

APPENDIX 7

**Commissioner of Education Memorandum
to Chief School Administrators
Regarding "Zero Tolerance for Guns Act"
(1995)**



State of New Jersey

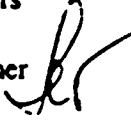
DEPARTMENT OF EDUCATION
CN 500
TRENTON NJ 08625-0500

CHRISTINE TODD WHITMAN
Governor

LEO KLAGH
Commissioner

August 4, 1995

TO: Chief School Administrators

FROM: Leo Klagholz, Commissioner
Department of Education 

SUBJECT: Chapters 127 and 128 of 1995, The Zero Tolerance for Guns Act

Two assembly bills, A-2348 and A-2349, were recently signed into law by Governor Whitman. The approved copies of the bills, which are attached, include the amendments which were adopted by the legislature to concur with recommendations made in the Governor's conditional veto message. The new statutes place New Jersey in compliance with the provisions of the federal Gun-Free School Act of 1994, which requires states to enact such provisions.

These two laws are supportive of proposals in the Safe Schools Initiative to remove students from the regular education program who possess firearms or who commit violent acts with weapons other than firearms, and are effective with the 1995-96 school year. Information is attached to assist you in implementing the provisions of Chapter 127 and 128. If you have questions regarding the new statutes, please contact Robin Bryant, director, Office of Safe and Drug-Free Schools at (609) 292-0321.

LK/BA/tkch

Attachments

c: Richard A. DiPatri
Barbara Anderson
Peter B. Contini
Robin Bryant
County Superintendents

A7-1

POLICY INFORMATION AND PROCEDURES

Safe Schools Initiative

I. Introduction

The following information is intended to assist district boards of education in implementing the Safe Schools Initiative, based on recent legislation that has become law. Chapter 127 of 1995 requires that pupils who are convicted or adjudicated delinquent for possession of a firearm or who are found to be in possession of a firearm on school property must be immediately removed from the regular education program and provided with an alternative program, pending a hearing before the board of education. Chapter 128 of 1995 requires that pupils who commit assaults upon members of the school community with a weapon other than a firearm shall be immediately removed from the school's regular education program and provided with an alternative program, pending a hearing before the board of education. These new laws, in addition to the other statutes referenced below, represent a significant milestone in our efforts to insure that schools are environments safe from violence and conducive to learning.

The new laws also bring New Jersey in compliance with provisions of federal law, P.L. 103-382, the Improving America's Schools Act of 1994 (IASA). This law mandates that states have in effect a statute requiring local educational agencies to "expel" from school for a period of not less than one year, a pupil who is determined to have brought a weapon to a school, as a condition of receiving federal funds. The federal law does not define the term "expulsion," and the Department of Education has been advised that the provisions in Chapter 127 of 1995 which require "removal" of a pupil for the same violation, comply with the intent of the federal law.

The IASA further provides that each local educational agency requesting assistance from the State under the provisions of the act must:

- Provide to the State an assurance that it is in compliance with the State law (Chapter 127 of 1995); and
- Provide a description of the circumstances surrounding any exclusion of pupils imposed under the State law.

Information regarding compliance with these provisions of the IASA have been provided to school districts as part of the application package for the Safe and Drug-Free Schools and Communities Act entitlement grant program disseminated in July 1995. District responsibility for providing information regarding exclusion of pupils will be met through utilization of the revised Vandalism, Violence, and Substance Abuse Report Form which will be distributed in September 1995.

Existing regulations, N.J.A.C. 6:29-10.2, already require district boards of education to adopt policies and procedures on the unlawful possession, distribution, and disposition of firearms and

other deadly weapons. The following suggestions should be used to assist school districts in revising their policies and procedures in accordance with the new statutory framework.

I. **Administrative Procedures for Removal of Pupils for Weapons Offenses**
(Implementing Chapters 127 and 128 of 1995)

Definitions:

Removal: The exclusion of a pupil from the regular education program in the school to which the pupil was assigned for the purpose of being offered a thorough and efficient, free public education and assignment of the pupil to an alternative education school/program for at least one calendar year, following a proper hearing conducted by the district board of education.

Expulsion: A permanent exclusion from school which denies a pupil the right to a free, thorough and efficient public education provided by the school district in which the pupil resides, based on specific conditions and following due process procedures, including a hearing conducted by the district board of education.

Suspension: A temporary exclusion from school, following due process procedures.

