big problems is reliability of reporting, building by building, and that there doesn't seem to be any uniform standard in that regard?

Dr. MOLONEY. Mr. Smith, would you care to comment on that?

Mr. SMITH. Yes. I'd like to add to Dr. Moloney's remarks. One of the things we really struggled with, as the head committee, is to engage in any of these behaviors that would become in our schools as a result of an expulsion. So if the student is expelled from school, they're no longer in that environment. And to get into the notion of "persistent," somebody else would have to step up and engage in that same kind of behavior in order to make the school a "persistent" environment. They would also be expelled, and so somebody else would have to step up. That's where the whole notion of "persistence" begins to come into play.

In Colorado we paid very close attention to the "safe schools" option. And we've actually expelled kids, and the general assembly has created programs for students who are expelled so that they're not just churned into the community, but they go on and get services and support. So there's a real focus on those students who are engaged in these violent-potentially leveled behaviors. So that was sort of the kind of thing that we were faced with.

Mr. OSBORNE. OK. So you're saying that since students are expelled for certain types of behavior, that then the "persistent" definition sometimes becomes removed because those students were reported? Is that what you're saying?

Mr. SMITH. Well, in order for the school environment to be "persistent," that student is no longer there, somebody else would have to engage in that behavior. And that's what we were looking at in terms of one of the rates. If a student engaged in assaulting another student and caused bodily injury, they're expelled from school. As Commissioner Moloney indicated, that would show up as an expulsion; having shown up as an assault from that school, the parents may be alarmed. But the fact of the matter is that student is no longer in that school. And that's the dilemma that's posed by statistics.

Mr. OSBORNE. OK. Well, I understand some of what you're saying. And at this time, I think my 5 minutes is up.

Mrs. Musgrave, would you care to continue?

Mrs. MUSGRAVE. Thank you, Mr. Osborne.

Well, I don't think I ever heard an answer to the question: In a school with an enrollment of 300 students, there would have to be 90 violations in a school year before that school would be considered "persistently dangerous." And I just want to know from the both of you: Is that a standard that is an accurate indicator of how safe our schools are in Colorado? I mean, that could be one every other day in a school year. Is that an accurate indicator that our schools are safe?—I mean, 300 violations?

Dr. MOLONEY. I would defer to Mr. Smith, and then I will follow up on his response to it more specifically.

Mr. SMITH. My (inaudible), again, was that whole idea of "persistence." You know, that—the scenario that you described of "every other day" would be if somebody in that school environment—somebody making it dangerous "every other day"—"persistently dangerous." And that, again, is something that we struggle with.

When you look at the notion of "persistently dangerous," that means—that would indicate to me as a parent and to other parents that on a regular basis that school is a dangerous place for my child to be.

Mrs. MUSGRAVE. You know, I think an adult like myself going into a work environment—and I'm thinking if I were applying for a job and I read these statistics, what I would think about going to work at a place like that. And then I think as a young person, as a minor going into an environment like that, what they're like.

Some children are very slight in build. Some children are very needy by nature. They're more likely to be a target. And I wonder what they feel like—what their gut feels like when they go to a school that has 300 violations a year. That really hits home with me.

Dr. Moloney, you worked in Pennsylvania. And we look at Pennsylvania standards; Colorado standards are much lower. Could you comment on that? Why is there such a difference?

Dr. MOLONEY. Well, I cannot speak to the criteria that each state adopted. I can say something about the realities. Having worked there for 9 years, I'm quite familiar with realities. I would strongly submit that the standards for school management here in Colorado are much stronger. And that is not out of any, you know, superior wisdom on our part, but it is a very different demographic knowing Philadelphia—if you're in a Pittsburgh school—very well, being in an excellent position to compare them with Denver and Pueblo or to some of our—our cities. If they appear better in this measurement, I certainly commend my colleague, Charles Zogby, who was there once we put it together.

Mrs. MUSGRAVE. Well, Dr. Moloney, in a student body of 2,000 in Pennsylvania, only 20 violations are permitted; in Colorado a student body of the same size could have 360 violations or more. So I mean, there is a stark difference between Colorado and Pennsylvania. I wonder how a parent responds to that. I think I know.

Dr. MOLONEY. I think part of this—an easy resolution of this would have been if a national standard had been set that required every state to adhere to the same standard. This would have resulted in much greater clarity and much greater consistency. But

for reasons I'm sure you understand, there was a desire to give flexibility to the states; and when you do that, you are at risk for 50 different approaches, which is characteristic of how this country approaches school reform. We act as if we have 50 sovereign nations. It's astonishing to the rest of the industrial world, but it is germane to, you know, what we're doing.

Mrs. MUSGRAVE. Well, I think that the important thing to me is that parents get accurate information so they can make a decision for their child. And when you see these kinds of disparities between the states, you know, I wonder if that's appropriate. Could you tell me what incentives or consequences you were implementing to really encourage honest reporting?

In specific, you know, when we may have administrators that would either overreport or some that underreport, I'd just like to say I would like to err on the side of giving the parents the most information, perhaps even if it might be a little alarmist at times. So what incentives—and either one of you can answer that—are we giving these individuals to assure honest reporting?

Dr. MOLONEY. I think that goal is certainly desirable. It is indeed a disservice to a parent moving from Philadelphia to Denver trying to determine what the realities are when they look at these standards. It would be much more helpful to that parent if there was a reliable standard set at a national level. That parent would never be satisfied as long as we allow 50 different approaches.

I would prefer—just as I did when I was a school administrator—to err on the side of strictness. Every poll we've ever taken says parents rate discipline and its variance as the No. 1 concern. More basic than the basics is: Does your child come home from school in one piece? And we're as committed to that as anyone. But you're right, the system does not lend itself to that result.

Mrs. MUSGRAVE. Thank you. I believe my time is up.

Mr. OSBORNE. OK. We'll entertain one more round of questions with you gentlemen, if that will be OK with you.

Just a couple of thoughts. I've been in (inaudible) Denver high schools. I been in quite a few of the Philadelphia high schools. And I can tell you, from my experience, that there is a fair amount of similarity; some dissimilarities. But still, I think we can say that this area of the country is removed from some of the problems that we see in Philadelphia, and, obviously, the assessment is quite different in those two areas.

It seems like we're hung up on the word "persistent." And I would assume that if one out of every six children were the victim of some type of assault and violence every 2 years in a school, most parents would say that's too persistent.

And in terms of a national standard, we understand that appeal; but we also understand that most of the people at the state level in education have resisted strenuously a national standard. They wanted to have the state set the testing standards; and as you know, there are differences state by state.

So I think what the people in the Education Committee and the House at least felt was that we would like to give each state as much autonomy as possible. But also when you look at the results here, 46 states say they have no unsafe schools. Obviously, common sense and logic is this is somewhat incredulous. And then to have

one or two states with almost all the schools labeled as "unsafe" doesn't seem logical. So it may be that a national standard will come into being.

And then we're thrown back on the reliability of the reporting at the school level. As you mentioned, that's a problem. And I can see that every school wants to be considered safe. And so we're certainly concerned about reliability and integrity at the individual school building, too, which I would assume you folks would be more clearly attuned to sitting in Washington.

So anyway, those are just some of my thoughts. And I would like to ask one more question and do this question for each of you. When Colorado implemented their current provision, did you hear from parents or teachers as to whether this definition met or did not meet their expectations and whether it provided them with the information they needed as to the safety of their children? So, was there input from parents and teachers once you had decided on your standard?

Mr. SMITH. Yes, there was input. The PTA (inaudible) Standard America Committee, so they approved—you know, they saw the standards. Parents were quoted in the papers saying they were not surprised that there were no "persistently dangerous" schools in Colorado, because they didn't feel that the school that their child attended was dangerous. I did not receive any phone calls directly from parents saying they—or any kind of a letter or anything indicating that they disagreed with this criteria. Although I will add that we strongly support providing parents with accurate data so that they can draw the line themselves as to whether they deem it to be a safe or an unsafe school.

So I really want to emphasize that in Colorado, providing that information on the "report card"—one assault may be too many for one parent, and they may want to move their child then. So I think the issue is providing accurate information to the parents. I think that that's a principle that we absolutely need to stick with, so that the parents themselves can look at that data and then they can decide. In Colorado they can move their child (inaudible) without a "persistently dangerous school" label. They can move their child if there is one fight and their child is involved in it and they deem that school to be unsafe, they can move their child then.

Mr. OSBORNE. So you feel that you're willing to or are providing the information to the parents at the present time?

Mr. SMITH. I'm not sure that this information has gone out specifically to parents. It's been in the press that, you know, our legislature will require a school labeled as "persistently dangerous" to notify parents. That is one of the requirements of the legislation.

Mr. OSBORNE. So my question to both of you is: Do you have that in process where you are going to notify the parents of each school how many incidents have occurred at that school on a given year or a 2-year period?

Mr. SMITH. It's on the report card.

Dr. MOLONEY. OK. I could offer a thought on that of a practical nature. When we interact with our 178 school districts and 1700 schools, and particularly when we assert certain constraints of time, we do not interact with them directly. If we (inaudible), we

suggest that it would be in a (inaudible) communication. We operate through organizations, as every state does.

Now, with parents, other than general citizenry, this is the largest and most diverse group of folks who are involved, and one can very legitimately raise the question: Which parents do you communicate with, and is the organization sufficient? Had we more time or resource or whatever, we might have cast that net more widely. But as these processes go, it was a—I think, let's say, a very thorough kind of outreach; but it still leaves, as I think we all know, parents' differences of opinion. Organizations and individual parents are often in somewhat different places. But as Mr. Smith suggests, at the end of the day, parents are fairly shrewd consumers. Maybe their sources of information are not entirely scientific, but they know what they like and they know what they want and have ways of kind of tapping into this. But it's an imperfect process.

Thank you.

Mr. OSBORNE. Mrs. Musgrave.

Mrs. MUSGRAVE. Thank you, Mr. Osborne. I would just like to say that when I heard about the makeup of the committee, you know, it was a butcher, baker, and a candlestick maker; but I tell you that committee should have had a lot more parental input.

Granted we need administrators, we need folks from law enforcement and the department and all of that, but really the heart of this whole issue is letting the parents know about the environment in the schools as with regard to safety.

I just have a question for either one of you in regard to the 20 schools in Colorado that were defined after 1 year as "persistently dangerous schools." What happened with that? When they got that—that label, so to speak—what happened in those schools? Were there consequences? Were there changes? Could you respond to that, please?

Dr. MOLONEY. I think I could help you with a generalization. We talked directly with the superintendents and the principals involved, as is the purpose of this legislation. This got their attention in a large way. I think some of the circumstances you run into here, very likely you'll run into with testing. In very small schools you find funny things happen with numbers. They look like a fever chart. We were not surprised with the disproportionality with middle schools.

But to specifically answer your question, I think they did indeed pay very close attention to that. And I think others on the edge of that bubble, so to speak, did also.

Mrs. MUSGRAVE. But what did they do, Dr. Moloney? I mean, did they report less fights? What did they do to respond to the "persistently dangerous" label that they had received?

Mr. SMITH. On the Automatic Data Exchange—which defines how school districts are to report the data that then goes on the school "report card"—the schools were not reading that definition closely enough, I think. But what we heard and got back from the school principals is that when you look at the definition, it said that in order to record in that category a fight had to arise to a second degree assault, meaning that there had to be bodily injury.

Their response was, we've been reporting any scuffle on the playground, a shoving in the lockers—we've been reporting that as an

assault, then. And that was supposed to be reported in the other category, not in the "assault/fight" category. So what they did is pay (inaudible) close attention to the state definition than the Automatic Data Exchange. And what you saw from this is a rise in the other violations and more accurate reporting of "assaults" in that category.

Mrs. MUSGRAVE. Well, what procedures are in place right now to assure that all dangerous incidents are reported?

Mr. SMITH. Well my response to that is the integrity of the data is only as good as the integrity of the people reporting it. I don't have any reason to believe that people are fudging the data. I think there's a honest definition issue—what constitutes a "dangerous" situation—and it may vary from community to community. I mean, I just don't have the sense that people are trying to be inaccurate in reporting their data.

Mrs. MUSGRAVE. Well, if you think that previously they were overreporting in the "assaults" category and now you think that, you know, the change in reporting is reflective, how—I would just like to know how you think that officials found it important to report those fights earlier, even though they were nonfelony assaults, and we don't want to include them now; is that appropriate?

Dr. MOLONEY. Let me offer a perspective on this, as we (inaudible) the community. The dilemma that we have in all aspects of reform is the concept of local control. As you know very well from your days serving your district in the general assembly here, many very sincerely were not happy with the reforms that were being thrust at them by the states—uniform standards, uniform assessment, accountability managers—and they said that this violated local control; but rightly, the general assembly and the Governors of both parties persisted in this.

So now at least—and I use the example of testing in the CSAP, which made them universally loved—but at least we know in every single school what portion of youngsters got Question H right because of that uniformity.

Relative to what we're talking about here today, we do not have that. We have, as Mr. Smith indicated, where circumstantial, we need to rely on a good-faith effort of folks out there. Now, those folks out there aren't necessarily and probably aren't even aware of what all of their counterparts are doing. But in our data gathering of things like this—whereas we can tell you exactly how many free-induced lunches are given and we know what a lunch is, on the safety statistics what comes back is—what any statistician will tell you—is highly skewed data.

Mrs. MUSGRAVE. Well, I agree with that. But when 20 schools were found to be "persistently dangerous" and then magically the reporting changed and then they weren't anymore, you know, you do get a little concerned about how the reporting is done. I do, at any rate.

I believe my time is up.

Mr. OSBORNE. Well, thank you. We'd like to thank the witnesses for coming here. We have difficult jobs, and we appreciate what you do. And so you may step down now. And I would ask that the second panel come forward and take their seats and recognize that once they get up here, we will have the gentlewoman from Colo-

rado make introductions. But thank you so much for being here today.

Dr. MOLONEY. Thank you very much for having us.

Mr. OSBORNE. I want to thank the members of the second panel for being here this morning. Since all of you reside in this area in Colorado and since Mrs. Musgrave represents Colorado, I will let her make the appropriate introductions. We will call on Mrs. Musgrave at this time.

Mrs. MUSGRAVE. Thank you, Mr. Osborne.

