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

I. Introduction

This guidance provides information concerning State and local responsibilities under the Gun-Free Schools Act (GFSA), which was reauthorized by the No Child Left Behind (NCLB) Act of 2001 (Public Law 107-110), as Section 4141 of the Elementary and Secondary Education Act of 1965 (ESEA). This guidance addresses changes made as a result of the NCLB reauthorization.

II. Background

As originally enacted on March 31, 1994, as part of the Goals 2000: Educate America Act (Public Law 103-227), and reauthorized on October 20, 1994, as part of the Improving America's Schools Act of 1994 (Public Law 103-382), the GFSA required each State receiving ESEA funds to have in effect a State law requiring local educational agencies (LEAs) to expel from school for a period of not less than one year a student who was determined to have brought a weapon to school. The GFSA also required that a State's law allow the chief administering officer of the LEA in question to modify the expulsion requirement on a case-by-case basis. The U.S. Department of Education (Department) provided nonregulatory guidance on previous GFSA provisions to Governors and Chief State School Officers on August 1, 1994; January 20, 1995; November 3, 1995; and October 2, 2000.

III. Summary of the New Law

A. What stayed the same?

LEAs are still required to have an expulsion policy consistent with the required State law to be eligible to receive ESEA funds. LEAs must have a policy requiring referral to the criminal justice or juvenile delinquency system of any student who brings a firearm to a school under the control and supervision of an LEA. In accordance with the GFSA, no ESEA funds may be made available to an LEA unless that LEA has the required referral policy.

The GFSA still must be construed in a manner consistent with the Individuals with Disabilities Education Act (IDEA). 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 maintain eligibility for Federal financial assistance. The Department has issued separate, more detailed guidance on discipline of students with disabilities, which includes clarification

on the implementation of the GFSA consistent with IDEA and Section 504. More information can be found at www.ed.gov/offices/OSERS/Policy/IDEA/Discipline_qa.doc

B. What changed?

Under the NCLB, certain statutory provisions were clarified to ensure that States and LEAs comply fully with the intent of the GFSA. Clarifications to the GFSA include:

- (1) That the existing one-year expulsion requirement in each State's law include students who are determined to have possessed a firearm at school;
- (2) A requirement that the chief administering officer of the LEA develop a written record of any case-by-case modifications of the one-year expulsion requirement;
- (3) That the GFSA does not apply to a firearm that is lawfully stored inside a locked vehicle on school property, or if it is for activities approved and authorized by the local educational agency (LEA), so long as the LEA adopts appropriate safeguards to ensure student safety.

Although States are not required to revise their State laws as a result of these clarifications, a State or LEA may consider implementing or revising its policies to address the revised GFSA requirements.

The Department has prepared the following questions and answers to assist States, State educational agencies (SEAs), and LEAs in implementing the GFSA requirements. Please note that most of the questions and answers have been revised as a result of the reauthorized GFSA.

IV. Questions and Answers

Q1. What entities do the provisions of the GFSA affect?

A1. Each State, as well as its SEA and LEAs, has responsibilities under the GFSA.

Q2. Are private schools subject to the requirements of the GFSA?

A2. 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-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 participates in a Federal program, such as Title I, is subject to a one-year expulsion, from participating in any Federal program funded under the ESEA, 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 or possesses a weapon at school.

Q3. Is compliance with the requirements of the GFSA a condition for the receipt of Federal financial assistance under the ESEA?

A3. Yes, compliance with the requirements of the GFSA is a condition for the receipt of funds made available to the State under the ESEA (and also under Title VII of the McKinney-Vento Homeless Assistance Act).

Q4. Will failure to comply with the requirements of the GFSA result in the termination or withholding of funds made available to the State under the ESEA?

A4. Under the provisions of the General Education Provisions Act, failure to comply with the requirements of the GFSA could result in the withholding of funds made available to the State under the ESEA (and under Title VII of the McKinney-Vento Homeless Assistance Act).

Q5. Does the GFSA's one-year expulsion requirement preclude any due process proceedings?

A5. 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 firearm to school, or to have possessed a firearm at school, the GFSA requires an expulsion for a period of not less than one year (subject to the case-by-case exception discussed below).

Q6. What does the GFSA require of States?

A6. The GFSA requires that each State receiving Federal funds under the ESEA: (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 firearm to school, or to have possessed a firearm at school; (2) have in effect a State law allowing an LEA's chief administering officer to modify the expulsion requirement on a case-by-case basis, if such modification is in writing; and (3) report to the Secretary on an annual basis concerning information submitted by LEAs to the SEA. SEAs must also ensure that no ESEA funds are made available to an LEA that does not have a referral policy consistent with Section 4141(h) of the GFSA. Details on these requirements follow.

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 firearm to school, or possesses a firearm at 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, but only if the modification is in writing. For children with disabilities, the provisions of IDEA apply. The GFSA must be construed in a manner consistent with IDEA.

Annual Reporting

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

- Q7. What does the GFSA require of LEAs?
- A7. 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 circumstances surrounding any LEAs' expulsions; and (4) adopt a referral policy for students who bring a firearm to school or possess a firearm at school. Details follow.

