

# **Gun-Free School Laws and Implications**

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## **The Gun-Free School Zones Act of 1990**

**Background:** The Gun-free School Zones Act of 1990 was passed under the commerce clause of the Constitution, which regulates interstate commerce.

**Discipline Definitions:** This statute makes it a federal crime to possess a gun within 1000 feet of any school—public, private, or parochial. Punishment for violations of this criminal law may be up to five years imprisonment and up to \$5000 fine. (18 U.S.C. Sec. 924 (a)(4)).

**Other Considerations:** In April 1995, the U.S. Supreme Court ruled in a 5-4 decision that the Gun-Free Schools Zone Act was unconstitutional. Enacted under the “interstate commerce” clause of the U.S. Constitution, the Court ruled in the case, *United State v. Lopez*, (Case No. 93-1260), that there was insufficient connection with interstate commerce to warrant such an enactment involving guns in school zones. Writing for the majority in the decision, Chief Justice William H. Rehnquist stated that the federal law “has nothing to do with ‘commerce’ or any sort of economic enterprise, however, broadly one might define those terms.” In an 18-page dissent, Associate Justice Stephen G. Breyer argued that Congress can legitimately conclude that the threat of gun violence around schools hampers education and thus the economic vitality of the nation.

Indeed, new legislation was introduced under the title of Gun-Free School Zones Amendments Act of 1995, as an amendment to Title 18 of the U.S. Code. The amendment ensures that the prohibitions against guns in school zones have the requisite nexus with interstate or foreign commerce. Language in this legislation, similar to the original act of 1990, states “It shall be unlawful for any individual knowingly to possess a firearm...at a place that the individual knows, or has reasonable cause to believe, is a school zone.” The legislation further states “...it shall be unlawful for any person...to discharge or attempt to discharge a firearm...at a place that the person knows is a school zone.”

## **The Goals 2000: Educate America Act (1994)**

**Background:** The Goals 2000: Educate America Act was passed March 21, 1994. Among other purposes of the “Goals 2000: Education America Act” were (1) to provide a national framework for education reform; and (2) to provide a framework for reauthorization of all Federal education programs. Resultantly, the Goals 2000: Educate America Act and, more

specifically, Goal 7 for Safe, Disciplined, and Alcohol-and Drug-Free Schools, has served as a catalyst for numerous Federal, State and Local gun-free legislative and reform initiatives.

**Original Language:**

Goal 7: Safe, Disciplined, and Alcohol- and Drug-Free Schools  
Goals 2000: Educate America Act of 1994

- (A) By the year 2000, every school in the United States will be free of drugs, violence, and the unauthorized presence of firearms and alcohol and will offer a disciplined environment conducive to learning.
- (B) The [relevant] objectives for this goal are that--...
  - (ii) parents, businesses, governmental and community organizations will work together to ensure the rights of students to study in a safe and secure environment that is free of drugs and crime, and that schools provide a healthy environment and are a safe haven for all children;
  - (iii) every local educational agency will develop and implement a policy to ensure that all schools are free of violence and the unauthorized presence of weapons....

### **The Gun-Free Schools Act**

**Background:** The Gun-Free Schools Act was enacted on October 20, 1994. It is considered an amendment to the Elementary and Secondary Education Act of 1965 (ESEA), which was reauthorized by President Clinton under the title of The Improving America's Schools Act.

**Discipline Definition:** In order to receive federal financial assistance under the ESEA, each state must have in effect a policy by October 20, 1995 that requires local education agencies (LEAs) to expel for a minimum of one year any student who brings a weapon to school. The chief administrative officer of the school district has the power to modify the expulsion requirement on a case-by-case basis.

**Other Considerations:** School districts must provide written assurances to the state education agency (SEA) that the policy is in effect and give information to the SEA explaining circumstances of any expulsion imposed as a result of the policy. The Gun-Free Schools Act contains assurances that authorize continued educational services in an alternative setting.

The term weapon refers in the Gun-Free Schools Act to a firearm and is defined by federal law (Section 921 of Title 18 of the U.S. Code) as "... (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer, or (D) any destructive device. Such term does not include an antique firearm." This definition, it must be noted, also does not include knives. However, schools may enact broader policies if they desire.

