
State and Local Education Agencies' Compliance with the Gun-Free Schools Act of 1994

FINAL AUDIT REPORT



CONTROL NUMBER ED-OIG/A03-A0018

FEBRUARY 2001

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U.S. Department of Education
Office of Inspector General
Philadelphia, Pennsylvania

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Statements that management practices need improvements, as well as other conclusions and recommendations in this report represent the opinions of the Office of Inspector General. Determinations of corrective action to be taken will be made by the appropriate Department of Education officials.

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UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF INSPECTOR GENERAL

THE INSPECTOR GENERAL

MEMORANDUM

FEB 1 2001

TO: Thomas Corwin
Office of Elementary & Secondary Education

FROM: Lorraine Lewis *Lorraine Lewis*

SUBJECT: FINAL AUDIT REPORT
*State and Local Education Agencies' Compliance with
the Gun-Free Schools Act of 1994*
Control No. ED-OIG/A03-A0018

Attached is our subject final report that covers the results of our audit of State and local education agencies' compliance with the Gun-Free Schools Act of 1994 during the 1997-98 school year.

Please provide us with your final response to each open recommendation within 60 days of the date of this report indicating what corrective actions you have taken or plan, and related milestones.

In accordance with Office of Management and Budget Circular A-50, we will keep this audit report on the OIG list of unresolved audits until all open issues have been resolved. Any reports unresolved after 180 days from the date of issuance will be shown as overdue in the OIG's Semiannual Report to Congress.

Please provide the Supervisor, Post Audit Group, Financial Improvement, Receivables and Post Audit Operations, Office of Chief Financial Officer and the Office of Inspector General, Audit Services with semiannual status reports on promised corrective actions until all such actions have been completed or continued follow-up is unnecessary.

In accordance with the Freedom of Information Act (Public Law 90-23), reports issued by the Office of Inspector General are available, if requested, to members of the press and general public to the extent information contained therein is not subject to exemptions in the Act. Copies of this audit report have been provided to the offices shown on the distribution list enclosed in the report.

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

We appreciate the cooperation given us in the review. Should you have any questions concerning this report, please contact Bernard Tadley, Regional Inspector General for Audit at (215) 656-6279.

Attachment

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

**STATE AND LOCAL EDUCATION AGENCIES’ COMPLIANCE
WITH THE GUN-FREE SCHOOLS ACT OF 1994**

CONTROL NUMBER ED-OIG/A03-A0018

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EXECUTIVE SUMMARY

The objective of our audit was to determine whether the state and local education agencies were in compliance with the Gun-Free Schools Act of 1994 (the Act). This audit report summarizes the crosscutting issues identified in our audits of seven state education agencies (SEAs) and forty-three local education agencies (LEAs). Individual audit reports have been issued to each state, with recommendations for actions to address findings where noted.

The Act 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 the U.S. Department of Education (ED) information on firearm expulsions under such 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.

In general, we found that five of the seven states and forty of the forty-three LEAs included in our audit appeared to be in compliance with the Act. Instances of state and LEA non-compliance with the Act are discussed in this audit report and the individual audit reports issued to each state. This report addresses the crosscutting areas of concern resulting from the individual state audits. Specifically, we found:

Two of the seven states have laws that may not be in full compliance with the Act.

We reviewed the California and Colorado state laws that implement the Act and found that these laws may not be in full compliance with the Act. The Act refers to Title 18 U.S.C. §921 to define *firearm*, which includes certain types of explosive devices. The California state law establishes differing levels of disciplinary action for acts involving firearms and explosives. The California state law allows LEAs discretion in ordering the expulsion of students who possess *explosive* devices. If the LEA decides to expel the student, the California state law does not specify a minimum length for the expulsion. The Colorado state law 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. In addition, the Colorado state law 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.

We recommend that the Assistant Secretary for Elementary and Secondary Education take steps to ensure that all states have in effect laws that are in compliance with the Act.

Confusion over which weapons qualify as a firearm resulted in an inaccurate report of expulsions under the Act.

