



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF INSPECTOR GENERAL

THE INSPECTOR GENERAL

SEP 13 2000

Mr. William J. Moloney  
Commissioner of Education  
Colorado Department of Education  
201 East Colfax Avenue  
Denver, CO 80203-1799

Dear Mr. Moloney:

This **Final Audit Report** (Control Number ED-OIG/A03-A0008) presents the results of our audit of Colorado State and Local Education Agencies' Compliance with the Gun-Free Schools Act of 1994 (the Act). The objective of our audit was to determine if the Colorado Department of Education (CDE) and local education agencies (LEAs) are in compliance with the Act.

A draft of this report was provided to CDE. In their response, CDE did not concur or partially concurred with each of the audit findings. A copy of CDE's response to the draft is included as an attachment to this letter.

**AUDIT RESULTS**

We concluded that CDE and two of the six LEAs that were included in the audit were not in full compliance with the Act for the 1997-98 school year. The other four LEAs were determined to be in compliance with the Act. Specifically, we found:

- The Colorado State law may not be in full compliance with the Act.
- Confusion over which weapons qualify as a *firearm* resulted in errors in CDE's count of expulsions.
- Two LEAs did not have in place a criminal justice or juvenile delinquency system referral policy.

CDE reported seventy-six firearm expulsions in the 1997-98 school year. Based upon the work we performed at CDE and the six LEAs, we arrived at an adjusted count of thirty-one firearm expulsions.

<b>Adjusted Count of Firearm Expulsions</b>	
Expulsions reported by CDE.....	76
Less: BB gun and pellet gun expulsions included in “other firearms” category.....	(26)
Firearm facsimile expulsions included in “other firearms” category.....	(14)
Expulsion for a black powder pistol which is not a firearm under Title 18 U.S. Code Section 921, included in “other firearms” category.....	(1)
Expulsions for firearms that occurred off of school grounds included in “other firearms” category.....	(4)
Expulsion for disruptive behavior included in “other firearms” category.....	(1)
Sub-total.....	30
Add: Firearm expulsion not reported to CDE by Denver Public Schools.....	1
Total adjusted expulsions.....	31

Our findings are described below:

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

A review of the Colorado State law requiring LEAs to expel a student, who is determined to have brought a firearm to school, revealed that the respective Colorado State law might not be in full compliance with the Act.

The Act, Title 20 U.S. Code Section 8921(b)(1) states that:

...each State receiving Federal funds under this (Elementary and Secondary Education Act) chapter shall have in effect a State law requiring local education agencies to expel from school for a period of *not less than one year* a student who is determined to have brought a weapon (firearm) to a school under the jurisdiction of local education agencies in that State, except that such State law shall allow the chief administering officer of such local education agency to modify such expulsion requirement for a student on a case-by-case basis.

Colorado’s statute dealing with the Act can be found in Colorado Revised Statute (CRS) 22-33-105 *Suspension, expulsion, and denial of admission*, and 22-33-106 *Grounds for suspension, expulsion, and denial of admission*. CRS 22-33-106(1)(d)(I) requires that expulsion shall be mandatory for carrying, bringing, using, or possessing a firearm without the authorization of the school or school district. No minimum period of expulsion is specified in CRS 22-33-106. CRS 22-33-105(2)(c) states that LEAs may expel, for any period *not extending beyond one year*, any student who does not qualify for continued attendance at the LEA’s public schools.

Based upon our understanding of CRS 22-33-105 and 22-33-106, the statute does not require LEAs to expel for at least one year a student who has brought a firearm to school as required under the Act. Rather the statute establishes a maximum expulsion period of

one year, leaving open the possibility that a LEA could expel a student for some period less than a year. Also, the Colorado statute does not contain language allowing the chief administering officer of each LEA to modify such expulsion requirement for a student on a case-by-case basis.

