
The State of New Jersey's Compliance With The Unsafe School Choice Option Provision

FINAL AUDIT REPORT



Control Number ED-OIG/A03-E0008
August 2005

Our mission is to promote the efficiency, effectiveness, and integrity of the Department's programs and operations.



U.S. Department of Education
Office of Inspector General
Philadelphia, Pennsylvania



U.S. DEPARTMENT OF EDUCATION

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Dr. William L. Librera
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August 30, 2005

Dear Dr. Librera:

Enclosed is our final audit report, Control Number ED-OIG/A03E0008, entitled "The State of New Jersey's Compliance With The Unsafe School Choice Option Provision". This report incorporates the comments you provided in response to the draft report. If you have any additional comments or information that you believe may have a bearing on the resolution of this audit, you should send them directly to the following Education Department official, who will consider them before taking final Departmental action on this audit:

Deborah Price
Assistant Deputy Secretary
Office of Safe and Drug-Free Schools
U.S. Department of Education
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Washington, DC 20202

It is the policy of the U. S. Department of Education to expedite the resolution of audits by initiating timely action on the findings and recommendations contained therein. Therefore, receipt of your comments within 30 days would be appreciated.

In accordance with the Freedom of Information Act (5 U.S.C. §552), reports issued by the Office of Inspector General are available to members of the press and general public to the extent information contained therein is not subject to exemptions in the Act

Sincerely,

Bernard Tadley
Regional Inspector General for Audit

Enclosure

NOTICE

Statements that management practices need improvement, as well as other conclusions and recommendations in this report, represent the opinions of the Office of Inspector General. Determinations of corrective action to be taken will be made by appropriate Department of Education officials.

In accordance with the Freedom of Information Act (5 U.S.C. §552), reports issued by the Office of Inspector General are available, if requested, to members of the press and general public to the extent information contained therein is not subject to exemptions in the Act.

TABLE OF CONTENTS

	<u>Page</u>
Executive Summary _____	1
Background _____	3
Audit Results _____	4
Finding No. 1 – NJDOE May Not Have Identified Some Schools that Met the Persistently Dangerous Schools Criteria _____	4
Finding No. 2 – Inaccurate, Incomplete, and Inconsistent Reporting of Incidents of Violence by the School Districts _____	8
Finding No. 3 – Special Schools Were Not Identified as Persistently Dangerous ____	14
Objective, Scope, and Methodology _____	16
Statement on Internal Controls _____	18
Appendix – Auditee’s Response	

Executive Summary

The objectives of the audit were to determine if New Jersey's Unsafe School Choice (USCO) policy was in compliance with applicable laws, regulations, and guidance, and if the policy was adequately implemented at the state and local levels for the period of July 1, 2002, to December 31, 2003. Our audit period was selected to encompass policy development and implementation, the July 2003 persistently dangerous schools (PDS) determination, and subsequent post determination processes.

To accomplish our objectives, we interviewed state and local officials regarding processes employed to fulfill USCO requirements and reviewed the associated documentation. Where applicable, we reviewed processes that followed the determination that a school was persistently dangerous, including notification and implementation of the transfer option and the development and implementation of a corrective action plan. Lastly, we reviewed New Jersey Department of Education's (NJDOE) process for handling appeals submitted from schools that disputed their status as a PDS.

New Jersey's USCO policy generally complied with applicable laws, regulations, and guidance, except that it exempts special services schools from being identified as persistently dangerous, thereby circumventing federal USCO requirements mandating that students attending a persistently dangerous school be offered the option to transfer to a safe school.

We found that the policy was adequately implemented at the state level; however, there were weaknesses in NJDOE's process for handling appeals from schools that disputed their PDS status, and in the oversight of USCO implementation at the local level. Our review revealed that at three of the four school districts reviewed, the policy was not adequately implemented. We found that reporting practices varied greatly across the districts we reviewed and may have yielded data that was not reliable enough for the purpose of making accurate and equitable PDS determinations. Additionally, we found a weakness in NJDOE's process for approving adjustments to reported incident data and subsequent reassessment of PDS status. It appeared that approved adjustments were not necessarily supported by the documentation provided, or justified according to incident criteria.

We recommend that NJDOE (1) develop and implement controls to ensure more consistent reporting across school districts, (2) improve data review processes to ensure that corrections to reported data are adequately supported, and (3) work with the U.S. Department of Education (Department) to determine if an alternative criteria for special schools is required, so that students attending these schools are not denied the opportunity to transfer from an unsafe environment.

NJDOE generally disagreed with our findings and recommendations. We have summarized its comments at the end of each finding and have attached the full response to the report (see Appendix).

NJDOE's General Comments:

NJDOE had concerns that our draft report did not provide a balanced presentation of its compliance with USCO, stating that it “is troubled that the majority of the report does not address the NJDOE’s compliance with the USCO statute; rather, the primary findings pertain to the NJDOE’s Electronic Violence and Vandalism Reporting System (EVVRS).” Furthermore, NJDOE states it “is confused by the findings regarding EVVRS, since in previous monitoring findings the EVVRS has been acknowledged by the Department as a model data collection instrument.”

OIG's comments:

We agree that NJDOE did take extensive steps to comply with the USCO requirements. We believe that stating that NJDOE complied with laws and guidance was sufficient, however, we did include information on the steps NJDOE took to comply with the laws and guidance in the Background section of the report. The main purpose of the audit report is to bring forth any areas that were not in compliance with the requirements or that require strengthening, so that corrective action can be taken.

Also, we did not take issue with EVVRS as a reporting mechanism, but with the lack of controls relating to the reporting of incidents. Specifically, we found that incomplete and inaccurate data was being entered into EVVRS and that NJDOE conducted no monitoring and had no internal controls in place to identify issues of non-compliance. However, we found that EVVRS was an effective data collection instrument that accurately captured and transmitted the reported data. Additionally, we noted that EVVRS could also be used as a monitoring tool to strengthen internal controls relative to incident reporting by comparing suspension and expulsion data related to violent incidents to reported USCO incidents and investigating significant variances (see Finding 2).

Background

The Unsafe School Choice Option (section 9532 of the Elementary and Secondary Education Act (ESEA) of 1965, as amended by the No Child Left Behind Act of 2001) states that, "each State receiving funds under this Act shall establish and implement a statewide policy requiring that a student attending a persistently dangerous public elementary school or secondary 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 elementary school or secondary school that the student attends, be allowed to attend a safe public elementary school or secondary school within the local educational agency, including a public charter school." Full compliance with USCO was expected as of July 1, 2003, with transfers of affected students to have been completed by the start of the new school year (September 2, 2003), and each year thereafter. States must certify their compliance with USCO to the Department each year as a condition of eligibility for ESEA funds.

NJDOE consulted with a representative sample of school districts in the formulation of the state's USCO policy, as well as a statistician, and state legal counsel. Benchmarks set to determine PDS were based upon analysis of historical data. Offenses factored into the PDS determination are in line with state code for violent offenses and the policy provides the opportunity for transfer to a safe school if the student is the victim of violent crime or attending a school determined to be a PDS.

NJDOE set benchmarks for determining PDS based upon an analysis of incident data reported during school years 1999-00, 2000-01, and 2001-02. The same three years of data were used to make the initial PDS determination in July 2003, when seven schools statewide were publicly identified as persistently dangerous. NJDOE defines a PDS as a public elementary or secondary school building (except for Regional Day Schools, Educational Services Commissions and Special Services School Districts) that has seven or more Category A offenses, **or** has a score of 1.0 or greater on the index of Category B offenses¹ in each of three consecutive years. Category A offenses include: a firearms offense set forth by New Jersey statute in accordance with the federal Gun-Free Schools Act, aggravated assault upon a student, assault with a weapon upon a student, and any assault upon a member of the school district staff. Category B offenses include: simple assault on a student, possession or sale of a weapon other than a firearm, gang fight, robbery or extortion, sex offense, terroristic threat, arson, sale and distribution of drugs (excluding possession with intent), and harassment and bullying.

NJDOE utilized its Electronic Violence and Vandalism Reporting System (EVVRS), a web-based data collection instrument, to collect the data used to determine PDS. Implemented in 1999, EVVRS replaced a paper system that had been in place since the

¹The index is defined as the result of dividing the number of Category B offenses by the square root of the school's enrollment.

reporting of incidents of violence in New Jersey public schools began, in response to Public School Safety Law 18A: 17-46, enacted in 1978. The *EVVRS User Manual* provides the criteria for reporting incidents of violence, which includes the offenses that are factored into the PDS determination. Incident definitions and “scenarios” are provided in the manual to assist school and district personnel in classifying and reporting incidents. New Jersey’s USCO policy and the criteria for reporting incidents of violence, per the *EVVRS User Manual*, were distributed to school administrators statewide in July 2003. NJDOE provided training on its USCO policy and on incident reporting to school administrators.

Each incident entered into EVVRS is given a unique incident number. NJDOE has an “Incident Form” that schools or school districts can use to capture the incident data for input into EVVRS. The date and time of the incident are recorded, along with school name, the school district, the offender name (if known), the victim name, and incident type, as well as other relevant information.

Audit Results

We concluded that New Jersey’s USCO policy generally complies with applicable laws, regulations, and guidance, except that it exempts special services schools from being identified as persistently dangerous. In addition, we also concluded that NJDOE adequately implemented the state’s policy; however, there were weaknesses in monitoring compliance with USCO-related reporting requirements at the local level and in the process for reassessing schools that disputed their PDS status. Finally, we found that for three of the four school districts we reviewed, the state’s USCO policy was not adequately implemented at the local level.

