



**U.S. DEPARTMENT OF EDUCATION
OFFICE OF INSPECTOR GENERAL**

**AN OIG PERSPECTIVE ON THE
GUN-FREE SCHOOLS ACT OF 1994**

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U.S. Department of Education
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EXECUTIVE SUMMARY

This paper provides a discussion of issues surrounding the Gun-Free Schools Act of 1994 (the Act). It is designed to assist U.S. Department of Education (ED) officials and Congress in determining if revisions to the Act are necessary. The pending reauthorization of the Elementary and Secondary Education Act of 1965 provides ED and Congress with an opportunity to amend the Act.

To assist in this task, the OIG offers the following issues for consideration:

- The Act does not cover a student who is determined to have brought to school an airgun (i.e., BB gun or pellet gun), antique firearm, or replica of an antique firearm. These weapons are not included because the Act defines a weapon as a firearm under Title 18 U.S.C. §921. BB guns, pellet guns, antique firearms, and replicas of antique firearms are not considered firearms under Title 18 U.S.C. §921. Our audit work found that confusion over which weapons qualify as a firearm resulted in some state education agencies (SEAs) and local education agencies (LEAs) submitting an inaccurate report of expulsions under the Act. According to the Centers for Disease Control and Prevention and the Consumer Product Safety Commission, in some instances high-velocity airguns may cause serious injury or death. In addition, some conventional firearms and airguns can be similar in appearance.
 - Determine if the Act should be amended to include airguns (i.e., BB guns and pellet guns), antique firearms, and replicas of antique firearms.
- The Act requires SEAs and LEAs to collect and report information on expulsions of students found to have brought firearms to school. ED has issued new guidance and a revised data collection instrument to improve the reporting of *incidents* that do not result in expulsion. However, the Act does not expressly require SEAs and LEAs to collect information on *incidents* involving students found to have brought firearms to school.
 - Determine if the Act should be amended to specifically require SEAs and LEAs to collect and report information on *incidents* of students found to have brought firearms to school and the resulting disciplinary actions (i.e., expulsion or modified expulsion).
- Items within the Act require clarification. First, the Act contains an incorrect reference in describing the information SEAs must report to ED. Specifically, Title 20 U.S.C. §8921(e) incorrectly refers to §8921(c), rather than subsection (d), which describes what information SEAs shall collect from LEAs. Second, Title 20 U.S.C. §8921(b)(4) states, "...[T]he term weapon means a firearm..." However, §8922(a) requires LEAs to have a policy requiring the referral to a criminal justice or juvenile delinquency system any student who brings a "firearm or weapon" to a school. Because §8922 uses the terms *firearm* and *weapon*, the term *weapon* refers to

something other than a *firearm*, whereas in §8921 *weapon* means a *firearm*. Third, the Act does not specify expulsion as the consequence for students found in *possession* of a firearm, because Title 20 U.S.C. §8921 and §8922 use the term *bring* or *brought*, rather than *possess*.

- Amend the reference in Title 20 U.S.C. §8921(e) from subsection (c) to subsection (d), which describes what information shall be collected and reported.
- Amend Title 20 U.S.C. §8921 and §8922 so that the term *weapon* is used consistently in both sections.
- Amend Title 20 U.S.C. §8921 and §8922 so that the Act specifically applies to students who bring or possess a firearm.

PURPOSE AND SCOPE

This paper provides a discussion of issues surrounding the Gun-Free Schools Act of 1994 (the Act). It is designed to assist the U.S. Department of Education (ED) officials and Congress in determining if revisions to the Act are necessary. The pending reauthorization of the Elementary and Secondary Education Act of 1965 provides ED and Congress with an opportunity to amend the Act. We conducted eight audits¹ concerning state education agency (SEA) and local education agency (LEA) compliance with the Act for the 1997-98 school year. In conducting our audits, we visited seven states and forty-three LEAs. We interviewed more than 1,500 officials from ED, SEAs, LEAs, and school administrators, teachers, counselors, students, parent organization representatives, and law enforcement officials. The eight audits were performed in accordance with government auditing standards appropriate to the scope of the reviews. Using the experience gained while conducting these audits and their results, we developed this paper to provide an OIG perspective on the Act and suggest issues to be considered during reauthorization of the Elementary and Secondary Education Act of 1965.