Our review determined that confusion over which weapons qualify as a *firearm* as defined in Title 18 U.S.C. §921 resulted in errors of the count of expulsions under the Act for the 1997-98 school year. The Act refers to Title 18 U.S.C. §921 to define *firearm*. Cap guns, toy guns, bb guns, pellet guns, antique or replicas of antique firearms, gun clips, and ammunition are not considered *firearms* under Title 18 U.S.C. §921. In conducting seven state audits, we found eighty-two expulsions reported to ED that were not for firearms. The reported expulsions were for the possession of items such as bb guns, pellet guns, firearm facsimile, antique or replicas of antique firearms, and a gun clip.

We recommend that the Assistant Secretary for Elementary and Secondary Education issue guidance to SEAs and LEAs noting that cap guns, toy guns, bb guns, and pellet guns are not considered *firearms* under Title 18 U.S.C. §921, and therefore expulsions for such weapons should not be included in the annual data collection performed by ED.

SEAs and LEAs did not report accurate data concerning firearm expulsions to ED.

We found significant errors in the data reported by four of the seven states. The errors included reporting expulsions that did not involve a firearm; SEAs reporting totals that did not equal the sum of the data submitted by all LEAs for the count of expulsions, shortened expulsions, shortened expulsions for students who are not disabled, and referrals to an alternative program; and expulsions reported in the incorrect school year. Errors were due to weaknesses in SEAs' and LEAs' data collection and reporting processes and ambiguity in the Act's data collection instrument's questions and instructions.

We recommend that the Assistant Secretary for Elementary and Secondary Education emphasize to SEAs and LEAs the importance of submitting accurate data on their reports and revise the questions and instructions in the data collection instrument to clarify what information SEAs are to report to ED.

Implementation of the Act could be improved by providing additional guidance.

Items within the Act and its non-regulatory guidance require clarification. Without clarification, SEAs and LEAs may incorrectly implement the Act, resulting in non-compliance, or may submit erroneous information on expulsions. Items in need of clarification are:

LEAs' practices of modifying expulsions on a case-by-case basis may violate the Act's requirements; and

A LEA's interpretation of what situations (i.e., on or off campus) fall under its jurisdiction may affect its implementation of the Act and the reporting of expulsions.

We recommend that the Assistant Secretary for Elementary and Secondary Education issue guidance on LEAs' practice of modifying expulsions and what situations fall under a LEA's jurisdiction.

In addition to the findings noted above, our audit disclosed:

Three of the forty-three LEAs included in the audit were not in full compliance with the Act. One New Mexico LEA did not expel fourteen of the twenty-six students who were involved in firearm incidents during the 1997-98 school year. In addition, two Colorado LEAs were not in full compliance with the Act, because they did not have a criminal justice or juvenile delinquency system referral policy in place.

At one Wisconsin LEA, we identified seven incidents involving students with exceptional educational needs who brought a firearm to school and were not expelled by the LEA. A LEA official informed us that the LEA did not report the incidents involving students with exceptional educational needs because, during the 1997-1998 school year, these students were not considered for expulsion due to a state law. The official informed us that the state law was subsequently changed for the 1998-1999 school year, and the LEA now conducts manifestation hearings and expels students when the student's disability is not a cause for the incident.

A draft of this report was provided to ED and each state included in the audit. In their response, ED generally concurred with the findings, but did not concur with the first and fourth findings' recommendations. As a result of ED's comments, we have made revisions to portions of the audit report. Other than New Mexico, no state provided us with comments on a draft of this report. In their comments, the New Mexico State Department of Education concurred with the information reported and recommendations specific to the New Mexico State Department of Education and their LEAs. Copies of the responses received from ED and the New Mexico State Department of Education are included as attachments to this report.

AUDIT RESULTS

In general, we found that five of the seven states and forty of the forty-three LEAs included in our audit appeared to be in compliance with the Act. Specifically, we found:

Two of the seven states have laws that may not be in full compliance with the Act.

Confusion over which weapons qualify as *firearms* resulted in an inaccurate report of expulsions under the Act.

SEAs and LEAs did not report accurate data concerning firearm expulsions to ED.

Implementation of the Act could be improved by providing additional guidance.

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

The Act, Title 20 U.S.C. §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.

We reviewed the California and Colorado state laws that implement the Act and found that these laws may not be in full compliance with the Act.

