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## THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

May 9, 1995

"Gun-Free School Zones Amendments Act of 1995"FACT SHEET

The President today transmitted to Congress a legislative proposal entitled the "Gun-Free School Zones Amendments Act of 1995." This legislation would provide the interstate nexus necessary to implement the Gun-Free School Zones Act of 1990 after the Supreme Court's recent decision in United States v. Lopez.

In a 5-4 decision, the Court in Lopez held that Congress had exceeded its authority under the Commerce Clause in enacting the Gun-Free School Zones Act of 1990 because the statute contained no jurisdictional element to ensure that the firearm possession in question had the requisite nexus with interstate commerce.

In the wake of that decision, the President directed Attorney General Reno to present him with an analysis of the Lopez decision and to recommend a legislative solution to the problem identified by that decision.

The Attorney General transmitted her analysis and recommendation to the President on May 5, 1995, and her legislative recommendation is presented in this proposal.

The legislative proposal would amend the Gun-Free School Zones Act by adding the requirement that the Government prove that the firearm has "moved in or the possession of such firearm otherwise affects interstate or foreign commerce."

The addition of this jurisdictional element would limit the Act's "reach to a discrete set of firearm possessions that additionally have an explicit connection with or effect on interstate commerce," as the Court stated in Lopez, and thereby bring it within Congress' Commerce Clause authority.

The Attorney General reported to the President that this proposal would have little, if any, impact on the ability of prosecutors to charge this offense, for the vast majority of firearms have been "in . . . commerce" before reaching their eventual possessor.

Furthermore, by also including the possibility of proving the offense by showing the possession of the firearm "otherwise affects interstate or foreign commerce," this proposal would leave open the possibility of showing, under the facts of a particular case, that although the firearm itself may not have "moved in . . . interstate or foreign commerce," its possession nonetheless has a sufficient nexus to commerce.

In transmitting this proposal to Congress, the President reiterated his belief that the States must continue to play the primary role in this area of law enforcement and that the Federal Gun-Free School Zones Act should properly be viewed in most instances as a "backup" to the State systems.

11-30  
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TO THE CONGRESS OF THE UNITED STATES:

Today I am transmitting for your immediate consideration and enactment the "Gun-Free School Zones Amendments Act of 1995." This Act will provide the jurisdictional element for the Gun-Free School Zones Act of 1990 required by the Supreme Court's recent decision in United States v. Lopez.

In a 5-4 decision, the Court in Lopez held that Congress had exceeded its authority under the Commerce clause by enacting the Gun-Free School Zones Act of 1990, codified as 18 U.S.C. § 922(g). The Court found that this Act did not contain the jurisdictional element that would ensure that the firearms possession in question has the requisite nexus with interstate commerce.

In the wake of that decision, I directed Attorney General Reno to present to me an analysis of Lopez and to recommend a legislative solution to the problem identified by that decision. Her legislative recommendation is presented in this proposal.

The legislative proposal would amend the Gun-Free School Zones Act by adding the requirement that the Government prove that the firearm has "moved in or the possession of such firearm otherwise affects interstate or foreign commerce."

The addition of this jurisdictional element would limit the Act's "reach to a discrete set of firearm possessions that additionally have an explicit connection with or effect on interstate commerce," as the Court stated in Lopez, and thereby bring it within Congress' Commerce Clause authority.

The Attorney General reported to me that this proposal would have little, if any, impact on the ability of prosecutors to charge this offense, for the vast majority of firearms have "moved in . . . commerce" before reaching their eventual possessor.

Furthermore, by also including the possibility of proving the offense by showing that the possession of the firearm "otherwise affects interstate or foreign commerce," this proposal would leave open the possibility of showing, under the facts of a particular case, that although the firearm itself may not have "moved in . . . interstate or foreign commerce," its possession nonetheless has a sufficient nexus to commerce.

The Attorney General has advised that this proposal does not require the Government to prove that a defendant had knowledge that the firearm "has moved in or the possession of such firearm otherwise affects interstate or foreign commerce." The defendant must know only that he or she possesses the firearm.

In transmitting this proposal to you, I reiterate my belief that the States must continue to play the primary role in this area of law enforcement and that the Federal Gun-Free School Zones Act should properly be viewed in most instances as a "backup" to the State systems.

