

**Guidance Concerning State and Local Responsibilities
Under the
Gun-Free Schools Act of 1994**

This guidance is to provide information concerning State and local responsibilities under the Gun-Free Schools Act (GFSA), which was enacted on October 20, 1994 as part of the Improving America's Schools Act of 1994 (the reauthorization of the Elementary and Secondary Education Act of 1965 (ESEA)), Public Law 103-382. Preliminary information was mailed to Governors and Chief State School Officers in a letter dated November 28, 1994. Revisions to the guidance were made and issued on October 31, 1995. This revision of the guidance contains an additional question and answer (Q. 10) concerning reporting.

The GFSA states that each State receiving Federal funds under ESEA must have in effect, by October 20, 1995, a State law requiring local educational agencies to expel from school for a period of not less than one year a student who is determined to have brought a weapon to school. Each State's law also must allow the chief administering officer of the local educational agency (LEA) to modify the expulsion requirement on a case-by-case basis.

The legislation explicitly states that the GFSA must be construed to be consistent with the Individuals with Disabilities Education Act (IDEA). Therefore, by using the case-by-case exception, LEAs will be able to discipline students with disabilities in accordance with the requirements of Part B of the IDEA and Section 504 of the Rehabilitation Act (Section 504), and thereby maintain eligibility for Federal financial assistance. The Department has issued separate, more detailed guidance on discipline of students with disabilities, which includes clarification of the implementation of the GFSA consistent with IDEA and Section 504.

The following questions and answers have been prepared to assist States, State educational agencies (SEAs), and LEAs in implementing these new requirements.

Q1. What entities are affected by the provisions of the Gun-Free Schools Act?

- A. Each State, as well as its State educational agency and local educational agencies, has responsibilities under the GFSA.

Q2. Are private schools subject to the requirements of the Gun-Free Schools Act?

- A. Private schools are not subject to the provisions of the GFSA, but private school students who participate in LEA programs or activities are subject to the one-

Revised September 29, 2000

year expulsion requirement to the extent that such students are under the supervision and control of the LEA as part of their participation in the LEA's programs. For example, a private school student who is enrolled in a Federal program, such as Title I, is subject to a one-year expulsion, but only from Federal program participation, not a one-year expulsion from the private school. Of course, nothing prohibits a private school from imposing a similar expulsion from the private school on a student who brings a weapon to school.

Q3. Will SEAs and LEAs have a period of time to comply with the requirements of the Gun-Free Schools Act?

- A. States must take prompt action to implement the requirements of the GFSA, including prompt action to initiate the legislative process. States have until October 20, 1995 to enact and make effective the one year expulsion legislation required by Section 14601. States that have not enacted and made effective legislation by this date risk losing ESEA funds.

In order to be eligible to receive ESEA funds, LEAs must have an expulsion policy consistent with the required State law.

LEAs must take immediate action to implement the referral policy required by Section 14602, because the GFSA directs that no ESEA funds shall be made available to an LEA unless that LEA has the required referral policy.

Q4. Is compliance with the requirements of the Gun-Free Schools Act a condition for the receipt of Federal financial assistance under the ESEA?

- A. Yes, compliance with the requirements of the GFSA is a condition for the receipt of funds made available to the State under the ESEA.

QS. Will failure to comply with the requirements of the Gun-Free Schools Act result in the termination or withholding of funds made available to the State under the ESEA?

- A. Failure to comply with the requirements of the GFSA could result in the withholding, under the provisions of the General Education Provisions Act, of funds made available to the State under the ESEA; however, it is anticipated that technical assistance provided to States will result in timely compliance and make withholding of funds unnecessary.

Q6. May a State request a waiver of the requirements of the Gun-Free Schools Act?

- A. Yes. The ESEA authorizes the Secretary to waive the requirements of the GFSA if that action will increase the quality of instruction for students or will improve the academic performance of students. However, it is not anticipated that the requirements of the GFSA will be waived except in unusual circumstances.

Q7. Does the Gun-Free Schools Act's one-year expulsion requirement Preclude any due process proceedings?

- A. No. Students facing expulsion from school are entitled under the U.S. Constitution and most State constitutions to the due process protection of notice and an opportunity to be heard. If, after due process has been accorded, a student is found to have brought a weapon to school, the GFSA requires an expulsion for a period of not less than one year (subject to the case-by-case exception discussed below).

Q8. What does the Gun-Free Schools Act require of States?

- A. The GFSA requires that each State receiving Federal funds under the ESEA must, by October 20, 1995: (1) have in effect a State law requiring LEAs to expel from school for a period of not less than one year a student who is determined to have brought a weapon to school; (2) have in effect a State law allowing the LEA's chief administering officer to modify the expulsion requirement on a case-by-case basis; and (3) report to the Secretary on an annual basis concerning information submitted by LEAs to SEAS. SEAs must also ensure that no ESEA funds are made available to an LEA that does not have a referral policy consistent with Section 14602.