California Education Code Section 48915 (EDC §48915) contains the California state law covering required expulsion actions for LEAs. The section establishes differing levels of required action for instances involving *firearms* and *explosives*. Under EDC §48915 and EDC §48916, California state law allows LEAs discretion in ordering the expulsion of students who possess *explosive devices*. Also, if the LEA decides to expel a student for possessing an explosive device, California state law does not specify a minimum length for the expulsion. EDC §48915 does not define *firearm* or *explosive*, or contain references to definitions contained in other sections of the state law. The Act refers to Title 18 U.S. Code §921 to define *firearm*. The definition of *firearm* contained in Title 18 U.S. Code §921(a)(3) includes *any destructive device*; certain types of explosive devices are considered a *destructive device* under Title 18 U.S. Code §921(a)(4). Therefore, California state law may not be in compliance with the Act's requirements for students found to possess explosives or other destructive devices that meet the Title 18 U.S. Code §921 definition of a firearm.

Colorado's state law relating to 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 provide an assurance 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.

Recommendation:

- 1.1 We recommend that the Assistant Secretary for Elementary and Secondary Education take steps to ensure that all states have in effect laws that are in compliance with the Act.

ED's Comments:

ED does not believe that the extent and nature of non-compliance identified in the finding are sufficient to warrant the recommendation. ED found that California and Colorado were interpreting and implementing their state laws consistent with the Act. Furthermore, ED is continuing to work with the two states on these matters and will continue to clarify its guidance as needed.

OIG's Response:

We found that two (28.5%) of the seven states included in the audit have state laws that may not be in full compliance with the Act. Given this percentage, we believe there could be other states with laws that may not be in full compliance with the Act. The recommendation provides ED with a mechanism to ensure consistent application of the Act throughout all states. In addition, non-compliance with the Act may result in the withholding of funds under the Elementary and Secondary Education Act. The recommendation allows ED to identify and consult with those states that unknowingly have laws that may not be in full compliance with the Act before their Elementary and Secondary Education Act funding is placed at risk.

The implementation of the recommendation can be accomplished in a manner that is not overly burdensome. The Office of Elementary and Secondary Education can obtain each state's law relating to the Act through the use of sources available on the internet or by requesting such laws from a SEA's Safe and Drug-Free Schools and Communities Program coordinator. The Office of Elementary and Secondary Education, in consultation with the Office of General Counsel, can then review and determine if states' laws are in 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.

Our review determined that confusion over which weapons qualify as a *firearm* as defined in Title 18 U.S.C. §921 resulted in errors of the count of expulsions under the Act for the 1997-98 school year. In conducting the individual state audits we found eighty-two expulsions reported to ED that were not for firearms. Specifically, we noted:

Of the sixty-four expulsions reported by Maryland, twenty were for pellet guns or bb guns and seven were for cap or toy guns.

The seventy-six firearm expulsions reported by Colorado included twenty-six bb gun and pellet gun expulsions, fourteen firearm facsimile expulsions, and an antique or replica of an antique firearm (black powder pistol) expulsion.

Of the sixty-six expulsions reported by Wisconsin, thirteen were for bb guns or pellet guns.

One Texas LEA submitted data concerning one expulsion for an incident involving a gun clip.

These expulsions should not have been included in the expulsions reported to ED because the Act defines a weapon as a *firearm* under Title 18 U.S.C. §921. Cap guns, toy guns, bb guns, pellet guns, antique or replicas of antique firearms, gun clips, and ammunition are not considered a *firearm* 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. 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."

Inaccurate data can result in a misunderstanding of the nature and extent of the problem of students bringing firearms to school on a local, state, and national level. In addition, inaccurate data can result in ED, SEA and LEA officials being unable to properly determine if the Act's provisions are being enforced consistently.

Recommendation:

- 2.1 We recommend that the Assistant Secretary for Elementary and Secondary Education issue guidance to SEAs and LEAs noting that cap guns, toy guns, bb guns, and pellet guns are not considered *a firearm* under Title 18 U.S.C. §921. Therefore, expulsions for such weapons should not be reported to ED in the annual data collection.

ED's Comments:

ED concurs with this finding and has initiated contact with the Bureau of Alcohol, Tobacco, and Firearms to obtain their concurrence with proposed language to revise the Act's accompanying guidance.

