

**1999 SENATE JUDICIARY**

**SB 2192**

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2192

Senate Judiciary Committee

Conference Committee

Hearing Date January 19, 1999

Tape Number	Side A	Side B	Meter #
1		x	0 - 2476
Committee Clerk Signature <i>Jackie Tollman</i>			

Minutes:

SB2192 relates to the scope of school weapons policies.

SENATOR STENEHJEM opened the hearing on SB2192 at 10:15 A.M.

All were present.

SENATOR WARDNER testified in support of SB2192. We need to make sure we send a message that weapons are not allowed in school. This bill should make young people understand this is serious business and the schools are going to be safe.

SENATOR HOLMBERG testified in support of SB2192. The reason for this bill is to add the CO2 guns and pellet guns are included under the firearms definition. This new law will expand this definition.

SENATOR STENEHJEM asked that we passed a similar bill and overlooked the firearms definition.

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Senate Judiciary Committee

Bill/Resolution Number SB2192

Hearing Date January 19, 1999

SENATOR HOLMBERG stated that is correct.

LINDA JOHNSON, Department of Instruction, testified to provide information on SB2192. We would like alternative education to the children who are suspended.

SENATOR STENEHJEM asked what we are doing with them now.

LINDA JOHNSON stated that a bill was proposed to make sure that they get this education but I do have an attachment on this. If the student has been adjudicated the school district is responsible, but if the student was just suspended the school district is not responsible.

SENATOR LYSON asked if law enforcement are always called when firearms are found.

LINDA JOHNSON stated that she did not know.

SENATOR HOLMBERG stated that the school board has to have written policy in place to call law enforcement. With students in special ed, a special process is done.

VIVIAN SCHAFER, Children's Caucus, testified in SB2192.

NANCY SAND, NDEA, testified in support of SB2192.

SENATOR STENEHJEM CLOSED the hearing on SB2192.

SENATOR LYSON made a motion for DO PASS, SENATOR WATNE seconded.

Motion passed.

SENATOR STENEHJEM will carry the bill.

6 - 0 - 0

Date: 1-19-99  
Roll Call Vote #: \_\_\_\_\_

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2192

Senate Judiciary \_\_\_\_\_ Committee

Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DO PASS

Motion Made By Lyson Seconded By Watne

Senators	Yes	No	Senators	Yes	No
Senator Wayne Stenehjem	X				
Senator Darlene Watne	X				
Senator Stanley Lyson	X				
Senator John Traynor	X				
Senator Dennis Bercier	X				
Senator Caroloyne Nelson	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Wayne Stenehjem

REPORT OF STANDING COMMITTEE (410)  
January 19, 1999 12:44 p.m.

Module No: SR-11-0824  
Carrier: W. Stenehjem  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

**SB 2192: Judiciary Committee (Sen. W. Stenehjem, Chairman)** recommends **DO PASS**  
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2192 was placed on the  
Eleventh order on the calendar.

**1999 HOUSE JUDICIARY**

**SB 2192**

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2192

House Judiciary Committee

Conference Committee

Hearing Date : February 16, 1999

Tape Number	Side A	Side B	Meter #
1	X		9.7
Committee Clerk Signature <i>Ala. Gindberg</i>			

Minutes: This bill was heard on March 16 and the committee recommended on that day that the bill DO PASS. The House re-referred the bill to the Judiciary Committee. The bill was heard again by the committee on March 16, and the committee took action on March 17. Thus, there are three sets of minutes.

REP. DEKREY This bill is the result of a situation that occurred in Grand Forks where a student brought a pellet gun to school. The Attorney General issued an opinion that the pellet gun is not a "weapon", since it is not included in the definition in the Century Code. Rep. DeKrey circulated a copy of that opinion which was issued to Sen. Holmberg.

LINDA JOHNSON (DPI) Presented written testimony, a copy of which is attached.

NANCY SAND (NDEA) We favor this bill.

REP. DEKREY read a letter from a teacher asking that laser pointers be added to the list.

COMMITTEE ACTION

Page 2

House Judiciary Committee

Bill/Resolution Number 2192

Hearing Date : March 16, 1999

REP. CLEARY moved that the committee recommend that the bill DO PASS. Rep. Koppelman

seconded and the motion passed on a roll call vote with 12 ayes, 0 nays and 3 absent. Rep.

