

**TITLE 6            PRIMARY AND SECONDARY EDUCATION**  
**CHAPTER 19       PUBLIC SCHOOL ACCOUNTABILITY**  
**PART 3            UNSAFE SCHOOL CHOICE OPTION**

**6.19.3.1            ISSUING AGENCY:** Public Education Department  
[6.19.3.1 NMAC - N, 08-31-04]

**6.19.3.2            SCOPE:** This rule applies to all school districts and public schools, including charter schools.  
[6.19.3.2 NMAC - N, 08-31-04]

**6.19.3.3            STATUTORY AUTHORITY:** Subsection B of Section 22-2-1, NMSA 1978 and Section 9532 of the Elementary and Secondary Education Act (ESEA) of 1965, as amended by the No Child Left Behind Act of 2001.  
[6.19.3.3 NMAC - N, 08-31-04]

**6.19.3.4            DURATION:** Permanent  
[6.19.3.4 NMAC - N, 08-31-04]

**6.19.3.5            EFFECTIVE DATE:** August 31, 2004, unless a later date is cited at the end of a section.  
[6.19.3.5 NMAC - N, 08-31-04]

**6.19.3.6            OBJECTIVE:** The rule establishes the definitions and requirements to implement the mandate of the No Child Left Behind Act that a student attending a persistently dangerous school, as determined by the State in consultation with a representative sample of local educational agencies, or who becomes a victim of a violent criminal offense, as determined by state law, while in or on the grounds of a public school that the student attends, to be allowed to attend a safe public school within the school district, including a public charter school.  
[6.19.3.6 NMAC - N, 08-31-04]

**6.19.3.7            DEFINITIONS:**

A.            “Safe public school” means a school that has developed and successfully implemented a public education department (“department”) approved safe schools plan and does not meet the definition of a persistently dangerous school.

B.            “Persistently dangerous public school” means a school, in which for three (3) consecutive school years, the school has experienced expulsions for greater than five percent (5%) of the student enrollment for incidents reported in the school district’s “safe schools report,” as required by Section 22-10A-33, NMSA 1978, under the violence and vandalism codes and definitions - violence codes 01 through 06 “assault and battery,” and has expelled one or more student (s) for knowingly bringing a weapon to school in violation of Section 22-5-4.7, NMSA 1978, and/or any policy of the district implementing this provision (violence and vandalism codes and definitions - firearms possession codes 61 through 63).

C.            “Timely implementation” means:

(1)          that parents and guardians of each student attending the school shall be notified within ten (10) school days from the time that the district has been notified by the department that the school has been designated as persistently dangerous and that students are offered the opportunity to transfer to a safe public school, including a safe public charter school, within the district;

(2)          that a student who is a victim of a violent criminal offense shall be offered the opportunity to transfer to a safe public school, including a safe public charter school, within the district within ten (10) calendar days, subject to space availability.

(3)          that the corrective action plan shall be developed and implemented within twenty (20) school days from the time that the district has been notified by the department that the school has been designated as persistently dangerous; and

(4)          that transfers of students shall be within thirty (30) school days after the district is notified that the school has been designated as persistently dangerous and/or after a student has become a victim of a violent criminal offense.

D.            “Corrective action plan” means a written document that explains what changes/new actions will be taken at the school to ensure that the school will become a safe public school.

E. “Violent criminal offenses” mean the following offenses when committed against a student while in or on the grounds of a public school that the student attends:

- (1) Criminal sexual penetration in the first degree, as provided in Subsection C of Section 30-9-11, NMSA 1978; or
- (2) Criminal sexual penetration in the second degree, as provided in Subsection D of Section 30-9-11, NMSA 1978; or
- (3) Kidnapping, as provided in Section 30-4-1, NMSA 1978; or
- (4) Aggravated battery, as provided in Subsection C of Section 30-3-5, NMSA 1978; or
- (5) Assault with the intent to commit a violent felony, as provided in Section 30-3-3, NMSA 1978; or
- (6) Dangerous use of explosives, as provided in Section 30-7-5, NMSA 1978; or
- (7) Robbery, as provided in Section 30-16-2, NMSA 1978; or
- (8) Aggravated burglary, as provided in Section 30-16-4, NMSA 1978; or
- (9) Aggravated arson, as provided in Section 30-17-6, NMSA 1978.

[6.19.3.7 NMAC - N, 08-31-04]

#### **6.19.3.8 IMPLEMENTATION:**

A. Identifying persistently dangerous schools: The department is responsible for identifying persistently dangerous schools in New Mexico, will utilize the criteria described above for this purpose and will send an annual report of persistently dangerous schools to the United State department of education.

(1) The district shall send the department the persistently dangerous school corrective action plan (s) for approval within twenty (20) school days from the date that the district has been notified by the department that the school has been designated as persistently dangerous.

(2) The district shall identify appropriate state and local funds to be used to help implement corrective action plans.

(3) The department shall annually review relevant data and corrective action plans that have been approved to reassess the status of public schools identified as persistently dangerous.

B. Providing a safe public school choice option to students attending persistently dangerous schools: A school district having one or more public schools identified as persistently dangerous shall:

(1) Within ten (10) school days from the date that the district has been notified by the department that the school has been designated as persistently dangerous, notify the parents or guardians of each student attending the school that the school has been identified as persistently dangerous and simultaneously offer all students the opportunity to transfer to a safe public school, including a safe public charter school, within the school district that is making adequate yearly progress (AYP) and that has not been identified as being in school improvement, corrective action, or restructuring. A student who seeks to transfer to a charter school within the district may do so, subject to the Charter Schools Act, the department's rules, and/or federal guidelines and restrictions.

(2) Complete the transfer (s) within thirty (30) school days after the district is notified that the school has been designated as persistently dangerous for the student (s) who accept the offer. Transfers may be temporary or permanent, but will be in effect as long as the student's original school is identified as persistently dangerous.

(3) Develop and implement a corrective action plan within twenty (20) school days from the time that the department has notified the district that the school has been designated as persistently dangerous.

C. Providing a safe public school choice option to students who have been victims of a violent criminal offense: A school district shall:

(1) Within ten (10) school days from the date a student has become the victim of a violent criminal offense while in or on the grounds of a public school that the student attends, offer a student the opportunity to transfer to a safe public school, including a safe public charter school, within the school district that is making adequate yearly progress (AYP) and that has not been identified as being in school improvement, corrective action, or restructuring. A student who seeks to transfer to a charter school within the district may do so, subject to the Charter Schools Act, the department's rules, and/or federal guidelines and restrictions.

(2) Complete the transfer within thirty (30) school days of the criminal incident. Transfers may be temporary or permanent, but will be in effect until such time as the parents of the victim and the school determine a permanent placement of the student.

[6.19.3.8 NMAC - N, 08-31-04]

History of 6.19.3 NMAC: [Reserved]