It's a pleasure to introduce all of you to The Honorable Bob Schaffer, who is the first member of our panel. And, of course, he served Colorado's fourth district from 1997 into 2002. He was Co-Chairman of the House Education Reform Caucus and a member of the Committee on Education and the Workforce. I have now taken his seat on that Committee. And prior to serving in Congress, Mr. Schaffer served 9 years in the Colorado State Senate. I believe he was the youngest person ever elected to the Colorado State Senate, and he was Vice Chairman of the Education Committee at that point. I knew him well then and I know him and appreciate him now for the work he does on behalf of education. It's very good to have you with us today.

We also have Ms. Gloria Zradicka with us today. She serves as a policy analyst for the Education Commission of the States in Denver; and prior to this position, she was a state services analyst and a research assistant for the Education Commission of the States. Ms. Zradicka has authored numerous publications throughout her career, including the most recent, a commission report entitled "The Persistently Dangerous School Criteria." Welcome.

It's a pleasure to introduce my friend, Senator John Andrews, president of the senate. Unfortunately, when I served with him, he was minority leader, so we didn't get to have as much fun; but what a pleasure to have you here, and I commend you for the interest you have in education reform throughout the years that I've worked with you. And welcome, Senator Andrews.

And then it's my pleasure to introduce our last panelist, Ms. Vicki Ware. And if I may say something very personal to you today. I know that this may be kind of intimidating to you. I remember the time when I first testified before the Education Committee in this building, and I remember my knees were shaking a little bit; and a few years later, I was on the other side of the table. And I just want to say to you, even though this room is set up to where we are elevated above you, we're not "above" you in any way; and your testimony today means a great deal to us. The most poignant things that we ever hear as a legislator is testimony from citizens, particularly parents. So I want you to feel very comfortable today as you tell your story. And it's a pleasure to have you with us here.

Mr. OSBORNE. Thank you, Mrs. Musgrave. We'll begin with the witnesses now. I'd like to call Mr. Schaffer. We served together on the Education Committee and have come to know you and respect you, and we certainly look forward to hearing from you today.

STATEMENT OF THE HONORABLE BOB SCHAFFER, PRESIDENT, COLORADO ALLIANCE FOR REFORM IN EDUCATION

Mr. SCHAFFER. Thank you, Mr. Chairman. Welcome to Colorado; and to the rest of the Committee and staff, thanks for being here. I am grateful for your attention not only to this issue but to express it in a way that involves a field hearing in this state.

This is one aspect of H.R. 1 that I'm particularly familiar with, because it is one that—that I followed all the way through its evolution and development as an idea that dated to the original drafts, and there was some point of amendment process. This "persistently dangerous schools" definition was considered even before H.R. 1, and that was during the reauthorization of the Elementary and Secondary Education Act, which did not receive as much interest at the time; but was spoilage for inclusion in H.R. 1, and I'm grateful for it.

And I might also add that it was discussed in the Committee. And as I recall, it was discussed on a bipartisan basis and with wide approval across both sides of the aisle. And without—and although, I will say that there was some objection when we met in the back room—and we're dealing with amendments and staffing and so forth—and when it came to the actual consideration on the Committee floor, it did not—it was the kind of amendment that, I think, was adopted in a way that suggested that there was great hope on both sides of the aisle for its successful implementation.

And the intention was directed at parents and with the realization that there would be certain people in school settings—whether they be administrators or perhaps teachers and others within various states—that would find this offensive. This is one more measurement and one more aspect of public education in America. But the objective was to do—to begin the process with an accurate assessment of dangerous schools and to—and to disclose the results of these assessments to the people who have the greatest responsibility for educating their children, because they're parents. And so it was very much student-driven and parent-driven. And the expectation was that they would be empowered to make choices when it comes to their children.

And this particular choice was a rather obvious one. I think a survey of any parents on what they care about—I think the school is one of their primary issues that they care about, meaning—the academic quality and professionalism of teachers and so on are things that they care about. But they also care about—student security and school safety is high on the minds of the parents in respect to their evaluation of their child's school.

The Congress failed to deal with the most difficult part of this question by letting the states do it, and that was done for a couple of reasons. One is to defer to the judgment of the states—which I think is always proper and a good idea—but second, we would have never arrived at Congress agreeing on a definition of "persistently dangerous schools." So it makes perfect sense—it did then and it still does now—to defer this definition to the several states. It was also somewhat expected; and from that standpoint when I was there to help draft this particular provision, I'm not surprised that there are many states that have decided the threshold should be

so high that, in fact, no schools in their state meet the definition of "persistently dangerous."

And to get around to a conclusion here as well, I think the Congress did a good thing by establishing a requirement that schools be evaluated by each state on the basis of the danger that occurs there and the kinds of the local violence that students must endure. I think the Congress was correct to suggest that there should be a connected choice element and a disclosure element to parents. But in terms of what happens next, I would—I think that there is one direction I would recommend to Congress; and that is, we left quite a lot to the U.S. Department of Education through its guidance on recommendations to states on how this definition ought to be presented. And because the Congress was relatively vague, the Department of Education's guidance is relatively vague as well. These definitions are really up to states.

And I think, Congressman Musgrave, you put your finger—and, Mr. Chairman, you put your finger right on the seminal issue here; and that is, to the extent to which parents are involved in the definition and implementation of this particular revision, my belief here in Colorado is similar to what I would evaluate other states to have; that I think we've been woefully inadequate when it comes to the involvement of parents in deciding where this threshold is, because I think the threshold is far higher than most parents would have arrived at on their own. And that's not a criticism necessarily, because these agencies are—they're not elected by people. They're not—you know, the process that all the states have gone through in arriving at this definition—are not individuals who are accountable to the parents to begin with. And I appreciate the gestures that all states have made, including parents.

But I really believe that the Congress—perhaps there's one recommendation that I can conclude with—is that the Congress make greater effort to recommend that state legislatures define this definition of "persistently dangerous schools" and the elected representatives of the people play a greater role, because I think it's very clear the direction that's taken place by allowing an administrative bureaucratic definition as—is taking us to a far different place than the Congress had intended and most parents would expect. That concludes my remarks.

Mr. OSBORNE. Thank you, Mr. Schaffer.

[The prepared statement of Mr. Schaffer follows:]

Statement of Hon. Bob Schaffer, President, Colorado Alliance for Reform in Education

Good morning Mr. Chairman and Members of the Committee. My name is Bob Schaffer. I live in Fort Collins, Colorado with my wife and five children. From 1997 to January of this year, I represented Colorado's Fourth Congressional District in the US House of Representatives. Throughout my six years in Congress, I served on the House Committee on Education and the Workforce. In fact, I was Vice–Chairman of this very Subcommittee.

It never occurred to me that I would someday be a Committee witness, but I am certainly honored to appear before you today. First, welcome to Colorado—the state I loved talking about so much when I worked in Washington. It's a great state with big hopes, grand dreams and expectations for our children that are as big as the Rocky Mountains.

People here tend to rally around our schools and teachers. We love seeing them succeed. We support them by applying a candid, direct and unambiguous philosophy to making them better.

We believe our public schools can compete with others, and this year, our Legislature entrusted them with the chance to do just that. Our governor signed the nation's most aggressive voucher bill which treats teachers like real professionals, parents like real customers, and the state's poorest children like real Americans.

We also believe that school improvement entails the identification, disclosure and correction of certain problems. The Committee's focus on the topic of today's hearing indicates its willingness to do the same, and I am grateful because the topic is an important one.

In 2001 the Congress passed H.R. 1, President Bush's Leave No Child Behind initiative. The goal was, and is, to improve the performance of the nation's schools and elevate the performance of the nation's students. The program was built upon the president's belief that all children can learn and that all children deserve a good school to teach them.

The focus was always on the child. Children trapped in unsatisfactory schools are the overriding objects of the law's compassion. The comfort of institutions and the people employed in them comes later. H.R. 1 seeks to rescue children trapped in failing schools by offering incentives and other motivation to improve. Through accountability, rigorous standards and disclosure, America's children stand a good chance of realizing more equality, economic and civic participation, opportunity and prosperity.

H.R. 1 also acknowledges that certain schools, for whatever reasons, are dangerous places. Unable to change or improve, these schools are places where the chances for academic progress among students is remote enough to warrant candid assessment, direct disclosure and unambiguous changes.

Some schools are dangerous because learning is persistently substandard and improvement is less than adequate. Other schools are dangerous because they are places of violence, corrupt or immoral behavior, and lack of discipline. In these schools, it is widely agreed, children stand little chance of learning and they face a serious risk of personal, physical injury. Thus the focus of today's hearing.

As one who participated in the drafting of H.R. 1, I concur with the overall objectives of the president's initiative. I also know a little about the origin of the provisions of the law that speak to "persistently dangerous schools." I proposed similar language earlier during the reauthorization of the Elementary and Secondary Education Act reauthorization. In 2001, I insisted the "persistently dangerous schools" language be included in the very first legislative drafts of HR1.

The goal was to help children in America's dangerous schools by, first, identifying them; second, by disclosing the dangerous nature of these institutions to the parents of children attending them, and; third, by encouraging, and in some cases mandating, options allowing parents to choose safe schools more conducive to learning.

As one who played a direct role in the development and passage of this part of the nation's law, I submit now to this Committee that this section is being poorly and improperly implemented by most states, including, I regret to say, my own state.

Clearly, the Congressional efforts to defer judgment to state officials and encourage state education agencies to carry out the spirit of the law, gave broad authority to unelected individuals in almost every state to define "persistently dangerous schools." Unfortunately the definitions established by nearly every state has established a threshold of violence, lawlessness and disorder that is far above the tolerance level of the typical parent.

It seems the standards have been set at a comfortable level for government employees—a level that avoids credible identification, sufficiently precludes honest disclosure, and perhaps most pernicious of all, denies liberty to those families which arguably would benefit most from exercising it. The result, I fear, has so far resulted in a situation falling far short of the intentions and expectations of the Congress, the president and therefore, the American people.

Unless addressed by Congress, the resultant tragedy is that public school children will continue to be unnecessarily exposed to unacceptable levels of crime and school violence. Administrators of the government-owned monopoly have once again proved their proficiency at concealing the ugly truth about crime at public schools. According to the Colorado Department of Education (CDE), there are no dangerous schools in the entire state.

No kidding. Under new federal guidelines, states were required to inform the US Department of Education last month of the number and identity of dangerous public schools. Colorado's report claimed every school in each of the state's 178 school districts is safe. No worries. No problems. No trouble.

The controversy began with the well-intentioned new law enacted by President George W. Bush and the US Congress. The measure was designed to rescue children

trapped in dangerous institutions and give them newfound liberty to escape to safer schools. Parents would be informed if their kids were at risk.

To avoid a one-size-fits-all approach, the Congress left the definition of "persistently dangerous schools" to each state. Under Colorado's new criteria, however, children would practically have to attend a school in a war zone before officials would warn parents of their child's imminent peril.

As usual, the real issue here is parental choice. Government-owned school managers and their accomplices in the teachers" unions reflexively reject any notion that parents are capable of choosing better schools—even when school safety is an issue.

The CDE convened a committee of these types to advise the state in implementing the new federal law. The result is a "farce," according to one school safety expert.

At Fort Collins High School, for example, the school where two of my daughters are attending at this very moment, students would have to survive a minimum of 540 felonies over a two-year period before parents would learn the school is persistently dangerous. It gets worse. Not all dangerous crimes count toward the state's calculation.

The CDE lists only the most egregious felonies for reporting purposes—murder, first- and second-degree assault, kidnapping, aggravated robbery, first degree arson and the like. Even the guy in charge of drafting the state's report admitted the incredibility of Colorado's reporting guidelines. The Denver Post quoted the CDE's own Dave Smith who confided, "In order to be persistently dangerous, you'd have to let the staff give up and let the students run the school.

For years, Colorado's parents and students have been victims of underreporting. Of course, no school principal is eager to report all incidents of school crime. The conscientious ones do it anyway. Others just underreport, but that doesn't change conditions in schools.

Every day, according to the Center for Study and Prevention of Violence at the University of Colorado, approximately 100,000 children nationally are assaulted at school. Additionally, 5,000 teachers are threatened with physical assault and 200 are actually attacked. Approximately one of every eight students has reported carrying some form of weapon to school, the CU researchers report.

These findings will likely never be accurately reflected in "self-reported" school data. According to Kenneth S. Trump, President of—National School Safety and—Security Services "Since being labeled as 'persistently dangerous' has serious political and administrative implications for local school administrators, principals will be pressured to underreport and/or non-report school crime and violence."

In testimony before the United States Senate, Trump explained, "The ability of school security professionals, school resource officers, and others in similar capacity to publicly speak about the real security issues within their schools is also often limited. Again, denial, image concerns, politics, and bureaucracy often prohibit these individuals to openly discuss or testify to their real findings and recommendations on what needs to be done to improve school safety. It is not uncommon to find that individuals who do so against the will of their superiors soon become transferred or unemployed."

Trump is right. It is the politics of public education that has betrayed the interests of children by placing them behind those of dangerous schools and the people employed by them. To avoid the prospect of parents choosing competing institutions, state officials have simply decided to look the other way and ignore dangerous crime.

Sending kids into persistently dangerous schools, according to President Bush "is the ultimate betrayal of adult responsibility." It's a greater crime that parents in Colorado will be denied full disclosure and the empowering choices Bush and Congress intended.

When it comes to persistently dangerous schools, our state and others have gone to pathetic lengths to deny parental choice by simply understating the "danger." It is the moral equivalent of locking innocent children in a burning building. Colorado schoolchildren deserve better.

Mr. Chairman, I think it was a good idea to leave the definition of "persistently dangerous schools" to the states. I have always opposed the heavy hand of government, yet I always support laws that empower individuals over governments—federal, local, or even state ones.

In finding a solution to the failure of the law to be applied as intended by the Congress, I urge you to seek solutions that perhaps involve statutory definitions established by State Legislators. Without involving those elected individuals who answer directly to the very parents who love their children, we should expect this and other sections of H.R. 1 to be defined by mediocrity.

This concludes my remarks. Thank you Mr. Chairman.

Mr. OSBORNE. Ms. Zradicka.

STATEMENT OF MS. GLORIA ZRADICKA, POLICY ANALYST, EDUCATION COMMISSION OF THE STATES (ECS)

Ms. ZRADICKA. Good morning.