In the enclosed policy guidance memorandums, the Office of Elementary and Secondary Education of the U.S. Department of Education has clearly stated that the Gun-Free Schools Act

does not conflict with requirements for students with disabilities as long as procedural safeguards required by the Individuals with Disabilities Education Act and Section 504 of the Rehabilitation Act are followed. Indeed, the Gun-Free Schools Act specifically states that the act shall be construed in a manner consistent with the Individuals with Disabilities Education Act. Assistant Secretary, Judith Heumann (in OSERS letter to Smith and Searcy dated February 3, 1995) stated that “Disabled students who bring firearms to school may be subject to the mandatory expulsion requirement of the Gun-Free Schools Act only if the following conditions are met: a group of persons knowledgeable about the student determines that the behavior of bringing a firearm to school is not a manifestation of the student’s disability; applicable procedural safeguards are followed; and for students eligible for services under IDEA, educational services continue during the expulsion period.”

The Gun-Free Schools Act also requires that Local Education Agencies have policy requiring referral to the criminal or juvenile justice system of any student who brings a firearm to school. Additionally, the Secretary of Education is required to collect data on the incidence of children with disabilities engaging in life threatening behavior or bringing weapons to school, and submit a report to Congress not later than January 31, 1995, analyzing the strengths and problems with the current approaches regarding disciplining children with disabilities.

**Original Language:**

**SEC. 14601. GUN-FREE REQUIREMENTS**

- (a) *Short Title*—This section may be cited as the “Gun-Free Schools Act of 1994.”
- (b) *Requirements*—
- (1) *In General*—Except as provided in paragraph (3), each state receiving Federal funds under this act 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, except<sup>6</sup> that such state law allow the chief administrative officer, of such local educational agency to modify such expulsion requirement for a student on a case-by-case basis.
  - (2) *Construction*—Nothing in this title shall be construed to prevent a state from allowing a local educational agency that has expelled a student from such a student’s regular school setting from providing educational services in an alternative setting.
  - (3) *Special Rule*—
    - (A) Any State that has a law in effect prior to the date of enactment of the Improving America’s Schools Act of 1994 which is in conflict with the not less than one year expulsion requirement describe in paragraph (1) shall have the period of time described in subparagraph (B) to comply with such requirement.
    - (B) The period of time shall be the period beginning on the date of enactment of the Improving America’s Schools Act and ending one year after such date.
  - (4) *Definition*—For the purpose of this section, the term “weapon” means a firearm as such term is defined in Section 921 of Title 18, United States Code.
- (c) *Special Rule*—The provisions of this section shall be construed in a manner consistent with the Individuals with Disabilities Education Act.

- (d) *Report to State*—Each local educational agency requesting assistance from the State educational agency that is to be provided from funds made available to the State under the Act shall provide to the State, in the application requesting such assistance—
- (1) an assurance that such local educational agency is in compliance with the State law required by subsection (b); and
  - (2) a description of the circumstances surrounding any expulsions imposed under the State law required by subsection (b), including—
    - (A) the name of the school concerned;
    - (B) the number of students expelled from such school; and
    - (C) the type of weapons concerned.
- (e) *Reporting*—Each State shall report the information described in subsection (c) to the Secretary on an annual basis.
- (f) *Report to Congress*—Two years after the date of enactment of the Improving America’s Schools Act of 1994, the Secretary shall report to Congress if any State is not in compliance with the requirements of this title.

## SEC. 14602. POLICY REGARDING CRIMINAL JUSTICE SYSTEM REFERRAL

- (a) *In General*—No funds shall be made available under this Act 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.
- (b) *Definitions*—For the purpose of this section, the terms ‘firearm’ and ‘school’ have the same meaning given to such terms by section 921(a) of title 18, United States Code.