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, and for children with disabilities, the requirements of IDEA, any student who brings a firearm to school, or possesses a firearm at school, must be expelled for not less than one year. A case-by-case exception must be in writing and may include children with disabilities in order to meet the requirements of IDEA.

LEA Assurance

An LEA must include in its application to the SEA 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 firearms 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 firearm to school or possesses a firearm at school.

- Q8. 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?
- A8. Information about any incidents covered by the GFSA must be included in annual reports furnished by LEAs and SEAs. Each incident in which a student is found to have brought a firearm (meeting the definition at 18 U.S.C. 921) to school, or to have possessed a firearm at school, must 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 must also be included, even if it is determined that the incident is a manifestation of the student's disability and that the GFSA penalties should be modified or not imposed. Modifications of the one-year expulsion requirement must also be reported.
- Q9. When must an LEA submit the required assurance?

- A9. In its application to the SEA for ESEA funds, the LEA must include an assurance that the LEA is in compliance with the State law. The assurance must be included each time the LEA files such an application.
- Q10. What is the role of the SEA in determining whether an LEA is in compliance with the GFSA?
- A10. 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 firearm 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 firearms concerned.
- Q11. Who is an LEA's "chief administering officer"?
- A11. The GFSA allows only the LEA's chief administering officer to modify the one-year expulsion requirement on a case-by-case basis. However, the term "chief administering officer" is not defined by the GFSA. Each LEA should determine, using its own legal framework, which officer or authority (e.g., Superintendent, Board, etc.) is the chief administering officer under the GFSA and has the power to modify the expulsion requirement.
- Q12. May any individual or entity other than the LEA's "chief administering officer" modify the one-year expulsion requirement on a case-by-case basis?
- A12. No. While, 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, the chief administering officer retains the responsibility for the final decision.
- Q13. What procedural requirements must the LEA's chief administering officer follow in modifying the one-year expulsion requirement?

A13. Modifications of the one-year expulsion requirement must be issued in writing by the chief administering officer.

Q14. Is it permissible for an LEA to use the case-by-case exception to avoid compliance with the one-year expulsion requirement?

A14. No, this exception may not be used to avoid over-all compliance with the one-year expulsion requirement.

Q15. How is the term "firearm" defined?

A15. For the purposes of the GFSA, the term "firearm" is defined in Section 921(a) of Title 18 of the United States Code.

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

--any weapon (including a starter gun) that will be, 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, including a

- (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 that will, or that may be readily converted to, expel a projectile by the action of an explosive or other propellant, and that 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

firearm. For additional information about whether a particular weapon is a "firearm" under this definition, contact the Safe and Drug-Free Schools Program at (202) 260- 3954 for a referral to the nearest Bureau of Alcohol, Tobacco, and Firearms field office.

Q16. Does the GFSA preclude classes such as hunting safety or military education, or activities such as before- or after-school hunting, or rifle clubs, that may involve the handling or use of weapons?

A16. No. The statute specifically states that the requirements of the GFSA do not apply to a firearm lawfully stored inside a locked vehicle on school property, or to activities approved and authorized by an LEA, provided that the LEA has adopted appropriate safeguards to ensure student safety.

The 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, provided 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 extra-curricular 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;
- provides notice as part of its GFSA policy that the activities are approved and authorized; and
- adopts appropriate safeguards to ensure student safety.

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. School districts that permit students to bring firearms to school for these limited purposes must adopt appropriate safeguards to ensure student safety, consistent with the purposes of the GFSA.

Q17. Are knives considered firearms under the GFSA?

A17. No, for the purposes of the GFSA, the definition of firearm does not include knives.

Q18. What is meant by the term "expulsion"?

A18. The term "expulsion" is not defined by the GFSA; however, at a minimum, expulsion means removal from the student's regular educational 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, or to have possessed a firearm at school, is effectively removed from that setting.

Q19. Is a State, SEA, or LEA required to provide alternative educational services to students who have been expelled for bringing a firearm to school?

A19. 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.

Q20. What is an "alternative setting" for the provision of educational services to an expelled student?

A20. An alternative setting is one that is clearly distinguishable from the student's regular school placement. Alternative settings are typically established for students who have been removed from the regular school program.

Q21. Is Federal funding available to provide educational services in alternate settings?

A21. Funds may be used only to supplement, and not supplant, existing funds that support such activities. In addition, other Federal funds may be available for alternative educational services, consistent with each program's statutory and regulatory requirements.

Q22. Do the requirements of the GFSA conflict with requirements that apply to students with disabilities?

A22. No. Compliance with the GFSA may be achieved consistent with the requirements that apply to students with disabilities, so long as discipline of those students is determined on a case-by-case basis in accordance with the IDEA and Section 504. The Department has issued separate, more detailed guidance on discipline of students with disabilities, which includes clarification on the implementation of the GFSA consistent with IDEA and Section 504 www.ed.gov/offices/OSERS/Policy/IDEA/Discipline_qa.doc

Q23. Is it permissible to expel a student for a school year rather than a year?

A23. No. The statute explicitly states that expulsion shall be for a period of not less than one year.

Q24. Does the expulsion requirement apply only to violations occurring in the school building?

A24. No. The one-year expulsion requirement applies to students who bring firearms to, or possess firearms at, any setting that is under the control and supervision of the LEA.