

INDIAN AFFAIRS DIRECTIVES TRANSMITTAL SHEET

(modified DI-416)

DOCUMENT IDENTIFICATION NUMBER 30 IAM 6	SUBJECT BIE Zero Tolerance Policy for Firearms and Other Weapons	RELEASE NUMBER #13-03
FOR FURTHER INFORMATION Bureau of Indian Education		DATE SEP 12 2013

EXPLANATION OF MATERIAL TRANSMITTED:

The Bureau of Indian Education (BIE) recognizes the presence of firearms and other weapons on campus property is a real threat to the safety of students, staff, and visitors. Therefore, the BIE hereby requires all BIE-operated schools and dormitories to adopt and implement this policy of Zero Tolerance for Firearms and Other Weapons which provides guidance for establishing staff and administration response and training procedures.



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Acting, Director, Bureau of Indian Education

FILING INSTRUCTIONS:

Remove: None

Insert: 30 IAM 6

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1.1 Purpose. The Bureau of Indian Education (BIE) recognizes that the presence of firearms and other weapons on campus property is a real threat to the safety of students, staff, and visitors. The presence of weapons on campus significantly increases the likelihood of an incident involving serious injuries. Therefore, the BIE hereby requires all BIE-operated schools and dormitories to adopt and implement this policy of Zero Tolerance for Firearms and Other Weapons. The BIE strongly recommends tribal grant and contract schools adopt this or a similar zero tolerance for firearms and weapons policy so the school is in compliance with the *Gun-Free Schools Act* (GFSA).

1.2 Scope. This policy applies to all BIE-operated schools and dormitories; BIE-operated school administrators, students and staff; any site that is classified as school property; and excludes weapons used by security or law enforcement.

1.3 Policy. BIE-operated schools must abide by the following protocols.

A. Zero Tolerance under the *Gun-Free Schools Act*

All BIE-operated schools and dormitories must expel from school for a period of not less than one year a student who is determined to have brought, used or possessed a firearm at school. The *Guns-Free Schools Act* (GFSA) permits School Principals, or other similarly situated chief administering officers, to modify the expulsion requirement for a student on a case-by-case basis. The modification must be in writing.

B. Other Weapons

BIE-operated schools and dormitories must also expel from school, for a period of not less than one year, students who bring other types of weapons to school or who knowingly possess such weapons at school. A weapon may include a knife or an instrument used as a bludgeon such as a bat. School principals may make the determination whether an object is a weapon and the facts surrounding the student's possession of the weapon.

C. Application of the Zero Tolerance Policy – Due Process

Consequences for possession of a firearm or other weapon shall be imposed consistently and equitably. A student found to have possessed, used, or brought a firearm or other weapon on school property or at an off-campus event is entitled to due process and an opportunity to be heard. After the student has been formally notified of the school charges and due process has been accorded, the student shall be expelled for a period of not less than one year, subject to a case-by-case exception process.

Special consideration may be made in incidences in which possession by a student of a firearm or other weapon was innocent without intent to harm. A School Principal may modify the expulsion requirements for a student on a case-by-case basis. The rationale for such modification, however, shall be thoroughly documented in writing.

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Furthermore, this policy must be construed in a manner consistent with the *Individuals with Disabilities Education Act* (IDEA). By using the case-by-case exception, schools are able to discipline students with disabilities in accordance with the requirements of Part B of the IDEA and Section 504 of the *Rehabilitation Act* and maintain eligibility for federal financial assistance.

D. Training and Technical Assistance

When applicable, school resource officers will provide training and technical assistance to school staff regarding zero tolerance policies, the GFSA, and search and seizure procedures. When school resource officers are not present, school staff is encouraged to seek out training and technical assistance from local law enforcement.

E. Search and Seizure

1. Whenever possible, law enforcement is designated as the entity to perform all search and/or seizures.
2. If there is reasonable suspicion that a student is in possession of a firearm or other weapon, and law enforcement is not available, a search of the student by a trained staff member may be conducted to ensure the safety of students and staff. The search must be within a reasonable scope of the violation and not excessively intrusive in light of the age and sex of the student and the nature of the infraction.
3. In all situations of search and/or seizure conducted by school staff, parent/guardian notification will be given. If a parent/guardian cannot be contacted, and the situation could endanger students and staff, a reasonable search will be conducted by a trained staff member.