It should be noted that the Colorado Department of Education requires LEAs to assure that they have a policy in effect requiring:

The expulsion from school for a period of not less than one year of any student who is determined to have brought a weapon to a school under its jurisdiction except that such policy may allow its chief administering officer to modify such expulsion requirement for a student on a case-by-case basis.

While this assurance covers many of the requirements of the Act, it is not a Colorado State law.

We issued an Action Memorandum, dated May 11, 2000, to the Assistant Secretary for Elementary and Secondary Education regarding this condition. In the Assistant Secretary's response, dated June 23, 2000, he noted that the Office of Elementary and Secondary Education (OESE) is reviewing the issue further and will request appropriate corrective action if necessary from the State.

**Recommendation:**

**1.1** We recommend that the Assistant Secretary for Elementary and Secondary Education determine whether Colorado's State law is in compliance with the Act. If it is determined that the Colorado State law is not in compliance, we recommend that OESE assist CDE in formulating remedies that will ensure compliance in regards to:

- 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.
- Allowing the chief administering officer of each LEA to modify such expulsion requirement for a student on a case-by-case basis.

**CDE's Comments:**

In commenting on the draft report, CDE states:

We do not concur with this finding. In essence, the Colorado Revised Statutes complies with the Gun-Free Schools Act. Colorado laws require mandatory expulsion for bringing a firearm to school. The laws also allow for a LEA chief administering officer to expel for a full year, or less than one year if they choose to exercise their discretion. The Gun-Free Schools Act allows for this same discretion when modifying one-year expulsions

on a case-by-case basis. In practice under both laws they can either expel for one full year or less than one year.

**OIG Response:**

We concur that Colorado State law requires that expulsion shall be mandatory for bringing a firearm to school. However, CRS 22-33-105(2)(c) establishes a *maximum* period of expulsion of one year. By establishing a *maximum* period of expulsion of one year, the Colorado State law does not comply with the Act's requirement that the expulsion be for a *minimum* period of one year, unless the LEA's chief administering officer modifies it.

We agree that Colorado State law allows the LEA's chief administering officer discretion in determining the period of expulsion, because no minimum period of expulsion is specified in CRS 22-33-105 and 22-33-106. However, the CRS is silent as to the modification of an expulsion.

In response to discussions with ED officials, we revised our recommendation.

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

CDE reported 76 firearm expulsions in the 1997-98 school year, of which 52 were for *other firearms*. The *other firearms* category included: 26 bb gun and pellet gun expulsions, 14 firearm facsimile expulsions, and 1 black powder pistol expulsion. These expulsions were included due to confusion over what weapons qualify as a firearm under Title 18 U.S. Code Section 921 and a Colorado State law that requires mandatory expulsions for firearms, bb guns, and pellet guns.

The Act defines a weapon as a firearm under Title 18 U.S. Code Section 921. BB guns, pellet guns, cap guns, and toy guns are not considered firearms under Title 18 U.S. Code Section 921. In addition, antique and replica (including most black powder) firearms are not considered firearms under Title 18 U.S. Code Section 921.

Inaccurate data can result in a misunderstanding of the nature and extent of the problem of firearms in schools on a local, State, and national level. Furthermore, inaccurate data can result in SEA and LEA officials being unable to properly determine if the Act's provisions are being enforced consistently in their jurisdictions.

**Recommendation:**

**2.1** We recommend that the Assistant Secretary for Elementary and Secondary Education provide additional guidance on what weapons do not qualify as *firearms* under Title 18 US Code Section 921 to the CDE administrators responsible for the collection and reporting of data under the Act.

**CDE's Comments:**

CDE concurs that the count of firearm expulsions was incorrect, but notes that the errors stemmed more from the wording of ED's data collection instrument than from confusion regarding what weapons qualify as a firearm. The data collection instrument states, "Please indicate the number of students expelled in your State under your State's law that requires a one-year expulsion for a student who brings a firearm to school." CDE officials note that firearms are a subset of weapons for which Colorado law mandates expulsion. Since ED requested data on expulsions under "your State's law", CDE provided a count of expulsions using a broader definition which includes such weapons as bb guns. CDE agreed with the recommendation.