The Administration is prepared to work immediately with Congress to enact this legislation. I urge the prompt and favorable consideration of the Administration's legislative proposal by the Congress.

THE WHITE HOUSE,

1130 drp

## A BILL

To amend the Gun-Free School Zones Act of 1990 to provide the necessary nexus with interstate commerce.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

## SECTION 1. SHORT TITLE.

This Act may be cited as the "Gun-Free School Zones Amendments Act of 1995".

## SEC. 2. INTERSTATE NEXUS.

Section 922(q)(2)(A) of title 18, United States Code, is amended by inserting after "zone" the following: ", if that firearm has moved in or the possession of such firearm otherwise affects interstate or foreign commerce".

A: Under current law, the Attorney General has emergency power to add drugs to the controlled substances list, but she does not have the authority to reschedule drugs that are already on the list. The situation with respect to rohypnol, commonly called "roofies," is a classic example of why she needs this new authority.

The abuse of "roofies" skyrocketed virtually overnight. Unfortunately, the administrative process for rescheduling a drug is time-consuming and does not afford the necessary flexibility to respond immediately to public health threats. The new authority would correct this problem.

Q: Why didn't you include child pornography legislation in this package?

A: The Administration has been working on comprehensive child pornography legislation with the Congress for some time now, primarily at the staff level, and will formally transmit a proposal in the near future.

Gun Free School Zones -- United States v. Lopez

Q: What is the Gun Free School Zones Act?

A: This statute, enacted in 1990, prohibits possession of a firearm in a school zone.

Q: What did the Supreme Court hold in United States v. Lopez?

A: The Court held that Congress had exceeded its authority under the Commerce Clause by enacting the Gun Free School Zones Act of 1990. The Court found that the Act did not contain the jurisdictional element that would ensure that the firearms possession in question has the requisite nexus with interstate commerce.

Q: How do you propose to fix the Gun Free School Zones Statute in response to Lopez?

A: In May of 1995, we transmitted to Congress a legislative proposal to revise the statute to require that the government prove in each prosecution that the firearm in question has moved in or otherwise affects interstate or foreign commerce. The addition of this jurisdictional element ensures that the statute will meet the constitutional standards established by the Supreme Court.

Q: How difficult will it be for a prosecutor to prove that a gun moved in or otherwise affects interstate commerce?

A: We anticipate that the vast majority of prosecutions will rest on a theory of interstate movement. In most states, it is not unduly difficult as a practical matter to make the required showing.

Sentencing Enhancements for Possessing Firearms during Certain Crimes -- Bailey v. United States

Q: What did the Supreme Court hold in Bailey v. United States?

A: The Court considered the current statute, 18 U.S.C. §924(c), which provides a mandatory 5-year sentencing enhancement if a defendant uses a firearm during a crime of violence or drug trafficking crime. The Court interpreted the word "use" to require that the defendant must have "actively employed" the firearm in connection with the crime.

Q: What problem does this interpretation present?

A: We believe that this sentencing enhancement should also reach situations in which the defendant has a firearm present or available to him/her in the course of the criminal activity. This situation commonly exists in drug trafficking crimes.

Q: How do you propose to revise the statute?

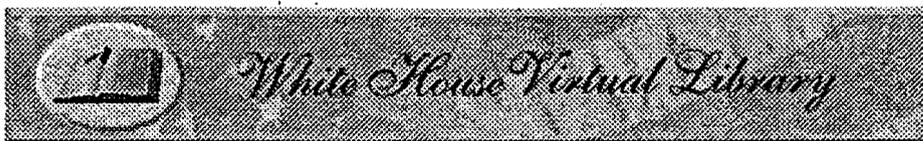
A: We would punish "possession" of a firearm, rather than "use." This would expand the scope of the 5-year sentencing enhancement to reach situations in which the defendant has a firearm present or available to him/her.

We also propose that if the firearm is discharged or is otherwise employed to inflict serious bodily injury, the mandatory sentencing enhancement should be for 10 years.

Methamphetamine Legislation

Q: What is methamphetamine?

A: Methamphetamine is a potent central nervous system stimulant that can be smoked, snorted, injected or taken orally. It is a dangerous and destructing synthetic drug.