The (inaudible) provides some background information among all states (inaudible) as far as implementing this requirement of No Child Left Behind, and it's been mentioned that the purpose of this is to allow children who are attending schools designated as "persistently dangerous" to have the opportunity to transfer to schools that are safe. The U.S. Department of Education requires states to provide information to the Secretary of Education annually on the number of schools that are identified. It also requires the schools to maintain a list of persistently dangerous schools that's readily available to the U.S. Department of Education. And the local education agencies are required to notify the parents at the point at which schools are identified within 14 days prior to the beginning of the school year, so children get the opportunity to transfer to a safe school.

The analysis that I've done has been on 46 of the adopted and public state policies that were available to us at the time that we were looking at these. And the policies identified that the states used a variety of factors to determine what "persistently dangerous" schools are.

One of the factors that states across the board looked at was a time span. The majority—I shouldn't say "majority"—over 50 percent of the states looked at a 3-year time span when they were considering what period should they look at to decide which school was "persistently dangerous," and most said that they need to—the events needed to happen every one of those 3 years. About 25 percent of the states looked at a 2-year time period; again, that the events must happen in each one of those 2 years. The remaining states did a combination of two and 3 years. Some of it was because they were just forming the new policy and didn't have 3 years' worth of data. Some of them—they looked at the current year and said that they needed to be additionally in one of the previous 2 years, so there's a combination of both. So there's a factor of two to 3 years that states looked at when they were developing the criteria.

Another factor that was considered is the threshold number of incidences or offenses that should occur before the school is identified as "persistently dangerous." About half of the schools used a combination of the percentage of the student enrollment for some offenses and a specific number of incidences for other offenses. A real typical way that the states did this is they might use a percentage of the enrollment when they were looking at less serious offenses or violations, and then they might use a specific number when they use something like the Gun-Free Schools Act, so they would be looking at distinguishing between less-violent and more-violent situations as to how they looked at those.

Slightly less than a third of the states used only a specific number of incidences to determine where their threshold was, and less than one-fifth of the states used (inaudible) based solely on the percentage of the student enrollment. And when they were based on

the percentages of the student enrollment, these percentages range from one-half of a percent to 5 percent of the student enrollment.

So you can see there's a wide variation of how the states determined how they were going to consider as situations to consider this—as situations to determine this.

The other factor that states looked at is: What did they consider as the instances or offenses that would be counted when they were figuring out their threshold numbers? Some of them did a very detailed list of offenses, and some of them did just the Gun-Free Schools Act violations. About 20 percent of the states used their generic terms on weapons for violent defenses to determine—to define what their situation was going to be; 16 states referred to offenses that were defined according to their state criminal codes. And about half the states, in addition to whether they used offenses defined as criminal or otherwise, specifically referred to the Gun-Free Schools Act violations, and most of the remaining states in some way referred to "possession of weapons" in their definition of what they used as criteria for "persistently dangerous" schools.

The number of schools that states determined really varies on that factor; and it can be a combination, because some states used a very narrowly defined list of offenses, but they may also have a very low threshold. And when they have a very low threshold, that (inaudible) the potential of still having a large number of "persistently dangerous" schools. But (inaudible) we know from circumstances that that's not what happened. And conversely, states that have a very detailed list of offenses might have a very high threshold of offenses, and that has the potential, again, of attracting a very relatively low number of dangerous schools.

When I did this written testimony, at that point there were 29 states that had declared what the number of "persistently dangerous" schools was. Since then—as we all know, and we've mentioned here—44 states have said they do not have "persistently dangerous" schools, in addition to D.C. Saying they don't have "persistently dangerous" schools, and then the remaining schools have been identified (inaudible) total to 52. So that's kind of where it is across the states.

There's a couple of notes of interest that I might comment on. Indiana's policy says that after a school meets their criteria for the third consecutive year, they don't automatically designate that school as "persistently dangerous." They establish a panel of local and state safety experts to decide if in fact: Is that school "persistently dangerous"?

Florida is the other one that has done a somewhat unique way of defining it. Once a school has met their criteria of what "persistently dangerous" is, then they do a survey of the students, parents, and the school personnel. And if the majority of the survey respondents perceive that school to be unsafe, then they declare that's "persistently dangerous."

So those two are the most unusual. Most of the rest of them have a pretty much—a time span. What are their threshold numbers? And what are their criteria? What are the offenses and the instances that they use in determining "persistently dangerous"?

Thank you very much.

Mr. OSBORNE. Thank you very much.

[The prepared statement of Ms. Zradicka follows:]

Statement of Gloria Zradicka, Policy Analyst, Education Commission of the States (ECS)

This testimony provides information on the federal requirement, specified in the No Child Left Behind Act (NCLB), that allows students attending a "persistently dangerous school" to transfer to a safe school. It provides descriptions of the requirement and of respective state policies.

States receiving funds under the NCLB are required to adopt and implement an "Unsafe School Choice Option" policy.[1] This policy must include a provision allowing students who attend a school designated as "persistently dangerous" to transfer to a safe school within the local education agency (LEA), including public charter schools. The definition of what constitutes a "persistently dangerous school" is determined by each individual state.

The U.S. Department of Education[2] requires states to provide information to the U.S. Secretary of Education annually about the number of schools identified. It also requires states to maintain a list of persistently dangerous schools, so that it is readily accessible to the U.S. Department of Education's representatives upon request. LEAs that have a persistently dangerous school are required to notify the parents of students attending the school that the school has been identified as "persistently dangerous" and offer students the opportunity to transfer to a safe school.

States must also identify persistently dangerous schools in sufficient time for the LEAs to notify affected parents of the option of transferring their children to a safe school at least 14 days prior to the start of the school year.[3]

This analysis is based on 46 adopted or proposed state policies that ECS has been able to document. These policies reveal that states use a variety of factors to identify persistently dangerous schools. (Criteria used by individual states are outlined in the report attached to this testimony.)

One factor is whether the number of offenses/incidents taking place at a school are examined over the course of two- or three-years. Over 50 percent of the state policies consider a three-year period and require the offenses/incidents to occur in each of the three years for a school to be designated as persistently dangerous. Twenty-five percent of the states consider offenses/incidents occurring in each year of a two-year period. The remaining states use a combination of two and three years, such as considering offenses/incidents occurring in any two years of a three-year period.

Another factor considered is the threshold number of incidents/offenses required to occur before the school is identified as persistently dangerous. Almost half the states use a combination of a percentage of the student enrollment for some offenses and a specific number of incidents for other offenses. For example, a state might use an enrollment percentage for determining the threshold number of less violent offenses/incidents but will establish a specific number for more serious offenses such as Gun–Free Schools Act violations[4] or homicide. Slightly more than one-third of the states use only a specific number of offenses/incidents to determine their allowable threshold. Less than one-fifth of the states determine the allowable number of offenses/incidents based solely on a percentage of the student enrollment. When percentages of student enrollment are used, the percentages range from one-half percent to 5 percent.

States' definitions of offenses/incidents vary from Gun–Free Schools Act violations to detailed lists of offenses or crimes. Almost 20 percent of the states use the generic terms of "weapon" or "violent offense" to define applicable incidents/offenses. Sixteen states define offenses according to their state's criminal code. About half the states specify "Gun–Free Schools Act" violations to determine persistently dangerous schools and many of the remaining states include some reference to weapons possession in their definition.

The number of schools in a state determined to be persistently dangerous thus depends on the factors included in a state's policy. A state using narrowly defined offenses also may have a low threshold for the number of offenses, potentially increasing the number of schools determined persistently dangerous. A state using a detailed offense list may have a high offense threshold, potentially resulting in a relatively low number of persistently dangerous schools.

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[1] H.R. 1, Title IX, Part E, Subpart 2, Section 9530.

[2] Unsafe School Choice Option: Draft Non–Regulatory Guidance (Sections B-C, July 23, 2003).

[3] Federal Register (pages 35671–35672, Vol. 68, No 115, 2003).

[4] A state law mandating the expulsion from school for a period of at least one calendar year any student who is determined to have brought a weapon to school.

A search of state Web sites and the news media found the number of persistently dangerous schools identified in 29 states. No schools were deemed persistently dangerous in Alabama, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Idaho, Illinois, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Missouri, Montana, Nebraska, North Carolina, Ohio, Rhode Island, South Carolina, Virginia, Washington and Wisconsin. States identified as having persistently dangerous schools are: New Jersey—seven schools, New York—two schools, Oregon—one school, Pennsylvania—28 schools and Texas—six schools.

[An attachment to Ms. Zradicka's statement is located at the end of the hearing.]

Mr. OSBORNE. Senator Andrews.

STATEMENT OF SENATOR JOHN ANDREWS, PRESIDENT, COLORADO SENATE

Mr. ANDREWS. Thank you, Mr. Chairman, and Congressman Musgrave.

Mr. Chairman, it's my hope that at the end of the day today, you'll be able to say you had a much more friendly welcome at the capitol in Denver than you ever did at Folsom Field in Boulder.

Mr. OSBORNE. I was always treated well, until one time Ralphie about ran over me.

Mr. ANDREWS. And as far as my friend, Mrs. Musgrave, you were very gracious in telling Ms. Ware that you don't feel that you rank above her. And I want the record to show that I know you rank above me, and I think it's exactly as it should be.

I certainly agree with the Committee that no student should have to attend a public school in which his or her personal safety is constantly at risk, and so I applaud the intent of Congress in requiring Colorado and other states to guarantee children an exit from such schools as a condition of receiving Federal grant money.

What a contrast from the late '40's when I entered public school. The survey said that the main problems in public schools across the land were things like chewing gum and running in the halls, and now it's weapons and pregnancies and drugs, all too prevalent.

I'm just concerned that the intent of the Persistently Dangerous School Provision won't be fulfilled in a number of states—including Colorado, as matters now stand—because of some of the data problems that were identified by Commissioner Moloney and Mr. Smith earlier in their testimony.

I want to focus on the 20 schools that were almost classified "persistently dangerous" that you were asking about earlier, Mrs. Musgrave. As Mr. Smith indicated, the distinction is between second-degree assault, which is called an "assault and fight" for purposes of the rankings or third-degree assault, which is excluded now. What is this crime that we're excluding? According to the Colorado Revised Statutes, a person commits the crime of assault in the third degree if he knowingly or recklessly causes bodily injury to another person or with criminal negligence he causes bodily injury to another person by means of a deadly weapon. Or as the rules are written now, no incident of this kind that occurs in a Colorado public school can count toward the tabulation of "persistently dangerous" schools, so that countless fights between students leading to countless bodily injuries aren't enough to trigger the escape provisions of the No Child Left Behind Act, unless someone makes

a judgment call upgrading those fights and those injuries to at least a second-degree assault.

I'm entirely in favor of allowing—under Federal law allowing states to make their own rules as much as possible, but this seems to me to be bureaucratic hairsplitting that defeats the intent of No Child Left Behind. What difference does it make to the students who got injured if it was only a third-degree assault? What difference does it make to the other students who stood by intimidated or to the parents who were left feeling that the education rulebook defies common sense.

I was just talking with Mr. Smith, and I'm not clear whether the distinction between third-degree and second-degree assault was written in our School Report Card Statute—you remember helping us in that 4 years ago, Congressman Musgrave—or whether it is a rulemaking. But whichever, I'm going to see what can be done to include this in the incident reporting, so that instead of giving the benefit of the doubt to face-saving for administrators and school boards, we give the benefit of the doubt to student safety.

I associate myself with Congressman Schaffer's comments. I don't criticize our fine State Board of Education elected members, Commissioner Moloney, or our fine State Board of Education staff, but we've got to get some common sense into this process. It doesn't really matter what schools get embarrassed or whose applecart gets turned over or how many students are allowed to transfer out. This is supposed to be about the students.

One more point. In the State Department of Education published guidelines, if a school is declared "persistently dangerous," the department suggests local officials then provide families with survey data that indicate which nearby schools are perceived as safe or not, based on perceptions scientifically gathered from students, employees, and parents. This is saying, "If you really want to know how dangerous a particular school is, ask the people who go there every day." Now, that's common sense.

And again, legislatively or by rulemaking, I want to press for a wider use of such survey data on school safety. These are "customer satisfaction surveys," as we would call them in the private sector.

In summary, I think we need to put the burden of proof where it belongs, not on citizens and taxpayers to prove that schools are dangerous—but the other way: Put the burden of proof on educators to prove that schools are safe and unlock the doors if they are not. We have to make consumer satisfaction the ultimate yardstick for public education, as it is for all the other goods and services we buy.

I'm proud Colorado now leads the Nation with a voucher program to allow students to transfer out of unsatisfactory public schools for reasons of safety or otherwise. But this voucher law of ours, if it has any shortcomings, is too bureaucratic in its yardsticks. Statistics on poverty and test scores are fine, but let's have more involvement of parental self-determination. That's my same concern about No Child Left Behind. I welcome the oversight and the monitoring from Congress on this, and we will try to do the same from the Colorado General Assembly.

Mr. OSBORNE. Thank you, Senator Andrews.

[The prepared statement of Mr. Andrews follows:]

Statement of Senator John Andrews, President, Colorado Senate

No student should have to attend a public school in which his or her personal safety is constantly at risk. I applaud the intent of Congress in requiring states to guarantee children an exit from such schools as a condition of receiving NCLB federal grant money.

But I am concerned that this intent will not be fulfilled here in Colorado, as matters presently stand. We are one of many states across the country that claim to have no persistently dangerous schools.

The claim rests on shaky data. According to media reports, along with information I have received from state education officials, Colorado would have had to identify 20 dangerous schools in this year's rankings if the incident category labeled "assaults and fights" had included the criminal offense of third-degree assault, as well as first- and second-degree assault.

Let me read you the definition from section 18–3–204 of the Colorado Revised Statutes: "Assault in the third degree. A person commits the crime of assault in the third degree if he knowingly or recklessly causes bodily injury to another person, or with criminal negligence he causes bodily injury to another person by means of a deadly weapon."

No incident of that kind, occurring in a Colorado public school, counts toward the tabulation of persistently dangerous schools, under the official policy adopted by our state department of education. Countless fights between students, leading to countless bodily injuries, are not enough to trigger the escape provisions of the No Child Left Behind Act unless someone makes the judgment call that upgrades those fights and those injuries to second-degree or first-degree assault.

I'm all for federal law letting states make their rules as much as possible, but this kind of bureaucratic hairsplitting cannot be what Congress intended when it offered kids a transfer to safer classrooms. Tell it to the students who got injured. Tell it to the other students who stood by intimidated. Tell it to the parents who feel cheated by an education rulebook that plays word-games and insults common sense.