Hawken was assigned to carry the bill.




1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2192

House Judiciary Committee

Conference Committee

Hearing Date 3-16-99

Tape Number	Side A	Side B	Meter #
Three SB 2192	x		9.6 to 55.0
Committee Clerk Signature	 (taken by Erlin Hanson)		

Minutes:

Summary of bill:

Sen Ray Holmberg: Understand some questions arose on the floor of the House concerning SB 2192 and was asked to put together some information to give to your committee. Major question that came up had to do with school lands and hunting on school lands. The definition of school land in this bill does not include state school land. Just school land belonging to the School District. This land does not have anything to do with hunting on State school land.

Chairman DeKrey: Would you explain how the bill came about?

Sen Holmberg: This bill is the result of an Attorney General opinion relative to new Statue in 1995. We decided to just use the Federal definition of what a dangerous weapon is and the Federal definition did not include pellet guns. So Mr Chairman that is the Atty Gen opinion.

Now we come to the case in Grand Forks school district when a student brought a b/b gun to school. The Attorney General ruled that he could not be expelled for one calendar year because of the Federal definition. This bill was never intended to have anything to do with hunting on school land or what ever just the subject of what constitutes the bringing of a dangerous weapon on school property.

Rep Klemin: The panic about hunting on school property that's current law. Basically when they say you couldn't go on school land to hunt.

Sen Holmberg: The language changing is expanding the definition of what is a dangerous weapon on school property.

Rep Meyer: Why are we putting in Code something they can already do.? I have a problem with this bill because of the way it is written. You are talking about a dart gun, new CO 2 loaded paint ball guns that are a big fun for a lot of kids, I believe each school board can do now what this bill implements.

Sen Holmberg: Because the school board was told by counsel they could not expel them for one year because state law did not permit them to do that.

Rep Koppelman: My notes indicate we amended the bill, if you put "May" on line 8 it changes the concept of the bill.

Rep Cleary: Does this mean every child who brings a weapon, as defined, would be expelled for 1 year.

Sen Holmberg: This bill just puts in place what Federal Law is. Hopes hunting question doesn't influence this bill.

Rep Meyer: The school board can do this now, under Section 14-49.13 they can make that determination right now. Right

Sen Holmberg: The Attorney General decided they couldn't do that now. This bill is just for the protection of the students.

Rep Klemin: Current law also allows the local superintendent to modify an expulsion on a case by case basis.

Bob Bennett: Atty Gen Office. Overriding concern is B/B guns. Fed definition of firearms does not include air guns. On their list of guns these are not dangerous weapons.

Rep Klemin: If we took out the word spring in line 10 wouldn't this help?

Bob Bennett: Some B/B guns would still be classified as weapons.

Rep Meyer: If B/B guns are a dangerous weapon seems kinda ridiculous were I come from out west.

Bob Bennett: Under the current law no one can enter a liquor or gaming establishment with a dangerous weapon such as a B/B gun.

Rep Meyer: Don't you think it is in the code now?

Bob Bennett: Maybe its covered now but need the right to act. Need a remedy.

Dick Peck Passed out a packet explaining the different weapons.

Rep Koppelman: If school boards adopt policy of no fire arms in school & we have defined what fire arms are, they are in trouble.

Rep Meyer: Does the school board figure they have no remedy? There's a remedy for every thing.

Page 4  
House Agriculture Committee  
Bill/Resolution Number JUDSB2192  
Hearing Date 3-16-99

Bob Bennett: The remedy they want is automatic suspension for 1 year but they couldn't do it under the definition they have in the code now.

Paul :Cass County Wildlife Club,

Rep Hawkin: Why would a Wildlife Club be interested in what happens in school.

Pau : This bill could be interpreted as school land where we hunt wildlife. We wanted to make sure what is in this bill.

Paul : B/B guns are not fire arms as classified as a dangerous weapon.

Hearing closed


1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2192

House Judiciary Committee

Conference Committee

Hearing Date : March 17, 1999

Tape Number	Side A	Side B	Meter #
1	X		0
Committee Clerk Signature 			

Minutes:

COMMITTEE ACTION

REO. KOPPELMAN presented proposed amendments and moved their adoption. Rep. Fairfield seconded and the motion passed on a unanimous voice vote.