**OIG Response:**

Our report acknowledges that CDE's inclusion of expulsions for bb guns and pellet guns was due in part to the confusion over which weapons qualify as a firearm and a Colorado State law that requires mandatory expulsion for firearms, bb guns, and pellet guns. However, based on our work, the primary reason for CDE's reporting of expulsions for bb guns and pellet guns is due to the confusion over what weapons qualify as a firearm under Title 18 U.S. Code §921. ED is revising the data collection instrument, and in response to both this issue and OIG recommendations, has added a note to the definition of "other firearms" that states "...this definition does not apply to such items as toy guns, cap guns, bb guns, and pellet guns." We provided ED officials with CDE's suggestion that ED revise the data collection instrument to distinguish between reporting expulsions under State and Federal law.

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

Woodland Park School District and Greeley-Evans School District were not in full compliance with the Act, because they did not have a criminal justice or juvenile delinquency system referral policy in place. Both the Act and CDE's Single Assurance Form for State Administered Federal Education Programs require LEAs to have a criminal justice or juvenile delinquency referral policy. Specifically, Title 20 U.S. Code Section 8922(a) *Policy regarding criminal justice system referral* states:

No funds shall be made available under this chapter (Elementary and Secondary Education Act) to any local education 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.

Although CDE requires LEAs to submit a Single Assurance Form for State Administered Federal Education Programs, CDE did not review LEA policies to ensure that the assured policies were in place. In addition, Woodland Park School District and Greeley-Evans

School District did not review their policies to ensure compliance with the Act and the Single Assurance Form for State Administered Federal Education Programs.

We notified the LEA officials of these conditions. The Woodland Park School District and Greeley-Evans School District officials agreed to revise their policies. The revised Woodland Park School District and Greeley-Evans School District *Weapons in School* policies are in compliance with the requirements of the Act. It should be noted that during the 1997-98 school year, no incidents involving a student with a firearm occurred in the Woodland Park and Greeley-Evans School Districts.

**Recommendation:**

- 3.1 We recommend that the Assistant Secretary for Elementary and Secondary Education require CDE to establish a system to review each LEA's policy requiring the referral to a criminal justice or juvenile delinquency system any student who brings a firearm or weapon to a school.

**CDE's Comments:**

CDE concurs with our finding, but believes that its revised monitoring system negates the need for our recommendation. The revised monitoring system should be completed by the end of the 2000-01 school year.

**OIG Response:**

Since the revised monitoring system will not be completed until the end of the 2000-01 school year, CDE may be compromising its compliance with the Act by distributing Elementary and Secondary Education Act funds to LEAs that do not have the referral policy in place. Therefore, we have not revised our recommendation.

### OTHER MATTERS

In the course of our audit, we noted the following issues relating to State requirements that we wish to bring to your attention:

#### **LEA Compliance with CRS 22-33-105(c):**

Denver Public Schools and Douglas County Public Schools were not in compliance with CRS 22-33-105(c). CRS 22-33-105(c) states:

...The executive officer shall render a written (emphasis added) opinion within five days after a hearing conducted by the executive officer or by a hearing officer. The executive officer shall report on each case acted upon at the next meeting of the board of education, briefly describing the circumstances and reasons for the executive officer's action...

If a Denver Public Schools' expulsion hearing did not result in an expulsion, the hearing officer notified the student's parents of the decision. The superintendent did not render a written opinion and did not notify the board of education of expulsion hearings that did not result in expulsions.

During the 1999-2000 school year, there were two incidents involving the same Douglas County School District student who brought a shotgun onto school grounds in his vehicle. The first incident resulted in the student receiving a deferred expulsion; the second incident resulted in the student's expulsion. Since the superintendent did not render his decision in writing by signing either the *deferred expulsion release and waiver* or *expulsion release and waiver* contracts, and the superintendent did not report on either incident before the board of education, the deferred expulsion and expulsion were not handled in accordance with CRS 22-33-105(c).

