



# Safety Opportunity Scholarships (SOS): How States Can Fulfill the Promise of Safe Schools for All Students

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# Safety Opportunity Scholarships (SOS): How States Can Fulfill the Promise of Safe Schools for All Students

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## EXECUTIVE SUMMARY

Most parents and policymakers believe public schools in middle-class neighborhoods are safe. They likely would change their minds if actual safety statistics were more transparent. Under the federal No Child Left Behind Act (NCLB) students may transfer to another public school under the Unsafe School Choice Option provision if their current public school meets the state definition of persistently dangerous. Because states define unsafe schools so narrowly, less than 50 public schools out of nearly 100,000 nationwide are labeled persistently dangerous each year. This analysis reviewed the first five years of federal safe schools policy, schools years 2003-04 through 2007-08, and finds it is giving parents a false sense of security about their children's schools.

Available safety statistics reveal around half of all violent and serious violent crimes are *concentrated* in a small fraction of schools nationwide; however, such crimes are not *limited* to those schools. Specifically:

- Around 80 percent of public schools report violent criminal incidents, and almost 20 percent of public schools report serious violent criminal incidents. Federal agencies also note that the amount of crime on school campuses is "substantial," and "students are more fearful at school today than in the past."
- Close to half of all schools report incidents of theft, and more than two-thirds of schools report criminal incidents involving weapons, drugs, alcohol, and vandalism. Although such incidents do not involve actual violence, they have a destabilizing effect on students' sense of well-being and can compromise their learning.
- Crime statistics are similar for suburban and urban public schools, as well as higher and lower

minority-student enrollment schools. Close to one in five urban and suburban schools report incidents of violent crime, and less than 10 percentage points separate high and low minority enrollment schools across criminal incident categories, including violent crime and serious violent crime.

Yet statistics do not tell the whole story, and federal agencies note that school violence is more prevalent than the NCLB persistently dangerous schools and Unsafe School Choice Option annual reports indicate because available school safety data are based largely on surveys and tallies of disciplinary actions, not actual safety incidents. It can take up to three years before schools can even be considered persistently dangerous and only under specified conditions. Worse, perverse incentives contribute to school officials underreporting the information necessary for parents to make informed decisions about the safety of their children's schools.

States are also not required to track the number of students requesting or using the Unsafe School Choice Option. Interviews with officials from more than 40 state education agencies, school districts, and local schools in eight states with schools identified as persistently dangerous revealed states are not systematically tracking students transferring under the Unsafe School Choice Option provision, making it impossible to assess its effectiveness in providing students safe school options.

Students should not have to wait years at a time or become victims of violent crime before their parents are allowed to transfer them to safer schools. The findings in this analysis show the failure of the current bureaucratically-driven, regulatory-compliance model to ensure school safety and indicate the urgent need for a common-sense, parent-driven reform. This analysis recommends that states adopt a Safety Opportunity Scholarship (SOS) Program and includes model legislation for state lawmakers.

An SOS Program would empower parents to transfer their children immediately to the safe

schools of their choice within or beyond their resident school districts, including public district, charter, and virtual schools, as well as private schools. The proposed SOS Program would fulfill the stated goal of NCLB that "All students will be educated in learning environments that are safe, drug free, and conducive to learning" and is based on recommendations from the U.S. Department of Education and other federal agencies. An SOS Program also would have five advantages over the current NCLB persistently dangerous schools (PDS) mandate:

- Schools would report meaningful safety information;
- actionable information for parents would replace the PDS stigma on schools;
- students at risk would have immediate safe school options;
- students at risk would have more safe school options; and
- states and schools could realize improved cost efficiency.

## INTRODUCTION

Along with academic quality, the safety of their children's schools is a leading concern among parents. Most parents think their children's schools are safe; however, more than twice as many public school parents express concern for their children's safety at school than do private school parents (27 percent compared to 13 percent). Compared to private school parents, three times as many public school parents say their children have expressed concern over their personal safety at school (12 percent versus three percent, respectively).<sup>1</sup> Levels of concern would likely be higher if public school parents had better information about the schools they entrust with their children.

Many parents may be aware that the No Child Left Behind Act (NCLB) signed into law in 2002 is supposed to help improve student achievement.<sup>2</sup> They are likely unaware of NCLB's "Unsafe School Choice Option," which occupies just two lines of the nearly 700-page federal Act.<sup>3</sup> Under the provision, students attending schools designated

as persistently dangerous according to state law have been allowed to transfer to a safe public school within the same district since the 2003-04 school year. Expanding parental choice over their children's schools was an express intention behind this provision, but after five years in operation former U.S. Secretary of Education Margaret Spellings admitted the provision has not succeeded.<sup>4</sup> A primary reason is that states' definitions are so narrow it is virtually impossible for schools in many states to be categorized as "persistently dangerous."

Nationwide, more than 150,000 serious violent crimes are committed in schools annually. Yet of the nearly 100,000 public schools nationwide, fewer than 50 are deemed persistently dangerous each year.<sup>5</sup> The U.S. Department of Education's Office of the Inspector General also has cited several states for failing to inform parents of their safe-schools transfer rights. Another problem with the NCLB Unsafe School Choice Option is that it is limited to public schools within a student's current school district.<sup>6</sup> If there are no other options with the district, school officials "are encouraged, but not required, to explore other appropriate options such as an agreement with a neighboring [school] to accept transfer students."<sup>7</sup>

This limitation poses serious obstacles for parents who want to transfer their children to safe schools. Many school districts nationwide are small and may not have safe, academically performing schools with room to accommodate students from unsafe schools. Even in larger districts that would have schools with room to accommodate student transfers, parents may not be able to transport their children.<sup>8</sup>

Beginning in fiscal year 2007, the U.S. Department of Education's Office of Safe and Drug-Free Schools began awarding grants to states with schools identified as persistently dangerous. Grants to four such states alone totaled \$8.6 million for violence and substance-abuse prevention programs, staff training, and counseling.<sup>9</sup> Yet research indicates that students benefit from the better

educational environments private schools typically offer compared to public schools.

A recent national survey found that one in three public high school students believe their schools are not doing enough to prevent bullying on school grounds, while one in four students think their schools are not doing enough to prevent gang activity on school grounds.<sup>10</sup> The U.S. Department of Education and U.S. Bureau of Justice Statistics conclude, "In every survey year, students in public schools were more likely than students in private schools to fear being attacked at school."<sup>11</sup> In fact, public school students are five times as likely as the private school counterparts to avoid certain areas at their schools because someone might attack them.<sup>12</sup>

Such statistics demonstrate the failure of the current bureaucratically-driven regulatory-compliance approach to ensure school safety and indicate the urgent need for a common-sense, parent-driven reform.<sup>13</sup> Empowering parents to vote with their feet would introduce powerful incentives for schools to implement real safety-assurance measures to retain and attract students. Letting them use Safety Opportunity Scholarships (SOS) would be a more responsible alternative to the current policy of regulatory compliance and proliferating programs administered by the very schools that have poor safety track records.

The following sections take a closer look at school crime statistics, the types of schools experiencing safety incidents, and schools' responses. Subsequent sections review key elements of states' persistently dangerous schools (PDS) definitions along with relevant findings from the U.S. Department of Education's Office of the Inspector General, which has been increasingly critical of states' weak persistently dangerous schools definitions. This review reveals an urgent need for greater transparency that includes meaningful and actionable information for parents about school safety. Using states' annual safety reports to the U.S. Department of Education, this analysis also identifies the number of reported incidents involving violence, physical injuries,

weapons, alcohol, and drugs as well as the number of schools states identify as persistently dangerous, hereafter referred to as PDS.<sup>14</sup>

Providing this information is important because the majority of states base their PDS definitions on the number of expulsions relating to such incidents over a two- to three-year period.<sup>15</sup> Consequently, only a handful of states each year report any PDS, giving parents a false sense of security about their children's schools. Gauging school safety according to the number of disciplinary actions schools take instead of actual safety violations that occur likely understates the true prevalence of violence, the presence of drugs and alcohol, and other disruptive behaviors that jeopardize students' physical well-being, sense of security, and ability to learn.

## A CLOSER LOOK AT SCHOOL CRIME STATISTICS

More than a decade ago the U.S. Department of Education and the U.S. Department of Justice noted that "our schools are among the safest places for students to be on a day-to-day basis." Based on crime statistics those agencies concluded that the likelihood a student would suffer a school-associated violent death was less than one in a million, and a student had less than a 0.5 percent chance of becoming a victim of a violent crime at school.<sup>16</sup>

Fatal incidents at school have declined since 1992, according to a variety of sources. School-associated homicides of K-12 students declined to 27 in 2007 from 34 in 1992.<sup>17</sup> The rate of homicides committed by students on school grounds during the regular school day declined even more over this period to 11 from 42.<sup>18</sup> These statistics mirror a larger downward trend in juvenile violence since the early 1990s based on FBI crime reports.<sup>19</sup>

Non-fatal crimes at school are down as well, to 63 incidents per 1,000 students in 2006, from 144 incidents per 1,000 students in 1992.<sup>20</sup> This category includes theft rates, which dropped to 34 incidents from 95 incidents per 1,000 students. Non-fatal violent crimes such as simple assault

fell to 29 incidents from 48 per 1,000 students. Meanwhile serious violent crime, which includes rape, sexual assault, and aggravated assault, dropped to six incidents per 1,000 students in 2006, from 10 incidents per 1,000 students in 1992.

Recent U.S. Department of Education survey responses from public school principals also indicate that violent incidents are concentrated in a small percentage of schools. Specifically, 6.6 percent of public schools (5,400) account for half of all violent incidents; 1.6 percent of schools (1,600) accounted for half of all serious violent incidents.<sup>21</sup> Still, both the education and justice departments concluded:

At the same time, there remains a substantial amount of crime, including violent crime, against both students and teachers in too many schools. It is also very important to note that students are more fearful at school today than in the past. These conditions highlight the importance of accurately measuring incidents of school crime so that we can improve our school environments and make them safer places.<sup>22</sup>

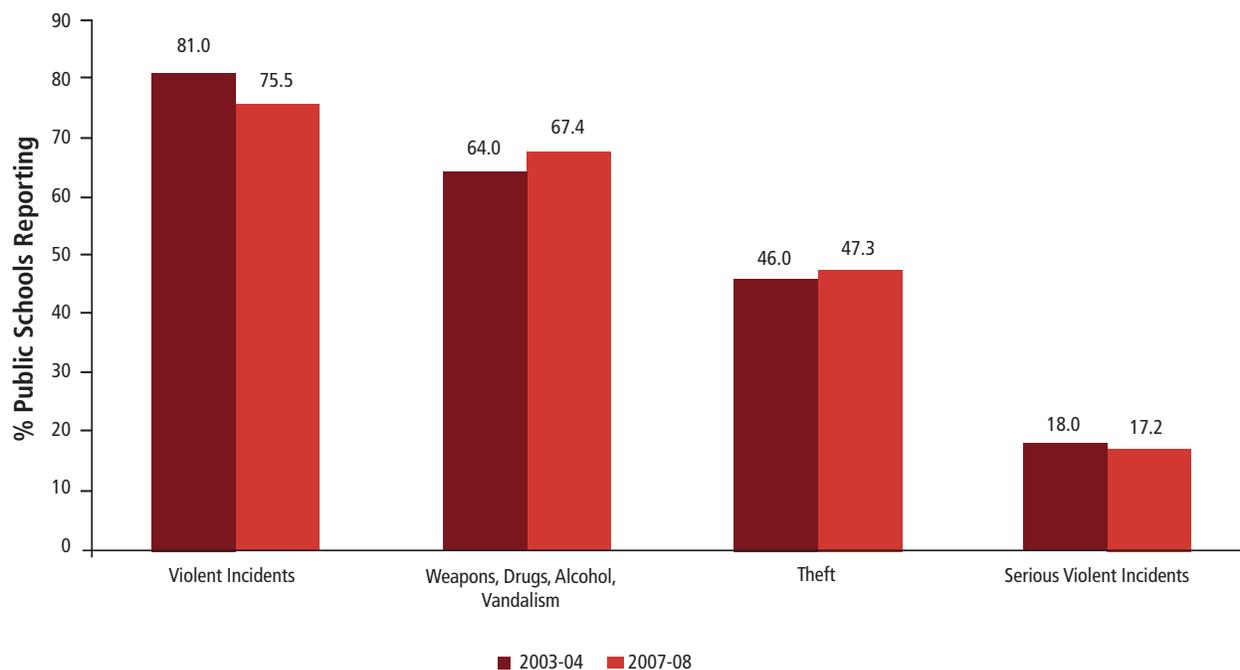
The recent findings from the School Survey on Crime and Safety (SSOCS), the primary source of school-level data for the U.S. Department of Education, substantiate that concern. The U.S. Department of Education reports that during the 2007-08 school year more than three out of every four public schools (62,600) reported a combined 1.3 million incidents of violent crimes, which include rape, sexual battery, physical attack, threat of physical attack, fighting, and robbery. Another 17.2 percent of public schools (14,300) reported a combined 58,300 incidents of serious violent crime, which differ from violent crimes given their severity and use of weapons.<sup>23</sup>

Although half of all violent crimes and serious violent crimes may occur at a small percentage of schools, approximately eight out of 10 public schools nationwide reported violent criminal incidents in both the 2003-04 and 2007-08 school years. Likewise, almost one in five public schools

reported incidents of serious violent crime during both school years. The decline in the percentage of schools reporting violent crime incidents from the 2003-04 school year through the 2007-08 school year is encouraging; however, the percentage of schools reporting serious violent crime for these school years remained essentially unchanged.

Likewise, the percentages of schools nationwide reporting criminal incidents of theft remained steady at just less than half for both school years, whereas criminal incidents involving weapons, drugs, alcohol, or vandalism increased from approximately six to seven out of 10 schools nationwide from the 2003-04 school year to the 2007-08 school year.

**Figure 1: Percentage of Public Schools Reporting Crimes at School, Comparing School Years 2003-04 and 2007-08**



**Sources:** Authors’ figure based on Table 1 of the U.S. Department of Education’s Crime, Violence, Discipline and Safety in U.S. Public Schools: Findings from the School Survey on Crime and Safety reports for the 2003-04 and 2007-08 school years.

**NOTES:**

1. The U.S. Department of Education defines “at school” as including “activities happening in school buildings, on school grounds, on school buses, and at places that hold school-sponsored events or activities.”
2. The U.S. Department of Education defines violent incidents as those that “include rape, sexual battery other than rape, physical attack or fight with or without a weapon, threat of physical attack with or without a weapon, and robbery with or without a weapon.”
3. Weapons, drugs, alcohol, and vandalism are classified by the U.S. Department of Education as “other incidents,” defined as those that “include possession of a firearm or explosive device; possession of a knife or sharp object; distribution, possession, or use of illegal drugs or alcohol; and vandalism.”
4. The U.S. Department of Education defines theft, which includes larceny (taking items worth more than \$10), as “the unlawful taking of another person’s property without personal confrontation, threat, violence, or bodily harm. This includes pocket-picking, stealing a purse or backpack (if left unattended or no force was used to take it from owner), theft from a building, theft from a motor vehicle or motor vehicle parts or accessories, theft of a bicycle, theft from a vending machine, and all other types of thefts.”
5. The U.S. Department of Education defines serious violent incidents as those that include “rape, sexual battery other than rape, physical attack or fight with a weapon, threat of physical attack with a weapon, and robbery with or without a weapon.”
6. Survey responses came from school principals or staff most knowledgeable about crime and safety issues at the school.

## Similar Proportions of Urban and Suburban Public Schools Report Criminal Incidents

A closer look at the types of schools reporting criminal incidents reveals that the percentages of urban and suburban schools reporting criminal incidents occurring at school is more similar than many parents might suspect. In fact, because of a U.S. Department of Education school locale reclassification relating to “urban fringe” and “suburban” schools in 2005 and 2006, it is possible that the declines in the percentages of suburban schools reporting incidents of violent crime, serious violent crime, and theft may be overstated; and the slight increase in the percentage of those schools reporting incidents involving weapons, drugs, alcohol, or vandalism may be understated. This means the percentages of urban and suburban schools reporting criminal instances could be even more similar than available statistics suggest.<sup>24</sup> With this caveat in mind, during the 2003-04 school year and the 2007-08 school year, an average of slightly less than six out of every 10 urban schools reported incidents of crime across all categories compared to around half of all suburban schools.

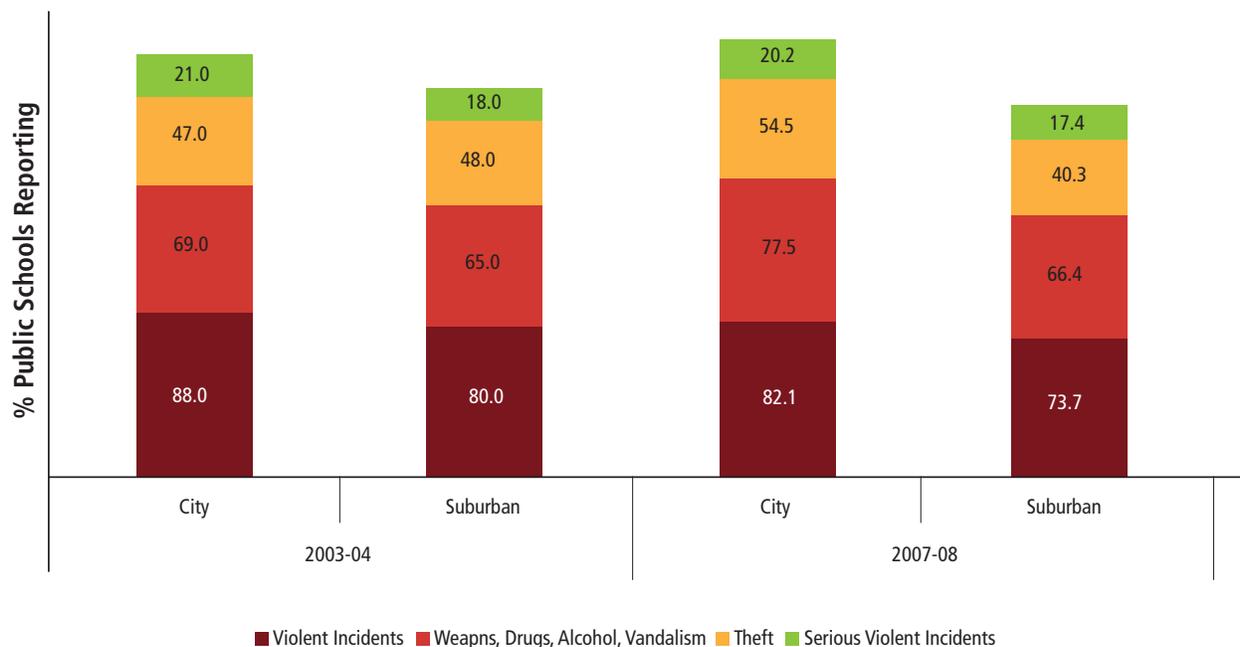
The percentage of public schools located in cities reporting violent criminal incidents declined from nearly nine out of 10 to nearly eight out of 10, compared to a decline in suburban schools from eight out of 10 to slightly more than seven out of 10. In terms of serious violent crime, the percentages of urban and suburban public schools reporting incidents in both school years

is practically indistinguishable. The percentages of schools in both locales declined about three percentage points each from the 2003-04 school year to the 2007-08 school year; however, close to one in five urban and suburban schools currently report incidents of serious violent crime.

In the 2003-04 school year close to half of both urban and suburban schools reported incidents of theft. During the 2007-08 school year, suburban schools reporting criminal incidents of theft declined nearly six percentage points, whereas urban schools reporting those incidents increased more than seven percentage points. The percentage of criminal incidents involving weapons, drugs, alcohol, or vandalism increased at both urban and suburban schools from the 2003-04 school year to the 2007-08 school year. More than three-quarters of urban schools reported such incidents in the 2007-08 school year, up from slightly more than two-thirds during the 2003-04 school year. The increase was much less pronounced among suburban schools over this period, with more than two-thirds of suburban schools reporting criminal incidents involving weapons, drugs, alcohol, or vandalism in both school years.

Again, however, it is possible that the classification changes involving suburban schools in 2005 and 2006 may overstate the decline in percentages of those schools reporting incidents of theft and understate the increase in percentages of suburban schools reporting criminal incidents involving weapons, drugs, alcohol, or vandalism.

**Figure 2: Percentage of Urban and Suburban Public Schools Reporting Crimes at School, Comparing School Years 2003-04 and 2007-08**



**Sources:** Authors' figure based on Table 1 of the U.S. Department of Education's Crime, Violence, Discipline and Safety in U.S. Public Schools: Findings from the School Survey on Crime and Safety reports for the 2003-04 and 2007-08 school years

**NOTES:**

1. The U.S. Department of Education defines "at school" as including "activities happening in school buildings, on school grounds, on school buses, and at places that hold school-sponsored events or activities."
2. The U.S. Department of Education defines violent incidents as those that "include rape, sexual battery other than rape, physical attack or fight with or without a weapon, threat of physical attack with or without a weapon, and robbery with or without a weapon."
3. Weapons, drugs, alcohol, and vandalism are classified by the U.S. Department of Education as "other incidents," defined as those that "include possession of a firearm or explosive device; possession of a knife or sharp object; distribution, possession, or use of illegal drugs or alcohol; and vandalism."
4. The U.S. Department of Education defines theft, which includes larceny (taking items worth more than \$10), as "the unlawful taking of another person's property without personal confrontation, threat, violence, or bodily harm. This includes pocket-picking, stealing a purse or backpack (if left unattended or no force was used to take it from owner), theft from a building, theft from a motor vehicle or motor vehicle parts or accessories, theft of a bicycle, theft from a vending machine, and all other types of thefts."
5. The U.S. Department of Education defines serious violent incidents as those that include "rape, sexual battery other than rape, physical attack or fight with a weapon, threat of physical attack with a weapon, and robbery with or without a weapon."
6. Survey responses came from school principals or staff most knowledgeable about crime and safety issues at the school.
7. In the figure, "suburban" represents schools defined in the 2003-04 school year as "urban fringe." See endnote 24 for more details.

**Similar Proportions of High and Low Minority Enrollment Schools Report Criminal Incidents**

Comparing schools by minority enrollment also indicates that the percentages of public schools reporting criminal incidents are not that disparate. During the 2003-04 school year and the 2007-08 school year, an average of slightly less than six out of every 10 schools with minority student

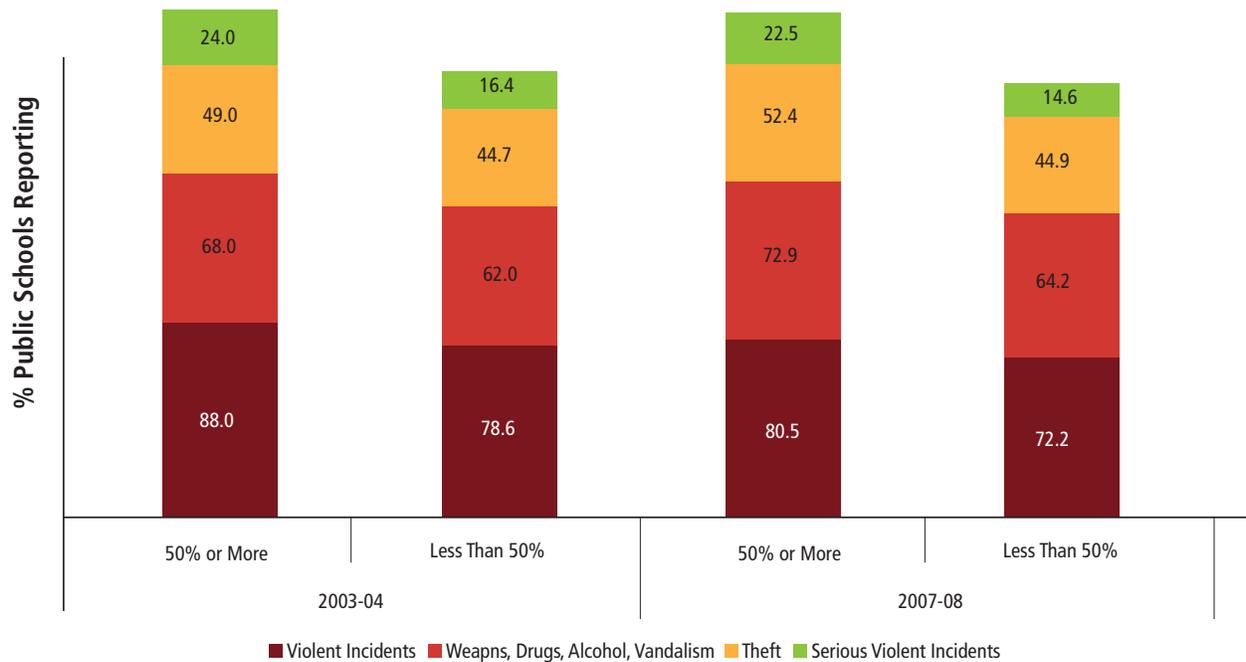
enrollment of 50 percent or more reported incidents of crime across all categories compared to around half of all schools with minority student enrollments of less than 50 percent.

It is well established that minority students, who are typically from economically disadvantaged backgrounds, are more likely to attend schools with higher incidents of crime. Statistics from the

U.S. Department of Education’s *School Surveys on Crime and Safety* corroborate that reality. Yet when it comes to the percentages of schools reporting various types of criminal incidents, fewer than 10 percentage points separates schools with 50 percent or more minority enrollment from those with minority enrollments less than 50 percent.

From the 2003-04 school year to 2007-08 school year the percentages of schools reporting violent incidents declined by more than six percentage points at schools with less than 50 percent minority enrollments, and more than seven percentage points at schools with 50 percent or more minority enrollment. The percentages of schools reporting serious violent incidents also decreased by about

**Figure 3: Percentage of Public Schools Reporting Crimes at School by Minority Enrollment, Comparing School Years 2003-04 and 2007-08**



**Sources:** Authors’ figure based on Table 1 of the U.S. Department of Education’s *Crime, Violence, Discipline and Safety in U.S. Public Schools: Findings from the School Survey on Crime and Safety* reports for the 2003-04 and 2007-08 school years.

**NOTES:**

1. The U.S. Department of Education defines “at school” as including “activities happening in school buildings, on school grounds, on school buses, and at places that hold school-sponsored events or activities.”
2. The U.S. Department of Education defines violent incidents as those that “include rape, sexual battery other than rape, physical attack or fight with or without a weapon, threat of physical attack with or without a weapon, and robbery with or without a weapon.”
3. Weapons, drugs, alcohol, and vandalism are classified by the U.S. Department of Education as “other incidents,” defined as those that “include possession of a firearm or explosive device; possession of a knife or sharp object; distribution, possession, or use of illegal drugs or alcohol; and vandalism.”
4. The U.S. Department of Education defines theft, which includes larceny (taking items worth more than \$10), as “the unlawful taking of another person’s property without personal confrontation, threat, violence, or bodily harm. This includes pocket-picking, stealing a purse or backpack (if left unattended or no force was used to take it from owner), theft from a building, theft from a motor vehicle or motor vehicle parts or accessories, theft of a bicycle, theft from a vending machine, and all other types of thefts.”
5. The U.S. Department of Education defines serious violent incidents as those that include “rape, sexual battery other than rape, physical attack or fight with a weapon, threat of physical attack with a weapon, and robbery with or without a weapon.”
6. Survey responses came from school principals or staff most knowledgeable about crime and safety issues at the school.
7. Percentages for schools with less than 50 percent minority enrollments represent authors’ averages of the corresponding percentages reported for schools with minority enrollments less than five percent; five to less than 20 percent; and 20 to less than 50 percent.

two percentage points at schools of both minority-enrollment types.