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## White House Press Release

### Radio Address By The President To The Nation

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The White House

Office of the Press Secretary

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Embargoed for Release  
Until 10:06 A.M. Edt,  
Saturday, April 29, 1995

### Radio Address By The President To The Nation

The Roosevelt Room

The President: Good morning. America has been through a lot in the last week. But if anything good can come out of something as horrible as the Oklahoma City tragedy, it is that the American people have reaffirmed our commitment to putting our children, their well-being and their future first in our lives.

In that light, I was terribly disappointed that, this week, the Supreme Court struck down a law passed by Congress under President Bush and sponsored by Senator Herb Kohl of Wisconsin, to keep **guns** away from schools. The law was a bipartisan approach to school safety based on common sense. Simply said, it was illegal to have a **gun** within 1,000 feet of a school.

We all know that **guns** simply don't belong in school. So members of Congress of both parties passed the law. Unfortunately, the Supreme Court struck down the specific law. They said the federal government couldn't regulate that activity because it didn't have enough to do with interstate commerce.

Well, this Supreme Court decision could condemn more of our children to going to schools where there are **guns**. And our job is to help our children learn everything they need to get ahead in safety, not to send them to school and put them in harm's way. I am determined to keep **guns** out of our schools. That's what the American people want, and it's the right thing to do.

Last year, I persuaded Congress to require states to pass a law that any student who brought a **gun** to school would be

expelled for a year -- no excuses, zero tolerance for **guns** in schools. But after Congress passed the law, I was worried that it would be hard to enforce. So I directed the Secretary of Education, Dick Riley, to withhold federal aid from any state that did not comply with the law.

The Supreme Court has now ruled we can't directly ban **guns** around the school. Therefore, today, I am directing the Attorney General to come back to me within a week with what action I can take to keep **guns** away from schools. I want the action to be constitutional, but I am determined to keep **guns** away from schools.

For example, Congress could encourage states to ban **guns** from school zones by linking federal funds to enactment of school zone **gun** bans. At least we could tie the money we have for safe schools to such a ban. At any rate, I am confident that the Attorney General will give me advice about what action I can take. We must reverse the practical impact of the Court's decision. If young people can't learn in safety they can't learn at all.

Now, according to the Centers for Disease Control in Atlanta, violence threatens schools in communities of all shapes and sizes. They've identified 105 violent school-related deaths in just the last two years. And we know there are common elements to violent

deaths among young people. Usually, the victim and the assailant know each other, the incident starts as an argument, and usually there is a firearm present.

Schoolyard fights have been around as long as schoolyards. But it used to be that when kids got in fights, they fought with their fists, adults broke them up, and the kids got punished. Today, there are **guns** on the playground, **guns** in the classroom, **guns** on the bus.

In 1990, the Cdc found that one in 24 students carried a **gun** in a 30-day period. By 1993, it was down to one in 12. The number of high school students carrying a **gun** doubled in only three years. This is certainly a national crisis, and we must have a national effort to fight it. We need a seamless web of safety that keeps **guns** out of the hands of our children and out of our school. That's why we fought for the provision in last year's Crime Bill which now makes it a federal crime for a young person to carry a handgun, except when supervised by an adult. And that's why we must make sure that anyone who does bring a **gun** to school is severely disciplined. And that's why we're going to find a way to ban **guns** inside or near our schools.

I'm committed to doing everything in my power to make schools places where young people can be safe, where they can learn, where parents can be confident that discipline is enforced.

We all know that we have to work together to get this done. Principals and teachers must take the lead for safe schools and teaching good citizenship and good values. And parents have to recognize that discipline begins at home. The responsibility to raise children and to make them good citizens rests first on the shoulders of their parents, who must teach the children right from wrong, and must get involved and stay involved in their children's education.

I pledge that we'll do our part to help make our schools safe and the neighborhoods around them safe. But in the end, we'll only succeed if we all work together.

Thanks for listening.