Procedures

Removal of Pupils From Regular Education

- Any pupil who is convicted or found to be delinquent for the following offenses shall be immediately removed from the school's regular education program for a period of not less than one calendar year and placed in an alternative education school or program pending a hearing before the district board of education to remove the pupil:
 - Possessing a firearm on any school property, on a school bus, or at a school -sponsored function; or
 - Committing a crime while possessing a firearm.

(Reference: N.J.S.A. 2C:1f and 18 U.S.C. 921)

- Any pupil who assaults a pupil, teacher, administrator, board member, or other school district employee with a weapon other than a firearm on school property, on a school bus, or at a school-sponsored function must be immediately removed from the school's regular education program and placed in an alternative education school or program, pending a hearing before the district board of education.

(Reference: N.J.S.A. 2C:12-1a(1) and N.J.S.A. 2C:39-1(r))

- The principal is responsible for the removal of any pupil for a weapons offense and must immediately report the removal to the chief school administrator. The principal must also notify the appropriate law enforcement agency of the possible violation of the code of criminal justice.
- If placement in an approved alternative education school or program is not available, the pupil must be provided home instruction or instruction in other suitable facilities or programs until the alternative education placement is available.
- In addition to placement in an approved alternative school or home instruction, the district board of education may consider other appropriate alternative education programs, such as individualized program plans developed in accordance with the graduation requirement standards set forth in N.J.A.C. 6:8-7.1(d)ii.
- Any pupil removed for a weapons offense is entitled to a hearing before the board of education to determine if the pupil is guilty of committing the offense.
 1. The hearing shall take place no longer than 90 calendar days following the day the pupil is removed from the regular education program. The hearing is not subject to the provisions of the "Open Public Meetings Act," P.L. 1975, c.231 (C. 10:4-6 et seq.).
 2. The decision of the board must be made within five days after the close of the hearing. Any appeal of the board's decision must be made to the Commissioner of Education within 90 calendar days of the board's decision.
 3. If it is found that the pupil is not guilty of these offenses, the pupil must be immediately returned to the regular education program.
 4. The chief school administrator may modify the decision to remove a pupil on a case-by-case basis.

Return of Pupils to Regular Education

- The chief school administrator determines whether the pupil is prepared to return to the regular education program or whether the pupil remains in the alternative education program or other educational placement. The chief school administrator's decision must be made in accordance with district procedures established pursuant to N.J.A.C. 6:26 et seq., Intervention and Referral Services for General Education Pupils, in consultation with the principal or director of the alternative education school/program or other educational placement, and in accordance with the conditions resulting from the district board of education hearing on the pupil's offense. If the pupil is educationally disabled, the pupil's placement is determined by the child study team and the pupil's parent(s) in accordance with N.J.A.C. 6:28 et seq., Special Education.

It should be noted that none of the above procedures prohibit the district board of education from expelling a pupil. Additionally, pupils may seek written authorization from the chief school administrator to possess, handle, or use firearms, or other weapons as part of their participation in

school-sponsored functions, military classes, or for recreational activities such as hunting clubs or rifle clubs. The chief school administrator must not provide such authorization to any pupil who has been convicted or found delinquent for possession of a firearm or for a crime involving the use of a firearm.

III. Alternative Settings

The following alternatives are among those that should be considered if a pupil is removed from the regular education program and a placement in an approved alternative education program is not available, or if the chief school administrator determines that it is in the best interest of the pupil and the school to modify the conditions for the removal and placement of the pupil:

A. Home Instruction

Home instruction should be provided in accordance with the provisions of N.J.A.C. 6:28-4.5. If instruction cannot reasonably be provided at the pupil's place of confinement, a suitable alternative location such as a municipal, county or state government facility, or a community-based facility should be considered.

B. Program Completion Option

An Individualized Program Plan (IPP) may be developed for the pupil in accordance with the graduation requirement standards set forth in N.J.A.C. 6:8-7.1(d)ii. The IPP provides the pupil, parent, and teacher with an educational plan to facilitate implementation of alternative educational activities for pupils not placed in an approved alternative school or program. The IPP may be used in conjunction with home instruction, or as the basis for organizing the provision of other tutorial and supervised learning experiences.

C. Distance Learning

It is expected that the technology that will make distance learning an option for delivering individual and small group instruction will become increasingly available during the next two years. Bergen, Burlington, Hudson, and Morris Counties already have a fiber optic infrastructure in use for interactive instruction. Video/audio bridges providing local access to school-based or home sites are used to deliver instruction in combination with computers equipped with fax/modems and other communication devices.