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

We found significant errors in the data reported by four of the seven states for the 1997-98 school year. Our audit work identified errors made by SEAs and LEAs in compiling firearm expulsion data:

1997-98 SCHOOL YEAR	California	Colorado	Maryland	New Mexico	Texas	West Virginia	Wisconsin
Total Expulsions Reported by SEA	382	76	64	32	424	17	66
Of the Count Above, Our Audits Noted the Following Errors or Omissions:							
Non-Firearm Expulsions Reported (BB/Pellet Guns)	(1)	(26)	(20)	-	-	-	(13)
Non-Firearm Expulsions Reported (Toy/Cap Guns/Facsimile, etc.)	(1)	(15)	(7)	-	(1)	-	-
Reported Expulsions Not Involving A Weapon	-	(1)	(4)	-	-	-	-
Firearm Expulsions Not Reported by SEA/LEA	3	1	1	4	-	1	-
Firearm Expulsions Incorrectly Reported by SEA/LEA (Not on School Grounds/ Wrong School Year/ Unverified Data/ No Actual Expulsion)	(3)	(4)	(2)	-	(2)	-	-

Note: This table contains information based solely upon our fieldwork at the seven SEAs and forty-three LEAs included in the respective audits.

Examples of the SEA and LEA reporting errors include:

One LEA accounted for forty of the sixty-four expulsions Maryland reported to ED. Of the forty reported expulsions, we found twenty-nine did not involve a firearm, one could not be verified, and one involved a firearm, but due to specific circumstances surrounding the case, did not result in an expulsion, and therefore, should not have been reported. In addition, we found the LEA did not report one expulsion to the Maryland State Department of Education.

The Maryland State Department of Education reported to ED totals that do not equal the sum of the data submitted by all Maryland LEAs for the count of: shortened expulsions, shortened expulsions for students who are not disabled, and referrals to an alternative program.

The California Department of Education excluded four expulsions from the state report due to an error in an electronic spreadsheet formula used to calculate data totals; increased a LEA's reported number of expulsions by one due to its misinterpretation of wording on the LEA's report; and erroneously transferred totals from its spreadsheet to the reporting form for the totals of shortened expulsions, shortened expulsions for students without disabilities, and referrals to alternative schools or programs.

The report completed by the Wisconsin Department of Public Instruction and submitted to ED shows "MD" (Missing Data) as the number of expulsions referred to an alternative program. In its memo to ED, the Wisconsin Department of Public Instruction indicated that it inadvertently deleted the question when combining the Act report form with another mandatory reporting form. The Wisconsin Department of Public Instruction indicated that it would re-add the question to subsequent years' data collection instruments.

One Wisconsin LEA reported "N/A" (Not Applicable) for the number of firearm expulsions that it modified from the mandatory one-year period. We found that of the six firearm expulsions reported, it could have reported three modified expulsions. Another Wisconsin LEA reported two firearm expulsions that it modified from the mandatory one-year period, one of which was for a student with disabilities. We found that the modified expulsion for the student with disabilities involved a bb gun and not a firearm. Therefore, the LEA should not have reported the modified expulsion.

The New Mexico State Department of Education reported thirty-two firearm incidents to ED for the 1997-98 school year. Based on LEAs' reports to the SEA, the SEA should have reported at least thirty-six firearm incidents to ED. One LEA initially reported five firearm incidents to the SEA. School records support that the correct number of firearm incidents for the 1997-98 school year was three. During the review process between the SEA and the LEA, the SEA incorrectly changed the number of incidents to zero. Another LEA reported one firearm incident, but it was not entered into the SEA database and was not reported to ED.

One Texas LEA submitted data concerning two expulsions that should have been reported in different time periods. One of the expulsions should have been reported in the 1996-97 school year, and the other one should have been reported in the 1998-99 school year.

Two California LEAs improperly included students in their reports who were expelled in the subsequent school year. This occurred because the LEAs used the date of the firearm incident rather than the expulsion date to identify the applicable reporting period. According to California Department of Education officials, LEAs report incidents for the California Safe Schools Assessment based on the incident date rather than expulsion date. This difference may have lead to confusion regarding the reporting for the Act.

Errors were due to weaknesses in SEAs' and LEAs' data collection and reporting processes, as noted in individual state audit reports, and ambiguity in the data collection instrument.