REP. DELMORE moved that the committee recommend that the bill DO PASS AS AMENDED.

Rep. Disrud seconded and the motion passed on a roll call vote with 12 ayes, 3 nays and 0 absent. Rep. Maragos was assigned to carry the bill.

Date: 2/16  
Roll Call Vote #: 1

21<sup>0</sup>

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2192

House JUDICIARY Committee

Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

Legislative Council Amendment Number Do. Pass

Action Taken \_\_\_\_\_  
\_\_\_\_\_

Motion Made By Cleary Seconded By Kopp

Representatives	Yes	No	Representatives	Yes	No
REP. DEKREY	✓		REP. KELSH	✓	
REP. CLEARY	✓		REP. KLEMIN	✓	
REP. DELMORE	✓		REP. KOPPELMAN	✓	
REP. DISRUD	✓		REP. MAHONEY	✓	
REP. FAIRFIELD			REP. MARAGOS		
REP. GORDER	✓		REP. MEYER		
REP. GUNTER	✓		REP. SVEEN	✓	
REP. HAWKEN	✓				

Total Yes 12 No 0

Absent 3

Floor Assignment Hawken

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**SB 2192: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS**  
(12 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). SB 2192 was placed on the  
Fourteenth order on the calendar.

Date: 3-<sup>17</sup>76-99  
Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. JB ~~2007~~ 2192

House JUDICIARY Committee

Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass as Am

Motion Made By Delmore Seconded By Disrud

Representatives	Yes	No	Representatives	Yes	No
REP. DEKREY	✓		REP. KELSH	✓	
REP. CLEARY	✓		REP. KLEMIN	✓	
REP. DELMORE	✓		REP. KOPPELMAN		✓
REP. DISRUD	✓		REP. MAHONEY	✓	
REP. FAIRFIELD	.	✓	REP. MARAGOS	✓	
REP. GORDER	✓		REP. MEYER	.	✓
REP. GUNTER	✓		REP. SVEEN	✓	
REP. HAWKEN	✓				

Total Yes 12 No 3

Absent 0

Floor Assignment Maragos

If the vote is on an amendment, briefly indicate intent:



**REPORT OF STANDING COMMITTEE**

**SB 2192: Judiciary Committee (Rep. DeKrey, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). SB 2192 was placed on the Sixth order on the calendar.

Page 1, line 8, replace "and also means" with ". Upon resolution of a school board, the term may also mean"

Page 1, line 13, after the period insert "The term does not include school trust lands managed by the board of university and school lands."

Renumber accordingly

**1999 TESTIMONY**

**SB 2192**



# GRAND FORKS PUBLIC SCHOOLS

**Secondary Education**  
308 Demers Avenue, P.O. Box 6000  
Grand Forks, ND 58206-6000

**Mr. Ron Gruwell**  
**Assistant Superintendent**  
Ph. (701) 746-2205 Ext. 116  
FAX (701) 772-7739

January 19, 1999

**To: Senator Ray Holmberg**  
**Fr: Ron Gruwell** *RG*  
**Assistant Superintendent**  
**Re: Firearms - Senate Bill 2192**

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The Grand Forks School District has a "O" tolerance policy concerning weapons at schools. We have specifically had two incidents of CO-2 pellet guns that were handled through due process hearings. Both resulted in expulsion from school for the remainder of the year.

Neither case was prosecuted by the police due to the fact that CO-2 pellet guns are not firearms under North Dakota statute.

Our school board passed a resolution in support of a stronger definition of firearms which would include CO-2 pellet guns and other such instruments that have projectiles.

Your support is greatly appreciated.

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*"A Great Place to Grow and Learn!"*

**AN EQUAL OPPORTUNITY EMPLOYER**

The Grand Forks Public School District does not discriminate on the basis of race, color, national origin, sex, age, religion, or disability in its educational programs/activities and employment policies/practices.



# NORTH DAKOTA SENATE



Senator Ray Holmberg  
District 17  
621 High Plains Court  
Grand Forks, ND 58201-7717

STATE CAPITOL  
600 EAST BOULEVARD  
BISMARCK, ND 58505-0360

President Pro Tempore  
COMMITTEE:  
Appropriations

June 3, 1997

24705

Honorable Heidi Heitkamp  
Attorney General  
State Capitol  
Bismarck, ND 58505

Dear Attorney General Heitkamp:

## REQUEST FOR AN OPINION

NDCC 12.1-01-04 defines a "firearm." NDCC 15-49-13 relates to weapons policies established by school districts. An additional definition of firearm is included by reference in NDCC 15-49-12 which states: "as used in Section 15-49-13, firearm has the meaning given in 18 U.S.C 921 [Pub.L. 90-351 82 Stat. 197]."