Finding 1: NJDOE May Not Have Identified Some Schools that Met the Persistently Dangerous Schools Criteria

Our review of the original data file used to make the 2003 PDS determinations revealed that 13 regular education schools initially met the criteria for PDS, however, only 7 schools were publicly identified as PDS. We questioned NJDOE as to why these six schools were not identified as PDS. NJDOE stated that 6 of the 13 schools successfully disputed their PDS designation. Based on our review of the documentation provided by these six schools, we concur with adjustments to reported data for two of the schools, and agreed that the PDS determination was irrelevant for one school, as the school had closed. We found that the documentation submitted by three schools was inadequate to support the requested adjustments to incident data that were approved by NJDOE. We believe that students attending these three schools may have been denied the opportunity to transfer from schools that met the state’s criteria for PDS, due to corrections made without adequate support from original incident documentation or corrections that were not in accordance with NJDOE’s criteria for reporting incidents of violence:

Bergen County Technical School –Teterboro, Bergen County Vocational District:
NJDOE deleted six duplicate entries that, in conjunction with an adjustment to the student population, resulted in the Category B index being reduced below the threshold for school year 2000-01. However, insufficient documentation was provided to support four of the six incidents deleted. Issues with the documentation included referenced incident numbers that did not agree to the data records in EVVRS, different incident date and times for incidents the school district indicated were duplicate entries, and missing victim/offender page(s) that precluded determining whether it was the same incident reported twice.

Based on the documentation we reviewed, Bergen County Technical School-Teterboro met the criteria for PDS. Schools with a score of 1.0 or greater on the index of Category B offenses in each of three consecutive years were designated as PDS. NJDOE officials deleted the incidents they thought the district intended to have corrected, based on their own determination of what appeared to be duplicated in EVVRS. No incident records should have been deleted until the discrepancies between the records at the state and local level were reconciled. Based on New Jersey's USCO policy criteria for Category B offenses, reversal of the four adjustments that did not have sufficient support would result in a Category B index of 1.15 (25/square root of 476) for school year 2000-01, rather than the .96 (21/square root of 476) determined by NJDOE after the six incidents were deleted.

Public School #14, Jersey City District:

NJDOE downgraded three Category A assaults to Category B simple assaults, reducing Category A offenses from eight to five for school year 2001-02. New Jersey's USCO policy defines an assault upon a member of the school district staff as a Category A offense. Documentation of the incidents indicated that two of the three incidents (#11698 and #25661) met the criteria of Category A assaults on school personnel and were correctly reported as such. Therefore, the school had seven Category A offenses for the 2000-01 year and met the criteria for PDS for three consecutive years and should have been identified as a PDS.

Public School #20, Paterson District:

NJDOE downgraded three of six incidents submitted by the district for reclassification from Category A offenses to Category B assaults. Our review of the documentation for these incidents indicated that all six incidents met the criteria of a Category A assault on school personnel. Therefore, the school had eight Category A offenses for the 1999-00 school year, and met the criteria for PDS for three consecutive years, and should have been identified as a PDS.

Commentary in the letter the Public School #20 Middle School submitted to NJDOE indicated that these incidents should not have been reported based on the child's age or developmental status, which the *EVVRS User Manual* states schools/school districts should consider before using these categories of offenses. While age and developmental status of the student should be considered in determining disciplinary action, it should not be a factor in reporting the incident (also see Finding 2).

Recommendations:

We recommend that the Deputy Under Secretary for Safe and Drug Free Schools require NJDOE to:

- 1.1 Review **all** incident data for any school that requests corrections to the incidents reported, as errors in reporting could have a positive or negative effect on the school's PDS status. Any incidents not reported should be entered into EVVRS. (Also see Recommendation 2.1)
- 1.2 Ensure that corrections to incident data are adequately supported and reviewed. This should include the following:
 - a) Confirming that the incident in question has been reported in EVVRS;
 - b) Verifying that the request is supported by complete, original documentation of the incident, and that the documentation demonstrates that the incident has been incorrectly reported based on the criteria for reporting, as detailed in the *EVVRS User Manual*, or is a duplicate entry.
 - c) Ensuring that adjustments to reported data are made directly to the original incident record, rather than to the aggregate total for the school; and
 - d) Maintaining an audit trail that details corrections made to reported incident data, supported by the documentation submitted with the requested adjustment.

NJDOE's comments:

NJDOE took issue with our using the word "appeal" to describe the process of revising reported EVVRS data for some of the schools that initially met the state's criteria for PDS prior to the state publicly identifying its PDS in July 2003. NJDOE cites N.J.A.C. 6A3-1.1 that authorizes district boards of education to file a Petition of Appeal with the Commissioner of Education if they had evidence that a PDS determination was not made in accordance with NJDOE's published USCO policy. Therefore, the only appeal or dispute option available to district boards of education would have been **after** schools were identified as PDS. NJDOE also states that duplicate entries would be undetected by the LEAs, as "they did not have the list of incidents on file" and would be unaware that they entered an incident twice.

NJDOE stated that the appeals documentation submitted by the schools was sufficient to reverse the PDS status for two of the three schools we questioned:

- NJDOE acknowledged that Public School #14 in Jersey City incorrectly had its PDS status reversed, as two Category A incidents were "erroneously changed" to Category B incidents, putting the school beneath the threshold of seven Category A incidents.
- NJDOE disagreed that students at Bergen County Technical School (BCTS) may have been denied the opportunity to transfer from an unsafe environment, stating,

“Following questions by the auditors, the NJDOE uncovered further duplication in the list above and one other pair of incidents, in addition to the six judged to be duplicates that should not have been included in the PDS calculation because they were *fight*s and not *simple assault*s.” NJDOE noted that an adjustment to the student population², along with the deletion of the six incidents approved at the time of the appeal, resulted in a .96 Category B index, which NJDOE noted was below the criterion level of 1. Furthermore, NJDOE stated, “Removing the four incidents discovered in the subsequent analysis, the number of incidents is reduced to 17, yielding an index of .78.”

- NJDOE stated that their deletion of three Category A incidents for Public School #20 in Paterson was appropriate, based on the age of the offenders, stating that “it was clear that age and developmentally appropriate behaviors factors had not been considered by the district when deciding to report the incidents to the state.”

NJDOE did not comment on our suggestion to conduct a full review of incident data, made in recommendation 1.1, although they asserted “the option for schools to request the review of incident data prior to the NJDOE identifying PDS is no longer available.” NJDOE agreed with recommendation 1.2 regarding the review and support for adjustments to reported incident data.

OIG’s Comments:

The word “appeal” was used by NJDOE and all district and school officials we interviewed and in the related correspondence we reviewed. Initially we were informed that **all** appeals had been denied and we were provided copies of the denial letters. It was only after we inquired as to why six other schools that met the criteria for PDS were not identified that NJDOE informed us that they did not conduct an appeals process. However, in a letter to us in December 2004, NJDOE stated that “review of school district appeals” resulted in the reversal of these schools’ PDS status. Therefore, our use of the word “appeals” was consistent with the terminology used by state and local officials, the correspondence between NJDOE and the schools that submitted appeals, and NJDOE’s correspondence with the OIG.

NJDOE provided additional information to support the deletion of the six BCTS incidents accepted as duplicates, as well as informing us that four³ of the incidents that were incorrectly reported should be deleted. This was the result of further analysis of the appeals documentation, which NJDOE performed after reviewing our draft report. No additional documentation was provided. Two of the four incidents were missing victim/offender information. NJDOE’s deletion of these two incidents was based on “identical date and time and incident data.” Victim and offender information must be reviewed to determine if the same incident was reported twice, with the victim and

² Enrollment was originally reported as 549. Per NJDOE, “This figure was later changed by the district in final file edits to 476.”

³ NJDOE stated that removal of the two incidents that should have been reported as fights, rather than assaults, results in four less Category B incidents. This is incorrect, as the duplicates had already been deleted [see recommendation 1.2(c)].

offender reversed on the second entry. Furthermore, it is unclear how NJDOE determined that two of the incidents were incorrectly reported as assaults. NJDOE provided no explanation or documentation to support this determination.

The results of NJDOE's subsequent analysis of the adjustments further supports our conclusion that the incident data was not sufficiently reviewed and that some of the adjustments were not adequately supported at the time they were approved and the PDS status was reversed. Furthermore, we reiterate that a complete review of incident data would be needed to accurately assess the PDS status of these schools, as NJDOE does not know to what degree they complied with USCO-related reporting requirements. Implementation of our recommendations and NJDOE's new appeals process would ensure that any future adjustments are adequately reviewed, supported, and documented, so that all schools that meet the PDS criteria are identified.

We considered NJDOE's comments regarding Public School #20 in Paterson, however, we do not agree that age and developmental status should have any bearing on whether an incident of violence is reported, and should only be considered in determining the appropriate disciplinary action.

Finding 2: Inaccurate, Incomplete and Inconsistent Reporting of Incidents of Violence by the School Districts

Our review of four school districts revealed that the interpretation of the criteria for reporting incidents of violence and the level of compliance with reporting requirements varied significantly at each school district we visited, despite long-standing reporting requirements, and incident definitions and scenarios being included in the EVVRS User Manual. One school district included in our review, Middletown Township, was found to be in full compliance with USCO-related reporting requirements. We found the following compliance and reporting issues at the other three districts:

Camden City District

Our review of incident documentation in Camden City District disclosed under-reporting incidents of violence, incomplete reporting of incident data, and insufficient knowledge of reporting criteria.

In Camden City District schools completed the Student/Staff Incident/Accident Report form to capture incidents of violence and vandalism. The forms were forwarded to the school district for input into EVVRS. The Chief of Security reviewed the incidents and determined the category of offense to report.

- Under reporting of incidents of violence was discovered at Camden High School during an in-depth review conducted by school district officials. They found that 186 incidents should have been reported to the school district, and ultimately the state, however only 42 were reported. Camden High School did not submit all reports of incidents of violence to the school district, and therefore they were not entered into EVVRS. The school district review revealed that, generally, only

incidents of violence that required contacting emergency services were reported to NJDOE. NJDOE requires that EVVRS be used to report all incidents of violence, vandalism, weapons, and substance abuse. The school district implemented a change in administration at Camden High School in March 2003, and it appeared that the problem had been resolved. Despite the under reporting, Camden High School was determined to be PDS in July 2003.