In contrast, the percentages of schools reporting criminal instances of theft and incidents involving weapons, drugs, alcohol, or vandalism increased for both minority-enrollment types from the 2003-04 school year to 2007-08 school year. Those increases, however, were larger at schools enrolling 50 percent or more minority students.

The crime statistics presented in this section corroborate previous research showing that disruptive and criminal behaviors are not limited to inner-city or high-minority enrollment public schools. On the contrary, in many instances these behaviors are more prevalent at more affluent, suburban public schools.<sup>25</sup> They also offer several important public policy cues. First, statistics show around half of all violent and serious violent crimes are *concentrated* in a small fraction of schools nationwide; however, such crimes are not *limited* to those schools. In spite of declines from the 2003-04 school year to the 2007-08 school year, around 80 percent of public schools still report violent criminal incidents, and almost 20 percent of public schools continue to report serious violent criminal incidents.

Second, although incidents of theft and those involving weapons, drugs, alcohol, and vandalism do not involve actual violence, they have a destabilizing effect on students' sense of well-being, and can compromise their learning. In fact, research has found that even one disruptive student negatively affects the learning of an entire classroom of students.<sup>26</sup> Close to half of all schools reported incidents of theft in both the 2003-04 and 2007-08 school years, and more than two-thirds of schools reported criminal incidents involving weapons, drugs, alcohol, and vandalism in both of those school years. The fact that these categories of criminal incidents are on the rise in schools is therefore a serious public policy concern.

Third, crime statistics are more similar than people might suspect for suburban and urban

public schools, as well as higher and lower minority-student enrollment schools. The statistical similarities emphasized in this section are not meant to overshadow the urgent need for improved safety in high-minority, urban schools. Intensive security efforts should be concentrated on those schools to help accelerate declines in violent and serious violent crime at school, and to reverse the increases in reported criminal theft as well as criminal instances involving weapons, drugs, alcohol, and vandalism. At the same time, this section highlights statistical similarities between schools regardless of demographics to underscore the fact that school safety is a universal policy issue that transcends socio-economic boundaries.

## RESPONSES BY SCHOOLS TO CRIMINAL INCIDENTS

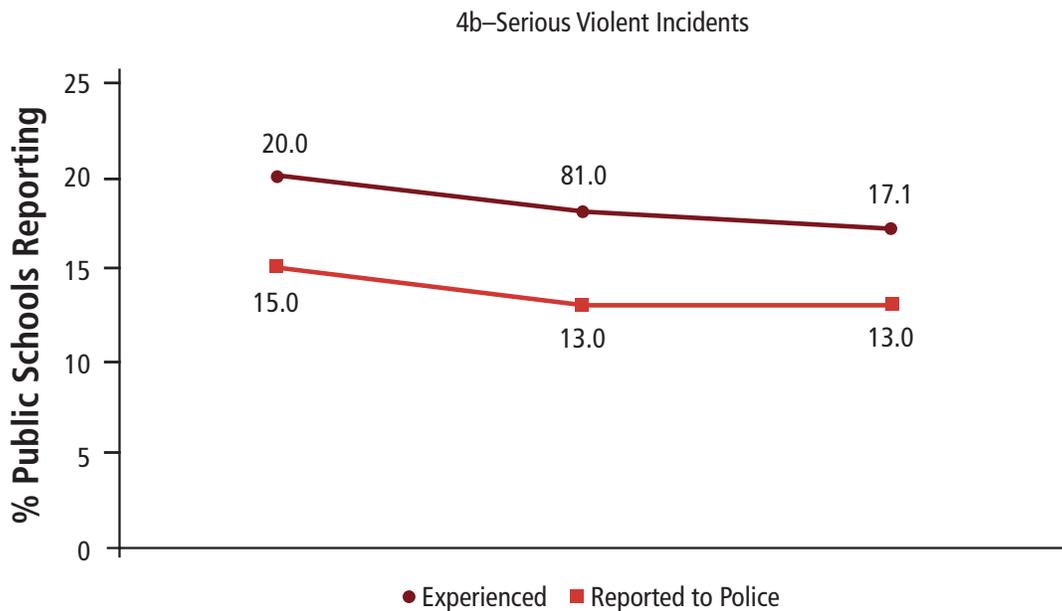
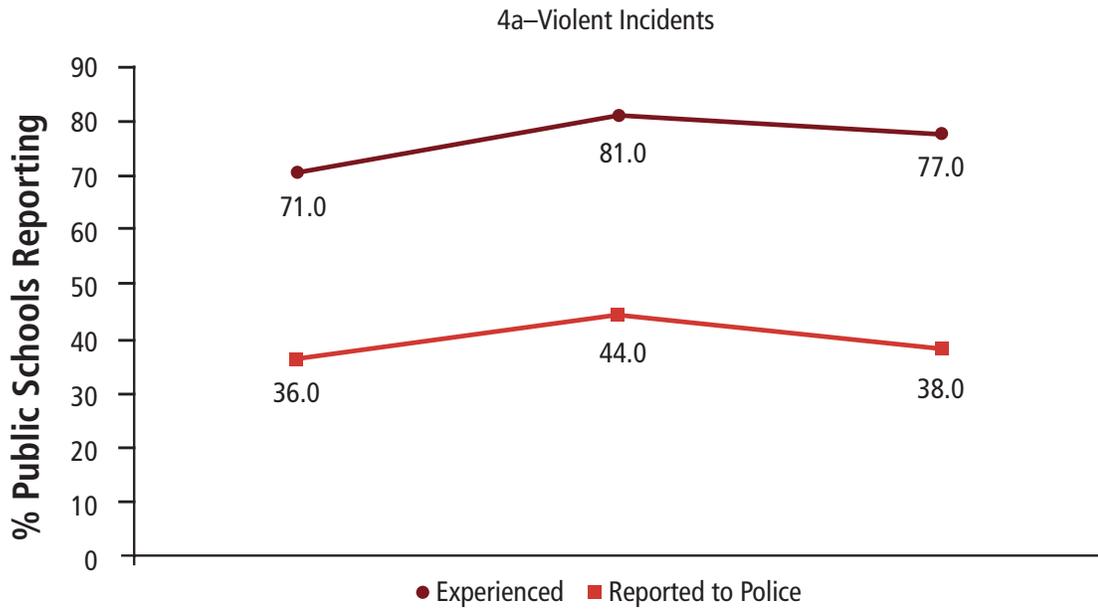
Public schools nationwide largely respond to criminal incidents by either calling the police or disciplining students. As this section reveals, however, school officials' response to criminal incidents on campus is a poor indicator of how safe schools actually are.

### Reporting to the police

During the 2005-06 school year, an estimated 2.2 million total crimes occurred at public schools, which amount to 46 crimes per 1,000 students. Of those crimes, 763,000, or 16 crimes per 1,000 students, were reported to police.<sup>27</sup> Although not all incidents may justify contacting the police, there is a distinct gap across criminal incident types between the percentages of schools experiencing criminal incidents and the percentages of schools contacting the police.

On average, about 20 percent of schools report experiencing serious violent incidents, and about three-quarters of them reported those incidents to the police. Likewise, an average of nearly 70 percent of schools report experiencing criminal incidents involving weapons, drugs, alcohol, or vandalism, and three-fourths of those schools contacted the police. The police contact rates are lower, however,

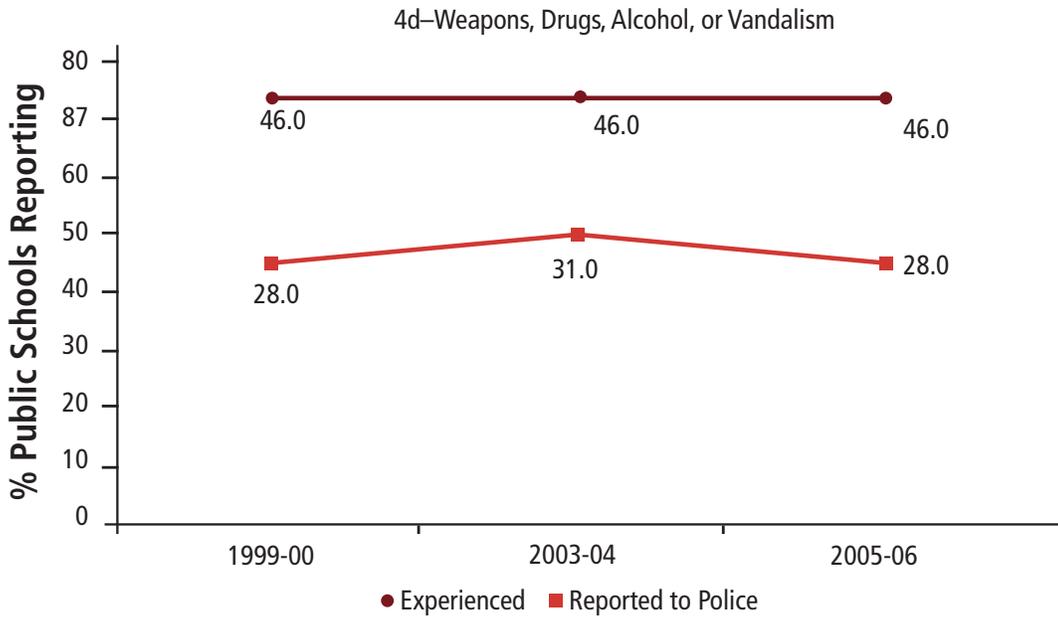
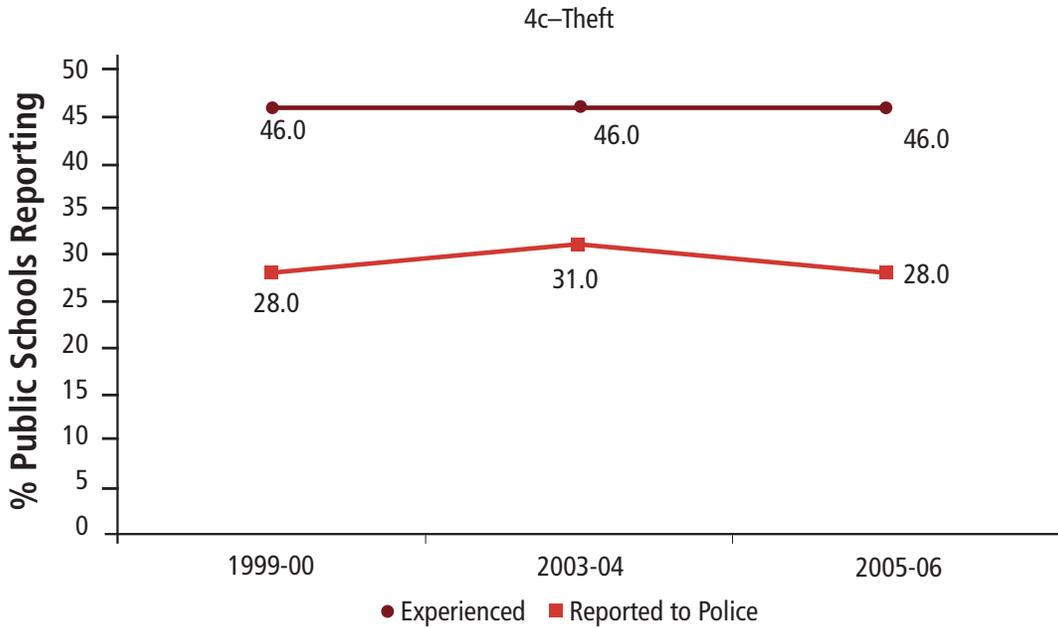
Figure 4: Percentage of Public Schools Experiencing and Reporting to Police Incidents of Crime by Type, Select School Years



Sources: Authors' figures 4a-d are based on Tables 1 and 2 of U.S. Department of Education, National Center for Education Statistics, School Survey on Crime and Safety (SSOCS) data for corresponding school years

NOTES:

1. Data in the figures represent criminal incidents that occurred at school. The U.S. Department of Education defines "at school" as including "activities happening in school buildings, on school grounds, on school buses, and at places that hold school-sponsored events or activities."
2. The U.S. Department of Education defines violent incidents as those that "include rape, sexual battery other than rape, physical attack or fight with or without a weapon, threat of physical attack with or without a weapon, and robbery with or without a weapon."



3. Weapons, drugs, alcohol, vandalism are classified by the U.S. Department of Education as "other incidents," defined as those that "include possession of a firearm or explosive device; possession of a knife or sharp object; distribution, possession, or use of illegal drugs or alcohol; and vandalism."
4. The U.S. Department of Education defines theft, which includes larceny (taking items worth more than \$10), as "the unlawful taking of another person's property without personal confrontation, threat, violence, or bodily harm. This includes pocket-picking, stealing a purse or backpack (if left unattended or no force was used to take it from owner), theft from a building, theft from a motor vehicle or motor vehicle parts or accessories, theft of a bicycle, theft from a vending machine, and all other types of thefts."
5. The U.S. Department of Education defines serious violent incidents as those that include "rape, sexual battery other than rape, physical attack or fight with a weapon, threat of physical attack with a weapon, and robbery with or without a weapon."
6. Survey responses came from school principals or staff most knowledgeable about crime and safety issues at the school.

among schools experiencing incidents of theft and violent incidents.