BACKGROUND

The Gun Free Schools Act of 1994 (Title 20 U.S.C. §8921, §8922, and §8923) requires states to have in effect a 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, except that such state law shall allow the LEA's chief administering officer to modify such expulsion requirement on a case-by-case basis. The Act also requires SEAs to report annually to ED information on firearm expulsions under the state law.

The Act requires LEAs to comply with the state law, provide an assurance of compliance with the state law to the SEA, report annually to the SEA information on expulsions under the state law, and implement a policy requiring referral to a criminal justice or juvenile delinquency system of any student who brings a weapon to school.

Fifty-five SEAs submitted data for both the 1997-98 and 1998-99 school years. Among these SEAs, 3,658 expulsions were reported for the 1997-98 school year and 3,523 expulsions were reported for the 1998-99 school year. Eleven SEAs revised the data they submitted for the 1997-98 school year.

¹ For a complete listing of the audits and findings used in developing this paper, please refer to the Appendix on page 11. The listing includes seven individual state audit reports and one national audit report.

ISSUE NO. 1 - EXPULSIONS FOR BB GUNS, PELLET GUNS, ANTIQUE FIREARMS, OR REPLICAS OF ANTIQUE FIREARMS ARE NOT REQUIRED UNDER THE ACT.

The Act does not cover a student who is determined to have brought to school an airgun (i.e., BB gun or pellet gun), antique firearm, or replica of an antique firearm. The Act defines a weapon as a firearm under Title 18 U.S.C. §921. BB guns, pellet guns, antique firearms, and replicas of antique firearms are not considered firearms under Title 18 U.S.C. §921. The Bureau of Alcohol, Tobacco and Firearms is the agency responsible for providing a definitive statement about the kinds of weapons that do not qualify as a firearm under Title 18 U.S.C. §921. Our audit work found that confusion over which weapons qualify as a firearm resulted in some SEAs and LEAs submitting an inaccurate report of expulsions under the Act.² According to the Centers for Disease Control and Prevention³ and the Consumer Product Safety Commission,⁴ in some instances high-velocity airguns may cause serious injury or death. In addition, some conventional firearms and airguns can be similar in appearance. For illustrated examples of a firearm and an airgun, see page 5. For the Consumer Product Safety Commission warning regarding BB guns, see page 6.

Issue for Consideration:

- 1.1 Determine if the Act should be amended to include airguns (i.e., BB guns and pellet guns), antique firearms, and replicas of antique firearms.

² ED's *Guidance Concerning State and Local Responsibilities Under the Gun-Free Schools Act of 1994* (originally issued January 20, 1995 and revised on October 31, 1995 and September 29, 2000) notes that states, SEAs, and LEAs may expand, at their own discretion, their statutes and policies to require expulsions for weapons other than firearms. Among the states included in our audits, some of the states required LEAs to expel students found to have brought an airgun, antique firearm, or replica of an antique firearm to school, whereas other states left the disciplinary consequences for such infractions to be determined by the LEA.

³ See <http://www.cdc.gov/mmwr/preview/mmwrhtml/00039773.htm> for related CDC *Morbidity and Mortality Weekly Report* article.

⁴ See <http://www.cpsc.gov/cpsc/pub/pubs/5089.html> for selected CPSC information on BB guns; see also page 6 of this perspective paper.

ILLUSTRATION OF AIRGUN AND FIREARM PISTOLS⁵



.177 Caliber Pellet Pistol
(Airgun)

.40 Caliber Pistol
(Firearm)

⁵ Photo taken by ED OIG personnel. The photograph has been edited to remove any identifying markings from the pistols.