- Camden City District did not provide victim information to NJDOE. EVVRS depends on victim information being supplied for a simple assault on school personnel to be correctly captured as a Category A offense. The threshold for Category A offenses is seven, therefore misreporting of any Category A offense could have a significant impact on the PDS determination. EVVRS showed that 32 percent of the incidents reported statewide for school year 2002-03 lacked victim information. Camden City District accounted for 19 percent of the incidents reported statewide that lacked victim information.

In May 2004, in response to a memo from the Assistant Commissioner of NJDOE, Camden City District submitted a request for revisions to incident data reported during school years 2000-01, 2001-02, and 2002-03. The revisions included eight assaults on school personnel reported as aggravated assaults that the school district requested to be changed to simple assaults (a Category B Offense), as “no serious bodily injury occurred.” According to NJDOE’s USCO policy, any assault on school personnel is a Category A offense. In contrast, the criteria provided in the *EVVRS User Manual* are unclear about how to classify and report an assault on school personnel, and is not in line with the state’s USCO policy.

East Orange District:

East Orange High School - Campus #9 did not begin complying with EVVRS reporting requirements until March 2004. Entry of incident data into EVVRS was done centrally at the school district. East Orange district schools were required to submit their incident reports to the school district by the 5th of each month. The district also required schools to submit a monthly Suspension Report Summary. School district officials noticed that incidents were not being reported to NJDOE, as the school’s suspension reports indicated that reportable incidents had occurred; yet no incident forms had been submitted to the school district. The school district addressed this issue with Campus #9 in February 2004, at which time they began to comply with the EVVRS reporting requirements. Our review of the school’s Suspension Report Summaries for school year 2002-03 indicated that 231 suspensions occurred due to incidents of violence and vandalism, yet only one incident had been reported to NJDOE for the year. A summary report obtained from the East Orange Police Department indicated that during calendar year 2002, 12 aggravated assaults and 18 simple assaults occurred at Campus #9, as well as 2 aggravated assaults and 16 simple assaults during calendar year 2003.

Jersey City District:

Incidents of violence were significantly under-reported at the schools we visited in Jersey City District. The school district has a Zero Tolerance (ZT) policy in place that provides, “students who bring weapons to school or commit any act of violence against a student or staff member will be removed from the school building immediately.” Interviews with school and district officials and analysis of incident documentation revealed that schools in Jersey City report incidents that qualify as ZT incidents. Reported incidents generally included only assaults and weapons violations. Our review of the incident documentation at the schools indicated that, during school year 2002-03, at least 61 violent offenses occurred at Dickinson High School, however, only 9 were reported to NJDOE (14%). Whitney Young Middle School reported 3 of 25 (12%) incidents, and Webb Elementary School reported 13 of 26 (50%) incidents.

Although NJDOE adequately communicated and disseminated the state’s USCO policy and criteria for reporting incidents of violence, it did not have sufficient internal controls in place to identify non-compliance with reporting requirements, which contributed to the inaccurate, incomplete, and inconsistent reporting among the school districts. NJDOE conducted a completeness test at year-end, when districts were required to verify reported data or submit a zero incident report. These faxed verifications were taken at face value. NJDOE reviewed only incident documentation submitted by schools appealing the PDS determination.

We believe that NJDOE needs to have a process in place to ensure that the school districts review the incident data for accuracy and completeness. An example of an internal control process to help ensure accurate and complete reporting would be for NJDOE to require the school districts to reconcile reported suspension and expulsion data or other similar data to incidents reported in EVVRS. This would ensure that all appropriate incidents have been reported to NJDOE. This process is already being performed by Middletown Township School District. The school districts should also be expected to maintain documentation of the reconciliation to support the year-end verification of incident data to NJDOE. This process would also provide a sound basis for NJDOE’s annual certification of USCO compliance to the Department.

Another factor contributing to the inconsistent reporting was that some of the incident definitions in the *EVVRS User Manual* include a sentence that reads, “One needs to consider age and developmentally appropriate behavior before using this category” for the violent offenses. This statement allows too much room for individual interpretation and is not conducive to yielding objective data “that is not influenced by emotion, surmise, or personal bias,” as recommended in the Department’s Non-Regulatory Guidance. The Department’s guidance states that SEAs should develop objective criteria to use in identifying PDS. “Objective” generally means not influenced by emotion, surmise, or personal bias. The *EVVRS User Manual* instructed school personnel to consider intent in deciding what to report and how to classify the incident. We believe that this guidance is sufficient and that no additional qualifiers are necessary.

Lastly, the OIG identified two data collection weaknesses that we believe adversely

affected NJDOE's ability to collect complete and accurate data:

- 1) Use of the EVVRS Incident Form was not required. School districts that used their own forms did not capture all of the data elements pertinent to fulfilling USCO requirements, as was evident in the Camden City District; and
- 2) The EVVRS Incident Form requires two fields on two separate pages to be populated in order for a simple assault on school personnel to be correctly captured in EVVRS as a Category A offense. This reduced the likelihood that the offense was reported correctly. This can have a significant impact on PDS determinations.

Recommendations:

We recommend that the Deputy Under Secretary for Safe and Drug Free Schools require NJDOE to:

- 2.1 Implement management controls at the state and/or local level to ensure more complete and accurate reporting, and require school districts to capture and report complete incident data in EVVRS, including all data elements used by NJDOE to fulfill USCO requirements.
- 2.2 Remove from the incident definitions in the *EVVRS User Manual* the statement, "One needs to consider age and developmentally appropriate behavior before using this category." The incident scenarios should also be revised accordingly.
- 2.3 Revise the EVVRS Incident Form to include "assault on school personnel" as an incident classification, so that the correct reporting of this offense is no longer contingent upon supplying victim information.
- 2.4 Clarify incident definitions and scenarios to ensure that assaults on school personnel are correctly classified and reported as such.

NJDOE's comments:

NJDOE concurred that Camden City District failed to provide victim information and that failing to provide victim information could have a significant impact on the PDS determinations. NJDOE has proposed an amendment to New Jersey regulations to "require that district boards of education adopt a form that includes all of the incident detail and offender and victim information that is reported on EVVRS." NJDOE noted, "Additionally, two new EVVRS reports were developed that alert districts when offender and/or victim information is missing, by incident. These reports will be sent to affected districts monthly and at the end of the year." NJDOE surveyed districts that did not report victim information for 2003-04. These districts indicated why they had not supplied the information and assured NJDOE that they would report victim information going forward.

NJDOE acknowledged that reported incident data has been inconsistent, however, disagreed that it had insufficient internal controls in place to identify non-compliance. Regarding issues noted in East Orange and Jersey City districts, NJDOE stated that, “Since the NJDOE does not have the documentation reviewed by the OIG, we do not accept nor refute the documentation summary.”

NJDOE also disagreed with the factors the OIG determined to have contributed to the inaccurate reporting. Therefore, NJDOE disagreed with our recommendations to address those issues, as follows:

2.1 - NJDOE felt it had sufficient controls to identify issues of non-compliance, noting the training and guidance (incident scenarios) provided to the districts. NJDOE informed us of plans for continued training. NJDOE also asserted that, “Under EVVRS, every district has opportunities to reconcile data prior to NJDOE’s PDS determinations under the USCO Policy. Pursuant to N.J.A.C. 6A:16-5.3(d)2, the CSA is required to annually verify that the data entered into the EVVRS are correct. Pursuant to N.J.A.C. 6A16-5.3(e), the CSA is required to annually report a numerical summary of all acts of violence and vandalism and incidents of substance abuse to the district board of education at a public meeting.”

2.2 - NJDOE disagreed that the sentence instructing school officials to consider age and developmental status before reporting an incident should be removed from the incident definitions. NJDOE stated that this criterion “was strongly endorsed by the USCO Advisory Panel” and that “this criterion contained in the EVVRS User Manual is supported by the use of the same criteria by the USDOE, National Center for Educational Statistics, in its publication *Safety in Numbers*.” They added that, “NJDOE, through the EVVRS User Manual, is providing this federal guidance to the districts.”

2.3 - NJDOE disagreed that a new incident category “assault on school personnel” should be added to the EVVRS Incident Form. “Keeping the incident and victim information separate allows NJDOE to capture all types of incidents where a staff member is a victim. The NJDOE maintained that creating a new incident category “assault on school personnel” compromises the current system.”

2.4 - NJDOE disagreed with our assertion that the incident definition and scenarios for “assault on school personnel” in the EVVRS User Manual are not in line with the state’s USCO policy.

OIG’s comments:

NJDOE stated it wanted to be sure that PDS determinations were based on reliable data (per the response to Finding 1), however, it conducted no review of the reported data, nor did it implement a process for assessing compliance with USCO-related reporting requirements. NJDOE also failed to utilize the available controls offered by EVVRS, although they stated that they “will receive a report in the fall of 2005 from a consultant contractor that will identify schools where there is a significant discrepancy between the

number of students reported having been suspended on the School Report Card and the number of students suspended as reported on the EVVRS.”

Suspension data resides in EVVRS and is summarized on NJDOE’s website in the School Report Cards. NJDOE could have performed this type of reasonability testing to assess the reliability of the incident data used to determine PDS in 2003 and 2004. For example, Campus #9 in East Orange shows that 26 percent of the student population had been suspended during the 2002-03 school year, yet the school had reported only one USCO incident. This school was found to be non-compliant with USCO-related reporting requirements. Had NJDOE taken advantage of this potential control available in EVVRS, they may have investigated why a school where one quarter of its student population had been suspended had reported only one USCO incident.

In NJDOE’s response to Finding 1, regarding adjustments made to BCTS’ incident data, it states, “NJDOE determined that there was a potential for duplicate records that the district would not have been able to identify since districts were not provided with the list of incidents on the file on which the PDS determinations would be made.” However, the EVVRS User Manual states that districts will receive an annual detail of reported incidents to be reviewed prior to the district confirming their data at year-end. The OIG feels that this is a further indication of weak internal controls around incident reporting. We did not alter the content of our finding. We also did not alter our recommendations, for the following reasons:

2.1 - Laws and training are not sufficient internal controls. Our recommendations address the lack of controls around processes that are dictated by the laws NJDOE cited. Implementation of our recommendations would reduce common errors and ensure that districts have adequately reviewed reported incidents before confirming their data at year-end. These steps are necessary to achieve the consistency that will enable NJDOE to make reliable PDS determinations.