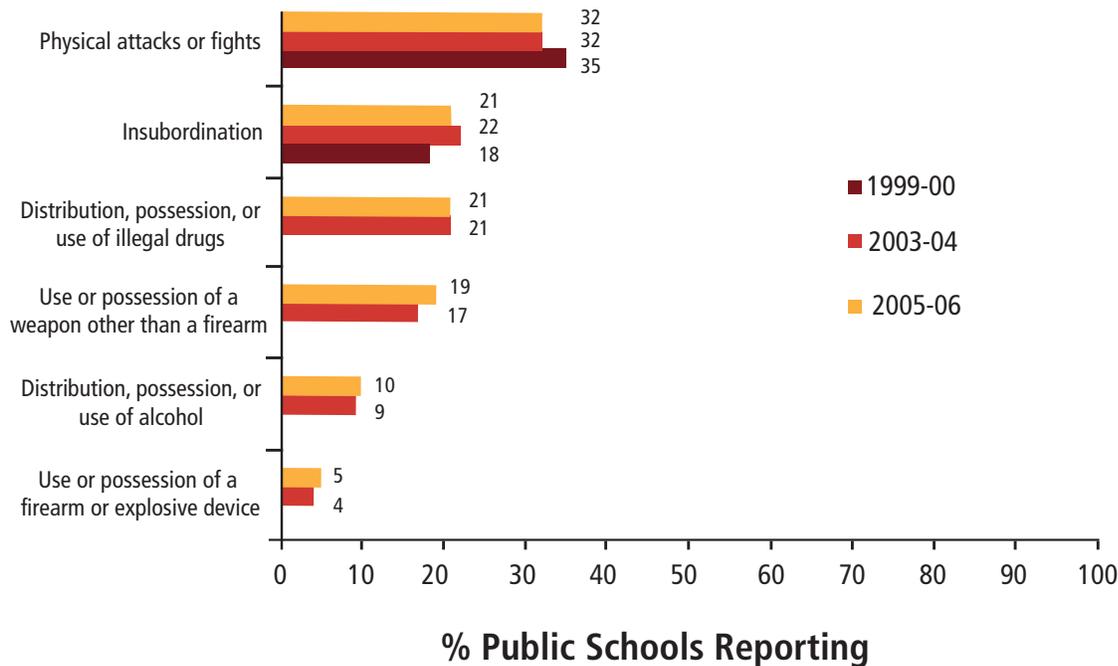
Close to half of all public schools reported incidents of theft on average, yet less than two-thirds of those schools contacted the police. The police contact rates are most alarming with regard to violent incidents. More than three-quarters of

schools reported experiencing violent incidents on average, but only about half of those schools contacted the police.

### Taking disciplinary action

Disciplinary actions taken by schools themselves are another barometer of school safety. These actions include corrective discipline as well as security

**Figure 5: Percentage of Public Schools Using Any Serious Disciplinary Action by Offense, Select School Years**



**Sources:** Authors’ figure based on Tables 14 and 15 of U.S. Department of Education, National Center for Education Statistics, School Survey on Crime and Safety (SSOCS) data for corresponding school years.

**NOTES:**

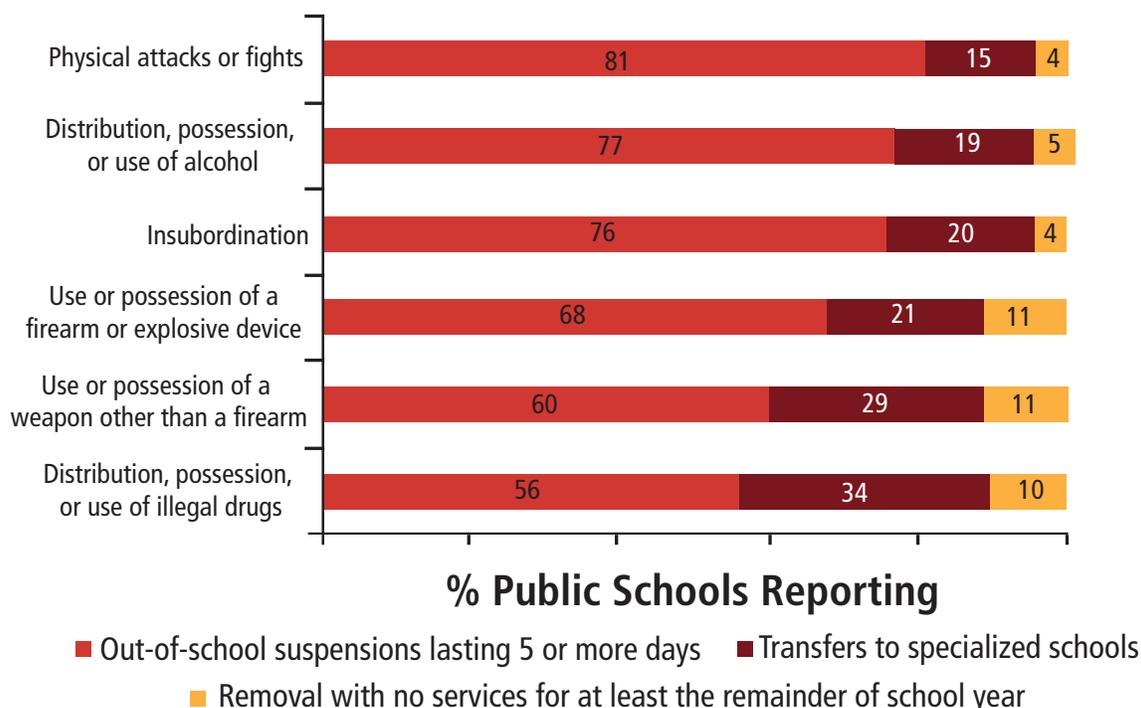
1. Serious disciplinary actions include removals with no continuing services for at least the remainder of the school year, transfers to specialized schools for disciplinary reasons, and out-of-school suspensions lasting five or more days, but less than the remainder of the school year.
2. Some data were not available prior to 2003-04.
3. The U.S. Department of Education defines physical attack or fight as “an actual and intentional touching or striking of another person against his or her will, or the intentional causing of bodily harm to an individual.”
4. The U.S. Department of Education defines insubordination as “a deliberate and inexcusable defiance of or refusal to obey a school rule, authority, or a reasonable order. It includes, but is not limited to, direct defiance of school authority, failure to attend assigned detention or on-campus supervision, failure to respond to a call slip, and physical or verbal intimidation or abuse.”
5. The U.S. Department of Education defines weapon as “any instrument or object used with the intent to threaten, injure, or kill. This includes look-alikes if they are used to threaten others.”
6. The U.S. Department of Education defines firearm or explosive device as “any weapon that is designed to (or may readily be converted to) expel a projectile by the action of an explosive. This includes guns, bombs, grenades, mines, rockets, missiles, pipe bombs, or similar devices designed to explode and capable of causing bodily harm or property damage.”
7. Survey responses came from school principals or staff most knowledgeable about crime and safety issues at the school.

measures such as controlled access to buildings, requiring faculty and staff to wear identification badges, and the use of security cameras.

Across offenses, the percentages of schools taking any serious disciplinary action at all are alarmingly low, ranging from 5 percent for the use or possession of a firearm or explosive device

to 32 percent for physical attacks or fights as of the 2005-06 school year. These figures could suggest that the incidents themselves did not warrant serious action. It also might suggest that schools that do take action have strict disciplinary policies in place and actually would be safer than schools that do not take action. The

*Figure 6: Percentage Distribution of Serious Disciplinary Actions Used by Public Schools by Offense, 2005-06 School Year*



**Sources:** Authors' figure based on Table 14 of U.S. Department of Education, National Center for Education Statistics, 2006 School Survey on Crime and Safety (SSOCS) data for 2005-06.

**NOTES:**

1. The four percent removal figure for insubordination should be interpreted with caution because the standard of error for this estimate is 30 to 50 percent of its value, according to the U.S. Department of Education.
2. The U.S. Department of Education defines physical attack or fight as "an actual and intentional touching or striking of another person against his or her will, or the intentional causing of bodily harm to an individual."
3. The U.S. Department of Education defines insubordination as "a deliberate and inexcusable defiance of or refusal to obey a school rule, authority, or a reasonable order. It includes, but is not limited to, direct defiance of school authority, failure to attend assigned detention or on-campus supervision, failure to respond to a call slip, and physical or verbal intimidation or abuse."
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5. The U.S. Department of Education defines firearm or explosive device as "any weapon that is designed to (or may readily be converted to) expel a projectile by the action of an explosive. This includes guns, bombs, grenades, mines, rockets, missiles, pipe bombs, or similar devices designed to explode and capable of causing bodily harm or property damage."
6. Percentages may not sum to 100 because of rounding.
7. Survey responses came from school principals or staff most knowledgeable about crime and safety issues at the school.

types of disciplinary actions taken by schools are detailed in Figure 6.

Out-of-school suspensions are far and away the most common disciplinary actions used by schools, not outright expulsions, which typically are used by states to determine whether schools are persistently dangerous. Using suspensions or specialized transfers may help schools avoid a persistently dangerous label, but it compromises parents' ability to judge the safety of their children's schools and transfer their children to other schools under the "Unsafe School Choice Option."<sup>28</sup>

As the following sections show, there is growing concern over the prevailing regulatory approach to identifying unsafe schools, and the absence of safe school options is negatively affecting students, many of whom do not feel safe at school—in spite of reported statistical improvements in school safety.

## GROWING CRITICISM OF THE REGULATORY APPROACH TO SCHOOL SAFETY

National statistics do not tell the whole story for parents who want to know how safe their child's school really is. For example, the U.S. Department of Education, Office of Inspector General concluded, "Bureau of Justice data on school violence indicates that school violence is more prevalent than USCO [Unsafe School Choice Option] results indicate."<sup>29</sup> There has been growing criticism that data collected by the states and the federal government is unreliable, largely because it is not based on actual incidents but surveys.<sup>30</sup>

In her recent analysis of public school safety, Lisa Snell of the Reason Foundation examined the national safety statistics in greater detail. She concluded, "As a parent you are far more likely to find crime data about your child's school in the newspapers than you are on the district's Web site."<sup>31</sup> Media coverage helps fill an important void in exposing school violence that might otherwise go unreported.<sup>32</sup> Each year, newspapers publish hundreds of stories about school violence, including shootings, fights, and sexual assaults. In

many instances, those stories report acts of violence committed by students against other students. Other stories involve student violence against teachers, and vice versa. Adding to the tragedy of those accounts is the fact that, in a significant number of cases, school district officials were either unaware of safety problems, or kept parents in the dark when acts of violence occurred.

For example, the *San Bernardino County Sun* exposed the fact that the Chaffey Joint Union High School District in Ontario, California, employed a now-retired math teacher accused of murdering and dismembering his wife. He previously confessed to raping and murdering an Oklahoma hitchhiker in 1967, but was not sentenced because authorities could not find the victim's body. The Chaffey teacher, however, did serve time for arson, and was even accused by the U.S. Secret Service of threatening the life of President Nixon.<sup>33</sup>

Likewise, the *Chicago Tribune* reported that an East Peoria school did not know that a convicted 16-year-old sex offender had enrolled until the older brother of his seven-year-old victim told their mother that the sex offender was in his gym class. His mother informed the school and later told the *Tribune*, "I'm just one person in Peoria...If [my son's assailant] fell through, how many other kids are out there that these schools don't know about?"<sup>34</sup>

In many instances, regulatory safeguards break down, and districts must rely on other channels to identify potential and actual abusers. The Bonita Unified School District in Los Angeles County, California, spent millions of dollars over the years settling cases involving students who were sexually abused by teachers. Despite spending an additional \$100,000 more on sexual abuse prevention training for school staff, it wasn't until a Bonita math teacher was caught in an NBC Dateline "To Catch a Predator" sting that district officials realized he posed a threat. As reported in the *San Gabriel Valley Tribune*, "While the teacher pleaded guilty, and some students said his classroom behavior left them unsurprised at his arrest, Bonita officials didn't have a clue."<sup>35</sup>

In other cases, school districts are fully aware of potential or even actual criminal backgrounds of their staff members. An investigation by *Denver Post* staff writer Doug Oplinger concluded, "In reality, disclosures of school violence vary wildly from one district to another. Some schools report every punch thrown on the playground. Others did not include assaults that police classified as felonies." Oplinger discovered that at metro-area schools reporting no violence or fights at all was a boy requiring staples to close head wounds. Another girl was hospitalized with bruised kidneys. There were also incidents including a sexual assault, a knifing, and attacks with a flagpole and a baseball bat.<sup>36</sup>

Officials at the Torrance Unified School District in Los Angeles County, California, allowed a convicted sex offender to be a school volunteer but did not notify parents. Parents subsequently discovered that the volunteer was registered on the Megan's Law sex offender Web site. After initial denials of any knowledge about the matter, district officials admitted they were aware of the volunteer's background but said there were extenuating circumstances for allowing him to be in his daughter's classroom as a volunteer.<sup>37</sup>

Evidence suggests such examples are just the tip of the iceberg. Kenneth S. Trump is President and CEO of National School Safety and Security Services, Inc., a Cleveland-based national firm specializing in school security and emergency preparedness consulting and training. Over the past 20 years, Trump has worked with school officials in urban, suburban, and rural communities in 45 states. Federal reports indicate school violence has declined over the past several years, but experts such as Trump attribute that decline to school administrators' unwillingness to report the problem. "For the U.S. Department of Education to tell the American education community and public in general that school crime is declining is misleading," according to Trump.<sup>38</sup> In his April 23, 2007, testimony before the U.S. House Committee on Education and Labor, Trump explained:

Parents will forgive educators, legislators, and others with whom they entrust their children's education and safety if their children's test scores go down for one year. They are much less forgiving if something harmful happens to their children that could have been prevented in the first place or better managed in a crisis which could not be averted...

One of the "dirty little secrets" in our nation's education community is that there is no comprehensive, mandatory federal school crime reporting and tracking of actual school crime incidents for K-12 schools...

Federal school crime and violence data by-and-large consists of a hodgepodge collection of just over a half-dozen academic surveys and research studies... Additionally, the "Persistently Dangerous Schools" component of the federal No Child Left Behind law requires states to create definitions of a "persistently dangerous school" so that parents may have the option of school choice. This label alone is considered to be the "Scarlet Letter" of education today. The result has been that to avoid creating a politically volatile relationship with local education agencies, states have created definitions of "persistently dangerous" that are so unreachable that they could not be met by most school districts even if they wanted the label. The result, at best, has been well intended legislation that has been lost in the politics of implementation.