I challenge Colorado's education policymakers to redraw their incident reporting guidelines in a way that gives the benefit of the doubt to student safety, rather than face-saving for administrators and school boards. I urge them to include third-degree assault in the statistics from now on, no matter whose applecart gets upset—no matter how many schools get embarrassed—no matter how many students are entitled to transfer out. Aren't the students what this is all about?

Let me draw the committee's attention to one other significant item in the Colorado Department of Education document entitled "Safe School Choice Option: Procedures for Persistently Dangerous Schools."

When and if any school in our state is ever identified as dangerous, the department suggests that local officials provide families with survey data on which nearby schools are perceived as safe or unsafe, based on perceptions scientifically gathered from students, employees, and parents.

That's just a fancy way of saying that if you really want to know how dangerous a particular school is, ask the people who go there every day. I endorse that common-sense approach, and I will encourage Colorado educators to make much wider use of survey data on school safety—customer satisfaction surveys we might call them.

A 1994 study produced by Metropolitan Life Insurance found that annually across the United States, one in four students and one in nine teachers are attacked in schools.

A 1996 poll by Public Agenda, sampling 1300 high-school students nationwide, found that 48 percent of them said drugs and violence are serious problems in their schools.

Are things still that serious in 2003? Are they that serious here in Colorado? We need to know. We need to put the burden of proof where it belongs—not on citizens and taxpayers to prove that schools are dangerous, but on educators to prove that schools are safe. We need to find ways of making customer satisfaction the ultimate yardstick for public education, just as it is for all the other goods and services we buy.

That was the idea behind a bill that Congresswoman Musgrave will remember my proposing several years ago. It was called the Colorado School Guarantee Act. The bill simply stated that as a condition of receiving state aid, every public school shall guarantee, to the satisfaction of the parent, a learning environment fully conducive to the student's academic progress, moral development, and physical safety.

The guarantee would be enforced as follows: (1) A parent who is not satisfied may file an affidavit stating the reasons, after which the school has 90 days to take corrective action. (2) If the parent is still not satisfied, a hearing is held for school to show cause why relief should not be granted. (3) Relief, if granted, will consist of a scholarship voucher good for tuition at any accredited nonpublic school, not to exceed 80% of district per-pupil revenue, for the student's remaining years at the current level of education—elementary, middle, or high school.

My proposed School Guarantee Act died in committee in February 2000. It went too far too fast, in the direction of affirming that the parent is the ultimate educator of the child—thus limiting the role of government to facilitating, not dictating.

I am grateful and proud to note that three years later, April 2003, Colorado did enact a far-reaching school voucher program, House Bill 1360, which is already signing up families and schools for its launching next summer. If this new program has any shortcoming, in my opinion, it is the reliance on bureaucratic measurements such as poverty and test scores, rather than pure parental self-determination, to decide when the doors will be unlocked and families will get to choose.

Colorado's voucher program is still a step in the right direction, and so is the federal safe school choice option. That option too is overly bureaucratic, as I have stated—too easy for the establishment to sabotage, too difficult for parents to take advantage of. I hope the Congress will continue to monitor its implementation and make necessary changes. We here in Colorado will do our part to make the promise of school safety is honestly fulfilled for every child, every family.

Mr. OSBORNE. Ms. Ware.

STATEMENT OF VICKI WARE, PARENT

Ms. WARE. I just have a statement to make.

Mr. OSBORNE. That will be fine.

Ms. WARE. My son attended MLK for 2 years. And the last year, on the way home, he was followed by a known gang member and was beat up really, really bad. He was beat up horribly bad.

I went to the school the next morning; and they said, if they suspend the other guy, they would have to suspend my son. And I didn't have any understanding of that. I just removed my son out of MLK and placed him in a different school.

And shortly after that, my 12-year-old daughter was beat up on the way home from school, and so I removed her from MLK and placed her in another public school to where I feel they will be safe there.

Mr. OSBORNE. So that's the experience you've had personally?

Ms. WARE. Yes.

[The prepared statement of Ms. Ware follows:]

Statement of Vicki Ware

In the year of 2000 my son was followed home by a known GANG MEMBER and beat up horribly bad. He had to miss one week of school due to his injuries. MLK Middle School then filed charges with the Juvenile Court because my son had missed a week of school. I called the school everyday to let them know that my son was hurt and he wouldn't be in. So shortly thereafter, I removed my son from MLK Middle School and placed him in Gove Middle School. About three months later, after school my 12 year old daughter was followed home and was in a fist fight with another 12 year old girl. The next morning I took my daughter into the school to let her counselor know what was going on. As we sat waiting for her counselor, I noticed a boy in the next office pulling razor blades from the bottom of his shoe. All the while the counselor that was in the room with him said, "Your parents are going to be very upset when they hear about this." I feel that the police should have been called first, then his parents. My concern was about my daughter at the time. This was the 2nd to last day of school. I removed my daughter from MLK Middle School and placed her in Gove Middle School.

Mr. OSBORNE. OK. Well, I'd like to thank all of the witnesses for coming today, and we'll ask a few questions at this point. And starting with Mr. Schaffer.

You were in Congress when "No Child" was written. I remember your sitting up on a higher dias than I was, and deservedly so. And I wondered if you could amplify a little bit—some of your opening remarks, I think, addressed this—but could you tell me a little bit more about what you thought the intent of this provision was when Congress drafted the law.

Mr. SCHAFFER. Sure. Just within the context of the overall purpose and intentions of H.R. 1, there are really three parts. One was a higher level of national evaluation of student performance, the second was granting greater degrees of flexibility to the states, and the third element, the president asked us to move forward on. His proposal was making greater opportunities available for parents to exercise marketplace decisions with respect to education. And that last element was—was to be supported by better data-gathering—again, both on an academic side and on a performance side from the standpoint of America's public schools.

And so it was—it's an interesting thing here that one of the driving elements of this "persistently dangerous school" language was to allow for greater levels of choice. We—in fulfilling the president's vision of leaving no child behind—we wanted to make sure that children who were trapped in schools that were not teaching them well would have the opportunity to leave and choose other schools.

And that marketplace dynamic is believed by the president and ultimately by the Congress—or eventually by the Congress—to create school improvement through greater levels of competitive schools. And this—and it was also agreed, Well, if we're going to be concerned about the intellectual well-being of children, parents tell us, We should also be concerned about the physical well-being of children in certain schools.

And so this information and data-gathering was designed to be a tool to, first, begin the process of getting better data, but also arming parents with that data so that they could exercise those choices. It was designed to be for parents—pro-parents—and not to be an extraordinary high threshold so that the law would not apply in the vast majority of America's states and the schools within them.

Mr. OSBORNE. OK. Thank you very much.

And, Ms. Zradicka, apparently you're somewhat of an expert in this area—at least you've gathered a lot of data—and I wondered if you could provide any suggestions as to what you think maybe would be a little bit more uniform standard that we might look at across the country.

Ms. ZRADICKA. Well, you could look at the data from the policy's perspective. I think one of the things that the states were trying to get at—and this is only, you know, based on my perceptions—is they were trying to avoid tagging schools as being "persistently dangerous" if there were one or two instances that happened, which is why they were getting into the time period.

The actual document that the Honorable Robert Schaffer referred to—a nonregulatory document—actually used the phrase "a pattern of violence." And I think that's what states were trying to get into

with their two- to 3-year time period that they looked at, and also, you know, looking at what the situations (inaudible). And possibly that's what people need to look at is: Were they considering in this (inaudible)—as Senator Andrews mentioned—(inaudible) you know, What do they consider as situations of violence? Do they consider them third degree? Don't they consider them third degree? Because a lot of the states, when they spelled out (inaudible) criminal code, they specified first- and second-degree assault, first- and second-degree, you know, whatever. So that might be a place that people can look at and say: Is this valid or not valid?

Mr. OSBORNE. All right. Senator Andrews, you mentioned the "second" and "third" distinction. And is this strictly a legal distinction made by the courts, or who makes that distinction?

Mr. ANDREWS. As I understand, when criminal charges would be brought by a district attorney, Mr. Chairman, it is a judgment call according to certain criteria.

I heard Mr. Smith clarify in response to a question that fights were overreported in year one causing the 20 schools to qualify as almost "persistently dangerous" because third-degree assaults were included, and I heard him say that a "third-degree assault involves no injury." The definition I read you from our statutes twice mentions that "injury has occurred." It doesn't just say that "there might have been" but that there was in fact an injury. Now, I imagine when a prosecutor would bring charges, the question was: How serious was the injury? How intentional was the injury?

But as I said earlier, it seems to me that it doesn't matter very much to the student injured, the other students who live in a climate of fear as a result, and the families who also have a sense of apprehension, as Ms. Ware would have had in sending her child off to school every day.

Mr. OSBORNE. OK. Thank you. My time is up.

Mrs. Musgrave.

Mrs. MUSGRAVE. Thank you, Mr. Chairman. In regard to Martin Luther King Middle School—that is not in the category of "persistently dangerous schools"—in the 2001 and 2002 school year it had 326 assaults/fights—where CDE might think that's overreported—it had 8 dangerous weapons, 8 drug abuses, and 5 alcohol and tobacco abuses, and not to mention 626 other violations of the code of conduct. Senator Andrews, do you think this school is safe?

Mr. ANDREWS. I certainly don't. And this is why—whether it involves a legislation or whether it involves simply consultation with our State Board of Education—I think we need to change the threshold.

Reference has been made several times to our "School Report Card." I'm proud that Colorado is leading the United States in this regard, as we are with our voucher plan. But I think that we may need to consider whether the School Report Card statistical reporting is classified in a way that we as legislators feel honestly gives the right information to parents and to the public, or we may need to delink the School Report Card criteria from the "persistently dangerous schools" qualifications to comply with No Child Left Behind.

But the numbers you read me at Martin Luther King Junior High School are shocking. They ought to disturb all of us. They

ought to alarm all of us. And these aren't just numbers on paper. Every single one of those 326 assaults and fights was a child like the son and daughter of Ms. Ware, and something has to be done.

Mrs. MUSGRAVE. Senator Andrews, further—you know, I asked the question earlier: What happened to the 20 schools? What happened when they were classified as "persistently dangerous"? Do you have a comment on that in regard to those 20 schools in Colorado?

Mr. ANDREWS. The Rocky Mountain News focused in on the dramatic falloff of reported fights and assaults in year two. It pointed out not only—I believe it used Martin Luther King Junior High here in metro Denver. It also used a school in Leadville, a middle school in the rural Colorado community where I grew up where we thought it was pretty safe. So this is a problem across the state.

And the technically correct guidance given by Mr. Smith and his colleagues at the state department to tell these schools, You're not reading the criteria correctly; put this in a different box—it was put under the box called "other" instead of "assaults and fights"—I don't fault them for giving that guidance, but something is clearly—the ball has been dropped somewhere between the legislature and the rulemaking to allow, as I call it in my testimony, "bureaucratic hairsplitting" of this kind to get in the way of the commonsense intention of No Child Left Behind.

I should mention that Colorado is—Colorado parents and students are fortunate that there is already a wide-ranging option to transfer a student out of one public school into another in the same district or a different district before No Child Left Behind was ever passed, and that's the option Ms. Ware exercised.

So this issue is really less urgent in Colorado, because of the initiatives that have been taken already in legislation to allow a wide-ranging choice of public schools for parents for whatever reason. They don't have to give a reason at all. They just say, I'm moving my child as soon as I can find space. But it is more urgent in other states that don't have that kind of escape option in the absence of the proper application of the "persistently dangerous" criteria.

Mrs. MUSGRAVE. Well, I am not without sympathy for teachers and administrators that constantly face the challenge of dealing with students that are committing criminal behavior or even inappropriate behavior. It's not their fault. And I'm not trying to say that. But transparency is the goal here.

And, Senator Andrews, how can we make that more attractive for these school administrators so that parents can really get an accurate idea of what's going on in the schools in regards to (inaudible)?

Mr. ANDREWS. I think Mr. Smith is absolutely right when he said that the integrity of the data is only as good as the integrity of the people who compile the data. But the very fact that the MLK Middle School reported those 326 assaults says to me, There is good faith in the reporting compliance by many, many of these school administrators, and so—Commissioner Moloney is correct. Sometimes there's a disincentive to report, lest I make my school look bad, lest I get penalized or even lose my job. But it sounds like in the face of that, there's still a good-faith effort to comply with this reporting.

I bring it right back to myself and the 99 others of us who serve in the state senate and the state house. We have got to take a hold of this thing and define it better, as Mr. Schaffer suggested.

Mrs. MUSGRAVE. Well, that brings me to a question for Congressman Schaffer. What do you think is the best solution to this problem that we're facing with transparency?

Mr. SCHAFFER. I do believe it would make eminent sense for the Congress and the Department to—not to mandate, certainly, but to the extent that the DOE guidance lays out a vision or a process for state education agencies and local education agencies to implement this law, I think that—I think we ought to put more emphasis at the Federal level on encouraging states to make this at a legislative level. And I think that's a relatively easy thing to do, and perhaps it doesn't even involve Federal legislation.

But within a broader context of expectations, I think we should expect that the tendency of states is going to be—even with legislative language—is going to be to underreport. And if there are—and if the data collection accounts for that, I'm persuaded by Senator Andrews that it ought to be on the basis of having schools prove to parents essentially the safety associated with all the individual schools, rather than argue from the assumption that they're all safe; and if the statistics get high enough, then we'll get around to notifying parents.

This parental notification part is the most powerful element. And that is what is being avoided—the quest is to avoid parental notification, the letter that goes home from a school to parents saying, This is a "persistently dangerous school."

And again, I'm much in the place where Ms. Ware is. My level of tolerance and threshold is much lower than what I would get—my twin daughters right now are in public high school in Fort Collins. And given the size of that school, it would take 540 dangerous events over a 2-year period before I would be notified that my children are in a dangerous place under Colorado's guidelines.

I'm—and I realize—there's just something that has to be said here. I went to the Department of—the Denver Health Department Web page to find out what it takes to close down a restaurant. And the enclosure for imminent health hazards include: There's justification that there would be no hot water, sewage problems, no utilities, pest infestation, contaminated food, a food-borne illness outbreak, extreme uncleanliness, and inadequate refrigeration. One event. And now, the people who implement the "persistently dangerous schools" language are different than the ones who deal with health inspections. And from that standpoint, it's not an apples-to-apples comparison, except for the commentary it makes about us as a society, when it takes one event to shut down a restaurant, but 540 before I get a notice as a parent. It just indicates that as a society we care more about what I feed my stomach rather than what our schools feed my children's minds.

Mrs. MUSGRAVE. I yield back, Mr. Chairman.

Mr. OSBORNE. Thank you. I think we might mention one thing here—and that is, that in my previous travels, sometimes I'd run into a school that had a fence around it that was very high—not a deer or elk could get over that fence—and metal detectors required to get into that school, and I'm sure that administrator felt

that he was doing everything he could and probably still had quite a bit of violence in that school.

So this is not an easy problem. It's very easy for us to sit and throw stones at the schools. But some of it is neighborhood-driven. The clientele, if they come to school violent, there's going to be violent type of events, and I think we recognize that fact. But having said that, however, I think we also would probably agree here today that something is amiss when you have 44 states who can't find one single school that is not dangerous.

Ms. Ware, I would like to just ask you a couple of questions here. When your children were assaulted, do you know whether those were second- or third-degree assaults? Did anybody ever tell you?

Ms. WARE. No. I just assumed that my daughter was maybe a first-degree assault—not first-degree—maybe second-degree, and my son first-degree.

Mr. OSBORNE. All right. And then what criteria did you use as to what schools you would send them to when you pulled them out? Did you have any information that you were able to (inaudible)?

Ms. WARE. I asked other parents. And I've known personally like six different parents that transferred their kids out of MLK.

Mr. OSBORNE. So you went primarily by word of mouth and just on what other parents would say?

Ms. WARE. Yes.

Mr. OSBORNE. All right. Then I guess that brings us back to maybe the most common point that I've heard, and that may be some type of survey information. And so I would ask this of all the panels: Do you have any idea as to what type of survey we might implement? What would be the criteria? Because you realize that, you know, some parents—one may have heard one rumor, and they're going to say, Well, this is a very violent school, and they're going to take several documented cases. But do you have any way that you would advocate implementing a survey and that type of approach to this problem?

Mr. ANDREWS. Mr. Chairman, in looking at the guidelines that our state department has issued, that would be, as I understand, triggered when and if the school was termed "persistently dangerous." The exact phrase in their guideline is that it would be reliable and valid—or reliable and verified—I forget two of those three words—survey data gathered from parents, employees, and students.

And so I think we're talking about scientific polling, which in politics—and in market research, for that matter—we know it can be done to within a very high degree of certainty, three or 4 percentage points. And there are some costs to that. But again, I think the cost is money well-spent, as Congressman Schaffer suggested, money well-spent toward the goal of finding out and publicizing—finding out and publicizing what the people who go into these buildings every day or send their loved ones into these buildings every day feel and know about the place, not just based on anecdotes, but based on some kind of scientific polling survey or market research.

Mr. OSBORNE. So you're advocating maybe a series of questions that would be asked of the parents, and you would have to have a statistically significant sample?

Mr. ANDREWS. I think a valid sample and carefully drawn questions to weed out the emotional overreaction to overreaction. Congress has told us to look for "persistently dangerous" schools; and I think that previous testimony was on target in saying, Let's not overreact based on isolated instances. Let's look for the pattern. Let's look for the continuity of the danger.

So I think the right questions and the right sample of parents, students, and employees can get us that data.

Mr. OSBORNE. All right. Would you advocate that that be constructed at the state level or at the Federal level?

Mr. ANDREWS. Mr. Chairman, I believe that that should be at the state level. I believe that almost all of these determinations need to be made at the state level to the extent that we can. I'm a pretty thoroughgoing Tenth Amendment Federalist, particularly as to the rights of education, which I don't see mentioned in the U.S. Constitution anywhere, with due respect to your Committee.

Mr. OSBORNE. We don't worry about those things.

Mr. Schaffer, did you have a comment?

Mr. SCHAFFER. I do. I would just point out that the state's "report card" and data-gathering process in Colorado is probably—and I've had a chance to review—sitting in your capacity—to review similar data-collection processes in other states. Colorado's really is one of the best. And the data-collection categories that we find when it comes to safety and discipline are good categories and give us perhaps a head start in this state.

But here again, when the difference between 1 year and another year can be so dramatic as a matter of—and changed as a result of interpretation, it just suggests that this is an inexact science at the moment and very difficult to get our hands around, but I think it charts a clear path for what needs to happen—not only in Colorado but throughout the country as well. And it comes down to the individuals reporting to the state as well.

I think there's 178 school districts in Colorado. I don't know what that translates to in terms of the number of principals to fill these reports out, but it's quite a lot of opportunity for a difference of interpretation and in what must be interpreted in order to arrive at these statistics.

Mr. OSBORNE. Yes.

Ms. Zradicka.

Ms. ZRADICKA. One thing that—if you were going to have a survey, you might have to talk with the U.S. Department of Education, because in their (inaudible) it says that state education agencies should develop objective criteria for (inaudible) in identifying "persistently dangerous schools." And they say "objective" usually means the type of data that includes records and (inaudible) for bringing violence to school. They do include results from certain student surveys about issues, such as physical fights on school grounds or data from gang presence on school grounds. And they say in (inaudible) subjective information might include data-gathering from focus groups about community-wide perceptions of safety and (inaudible) information.

So at least on the surface it looks like the U.S. Department of Education is focusing on (inaudible), although they're putting in (inaudible).

Mr. OSBORNE. So you're saying that you don't think that the surveys would qualify under the guidelines that have been laid out at the present time?

Ms. ZRADICKA. It mentioned "surveys." It's talking about getting data from students as far as actual instances that happen—is the way that I interpret that. Now, other people may interpret it differently. But I think at least from the surface, when I read this, the focus seems to be on (inaudible) things that have happened, although, they do mention (inaudible) things. But that would be one thing that might be considered (inaudible)—if you considered the survey route, you know, having the department give some different guidelines or expanding (inaudible).

Mr. OSBORNE. And then last. Ms. Ware, which would you put your faith and reliance on—the reports from other parents as to what's going on in the school or some type of report from the administration at the school as to the safety level of the school?

Ms. WARE. The administration.

Mr. OSBORNE. You would go with the administration in terms of what they said?

Ms. WARE. Yes, I would.

Mr. OSBORNE. OK.

Mr. ANDREWS. Mr. Chairman, if I might just add the thought: As a parent—my children are beyond school age, but I also have a grandson that will soon go to school. It matters to me that if there is a climate of fear in my child's school and if you can find that out by surveys—when you study how New York cleaned up its crime problem, there was this broken-windows approach that they were going to start with the smallest incidence and send a message to the community that authority in law enforcement—now we're serious. And I think that is the message that needs to prevail in our schools. That if schools have even a climate of fear among the students, parents, and employees, that we could determine by surveys, that in itself is significant. It's going to stay in the way of learning that has to take place there.

Mr. OSBORNE. I have an additional comment. Because obviously if you're a young person and you get slammed up against the locker once a week, there may not be any physical evidence of damage, but the internal scars are there. And it certainly is something that's hard to quantify. But it's very real, and it's very present, and it really affects the school.

Mrs. Musgrave.

Mrs. MUSGRAVE. Thank you, Mr. Osborne. I would just like to say that on a personal level, I can very much identify with what you've gone through, Ms. Ware. My children are all grown now, but we had a couple of incidences with our children where two of them were beat up, so to speak—or pushed down and harmed. And the turmoil that goes on in the home and the things that we go through as parents—with the knotting in the gut, sending our child off to school every day—is enormous. The toll that it takes on the family trying to imagine your child in an environment where they're supposed to be learning, and all they're thinking about is: Is somebody going to beat me up today? It's a distraction that is very, very difficult to deal with.

When I think about the education process, I think underreporting of school violence is much like what inflated grades did to academic rigor. Parents think that things are OK because their kids are getting good grades or parents think that the environment of the school is safe because the school is not classified as "persistently dangerous." But I think—and with respect to teachers and administrators and the Colorado Department of Education, I think that transparency needs to be our goal, because there's one thing that we all have in common: We want a good education for our children.

You know, I don't fault the schools. I don't fault the Department. It's a reflection of our culture when children commit violent acts when they're in school. And the challenges that educators face today—and the administrators—are enormous, and I'm very appreciative of that. But when we have problems, we need to know about them. And we're not going to address those problems unless they're evident to parents and other members of society.

I would just like to thank you all for your testimony, and I appreciate it very much. And particularly for a mother to come forward and talk about something that's very personal—I appreciate how difficult that is, and I thank you.

Mr. OSBORNE. I wish to thank the witnesses for being here today. And if there's no further business, we stand adjourned.

[Whereupon, at 11:44 a.m., the subcommittee was adjourned.]

[An attachment to Ms. Zradicka's statement follows:]

StateNotes

No Child Left Behind

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Persistently Dangerous School Criteria

Updated September 2003

Compiled by Gloria Zradicka

This report provides information on the national response to the federal requirement, as specified in the No Child Left Behind Act (NCLB), that allows students attending a "persistently dangerous school" to transfer to a safe school within the local education agency (LEA). Brief descriptions of the requirement, state responses, notes of interest and state-by-state summaries are provided below.

Background on "Persistently Dangerous Schools"
NCLB requires states to establish and implement a statewide policy that allows students attending a school determined by the state, in consultation with a representative sample of local education agencies, to be "persistently dangerous" to transfer to a safe school within the LEA. States must certify they are in compliance with this provision to receive funding under NCLB.

The Importance of Identifying "Persistently Dangerous Schools"
This requirement helps parents, regardless of their income, remove their children from dangerous schools. Children are better able to concentrate on their studies and improve their academic achievement when concerns about their safety are reduced.

State Trends
An analysis of 46 adopted or proposed policies available to ECS demonstrates states are using a variety of factors to identify persistently dangerous schools:

- More than half the states consider offenses or incidents occurring during a three-year period; one-quarter of the states consider a two-year period; and one-fifth of the states consider a combination of two and three years.
- Almost half the states determine the threshold of offenses/incidents by using a combination of a percentage of the student enrollment for some offenses and a specific number for other offenses. Slightly more than one-third of the states use a specific number of offenses to determine the threshold and less than one-fifth of the states use a percentage of the student population. The policies use percentage rates ranging from one-half percent to 5%. Eleven states differentiate offense/incident thresholds according to school size.
- States' definitions of offenses/incidents vary from considering Gun-Free School Act violations (i.e., a state law mandating the expulsion from school for a period of at least one calendar year any student who is determined to have brought a weapon to school) to detailed lists of offenses. Almost one-fifth of the policies use the generic terms of weapon or violent offenses to determine thresholds for identifying persistently dangerous schools.

The number of schools in a state determined to be persistently dangerous will depend on the combination of factors included in a state's policy. A state using narrowly defined offenses also may have a low threshold for the number of offenses, thus increasing the number of schools determined persistently dangerous. A state using a detailed offense list may have a high offense threshold, resulting in a relative low number of persistently dangerous schools.

Notes of Interest

There are unique aspects in some state's adopted or proposed policies:

- Indiana's policy establishes a panel of local and state school safety experts who will determine if a school that has met the policy's criteria for the third consecutive year should be identified as persistently dangerous.
- Schools identified as persistently dangerous in North Dakota and Mississippi will, prior to final determination, have an opportunity to provide additional information to the state department of education or the state board of education.
- Florida schools meeting the expulsion criteria will conduct an anonymous schoolwide survey of students, parents and personnel. If a majority (51%) of the survey respondents perceive the school as unsafe, the school is persistently dangerous.
- South Dakota's policy considers all offenses occurring on school property, at school-sponsored events or on buses – 24 hours a day, 12 months a year – whether committed by or victimizing students, school personnel or nonschool personnel.
- Michigan and Tennessee exclude alternative schools established for suspended or expelled students. Mississippi's policy includes alternative schools that have higher thresholds of incidents than at other public schools.
- New Jersey's policy applies only to schools in a local education agency receiving NCLB funds.
- Mississippi's policy excludes charter schools.

ECS will update this *ECS StateNote* as additional information becomes available.

Persistently Dangerous School Criteria		
State	**Criteria/Definition**	**Authority/ Status/ Reference**
Alabama	**Determination of persistently dangerous schools** A school that for three consecutive years has expelled 1% of the student population or five students (whichever is greater) for violent criminal offenses committed on school property during school hours or committed at school-sponsored activities. **Offenses/incidents** 1. Homicide, robbery, assault in the first or second degree, sexual battery (including rape) as defined by the Alabama Criminal Code 2. Use of a handgun, firearm component, explosive, knife and other "unknown weapons" as defined by the Student Incident Report. **Link**: http://www.alabamaadministrativecode.state.al.us/docs/ed/3ed1.htm#T1	State board **Adopted** AAC 290-3-.02 (1)(e)
Alaska	**Determination of persistently dangerous schools** Safety status of schools is determined by the following formula: Safety status = (total days students were suspended for infractions involving a weapon or violence against a person / total student population of the school x 170) X school size factor School size factor used in above formula is: School size — Factor 10-100 students — 0.7 101-425 students — 0.8 426-1,000 students — 0.9 1,001 and more students — 1.0 A school will be designated as a persistently dangerous school if during the past three years the school has experienced two or more years with a safety status of 3% or greater. The department of education may continue to designate the school as persistently dangerous if the school does not comply with school district's intervention plan or if the department has evidence the school is not a safe environment. **Offenses/incidents** 1. Infractions involving weapons OR 2. Violence against a person.	State board **Adopted** 4 AAC 06.200-.270