F. Reporting and Referral to Criminal Justice System

All School Principals must immediately refer to the criminal justice or juvenile delinquency system any student who uses and/or brings a firearm or other weapon at/to a school. A student who is determined to have brought, used, or a firearm at school will receive a mental health referral.

If a weapons incident involves injuries, the School Principal, or their designee, must notify the Associate Deputy Director (ADD) for School Operations the same day of the event, preferably within two hours of notification of the incident. In all cases of weapon possession, schools shall provide a Critical Incident Reporting Form to the ADD within 24 hours after the incident.

Examples of information to be collected in the Critical Incident Reporting Form include, but are not limited to: a chronology of events; the time, date, and location(s); the name(s), age(s), identification number(s), and address(es) of the offender(s) involved; a detailed description of the weapon(s); names of witnesses and their contact information; a description of victims and their injuries, if any; incidents that precipitated the event; any references to or indications of gang affiliation by the

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alleged offender(s); threats and/or other statements made by the alleged offender(s); the school's response to the incident; contacts made with emergency responders and medical personnel; and measures taken to notify parents, the ADD, and the BIE administration.

The ADD shall immediately notify the BIE Office of the Director by telephone and forward the Critical Incident Reporting Form by email or fax. The ADD will confirm the student has received a mental health referral.

Schools shall report annually to the ADD the number of students expelled, the types of firearms or other weapon involved, and the circumstances surrounding the expulsions. The ADD will annually provide the BIE Office of the Director copies of these reports.

1.4 Authority.

- A. Title 20 U.S.C. § 7151, the *Guns-Free School Act*, reauthorized by the *No Child Left Behind Act* of 2001 (Public Law 107-110) as Section 4141 of the *Elementary and Secondary Education Act of 1965*
- B. Title 20 U.S.C. § 1415(k), the *Individuals with Disabilities Education Act*
- C. Title 29 U.S.C. § 794, the Section 504 of the *Rehabilitation Act of 1973*
- D. Title 18 U.S.C. § 930(g)(2)

1.5 Roles and Responsibilities.

- A. **Director, BIE** is responsible for distribution of policy to all BIE-operated schools and dormitories, and for monitoring adherence to policy.
- B. **Associate Deputy Director, School Operations** is responsible for the annual review of the policy and for monitoring adherence to the policy by the Education Line Officers and School Principals.
- C. **Education Line Officers** are responsible for ensuring the policy is in place and being implemented at BIE-operated schools and dormitories; and that annual reports by School Principals are submitted to the ADD.
- D. **School Principals** are responsible for ensuring compliance with the policy and that procedures and reporting by staff are performed.

1.6 Definitions.

- A. ***Weapon*** - for purposes of this policy, a "weapon" is any instrument that causes serious bodily injury, whether by design or incidentally and includes a "Dangerous Weapon" as defined in 18 U.S.C.930(g)(2), a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious

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bodily injury, except that such term does not include a pocket knife with a blade of less than 2 ½ inches in length.

- B. *Firearm*** - for purposes of this policy, a “firearm” is;
- i. any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive;
 - ii. the frame or receiver of any such weapon;
 - iii. any muffler or silencer for such weapon; or
 - iv. any destructive device.
- C. *Zero Tolerance*** - for purposes of this policy, “Zero Tolerance” is a policy by which a school is required to expel a student for a single infraction of the rules.
- D. *School Property*** - for purposes of this policy, “school property” is any property owned, leased, rented, under the control and supervision of the school for the purpose of student activities, such as off-campus events, approved and authorized by school, or otherwise used by the school including, but not limited, to the following:
- i. all interior portions of any building or other structure used for instruction, administration, support services, maintenance, or storage. This includes, but is not limited to, areas normally reserved for the exclusive use of faculty or support staff;
 - ii. all school grounds and buildings over which the school exercises control, including areas surrounding school buildings, playgrounds, athletic fields, recreation areas, and parking lots; and
 - iii. all vehicles used by the school for transporting staff, students, and visitors.
- E. *Off-Campus Events*** - for purposes of this policy, “off-campus events” are events officially sponsored by the school, for which transportation, publicity, advertising, and/or school personnel or volunteers are provided. Examples include, but are not limited to, sporting events, academic and extra-curricular competitions, field trips, and in-state and out-of-state travel.