2.2 - The criteria for reporting incidents of violence is to be in line with state code for violent crimes, per the guidance issued by the Department. There is no basis for figuring age and developmental status into the decision to report an incident. We reiterate that this is a factor to be considered in determining disciplinary action, however, it should have no bearing on the decision to report the incident.

2.3 - EVVRS defaults to a Category B “assault on a student” if it is not specified that the victim was school personnel. This is a common error, which could have a significant effect on the PDS determination. Adding this offense to the incident form would prevent the offense from defaulting to a Category B “assault on a student” if the user fails to identify the victim as “school personnel” in the “Victim Type” field on page 3 of the incident form. This would clearly help ensure more accurate reporting.

2.4 - The incident scenarios for an assault on school personnel do not clearly indicate that the offense should be reported, as “any assault upon a member of the school district staff” which is a Category A offense per New Jersey’s USCO policy.

Finding 3: Special Schools Were Not Identified as Persistently Dangerous

In July 2003, six special schools determined to have met the criteria for PDS were not identified. Special services schools (Regional Day Schools, Educational Services Commissions, and Special Services School Districts) were established by statute to provide special education programs for disabled students throughout the state, and to educate students who cannot be provided with a free and appropriate education in a less restrictive setting.

NJDOE's USCO policy specifically excludes special schools determined to have met the state's criteria for persistently dangerous from being identified. New Jersey's policy states:

Special Schools Meeting the Criteria for PDS

Regional Day Schools, Special Services Districts and Educational Services Commissions that meet any one of the criteria for persistently dangerous schools will not be identified as such but will be contacted by the NJDOE and required to develop and submit for approval school safety plans on or before September 30 of the respective year. The school safety plans must be completed in the format provided by the NJDOE and describe how the schools will reduce the number of incidents of violence as determined by the EVVRS. The NJDOE will provide schools with guidance for their school safety plans, as well as monitor schools' timely completion of the approved plans.

NJDOE points to the special nature of these schools and the nature of the students being served⁴ as the basis for its decision to exclude them from the federally mandated USCO requirements. Parents of students attending the six schools found to have met the criteria for PDS were not notified of the PDS status and transfer options were not offered. In addition, students attending these schools that are victims of a violent crime were not being offered the option to transfer to another school as required by the USCO. These schools were required only to develop and implement a corrective action (safety) plan. In a letter to the OIG, NJDOE explained that, "Since these schools were not identified as persistently dangerous under our USCO policy, the notification of parents was not required." NJDOE also stated that parents of disabled students may request a change in placement from one of these schools.⁵ Even though parents of these students may request a change in placement, USCO requires parental notification for all schools determined to meet the state's criteria for persistently dangerous.

We concluded that the special schools should be identified as PDS if they meet the PDS criteria. Furthermore, students attending these schools that are victims of a violent crime should be offered the option to transfer to another school. Special education students

⁴NJDOE informed us that for many of the students who attend these schools, their inappropriate behaviors are a manifestation of the student's disabilities.

⁵Requested changes in placement would not be based on the USCO requirement.

should be afforded the same rights as students attending a regular school. NJDOE is collecting the same incident data for these schools that is being collected for regular schools. NJDOE is ultimately determining that the special (education) schools are PDS, but not “officially” recognizing them as PDS. In a NJDOE USCO Policy Question and Answer document posted on NJDOE’s website, NJDOE stated that it does not consider the number of special education students in a regular school when applying the PDS criteria. NJDOE believes that “the formula for determining PDSs is based on the relative safety and security in schools, as determined by school-reported data..., regardless of educational classification. Whether special education or regular education students commit a larger portion of the reported offenses, it is the position of the NJDOE that the result is the same – unsafe schools.”

We recognize that Section D.14 of the *Unsafe School Choice Option, Non-Regulatory Guidance*, issued in May of 2004, allows for a different definition of “persistently dangerous” to be set for alternative schools that serve students removed from regular educational placements because of behavioral problems. While not specifically addressing special education schools, the guidance recognizes that special circumstances should be appropriately addressed, however, it also recognizes that federal USCO requirements mandate that all students be provided the opportunity to transfer from an unsafe environment. Failure to identify a PDS and notify parents of a school’s PDS status nullifies the intent of USCO, as it does not provide parents the opportunity to remove their child from an unsafe environment.

Recommendation:

- 3.1 We recommend that the Deputy Under Secretary for Safe and Drug Free Schools, in conjunction with the Assistant Secretary for Special Education and Rehabilitative Services, assess how NJDOE is treating the special schools and require NJDOE to make any necessary changes to its policy to ensure disabled students receive the same benefits as non-disabled students.

NJDOE’s Comments:

NJDOE disagreed that its policy should be changed. It stated, “The USCO provisions apply only to educational institutions that are considered LEAs under NCLB. Regional Day Schools, Special Services Districts and Educational Services Commissions are not considered LEAs under the NCLB special rule at Title IX, Section 9101(1)(C), due to their status as tuition-based educational institutions. As such, these special services schools do not receive allocations for any Title under NCLB and are not LEAs.”

NJDOE added, “Additionally, Regional Day Schools, Special Services Districts and Educational Services Commissions were established to serve students with disabilities. Therefore, under Title IX, Section 9101(1)(D) cited below, these special services schools also are not considered LEAs under NCLB because they operate under tuition payments from LEAs to serve students with disabilities. The students

are considered to be enrolled in the sending LEAs, rather than in the receiving special services schools.”

Furthermore, NJDOE noted, “As a practical matter, students with disabilities can not be immediately transferred to another school. By federal law, the students individualized education program team must meet to consider any changes to the student’s IEP. Additionally, these schools do not have equivalent schools to accommodate transfers since the school’s programs are determined by the special education needs of the existing populations.”

OIG’s Comments:

NJDOE’s response does not appear to be consistent with the language of the USCO statute. NCLB does not only apply to LEAs but as stated in the Act, all public schools. USCO states, “each State receiving funds under this Act shall establish and implement a statewide policy requiring that a student attending a persistently dangerous public elementary school or secondary 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 elementary school or secondary school that the student attends, be allowed to attend a safe public elementary school or secondary school within the local educational agency, including a public charter school.” NJDOE receives NCLB funds and is therefore required to comply with USCO.

NJDOE stated that students attending special schools are considered to be enrolled by the sending LEA, however, USCO pertains to the “school that the student attends,” which is the special school.

We understand that it may be difficult to facilitate the transfer of disabled students, however, Departmental guidance stipulates that parental notification must occur even if transfer to a safe school cannot be offered. Parents must be afforded the option to remove their children from an unsafe environment. We did not alter the finding or our recommendation.

Objective, Scope, and Methodology

The objectives of the audit were to determine if New Jersey’s USCO policy was in compliance with applicable laws, regulations, and guidance, and if the policy was adequately implemented at the state and local levels for the period of July 1, 2002 to December 31, 2003. The scope of the audit covered the development and implementation of the policy, the initial PDS determination, and processes following the PDS determination, including offering the option to transfer to affected students and the development and implementation of corrective action plans.

To accomplish the audit objectives, we reviewed applicable laws, regulations, and Departmental guidance pertaining to USCO, and reviewed New Jersey’s USCO policy in

comparison with that criteria. We interviewed NJDOE officials and examined documentation related to policy development and implementation, data collection and review, and where applicable, parental notification of the PDS determination and the option to transfer, fulfillment of subsequent transfer requests, and the development and implementation of a corrective action plan. Additionally, we reviewed documentation associated with appeals and adjustments submitted by schools determined to be PDS.

Four school districts were included in our statewide review. Selection of the school districts was limited to New Jersey's 8 counties (of 21) that had the highest rates of juvenile crime in 2002. Three of the eight counties were selected to be included in our review. Two counties (Camden and Essex) were judgmentally selected to include PDS. One additional county (Monmouth) was randomly selected. Within the three selected counties, we judgmentally selected districts and schools. Our selections were made by considering the overall characteristics of the school district, including the size, type of schools, range of grades included, and the number of USCO-related incidents reported during our audit period. We selected one high school, one middle school, and one elementary school in each district. A fourth district was later added, due to possible under-reporting.

The following table on the following page details the districts and schools reviewed and the incidents reported during the school years factored into the July 2003 PDS determination:

Schools Reviewed and Their Reported USCO Incidents⁶											
									Jersey City District		
East Orange High School Campus 9			Camden High School			Middletown High School - North			Dickinson High School		
Year	Cat A	Cat B	Year	Cat A	Cat B	Year	Cat A	Cat B	Year	Cat A	Cat B
2000	7	.26	2000	7	.54	2000	3	.88	2000	3	.19
2001	4	.69	2001	10	1.66	2001	1	.93	2001	9	.14
2002	3	.39	2002	4	1.51	2002	1	1.00	2002	8	.22
Patrick Healy Middle School			East Camden Middle School			Bayshore Middle School			Whitney Young Middle School		
Year	Cat A	Cat B	Year	Cat A	Cat B	Year	Cat A	Cat B	Year	Cat A	Cat B
2000	1	1.70	2000	6	1.64	2000	0	.97	2000	9	.18
2001	9	1.45	2001	2	3.20	2001	1	1.14	2001	3	.23
2002	14	2.30	2002	1	2.17	2002	1	.91	2002	10	.60

⁶ Category A refers to number of incidents reported and Category B refers to the index of incidents. See Background section for complete criteria.