The aforementioned points should beg this Committee, and Congress in general, to ask how you can make sound policy and funding decisions when as a nation, we do not even have timely and accurate incident-based data on how many school-associated violent deaths and gun offenses occur on campus, much less the many, many more

common forms of school violence and crime such as assaults, sexual assaults, other weapons offenses (such as bladed weapons), threats and menacing, extortion, etc.<sup>39</sup>

According to a recent survey by the National Association of School Resource Officers (NASRO), “Crimes occurring on school campuses nationwide are underreported to law enforcement and the current federal No Child Left Behind Act requirement for states to define ‘persistently dangerous’ schools will lead to further underreporting of school crime,” a phenomenon subsequently documented by the U.S. Department of Education’s Office of Inspector General. Specifically, the NASRO survey found that more than 87 percent of school-based police officers reported that the numbers of crimes occurring on school campuses nationwide are underreported to police.<sup>40</sup> Absent alternatives, students are taking matters into their own hands.

### **MORE STUDENTS AVOIDING SCHOOL OVER SAFETY CONCERNS IN SPITE OF IMPROVING SAFETY STATICS**

The Centers for Disease Control (CDC) has documented improvements in certain school safety indicators from 1993 to 2007. Students reporting that they had carried weapons on school property dropped by half, to 5.9 percent from 11.8 percent. Students involved in physical fights at school also declined over this period, to 12.4 percent from 16.2 percent. Students reporting their property was damaged or stolen on at school likewise declined somewhat, to 27.1 percent from 29.8 percent.<sup>41</sup> Those with an in-the-trenches experience, however, disagree.

In his April 23, 2007, testimony before the U.S. House Committee on Education and Labor, Trump explained that “the American public is being inadvertently misled when these surveys are being used to claim that school violence in America is actually decreasing over the past decade. When front-line educators and public safety officials hear quotes from this federal source claiming that

violent school crime is down over 50 percent since 1992, they laugh. But this is no laughing matter.”<sup>42</sup>

In spite of reported statistical improvements in school safety, in 2008 nearly one-third of students (30 percent) reported that they “are worried about being physically attacked by someone in the school.”<sup>43</sup> The CDC also found, “During 1993–2007, a significant linear increase occurred in the percentage of students who did not go to school because of safety concerns (4.4 percent –5.5 percent).”<sup>44</sup> Those percentages mean the number of students who skip school out of fear increased from approximately 1.9 million in the fall of 1993 to more than 2.7 million in the fall of 2007.<sup>45</sup>

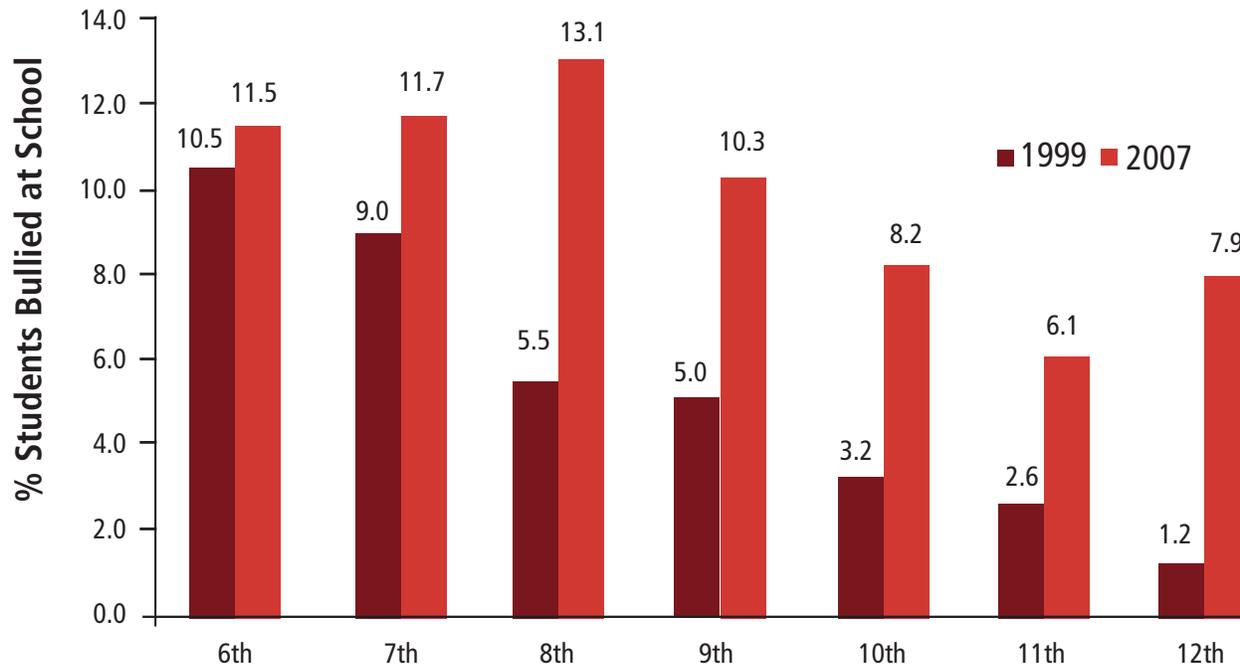
Based on a variety of government and private-sector agency surveys, some experts believe threats and bullying are contributing factors.<sup>46</sup> Since 1999, there has been an overall increase in the percentage of middle- and high-school students who report being bullied at school at least once a week. In spite of select decreases in bullying from 2005 to 2007, students who report they are bullied at least weekly has increased overall an average of nearly five percentage points since 1999.<sup>47</sup>

This increase may be due, at least in part, to better reporting. Yet the statistics are alarming given that 39 states now have bullying laws, and numerous programs have been enacted over this period to combat bullying.<sup>48</sup> The U.S. Department of Education’s Office of Inspector General also has criticized states for not including bullying among the violent offenses that count toward schools’ persistently dangerous designations.<sup>49</sup> This omission is especially troubling because in many instances acts of violence, some fatal, are preceded by instances of school bullying that went unresolved.

### **“PERSISTENTLY DANGEROUS SCHOOL” LABEL IS A POOR BAROMETER OF SCHOOL SAFETY**

Assuring safe schools is the fourth of five stated goals of NCLB. “All students,” explains the U.S. Department of Education, “will be educated in

Figure 7: Percentage of Students Bullied at School Once or Twice a Week, 1999 and 2007 Compared



Sources: Authors' figure based on bullying statistics reported in Indicators of School Crime and Safety, various years.

learning environments that are safe, drug free, and conducive to learning.”<sup>50</sup> To achieve that goal, parents have the right to transfer their children to other public schools if their current schools are deemed unsafe under the Unsafe School Choice Option (USCO) provision.

This provision occupies just two lines of the nearly 700-page NCLB Act.<sup>51</sup> It requires that, beginning in the 2003-04 school year, states receiving federal funds under NCLB had to have policies in place allowing students to transfer to a safe public school if their current school is deemed persistently dangerous or they become victims of a violent crime on campus. Schools are required to notify parents of their children’s choice option at least 14 days before the start of the new school year. Each year, states’ compliance with the NCLB Unsafe School Choice Option must be certified before the federal government releases funding for the following year.<sup>52</sup>

Apart from establishing and implementing an Unsafe School Choice Option policy, federal law requires only that states: 1) define persistently dangerous schools “in consultation with a representative sample of local educational agencies”; 2) create a state law that allows students who become victims of violent crimes on school grounds to transfer to another public school within the district, including a public charter school; and 3) the Secretary of State must annually certify in writing that the state is in compliance with the Unsafe School Choice Option statute.<sup>53</sup> The details of those policies are left up to the states.<sup>54</sup>

The analysis in this section focuses on the first five years of operation of the “Unsafe School Choice Option,” the 2003-04 school year through the 2007-08 school year. Each year, the states, the District of Columbia, and Puerto Rico are required to file Consolidated State Performance Reports, the reporting tool authorized under

Section 9303 of the Elementary and Secondary Education Act (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB). With regard to safe schools, the number of states' persistently dangerous schools is found in Part I, section 1.7. States' persistently dangerous schools definitions and data components related to those definitions are contained in Part II, section 2.7 of their Consolidated State Performance Reports. These components include out-of-school suspensions and expulsions for incidents relating to violent incidents, both with and without physical injury, weapons possession, alcohol, and illicit drugs.<sup>55</sup>

As Appendix A shows, over the five-year period from the 2003-04 school year through the 2007-08 school year, of the nearly 100,000 public schools nationwide, less than 50 were deemed persistently dangerous each year.<sup>56</sup> Over this five-year period only nine states, including Puerto Rico, identified any public schools as persistently dangerous. These states are: Georgia, Maryland, New Jersey, New York, Oregon, Pennsylvania, Puerto Rico, South Dakota, and Texas. It would be a mistake, however, to conclude that public schools in these states are necessarily more dangerous than those in states that have never identified persistently dangerous schools.

The U.S. Department of Education's Office of Inspector General released a report that was highly critical of how states define persistently dangerous schools. Overall, more than half of the states omitted common violent offenses, such as bullying. They measured disciplinary actions such as suspensions and expulsions rather than the actual number of unsafe incidents. With that information, states then require that specified numbers or proportions of disciplinary actions occur relative to schools' student enrollments. Next, those proportions of disciplinary actions for safety violations must be sustained for up to three years before schools can even be considered persistently dangerous. Each of those shortcomings runs counter to the U.S. Department of Education's non-regulatory guidance on such matters.<sup>57</sup>

Another flaw with states' persistently dangerous schools policy concerns perverse incentives. The

schools are responsible for compiling and reporting safety information that states will use to label them as persistently dangerous. With few incentives to comply, the U.S. Department of Education's Office of Inspector General noted that "it would be difficult to address all of the ways that allow the intent of USCO [Unsafe School Choice Option] to be circumvented." The Inspector General's Office recommends instead:

For the intent of USCO to be met, and due to the apparent reluctance to identify PDS, it may be more productive to replace the requirement for states to identify PDS with a requirement that states provide parents the information needed to define if a school is safe enough for their child to attend. This would eliminate the issue of the stigmatizing PDS label, alleviate the pressure on states to develop a reasonable definition of PDS, and allow school and district administrators to be less apprehensive about reporting honestly.<sup>58</sup>

In a separate report critical of California's persistently dangerous school policy, the Inspector General's Office concluded that: 1) it should not take three consecutive years before a school is even considered persistently dangerous and parents can move their children to safer schools; and 2) defining dangerous schools should be based on objective criteria students and parents would use to determine the safety of a school.<sup>59</sup>

A final flaw with the current Unsafe School Choice Option policy is that states are not required to collect or report information about how many students are eligible for or exercising their safe-school rights. States are required to include in their annual Consolidated State Performance Reports to the U.S. Department of Education the number and percentage of students transferring to better public schools if their previous schools fail to make adequate yearly progress (AYP).<sup>60</sup> There is no such requirement for states to compile similar data on the number of students exercising their transfer rights under the Unsafe School

Choice Option provision. Absent hard data, it is virtually impossible to know how many—or whether—students are exercising their safe school transfer option under existing state policies. The following section summarizes the authors' findings from interviews with state and school officials to better understand how the Unsafe School Choice Option is being implemented across the country.

## THE UNSAFE SCHOOL CHOICE OPTION: STATE FINDINGS

To help fill the current void about how states are implementing the “Unsafe School Choice Option,” the authors contacted officials from more than 40 state education agencies, school districts, and local schools in eight states with schools identified as persistently dangerous during the five-year period covered in this analysis, the 2003-04 school year through the 2007-08 school year. Officials were contacted beginning in June 2009, with ongoing correspondence lasting through the spring of 2010. Officials were asked how many students requested USCO transfers, and how many of those transfers were granted.

The process was time consuming in most cases because there was no clear authority for tracking student transfers under the Unsafe School Choice Option provision. Many times school officials would recommend contacting school districts; and school district officials would recommend contacting county and state agencies. Those agency officials, in turn, many times referred us back to school representatives. In other cases, officials declined to comment altogether about student transfers. In still other cases, transfer records kept by school districts were erased after each school year.

States are required to track the number of students who transfer or receive supplemental services if their schools are not making adequate yearly progress (AYP) in terms of academics as part of their annual NCLB Consolidated State Performance Reports. There is no such requirement when it comes to students exercising their “Unsafe

School Choice Option.” Consequently, states are not systematically tracking students transferring under the Unsafe School Choice Option provision. This dearth of information makes it impossible to assess its effectiveness in providing students safe school options. The sparse information that was obtained is summarized below.

Officials with the New York State Education Department explained data regarding student transfers from persistently dangerous schools is collected, but since student transfers are not identified by name the department has only the gross number of transfers. Officials declined to share those numbers for this analysis.

An official from one school designated persistently dangerous in Oregon explained figures are available for students who exercised their NCLB option to transfer to better performing schools because of low AYP, but that schools are unable to track whether students transferred through the “Unsafe School Choice Option.”

An official from one Texas school designated persistently dangerous explained that all student transfers are handled through the same process at the district level. A representative from that district was able to recall that two students transferred into the district through the USCO provision; however, officials from other persistently dangerous Texas schools and their districts could not be reached.

Another complicating factor is that states already have laws concerning transfer options when students become victims of violent crime. A state education department official from California, where none of its nearly 10,000 public schools has ever been deemed persistently dangerous, explained that school districts “do not have to report this information. Additionally, students don't request a transfer under the Unsafe School Choice Option; districts have to offer the transfer to a student when he/she becomes a victim of a violent criminal offense that occurs on campus. The site and district have to keep record[s] that the offer was made, but

this information is not reported out. You would have to contact each individual district to obtain this information.”<sup>61</sup>

The Department of Education in Delaware keeps track of all students who exercise school choice, nearly 18 percent of the student population.<sup>62</sup> More than 7,000 students have choice within their resident districts; and nearly 3,800 of them exercise choice outside their resident districts. Another 251 students exercise choice under NCLB school improvement requirements, but because no Delaware school has been designated persistently dangerous, no students are exercising school choice under the “Unsafe School Choice Option.”

