

SUBJECT: POSSESSION OR USE OF A FIREARM ON SCHOOL PROPERTY

No student may bring onto school premises or shall have in his or her possession on school premises any firearms, as defined in federal law. For purposes of this policy the term "firearm" shall mean: 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; the frame or receiver of such weapon; any firearm muffler or silencer or any destructive device (18 USC §921).

In accordance with the Gun Free Schools Act of 1994, any student found guilty of bringing a firearm onto school premises, or of having such firearm in his or her possession on school premises, after a hearing has been provided under Education Law §3214, will be subject to at least a one-year suspension from school, unless the component school superintendent imposes a lesser penalty on a case-by-case basis. The superintendent shall review the penalty and may modify the penalty based on factors set forth in Part 100.2 of the Regulations of the Commissioner of Education and in Commissioner's decisional law. Those factors may include:

1. The age of the student;
2. The student's grade in school;
3. The student's prior disciplinary record;
4. Input from parents/guardians, teachers and/or others;
5. Other extenuating circumstances; and
6. The superintendent's belief that other forms of discipline in place of or in conjunction with suspension will be more appropriate for the particular student.

Authorized law enforcement officers are the only people permitted on school property to have a weapon in their possession.

In the case of the student who is classified as disabled under the Individuals with Disabilities Education Act (IDEA) and Part 200 of the Regulations of the Commissioner, if such student brings or has in his or her possession a firearm on school premises, the BOCES shall inform the local home school district and initiate the following plan:

STUDENT WITH A DISABILITY BRINGING A FIREARM TO SCHOOL

A student with a disability will be automatically removed for ten (10) school days with educational services provided, according to current laws and regulations. During the two-week period, the component school district Individualized Education Program (IEP) team will convene to determine the programming content and physical placement for a forty-five (45) calendar day "alternative education placement." Also during the forty-five (45) day period, the IEP team convenes again for a "manifestation determination" to decide whether the firearm-toting incident is related to, or caused by, the student's disability.

The student may be placed in the "alternative education placement" for up to forty-five (45) calendar days. If the parent/guardian request a due process hearing at any time following the firearm-toting incident and prior to the end of the forty-five (45) day period of "alternative education placement," the student shall remain in the "alternative education placement" until the completion of all due process proceedings.

If there is no relationship between the firearm-toting incident and the student's disability, the school can move to expel the student under the Gun Free Schools Act for a minimum of one calendar year (unless the superintendent or designee waives the expulsion on a case-by-case basis). Alternative instruction must be provided.

If there is a relationship between the firearm-toting incident and the student's disability, the school cannot impose a long-term suspension or expulsion under the Gun Free Schools Act. The school's options are:

1. Change only the location where the student's IEP is delivered without making any change to the IEP;
2. Obtain the parent/guardian's agreement to an interim placement while the parent/guardian and Committee on Special Education (CSE) work toward a mutually suitable change in the student's IEP; or
3. Seek a court order to suspend a dangerous student for more than ten (10) days where an agreement with the parent school cannot be reached and an alternative program cannot be secured.

If the parent/guardian disagrees with the ultimate determination of the CSE concerning the student's placement, the parent/guardian shall have the right to request an impartial hearing under Part 200 of the Commissioner's Regulations.

In the case of a student who is classified as a disabled person within the meaning of Section 504 of the Rehabilitation Act of 1973 and its accompanying regulations (34 CFR §104 et. seq.), any proposed significant change in placement (including suspensions of more than 10 days) shall be evaluated by the local home school district's multi-disciplinary Section 504 team to determine whether the student's misconduct is related to the student's disability. Where the team concludes that a link exists between the student's disability and the behavior, which led to a violation of this policy, the team must conduct further evaluations to determine whether the student's current educational program is appropriate.

However, in those cases where the local home school district's team concludes that the misbehavior is not related to the student's disability, the local home school district may discipline the student to the same extent as it disciplines non-disabled students in accordance with Education Law §3214. If the parent/guardian disagrees with the team's determination concerning whether the misconduct was related to the student's disability, the parent/guardian shall have the right to request an impartial hearing in accordance with the local home school district's Section 504 policies and procedures.

Nothing in this policy shall prevent the local home school district or the BOCES from utilizing temporary short-term measures such as suspensions of less than five (5) days or in-school suspensions in dealing with student disciplinary problems. In addition, nothing in this policy shall limit the authority of the district to offer courses in the safe use of firearms under Education Law §809-a.

Adopted: March 13, 2002
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