Johnnie Cochran Academy Elementary School			Bonsall Elementary School			Harmony Elementary School			Webb Elementary School		
Year	Cat A	Cat B	Year	Cat A	Cat B	Year	Cat A	Cat B	Year	Cat A	Cat B
2000	0	.42	2000	4	2.60	2000	0	0	2000	10	.62
2001	2	1.56	2001	3	6.65	2001	0	0	2001	6	.60
2002	2	2.69	2002	4	7.09	2002	0	.04	2002	1	.38

To assess implementation and compliance at the local level, we interviewed school district officials to gain an understanding of the school district’s processes for collecting and reporting USCO-related data. At each school, we interviewed school officials and other school personnel regarding processes related to reporting incidents of violence. Where applicable, school security and school resource officers were interviewed. We reviewed all available documentation of incidents that occurred at each school during the 2002-03 school year, including EVVRS incident forms, suspension forms, and incident reports submitted by school security.

During the audit, we relied on computer-processed incident data in the EVVRS. To assess the reliability of the data, we compared the computer-processed data with the source documentation, incident forms (the school district’s documentation of incidents reported to NJDOE). We also performed completeness tests by comparing the source documentation to EVVRS reports and data files. Based on these tests, we concluded that the data were sufficiently reliable to be used in meeting the audit objectives.

We conducted on-site fieldwork at NJDOE offices in Trenton, New Jersey, and at school districts and schools in East Orange, Camden City, Middletown Township, and Jersey City, from April 4, 2004, to June 10, 2004. A preliminary exit conference was held on October 8, 2004. We returned to Trenton to perform additional work on October 29, 2004. We had a final exit conference with NJDOE on April 20, 2005. We conducted our audit in accordance with generally accepted government audit standards appropriate to the scope of the audit work described above.

Statement on Internal Controls

As part of our review, we assessed the system of internal controls, policies, procedures, and practices applicable to NJDOE’s and the selected school district’s implementation of New Jersey’s USCO policy. Our assessment was performed to determine the nature and extent of our substantive tests to accomplish the audit objectives.

For purposes of this report, we categorized the significant internal controls into the following categories:

- Policy implementation;

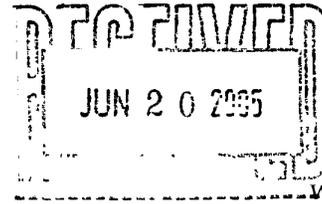
- Data collection, reporting, and review; and
- PDS determinations and post-PDS processes.

Because of inherent limitations, a study and evaluation made for the limited purpose described above would not necessarily disclose all material weaknesses in the internal controls. However, our assessment disclosed internal control weaknesses that adversely affected NJDOE's ability to reliably identify PDS. These weaknesses included a lack of internal controls to ensure accurate reporting and an inadequate process for approving adjustments to reported incident data. These weaknesses and their effects are discussed in the **Audit Results** section of this audit report.



State of New Jersey

DEPARTMENT OF EDUCATION
PO Box 500
TRENTON, NJ 08625-0500



RICHARD J. CODEY
Acting Governor

WILLIAM L. LIBRERA
Commissioner

June 20, 2005

Mr. Bernard Tadley, Regional Inspector for Audit
U.S. Department of Education
Office of Inspector General
100 Penn Square East, Suite 502
Philadelphia, PA 19107

Dear Mr. Tadley:

Subject: Response to OIG Draft Audit Report of the State of New Jersey's Compliance with the Unsafe School Choice Option Provision – Control Number ED-OIG/A03-E0008

The New Jersey Department of Education (NJDOE) has received and reviewed the findings and recommendations contained in the Office of Inspector General (OIG) Audit Report of the State of New Jersey's Compliance with the Unsafe School Choice Option Provision dated May 5, 2005 for the period July 1, 2002 to December 31, 2003. The NJDOE's response is included herein.

NJDOE Compliance Report: General Concerns

In general, we are concerned that the compliance report does not address the extensive steps the New Jersey Department of Education (NJDOE) has taken to fully comply with the Unsafe School Choice Option (USCO) statute. This is particularly noteworthy considering that New Jersey is one of only four states to identify persistently dangerous schools in the 2003-2004 school year and one of only three states to identify persistently dangerous schools in the 2004-2005 school year.

We are troubled that the majority of the compliance report does not address the NJDOE's compliance with the USCO statute; rather, the primary "findings" in the report pertain to the NJDOE's Electronic Violence and Vandalism Reporting System (EVVRS). We also are confused by the findings regarding EVVRS, since in previous monitoring findings the EVVRS has been acknowledged by the United States Department of Education as a model data collection system.

In the exit conference on April 20, 2005, we were assured that the NJDOE's activities to comply with the Unsafe School Choice Option statute would be fully explained in the final report. We are disappointed that the report only makes a few general statements indicating that the NJDOE's

USCO Policy "...generally complies with applicable laws, regulations, and guidance..." without providing information substantiating how the policy and the NJDOE's implementation of it complies with the authorizing statute. It is our understanding that a compliance audit is intended to document the degree to which an agency has fulfilled a requirement. Since, in our opinion and as indicated in the brief statements in the report, the NJDOE's USCO Policy is in compliance with the USCO statute, it is our observation that the focus and breadth of the report provides an imbalanced perspective on the NJDOE's policy. While there are a few paragraphs acknowledging compliance with the USCO statute, the degree of attention (8 pages) given to the "findings" regarding the EVVRS gives the mistaken impression that there are significant concerns with the USCO Policy.

Since we understand that the intent of the audit was to assess the NJDOE's degree of compliance with the USCO statute, we strongly believe that the report should give a full accounting of the NJDOE's performance in addressing the provisions in the statute. The steps the NJDOE have taken to comply with the USCO Policy are particularly noteworthy, since they have been undertaken with no funding provided under NCLB to effectuate the USCO statute. Therefore, provided below are facts that should be included in the compliance audit report to fully, fairly and proportionately document NJDOE's implementation of the USCO Policy.

Background

USCO POLICY PLANNING AND ADOPTION

The NJDOE formed a USCO advisory panel whose membership embodied a representative sample of local educational agencies (LEAs) in New Jersey. The sample of schools was selected randomly by configurations, type of schools and grade range (e.g., K-12, K-8, special services, vocational) and in a manner that ensured representation of districts of varying size and demographics (i.e. urban, suburban, rural), regions (i.e. north, central, south) of the state and districts with and without a cross-section of school staff functions or types of staff and administrative positions (e.g., central office administrator, building administrator, student support services staff, instructional staff, school resource officer) were recruited.

In January 2003, the panel convened and the panel members: 1) identified and reached consensus on the types of incidents that would create a dangerous school environment, which are included in the USCO Policy; 2) agreed that the established criteria should account for school size; 3) requested that the department examine statewide data before establishing criteria for persistently dangerous schools (PDS), which was accomplished; 4) decided that three years of data should be used to measure persistence; and 5) agreed that the self-reported data collected under the EVVRS was as reliable as any other data collection mechanism or data source used for the purpose of determining PDS, and since EVVRS had been in place for three years, the department should take steps to maximize reporting under the EVVRS rather than create another system.

On three occasions, the NJDOE staff consulted with the Attorney General's Education-Law Enforcement Working Group, comprised of broad representation from the education and law enforcement communities at the state, county and local levels to review both the PDS criteria and the individual victim option. The NJDOE met and spoke with the assigned Assistant Attorney General on numerous occasions to ensure that the definitions for violent criminal offenses comported with the criminal code, as required under the USCO statute. The NJDOE's No Child Left Behind Advisory Council and the Commissioner of Education's Leaders for Educational Excellence Group, comprised of leaders of the major statewide education professional associations, were also consulted and apprised of the general strategy of PDS determination. All of the groups identified above were given the final draft and asked to comment, prior to submission of the policy for consideration by the State Board of Education.

The policy addressed both the persistently dangerous schools and the victims of violent criminal offenses provisions. Additionally, the policy required the NJDOE to notify schools that reported high incidents of violence and had them develop corrective action plans (safety plans) even though they have not met the PDS criteria. This "early warning" system was established to provide early intervention before problems escalate.

The New Jersey State Board of Education reviewed the USCO Policy at two public meetings and at a subcommittee work session prior to adoption by resolution on June 18, 2003. The adopted USCO Policy was disseminated to all chief school administrators on July 3, 2003.

2003-2004 IMPLEMENTATION

USCO Technical Assistance and Professional Development Programs

On July 17, 2003, NJDOE staff held a meeting to provide advance notice and technical assistance to chief school administrators, building administrators and other school staff regarding the placement of their school or schools on the NJDOE's list of PDS. The school representatives were provided with technical support for fulfilling their obligations under the USCO Policy, including guidance and a format for developing corrective action plans, communicating with parents and the communications media, as well as obtaining parental and community support for addressing the rates of violence that contributed to the schools' placement on the PDS list.

On September 17, 2003, NJDOE staff conducted a technical assistance meeting with administrators from special services schools (i.e., regional day schools, special services school districts, educational services commissions) that met the PDS criteria, but were not designated as PDS per the USCO Policy, to review the USCO Policy and its implications and to provide technical support for fulfilling their obligations under the policy.

Numerous meetings were held and ongoing technical support and communication took place among NJDOE central office and regional office staff in support of school district fulfillment of their obligations under the USCO Policy. A compliance chart was developed for central office staff to monitor progress of school district fulfillment of their obligations under the USCO Policy based on documentation and assurances provided to assigned regional and county office staff. A

question and answer document was developed, provided to affected school districts and published by NJDOE.

