

Guns and Weapons Policy Q & A



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This policy Q & A addresses the legal requirements for schools related to guns and weapons.

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What are the requirements of the Gun-Free Schools Act?

The Gun-Free Schools Act was originally passed as a separate act in 1990, but was later included as part of the No Child Left Behind Act (NCLB; a reauthorization of the Elementary and Secondary Education Act, ESEA). Under this act, all states must have a law requiring expulsion of students for at least one calendar year who bring a firearm to school. However, the law allows the superintendent the option of modifying the expulsion on a case-by-case basis if done in writing.

For Nebraska, the consequence for bringing a firearm to school is found in the Student Discipline Act. Every school district is required to have a policy requiring the expulsion of a student for no less than one year who knowingly and intentionally brings a firearm to school (Neb. Rev. Stat. § 79-263(1), 2008). Note that this mirrors the federal statute. The policy that the school district adopts must also include a clause that allows the superintendent or the school board to modify the expulsion requirement on an individual basis (Neb. Rev. Stat. § 79-263(1), 2008). This means that not all students may actually receive a full one calendar year expulsion based on mitigating circumstances. The rest of this subsection of the law gives the reporting requirements for school districts concerning firearms brought to school, which would not be included in a code of conduct.

The Gun Free Schools Act provides two narrow exceptions to these prohibitions, permitting firearm possession where the gun is lawfully stored inside a locked vehicle on school property, or where the gun is possessed for an activity approved and authorized by the local educational agency, if the agency has adopted appropriate safeguards to ensure student safety.

Reference Nebraska Revised Statutes. <http://nebraskalegislature.gov/laws/browse-statutes.php>

Can students who bring firearms to school be provided alternative education?

According to federal law, a state can allow a local district to provide educational services in an alternative setting for students who have brought firearms to a school, but are not required to do so. In Nebraska, schools are required to offer educational services to students who are suspended long term or expelled in order to help them reach graduation (See Nebraska Rule 17).

Does this law override the IDEA requirements for students with disabilities?

No. This act must be interpreted to be consistent with the Individuals with Disabilities Education Act (IDEA) regarding guns (Gun-Free Schools Act, 20 U.S.C. §4141(b)(1)-(2), (c), 2002). This means that the requirements of the Gun Free Schools Act does not overrule the IDEA requirements for a manifestation determination and continuing delivery of IEP services.

Are schools required to refer these students to law enforcement?

Yes. Schools must have a policy that refers any student who brings a firearm or a weapon to school to a law enforcement agency. Also, a local educational agency cannot receive funds from the federal government unless there is a policy requiring referral of a student who brings a firearm or weapon to school to a criminal justice or juvenile delinquency system (Gun-free Schools Act, 20 U.S.C. §4141(h)(1), 2002). Reference: Gun-free Schools Act. 20 U.S.C. §4141. (2002).
<http://www.law.cornell.edu/uscode/text/20/7151>

What about other weapons in school such as knives?

Although the federal law only addresses firearms, some states or local school districts have broadened this prohibition to include other “weapons”. The school’s code of conduct must mandate a yearlong expulsion for bringing a firearm, but not necessarily other weapons, such as knives (at least in federal law). Nebraska’s gun free school and school zone laws only address weapons; however, concealed weapons such as knives over 3.5 inches are prohibited statewide. Local restrictions may also apply to air guns, slingshots, BB guns or other items made to appear to look like weapons. Check local district policies or municipal ordinances regarding policies about knives or other weapons in school or in the community.
<http://www.criminaldefenselawyer.com/resources/weapons-charges-nebraska.htm>.

What are the requirements of the Gun Free Zone Act of Nebraska?

The Gun Free Zone Act is often confused with the Gun Free Schools Act. Although primarily aimed toward adults, this law states that no one is allowed to bring guns on school property. This law states that any person possessing a firearm on school grounds, in school, a school vehicle, or at a school-sponsored activity is guilty of unlawful possession of a firearm at school. This is a class IV felony. Under this act, any firearm brought on school grounds must be confiscated and turned over

to a law enforcement officer. There are a few exceptions one of which is a law enforcement officer who has lawful possession of the weapon, or a weapon which is not loaded and is locked in a vehicle, This law does not include all weapons, but rather “firearms” as defined in federal law. Firearms include most explosive devices as well. Any firearm brought to school shall be declared a common nuisance, and, after all the evidence has been gathered and the case is completed, the firearm will be ordered destroyed by a court (or an antique gun could be sold at auction), but the student and their parents do not get the weapon returned (Neb. Rev. Stat. § 28-1204.04, 2011).

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