The "Abbreviations and Definitions" section of the data collection instrument defines firearms using excerpts from Title 18 U.S.C. §921. It does not note that bb guns, pellet guns, or firearm facsimiles are not *firearms* under Title 18 U.S.C. §921. As noted previously, 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. 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."

Question 1 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." Some states may include in their answer expulsions for weapons, other than firearms, that are covered in their state law because the question requests expulsions "*..under your State's law ...*" Colorado Department of Education officials noted that firearms are a subset of weapons for which the Colorado state law mandates expulsion. Because ED requested data according to "state law," the Colorado Department of Education reported additional weapons such as bb guns and pellet guns.

The note accompanying Question 1 states: "Do not include in your response to this question students who have brought a firearm to school but who *have not been expelled* [emphasis added], whether because of disability, an intervening court order, delays in the process, or any other reason." Based upon this note, only expulsions occurring during the school year should be reported. Firearm incidents should be reported based upon the school year the student is expelled, not the school year in which the incident occurs.

The Act requires SEAs to collect information from LEAs concerning expulsions under their state law, and report such data to ED on an annual basis. In a March 29, 1999, letter requesting SEAs to verify their 1997-98 expulsion data, ED notes that they are committed to collecting and reporting the most accurate data under the Act. 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 ED, SEA and LEA officials being unable to properly determine if the Act's provisions are being enforced consistently.

Recommendations:

We recommend that the Assistant Secretary for Elementary and Secondary Education:

- 3.1 Emphasize to SEAs and LEAs the importance of submitting accurate data on their reports.
- 3.2 Revise the guidance and data collection instrument to clarify what information SEAs are to report to ED. Revisions should include:
 - 3.2.1 Instructing that only firearm expulsions be reported, with clarification that expulsions for other types of weapons should not be included in the data reported to ED.
 - 3.2.2 Specifying that firearm incidents be reported based upon the school year the student is expelled, not the school year in which the incident occurs.

ED's Comments:

ED concurs with this finding. In addition, ED has initiated the following actions to address the recommendations. In an October 2000 "Dear Colleague" letter to Chief State School Officers, ED emphasized the importance of submitting accurate data. ED has revised the data collection instrument and plans to revise the Act's accompanying guidance to clarify the Act's definition of *weapon*, as indicated in ED's comments to Finding No. 2.

Finding No. 4 – Implementation of the Act could be improved by providing additional guidance.
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Items within the Act and ED's guidance require clarification. Without clarification, SEAs and LEAs may incorrectly implement the Act, resulting in non-compliance or the submission of erroneous information on expulsions under the Act. The items requiring clarification are:

In the event that a LEA's chief administering officer delegates his/her expulsion authority to another individual or entity, and the individual or entity unilaterally modifies an expulsion, the LEA would not be in compliance with the Act. Our review found one California LEA allowed school officials, other than the chief administering officer, to modify the expulsion requirement for students with disabilities. In addition, we found two Colorado LEAs where the chief administering officer did not render a written opinion, as required by Colorado state law, of their decision not to expel students who were determined to have brought a firearm to school. A written opinion of the chief administering officer's decision ensures that only the chief administering officer exercises his/her authority under Title 20 U.S.C. §8921(b)(1), which states, "...each 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, *except that such State law shall allow the chief administering officer of such local educational agency to modify such expulsion requirement for a student on a case-by-case basis* [emphasis added].”

ED’s Guidance Concerning State and Local Responsibilities under the Gun-Free Schools Act of 1994 states, “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.” It also states, “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.” Based upon the Act and its accompanying guidance, only a chief administering officer can modify an expulsion. Therefore, LEAs that delegate expulsion authority to individuals or entities other than the chief administering officer are not in compliance with the Act.