Provided below is a list of optional conferences and trainings in 2003 at which the New Jersey Department of Education staff provided information on the Unsafe School Choice Option Policy to school staff and other officials and members of the community:

Conferences and Trainings			
Event	Sponsor	Location	Date(s)
No Child Left Behind Regional Information Sessions	New Jersey Department of Education	Wayne, NJ Sewell, NJ Flemington, NJ	April 15, 2003 August 21, 2003 August 22, 2003
Stop the Pain: New Jersey Cares About Bullying Conference	New Jersey Office of Bias Crimes and Community Relations	New Brunswick, NJ	March 17, 2003
Principals Training	New Jersey Principals and Supervisors Association	Jamesburg, NJ	September 30, 2003
Thirty-third Annual School Law Forum	New Jersey School Boards Association	Atlantic City, NJ	October 23, 2003

Certification of Compliance to United States Department of Education

On October 10, 2002, December 20, 2002 and March 21, 2003, the NJDOE submitted required status updates to the United States Department of Education (USDOE) on progress toward establishing and implementing the USCO Policy. On September 24, 2003, the Commissioner of Education confirmed to the USDOE that the NJDOE had adopted a statewide USCO Policy; that the implementation of the policy for the 2003-2004 school year had been completed in accordance with the deadlines established in the Federal Register (Vol. 68, No. 115); and provided a copy of the policy.

It should be noted that only draft non-regulatory guidance for the USCO Policy had been issued (July 22, 2002) prior to adoption of the USCO Policy. Additionally, the NJDOE received no indication from USDOE that there were concerns with the provisions of the adopted policy or the NJDOE's implementation of the policy. Informal contacts suggest that the USDOE viewed favorably NJDOE's USCO Policy.

2004-2005 IMPLEMENTATION

USCO Policy Planning

Revisions to the USCO Policy (performance dates only) and the Question and Answer document were revised and published on June 1, 2004.

USCO Technical Assistance and Professional Development Programs

PDS were provided advance notification of their status on June 25, 2004. On July 12, 2004, NJDOE staff held a meeting to provide technical assistance to chief school administrators, building administrators and other school staff regarding the placement of their school or schools on the NJDOE's list of PDS. The school representatives were provided with technical support for fulfilling their obligations under the USCO Policy, including guidance and a format for developing corrective action plans, communicating with parents and the communications media, as well as obtaining parental and community support for addressing the rates of violence that contributed to the schools' placement on the PDS list.

Early Warning Schools (EWS) were provided with advance notification of their status on July 26, 2004. On August 13, 2004, NJDOE staff conducted a technical assistance meeting with administrators from special services schools (i.e., regional day schools, special services school districts, educational services commissions) that met the PDS criteria, but were not designated as PDS per the USCO Policy, as well as EWS identified under the policy, to review the USCO Policy and its implications and to provide technical support for fulfilling their obligations under the policy, including guidance and a format for completing school safety plans.

A technical assistance meeting was held on July 27, 2004 to plan with and provide technical assistance to NJDOE staff (i.e., county offices of education, regional educational support services offices, Abbott Division and Office of Special Education) that were responsible for providing ongoing technical support and administrative oversight to PDS and EWS schools. Numerous meetings were held and ongoing technical support and communication took place among NJDOE central office, regional office, county office and Abbott office staff in support of school district fulfillment of their obligations under the USCO Policy. Regional coordinators, county education specialists and Abbott local support team members from NJDOE provided ongoing technical assistance to schools identified as PDS and EWS and staff from the Office of Special Education provided ongoing technical assistance to identified special services schools. A summary chart of NJDOE staff assignments was provided to assigned regional and county office staff. A revised compliance chart was developed for central office staff to monitor progress of school district fulfillment of their obligations under the USCO Policy based on documentation and assurances provided to assigned regional and county office staff.

Certification of Compliance to United States Department of Education

On June 2, 2004, the Commissioner of Education recertified to the USDOE that the NJDOE would identify PDS in sufficient time for LEAs to offer students in those schools the option to transfer to a safe school in the LEA at least 14 calendar days before the start of the 2004-2005 school year. The Commissioner also certified that the NJDOE had in place a policy requiring schools who are victims of violent criminal offenses while at school or on school grounds of a school that the student attends the opportunity to transfer to a safe school in the LEA. A copy of the policy also was provided to the USDOE. Once again, the NJDOE received no indication from USDOE that there were concerns with the provisions of the adopted policy or the NJDOE's implementation of the policy. Informal contacts again suggest that the USDOE viewed favorably NJDOE's USCO Policy.

2005-2006 IMPLEMENTATION

USCO Policy Planning

The USCO Advisory Panel meeting was reconvened on November 10, 2004. A second meeting of the reconvened USCO Advisory Panel was held on February 22, 2005. Consideration of the recommendations from the panel is pending the Inspector General's final report on the NJDOE's compliance with the USCO statute.

Audit Results

Finding Number 1, Page 3 of 12

NJDOE did not identify some schools that met the Persistently Dangerous Schools criteria.

Recommendation Number 1, pages 4 and 5 of 12

We recommend that the Assistant Deputy Secretary for Safe and Drug Free Schools require NJDOE to:

- 1.1 Review all incident data for any school that requested corrections to the incidents reported, as errors in reporting could have a positive or negative effect on the school's PDS status. Any incidents not reported should be entered into EVVRS. (Also see Recommendation 2.1)

- 1.2 Ensure that corrections to incident data are adequately supported and reviewed. This should include the following:
 - a) Confirming that the incident in question has been reported in EVVRS;
 - b) Verifying that the request is supported by complete, original documentation of the incident, and that the documentation demonstrates that the incident has been incorrectly reported based on the criteria for reporting, as detailed in the *EVVRS User Manual*, or is a duplicate entry;
 - c) Ensuring that adjustments to reported data are made directly to the original incident record, rather than to the aggregate total for the school; and
 - d) Maintaining an audit trail that details corrections made to reported incident data, supported by the documentation submitted with the requested adjustment.

Department Response to Finding Number 1

It is important to clarify that districts were afforded the opportunity to review and revise the EVVRS data that they had previously submitted in fiscal years 2000, 2001 and 2002 prior to being designated PDS, rather than giving them the opportunity to appeal or dispute PDS

determinations. Once PDS determinations were made, district boards of education were authorized to file a Petition of Appeal with the Commissioner of Education, pursuant to N.J.A.C. 6A3-1.1 et seq., if they had evidence that a PDS determination was not made in accordance with the NJDOE's published USCO Policy. Therefore, the only appeal or dispute option available to district boards of education occurred after schools were publicly identified as PDS.

Districts were given the opportunity to request data adjustments because districts were not notified prior to November 2003 that the EVVRS data would be used to determine PDS. The new use of this self-reported data heightened the need for accuracy. Additionally, for the first time in November 2003 the NJDOE provided scenarios that help clarify the distinctions between certain types of incidents. Finally, use of the EVVRS was initiated in March of 2000 and districts were novices at the entry of data and the use of the system. The NJDOE wanted to be sure that the PDS determinations were based on accurate data.

NJDOE disagrees that the documentation submitted by three schools was inadequate to support the requested adjustments to incident data that were approved by NJDOE, and that students attending the three schools may have been denied the opportunity to transfer from schools that met the state's criteria for PDS, due to corrections made without adequate support from original incident documentation or corrections that were not in accordance with NJDOE's criteria for reporting incidents of violence. As is demonstrated in the analysis below, the documentation submitted by the districts was adequate in two out of three cases and corrections were made, with support from original incident documentation and in accordance with NJDOE's criteria for reporting incidents of violence.

The NJDOE considered two forms of documentation, a hard copy of the original incident record and the electronic record of the incident on the Electronic Violence and Vandalism Reporting System (EVVRS) database. When a district asserted that it had misclassified an incident (e.g., a reported simple assault did not meet the definition of assault in the EVVRS user manual), NJDOE staff reviewed the submitted description of the incident contained in the original incident record. If the description indicated that the incident did not meet criteria set forth in the definition, then the incident was reclassified or deleted, as appropriate.

In the first years of use of the system by districts, NJDOE identified that multiple records of an incident resided on the EVVRS database. The source of this duplication was twofold. Districts entered one incident multiple times, once for each offender. Since 2000-2001 was the first full-year of use of the EVVRS, this kind of multiple entry was not uncommon. A second source of duplicate entry occurred when the action of clicking on the "Continue" button on the Incident Information page occurred more than once. This action occurred when the user could not determine if the system had recognized the action. In 2001-2002, warnings to the user to "Click only once" were added next to each page's "Continue" button. If the district claimed that staff entered the same incident more than once, NJDOE staff checked the EVVRS database to determine whether there were duplicate entries. A determination of duplication was made if the following fields were identical: location, date/time, incident type (not shown on tables below), incident description (if available – field is optional), and the webtime (the date and time that the incident was entered onto the system by the user). Identical webtimes indicate probable double

clicking of the “Continue” button; proximal webtimes were indicative of probable multiple entry of an incident due to there being multiple offenders.

It is important to note that the district had access to their paper records only; they did not have the list of incidents on the file. Thus, in cases where district staff had most likely double-clicked the “Continue” button, they would not have been aware that they had entered an incident twice. Also, they would not have known the date/time that had been entered on the file. Thus, when NJDOE searched the electronic database, it looked for both the incidents that the district’s paper records indicated were duplicates and those for which the district would not have been aware.

Bergen County Technical School -Teterboro, Bergen County Vocational School District

The NJDOE disagrees that the Bergen County Technical School met the criteria of PDS.

NJDOE disagrees with the finding that “insufficient documentation was provided to support four of the six incidents deleted” and that “issues with the documentation . . . precluded determining whether it was the same incident reported twice.” Bergen County Technical School (BCTS) claimed it had, in several cases, entered one incident multiple times, once for each offender. NJDOE’s review of incident documentation submitted by the district and the EVVRS database found that with one exception referenced incident numbers agreed with the data records in EVVRS and that incident dates and times for incidents the school district identified were indeed duplicate entries. The review was conducted to determine whether the incidents were duplicates, using the fields described above, i.e., location, date/time, and incident type (or description) and webtime; proximal webtimes were used to confirm that identical information in the other fields was indicative of duplicate entry.

During the review, the NJDOE determined that there was a potential for duplicate records that the district would not have been able to identify since districts were not provided with the list of incidents on the file on which the PDS determinations would be made. Therefore, the NJDOE reviewed all the electronic records and the paper records to determine duplicative entries.