### **Discipline Provisions of The Individuals with Disabilities Education Act**

**Background.** The Individuals with Disabilities Education Act (IDEA) does not contain a specific section on discipline but does contain a “stay-put” provision. The stay-put provision prohibits schools from indefinitely expelling, suspending, or changing the placement of a student with disabilities if the student’s behavior is determined to be a manifestation of the disability. Through policy letter, the Department of Education has adopted the position that a suspension of up to 10 school days does not amount to a change of placement in violation of the stay-put provision. **In 1994, the Jeffords Amendment was enacted modifying these provisions for weapons as explained below.**

**Discipline Definition:** Students with a disability may be immediately suspended for engaging in behavior subject to discipline. A manifestation determination must then be made. If the behavior is a manifestation of the disability, the school may initiate a change in placement but may not expel or suspend the student for more than 10 days. If the parents request a due process hearing, the student remains in the current placement until the dispute is resolved, unless the school obtains a court order for removal or the parents and the school agree on another placement. If the behavior is not a manifestation of the disability, the school may suspend or expel the student but must continue to provide educational services. Again, if the parents request a due process hearing, the student remains in the current placement until the dispute is resolved, unless the school obtains a court order for removal or the parents and the school agree on another

placement. Suspensions or expulsions of longer than 10 days are considered a change in placement and are subject to the laws regarding change in placement. **In 1994, the Jeffords Amendment was enacted modifying these provisions for weapons as explained below.**

### *Honig v. Doe*

**Background.** The stay-put requirements of the Individuals with Disabilities Education Act (IDEA) was considered by the Supreme Court in *Honig v. Doe*. The case addressed the attempted expulsion by the San Francisco Unified School District of two students for violent and disruptive behavior related to their disabilities. Finding the school district in violation of IDEA, the district court entered a summary judgment for the plaintiffs and issued a permanent injunction. The decision was upheld by both the court of appeals and the Supreme Court.

**Discipline Definition.** In *Honig v. Doe* the court observed that the interests of a child with a disability to remain in school are balanced with the interests of the school to maintain a safe learning environment. Refusing to read a dangerousness exception into the stay-put provision, the Supreme Court stated, "...where a student poses an immediate threat to the safety of others, officials may temporarily suspend him or her for up to 10 school days. This authority...not only ensures that school administrators can protect the safety of others by promptly removing the most dangerous of students, it also provides a cooling down period during which officials can initiate IEP review and seek to persuade the child's parents to agree to an interim placement. And in those cases in which the parents of a truly dangerous child adamantly refuse to permit any changes in placement, the 10-day respite gives school officials an opportunity to invoke the aid of the courts...to grant any appropriate relief."

### *Light v. Parkway*

**Background:** *Light v. Parkway* set standards which were later formally adopted by the Office of special Education Projects (in OSEP Memorandum 95-16 dated April 16, 1995) for obtaining a *Honig* injunction.

**Discipline Definition:** A two-pronged test was determined by the Eighth Circuit Court of Appeals in *Light v. Parkway* for seeking judicial sanction for the removal of an allegedly dangerous child:

1. Is the child substantially likely to harm self or others unless removed from the current placement?
2. Has the school district taken reasonable steps to reduce the likelihood that the child will cause injury?

### **The Jeffords Amendment of 1994**

**Background:** The Jeffords Amendment, introduced by Senator James Jeffords (R—Vt), is an amendment to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1415(b)(3). President Clinton, in signing the Improving America's Schools Act on October 20, 1994, reauthorized the Elementary and Secondary Education Act of 1965t (ESEA) and authorized the

Jeffords Amendment. This amendment modifies the “stay-put” provision of the Individuals with Disabilities Education Act (IDEA). It applies only to students who are eligible for special education under IDEA and not to students covered only under Section 504.

**Discipline Definition:** Students with disabilities who bring a weapon to school may be placed in an interim alternative educational setting for up to 45 school days. Prior to the Jeffords Amendment, schools could not suspend students with disabilities for more than 10 days without a court order or parental consent.

The amendment allows the team in charge of a student’s individualized educational program (IEP), which includes parents, to impose the long-term suspension of up to 45 days. If the placement is challenged by parents, the student will “stay put” in the alternative setting during the due process proceedings unless the parents and local educational agency agree otherwise. Thus, a student bringing a weapon to school may be suspended for 10 days or placed in alternative educational setting up to 45 days while a manifestation or relationship of the behavior to the disability determination is made by the IEP team.

**Manifestation**

**Discipline**

If bringing a gun to school is related to disability...