	Link: http://www.eed.state.ak.us/regs/adopted/4AAC06.200-.270SafeSchool.pdf	
Arizona	**Determination of persistently dangerous schools** For July 1, 2003, any school that had four or more firearms brought to campus in the baseline analysis of 2000-01 data and an average of four expulsions for a firearms-related offense under the Gun-Free Schools Act (GFSA) for school years 2000-01 and 2001-02, unless appropriate information is presented to allow an exemption, will be labeled as a persistently dangerous school. Schools that meet the criteria for firearms brought to campus in the baseline analysis and based on the two-year average of data will be identified on the preliminary list of persistently dangerous schools. Schools placed on the preliminary list will be required to submit additional objective explanatory and prevention data/information about these incidences, which will be used by the state department of education to make a final determination about the school's status. **Offenses/incidents** • Violations of the Gun-Free Schools Act. **Link**: Not available online.	State board **Proposed** Policy on June 30, 2003 meeting agenda.
Arkansas	**Determination of persistently dangerous schools** For each of the past two consecutive years, the school had a federal or state gun-free school violation or at least one conviction of a staff or student of violent criminal offense committed on school property AND for the past two consecutive years, the school's expulsions for drug, alcohol or violence exceeds 3% of the total school population as reported on October 1 of each year. **Offenses/incidents** 1. Homicide 2. Sexual offenses 3. Robbery 4. Aggravated assault 5. Expulsions for drug, alcohol or violence. **Link**: Not available online.	State board **Adopted** April 14, 2003 board minutes
California	**Determination of persistently dangerous schools** A school that for three consecutive fiscal years: 1. Has a federal or state gun-free schools violation or a violent criminal offense has been committed by a student or a non-student on school property; AND 2. Expelled students, under *California Education Code*, for the offenses listed below. The number of expulsions for these offenses must exceed one of the following rates: • Three expulsions for a school of fewer than 300 enrolled students • One expulsion for every 100 enrolled students or fraction thereof, for a school with more than 300 enrolled students. **Offenses/incidents** 1. Gun-free school violation 2. Violent criminal offense 3. Offenses • Assault or battery upon any school employee • Brandishing a knife • Causing serious physical injury to another person, except in self-defense • Hate violence • Possessing, selling or furnishing a firearm • Possession of an explosive • Robbery or extortion • Selling a controlled substance • Sexual assault or sexual battery. **Link**: http://www.cde.ca.gov/spbranch/safety/nclb/usco.pdf	State board **Adopted** May 30, 2002 board minutes
Colorado	**Determination of persistently dangerous schools** A school that has a total number of incidents annually reported to the Colorado Department of Education (CDE) for offenses listed below that exceed the following numbers per student enrollment per year for two consecutive years, beginning with	State department of education

	the 2001-02 school year: 1. 45 for fewer than 299 students 2. 90 for 300 – 599 students 3. 135 for 600 – 899 students 4. 180 for 900 – 1,199 students 5. 225 for 1,200 – 1,499 students 6. 270 for 1,500 – 1,799 students 7. 315 for 1,899 – 2,099 students 8. 360 or more for 2,100 or more students. **Offenses/incidents** 1. Alcohol violations, drug violations, assaults/fights, robberies and other felonies as defined by the Automated Data Exchange 2. Expulsions for firearms per the Gun-Free Schools Act 3. The number of reports to CDE of school employees engaging in unlawful behavior, as defined by State Board of Education Rules 2260.5-R-15.05. **Link:** http://www.cde.state.co.us/cdeprevention/download/pdf/ Safe_School_Choice_Policy.pdf	**Adopted** Policy dated May 13, 2003
Connecticut	**Determination of persistently dangerous schools** Based on data reported for three years (1999-2000, 2000-01 and 2001-02), a school that equals or exceeds the incidents/tolerance levels listed below in two of the three types of incidents: 1. Two or more expulsions for possession of a firearm or explosive on school property 2. Three or more expulsions per 200 students for possession of other weapons, such as a knife, capable of causing harm 3. Three or more expulsions per 200 students for violent crimes offenses – incidents in which someone suffers bodily harm. **Offenses/incidents** 1. Possession of a firearm or explosive on school property 2. Possession of other weapons capable of causing harm 3. Violent criminal offenses where someone suffers bodily harm. **Link:** http://www.state.ct.us/sde/circ/circ02-03/C-34.pdf	State board; state department of education **Approved** Circular Letter: C-34
Delaware	**Determination of persistently dangerous schools** A school that has five or more incidents for every 100 students enrolled for three consecutive fiscal years. **Offenses/incidents** 1. Suspension or expulsion of a student for a Gun-Free School Act violation. 2. Suspension of expulsion of a student for a crime committed on school property that is required to be reported under 14 Del. C § 4112. 3. A crime committed by a non-student on school property that is required to be reported under 14 Del. C. § 4112. 4. Suspension or expulsion of a student for terroristic threatening under 11 Del. C. § 621. 5. The school that fails to comply with reporting mandates to the Delaware Department of Education and/or appropriate police agency as required by 14 Del. C. § 4112 and/or Regulation 601 until the state department of education determines the school has met the reporting requirements. **Link:** http://www.state.de.us/research/AdminCode/Education/	Delaware Secretary of Education **Approved** Regulation 608
District of Columbia	**Determination of persistently dangerous schools** A school where the number of officially reported violent crimes against students for two consecutive years is equal to or greater than the following: 1. For schools with 200 students or more – 2.5% of the official student enrollment 2. For schools with 200 students or less – five. Juvenile detention facilities are exempt from these provisions. **Offenses/incidents** Any of the following offenses designated as a "crime of violence" under D.C. Code 22-4501(f) and documented by an official policy report: 1. Murder	Board of education **Adopted** D.C. Code 38-3804; published in D.C. Register Vol. 50, No. 27, July 4, 2003 – Notice of Emergency and

	2. Manslaughter 3. First- and second-degree sexual assault 4. Malicious disfigurement of another 5. Abduction 6. Kidnapping 7. Any assault with intent to kill, commit first- or second-degree sexual abuse, child sexual abuse or robbery 8. Assault with a dangerous weapon 9. Assault with intent to commit any offense punishable by imprisonment 10. Extortion or blackmail accompanied by threats of violence or aggravated assault. **Link:** http://www.amlegal.com/nxt/gateway.dll?f=templates$fn=default.htm$vid=dcr:free Note: Students attending a school designated as persistently dangerous may transfer to a public school that (1) is not identified as persistently dangerous; (2) is not in need of improvement, under corrective active or restructuring; (3) is making adequate yearly progress; and (4) has space to accommodate the student.	Proposed Rulemaking
Florida	**Determination of persistently dangerous schools** A public school that for three consecutive years meets each of the two following conditions: 1. Had a federal Gun-Free School Act violation; AND 2. Expelled 1% or more of a student body that is greater than 500 students, or five students if the student body is 500 students or less, for the offenses listed below. If the school meets the expulsion criteria, it will conduct an anonymous schoolwide climate survey of students, parents and school personnel. The state department of education will determine the survey instrument. If the majority (51%) of the survey respondents perceive the school to be unsafe, the school is persistently dangerous. **Offenses/incidents** 1. Homicide 2. Battery 3. Sexual Battery 4. Weapons possession related offenses. **Link:** Not available online.	State department of education **Finalized** Policy dated May 2003
Georgia	**Determination of persistently dangerous schools** A public school in which for each of three consecutive years on public school property or at an event within public school jurisdiction or at a school- sponsored event: 1. At least one student enrolled in the school is found by official action to have committed an offense in violation of a school rule that involved one or more of the criminal offenses listed below under # 1; OR 2. Two percent or more of the student population or 10 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 other offenses listed below under # 2; OR 3. Any combination of above criteria. **Offenses/incidents** 1. Criminal offenses • Aggravated battery • Aggravated child molestation • Aggravated sexual battery • Aggravated sodomy • Armed robbery • Arson – first degree • Kidnapping • Murder • Rape • Voluntary manslaughter. 2. Other offenses • Non-felony drugs • Felony drugs • Felony weapons	State board **Adopted** Rule 160-4-8-.16 [Code: JBCCA(2)]

	• Terroristic threats. **Link**: http://www.doe.k12.ga.us/_documents/doe/sboe/072203bdmin.pdf and http://www.doe.k12.ga.us/_documents/doe/legalservices/160-4-8-.16.pdf	
Hawaii	**Determination of persistently dangerous schools** State department of education personnel provided an overview of the "persistently dangerous school" definition that would be submitted to the U.S. Department of Education for review by the June 30, 2003, deadline at the June 19, 2003, state board of education meeting. ECS is unable to locate the definition text. **Offenses/incidents** ECS is unable to locate the definition text. **Link**: http://lilinote.k12.hi.us/STATE/BOE/Minutes.nsf/0/48cdfc4f0242561a0a256d6a0074ce88?OpenDocument	State department of education **Proposed** June 19, 2003 board minutes
Idaho	**Determination of persistently dangerous schools** A school that meets the following criteria in each of three consecutive years: 1. Has one instance of homicide, sexual assault or kidnapping OR 2. 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 state gun-free schools requirements on school property or at school-sponsored events while school is in session. **Offenses/incidents** Conduct which could be charged as a felony or misdemeanor involving: 1. Threat of or actual physical injury 2. Sexual offense 3. Homicide 4. Rape 5. Robbery 6. Aggravated assault 7. Aggravated battery 8. Stalking 9. First-degree kidnapping 10. Aggravated arson. **Link**: Not available online.	State board **Approved** June 26-27, 2003 board minutes
Illinois	**Determination of persistently dangerous schools** A school that meets all of the following criteria for two consecutive years: 1. Have violence-related expulsions greater than 3% of the student enrollment 2. Have one or more students expelled for bringing a gun or weapon to school as defined in 18 USC 921 3. Have 3% or more of the student enrollment exercising the individual victim of violent crime option. **Offenses/incidents** 1. Violence-related expulsions 2. Bring gun or weapon to school as defined in 18 USC 921. **Link**: http://leeogle.org/sip/safety.htm and http://www.isbe.net/nclb/csa/contentsIII/titleIVAsafe.pdf	State board **Adopted** State board policy
Indiana	**Determination of persistently dangerous schools** A school that for three consecutive years has more than 2% of the students enrolled in the school convicted either of the offenses listed below or determined to have committed an act of delinquency that would, if committed by an adult, constitute any of the offenses. A conviction or act of delinquency is considered in the determination if the conduct occurs: 1. In or on the grounds of the public school that the student attends immediately before school hours, during school hours or immediately after school hours; 2. Off school grounds at an activity, function or event sponsored by the school the student attends; OR 3. While traveling to or from school or a school activity, function or event on school-provided transportation.	State department of education **Adopted** Policy adopted April 30, 2003

	For the 2002-03 school year, in the absence of crime data, a public school is determined to be persistently dangerous by a review panel if the criteria listed is met for three consecutive years. For the 2003-04 school year, two years of expulsion data and one year of conviction and delinquency data shall be used to determine if a school is persistently dangerous. For the 2004-05 school year, one year of expulsion data and two years of conviction and delinquency data shall be used to determine if a school is persistently dangerous. If the persistently dangerous criteria are met for a third consecutive year, a panel of local and state safety experts will convene to make the determination of whether the school should be considered persistently dangerous. **Offenses/incidents** 1. A violent crime as defined by IC 5-2-6.1-8. 2. Possession of any of the following: • A firearm, as defined by IC 35-47-1-5 • A deadly weapon, as defined by IC 35-41-1-8 • A destructive device, as defined by IC 35-47.5-2-4. **Link**: http://ideanet.doe.state.in.us/esea/pdf/uscofinalv2.pdf	
Iowa	**Determination of persistently dangerous schools** A school meets the following criteria for three consecutive school years: 1. Violence-related suspensions (10 days or more) or expulsions (local board action) for more than 1% of the student population. A violence-related, long-term suspension or expulsion occurs as a result of physical injury or the threat of physical injury, according to Iowa Code offenses listed below, to a student on school property during the regular school day or at school-sponsored activities. 2. Expulsion of two or more students for violating the federal or state gun-free school laws. 3. Five students or 1% of the enrolled student population, whichever is greater, exercised the individual victim transfer option. **Offenses/incidents** 1. A forcible felony 2. Offenses, excluding simple misdemeanors, involving physical assault 3. Offenses, excluding simple misdemeanors, involving sexual assault 4. Kidnapping 5. First- and second-degree robbery and extortion 6. First-degree arson 7. Use of incendiary or explosive devices such as bombs 8. Criminal gang activity 9. Carrying and/or using a weapon. **Link**: http://www.state.ia.us/educate/ecese/nclb/legis/chapter11.pdf	State board **Adopted** IAC 281-11.3
Kansas	**Determination of persistently dangerous schools** A school meets all of the following criteria for three consecutive school years based on numbers and rates from September 20 enrollment data and calculated annually: 1. One or more students expelled as a result of a federal gun-free schools violation; AND 2. At least 2% or five students, whichever is greater, of the student enrollment exercising the individual victim student transfer option; AND 3. Have a violence-related expulsion rate of at least 2% or five students, whichever is greater, of the student enrollment convicted of or adjudicated for the offenses listed below. **Offenses/incidents** 1. Crimes against persons that constitute the commission of a felony, including murder, aggravated assault, battery, criminal threat, hazing, kidnapping, robbery, burglary and stalking; OR 2. Sex crimes such as rape, aggravated indecent liberties with a child, indecent solicitation of a child, sexual battery, sexual exploitation of a child and sodomy; OR 3. Child abuse; OR 4. Terroristic threat.	State board **Approved** December 10, 2002 board minutes

	Link: http://www.ksde.org/sfp/nclb/titleI/unsafeschool.definitions.doc	
Kentucky	**Determination of persistently dangerous schools** A public school that meets any two of the following conditions for two consecutive years for 2003-04 school year and three consecutive years for 2004-05 school year and beyond: 1. Forcible Rape: • One or more incidents per year 2. Robbery: • For a school with fewer than 500 students, five or more incidents in the school year • For a school with 500 or more students, the total number of incidents in the school year represents 1% or more of the total student enrollment. 3. Assault in the first degree: • For a school with fewer than 500 students, five or more incidents in the school year • For a school with 500 or more students, the total number of incidents in the school year represents 1% or more of the total student enrollment. 4. Assault in the second degree: • For a school with fewer than 500 students, five or more incidents in the school year • For a school with 500 or more students, the total number of incidents in the school year represents 1% or more of the total student enrollment. 5. Criminal Homicide – One or more incidents per year 6. Firearms Violations (Federal or State Gun-Free Schools legislation) • For a school with fewer than 500 students, five or more incidents in the school year • For a school with 500 or more students, the total number of incidents in the school year represents 1% or more of the total student enrollment. **Offenses/incidents** 1. Forcible Rape 2. Robbery 3. Assault in the first or second degree 4. Criminal Homicide 5. Firearms Violations [Federal or State Gun-Free Schools legislation (KRS 158.150)(2)]. **Link:** http://www.kentuckyschools.net/NR/rdonlyres/etcdkfr3s2ktfutkbz2bpfcxx5wlfww72qjetjs6tuiwtvcbm23l25soghogk6chytypdmnvbdgg3dh5gmcdj36ogof/USCOKentuckyDefinitions.pdf?GRAB_ID=102950486\&EXTRA_ARG=\&HOST_ID=1\&PAGE_ID=869\&HIWORD=PERSISTENTLY+DANGEROUS+	State board **Adopted** June 4-5, 2003 board minutes
Louisiana	**Determination of persistently dangerous schools** A school meets two of the following criteria for two consecutive school years: 1. One percent or more of the enrolled student body is expelled for possession of a firearm on school property, on a school bus or for actual possession of a firearm at a school-sponsored event 2. Four percent or more of the enrolled student body has been expelled for a crime of violence, according to Louisiana Revised Statute 14:2, occurring on school property, on a school bus or at a school-sponsored event 3. Six percent or more of the enrolled student body has been expelled pursuant to Louisiana Revised Statute 17:416 for the following types of misconduct listed below occurring on school property, on a school bus or at a school-sponsored event. **Offenses/incidents** 1. Possession of a firearm 2. Crime of violence according to Louisiana Code 3. Misconduct • Immoral or vicious practices • Conduct or habits injurious to associates • Possession of or use of any controlled dangerous substance in any form • Possession of or use of any alcoholic beverage • Cutting, defacing or injuring any school property • Possession of knives or other implements which can be used as weapons • Throws missiles liable to injure others	State board **Pending**; Notice of Intent published May 20, 2003. Comment period ended July 9, 2003. Regulation LAC 28:I.901