One Year Expulsion Requirement

Each State's law must require LEAs to comply with a one-year expulsion requirement; that is, subject to the exception discussed below, any student who brings a weapon to school must be expelled for not less than one year.

Case-By-Case Exception

Each State's law must allow the chief administering officer of an LEA to modify the one year expulsion requirement on a case-by-case basis.

Annual Reporting

Each State must report annually on LEA compliance with the one year expulsion requirement, and on expulsions imposed under the State law, including the number of students expelled in each LEA and the types of weapons involved.

Q9. What does the Gun-Free Schools Act require of LEAs?

- A. The GFSA requires that LEAs (1) comply with the State law requiring the one-year expulsion; (2) provide an assurance of compliance to the SEA; (3) provide descriptive information to the SEA concerning the LEAs' expulsions; and (4) adopt a referral policy for students who bring weapons to school.

One Year Expulsion Requirement

LEAs must comply with the State law requiring a one-year expulsion; that is, subject to the case-by-case exception, any student who brings a weapon to school must be expelled for not less than one year.

LEA Assurance

An LEA must include in its application to the State educational agency for ESEA assistance an assurance that the LEA is in compliance with the State law requiring the one-year expulsion.

Descriptive Report to SEA

An LEA must include in its application for ESEA assistance a description of the circumstances surrounding expulsions imposed under the one-year expulsion requirement, including:

- (A) the name of the school concerned;
- (B) the number of students expelled from the school; and
- (C) the type of weapons concerned.

Referral Policy

LEAs must also implement a policy requiring referral to the criminal justice or juvenile delinquency system of any student who brings a weapon to school.

Revised September 29, 2000

4

Q10. In annual compliance reports must LEAs and SEAs include information about an infraction under the GFSA even if the case-by-case modification provisions are used and no penalty is

imposed?

- A. Information about any incidents covered by the GFSA should be included in annual reports furnished by LEAs and SEAs. Any student found to have brought a firearm (meeting the definition at 18 U.S.C. 921) to school should be reported as an infraction, even if the chief administering officer elects to shorten the expulsion or impose no penalty. Any incidents in which a student covered by the provisions of the IDEA brings a firearm to school should also be included, even if it is determined that the incident is a manifestation of the student's disability. Modifications of the one-year expulsion requirement should also be reported in response to GFSA report questions concerning modifications.

Q11. When must an LEA implement its referral policy?

- A. LEAs must take immediate action to implement a policy requiring referral to the criminal justice or juvenile delinquency system of any student who brings a weapon to school. The GFSA directs that no ESEA funds shall be made available to an LEA unless that LEA has the required referral policy.

Q12. When must an LEA submit the required assurance?

- A. In its first application to the State educational agency for ESEA funds after the date that the State enacts and makes effective the required one year expulsion legislation, the LEA must include an assurance that the LEA is in compliance with the State law.

Q13. What is the role of the SEA in determining whether an LEA is in compliance with the Gun-Free Schools Act?

- A. The GFSA requires States to report to the Secretary on an annual basis concerning LEA compliance. Therefore, before awarding any ESEA funds to an LEA, the SEA must ensure that the LEA has: (1) implemented a policy requiring referral to the criminal justice or juvenile delinquency system of any student who brings a weapon to school; and (2) included in its application for ESEA funds the assurance and other information required by the GFSA. SEAs must ensure that the LEA application contains:

- (1) an assurance that the LEA is in compliance with the State law requiring the one-year expulsion; and

(2) a description of the circumstances surrounding expulsions imposed under the one-year expulsion requirement, including:

- (A) the name of the school concerned;
- (B) the number of students expelled from the school; and
- (C) the type of weapons concerned.

Q14. Who is an LEA's 'chief administering officer'?

A. The term "chief administering officer" is not defined by the GFSA. Each LEA should determine, using its own legal framework, which chief operating officer or authority (e.g., Superintendent, Board, etc.) has the power to modify the expulsion requirement on a case-by-case basis.

Q15. Can any individual or entity other than the LEA's "chief administering officer" modify the one-year expulsion requirement on a case-by-case basis?

A. No. However, the chief administering officer may allow another individual or entity to carry out preliminary information gathering functions, and prepare a recommendation for the chief administering officer.

Q16. Is it permissible for an LEA to use the case-by-case exception to avoid compliance with the one-year expulsion requirement?

A. No, this exception may not be used to avoid over-all compliance with the one-year expulsion requirement.

Q17. How is the term 'weapon' defined?

A. For the purposes of the GFSA, a "weapon" means a firearm as defined in Section 921 of Title 18 of the United States Code.