Consumer Product Safety Commission⁶

BB Guns Can Kill

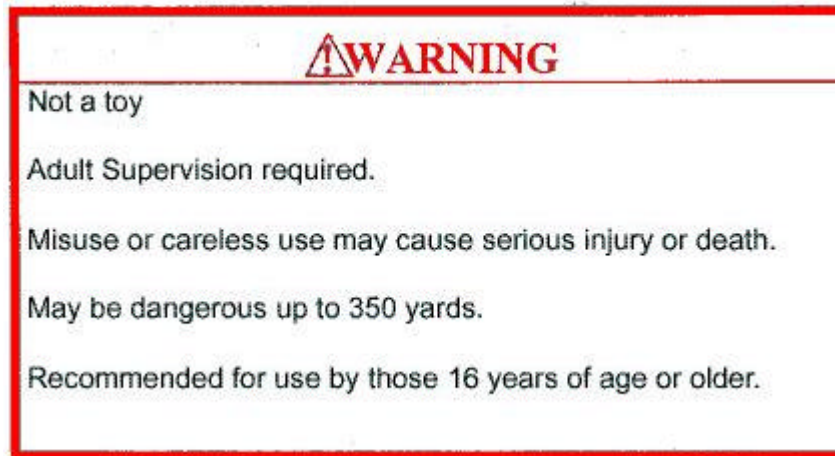
CPSC Document #5089

BB guns can kill a person. High-velocity BB guns, which have muzzle velocities higher than 350 feet per second, can increase this risk. The U.S. Consumer Product Safety Commission has reports of about 4 deaths per year caused by BB guns or pellet rifles.

Many people do not realize that BB guns, especially high-velocity guns, can cause death.

Therefore the CPSC warns that children under 16 years of age should not use high-velocity BB or pellet guns. And, like firearms, these guns should never be aimed at another person.

An example of the type of warning found on high-velocity BB guns is:



⁶ Source: Consumer Product Safety Commission, Document #5089.

ISSUE NO. 2 - THE ACT REQUIRES SEAS AND LEAS TO REPORT INFORMATION ON STUDENTS EXPELLED FOR FIREARMS, AND NOT SPECIFICALLY ON INCIDENTS INVOLVING STUDENTS FOUND TO HAVE BROUGHT FIREARMS TO SCHOOL.

Annually, ED issues *The Report on State Implementation of the Gun-Free Schools Act*. The report provides information on students expelled⁷ for firearms, and not on *incidents* involving students found to have brought firearms to school. The “Data Quality and Interpretation of Findings” section of the report for the 1997-98 school year states, “[T]his report is not designed to provide information to the reader regarding the rate at which students carry firearms to school. The data reported by the states concern disciplinary actions only.” Our audits identified the following *incidents*, which occurred during the 1997-98 school year, that were not included in the report because they did not result in an expulsion.

- One Colorado LEA conducted an expulsion hearing for a student with a disability who brought a firearm to school. It was determined that the student’s action was a manifestation of the disability, therefore the student was not expelled. The student was disciplined according to Individuals with Disabilities Education Act and placed on home teaching and recommended to an alternative education setting. This incident was resolved in accordance with the Gun-Free Schools Act, state law, and LEA policy. The Gun-Free Schools Act states that it shall be construed in accordance with the Individuals with Disabilities Act. LEAs are able to discipline students with disabilities in accordance with the Individuals with Disabilities Act by exercising the case-by-case exception contained in the Gun-Free Schools Act.
- The same Colorado LEA conducted an expulsion hearing for a high school senior who had brought a firearm to school at the end of the school year. However, the LEA did not expel the student because the student had graduated prior to the date of the expulsion hearing. This incident was resolved in accordance with the Act, state law, and LEA policy.
- At one Wisconsin LEA, we identified seven incidents involving students with disabilities who brought firearms to school and the LEA did not expel them. A LEA official informed us that the LEA did not report the incidents involving students with disabilities because of a state law. The official indicated that during the 1997-98 school year the LEA only had the authority to remove a student with disabilities for ten days, after which the student had to be returned to the original class setting. The official informed us that the state law was subsequently changed for the 1998-99

⁷ The Act specifies expulsion, for a period of not less than one year, as the standard disciplinary action. According to ED’s *Guidance Concerning State and Local Responsibilities Under the Act*, expulsion is not defined by the Act, however, at a minimum, expulsion means removal from the student’s regular program. The Act allows a LEAs’ chief administering officer to modify the expulsion requirement on a case-by-case basis. Modified expulsions can be an expulsion or suspension for a period of less than one year or the imposition of no penalty.

school year, and the LEA now conducts manifestation determination hearings and expels students when the misconduct is not a manifestation of the student's disability.