States already have tracking systems in place to comply with NCLB reporting requirements concerning students exercising choice under AYP provisions. Data on students transferring to safe schools under existing state and federal USCO laws should be compiled and publicly reported as well. Most important, students should not have to wait years at a time or become victims of violent crime before their parents are allowed to transfer them to safer schools. The following section describes how allowing parents to use Safety Opportunity Scholarships (SOS) to transfer their children to another public district school, either within or outside their resident districts, charter school, virtual school, or private school would be a better way to help ensure students attend safe schools.

### **ADVANTAGES OF ENACTING A SAFETY OPPORTUNITY SCHOLARSHIP (SOS) PROGRAM**

Although NCLB reauthorization is still pending, states should not wait for Congress to act when it comes to ensuring students’ safety at school. As it stands now, parents with students in schools they believe are not safe for them have two options. They must either wait for their children to become victims before they can transfer to another public school under existing state law or wait years for their children’s schools to be designated

“persistently dangerous” under states’ persistently dangerous schools definitions as required under NCLB. Of course, if there are no safer alternatives within their resident public school district, parents may not have any alternatives.

Further, as the U.S. Department of Education states in its non-regulatory guidance, “We strongly encourage all States to annually review and revise their definition of a persistently dangerous school.”<sup>63</sup> A fundamental barrier states face in accomplishing these goals is the federal procedural requirement that persistently dangerous schools must be defined “in consultation with a representative sample of local educational agencies.”<sup>64</sup> On its face it makes sense that school officials would help craft the definition of a dangerous school. In reality, however, that requirement creates a fundamental conflict of interest because the policy relies on the ones facing consequences to be responsible for compliance. It is not surprising, then, that out of the nearly 100,000 public schools nationwide, fewer than 50 are deemed persistently dangerous each year.<sup>65</sup> It is also not surprising that states with schools designated as persistently dangerous cannot or will not provide basic information on whether or how many students are exercising their Unsafe School Choice Option.

Testifying before the U.S. Senate Homeland Security and Governmental Affairs Committee in May 2009, Latasha Bennett, a District of Columbia mother of two, explained the importance of choosing safe schools for her children:

I already lost a nephew to the D.C. [public] schools. You may remember the story Feb. 2, 2004, of James Richardson 17 year old, student at Ballou, a star football player, who was shot inside the school. That was my nephew. His assigned neighborhood school was unsafe and had low expectations for the students. I wonder if he would be sitting here today as a success story, if a scholarship had been available for him to attend a private school...I will

not lose my babies when they are so bright and willing to learn.<sup>66</sup>

A Safety Opportunity Scholarship (SOS) program would empower parents to transfer their children to safe schools and to fulfill the stated goal of NCLB that “All students will be educated in learning environments that are safe, drug free, and conducive to learning.”<sup>67</sup> Parents with a reasonable apprehension for their children’s safety, based on the experiences of their children and/or actual incidents-based statistics schools would be required to report, would be allowed to transfer them to safer schools of their choice using a Safety Opportunity Scholarship. Scholarships would be worth the same amount students’ current public schools receive and could be used at any public district, charter, or virtual school, as well as at any participating private school, within or beyond students’ resident school districts.

This section summarizes the advantages a Safety Opportunity Scholarship (SOS) program would have over current state and federal safe schools policy based on recommendations from the U.S. Department of Education and other experts.<sup>68</sup>

## 1. Schools report meaningful safety information.

Under a Safety Opportunity Scholarship (SOS) program, schools would be required to report actual incidents, not disciplinary actions. This requirement follows the express recommendation of the U.S. Department of Education, which states in its non-regulatory guidance:

We strongly encourage SEAs [state education agencies] to work with local law enforcement officials, including school resource officers, to identify other sources of data and information that can be used to accurately assess whether a school is persistently dangerous. Many current State definitions utilize suspension and expulsion data, which measure disciplinary responses to an incident. We urge SEAs to use data that relate to incidents (numbers of offenses) even

when an offender is not apprehended and subsequently disciplined.<sup>69</sup>

Instead of complicated disciplinary actions reporting, public schools in states adopting the SOS program would instead present the same data the FBI collects through its National Incident Based Reporting System (NIBRS).<sup>70</sup> This system documents crimes known to the police along with a variety of data including the nature and type of crimes, victim and offender characteristics, the type and value of property stolen and recovered, and characteristics of people arrested in connection with a crime. Incident-based data provide an extremely large amount of information about crime in a streamlined, uniform way that public elementary and secondary schools easily could emulate.<sup>71</sup> Annual *Crime in the United States* reports are available online and document offenses known to law enforcement broken down into common-sense categories of violent crimes and property crimes. A separate report is available on hate crimes as well. Statistics are available for the nation, states, counties, various localities and cities, as well as for universities and colleges by state.<sup>72</sup>

Under an SOS program, public schools would collect and report the same safety data as universities and colleges are currently required to do. That information would be reported to state education agencies, which would compile the safety information and present it as a searchable database for parents and the public to access through links on their Web site home pages. Links to this database would also be available on the Web site home pages of public schools and districts, so parents could access it readily and make better informed decisions about their children’s schools. Schools, districts, and state education agencies also should have portals that enable students to report incidents anonymously so school officials can investigate.

This information removes the perverse incentive for schools to under-report safety incidents because instead of labeling schools, parents are simply empowered to act. The SOS program reporting

requirements also eliminate the unintended consequence that makes safer schools appear dangerous. Under the current PDS-label approach, schools that diligently report safety statistics appear comparatively unsafe to schools with lax reporting procedures, when in fact, such rigor suggests they take a no-nonsense approach to school safety.

## 2. Actionable information replaces PDS stigma.

While it will take an act of Congress to remove the PDS label requirement, it has proved an ineffective barometer of school safety at best. States also do not need to wait to allow parents to transfer their children if they have a reasonable apprehension about their children's safety. SOS transfers would help protect children without stigmatizing schools. Importantly, only schools that are truly unsafe would lose significant numbers of students through SOS transfers. Faced with the loss of actual students and their education dollars, those schools would have to improve school security to retain and attract new students or shut down. That reality, more than any government label, is the best assurance that students are kept safe at school. This practice follows the recommendation of the U.S. Department of Education's Office of Inspector General's noted previously that states be allowed to replace the PDS label with information parents actually can use to assess the safety of their children's schools. This change would remove the PDS stigma, and encourage school and district officials to report safety statistics more honestly.<sup>73</sup>

## 3. Students at risk have immediate safe school options.

Under an SOS program students would not have to wait years at a time for schools to meet states' narrow NCLB definitions of persistently dangerous, or become victims of violent crimes, before they would be eligible to transfer to safer schools. "While many States have defined 'persistently dangerous' schools as schools that meet State-established criteria over a period of two

to three years," according to the U.S. Department of Education, "we strongly encourage States to define persistently dangerous schools based on the number of incidents over a shorter period, specifically one school year. Students should not be subjected to violent offenses and activities over a period of years before a transfer option is made available."<sup>74</sup> Under an SOS program, students would be eligible for transfers if their parents had a reasonable apprehension for their safety, based on the experiences of their children such as bullying, hazing, or harassment, and/or the actual incidents-based statistics schools would be required to report. Basing students' SOS transfers on a reasonable apprehension standard is justified given the recommendation of the U.S. Department of Education's Office of Inspector General that dangerous schools be defined according to objective criteria students and parents would use to determine the safety of a school.<sup>75</sup>

## 4. Students at risk have greater safe school options.

When safer public school options are not available in students' resident districts, the U.S. Department of Education explains that under the current Unsafe School Choice Option policy, "LEAs [local education agencies or districts] are encouraged, but not required, to explore other appropriate options such as an agreement with a neighboring LEA to accept transfer students."<sup>76</sup> Importantly, there is no federal prohibition against allowing student transfers to private schools or home school settings. In fact, a strong case could be made that schools accepting federal funds that do not make private options available could be in violation of the federal Free and Appropriate Education (FAPE) mandate. Although this mandate applies to students with disabilities, its intention is that public schools supported with public funds must meet students' individual needs.<sup>77</sup> When traditional public schools cannot provide those services, they use public funds to send students to private schools. Approximately 362,000 schoolchildren with special needs currently are being educated in private- or home-school settings at public expense under the federal Individuals

with Disabilities Education Act (IDEA).<sup>78</sup> The FAPE standard of meeting students' needs should certainly apply in the larger context of providing learning environments that absent safety are not conducive to learning.

Research also shows that students benefit from the better educational environments private schools typically offer compared to public schools. A recent national survey found that one in three public high school students believes his or her school is not doing enough to prevent bullying on school grounds, while one in four students thinks his or her school is not doing enough to prevent gang activity on school grounds. One in five students also thinks his or her school does not do enough to prevent trespassers from being on schools grounds.<sup>79</sup>

A joint report from the U.S. Department of Education and U.S. Bureau of Justice Statistics reveals similar findings in their comparison of public and private school environments. Public school teachers are more than three times as likely as private school teachers to be threatened by students, and twice as likely to be physically attacked. Public school students are more than six times as likely as private school students to report the presence of gangs, and around twice as likely to be called hate-related slurs or see hate-related graffiti at their schools. Public school students are also more likely than private school students to be bullied.<sup>80</sup> The U.S. Department of Education and U.S. Bureau of Justice Statistics conclude, "In every survey year, students in public schools were more likely than students in private schools to fear being attacked at school."<sup>81</sup> In fact, public school students are five times as likely as the private school counterparts to avoid certain areas at their schools because someone might attack them.<sup>82</sup>

Recent findings from the Foundation for Educational Choice help quantify the comparative safety of public schools and private schools in

states with school choice policies. This research is important to the current analysis because it indicates how expanding safe school options to private schools, not just public schools, could strengthen the current Unsafe School Choice Option policy. Using a detailed search methodology covering newspaper reports over a five-year period, the Foundation for Educational Choice analysis found that instances of sexual, financial, academic, and other forms of misconduct are disproportionately found in public schools, 98 percent of cases compared to two percent. With 89 percent of students enrolled in public schools at the time, these findings are even more significant.<sup>83</sup>

### 5. Improved cost efficiency.

Allowing SOS transfers would not require new bureaucracies or extraordinary expenditures to collect school crime data. It simply requires presenting existing data to identify K-12 school-based crime incidents. States are supposed to be reporting actual safety incidents at school as it is based on non-regulatory guidance from the U.S. Department of Education, not the number of suspensions and expulsions. States that opted to report disciplinary actions instead of actual safety incidents therefore chose to implement burdensome and costly systems rather than adopt more cost-effective and transparent incident-based school safety reporting systems.<sup>84</sup> Those states should not use their ill-advised choice as an excuse for failing to adopt a better system now. Although there would be an upfront cost to those states from converting to an incident-based reporting system, those costs could be minimized by simply reporting safety incidents on a dedicated state education agencies' Web page as described above. Public schools could work with university officials, who must already report actual crimes, to design and implement incident-based reporting systems that are both cost efficient and effective. Many schools also conduct their own school climate surveys to assess how safe and secure students, teachers, and staff feel at school. Those reports could be

posted as well to provide additional information to parents; however, survey data are no substitute for incident-based information.

Only Congress can remove the PDS mandate and the costs associated with its data collection and reporting requirements on schools, districts, and states, but states could capture savings through other aspects of a SOS transfer program. Allowing SOS transfers to other public schools would likely result in a neutral program cost, as existing funding would simply “follow” students to their new public schools.<sup>85</sup> If states expanded SOS transfer options to private schools, they would likely realize a savings since average private school tuition is less than per-pupil public school expenditures. According to the U.S. Department of Education, average private school tuition is \$8,549 compared to the average public-school per-pupil expenditure of \$11,257, a difference of more than \$2,700 per student.<sup>86</sup> Those savings could be redirected toward implementing incident-based safety reporting systems, providing additional supplemental transportation assistance if needed, and safety prevention programs.

**APPENDIX A: NUMBER OF SCHOOLS DESIGNATED PERSISTENTLY DANGEROUS BY STATE, SCHOOL YEARS 2003-04 THROUGH 2007-08.**

STATE	# Schools Designated Persistently Dangerous				
	2003-04	2004-05	2005-06	2006-07	2007-08
Alabama					
Alaska					
Arizona					
Arkansas					
California					
Colorado					
Connecticut					
Delaware					
District of Columbia					
Florida					
<b>Georgia</b>			<b>2</b>		
Hawaii					
Idaho					
Illinois					
Indiana					
Iowa					
Kansas					
Kentucky					
Louisiana					
Maine					
<b>Maryland</b>			<b>6</b>	<b>6</b>	<b>5</b>
Massachusetts					
Michigan					
Minnesota					
Mississippi					

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STATE	# Schools Designated Persistently Dangerous				
	2003-04	2004-05	2005-06	2006-07	2007-08
Missouri					
Montana					
Nebraska					
Nevada					
New Hampshire					
<b>New Jersey</b>	<b>7</b>	<b>10</b>	<b>4</b>	<b>4</b>	
New Mexico					
<b>New York</b>	<b>2</b>		<b>5</b>	<b>17</b>	<b>27</b>
North Carolina					
Ohio					
Oklahoma					
<b>Oregon</b>	<b>1</b>			<b>1</b>	<b>1</b>
<b>Pennsylvania</b>	<b>28</b>	<b>14</b>	<b>9</b>	<b>9</b>	<b>12</b>
<b>Puerto Rico</b>	<b>9</b>	<b>15</b>	<b>8</b>	<b>4</b>	<b>3</b>
Rhode Island					
South Carolina					
<b>South Dakota</b>		<b>2</b>		<b>1</b>	
Tennessee					
<b>Texas</b>			<b>2</b>	<b>4</b>	
Utah					
Vermont					
Virginia					
Washington					
West Virginia					
Wisconsin					
Wyoming					
<b>TOTAL</b>	<b>47</b>	<b>41</b>	<b>36</b>	<b>46</b>	<b>48</b>

Sources: Authors' table based on data provided directly to them by the U.S. Department of Education on March 3, 2009.