	• Instigating or participating in fights. **Link**: http://www.state.la.us/osr/reg/0305/0305NOI.pdf	
Maine	**Determination of persistently dangerous schools** A school that meets or exceeds both of the following criteria: 1. In any three consecutive years, a Federal Gun-Free Schools Act violation or a violent criminal offense occurs in or on school property; AND 2. In any two years within a three-year span, 2% or more of the student body is expelled for a violation of the school's alcohol, tobacco and other drug policy or a violation of the school's weapons or violence policy. Judgments as to whether a violent criminal offense has been committed, and if so, where (in or on school property or not), are to be determined by the law enforcement agency having primary responsibility for the criminal investigation. **Offenses/incidents** According to the Maine Criminal Code: 1. Murder and related offenses 2. Offenses against the person 3. Sexual assaults 4. Kidnapping and criminal restraint 5. Theft 6. Burglary and criminal trespass 7. Falsification in official matters 8. Offenses against public order 9. Offenses against the family 10. Robbery 11. Offenses against public administration 12. Arson and other property destruction 13. Criminal use of explosives and related crimes 14. Drugs (drug crimes that are Class A, Class B or Class C). **Link**: http://www.state.me.us/education/edletrs/2003/ilet/ilet86.htm and http://www.maine.gov/education/edletrs/2003/ilet/ilet86draftpolicy.rtf	State department of education **Pending**; collecting data so persistently dangerous schools can be identified by July 1, 2003. Informational Letter No. 86
Maryland	**Determination of persistently dangerous schools** A school in which each year for three consecutive school years, the total number of student suspensions for more than 10 days or expulsions for the offenses listed below equals 2.5% or more of the total number of enrolled students. **Offenses/incidents** 1. Arson or fire 2. Drugs 3. Explosives 4. Firearms 5. Other guns 6. Other weapons 7. Physical attack on a student 8. Physical attack on a school system employee or other adult 9. Sexual assault. **Link**: https://constmail.gov.state.md.us/comar/13a/13a.08.01.18.htm	State board **Approved** COMAR 13A.08.01.18
Massachusetts	**Determination of persistently dangerous schools** A school meets either of the following criteria for three consecutive years beginning with the most recent enrollment data available to the state department of education, as well as the prior two years: 1. One or more students expelled for violation of the Federal Gun-Free Schools Act 2. The number of students who have been permanently excluded or expelled from school for a period greater than 45 days, for the offenses listed below, exceeds 1.5 % of the student enrollment. **Offenses/incidents** 1. Weapons or physical assault (Mass. General Laws Chapter 71, § 37H) 2. Violent crimes (Mass. General Laws Chapter 140, § 121). **Link**: http://www.doe.mass.edu/hssss/program/sdus.html	State board **Approved** March 25, 2003 board minutes

Michigan	**Determination of persistently dangerous schools** A school that each year for three consecutive years has: 1. More than 2.5% of the students or five students, whichever is greater, expelled by the school board for more than 10 consecutive days for the offenses listed below, as defined by the Michigan Revised School Code; OR 2. More than 2.5% of the students or five students, whichever is greater, have been victims of violent criminal offenses listed below. Alternative education programs and strict discipline academies that are appropriate for expelled individuals are exempt from this policy. **Offenses/incidents** 1. Arson 2. Physical assault 3. Bomb threat or similar threat 4. Criminal sexual conduct 5. Possession of a dangerous weapon. **Link**: http://www.michigan.gov/documents/safeschoolchoicepolicy_63131_7.pdf	State board **Adopted** April 24, 2003 board minutes
Minnesota	**Determination of persistently dangerous schools** A school where during two of the past three previous school years (July 1 – June 30): 1. A student attending the school was expelled according to Minn. Stat. 121A.44 for possession of a firearm (18 USC § 921) on school grounds AND 2. The number of students expelled for offenses listed below that were committed in or on school grounds exceeds: • Three incidents in a school with fewer than 300 enrolled students • One incident for every 100 students or fraction of 100 students in a school with 300 or more enrolled students. **Offenses/incidents** 1. Possessing a dangerous weapon [18 USC § 930 (g)(2)] 2. Possessing or using a controlled substance [21 USC § 812] 3. Selling or soliciting the sale of a controlled substance [21 USC § 812] 4. Committing third-degree assault [Minn. Stat. 609.223 (1)] or criminal sexual conduct [Minn. Stat. 609.342-345]. **Link**: Not available on the Minnesota Department of Education Web site. A definition that appears to be the same as the definition provided by the department of education can be found on the Minnesota School Boards Association Web site at http://www.mnmsba.org/Public/MSBA_Docs/NCLB1227%20Persistently %20Dangerous.pdf	State department of education **Adopted** Department policy
Mississippi	**Determination of persistently dangerous schools** A public school, excluding charter schools, in which conditions during the past two school years continually exposed its students to injury from violent criminal offenses and it is: 1. A public school in which a total of 20 or more violent criminal offenses, listed below, were committed per 1,000 students (2.0 or more per 100 students) in two consecutive school years; OR 2. A public alternative school in which a total of 75 or more violent criminal offenses, listed below, were committed per 1,000 (7.5 or more per 100 students) in two consecutive school years. When the state board of education has information that a school meets the criteria listed in # 1 or # 2 above, the state board will provide the local board with an opportunity to report on the conditions in the school. After consideration of that report and consultation with a representative sample of the local education agencies, the state board of education will determine whether the school is a persistently dangerous school. **Offenses/incidents** Crimes reported in the Mississippi School Information System: 1. Simple or aggravated assault 2. Homicide 3. Kidnapping	State board **Adopted** Code JGF-1

	4. Rape 5. Robbery 6. Sexual battery 7. Mayhem 8. Poisoning 9. Extortion 10. Stalking 11. Seizure and forfeiture of firearms. **Link:** http://www.mde.k12.ms.us/public/jgf-1.htm	
Missouri	**Determination of persistently dangerous schools** A public school in which the following conditions exists: 1. In each of three consecutive years: • The school has a federal and/or state gun-free schools violation; OR • A violent criminal offense as listed below is committed on school property; AND 2. In any two years within the three-year period listed above, the school experienced expulsions by local board action, for drug, alcohol, weapons or violence that exceed one of the following rates: • More than five expulsions per year for a school of less than 250 students • More than 10 expulsions per year for a school of more than 250 students but less than 1,000 students • More than 15 expulsions per year for a school of more than 1,000 students. **Offenses/incidents** As defined by the Missouri Criminal Code: 1. Murder first- or second-degree 2. Kidnapping 3. Assault first- or second-degree 4. Forcible rape 5. Forcible sodomy 6. Burglary first- or second-degree 7. Robbery first-degree 8. Distribution of drugs 9. Distribution of drugs to a minor 10. Arson first-degree 11. Voluntary manslaughter 12. Involuntary manslaughter 13. Sexual assault 14. Felonious restraint 15. Property damage first-degree 16. Possession of a weapon 17. Child molestation first-degree 18. Deviate sexual assault 19. Sexual misconduct involving a child 20. Sexual abuse. **Link:** http://www.dese.state.mo.us/schoollaw/rulesregs/50355100.htm	State board **Adopted** 5 CSR 50-355-100
Montana	**Determination of persistently dangerous schools** A school in which each of the following two conditions exist: 1. In each of three consecutive years, the school has a federal or state gun-free schools violation or a violent criminal offense, listed below, was committed on school property; AND 2. In any two years within a three-year period, the school experienced expulsions for drug, alcohol, weapons or violence that exceed one of the following rates: • More than five expulsions for a school of less than 250 students • More than 10 expulsions for a school of more than 250 students but less than 1,000 students; OR • More than 15 expulsions for a school of more than 1,000 students. **Offenses/incidents** 1. Homicide 2. Rape 3. Robbery 4. Aggravated assault.	State department of education **Adopted** Department policy

	Link: http://www.opi.state.mt.us/pdf/safeschools/persistentlydangerous.pdf	
Nebraska	**Determination of persistently dangerous schools** A school that meets the following condition for three consecutive years: • A violation of the Gun-Free Schools Act and said student is charged with a crime under Neb. Rev. Stat. § 28-1204.04. **Offenses/incidents** • Gun-Free Schools Act violation. **Link:** Not available online.	State department of education **Adopted** Department policy
Nevada	**Determination of persistently dangerous schools** SB 1 requires the state board of education regulations to include criteria for identifying a school as persistently dangerous. ECS is unable to locate state board policy text. **Offenses/incidents** SB 1 does not define violent criminal offense. ECS is unable to locate state board policy text. **Link:** http://www.leg.state.nv.us/19thSpecial/Reports/history.cfm?ID=1228 and http://www.nde.state.nv.us/admin/super/statebrd/actionreports/May2003ActionReport.htm	State legislature; state board **Enacted** state legislature; **adopted** state board policy SB 1 and May 16-17, 2003 board minutes
New Hampshire	**Determination of persistently dangerous schools** A school in which three of the offenses listed below occurred as separate incidents during the period of one school year for three consecutive years on school property, at a school-sponsored event, or during transportation to or from school if the transportation is provided by the school. **Offenses/incidents** 1. Homicide 2. First- or second-degree assault 3. Aggravated felonious sexual assault 4. Arson 5. Robbery as a class A felony 6. Unlawful possession or sale of a firearm or other dangerous weapon. **Link:** http://www.gencourt.state.nh.us/legislation/2003/sb0114.html	State legislature **Enacted** without governor's signature. SB 114 – RSA 193-G:1
New Jersey	**Determination of persistently dangerous schools** A school that meets one of the following categories for three consecutive years AND is part of an LEA that receives federal funds under NCLB: 1. Has seven or more Category A offenses listed below 2. Has a score of 1.0 or greater on an index of Category B offenses where the index is defined as the result of dividing the number of Category B offenses listed below by the square root of the school's enrollment. **Offenses/incidents** Category A: 1. A firearms offense in state law in accordance with the federal Gun-Free Schools Act 2. An aggravated assault on a student 3. An assault with a weapon on a student 4. Any assault on a member of the school district staff. Category B: 1. Simple assault on a student 2. Possession or sale of a weapon other than a firearm 3. Gang fight 4. Robbery or extortion 5. Sex offense 6. Terrorist threat 7. Arson 8. Sale and distribution of drugs (excluding possession with intent) 9. Harassment and bullying. **Link:** http://www.state.nj.us/njded/grants/nclb/policy/unsafe.htm	State board **Adopted** June 18, 2003 board meeting

New Mexico	The New Mexico State Department of Education Web site refers to persistently dangerous schools. A proposed regulation was on August 2003 state board of education meeting agenda. ECS is unable to locate proposed state board policy text. **Link**: http://164.64.166.11/fedpro/program_4.html and http://www.sde.state.nm.us/sbe.desktop/agenda.items/agenda.august.27.29.03.pdf	State board **Proposed** August 2003 state board meeting agenda
New York	**Determination of persistently dangerous schools** 1. A school will be initially identified as a school that may be designated as persistently dangerous for the 2003-04 school year if the school has in each of two consecutive years a 3% or greater ratio of weapons incidents to enrollment. A final designation will be made after the school has had an opportunity to demonstrate that it should not be designated persistently dangerous. 2. A school that has in two consecutive years a 2% or greater ratio of weapons incidents to enrollment will be required to develop an Incident Reduction Plan during the 2003-04 school year. If the ratio remains at 2% or greater after the implementation of the plan, the school may be initially identified as a persistently dangerous school for the 2004-05 school year. **Offenses/Incidents** • Weapons incidents. **Link**: http://www.emsc.nysed.gov/deputy/Documents/dsnews/dsnews91.html	State commissioner of education **Established** August 6, 2003 biweekly newsletter from Deputy Commissioner James A. Kadamus
North Carolina	**Determination of persistently dangerous schools** A public school or a charter school in which a total of five or more violent criminal offenses were committed per 1,000 students (0.5 or more per 100 students) during each of the two most recent school years and in which the conditions that contributed to the commission of those offenses are likely to continue into another school year. **Offenses/incidents** Crimes reported in the *Report on School Crime and Violence*: 1. Homicide 2. Assault resulting in serious bodily injury 3. Assault involving use of a weapon 4. Rape 5. Sexual offense 6. Sexual assault 7. Kidnapping 8. Robbery with a dangerous weapon 9. Robbery 10. Taking indecent liberties with a minor. **Link**: http://sbepolicy.dpi.state.nc.us/Policies/SS-A-006.asp?Acr=SS&Cat=A&Pol=006	State board **Adopted** Policy ID: SS-A-006
North Dakota	**Determination of persistently dangerous schools** A school where the following conditions exist for two consecutive years and occur on school property or at a school-sponsored event: 1. A state firearms violation that resulted in a one year expulsion; AND 2. A school expelled 1% of the student population or five students, whichever is higher, for violent criminal offenses as listed below. Prior to designating a school as persistently dangerous, the state department of public instruction will take into consideration the school's safety plan, local efforts to address the school's safety concerns and other information deemed relevant by the department. **Offenses/incidents** According to the North Dakota Century Code: 1. State firearms violation (NDCC 15.1-19-10) 2. Homicide (NDCC 12.1-16, subsections 01, 02, 03) 3. Assaults-threats (NDCC 12.1-17, subsections 01,01.1,02, 03, 04, 10) 4. Kidnapping (NDCC 12.1-18, subsections 01, 02) 5. Sex offenses (NDCC 12.1-20, subsections 03, 04, 17) 6. Robbery (NDCC 12.1-22, subsection 01) 7. Inciting a riot. (NDCC 12.1-25, subsection 01)	State department of education **Adopted** Department policy