The six pairs of items reviewed are labeled **D1-D6** in the table on page 9. All six met the criteria of location, date/time and incident type. The claim by the district that one of each pair was a duplicate was supported by the similarity of webtime on the file. In the table below, “Sch.” refers to a school code, “loc.” to a location code.

**Analysis of Bergen County Technical School-Teterboro, Bergen County Vocational
School District
2000-2001**

Incident #	Sch.	Loc.	Datetime	Incident Description	Webtime (entry)
D1					
22475	70	3	12/13/2000 11:00	Assault against another student.	5/9/2001 10:07
22477	70	3	12/13/2000 11:00	Assault against another student.	5/9/2001 10:15
D2					
22490 ¹	70		10/21/2000 9:00	Assault on another student.	5/9/2001 10:31
22491	70		10/21/2000 9:00	Assault on another student.	5/9/2001 10:31
D3					
22497	70	2	1/12/2001*	Assault on another student.	5/9/2001 10:36
22502	70	2	1/12/2001	Assault on another student.	5/9/2001 10:44
* Time noted on paper copy of Incident Information form is 12:30 for both forms.					
D4					
19204	70	3	10/28/2000	Assault against another student	4/12/2001 14:08
19206	70	3	10/28/2000	Assault against another student.	4/12/2001 14:17
D5					
25389 ²	70	2	4/4/2001 9:00	Assault on a student.	5/22/2001 12:18
25391	70	2	4/4/2001 9:00	Assault on a student.	5/22/2001 12:18
D6					
25395	70	2	4/4/2001 10:00	Assault on a student.	5/22/2001 12:23
25396	70	2	4/4/2001 10:00	Assault on a student.	5/22/2001 13:19

¹ The district claimed that Incidents 22489 and 22491 were duplicates. The electronic file showed that 22489 occurred in a classroom; location of incident data for both 22491 and 22490, a third recording of the same incident, was missing, i.e., 'None Selected,' the default value for the location field. As the webtime was identical for both 22490 and 22491, the district's claim of duplicate entry was accepted for 22490 and 22491. The paper record showed identical incident information for the paper records for incidents 22489 and 22491; only the offender information differed, indicating entry of the same incident twice, once for each offender.

² The district forwarded paper copies of the original records for incidents 25391 and 25396. Matching incident information was found on the electronic file at 22389 for 22391 and at 25395 for 25396. A subsequent review of the paper records submitted showed identical incident information for 25391 and 25396.

Following questions by the auditors, the NJDOE uncovered further duplication in the list above and one other pair of incidents, in addition to the six judged to be duplicates that should not have been included in the PDS calculation because they were *fight*s and not *simple assaults*.

Bergen County Technical Institute had completed an incident form once with the first student as the offender in a simple assault and the second student as the victim, and then completed a second set of forms with the first student as the victim and the second as the offender. This case of a mutual altercation should have been reported as a *fight*.³

- The paper records for incidents 25391 and 25396 which the district had submitted in support of their claim of duplication indicated contained identical incident information (e.g., location, date/time, description). Further, the incident, recorded as a simple assault, should have been reported as a *fight*. Thus incidents on the electronic database, 25389, 25391, 25395 and 25396 all refer to the same incident, a *fight*. This finding removes four simple assault incidents instead of two, as originally found.
- The initial analysis of data on the EVVRS database showed that two of the incidents (22519 and 22525) had different incident dates on the database; the claim that they were duplicates was therefore initially rejected. In the subsequent analysis, however, it was found that the paper forms of these two incidents contained identical date and time and incident data. This was also a case of misreporting a simple assault (twice) as a *fight*. This finding would result in two more incidents being removed from the list used in the PDS calculation.

Bergen County Technical School was informed that their claim of duplicate data entry of incidents had been accepted in six cases. This reduced the number of Category B offenses from 27 to 21, yielding an Index of .96⁴, below the criterion level of 1.0. Therefore, the school did not meet the PDS criteria. Removing the four incidents discovered in the subsequent analysis, the number of incidents is reduced to 17, yielding an index of .78.

³ NJDOE staff carefully considered the documentation provided and used the EVVRS definitions and the scenarios to determine if incidents were appropriately categorized.

A *simple assault* has an offender and a victim and is defined as:

A person attempts to cause, or purposely, knowingly, or recklessly causes bodily injury to another. One needs to consider age and developmentally appropriate behavior before using this category.

A *fight* is defined as:

Mutual engagement in a physical confrontation that may result in bodily injury to either party. Does not include verbal confrontations or a minor confrontation such as a shoving match. All participants should be classified as offenders. One needs to consider age and developmentally appropriate behavior before using this category.

The EVVRS Scenarios describes considerations to be taken into account when classifying an altercation:

Were both students mutually engaged in a physical confrontation that could result in bodily injury to either party? The victim must avoid engaging in violent physical contact for the incident to be a simple assault. If both students are engaged in the physical confrontation, this incident would be considered a *fight* and both participants would be reported as offenders.

See EVVRS Scenarios (http://homerom.state.nj.us/evvrs/EVVRS_Scenarios_v1_1.doc), Example 2, for further elaboration of *reporting decisions* regarding *fight* and *simple assault*.

⁴ The recalibrated index of .85 reported to the district was based upon the enrollment originally reported by the district (549). This figure was later changed by the district in final file edits to 476.

Jersey City, School #14

The NJDOE objects to the use of the word “agreed,” in this and other sections of the report, to characterize its decisions as a result of the review of district’s EVVRS data. The NJDOE made objective determinations based on the evidence provided by the districts. The use of the word “agreed” implies that the NJDOE settled with the district after some negotiation or discussion. Instead, the NJDOE made independent and objective judgments based on the available information and the NJDOE’s definitions of the applicable incidents.

The NDOE disagrees with the opinions on the categorization of the incidents in the OIG’s report. Four highly qualified and experienced NJDOE employees reviewed the data and the supporting evidence. The NJDOE maintains that their determinations are consistent with the applicable EVVRS definitions.

NJDOE does not contest the finding that two Category A offenses were erroneously changed to Category B offenses; the reason for the error in granting the reduction follows. The district had submitted a local “School Notice of Suspension” form for five of the incidents it stated were misreported as Category A offenses on the EVVRS, e.g., aggravated assault, assault on a teacher, assault with a weapon. NJDOE reviewed all five forms and, based on the description of the incident, determined that three of the five offenses were inaccurately categorized, two as Aggravated Assaults and one Assault with a Weapon, and changed the reporting categories which were Category B offenses (either as a simple assault or threat⁵). Thus, NJDOE informed the district that because the number of Category A incidents had been reduced to five, School #14 was not PDS. Later, however, NJDOE checked the EVVRS database and found that the three offenders in the three incidents in question had committed offenses that were recorded on the EVVRS, but the incidents were not those for which paper records had been submitted.

Paterson, School # 20

The NJDOE disagrees. The district requested review of six Category A incidents for 1999-2000. Two of the six on the numbered list remained Category A incidents following the review. A third, # 4 on the district’s list dated 7/24/03, was a duplicate of #5 according to the district. Although the district produced an Incident Information page with duplicate information, the data for #4 were not entered into the EVVRS database. It was, therefore, not among the eight original Category A incidents and was not accepted by the NJDOE for removal.

Three incidents in question, #1 – 14193; #2 – 972; and #5 - 3213, reported by the district as Assaults on School Personnel, were determined not to be reportable offenses. The student offenders were 6, 7 and 8 years old, respectively. By the district’s written description of the students’ behavior, it was clear that age and developmentally appropriate behavior factors had not been considered by the district when deciding to report the incidents to the state as required by the definition. Without these three incidents, the school experienced five, not eight, Category A incidents.

⁵ Threat is defined as: Attempting by physical menace (e.g., verbal threats) to put another in fear of **future** serious bodily injury. (Do not include bomb threats in this category.) One needs to consider age and developmentally appropriate behavior before using this category.

Department Response to Recommendations Numbers 1.1 and 1.2

Response 1.1: The option for schools to request the review of incident data prior to the NJDOE identifying PDS is no longer available. The review procedure was a short-term option that was made available for the reasons previously discussed. This opportunity for review by NJDOE of EVVRS data was granted to districts for the last time prior to identifying PDS in June 2004 only for data reported in the 2001-2002 school year.

Districts will have the opportunity to appeal the PDS determination only if they can document that the NJDOE failed to implement its USCO policy. When a district appeals a PDS designation, the district will be required to submit, on a form designed by NJDOE, the incident number, date/time, type (how classified), description (if available), and offender and victim types. NJDOE will then review both documentation of the incident and the data entered onto the EVVRS to ensure that there is a match between the incident described in the appeal and that reported on the EVVRS.

Response 1.2: NJDOE agrees with recommendations a, b and d, and believes that it has and will continue to implement them in this final year of permitted adjustments. NJDOE agrees with c and any adjustments approved for 2001-2002 EVVRS data will be made to the original file created for analysis, not the original record.

Finding Number 2, Page 5 of 12

Inaccurate, incomplete and inconsistent reporting of incidents of violence by the school districts.

Recommendation Number 2, Page 8 of 12

We recommend that the Assistant Deputy Secretary for Safe and Drug-Free Schools require NJDOE to:

- 2.1 Implement management controls at the state and/or local level to ensure more complete and accurate reporting, and require school districts to capture and report complete incident data in EVVRS, including all data elements used by NJDOE to fulfill USCO requirements.
- 2.2 Remove from the incident definitions in the *EVVRS User Manual* the statement, “One needs to consider age and developmentally appropriate behavior before using this category.” The incident scenarios should also be revised accordingly.
- 2.3 Revise the EVVRS Incident Form to include “assault on school personnel” as an incident classification, so that the correct reporting of this offense is no longer contingent upon supplying victim information.
- 2.4 Clarify incident definitions and scenarios to ensure that assaults on school personnel are correctly classified and reported as such.