NOTES:

1. Persistently Dangerous Schools Determinations are collected through Part I of states' Consolidated State Performance Report submitted annually, generally in December, to the U.S. Department of Education.
2. "School year" refers to the year for which the PDS determination is made; not the year for which data are collected.

## APPENDIX B: THE SAFETY OPPORTUNITY SCHOLARSHIP (SOS) ACT

### Summary

The Safety Opportunity Scholarship (SOS) Act allows parents with reasonable apprehension for their children's safety—based on their children's experiences and/or actual incident-based statistics schools report—to transfer them to safe schools of their parents' choice.

### Purpose

The Safety Opportunity Scholarship (SOS) Act is intended as state legislation independent of the federal No Child Left Behind (NCLB) Act. It would take an act of Congress to repeal the requirement that states define persistently dangerous schools and enforce Unsafe School Choice Option (USCO) policies in place; however, officials from the U.S. Department of Education as well as experts nationwide acknowledge that these federal NCLB mandates have “not advanced the national effort to ensure students a safe school environment.”<sup>87</sup> The U.S. Department of Education issued non-regulatory guidance ensuring students have access safe schools, which included the recommendation stating, “We strongly encourage all States to annually review and revise their definition of a persistently dangerous school (PDS).”<sup>88</sup> Yet the department documented the consequence of states' failure to do so when it found that out of the nearly 100,000 public schools nationwide, fewer than 50 were deemed persistently dangerous each year.<sup>89</sup>

Perverse incentives explain this failure to identify unsafe schools. “USCO has been criticized as counter-productive since its enactment...States fear the political, social, and economic consequences of having schools designated PDS, and school administrators view the label as detrimental to their careers,” according to the U.S. Department of

Education's Office of Inspector General.<sup>90</sup> The Safety Opportunity Scholarship (SOS) Act eliminates those perverse incentives by decoupling schools' compliance and enforcement. Under the federal NCLB, PDS, and USCO mandates, school representatives are largely responsible for defining dangerous schools and enforcing safe school transfers.<sup>91</sup> The Safety Opportunity Scholarship (SOS) Act limits school officials' compliance solely to reporting incident-based safety data. Parents are responsible for enforcement, namely, determining the safety of their children's schools and whether to transfer them.

This model legislation draws from the express non-regulatory guidance and other recommendations from the U.S. Department of Education to fulfill the intent of NCLB's persistently dangerous schools and Unsafe School Choice Option mandates. Specifically, the Safety Opportunity Scholarship (SOS) Act requires that states: 1) “provide parents the information needed to define if a school is safe enough for their child to attend,” rather than rely on a PDS label;<sup>92</sup> 2) define dangerous schools based on objective, incident-based criteria “students and parents would consider in determining a school's level of safety”;<sup>93</sup> 3) define “dangerous schools based on the number of incidents over a shorter period, specifically one school year”;<sup>94</sup> 4) not subject students “to violent offenses and activities over a period of years before a transfer option is made available”;<sup>95</sup> and 5) extend safe schools transfer options to traditional public district-run schools, public charter schools, virtual schools, and private schools within and beyond students' resident school districts.<sup>96</sup>

## Model Legislation

### *Section 1. {Title}*

Safety Opportunity Scholarship (SOS) Act<sup>97</sup>

### *Section 2. {Legislative Declaration}*

(A) It is the intension of [insert State legislative body] to give parents complete and total discretion to invoke their children’s right to a safe school consistent with:

- (1) Federal intent as stipulated in the No Child Left Behind (NCLB) Act that all students in the state of [insert] “will be educated in learning environments that are safe, drug free, and conducive to learning”;<sup>98</sup> and
- (2) State constitutional/legislative intent [insert education code/constitutional provision]<sup>99</sup>

### *Section 3. {Definitions}*

(A) “Program” means the Safety Opportunity Scholarship (SOS) Act in this sub-chapter.

(B) “Student” includes all children of school age eligible to attend a public district or charter school in the preceding semester or is starting school in the state for the first time.

(C) “Parent” includes a guardian, custodian, or other person with the authority to act on behalf of the child.

(E) “Department” means the state Department of Public Instruction or an organization chosen by the state.<sup>100</sup>

(F) “Participating school” means either a public school outside of the resident school district or any private school that provides education to elementary and/or secondary students that has notified the department of its intention to participate in the program and comply with its requirements.

### *Section 4. {Basic Elements of the Safety Opportunity Scholarship (SOS) Act}*

(A) Parents of students attending or eligible to attend a public elementary or secondary school shall qualify for a Safety Opportunity Scholarship (SOS) from the state for their child to enroll in and attend a participating school if they have reasonable apprehension for their child’s safety, based on the experiences of the child or incident-based statistics schools are required to report as described in Section 5(A).

(B) A Safety Opportunity Scholarship (SOS) shall remain in force until the student returns to his or her resident/assigned public school, graduates from high school, or reaches the age of 22, whichever occurs first.

(C) The maximum Safety Opportunity Scholarship (SOS) granted for an eligible student shall be equivalent to the base student allocation multiplied by the appropriate additional cost factors or student weights for the educational program that would have been provided for the student in the district school to which he or she was assigned, or the actual cost of educating the scholarship student at his or her chosen public district, charter, virtual, or private school, whichever is less.<sup>101</sup>

(D) The scholarship is the entitlement of the eligible student under the supervision of the student’s parent and not that of any school.

(E) A participating school may not refund, rebate, or share a student’s scholarship with a parent or the student in any manner. A student’s scholarship may be used only for educational purposes.

(F) A participating student shall be counted in the enrollment figures for his or her resident school district for the purposes of calculating state aid to the resident school district. The funds needed for a scholarship shall be subtracted from the state school aid payable to the student's resident school district. Any aid the school district would have received for the student in excess of the funds needed for a scholarship will be kept by the state.<sup>102</sup>

(G) At any time, the student's parent may remove the student from the participating school and place the student in another participating school.

***Section 5. {Public School, District, and Department Responsibilities}***

(A) Public elementary and secondary schools, including public charter and virtual schools, shall record actual criminal incidents in real time as state universities and colleges do through the FBI's National Incident Based Reporting System (NIBRS). This information shall be available publicly through a searchable database maintained by the Department, with links to the database posted on school, district, and the Department's Web home pages [specify other information to be included].<sup>103</sup>

(B) The resident school district shall provide a participating school that has admitted an eligible student under this program with a complete copy of the student's school records while complying with the Family Educational Rights and Privacy Act of 1974 (20 USC Section 1232 g).

(C) The resident school district shall provide transportation for an eligible student to and from the participating school under the same conditions as the resident school district is required to provide transportation for other resident students to private schools as per current law. The resident school district will qualify for state transportation aid for each student so transported.<sup>104</sup>

(D) The state education agency shall maintain a Safety Opportunity Scholarship (SOS) Web site, with links posted on school, district, and state education agencies' Web home pages, and shall include links to the following information:<sup>105</sup>

- (1) A Safety Opportunity Scholarship (SOS) program description;
- (2) Eligibility description;
- (3) Frequently Asked Questions (FAQ) document;
- (4) Responsibilities descriptions for parents, public schools, and participating private schools;
- (5) Safety Opportunity Scholarship (SOS) program application and related materials;
- (6) Program reports and statistics, including quarterly reports and annual reports as described in sub-section (E) of this sub-chapter;
- (7) Links to program statutes and rules; and
- (8) Directories of participating private schools with contact information.<sup>106</sup>

(E) The state education agency shall compile and maintain quarterly and annual reports according to a uniform reporting system followed by schools that present Safety Opportunity Scholarship (SOS) Program data and statistics in searchable, downloadable formats [specify information to be included].<sup>107</sup>

(F) The Department may bar a school from participation in the Safety Opportunity Scholarship (SOS) Program if it establishes that the participating school has:

(1) intentionally and substantially misrepresented information required under Section 5

(A); or

(2) routinely failed to comply with the accountability standards established in Section 5

(A) or (B);<sup>108</sup> or

(3) failed to comply with Section 5(C); or

(4) failed to refund to the state any scholarship overpayments in a timely manner.

(G) If the Department decides to bar a participating school from the program, it shall notify eligible students and their parents of this decision as quickly as possible. Participating students attending a school barred by the state education agency shall retain scholarship program eligibility to attend another participating school.

(H) The Department shall adopt rules and procedures as necessary for the administration of the present Safety Opportunity Scholarship (SOS) Program.

***Section 6. {Participating Private School Responsibilities}<sup>109</sup>***

(A) Administrative Accountability Standards. To ensure that students are treated fairly and kept safe, all participating private schools shall:

(1) comply with all health and safety laws or codes that apply to private schools;

(2) hold a valid occupancy permit if required by their municipality;

(3) certify that they comply with the nondiscrimination policies set forth in 42 USC 1981;<sup>110</sup> and

(4) conduct criminal background checks on employees, excluding from employment:

(a) any people not permitted by state law to work in a private school; and

(b) any people that might reasonably pose a threat to the safety of students.<sup>111</sup>

(B) Financial Accountability Standards. To ensure that public funds are spent appropriately, all participating private schools shall:

(1) demonstrate their financial accountability by:

(a) annually submitting to the Department a financial report that complies with uniform financial accounting standards and is conducted by a certified public accountant;<sup>112</sup> and

(b) having an auditor certify that the report is free of material misstatements and fairly represents the costs per pupil. The auditor's report shall be limited in scope to those

records that are necessary for the Department to make payments to participating schools on behalf of parents for scholarships.

- (2) demonstrate their financial viability by showing they can repay any funds that might be owed the state, if they are to receive \$50,000 or more during the school year, by:
  - (a) filing with the Department prior to the start of the school year a surety bond payable to the state in an amount equal to the aggregate amount of the Safety Opportunity Scholarships (SOS) expected to be paid during the school year to students admitted at the participating school; or
  - (b) filing with the Department prior to the start of the school year financial information that demonstrates the school has the ability to pay an aggregate amount equal to the amount of the Safety Opportunity Scholarships (SOS) expected to be paid during the school year to students admitted to the participating school.<sup>113</sup>

(C) Academic Accountability Standards. To ensure that schools provide academic accountability to parents of the students in the program, all participating schools shall regularly report to the parent on the student's progress.

(D) Participating School Autonomy. A participating private school is autonomous and not an agent of the state or federal government and therefore:

- (1) the state education agency or any other state agency may not in any way regulate the educational program of a participating private school that accepts a Safety Opportunity Scholarship (SOS);
- (2) the creation of the Safety Opportunity Scholarship (SOS) Program does not expand the regulatory authority of the state, its officers, or any school district to impose any additional regulation of private schools beyond those necessary to enforce the requirements of the program; and
- (3) participating private schools shall be given the maximum freedom to provide for the educational needs of their students without governmental control.

***Section 7. {Effective Date}***

The Safety Opportunity Scholarship (SOS) Program will be in effect beginning with the fall semester of the next school year.

## ABOUT THE AUTHORS

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Vicki E. (Murray) Alger is Senior Fellow and Director of the Women for School Choice Project at the Independent Women's Forum. She is currently working on a book examining the 30-year history of the U.S. Department of Education.

Dr. Alger's research focuses on education reform measures to improve academic accountability at all levels, promote a competitive education climate, and increase parents' control over their children's education. She has advised the U.S. Department of Education on public school choice and higher education reform. She has also advised education policymakers in more than 30 states, provided expert testimony before state legislative education committees, served on two national accountability task forces, and her research was used as part of the successful legal defense of Arizona's flagship tax-credit scholarship program in the U.S. Supreme Court in 2011 (*Winn v. Garriott*).

Dr. Alger has held education directorships at the Pacific Research Institute in Sacramento, California, and the Goldwater Institute in Phoenix, Arizona. Her research helped inspire numerous pieces of K-12 parental choice legislation in those states, including programs for students from low-income families, attending failing schools, with special needs, and children in the foster-care system. Dr. Alger's research also informed a statewide higher education voucher program.