- At one Maryland LEA, a student who brought a firearm to school was not expelled. Instead, the school's administration allowed the student to withdraw. The LEA's administration was not informed of the incident. Police arrested and charged the student with possession of a handgun. The incident was not resolved according to the Act, state law, and LEA policy.
- One New Mexico LEA reported to the SEA twelve expulsions for firearm incidents. However, our review of local law enforcement reports and other records identified twenty-six students who were involved in firearm incidents. Based on enrollment records, we determined that the LEA did not expel the remaining fourteen students involved in firearm incidents. The LEA did not resolve these incidents in accordance with the Act, state law, and LEA policy.
- At one California LEA, school officials did not recommend a student involved in a firearm incident for expulsion. According to a school official, the school took no expulsion action because the student was arrested and did not return to school. The student apparently did not enroll at another school since the school had not received a request for the student's records. The incident was not resolved according to the Act, state law, and LEA policy.
- At two California LEAs, we identified five firearm-related incidents involving students with disabilities. The students were not expelled because it was determined that the student's action was a manifestation of their disability or the student's needs were not properly served at the time of the incident. Under California Education Code, the governing board is required to modify the expulsion requirement (i.e., not expel) for students with disabilities when an Individualized Education Program team determines that the students' actions were a manifestation of their disability or the students were not appropriately placed at the time.

Future reports should contain information on incidents similar to the preceding examples because of a revised data collection instrument and new guidance issued by ED. The revised data collection instrument, approved by the Office of Management and Budget, requests SEAs to report information on incidents in which a student has brought a firearm to school, rather than information on the resulting expulsion. Both the revised data collection instrument and new guidance, revised on September 29, 2000, direct LEAs and SEAs to report information about any incident covered by the Act. Any student found to have brought a firearm to school should be reported as an infraction, even if the LEA's chief administering officer elects to shorten the expulsion or impose no penalty. Any incident in which a student is covered by the provisions of the Individuals with Disabilities Education Act and 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 the response to the report's questions concerning modified expulsions.

The new guidance and revised data collection form requests information on incidents in which a student has brought a firearm to school. The Act does not expressly require SEAs and LEAs to collect and report information on incidents involving students found to have brought firearms to school. The Act requires SEAs and LEAs to collect and report information on expulsions imposed under the state law. Title 20 U.S.C. §8921(d)(2) requires LEAs to provide SEAs with “a description of the circumstances surrounding any expulsions imposed under the State law...” and §8921(e) states, “Each State shall report the information described in subsection (c)⁸ of this section to the Secretary on an annual basis.”

Despite containing information on incidents similar to the preceding examples that were not captured in a previous report, the revised data collection instrument may not result in an accurate count of expulsions under the Act. The revised data collection form requests information on incidents in which a student has brought a firearm to school and the resulting modified expulsions. But as shown in the previous examples, all incidents covered under the Act do not result in a LEA’s chief administering officer formally expelling or modifying the expulsion requirement of a student involved in an incident covered under the Act. Therefore, collecting information on the count of incidents covered under the Act and the resulting modified expulsions may not result in an accurate count of expulsions under the Act.

Without accurate data on incidents of students who have brought firearms to school, education agencies are unable to assess the success of programs and strategies being used to keep firearms out of schools. In addition, ED is unable to understand the nature and extent of the problem of students bringing firearms to school from a national perspective. Furthermore, without information on incidents of students who have brought firearms to school and the resulting expulsions or modified expulsions, SEAs and LEAs are unable to determine if the Act’s provisions are being enforced consistently in their jurisdictions.

Issue for Consideration:

- 2.1 Determine if the Act should be amended to specifically require SEAs and LEAs to collect and report information on *incidents* of students found to have brought firearms to school and the resulting disciplinary actions (i.e., expulsion or modified expulsion).

⁸ This reference should be to subsection (d) as discussed on page 10.

ISSUE NO. 3 – IMPLEMENTATION OF THE ACT COULD BE IMPROVED BY CLARIFYING THE LAW.

In conducting our audits, we identified items within the Act that require clarification. Without clarification, SEAs and LEAs may incorrectly implement the Act, resulting in non-compliance or the submission of erroneous information on disciplinary actions under the Act. The items requiring clarification are:

- The Act contains an incorrect reference in describing the information SEAs must report to ED. Title 20 U.S.C. §8921(e) incorrectly refers to §8921(c). §8921(e) states, “Each State shall report the information described in subsection (c) of this section to the Secretary on an annual basis.” The reference in §8921(e) should be to subsection (d), which describes the information SEAs shall collect from LEAs.
- Title 20 U.S.C. §8921(b)(4) states, “...[T]he term weapon means a firearm...” However, §8922(a) requires LEAs to have a policy requiring the referral to a criminal justice or juvenile delinquency system any student who brings a “firearm or weapon” to a school. Because §8922 uses the terms *firearm* and *weapon*, the term *weapon* refers to something other than a *firearm*, whereas in §8921 *weapon* means a *firearm*. Our audit work found that confusion over which weapons qualify as a firearm resulted in some SEAs and LEAs submitting an inaccurate report of expulsions under the Act.
- The Act does not specify expulsion as the consequence for students found in *possession* of a firearm. Title 20 U.S.C. §8921 and §8922 use the term *bring* or *brought*, rather than *possess*. §8921(b)(1) states, “...[E]ach State receiving Federal funds under this chapter shall have in effect 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 a school under the jurisdiction of local educational agencies in that State...” [emphasis added]. In addition, §8922(a) states, “No funds shall be made available under this chapter to any local educational agency unless such agency has a policy requiring referral to the criminal justice or juvenile delinquency system of any student who *brings* a firearm or weapon to a school served by such agency” [emphasis added]. Therefore, the expulsion requirement under the Act may not apply to a student who is found in *possession* of a firearm that another person or student *brought* to school.

Issues for Consideration:

- 3.1 Amend the reference in Title 20 U.S.C. §8921(e) from subsection (c) to subsection (d), which describes what information shall be collected and reported.
- 3.2 Amend Title 20 U.S.C. §8921 and §8922 so that the term *weapon* is used consistently in both sections.
- 3.3 Amend Title 20 U.S.C. §8921 and §8922 so that the Act specifically applies to students who *bring* or *possess* a firearm.

APPENDIX: SUMMARY OF AUDITS AND FINDINGS

State and Local Education Agencies' Compliance with the Gun-Free Schools Act of 1994 (ACN A03-A0018)

Finding No. 1 – Two of the seven states have laws that may not be in full compliance with the Act.

Finding No. 2 – Confusion over which weapons qualify as a firearm resulted in an inaccurate report of expulsions under the Act.

Finding No. 3 – SEAs and LEAs did not report accurate data concerning firearm expulsions to ED.

Finding No. 4 – Implementation of the Act could be improved by providing additional guidance.

California State and Local Educational Agencies' Compliance with the Gun-Free Schools Act of 1994 (CAN A09-A0008)

Finding No. 1 – California state law may not require mandatory expulsions of students who bring explosives to school.

Finding No. 2 – LEA's decisions to modify the expulsion requirement were made at lower organizational levels than allowed by the Act.

Finding No. 3 – CDE and LEAs made errors when compiling expulsion information for the Act reports.

Finding No. 4 – LEAs did not provide CDE with school-level data as required by the Act.

Colorado State and Local Education Agencies' Compliance with the Gun-Free Schools Act of 1994 (ACN A03-A0008)

Finding No. 1 – The Colorado Revised Statute may not be in full compliance with the Act.

Finding No. 2 – Confusion over what weapons qualify as a firearm resulted in errors in the Colorado Department of Education's count of expulsions under the Act.

Finding No. 3 – Not all LEAs had in place a criminal justice or juvenile delinquency system referral policy as required under the Act.

Maryland State and Local Education Agencies' Compliance with the Gun-Free Schools Act of 1994 (ACN A03-90023)

Finding No. 1 – Weakness in the collection and reporting of data resulted in significant errors in the data reported by MSDE.

Finding No. 2 – Confusion over what weapons qualify as a firearm resulted in errors in Maryland's count of expulsions under the Act.

Finding No. 3 – One LEA's student who was found to have brought a firearm to school was not handled according to the Act, state law, and school district policy.

**New Mexico State Department of Education and Local Education Agencies
Compliance with the Gun-Free Schools Act of 1994 (ACN A06-A0006)**

Finding No. 1 – One New Mexico LEA did not comply with the Act.

Finding No. 2 – The state did not accurately report firearm incidents.

**Texas State and Local Education Agencies' Compliance with the Gun-Free Schools
Act of 1994 (ACN A06-A0005)**

No findings of non-compliance reported.

**West Virginia State and Local Education Agencies' Compliance with the Gun-Free
Schools Act of 1994 (ACN A03-A0007)**

No findings of non-compliance reported.

**Wisconsin State and Local Education Agencies' Compliance with the Gun-Free
Schools Act of 1994 (ACN A05-A0011)**

Finding No. 1 – The Wisconsin Department of Public Instruction could improve data integrity and eliminate reporting errors.

Finding No. 2 – The Wisconsin Department of Public Instruction needs to obtain an assurance of a referral policy from all LEAs each time the LEAs apply for Elementary and Secondary Education funding.

The audit reports can be obtained from the Internet site: www.ed.gov/offices/OIG/Areports.htm.