A LEA’s interpretation over what situations fall under its jurisdiction may affect its implementation of the Act and the reporting of expulsions. Title 20 U.S.C. §8921(b)(1) states that the law applies to schools “...under the jurisdiction of local educational agencies in that State...” ED’s Guidance Concerning State and Local Responsibilities Under the Gun-Free Schools Act of 1994 provides guidance on this matter. Question 25 of the guidance asks: “Does the expulsion requirement apply only to violations occurring in the school building? No. The one-year expulsion requirement applies to students who bring weapons (firearms) to any setting that is under the control and supervision of the LEA.” In the course of our fieldwork at two California LEAs, we found different reporting practices for expulsions for incidents that occurred *off campus*, i.e., not at school or at a school-controlled activity. The first LEA did not report two firearm-related expulsions on its 1998-99 Act report because the incidents occurred entirely off-campus. The second LEA reported two firearm-related expulsions on its 1997-98 Act report where the incidents happened entirely off-campus. Both LEAs intend to continue reporting based on their different reporting philosophies.

Recommendations:

We recommend that the Assistant Secretary for Elementary and Secondary Education:

- 4.1 Issue guidance to SEAs and LEAs that the LEA’s chief administering officer is responsible for the final decision to modify the expulsion requirement on a case-by-case basis. In addition, the guidance should suggest that the chief administering officer’s decision to modify an expulsion be in writing.

- 4.2 Issue guidance to SEAs and LEAs specifying what situations fall under a LEA's jurisdiction for purposes of implementing the Act and reporting expulsions under the Act.

ED's Comments:

ED believes that issues, contained in a draft of this report, which require changes in statute be addressed in an accompanying report on the OIG's perspective on the Act. These issues include a technical correction to a reference in the Act, imposition of a new requirement that decisions to modify an expulsion be in writing, and clarification of statutory intent in regards to students who possess (but did not bring) a firearm to school. ED also believes that the issue regarding the definition of the term *weapon*, as it is used in different sections of the Act, has been addressed in earlier findings. Furthermore, ED does not believe that all of the recommendations are appropriate or needed.

OIG's Response:

Based upon ED's comments, we have decided not to address the issues that require changes in the statute in this audit report. Therefore, issues and recommendations for changes in statute have been removed from this audit report. We have retained in this audit report the issues that can be best addressed through additional guidance.

OTHER MATTERS

LEA Compliance with the Act - Of the forty-three LEAs included in our audit, we found three LEAs that did not comply with the Act. The instances of LEA non-compliance with the Act were:

One New Mexico LEA did not expel fourteen of the twenty-six students who were involved in firearm incidents during the 1997-98 school year. The LEA reported to the SEA twelve expulsions for firearm incidents for the 1997-98 school year. Our review of local law enforcement reports and other records identified twenty-six students who were involved in firearm incidents. Although the LEA was unable to specifically identify the twelve students that it reported to the SEA, we confirmed that the LEA expelled twelve of the twenty-six students. Based on enrollment records, we determined that the LEA did not expel the remaining fourteen students involved in firearm incidents. This condition, along with recommendations to ensure the LEA's compliance with the Act, was included in an audit report to New Mexico's Superintendent of Public Instruction. The New Mexico State Department of Education concurred with our finding and the respective recommendations.

Two Colorado LEAs were not in compliance with the Act, since they did not have a criminal justice or juvenile delinquency system referral policy in place. Title 20 U.S.C. §8922 requires LEAs receiving Elementary and Secondary Education Act funds to have a policy requiring referral to a criminal justice or juvenile delinquency system any student who brings a firearm or weapon to school. We notified the LEA

officials of these conditions. The LEA officials agreed to revise their policies. The LEAs' revised "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 either LEA. This condition, along with a recommendation for the Colorado Department of Education to review each LEA's referral policy, was included in an audit report to Colorado's Commissioner of Education. The Colorado Department of Education concurred with our finding, but believes that their revised monitoring system negates the need for our recommendation.

Treatment of Students with Exceptional Educational Needs - During our visit to one Wisconsin LEA, we identified seven incidents involving students with exceptional educational needs who brought a firearm to school and were not expelled by the LEA. A LEA official informed us that the school district did not report the incidents involving students with exceptional educational needs because, during the 1997-1998 school year, these students were not considered for expulsion due to a state law. The official indicated that during the 1997-98 school year the LEA only had the authority to remove a student with exceptional educational needs for 10 days, after which the student had to be returned to the original class setting. The LEA did not make manifestation determinations for any of these students and none were expelled. Instead, they were either given alternative services or reassigned to another school. A manifestation determination is a decision as to whether the student's disability caused the student to bring a firearm to school. The official informed us that the state law was subsequently changed for the 1998-1999 school year, and the LEA now conducts manifestation hearings and expels students when the student's disability is not a cause for the incident.