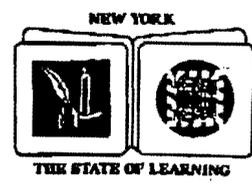
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To comment on this service: [feedback@www.whitehouse.gov](mailto:feedback@www.whitehouse.gov)

Crime - Gun Free Schools



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, N.Y. 12234

PRESIDENT OF THE UNIVERSITY  
AND COMMISSIONER OF EDUCATION  
THE NEW YORK STATE EDUCATION DEPARTMENT  
ALBANY, NEW YORK 12234

June 15, 1995

*CU*

The Honorable Richard W. Riley, Secretary  
U.S. Department of Education  
600 Independence Ave., S.W.  
Room 6213 - FOB 10  
Washington, DC 20202

Dear Secretary Riley:

The purpose of this letter is to request clarification concerning compliance issues relating to the Gun-Free Schools Act of 1994 contained in Title XIV, Part F of the Improving America's Schools Act (§14601).

Our understanding is that all states are required to enact legislation in accordance with the provisions of Section 14601 by October 20, 1995. It is possible that some states, even with good-faith efforts, will not promulgate such legislation by this date.

In such cases, if this Section is not repealed or revised, the United States Department of Education (USDE) may choose to withhold federal education funds to these states. Based on our analysis of the requirements, and the fact the grant award has been issued for the 1995-96 program year, it appears that the USDE might begin withholding funds for the 1996-97 program year on July 1, 1996 (unless such states enact the required legislation).

We ask that you confirm our understanding of this provision and if possible provide us with further clarification regarding USDE's oversight policy concerning the states implementation of this provision.

Sincerely,  
*Thomas Sobol*  
Thomas Sobol

OS/EE/10000  
JUN 15 3 31 PM '95

# Gun-Free Schools Act Implementation -- State Act Status

**Notes:**

**Copy:** Y: Yes; YY: Multiple copies, different dates; N: No; F: Will Fax; S: Will Send;  
 C: Current Law Furnished (may be unrelated); YO: Older proposal, being reworked  
**I.A. (Initial Assessment):** 1: Consistent with GFSA; 2: Close to GFSA; 3: Inconsistent;  
 4: Other

**Contact:** If no contact is listed, it is the SEA SDFSCA Coordinator.

<u>State</u>	<u>Status</u>	<u>Copy</u>	<u>Updated</u>	<u>I.A.</u>	<u>Contact</u>
Alabama	Pending In session until 7/30	Y	6/19	1	
Alaska	Passed; Signed 5/19	Y	6/19	2	
Arizona	Passed; [checking]	N	6/21		
Arkansas	Passed; Signed	Y	6/20	2	
California	Current law (explicit 1 year req. pending)	F	6/20		Vivian Lynford (916) 657-4289
Colorado	Believes current law meets requirements	Y	6/19	3	Cheryl Carstedt (303) 866-6759
Connecticut	Pending	Y	5/7	1	
Delaware	SEA policy only (force of law)	Y	6/19	1/4	
D.C.					
Florida	Passed; Signed	Y	6/20	1	Art Mainwood (904) 488-6304
Georgia	Passed; [checking]	Y	6/21	1	
Hawaii					
Idaho	Passed; Signed	Y	6/19	1	Kirby Nelson (208) 334-3300

Illinois	Bel. curr. law appl. b/c schools can take disc. act; IL "expel" means to cut services; 2 yr. expulsion pending	Y	6/21	1	Rich Coffee (217) 782-5270
Indiana	Passed; Signed	Y	6/19	1	Kevin McDowell (317) 232-6676
Iowa	Passed; Signed (fax arrive in 2 wks.)	F	6/20		
Kansas	Believes current law meets requirements	Y	5/25	1	
Kentucky	Requested waiver		5/25		
Louisiana	Pending? [checking] Leg. out until 1996	N	6/21		Ms. Dean Frost (504) 342-3480
Maine	Pending	Y	6/19	1	
Maryland	Passed; [checking]	Y	6/21	1	
Mass.	Believes current law meets requirements	Y	5/25	2	
Michigan	Passed; Signed last year	Y	6/19	2	
Minnesota	Current law does not comply; legis. back 1/96	C	6/19		Mary Kay Haas (612) 296-5086
Mississippi	Law 37-11-18 In effect 7/1/95	Y	6/19	2	Anita Clinton (601) 359-2566
Missouri	Passed	Y	6/20	1	Stephen Barr (314) 751-3520
Montana	Passed; Signed	Y	6/19	1	Rick Chiatti (406) 444-1963
Nebraska	Passed; Signed	Y	6/19	1	Brian Halstead (402) 471-0732
Nevada	S.B. 85: problems - on chief clerk's desk A.B. 123: no action since 2/95	S	6/20		Legislative Hotline (702) 687-5545