Dr. Alger's research and writings on market education policy have been widely published and cited in state and national media and research outlets, as well as outlets in Canada, Great Britain, Mexico, and New Zealand. Prior to her career in

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  - 18 Based on data from the National School Safety Center. See the Virginia Youth Violence Project, University of Virginia School of Education, <http://youthviolence.edschool.virginia.edu/violence-in-schools/national-statistics.html>.
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- 81 Dinkes, R., Cataldi, E.F., Kena, G., and Baum, K. (2006). Indicators of School Crime and Safety: 2006 (NCES 2007-003/NCJ 214262). U.S. Departments of Education and Justice. Washington, DC: U.S. Government Printing Office, <http://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2007003>. See Indicator 16.
- 82 Dinkes, R., Cataldi, E.F., Kena, G., and Baum, K. (2006). Indicators of School Crime and Safety: 2006 (NCES 2007-003/NCJ 214262). U.S. Departments of Education and Justice. Washington, DC: U.S. Government Printing Office, <http://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2007003>. See Indicator 17.
- 83 Greg Forster and Matthew Carr, *Disruptive Behavior: An Empirical Evaluation of School Misconduct and Market Accountability*, Foundation for Educational Choice (formerly the Milton and Rose D. Friedman Foundation), June 1, 2007, <http://www.edchoice.org/Research/Reports/Disruptive-Behavior--An-Empirical-Evaluation-of-School-Misconduct-and-Market-Accountability.aspx>.
- 84 States' persistently dangerous schools definitions and data components related to those definitions are contained in Part II, section 2.7 of their Consolidated State Performance Reports. These components include out-of-school suspensions and expulsions for incidents relating to violent incidents, both with and without physical injury,

- weapons possession, alcohol, and illicit drugs. See U.S. Department of Education, Consolidated State Performance Reports, <http://www.ed.gov/admins/lead/account/consolidated/index.html>. In particular, SY 2007-2008 Consolidated State Performance Reports, Part II, by State, section 2.7 Safe and Drug-Free Schools and Communities Act (Title IV, Part A), subsections 2.7.1 through 2.7.2.6.2, <http://www2.ed.gov/admins/lead/account/consolidated/sy07-08part2/index.html> or an older but more accessible state-by-state summary, see Education Commission of the States, "Persistently Dangerous School Criteria," by Gloria Zradicka, updated September 2004, <http://www.ecs.org/clearinghouse/52/98/5298.htm>.
- 85 Federal resources currently exist to help offset transportation costs. See U.S. Department of Education, "Unsafe School Choice Option: Non-Regulatory Guidance," May 2004, p. 14, <http://www.ed.gov/policy/elsec/guid/unsafeschoolchoice.pdf>.
- 86 The private school average tuition figure is from the fall of 2007. The average public-school per-student expenditure is from the 2006-07 schools year. All data are for the latest years available, and are not adjusted for inflation. See tables 59 and 183 of Thomas D. Snyder and Sally A. Dillow, *Digest of Education Statistics 2009* (NCES 2010-013), National Center for Education Statistics, Institute of Education Sciences, U.S. Department of Education, Washington, DC, April 2010, <http://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2010013>.
- 87 U.S. Department of Education, Office of Inspector General, *An OIG Perspective on the Unsafe School Choice Option*, ED-OIG/S03G0015, Philadelphia, Pennsylvania, August 2007, p. 10, <http://www.ed.gov/about/offices/list/oig/auditreports/s03g0015.pdf>. The NCLB persistently dangerous school designation and the Unsafe School Choice Option mandates are supposed to ensure that students "will be educated in learning environments that are safe, drug free, and conducive to learning." See the U.S. Department of Education, "The Five NCLB Goals" on the Consolidated State Performance Reports Web site, <http://www.ed.gov/admins/lead/account/consolidated/index.html>.
- 88 U.S. Department of Education, "Unsafe School Choice Option: Non-Regulatory Guidance," May, 2004, p. 8, <http://www.ed.gov/policy/elsec/guid/unsafeschoolchoice.doc>.
- 89 U.S. Department of Education, Second Preliminary Reports of the Safe and Drug Free Schools and Communities Advisory Committee, December 8, 2006, <http://www.ed.gov/about/bdscamm/list/sdfscac/schoolrpt1.html>. Go to U.S. Department of Education, Safe and Drug Free Schools and Communities Advisory Committee, "Unsafe Schools Choice Option," December 2006, <http://www.ed.gov/about/bdscamm/list/sdfscac/topics.html#Unsafe>.
- 90 U.S. Department of Education, Office of Inspector General, *An OIG Perspective on the Unsafe School Choice Option*, ED-OIG/S03G0015, Philadelphia, Pennsylvania, August 2007, pp. 9-10, <http://www.ed.gov/about/offices/list/oig/auditreports/s03g0015.pdf>.
- 91 The Unsafe School Choice Option in Title IX, Part E, Subpart 2, Section 9532; and U.S. Department of Education, Office of Inspector General, *An OIG Perspective on the Unsafe School Choice Option*, ED-OIG/S03G0015, Philadelphia, Pennsylvania, August 2007, p. 10, <http://www.ed.gov/about/offices/list/oig/auditreports/s03g0015.pdf>.
- 92 U.S. Department of Education, Office of Inspector General, *An OIG Perspective on the Unsafe School Choice Option*, ED-OIG/S03G0015, Philadelphia, Pennsylvania, August 2007, p. 10, <http://www.ed.gov/about/offices/list/oig/auditreports/s03g0015.pdf>.
- 93 U.S. Department of Education, Office of Inspector General, "California Department of Education's Compliance with the Unsafe School Choice Option," ED-OIG/A09-E0025, Sacramento, California, March 24, 2005, p. 10, <http://www.ed.gov/about/offices/list/oig/auditreports/a09e0025.pdf>; and U.S. Department of Education, "Unsafe School Choice Option: Non-Regulatory Guidance," May, 2004, p. 8, <http://www.ed.gov/policy/elsec/guid/unsafeschoolchoice.doc>.
- 94 U.S. Department of Education, "Unsafe School Choice Option: Non-Regulatory Guidance," May, 2004, p. 8, <http://www.ed.gov/policy/elsec/guid/unsafeschoolchoice.doc>.

## Safety Opportunity Scholarships (SOS): How States Can Fulfill the Promise of Safe Schools for All Students

- 95 U.S. Department of Education, “Unsafe School Choice Option: Non-Regulatory Guidance,” May, 2004, p. 8, <http://www.ed.gov/policy/elsec/guid/unsafeschoolchoice.doc>.
- 96 U.S. Department of Education, “Unsafe School Choice Option: Non-Regulatory Guidance,” May, 2004, p. 14, <http://www.ed.gov/policy/elsec/guid/unsafeschoolchoice.doc>. See also Erik W. Robelen, “Unsafe Label Will Trigger School Choice,” *Education Week*, October 23, 2002. Throughout this model legislation the term private school is used. Legislators should use the private-school terminology that best suits standard practice in their states, such as independent or non-government schools.
- 97 For related model legislation, see the American Legislative Exchange Council, “The Parental Choice Scholarship Program Act (Universal Eligibility, Means-Tested Scholarship Amount),” amended by the Education Task Force July 16, 2009, and approved by the ALEC Board of Directors on August 27, 2009. See also California State Assembly, Assembly Bill 2361, Safe School Guarantee, [http://www.leginfo.ca.gov/pub/07-08/bill/asm/ab\\_2351-2400/ab\\_2361\\_bill\\_20080221\\_introduced.pdf](http://www.leginfo.ca.gov/pub/07-08/bill/asm/ab_2351-2400/ab_2361_bill_20080221_introduced.pdf); Vicki E. Murray, Testimony submitted to the California Assembly Education Committee - AB-2361, April 2, 2008, <http://www.pacificresearch.org/publications/testimony-submitted-to-the-california-assembly-education-committee-ab-2361>; and Vicki E. Murray, “California Focus: School safety loses in Sacramento,” *Orange County Register*, April 22, 2008, <http://www.ocregister.com/opinion/schools-24538-incidents-safe.html>.
- 98 This statement is the fourth of five stated NCLB goals states are required to pursue. See the U.S. Department of Education, “The Five NCLB Goals” on the Consolidated State Performance Reports web site, <http://www.ed.gov/admins/lead/account/consolidated/index.html>.
- 99 State lawmakers should insert here any relevant provisions from their State Constitutions or education codes.
- 100 “This bill designates the Department of Public Instruction as the agency regulating the...Program, though if your state has an existing school choice program, it could be administered in a different department. The intent was to name the existing agency in the state that is responsible for public school finances and private school regulation. Alternatively, legislators may choose to consider other capable departments, create a new small agency, or contract with a private nonprofit organization to oversee the program if they are concerned about the hostility the program would face from the existing state education department.” See note 2 of the American Legislative Exchange Council, “The Parental Choice Scholarship Program Act (Universal Eligibility, Means-Tested Scholarship Amount).”
- 101 The language here is meant to accommodate the very real possibility that students with more expensive special educational needs will be participating in the Safety Opportunity Scholarship (SOS) program. Legislators will need to ensure that the scholarship amounts, as determined by the state’s school financial system, are sufficient to cover the costs of their education at their chosen schools.
- 102 “The bill has been drafted so that any savings in the cost of educating a student shall accrue to the state. School choice legislation drafted in this manner has the political advantage of either reducing state expenditures or making more funds available for other public schools. Legislators should know that some local school districts will claim that because the state is capturing the savings the program is ‘draining resources’ away from public schools. This would not be the case if the savings were used to increase state aids to public school districts.” See note 7 of the American Legislative Exchange Council, “The Parental Choice Scholarship Program Act (Universal Eligibility, Means-Tested Scholarship Amount).”
- 103 This system documents crimes known to the police along with a variety of data including the nature and type of crimes, victim and offender characteristics, the type and value of property stolen and recovered, and characteristics of people arrested in connection with a crime. Incident-based data provide an extremely large amount of information about crime in a streamlined, uniform way that states could easily emulate. See The National Archive of Criminal Justice Data, “National Incident-Based Reporting System Resource Guide,” <http://www.icpsr.umich.edu/>

- NACJD/NIBRS; and the Federal Bureau of Investigation, “Developments in NIBRS,” on the Uniform Crimes Reports Web site, [http://www.fbi.gov/about-us/cjis/ucr/nibrs/developments-in-nibrs/developments\\_in\\_nibrs/](http://www.fbi.gov/about-us/cjis/ucr/nibrs/developments-in-nibrs/developments_in_nibrs/); and <http://www.fbi.gov/about-us/cjis/ucr/ucr/>. Legislators should consult Table 9, “Offenses Known to Law Enforcement, by State by University and College, 2008,” which breaks data down by campuses for each state, <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2008>. A separate report is available on hate crimes as well through this link. These data are part of the FBI’s annual *Crime in the United States* reports, which document offenses known to law enforcement broken down into common-sense, detailed categories of violent crimes and property crimes. See also “Offense Tables,” which present data for the nation, nation, states, counties, various localities and cities, as well as for universities, <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2008>. University and college crime data by state are available here: <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2008>. Legislators should streamline the incidents-based data schools would be required to report based on the FBI’s annual *Crime in the United States* reports with current NCLB PDS required offenses. Legislators may also want to specify that the state education agency direct schools to maintain hotlines and/or special Web functions so students can anonymously report safety incidents for school officials to investigate.
- 104 Federal resources currently exist to help offset transportation costs. See U.S. Department of Education, “Unsafe School Choice Option: Non-Regulatory Guidance,” May 2004, p. 14, <http://www.ed.gov/policy/elsec/guid/unsafeschoolchoice.pdf>. Legislators should also insert any relevant state education code statutes about transportation funding here.
- 105 The Florida Department of Education’s Office of Independent Education and Parental Choice maintains an excellent School Choice Web site legislators may want to use as a model. See, <http://www.floridaschoolchoice.org/>. Legislators concerned about hostility from the state education agency toward this program should define the program description, application, eligibility requirements, and other information clearly in statute.
- 106 Because enrollment in these schools is optional for parents, legislators do not need to require they collect and report this information. Requiring such reporting would likely dampen participation of independent/non-government/private schools; however, for political reasons, legislators may want to require that participating schools do report this information.
- 107 The Florida Department of Education’s Office of Independent Education and Parental Choice compiles excellent annual and quarterly reports for each of its parental choice programs. See, <http://www.floridaschoolchoice.org/>. All tables in those reports should be available for download in formats conducive to analysis, such as Excel. Compiling this information should not be an undue burden for the state education agency since schools should be collecting this information in an Excel or similar format, which can be linked to the SEA’s database.
- 108 “The legislation allows schools to occasionally fail to meet an accountability standard so that an antagonistic regulator cannot shut down the program by banning schools with a modest occasional violation such as turning in a report late.” See note 17 of the American Legislative Exchange Council, “The Parental Choice Scholarship Program Act (Universal Eligibility, Means-Tested Scholarship Amount).”
- 109 This model legislation does not require private schools to report incidents-based crime statistics as public schools must. Unlike public schools, parents are free to choose whether their children attend private schools or not. Private schools also likely have their own school safety reporting procedures in place. Legislators may include a provision in this section requiring private schools to report the same data as public schools; however, this requirement may dampen private school participation.
- 110 “Under 42 USC 1981, private schools are already prohibited from discriminating with respect to race, color and national origin. In addition, if private schools are recipients of federal funds, they are subject to nondiscrimination requirements under 42 USC 2000d (race, color, national origin) and 29 USC 794 (disability). If you choose to include language banning discrimination in hiring on the basis of race,

color, national origin, or disability, take care not to interfere with the ability of religious institutions to hire individuals who share their religious beliefs.” See note 9 of the American Legislative Exchange Council, “The Parental Choice Scholarship Program Act (Universal Eligibility, Means-Tested Scholarship Amount).”

111 “The model legislation provides schools with the tools they need to ensure that students will be safe. The schools are required to conduct criminal background checks on existing and potential employees, and then they are given the flexibility to determine from this information whether the employee might pose a risk to students. This language is valuable in two cases: 1) a small number of states prohibit discriminating against felons in hiring even for sensitive positions in schools, and this language would give schools clear authority to dismiss or not hire individuals who pose a risk to student safety; and 2) some religious schools see rehabilitation as part of their mission. In this case, the schools could hire someone with a criminal background who they believe is no longer a threat to students, such as someone who committed nonviolent crimes or has decades-old violations followed by a clean record. This language would give schools the responsibility to do background checks and the power to exclude potential risks from the school.” See note 10 of the American Legislative Exchange Council, “The Parental Choice Scholarship Program Act (Universal Eligibility, Means-Tested Scholarship Amount).”

112 “The purpose of the financial information report is to make sure that the Department can ascertain the costs of educating a student at the school and to ensure public funds are used appropriately. The legislation does not call for an independent audit because this would be unnecessarily expensive and invasive for many private schools.” See note 11 of the American Legislative Exchange Council, “The Parental Choice Scholarship Program Act (Universal Eligibility, Means-Tested Scholarship Amount).”

113 “The model legislation provides for two methods for schools to demonstrate financial viability to ensure that public funds are secure. The first method employs a market-based means of demonstrating viability. Private companies that issue surety bonds have a financial interest in making sure that the

schools can repay any funds that might be owed the state. They will therefore conduct the checks necessary to protect their financial interest as well as the taxpayers’ financial interests. Surety bonds can be expensive (one to three percent of the amount covered) or invasive for some institutions, so the legislation allows schools to demonstrate by some other means that they have the financial wherewithal to pay back any amount they might owe the state. This might include things like personal guarantees, reserve accounts, or escrow accounts.” See note 12 of the American Legislative Exchange Council, “The Parental Choice Scholarship Program Act (Universal Eligibility, Means-Tested Scholarship Amount).”



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