BACKGROUND

The Gun Free Schools Act of 1994 (Title 20 U.S.C. 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. 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.

For the 1997-98 school year, 56 SEAs reported a total of 3,930 expulsions of students who brought firearms to school.

AUDIT OBJECTIVE, SCOPE AND METHODOLOGY

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

Our audit covered the 1997-1998 school year. We selected seven states as auditees: California, Colorado, Maryland, New Mexico, Texas, West Virginia, and Wisconsin. All of the states, with the exception of California, were randomly selected. California was included in the audit due to its large student population.

Forty-three LEAs were included in the audit. Within each state we visited six LEAs, with the exception of Maryland where seven LEAs were visited because we included the largest urban LEA in the state. On the basis of student population the LEAs within each state were categorized as large, medium, or small. Twelve LEAs (four from each category) were then randomly selected. In Maryland, we randomly selected nine LEAs (three from each category). From the randomly selected LEAs, we judgmentally selected six (two from each category) for audit site visits. In California, Colorado, and Wisconsin we substituted the largest urban LEA in each state in lieu of a randomly selected large LEA. LEAs with fewer than five hundred students were omitted from the selection process. We selected four schools (where available) within each LEA, where we conducted interviews with school administration and faculty.

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

Summary of Officials Interviewed			
SEA Administrators	30	Parent Representatives	98
LEA Administrators	150	School Security Staff	61
School Administrators	314	Law Enforcement Officials	129
Teachers	474	Students	7
Guidance Counselors	246	Other School Personnel	6
Total			1,515

We performed fieldwork at the seven SEAs and the forty-three LEAs between November 1999 and May 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 each state audit, we assessed the system of management controls, policies, procedures, and practices applicable to the SEAs' and the selected LEAs' compliance with the Act. Our assessments were 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 our audits, 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 assessments disclosed management control weaknesses in the above areas at one or more SEA or LEA. (See Summary of Individual State Audits and Findings.) Statements on Management Controls are provided in each state audit report, specifying the areas where weaknesses were noted at the particular SEA or LEA.

APPENDIX: SUMMARY OF INDIVIDUAL STATE AUDITS AND FINDINGS

California State and Local Educational Agencies' Compliance with the Gun-Free Schools Act of 1994 (ACN 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 reported.

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

No findings 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.



UNITED STATES DEPARTMENT OF EDUCATION

WASHINGTON, D.C. 20202-_____

DEC 22 2000

MEMORANDUM

TO: Lorraine Lewis
Inspector General

FROM: Michael Cohen *Michael Cohen*
Assistant Secretary, Office of Elementary and
Secondary Education

Philip Rosenfelt *Philip Rosenfelt*
Assistant General Counsel, Division of Elementary, Secondary,
Adult, and Vocational Education

SUBJECT: Comments on Draft Audit Report (Control # ED-OIG/A03-A0018) – State
and Local Education Agencies' Compliance with the Gun-Free Schools
Act of 1994

Thank you for the opportunity to comment on the above-referenced draft audit report. We have carefully reviewed the report and have the following comments:

Generally, we are pleased with the quality of the fieldwork and analysis of your staff, but we are concerned about the report's emphasis on the instances of non-compliance that were identified during fieldwork. While we appreciate learning the results of the excellent fieldwork conducted by your staff and are currently working with several States to resolve issues identified, the draft summary report seems to place the focus heavily on problems identified almost to the exclusion of a discussion of information about the positive results found in your review. The stated audit objective was "to determine if the SEAs and LEAs were in compliance with the Act." We think the results of your fieldwork reveal a high level of compliance and we do not believe the report should minimize those results. We are concerned that the current emphasis on issues of non-compliance invites misunderstanding about the results of the audit.

For example, the discussion of local educational agency (LEA) compliance with the Gun-Free Schools Act (GFSA) focuses on the three LEAs identified with compliance problems. Again, while we're anxious to correct the problems identified, it seems appropriate that some comment be made about the fact that more than 90 per cent of LEAs visited were identified as being in compliance with the requirements of the GFSA.