N. Hamp.	Passed; Signed 6/19	Y	6/20	2	Gary Gouzouskas (603) 271-3869
N. Jersey	Pending bill condit. vetoed; being reworked; should go through	YO	6/21	2	
N. Mexico	Passed; Signed	Y	5/25	2	
New York	Pending: problems in Assembly, may not pass	N	6/10		
N. Carolina	Passed (6/20)	Y	6/21	1	Ann Berlam (919) 715-1265
N. Dakota	Passed; Signed	YY	6/21	1	Roger Rieger (701) 328-2389
Ohio	Passed; to be signed 6/95	Y	5/25	1	
Oklahoma	Passed; Signed	Y	6/19	1	
Oregon	Passed (H.B. 2487)	F	6/21		Peggy Holstedt (503) 378-5585/601
Penn.	Pending, in rules cmte.	Y	6/19	1	
Rhode Isl.	Passed	F	6/20		Steve Nardeloi (401) 277-2638 1,1,2209
S. Carolina	Passed; Signed	Y	6/19	1	Bunny Mack (803) 734-8573
S. Dakota	Passed; Signed (H. 1050)	Y	6/19	3	
Tennessee	Passed; Signed	F	6/19		
Texas	Passed; Signed (5/30)	Y	6/20	2	Robert Scott (512) 463-9682
Utah	Passed	F	6/21		
Vermont	Passed; Signed	Y	6/19	2	

Virginia	Passed; Signed	Y	6/19	1
Washington	Passed; Signed	Y	6/21	1
W. Virginia	Passed; Signed	YY	6/19	1
Wisconsin	Pending (still in session)	Y	6/20	1
Wyoming	Passed; Signed	Y	6/19	1



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

THE ASSISTANT SECRETARY

JAN 20 1995

MEMORANDUM

TO: Governors, Chief State School Officers, Safe and Drug-Free Schools and Communities Act Coordinators

FROM: Thomas W. Payzant *Thomas W. Payzant*

SUBJECT: Gun-Free Schools Act Guidance

This memorandum is a follow-up to my December 1, 1994 letter concerning the Gun-Free Schools Act provisions of the Improving America's Schools Act of 1994. I have enclosed more detailed guidance concerning the implementation of these provisions for your information.

The Department of Education will also be issuing separate, detailed guidance addressing issues concerning discipline and students with disabilities in the middle of February.

I hope that you will find this guidance helpful. If you have additional questions concerning the implementation of the Gun-Free Schools Act provisions, please do not hesitate to send those inquiries by facsimile to the Safe and Drug-Free Schools Program in the Office of Elementary and Secondary Education. Inquiries may be sent to (202) 260-7767 or (202) 260-7617.

**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, including a copy of this new legislation, was mailed to Governors and Chief State School Officers in a letter dated November 28, 1994.

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 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.

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-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.

**Q5. 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 LEA's 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.

**Q10. 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.

**Q11. 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.

**Q12. 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.

**Q13. 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.

**Q14. 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.

**Q15. 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.

**Q16. 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 (copy attached).

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

- any weapon 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 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
- 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
- any combination of 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, the following are not included in the definition:

- an antique firearm
- a rifle which the owner intends to use solely for sporting, recreational, or cultural purposes
- any device which is neither designed nor redesigned for use as a weapon
- any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety, or similar device
- surplus ordnance sold, loaned, or given by the Secretary of the Army pursuant to the provisions of section 4684(2), 4685, or 4686 of title 10

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.

**Q17. Does the Gun-Free Schools Act preclude classes such as hunting or military education, or activities such as hunting clubs or rifle clubs, which may involve the handling or use of weapons?**

A. No, the GFSA does not prohibit the presence at school of rifles that the owners intend to use solely for sporting, recreational, or cultural purposes.

**Q18. 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.

**Q19. 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 school program at the location where the violation occurred.

**Q20. Is a State, SEA, or LEA required to provide alternative educational services to students who have been expelled for bringing a weapon to school?**

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.

**Q21. 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.

**Q22. 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.

**Q23. 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.

**Q24. 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.

**Q25. 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.