#### **Single Assurance Form Policies Not in Place:**

CDE requires that each LEA receiving Federal education funds submit a Single Assurance Form for State Administered Federal Education Programs. By signing the form, the LEA assures that it has a policy in effect requiring:

The expulsion from school for a period of not less than one year of any student who is determined to have brought a weapon to a school under its jurisdiction except that such policy may allow its chief administering officer to modify such expulsion requirement for a student on a case-by-case basis.

Although Denver Public Schools and Greeley-Evans School District signed the assurance form, their policy was not in writing. Both LEAs' policies specified a mandatory expulsion for bringing a firearm to school without the wording contained in the assurance

form. We notified the LEA officials of these conditions. Greeley-Evans School District officials agreed to revise their policies; the revised *Weapons in School* policy reflects the policy contained in the Single Assurance Form for State Administered Federal Education Programs. In addition, while Denver Public Schools did not have a written policy in place, it appeared to be complying with the requirements. Denver Public Schools had five firearm expulsions in the 1997-98 school year; one expulsion was shortened to a period of less than one year.

### **BACKGROUND**

The Gun Free Schools Act of 1994 (Title 20 U.S. Code Sections 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 does not require LEAs to expel students for the possession of weapons that are not a firearm, such as pellet guns and bb guns. However, States may choose to take such disciplinary action against students found in possession of these weapons; but the expulsions would not be reported to ED under the Act.

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.

The State of Colorado has 176 LEAs. For the 1997-98 school year, approximately 28 LEAs reported a total of 76 expulsions of students who brought firearms to school.

### **AUDIT OBJECTIVE, SCOPE AND METHODOLOGY**

The objective of our audit was to determine if the CDE and LEAs are in compliance with the Act.

Our audit covered the 1997-1998 school year. We selected seven States as auditees; six of the States, including Colorado, were randomly selected. Within the State of Colorado, we selected six LEAs for inclusion in the audit. On the basis of student population, the districts within the State were categorized as large, medium, or small. Twelve districts (four from each category) were then randomly selected. From the 12 districts, we judgmentally selected six (two from each category) for audit site visits. The six districts from large to small were Denver Public Schools, Douglas County School District, Greeley-Evans School District, Woodland Park School District, Gunnison-Watershed School District, and Bennett School District. We selected four schools within each of the LEAs (except the Greeley-Evans School District, where we visited five schools including one charter school, and the Bennett School District, which only has three schools) where we conducted interviews with school administration and faculty.



To accomplish our objective, we reviewed applicable Colorado State laws and LEA policies, the methodology used by CDE and LEAs to collect and report expulsion data, and selected student disciplinary files. We interviewed CDE, LEA, and school administrators, teachers, counselors, students, parent organization representatives, and law enforcement officials.

<b>Summary of Officials Interviewed</b>			
CDE Administrators	5	Parent Representatives	10
LEA Administrators	26	School Security Staff	9
School Administrators	46	Law Enforcement Officials	27
Teachers	83	Students	7
Guidance Counselors	39	<b>Total</b>	<b>252</b>

We performed fieldwork at CDE and the six selected LEAs between March 2000 and April 2000. Our audit was performed in accordance with government auditing standards appropriate to the scope of the review described above.

#### **STATEMENT OF MANAGEMENT CONTROLS**

As part of our review we assessed the system of management controls, policies, procedures, and practices applicable to CDE's and the selected LEAs' compliance with the Act. Our assessment was performed to determine the level of control risk for the nature, extent, and timing of our substantive tests to accomplish the audit objectives.

For purposes of this report, we assessed and classified the significant controls into the following categories:

- Compliance with the State law expulsion requirement.
- Compliance with the referral policy requirement.
- Data collection and reporting.