Department Response to Finding Number 2

The NJDOE acknowledges that in the past the reporting of incidents on the EVVRS has been variable. Since the inception of the system the NJDOE has provided training and technical assistance to districts to improve the consistent, accurate reporting of the data. In October of 2003, the NJDOE enhanced its efforts by increasing training, inviting district administrators to training, revising definitions and creating scenarios to illustrate the questions to ask to help appropriately categorize incidents. The OIG report states that the NJDOE “requires that EVVRS be used to report all incidents of violence, vandalism, weapons and substance abuse.” In fact, the NJDOE requires the reporting of incidents that meet the EVVRS definitions.

Camden City District

The NJDOE agrees that Camden City School District did not report victim information in 2002 and 2003. This lack of information may have impacted the number of Category A offenses reported. However, the NJDOE disagrees with the statement that the “criteria provided in the *EVVRS User Manual* are unclear about how to classify and report an assault on school personnel, and is not in line with the state's USCO policy.” The manual states that the victim type “must be entered.” The manual refers the user to the drop-down list of victim types which includes “school personnel”. This victim category is also present on the hard copy of the EVVRS Victim Information Page.

Further categorizing an incident as an aggravated assault to a simple assault when the victim is a staff member has no impact on the number of Category A offenses. An assault on a staff member is a Category A offense regardless of the degree.

East Orange School District

Since the NJDOE does not have the documentation reviewed by the OIG, we do not accept nor refute the documentation summary.

Jersey City School District

Since the NJDOE does not have the documentation reviewed by the OIG, we do not accept nor refute the documentation summary.

The NJDOE disagrees with the finding that it did not have “sufficient internal controls in place to identify non-compliance with reporting requirements, which contributed to the inaccurate, incomplete, and inconsistent reporting among the school districts” for the reasons described above.

The NJDOE disagrees that considering age and developmentally appropriate behavior before using certain categories contributes to inconsistent reporting. Also, we disagree that such consideration “is not conducive to yielding objective data that is not influenced by emotion, surmise or personal bias.” Such consideration yields a more accurate evaluation of the behavior and its appropriate categorization. Further, the application of the criteria does not automatically

cause the introduction of emotion, surmise or bias into decision making. The NJDOE believes that this criterion is critical to the accurate categorization of incidents.

The NJDOE disagrees that the EVVRS system was weakened because the NJDOE did not require that districts use the EVVRS Incident Form. School districts may choose to collect information that is not required by EVVRS or may design a form that works better for their faculty. The NJDOE in its regulatory amendment scheduled for State Board approval in August, 2005 will require that district boards of education adopt a form that includes all of the incident detail and offender and victim information that is reported on EVVRS.

Finally, the NJDOE disagrees that requiring two fields on two separate pages of the EVVRS to report assaults on school personnel reduced the likelihood that the offenses were reported correctly. The NJDOE mailed a survey to all districts with missing offender and victim information in the 2003-2004 reporting year. Districts indicated why they had not entered the data and assured NJDOE that they would henceforth enter offender and victim data. Additionally, two new EVVRS reports were developed that alert districts when offender and/or victim information is missing, by incident. These reports are sent to affected districts monthly and at the end of the year. As indicated by the number of incident with victims reported, the vast majority understand the structure of the EVVRS. There is no need to alter that structure in an attempt to correct the shortcomings of a relatively small number of districts. The two reports should solve the problem of missing victim data.

Department Response to Recommendations 2.1-2.4

Response 2.1: Pursuant to regulations (N.J.A.C. 6A:16-5.3(a)1i) proposed to the State Board of Education in October 2004, local district's EVVRS forms will be required to include all of the incident detail and offender and victim information that is reported on the EVVRS. The rules are scheduled for adoption in September 2005.

However, the NJDOE believes that sufficient management controls are in place to protect the integrity of the EVVRS data. Under the EVVRS, every district has opportunities to reconcile data prior to NJDOE's PDS determinations under the USCO Policy. Pursuant to N.J.A.C. 6A:16-5.3(d)2, the CSA is required to annually verify that the data entered into the EVVRS are correct. Pursuant to N.J.A.C. 6A16-5.3(e), the CSA is required to annually report a numerical summary of all acts of violence and vandalism and incidents of substance abuse to the district board of education at a public meeting. Additionally, in accordance with N.J.A.C. 6A:16-5.3(f) district board's of education are required to implement procedures regarding the imposition of consequences for any school employee who knowingly falsifies the annual report on violence and vandalism required under N.J.S.A. 18A:17-46.

Response to 2.2: The NJDOE disagrees. Aligning the EVVRS definitions with the New Jersey's Criminal Code has precipitated the need to consider the developmental age of the child when determining how to categorize an incident. The NJDOE believes that the developmental age of the child should be considered in determining the categorization of a behavior. NJDOE had changed many incident definitions to bring them into line with the state criminal code so that

the EVVRS could be used to meet the USCO Option II requirements for determining when a student was a victim of a violent criminal offense. Given this shift in the meaning of incident definitions, it was important for districts to differentiate between violent behaviors of children that reflected developmental delays or age-related comprehension and the more serious incidents of violence defined under the state's criminal code for violence and to be reported in the EVVRS. For example, a kindergarten child who kicks a teacher while having a temper tantrum has not committed a simple assault on a staff member. Requiring the districts to consider age and developmentally appropriate behavior was strongly endorsed by the USCO Advisory Panel. Further, this criterion contained in the EVVRS User Manual is supported by the use of the same criteria by the USDOE, National Center for Educational Statistics, in its publication *Safety in Numbers*⁶. For example, Battery is defined as "Touching or striking of another person against his or her will or intentionally causing bodily harm to an individual." The Notes state: "Consider age and developmentally appropriate behavior before using this category." NJDOE, through the EVVRS User Manual, is providing this federal guidance to the districts.

The NJDOE maintains that this criterion meets both the letter and spirit of the USCO requirement.

Response to 2.3: Incident and victim information are reported on separate pages. "School Personnel" is a choice on the Victim Information Page used to record the incident and is on the drop-down list of victim types. Keeping the incident and victim information separate allows NJDOE to capture all types of incidents where a staff member is a victim. The NJDOE maintains that creating a new incident category "assault on school personnel" compromises the current system.

Response to 2.4: NJDOE has addressed and will continue to address the issue of standards for reporting and interdistrict and intradistrict variability in the application of reporting standards. NJDOE will continue to annually train school and district staff on standards for reporting, including the use of EVVRS and categorization of incidents. It will receive a report in the fall of 2005 from a consultant contractor that will identify schools where there is a significant discrepancy between the number of students reported having been suspended on the School Report Card and the number of students suspended as reported on the EVVRS. Additionally, through a grant from the United States Office of Education (USDOE), NJDOE will produce and distribute to all districts an updated video tape program by the 2006-07 school year on reporting incidents of violence and vandalism.

Finding Number 3, Page 8 of 12

Special schools were not identified as Persistently Dangerous.

⁶ National Center for Education Statistics (2002). *Safety in Numbers*. Washington, DC (pp. 49, 52,53,56).

⁷ National Center for Education Statistics (2002). *Safety in Numbers*. Washington, DC (pp. 49, 52,53,56).

Recommendation Number 3, Page 10 of 12

- 3.1 We recommend that the Assistant Deputy Secretary for Safe and Drug Free Schools, in conjunction with the Assistant Secretary for Special Education and Rehabilitative Services, assess how NJDOE is treating the special schools and require NJDOE to make any necessary changes to its policy to ensure disabled students receive the same benefits as non-disabled students.

Department Response to Finding and Recommendation Number 3

The NJDOE agrees that Regional Day Schools, Special Services Districts and Educational Services Commissions are not identified as persistently dangerous under the state's Unsafe School Choice Options Policy. However, the NJDOE disagrees that its policy should be changed. The USCO provisions apply only to educational institutions that are considered LEAs under NCLB. Regional Day Schools, Special Services Districts and Educational Services Commissions are not considered LEAs under the NCLB special rule at Title IX, Section 9101(1)(C), due to their status as tuition-based educational institutions. As such, these special services schools do not receive allocations for any Title under NCLB and are not LEAs. Title IX, Section 9101(1)(C) establishes that:

“If the local educational agency in which a child resides makes a tuition or other payment for the free public education of the child in the school located in another school, the Secretary shall, for the purpose of this Act –

- (i) consider the child to be in attendance at a school of the agency making the payment; and
- (ii) not consider the child to be in attendance at a school of the agency receiving the payment.”

Additionally, Regional Day Schools, Special Services Districts and Educational Services Commissions were established to serve students with disabilities. Therefore, under Title IX, Section 9101(1)(D) cited below, these special services schools also are not considered LEAs under NCLB because they operate under tuition payments from LEAs to serve students with disabilities. The students are considered to be enrolled in the sending LEAs, rather than in the receiving special services schools.

“If a local educational agency makes tuition payment to a private school or to a public school of another local educational agency for a child with a disability, as defined in section 602 of the Individuals with Disabilities Education Act, the Secretary shall, for the purpose of this Act, consider the child to be in attendance at a school of the agency making the payment.”

Therefore, the NJDOE asserts that its USCO Policy regarding Regional Day Schools, Special Services Districts and Educational Services Commissions not only is in compliance with the USCO statute, but it goes beyond the provisions of the statute by identifying these non-LEA

schools that have high rates of violent incidents and to require them to develop corrective action plans (school safety plans) to reduce the number of incidents of violence.

As a practical matter, students with disabilities can not be immediately transferred to another school. By federal law, the students individualized education program must meet to consider any changes to the student's IEP. Additionally, these schools do not have equivalent schools to accommodate transfers since the school's programs are determined by the special education needs of the existing populations.

We trust that our response satisfies the concerns raised in the audit report. Should you have any questions or need further information, please contact me at 609-984-5593 or Susan Martz, director, Office of Program Support Services at 609-633-1752.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ray Montgomery', with a long horizontal flourish extending to the right.

Ray Montgomery, Director
Office of Compliance Investigation

RM/IRB/SBM

c: William L. Librera
Dwight Pfennig
J. Michael Rush
Isaac Bryant
Regional Assistant Commissioners
Susan B. Martz