D. Home Schooling

Parents of pupils removed from the regular educational program have the right to educate a child at home. They must demonstrate to the local school district that the instruction provided is academically equivalent to that provided in public school for a child of similar grade and attainment (State v. Massa, 94 N.J. Super. 382, (1967)). If parents elect to educate a child at home, they must annually submit a written curriculum as evidence to the local board of education, and they are responsible for development, implementation, and assessment of their child. The local school district has the responsibility to review the proposed curriculum

and accept it or show that the curriculum is not academically equivalent to that provided in the public schools (State v. Vaughn, 44 N.J. Super. 142 (1965)).

If a child who has been schooled at home is subsequently enrolled in the local public school, the school evaluates the child and determines appropriate placement and the acceptability of credits.

IV. Special Education

The Individuals with Disabilities Education Act (IDEA), was enacted to ensure that a free, appropriate public education is made available to pupils with disabilities. The rights of pupils with disabilities to a free appropriate public education are compatible with the goal of school safety.

Pupils with disabilities who exhibit dangerous or violent behavior, may be removed immediately from the school setting. The principal may take swift action and may suspend the pupil for up to ten school days without involvement of the child study team.

When the school believes that a pupil with disabilities should be removed from school for more than ten school days the following steps are taken:

- The child study team must conduct a reevaluation to determine whether the pupil's misconduct was primarily caused by his or her disability;
- If the misconduct is determined not to be primarily caused by the pupil's disability, the pupil may be removed, expelled, or suspended from school for more than ten school days, following applicable due process procedures. However, the district may not cease educational services;
- If the misconduct is determined to be primarily caused by the pupil's disability, the pupil may not be expelled or suspended from school for more than ten days. However, the school district may change the pupil's placement if it believes that maintaining the pupil in the current educational placement is inappropriate.

If the district believes that the pupil with disabilities is a danger to self or others, or the pupil's presence in school will substantially disrupt the educational process, the district may seek emergency relief through the Office of Administrative Law to remove the pupil beyond ten school days.

According to provisions of the Jefford amendment to the IDEA made by the IASA, schools are permitted to make immediate interim changes of placement for pupils with disabilities who bring firearms to school. The principal may immediately suspend the pupil for up to ten school days. Subsequently, the pupil may be placed in an interim alternative educational placement for 45 calendar days. The individuals who participate in the development of the IEP are responsible for determining the interim alternative educational setting. During the 45 day interim alternative placement, the child study team will conduct a reevaluation to determine whether the pupil's misconduct was primarily caused by the pupil's disability and review the pupil's placement.

If it is determined that the pupil's behavior was not primarily caused by the disability, then the pupil may be removed for one year to the interim alternative placement. If it is determined that the behavior was primarily caused by the disability, the pupil may not be automatically removed for the one year; however, the district may propose a change in the pupil's placement. In either case, if the pupil's parents request a due process hearing, the pupil must remain in the interim placement until the completion of all proceedings, unless the parents and the school district can agree on another placement.

A resource document from the U.S. Department of Education with questions and answers regarding the disciplining of pupils with disabilities has been mailed to districts to provide additional guidance on this topic.

V. Other State Statutes

Two other existing statutes provide direction regarding behaviors by pupils which are disruptive, violent, or may lead to violence.

A. Assaults on Board of Education Members or Employees

Any pupil who commits an assault not involving a firearm, or other weapon upon a teacher, administrator, board member or other employee of a district board of education must be immediately suspended from school consistent with procedural due process, pending suspension or expulsion proceedings before the district board of education. The proceedings must take place no later than 90 calendar days following the day on which the pupil is suspended.

(Reference: N.J.S.A. 18A:37-21)

B. Remotely Activated Paging Devices

Without the expressed written permission of the school board, the chief school administrator, or the school principal, pupils are prohibited to bring or possess any remotely activated paging device on any property used for school purposes, at any time and regardless of whether school is in session or other persons are present.

(Reference: N.J.S.A. 2C:33-19)

VI. Memoranda of Understanding Between Education and Law Enforcement Authorities

N.J.A.C. 6:29-10.3(a) requires that district boards of education adopt policies and procedures which include an agreement or memorandum of understanding with appropriate law enforcement authorities consistent with the policies established through the State Memorandum of Agreement authorized by the Attorney General's Executive Directive 1988-1. The regulations also require that the chief school administrator and local law enforcement officials annually review the effectiveness of the implementation of the agreement and discuss the need for revising it. Appropriate modifications of the memorandum of agreement should be considered by chief school administrators and local law enforcement officials in order to effectively implement the provisions of the federal and state laws summarized above.