Because of inherent limitations, a study and evaluation made for the limited purpose described above would not necessarily disclose all material weaknesses in the management controls. Our assessment disclosed significant management control weaknesses, which adversely affected CDE's and selected LEA's ability to comply with the Act. These weaknesses included State law that may not comply with the Act's requirements and referral policies not being in place. These weaknesses and their effects are discussed in the Audit Results section of this audit report.

**ADMINISTRATIVE MATTERS**

Statements that financial and/or managerial practices need improvement or recommendations that costs questioned be refunded or unsupported costs be adequately supported, and recommendations for the better use of funds, as well as other conclusions and recommendations in this report, represent the opinions of the Office of Inspector General. Determinations on these matters will be made by the appropriate Education Department officials.

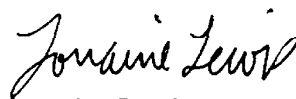
If you have any additional comments or information that you believe may have a bearing on the resolution of this audit, you should send them directly to the following Department of Education official, who will consider them before taking final Department action on the audit:

Michael Cohen  
Assistant Secretary for Elementary  
and Secondary Education  
400 Maryland Avenue  
Room 3W315  
Washington, DC 20202

Office of Management and Budget Circular A-50 directs Federal agencies to expedite the resolution of audits by initiating timely action on the findings and recommendations contained therein. Therefore, receipt of your comments within 30 days would be greatly appreciated.

In accordance with the Freedom of Information Act (Public Law 90-23), reports issued to the Department's grantees and contractors are made available, if requested, to members of the press and general public to the extent information contained therein is not subject to exemption in the Act.

Sincerely,



Lorraine Lewis

Attachment

# STATE OF COLORADO

## COLORADO DEPARTMENT OF EDUCATION

201 East Colfax Avenue  
Denver, CO 80203-1704  
(303) 866-6600  
FAX (303) 830-0793  
www.cde.state.co.us



William J. Moloney  
Commissioner  
of Education

Richard G. Elmer  
Deputy Commissioner

August 11, 2000

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

Dear Mr. Tadley,

The Colorado Department of Education has reviewed your office's July 13, 2000 **Draft Audit Report** (Control Number ED-OIG/A03-A0008) concerning the Gun-Free Schools Act of 1994. Following is our response to your findings, a description of corrective action taken if necessary, and our response to your recommendations:

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

We do not concur with this finding. In essence, the Colorado Revised Statutes complies with the Gun-Free Schools Act. Colorado laws require mandatory expulsion for bringing a firearm to school. The laws also allow for a LEA chief administering officer to expel for a full year, or less than one year if they choose to exercise their discretion. The Gun-Free Schools Act allows for this same discretion when modifying one-year expulsions on a case-by-case basis. In practice under both laws they can either expel for one full year or less than one year.

Corrective Action: CDE cannot take action until the outcome of the ongoing investigation by the Office of Elementary and Secondary Education regarding this compliance issue is made known.

Recommendation 1.1: We concur that a legal opinion be called for from the Office of General Counsel.

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

We concur that the count was in need of revisions, but add that the confusion stems more from the count required in the reporting form in addition to what weapons qualify as a firearm. The form used to submit the data to WESTAT, the U.S. Department of Education's contractor, asks a state to report the data according to its "State's law that requires a one year expulsion for a student who brings a firearm to school." Firearms, as defined by the Gun-Free Schools Act, are a subset of the weapons for which the Colorado law mandates expulsion. Therefore, by asking for data according to a "state law", which in our case broadens the definition, additional weapons (i.e. BB guns) were reported.

Corrective Action: The data for the 1997-98 school year has been revised and submitted to WESTAT. The OIG report reflects these revisions. No further action is needed.

Recommendation 2.1: We agree with the recommendation that the Assistant Secretary for the Office of Elementary and Secondary Education issue additional guidance on what weapons do not qualify as firearms under the Gun-Free Schools Act. We further recommend that the reporting form used to collect the information be revised to distinguish between state law and federal law.

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

We concur with this finding, based upon the outcome of the LEA audit conducted by the Office of Inspector General.