According to Section 921, the following are included within the definition:

-- any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive

--the frame or receiver of any weapon described above

--any firearm muffler or firearm silencer --any destructive device, which includes:

- (a) any explosive, incendiary, or poison gas
 - (1) bomb,
 - (2) grenade,
 - (3) rocket having a propellant charge of more than four ounces,
 - (4) missile having an explosive or incendiary charge of more than one-quarter ounce,
 - (5) mine, or
 - (6) similar device
- (b) any weapon which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter
- (c) any combination or parts either designed or intended for use in converting any device into any destructive device described in the two immediately preceding examples, and from which a destructive device may be readily assembled

According to Section 921, antique firearms are not included in the definition. In addition, we have been advised by the Bureau of Alcohol, Tobacco, and Firearms that Class-C common fireworks are not included in the definition of weapon. For additional information about whether a particular weapon is a "firearm" under this definition, contact the Safe and Drug-Free Schools Program at (202) 2603954 for a referral to the nearest Bureau of Alcohol, Tobacco, and Firearms field office.

Q18. Does the Gun-Free Schools Act preclude classes such as hunting or military education, or activities such as before or after school hunting, or rifle clubs, which may involve the handling or use of weapons?

- A. No. Although individual school districts may choose to prohibit firearms altogether, the Secretary does not believe that Congress intended the GFSA to preclude, in all circumstances, school-sponsored or authorized classes and activities that might involve the handling or use of firearms by students. The Secretary interprets the GFSA to allow local school districts to permit firearms at school when students are participating in school-sponsored or authorized activities that involve firearms. Similarly, based on the legislative history, the

Revised September 29, 2000

Secretary interprets the GFSA not to forbid school districts from allowing firearms at school when students intend to use firearms solely for before or after school hunting purposes, providing the school district's determination to permit firearms is made and disseminated in advance, as part of LEA policy, and is consistent with the intent and purposes of the GFSA to prevent violence and create an environment conducive to learning. For example, if a local school district approves an extracurricular program such as a rifle club, or allows students to bring firearms solely for before or after school hunting, the activities would not violate the GFSA if the school district:

determines that the activity is consistent with the intent and purposes of the GFSA;and

-- provides notice as part of its Gun-Free Schools policy that the activities are approved and authorized.

If any firearms are to be allowed for these limited purposes, local school districts are cautioned to consider all applicable local, State, and Federal laws pertaining to the possession of firearms. In particular, school districts should be aware that Federal and some State laws prohibiting juveniles from possessing handguns may be applicable. The Secretary also encourages school districts that permit students to bring firearms to school for these limited purposes to adopt appropriate safeguards to ensure student safety, consistent with the purposes of the GFSA.

Q19. Are knives considered weapons under the Gun-Free Schools Act?

A. No, for the purposes of the GFSA, the definition of weapon does not include knives. State legislation or an SEA or LEA may, however, decide to broaden its own definition of weapon to include knives.

Q20. What is meant by the term "expulsion"?

A. The term "expulsion" is not defined by the GFSA; however, at a minimum, expulsion means removal from the student's regular program. Expulsion does not mean merely moving a student from a regular program in one school to a regular program in another school. Care should be taken by local officials to ensure that a student who is determined to have brought a firearm to school is effectively removed from that setting.

Q21. Is a State, SEA, or LEA required to provide alternative educational services to students who have been expelled for bringing a weapon to school?

Revised September 29, 2000

- A. The GFSA neither requires nor prohibits the provision of alternative educational services to students who have been expelled. Other Federal, State, or local laws may, however, require that students receive alternative educational services in certain circumstances.

Q22. What is an "alternative setting" for the provision of educational services to an expelled student?

- A. An alternative setting is one that is clearly distinguishable from the student's regular school placement.

Q23. Is Federal funding available to provide alternative educational services?

- A. Yes, formula grants awarded under the Safe and Drug-Free Schools and Communities Act may be used for alternative educational services. In addition, other Federal funds may be available for alternative educational services, consistent with each program's statutory and regulatory requirements.

Q24. Do the requirements of the Gun-Free Schools Act conflict with requirements that apply to students with disabilities?

- A. No. Compliance with the GFSA may be achieved consistently with the requirements that apply to students with disabilities, so long as discipline of such students is determined on a case-by-case basis in accordance with the IDEA and Section 504. The Department intends to issue separate, more detailed guidance on discipline of students with disabilities, which will include clarification of the implementation of the GFSA consistent with IDEA and Section 504.

Q25. Is it permissible to expel a student for a "school year" rather than a year?

- A. No. The statute explicitly states that expulsion shall be for a period of not less than one year.

Q26. Does the expulsion requirement apply only to violations occurring in the school building?

- A. No. The one-year expulsion requirement applies to students who bring weapons to any setting that is under the control and supervision of the LEA.

Revised September 29, 2000