Finding 1 – We do not believe that the extent and nature of concerns about compliance of State laws with GFSA requirements identified by the audit are sufficient to warrant the

recommendation that a general examination be conducted of State laws enacted to address the GFSA. As we understand your findings, no State laws were found to be inconsistent with the GFSA, but a couple of State laws were ambiguous. When we checked further on this matter, we found that these States were interpreting and implementing their laws consistent with the GFSA. We are continuing to work with these States on these matters and we will continue to make efforts to clarify our guidance as needed. We believe that these efforts are an appropriate response to the concerns identified.

Finding 2 – As we have indicated in discussions with OIG staff, we concur with this finding, and have initiated contact with the Bureau of Alcohol, Tobacco, and Firearms in September 2000 to obtain their concurrence with proposed language to revise the non-regulatory guidance for the GFSA to address this concern. We believe that it is appropriate to recognize this effort in the final audit report. (In discussions by telephone with BATF officials this week, they have agreed to the language proposed and we will be initiating revisions in the near future to the non-regulatory guidance to reflect their concurrence.)

Finding 3 – We concur with this finding, and as a result of information shared with program staff during the fieldwork associated with this audit, we have already undertaken significant actions that respond to the recommendations associated with this finding. We believe that the final audit report should appropriately reflect these actions. For example, the Secretary issued a lengthy “Dear Colleague” letter to the Chief State School Officers in October 2000 emphasizing the importance of submitting accurate data in October 2000. We also revised the data collection instrument and plan to further revise the non-regulatory guidance concerning the definition of weapon as indicated above in the discussion concerning Finding 2.

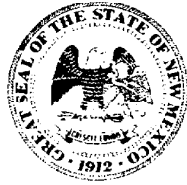
Finding 4 – The first recommendation for a legislative amendment has already been included in the Department’s reauthorization proposal, the Educational Excellence for All Children Act of 1999. We will consider the other recommendations and take into account the views expressed in the audit report in our ongoing reauthorization process, and our process of providing the most appropriate guidance. When we consider both the positive results (which we feel were not highlighted sufficiently in the report), as well as the problems found by the audit team, we are not convinced that all of the changes proposed in the recommendations (other than recommendation 4.1) are appropriate or needed.

We also understand that your office will soon be issuing a “perspectives” report on the GFSA. Generally, we believe that this finding and corresponding recommendations may be more appropriately included and considered as part of that report. Some of the issues raised would require changes in the statute [e.g. the technical correction in recommendation 4.1, imposition of a new requirement that decisions to modify an

Page 3 -- Lorraine Lewis

expulsion be in writing (recommendation 4.3), and clarification of statutory intent (recommendation 4.4)] or have been addressed in earlier findings (e.g. definition of weapons clarification identified in Finding 2 and correspondence recommendation.) Generally these sorts of issues appear to be more appropriately considered as part of a “perspectives” report.

Again, we very much appreciate the significant and excellent effort made by OIG staff on this project and look forward to working with State and local educational agencies to enhance current efforts to comply with the GFSA. We have been very pleased with our discussions with your staff on GFSA matters. If you have any questions concerning our comments on the draft report, please do not hesitate to contact Deborah Rudy or Michelle Padilla Georgia of the Safe and Drug-Free Schools Program or Mari Colvin of the Office of the General Counsel.



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December 8, 2000

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 New Mexico State Department of Education (NMSDE) has received the copy of the DRAFT AUDIT REPORT for State and Local Education Agencies' compliance with the Gun-Free Schools Act (GFSA) of 1994. After review of the document, I concur with the information reported and recommendations specific to the NMSDE and our local education agencies.

Many of the recommendations made in the document are now in place. The 1997-98 school year was NMSDE's first attempt at data collection specific to the GFSA of 1994 requirements. We have learned a great deal since our initial report and have significantly improved the accuracy of our reports. Should you need additional input from NMSDE, please contact Gerald Hunt, Title IV Coordinator, 120 S. Federal Pl., Rm. 206, Santa Fe NM 87501. His phone number is 505-827-1827 and e-mail address is ghunt@sde.state.nm.us

Sincerely,

MICHAEL J. DAVIS
State Superintendent
of Public Instruction

cc: Jack McCoy

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