Corrective action: The two LEAs found to have been out of compliance revised their policies prior to the completion of the audit. Each has demonstrated its compliance directly to the OIG auditors. No further action is required by CDE.

Recommendation 3.1: We do not concur with the recommendation that the Assistant Secretary of the OESE require CDE to establish a system to review each LEA's policy requiring a referral to a criminal justice or juvenile delinquency system of any student who brings a firearm or weapon to a school.

That is not to imply that it is not of concern to us that a district may not be accurate when assuring its compliance with policies to us. Rather, CDE is currently revising the system we already have in place for monitoring school districts so a requirement from the OESE is not necessary. Legislation recently enacted requires the establishment of numerous LEA policies, reporting of data, and quality control audits. A new monitoring and data collection system is being developed. The reporting of weapon expulsions is included in the new legislation (Senate Bill 186, Educational Reform, and Senate Bill 133, Safe Schools). Determining whether or not districts are in compliance with state and federal laws is a component of this new system. Any requirement to separate out one policy or law from the broader system defeats the purpose for striving toward a more comprehensive, streamlined, and less burdensome protocol to the LEA.

The new system should be completed by the end of the 2000-01 school year.

Other matters

Regarding LEA issues brought to our attention in the "other matters" section, we will use your audit findings to continue educating school officials about the Gun-Free Schools Act and associated state law requirements.

Please don't hesitate to contact us if you need to discuss our response contained herein to the Draft Audit Report for the Gun-Free Schools Act. Please contact Janelle Krueger, the director of the Safe and Drug-Free Schools and Communities program, at (303) 866-6660, or Krueger\_J@cde.state.co.us.

Sincerely,



William J. Moloney  
Commissioner of Education

## REPORT DISTRIBUTION LIST

	<u>No. of Copies</u>
<b><u>Auditee</u></b>	
Mr. William J. Moloney Commissioner of Education Colorado Department of Education	1
Ms. Janelle Krueger Program Director, Safe and Drug-Free Schools and Communities Colorado Department of Education	1
<b><u>Action Official</u></b>	
Mr. Michael Cohen Assistant Secretary for Elementary and Secondary Education U.S. Department of Education	1
<b><u>Other ED Offices</u></b>	
Mr. William Modzeleski Director, Safe and Drug Free Schools Program	1
Ms. Deborah Rudy Group Leader, Safe and Drug Free Schools Program	1
Mr. Charles Miller Supervisor, Post Audit Group, OCFO	1
Mr. Alex Wohl Director, Public Affairs, OS	1
<b><u>Office of Inspector General (electronically)</u></b>	
Inspector General	1
Assistant Inspector General for Audit	1
Assistant Inspector General for Investigations	1
Assistant Inspector General for Analysis and Inspections	1
Regional Inspectors General for Audit	1 each
Director, State and Local Advisory and Assistance Team	1
Director, Non-Federal Audit Team	1



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF INSPECTOR GENERAL

THE INSPECTOR GENERAL

**MEMORANDUM**

SEP 13 2000

**TO:** Michael Cohen  
Assistant Secretary  
Office of Elementary & Secondary Education

**FROM:** Lorraine Lewis *Lorraine Lewis*

**SUBJECT:** FINAL AUDIT REPORT  
*Colorado State and Local Education Agencies' Compliance with  
the Gun-Free Schools Act of 1994*  
Control No. ED-OIG/A03-A0008

Attached is our subject report presenting our findings and recommendations resulting from our audit of the Colorado Department of Education and local education agencies.

In accordance with the Department's Audit Resolution Directive, you have been designated as the action official responsible for the resolution of the findings and recommendations in this report.

If you have any questions, please contact Bernard Tadley, Regional Inspector General for Audit, at (215) 656-6279.

Please refer to the above control number in all correspondence relating to this report.

Attachment

cc: William Modzeleski, Director, Safe and Drug Free Schools Program, OESE  
Deborah Rudy, Group Leader, Safe and Drug Free Schools Program, OESE