	Link: http://www.dpi.state.nd.us/health/usco.pdf	
Ohio	**Determination of persistently dangerous schools** 1. A school that has two or more violent criminal offenses on school property, per 100 students, in each of two consecutive school years. 2. A school with 300 or fewer students enrolled will be designated "persistently dangerous" only if six or more violent criminal offenses occur in each of two consecutive schools years. 3. A school with 1,350 or more students enrolled will be designated "persistently dangerous" if 27 or more violent criminal offenses occur in each of two consecutive school years. **Offenses/incidents** • Offense as defined by Ohio law that is violent in nature. **Link:** http://www.ode.state.oh.us/esea/superintendent/School_Safety_Policy.asp Note: HB 3 that addresses persistently dangerous schools is being considered by the legislature.	State board **Adopted** July 9-10, 2002 board minutes
Oklahoma	**Determination of persistently dangerous schools** A public school site that meets the following criteria for three consecutive fiscal school years: 1. A site has students and/or employees convicted of a violent criminal offense and the number of offenses exceeds 2% of the site's audited membership; AND 2. The offense occurs at school or on a school bus in transit to or from school. **Offenses/incidents** • An offense listed as an exception to the term "nonviolent offense" as specified in Okla. Stat. Tit. 57, § 571. **Link:** http://www.sde.state.ok.us/NCLB/USCO%20definition and http://www.sde.state.ok.us/NCLB/Oklahoma%20Criminal%20Code.pdf	State board **Approved** April 17, 2003 board meeting
Oregon	**Determination of persistently dangerous schools** A public school where the following conditions exist for three consecutive school years: 1. The school has expulsions for weapons; AND/OR 2. The school has expulsions for violent behavior; AND/OR 3. The school has expulsions for students arrested for any of the violent criminal offenses listed below on school grounds, on school sponsored transportation and/or at school sponsored activities. The total number of expulsions for the above combined categories must meet or exceed one of the following rates per year: 1. For a school with fewer than 500 enrolled students, five expulsions. 2. For a larger school, one expulsion for every 100 enrolled students or fraction thereof. **Offenses/incidents** 1. Expulsion for weapons [ORS 339.250(6)] 2. Violent criminal offenses • Assault [ORS 163.160, ORS 163.165, ORS 163.175, ORS 163.185] • Manufacture or delivery of a controlled substance [ORS 475.992 (1-3)] • Sexual crimes using force, threatened use of force or against • incapacitated person [ORS 163.375, ORS 163.395, ORS 163.411, ORS • 163.427] • Arson [ORS 164.315, ORS 164.325] • Robbery [ORS 164.395, ORS 164.405, ORS 164.415] • Hate/Bias Crime [ORS 166.155, ORS 166.165] • Coercion [ORS 163.275] • Kidnapping [ORS 163.225, ORS 163.235]. **Link:** http://www.ode.state.or.us/nclb/pdfs/usco-boardadopt.pdf	Unclear if the authority is the state board of education or the state department of education. Unclear if the policy is adopted or proposed. Reference not available online
Pennsylvania	**Determination of persistently dangerous schools** Any public school that meets the following criteria for the most recent school year and in one additional year of the two years prior to the most recent school year:	State board **Adopted**

	1. For a school whose enrollment is 250 or less, at least five dangerous incidents 2. For a school whose enrollment is 251 to 1,000, a number of dangerous incidents that represents at least 2% of the school's enrollment 3. For a school whose enrollment is over 1,000, 20 or more dangerous incidents. **Offenses/incidents** 1. Weapons possession incidents resulting in arrest, including guns, knives or other weapons 2. Violent incidents resulting in arrest, including homicide, kidnapping, robbery, sexual offenses and assaults as reported on the PDE-360 report. **Link**: http://www.pde.state.pa.us/svcs_students/cwp/view.asp?a=141&q=93313 and http://www.pabulletin.com/secure/data/vol33/33-26/1251.html	Resolution at May 22, 2003 board meeting and published in PA Bulletin 33-26 as 22 PA. Code § 403.2
Rhode Island	ECS is unable to locate policy.	
South Carolina	**Determination of persistently dangerous schools** A public elementary, secondary or charter school if any two of the following situations exist for three consecutive years with regard to the occurrence of violent criminal offenses on its grounds: 1. Homicide: one or more incidents in the school year 2. Forcible sex offense: one or more incidents in the school year 3. Kidnapping: one or more incidents in the school year 4. Aggravated assault: the total number of incidents during one school year represent 1% or more of the total student enrollment for a school of 500 or more students, or 10 or more incidents for a school with fewer than 500 students 5. Robbery: the total number of incidents during one school year represent 1% or more of the total student enrollment for a school with 500 or more students, or 10 or more incidents for a school with fewer than 500 students 6. Weapons violations: the total number of incidents during one school year represent 1% or more of the total student enrollment for a school with 500 or more students, or 10 or more incidents for a school with fewer than 500 students. **Offenses/incidents** 1. Homicide 2. Forcible sex offense 3. Kidnapping 4. Aggravated assault 5. Robbery 6. Weapons violations (consistent with and as defined by the federal Gun-Free Schools Act). **Link**: https://www.myscschools.com/nclb/Unsafe-schools-guidelines.pdf	State department of education **Adopted** South Carolina *Guidelines for Unsafe School Choice Option*
South Dakota	**Determination of persistently dangerous schools** Multiple violent criminal offenses in two or more consecutive years, including the most recent school year, as set forth in South Dakota state law, including: 1. Whether committed by or victimizing students, school personnel or non-school personnel 2. That occur 24 hours a day (not just during school hours) 3. That occur 12 months a year (not just during the school year); AND 4. That occur on school grounds, school property or school-related and/or school-sponsored events, including buses and sports arenas. The number of multiple violent criminal offenses used to determine each school's status as a safe school or a persistently dangerous school is calculated according to the following formula: One or more violent criminal offenses per 50 students enrolled with a maximum of 10 offenses per year, in two consecutive school years will classify a school as persistently dangerous. **Offenses/incidents** The state department of education will maintain a list of offenses considered to be "violent criminal offenses" for purposes of the "Unsafe School Choice Option" (USCO) policy. The department will use data collected via the annual Safe and Drug/Gun-Free Schools data-collection process for purposes of implementing the USCO policy. **Link**: http://www.state.sd.us/deca/Secretary/AdminMemo/2003/May/unsafe.htm	State department of education **Adopted** May 2003 DECA Administrative Memorandum

Tennessee	**Determination of persistently dangerous schools** A public school, excluding a school established specifically for serving suspended or expelled students or students with behavioral disabilities, that meets the following criteria for three consecutive years: 1. Has violence-related disciplinary actions as reported on the Annual Report of Zero Tolerance Offenses as listed below; OR 2. Has students who have been the victim of a violent crime at school; AND 3. The sum of violence-related disciplinary actions and/or incidents of student victimization identified in criteria # 1 and criteria # 2 above are equal to or greater than 3% of the school's average daily membership. **Offenses/incidents** 1. Possession/use of a firearm 2. Battery of a teacher or school employee (including a school resource officer assigned to the school) 3. Possession/use of a weapon other than a firearm. **Link:** http://www.tennessee.gov/education/sp/spdraftunsafeschoolchoicepolicy.doc	State board **Proposed** Final reading of policy scheduled for August 22, 2003 board meeting.
Texas	**Determination of persistently dangerous schools** A regular education campus that reported three or more mandatory expulsion incidents per 1,000 students in each of the following school years: 1999-2000, 2000-01 and 2001-02. Proportionate adjustments made to take into account the campus size. **Offenses/incidents** 1. Used, exhibited or possessed a firearm 2. Used, exhibited or possessed a club 3. Used, exhibited or possessed a weapon, such as a short-barrel firearm, switchblade, knife, brass knuckles or Mace 4. Arson 5. Murder or attempted murder 6. Indecency with a child 7. Aggravated kidnapping 8. Aggravated assault of a school employee 9. Aggravated assault of a student 10. Sexual assault or aggravated sexual assault of a school employee 11. Sexual assault or aggravated sexual assault of a student 12. Felony controlled substance 13. Felony alcohol violation. **Link:** http://www.tea.state.tx.us/press/schoolsafety.html	State department of education **Practice** August 4, 2003 Texas Education Agency press release
Utah	**Determination of persistently dangerous schools** A public school has at least 3% of the student body, as determined by the October 1 count, expelled in each of three consecutive school years (two previous school years for 2003-04 and 2004-05 school years) for: 1. Violent criminal offenses, listed below, that occurred on school property or at school-sponsored activities; OR 2. Federal gun-free school violations. **Offenses/incidents** 1. Violent criminal offense - offense shall be reported to law enforcement and charged to qualify for purposes of this policy • Actual or attempted criminal homicide • Rape • Aggravated sexual assault • Forceable sexual abuse • Aggravated sexual abuse of a child • Aggravated assault • Robbery under 76-6-301. The offense shall be reported to law enforcement and charged as indicated to qualify for purposes of this rule. 2. Federal gun-free school violation. **Link:** http://www.rules.utah.gov/publicat/code/r277/r277-483.htm	State board **Adopted** R277-483

Vermont	**Determination of persistently dangerous schools** A school that meets all of the following criteria for each of the immediately prior three school years: 1. Three percent or more of the student enrollment or, for schools with a student enrollment of less than 100, at least three students have been expelled for violence-related incidents that occurred on school grounds or at a school-sponsored event; AND 2. One or more students have been expelled for possessing a weapon on school grounds or at a school-sponsored event; AND 3. Three percent or more of the student enrollment or, for schools with a student enrollment of less than 100, at least three students have been victims of violent criminal offenses and have exercised the school choice option. This criterion is inapplicable with respect to any school year prior to July 1, 2003. **Offenses/incidents** 1. Violence-related incidents not defined. 2. Possession of a dangerous or deadly weapon as defined in 13 V.S.A. §4016(a)(2). **Link:** http://www.state.vt.us/educ/new/pdfdoc/pgm_safeschools/policy_unsafe_choice.pdf	State board **Adopted** May 20, 2003 board meeting
Virginia	**Determination of persistently dangerous schools** A school would have experienced one or more Category I incidents and/or exceeded its annual point threshold for Category II and Category III incidents for three consecutive years. A school's annual threshold of incidents is determined in the following ways: 1. Category I Threshold: Regardless of school size, one Category I incident during a year of a sexual assault offense, homicide, or use of a bomb or explosive (absolute threshold); OR 2. Category II and III Threshold: The accumulated point threshold of incidents for each school, each year, is the equivalent of one point per 100 students enrolled based on any combination of Category II and Category III incidents. Accumulation of threshold points from Category II and Category III is determined as follows: • Each incident from Category II is assigned two points. • Each incident from Category III is assigned one point. **Offenses/incidents** 1. Category I • Homicide with a firearm or other weapon • Sexual assault offenses • Use of a destructive bomb. 2. Category II • Assault with a firearm or other weapon • Aggravated sexual battery • Malicious wounding without a weapon • Actual and attempted robbery • Kidnapping/abduction. 3. Category III • Illegal possession of a handgun, rifle/shotgun, projectile weapon, bomb or other firearms • Illegal possession of controlled drugs and substances, including marijuana, with the intent to distribute or sell. **Link:** http://141.104.22.210/VDOE/nclb/nclbdangerousschools.pdf	State board **Adopted** April 29, 2003 board minutes
Washington	**Determination of persistently dangerous schools** A school that meets BOTH of the following criteria for three consecutive reporting years: 1. Expulsions for the federal Gun-Free Schools Act violation: School size — Minimum number of expulsions • Up to 1,000 enrolled students — 2 per reporting year • 1001 to 1,500 enrolled students — 3 per reporting year • 1501 to 2,000 enrolled students — 4 per reporting year • 2001 to 2,500 enrolled students — 5 per reporting year • 2501 to 3,000 enrolled students — 6 per reporting year	State department of education **Adopted** Bulletin No. 43-03

	• 3001 to 3,500 enrolled students 7 per reporting year • More than 3,500 enrolled students 8 per reporting year 2. Expulsions for other violent criminal offenses: • For schools with 300 or less enrolled students: three expulsions per reporting year. • For larger schools, one expulsion for every 100 enrolled students, or a fraction thereof, per reporting year. **Offenses/incidents** Violent criminal offenses will be determined by local district policy, but should include the following offenses as defined by Washington State Criminal Code: 1. Homicide (all forms of murder and manslaughter) – RCW 9A.32 2. Assault – RCW 9A.36 3. Malicious harassment – RCW 9A.46 4. Kidnapping – RCW 9A.40 5. Rape – RCW 9A.44 6. Robbery – RCW 9A.56. **Link**: http://www.k12.wa.us/bulletinsmemos/bulletins2003/b043-03.pdf	
West Virginia	**Determination of persistently dangerous schools** A school has for two consecutive years substantiated violations of the offenses listed below that exceed 5% of the total number of students enrolled in the school based on the school's second month enrollment. **Offenses/incidents** 1. Battery on a school employee 2. Commission of a felony according to state law 3. Possession of a firearm or deadly weapon on a school bus, on school property or at a school-sponsored event 4. Sale of a narcotic drug on school property, at a school-sponsored event or on a school bus. **Link**: http://wvde.state.wv.us/policies/p4373_ne.html	State board **Adopted** CSR §126-99-16 (Policy 4373)
Wisconsin	**Determination of persistently dangerous schools** A school that meets one of the following criteria: 1. In each of the three school years immediately preceding the current school year, weapon-related suspensions in a school year are greater than 5% of the number of enrolled students 2. In each of the three school years immediately preceding the current school year, the greater of either of the followed occurred: • The school board expelled in a school year at least 1% of the enrolled pupils for offenses listed below. • The school board expelled in a school year five or more enrolled pupils for offenses listed below. **Offenses/incidents** 1. Assault 2. Endangering behavior 3. Weapons related offenses. **Link**: http://folio.legis.state.wi.us/cgi-bin/om_isapi.dll?clientID=23386786&headingswithhits=on&infobase=code.nfo&jump=PI%2023.05&softpage=Document#JUMPDEST_PI 23.05	Superintendent of public instruction with legislative approval **Approved** Administrative Code PI 23.05
Wyoming	ECS is unable to locate policy.	

Sources: Individual state Web sites and information received via email or fax from individual state departments of education.

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