

****635 – Student Safety Measures:** This updated policy removes references to NCLB as outdated, and replaces them with references to the ESSA. In addition, since the SDE's policy was adopted in 2003, the Idaho legislature has modified some of the language of the criminal offenses defined in the policy. For example, the definition of stalking has been completely modified to include both first and second degree stalking. Although the SDE's policy continues to use the terms as they appeared in the law in 2003, we are updating the definitions to comport with existing statutory definitions, to avoid confusion.

The Idaho State Board of Education has approved an operational definition of a “persistently dangerous” school for purposes of complying with the **Unsafe School Choice Option, mandated by the Elementary and Secondary Education Act of 1965, as reauthorized by the Every Student Succeeds Act of 2015 (ESSA)**, and definitions of violent criminal offenses.

DEFINITION OF PERSISTENTLY DANGEROUS SCHOOL

In the context of **the ESSA**, an Idaho public elementary or secondary school is considered to be persistently dangerous if it meets the following criteria:

In each of three **(3)** consecutive years, there is one **(1)** instance of:

Homicide
Sexual offense
Kidnapping

or the school exceeds an expulsion or student conviction rate of:

1% of the student body

or

3 students, whichever number is greater, for violent criminal offenses or for violations of federal or state gun free schools requirements on school property or at school sponsored events while school is in session.

For the purpose of this definition, a “violent criminal offense” is defined as conduct which could be charged as a felony or misdemeanor involving the threat of or actual physical injury, a sexual offense, homicide, rape, robbery, aggravated assault, aggravated battery, stalking, first degree kidnapping or aggravated arson.

DEFINITIONS OF VIOLENT CRIMINAL OFFENSES

The definitions of most violent offenses, such as homicide and rape, are commonly understood and do not need further clarification. Other terms, such as aggravated assault, aggravated battery,

and robbery, are subject to individual state definitions and may be misapplied by those not familiar with their legal definitions. Therefore, for purposes of the Unsafe School Choice Options program, the following definitions taken from Idaho Code shall apply:

1. **Assault (*Threat of or Actual Physical Injury*).** To express an intent, through word or action, to inflict harm upon another's person, coupled with the apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent. Idaho Code §18-901.
2. **Aggravated Assault.** An aggravated assault is an assault (a) with a deadly weapon or instrument without the intent to kill; or (b) an assault by any means or force likely to produce great bodily harm; or (c) with any vitriol, corrosive acid or a caustic chemical of any kind. Idaho Code §18-905.
3. **Aggravated Battery.** An aggravated battery is a battery in which a person: (a) causes great bodily harm, permanent disability, or permanent disfigurement; or (b) uses a deadly weapon or instrument; or (c) uses any vitriol, corrosive acid, or a caustic chemical of any nature; or (d) uses any poison or other noxious or destructive substance or liquid; or (e) upon the person of a pregnant female, causes great bodily harm, permanent disability, or permanent disfigurement to an embryo or fetus. Idaho Code §18-907.
4. **Robbery.** Robbery is the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear. Idaho Code §18-6501. (Note: Robbery differs from theft because of the physical presence of the victim and the force or fear component involved in the perpetrator taking the property from the victim against his will.)
5. **Homicide.** The unlawful killing of a human being.
6. **Aggravated Arson.** Burning or damaging, by fire or explosion, a structure or real or personal property, resulting, directly or indirectly, in great bodily harm, permanent disability, permanent disfigurement, or death of any person, regardless of intent or lack of intent to cause such harm. Idaho Code §18-805.
7. **Kidnapping-First Degree.** Any kidnapping committed for the purpose of: (a) obtaining money, property, or another thing of value for the return or disposition of such person; (b) raping or committing the infamous crime against nature; (c) committing serious bodily injury upon the person kidnapped; (d) committing any lewd and lascivious act upon any child under the age of 16. Idaho Code §18-4502.
8. **Stalking –Second Degree.** A person commits the crime of stalking in the second degree if the person knowingly and maliciously (a) engages in a course of conduct that seriously alarms, annoys or harasses the victim and is such as would cause a reasonable person substantial emotional distress; or (b) engages in a course of conduct such as would cause a reasonable person to be in fear of death or physical injury, or in fear of the death or physical injury of a family or household member. "Course of conduct" means repeated acts of nonconsensual contact involving the victim or a family or household member of the victim,

provided, however, that constitutionally protected activity is not included within the meaning of this definition. “Nonconsensual contact” means any contact with the victim that is initiated or continued without the victim’s consent, that is beyond the scope of the consent provided by the victim, or that is in disregard of the victim’s expressed desire that the contact be avoided or discontinued. Nonconsensual contact includes, but is not limited to: (a) following the victim or maintaining surveillance, including by electronic means, on the victim; (b) contacting the victim in a public place or on private property; (c) appearing at the workplace or residence of the victim; (d) entering onto or remaining on property owned, leased, or occupied by the victim; (e) contacting the victim by telephone or causing the victim’s phone to ring repeatedly or continuously regardless of whether a conversation ensues; (f) sending mail or electronic communications to the victim; or (g) placing an object on, or delivering an object to, property owned, leased or occupied by the victim. Idaho Code §18-7906

9. **Stalking – First Degree.** A person commits the crime of stalking in the first degree if the person violates Idaho Code §18-7906 and: (a) the actions constituting the offense are in violation of a temporary restraining order, protection order, no contact order or injunction, or any combination thereof; or (b) the actions are in violation of a condition of probation or parole; or (c) the victim is under the age of sixteen (16) years; or (d) at any time during the course of conduct constituting the offense, the defendant possessed a deadly weapon or instrument; or (e) the defendant has been previously convicted of the crime of stalking, or a substantially conforming foreign criminal violation within seven (7) years, notwithstanding the form of the judgment or withheld judgment; or (f) the defendant has previously been convicted of a crime, or an attempt, solicitation, or conspiracy to commit a crime, involving the same victim under any of the following provisions of Idaho law or a substantially conforming foreign criminal violation within seven (7) years, notwithstanding the form of judgment or withheld judgment: (i) Chapter 9, title 18, Idaho Code (assault and battery); (ii) Chapter 15, title 18, Idaho Code (children and vulnerable adults); (iii) Chapter 61, title 18, Idaho Code (rape); (iv) Section 18-4014 (administering poison with intent to kill); (v) Section 18-4015 (assault with intent to murder); (vi) Section 18-4501 (kidnapping); (vii) Section 18-5501 (poisoning); (viii) Section 18-6608 (forcible sexual penetration by use of a foreign object); (ix) Section 18-7902 (malicious harassment); or (x) Section 18-8103 (act of terrorism).
10. **Sex Offense.** Rape, crime against nature, forcible sexual penetration by use of foreign object, sexual abuse of a child under the age of 16, ritualized abuse of a child, sexual exploitation of a child. Lewd conduct with a minor child under 16, or sexual battery of a minor child 16 or 17 years of age. (Chapters 15 and 61, title 18, Idaho Code)

COMPLIANCE WITH PERSISTENTLY DANGEROUS SCHOOL DEFINITION

As required by the State Department of Education, this district, on an annual basis, will report all incidents that meet the definition of “violent criminal offense”; will comply with all requirements of the State Department of Education in enforcing the Unsafe School Choice Policy, pursuant to the ESSA; and will allow a student attending a persistently dangerous elementary or secondary

school, or who is a victim of a violent criminal offense, to attend a safe public elementary or secondary school in the district, including charter schools.



LEGAL REFERENCE:

Unsafe School Choice Option, 20 U.S.C. §7912

Idaho Unsafe School Choice Option Policy

ADOPTED:

AMENDED: