

Updated Flowchart for Disciplining Gun-Toting Students with Disabilities

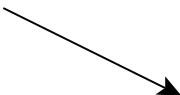
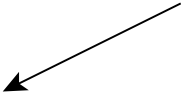
Student with Disabilities Brings Gun to School¹



Automatic removal for 10 school days (or two weeks) with no educational services provided.²
Meanwhile, during this two-week period, the IEP team convenes to determine the programming content and physical placement for a 45 calendar-day “alternative education placement.”³



Student is placed in the “alternative education placement” for 45 calendar days. If the parents request a due process hearing at any time following the gun-toting incident and prior to the end of the 45-day period of alternative education placement, the student remains in the alternative education placement until the completion of all due process proceedings.⁴
During the 45-day period, the IEP team convenes again for a “manifestation determination” to decide whether the gun-toting incident is related to, or caused by, the student’s disability.⁵



If there is no relationship between the gun-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).⁶

If there is a relationship between the gun-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) convene the IEP team to consider a change of placement (a more restrictive setting); 2) get the parents’ agreement to a change of placement; or 3) go to court to obtain a “Honig” injunction to remove the student from school (prove that a student is, or is substantially likely to be, a danger to himself or others, and that the district has taken reasonable steps to accommodate the child’s disability to minimize the likelihood of injury to the child or others) *Light v. Parkway Sch. Dist C-2* (21 IDELR 933).⁷

Gun-Toting

Footnotes:

¹Remember that the Gun-Free Schools Act and this flow chart only apply to students who bring guns to school. The legislation specifically defines a gun as a "firearm" which "is designed to or may readily be converted to expel a projectile by the action of an explosive" or any other "destructive device." This includes starter guns, mufflers, silencers, bombs, grenades, rockets, missiles, or mines, but does not include antique firearms. (V.S.C. Title 18, Chapter 44, Section 921(3) & (4))

²Schools can automatically remove any disabled student for a disciplinary infraction for up to 10 school days (or two weeks) *per offense*. During this period, schools are not required to provide any educational services to the student. (*Honig v. Doe* (U.S. 1988)). Some states, however, have adopted a more stringent requirement that limits the number of suspension days *per year*. The new guidance does not specifically address this problem, but does state that schools may immediately remove, for 10 school days, gun-toting disabled students.

³The two-week removal period is designed to allow the school district adequate time to convene an IEP team for the purpose of developing an "alternative education placement" (IDEA, Section 1415 (3)(B)). Here, the members of the IEP team, including the parents, develop an interim IEP to ensure that the student continues to receive FAPE. The school determines the physical location of the alternative education placement, which may be an alternative school, homebound instruction or other setting. The official guidance does not specifically mention the effect of the LRE requirements during this period, but does state that schools may use homebound instruction. This seems to suggest that LRE considerations are not to be used to override the decision of the school district regarding the physical location for the alternative education placement.

⁴One of the most important components of the new official guidance is the department's statement that the student is to remain in the alternative education placement as long as due process proceedings continue. Although all due process hearings are required by law to be completed within 45 calendar days, in practice many - if not most - hearings take much longer to complete. All hearing officers and administrative law judges have authority to grant continuances for good cause upon the request of either party.

⁵With this new official guidance, we finally can understand the role of the "manifestation determination" as it applies to gun-toting students with disabilities. It is not necessary to determine whether the gun-toting incident was related to the student's disability until the student is in the alternative education placement, and then the determination only applies to what happens after the alternative education placement ends.

The bottom line - every disabled student who brings a gun to school can be placed in an alternative education program for 45 calendar days or longer if the parents request a due process hearing. It doesn't matter whether the student's behavior is related to his/her disability.

⁶If, for example, Johnny's gun-toting is not caused by his learning disability in reading, the principal can recommend expulsion under the Gun-Free Schools Act. Remember, however, that even if Johnny is expelled for a year the school must continue to provide FAPE! Also remember that the superintendent or designee can waive the expulsion on a case-by-case basis (One example that has been used is of a Kindergartner whose father used the child's book bag to carry a pistol for target practice over the previous weekend. On Monday, the child took the book bag to school, unaware that his father's gun was still in the bag.)

The bottom line - disabled students who bring guns to school can be expelled under the Gun-Free Schools Act if an IEP team determines that their gun-toting is not related to their disability, and if the chief administering officer of the school district does not waive the expulsion on a case-by-case basis. ALL IDEA-ELIGIBLE STUDENTS WHO ARE EXPELLED UNDER THE GUN-FREE SCHOOLS ACT MUST CONTINUE TO RECEIVE AN APPROPRIATE, INDIVIDUALIZED EDUCATION PROGRAM TO MEET THEIR UNIQUE NEEDS. (Students who are disabled only under Section 504 are not entitled to a continuation of educational services).

⁷If, for example, the IEP team finds that Ricky's gun-toting is related to his oppositional defiant disorder (SED), the school either must 1) return the boy to his regular classroom following the 45-day alternative education placement, 2) have the IEP team recommend a change of placement, 3) get the parents' approval to change the student's placement, or 4) go to court to obtain an injunction. YOU CANNOT EXPEL A STUDENT WHO BRINGS A GUN AS A RESULT OF HIS/HER DISABILITY! The most you can do is place that student in a 45-day alternative education placement following an initial two-week removal.

Adopted: August 23, 1995
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