No expulsion permitted. Suspension permitted for up to 10 days. May be placed in alternative educational setting up to 45 days while IEP team determines appropriate settings or behavior conditions for students return. LEA may seek court order for removal of a dangerous student; placement may be changed, in accordance with IDEA and Section 504, if determined that current placement is not appropriate.

If bringing a gun to school is not related to disability.....

Expulsion or suspension longer than 10 days permitted as long as procedural safeguards of IDEA and Section 504 are followed. Alternative education must be provided as IEP requirements remain in effect.

**Other Considerations:** Alternative placements may exceed 45 days during prolonged due process proceedings. In accordance with IDEA, educational services must continue throughout the placement.

**Original Language:**

**The Jeffords Amendment to the Individuals with Disabilities Education Act**

- (3) (A) Except as provided in subparagraph (B), during the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parent or guardian otherwise agree, the child shall remain in the then current educational placement of such child, or, if applying for initial admission to a public school shall, with the consent of

the parents or guardian, be placed in the public school program until all such proceedings have been completed.

- (B) (i) Except as provided in clause (iii), if the proceedings conducted pursuant to this section involve a child with a disability who is determined to have brought a weapon to school under the jurisdiction of such agency, then the child may be placed in an interim alternative educational setting, in accordance with State law, for not more than 45 days.
- (ii) The interim alternative educational setting described in clause (i) shall be decided by the individuals described in section 602(a)(2) [IEP team].
- (iii) If a parent or guardian of a child described in clause (i) requests a due process hearing pursuant to paragraph (2) of subsection (b) then the child shall remain in the alternative educational setting described in such clause during the pendency of any proceedings conducted pursuant to this section, unless the parents and the local educational agency agree otherwise.
- (iv) For the purpose of this section the term “weapon” means a firearm as such term is described in Section 921 of title 18, United States Code.

(2) *Effective Date*—Paragraph amendments made by paragraph (1) shall be effective during the period beginning on the date of enactment of this Act and ending on the date of enactment of an Act (enacted after the date of the enactment of this Act) that reauthorizes the Individuals with Disabilities Act.

(b) *Limitation*—Nothing in the Individuals with Disabilities Act shall supersede the provisions of section 14601 of the Elementary and Secondary Act if a child’s behavior is unrelated to such child’s disability, except that this section shall be interpreted in a manner that is consistent with the Department’s final guidance concerning State and Local responsibilities under the Gun-Free Schools Act of 1994.<sup>2</sup>

<sup>1</sup> So in original.

<sup>2</sup> So in original.

**Pending Reauthorization:** Discipline has been a contentious issue during the current IDEA reauthorization process. Under consideration have been such changes as the following selected from the recent Senate Discipline proposal: change in educational placement for possession of a dangerous weapon, engaging in illegal use, possession, or distribution of drugs, or engaging in behavior resulting in serious bodily injury; cumulative record or behavior of a child with a disability who is seriously disruptive; broadening of definition of “dangerous weapon” to “a weapon, device, or instrument, material or substance, animate or inanimate, that is used for or is readily capable of causing death or serious bodily injury”; etc.

### **Discipline Provisions of Section 504 of the Rehabilitation Act**

**Background:** Section 504 of the Rehabilitation Act of 1973 prohibits discrimination against individuals with disabilities under any program receiving federal financial assistance.

**Discipline Definition:** Disciplinary measures may be implemented in a plan similar to the individualized education program, may not constitute a significant change in placement, and may not be applied in a discriminatory manner to students identified under Section 504 as having disabilities. As in IDEA, students identified under Section 504 are allowed some due process prior to any action of long-term suspension (more than 10 days), expulsion, or change in placement. Students with disabilities may be treated the same as non-disabled students in cases of short-term suspensions. **Exceptions now exist for students bringing a weapon to school** (see Gun-Free Schools Act and Jeffords Amendment sections).

**Other Considerations:** Students who are identified only under Section 504 and not under IDEA may not be entitled to a continuation of educational services following any long-term exclusion. The Jeffords Amendment does not apply to students identified only under Section 504. A pattern on long-term exclusions may violate Section 504 as they may constitute a change in placement.