**QUESTION: Does a "pellet gun," possessed or used contrary to a school districts weapons policy, fall within the definition of a firearm?**

Your expeditious handling of this matter would be appreciated.

Sincerely,

Ray Holmberg  
State Senator

cc: Mr. Pat Fisher

✓ 50-01

FILE

15-49-12  
15-49-13  
12.1-01-04

STATE OF NORTH DAKOTA  
OFFICE OF ATTORNEY GENERAL

STATE CAPITOL  
600 E BOULEVARD AVE  
BISMARCK ND 58505-0040  
(701) 328-2210 FAX (701) 328-2226



Heidi Heitkamp  
ATTORNEY GENERAL

June 18, 1997

The Honorable Ray Holmberg  
State Senate, District 17  
621 High Plains Court  
Grand Forks, ND 58201-7717

Dear Senator Holmberg:

Thank you for your letter asking whether a pellet gun, possessed or used contrary to a school district weapons policy, falls with the definition of a firearm pursuant to N.D.C.C. § 15-49-12(1).

The above noted section of law cites 18 U.S.C. § 921 as being the definition of the term "firearm." That section of federal law defines firearm as:

. . . [A]ny 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; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm.

18 U.S.C. § 921(a)(3). The term destructive device is defined in 18 U.S.C. § 921(a)(4) to include items such as bombs, grenades, rockets, missiles, or mines or similar devices. However, the term "explosive" is not defined in the relevant federal law section for purposes of determining the source of the motive force that causes the projectile to be expelled.

Because N.D.C.C. § 15-49-12(1) imports the definition from federal law into North Dakota law, a definition of the term "explosive" must be found for purposes of North Dakota law.

"Words and phrases must be construed according to the context and the rules of grammar and the approved usage of the language. Technical words and phrases and such others as have acquired a peculiar and appropriate meaning in law, or as are defined by statute, must be construed according to such peculiar and appropriate meaning or definition." N.D.C.C. § 1-02-03.

In a prosecution for unlawful possession of explosives under N.D.C.C. § 62.1-02-11, the North Dakota Supreme Court noted that because the section violated did not itself define the term "explosives" that the definition must be found and interpreted by reference to similar statutes. State v. Johnson, 417 N.W.2d 365, 369 (N.D. 1987). In that

The Honorable Ray Holmberg  
June 18, 1997  
Page 2

case, the Supreme Court relied on N.D.C.C. § 12.1-01-04(8) for a definition of the term "explosive" and noted that the general definition of the term contained in Title 12.1 should be applied to ascertain the meaning of the term "explosives" in section 62.1-02-11 because title 62.1 contained no definition. State v. Johnson, 417 N.W.2d at 369.

As was true in Johnson, the statute here in question, N.D.C.C. § 15-49-12(1), and its federal statute reference, do not contain a definition for the term "explosive." Such a definition is critical to the determination of whether a "pellet gun" (or a BB gun, air gun, or CO<sub>2</sub> gun) constitutes a "firearm." Therefore, just as the court did in Johnson, it is appropriate to refer to N.D.C.C. § 12.1-01-04(8) which defines "explosive" to mean:

. . . gunpowders, powders used for blasting, all forms of high explosives, blasting materials, fuses (other than electric circuit breakers), detonators and other detonating agents, smokeless powders, and any chemical compounds, mechanical mixture, or other ingredients in such proportions, quantities, or packing that ignition by fire, by friction, by concussion, by percussion, or by detonation of the compound, or material, or any part thereof may cause an explosion.

As I understand your question, the "pellet gun" to which you refer is a gun that is capable of expelling a projectile, possibly a BB or pellet, through the use of compressed air or compressed CO<sub>2</sub>. The exact nature of the gun to which you refer in your question is for the individual school district to determine on a case-by-case basis, however, unless the pellet gun (or BB gun, or air gun, or CO<sub>2</sub> gun) propels its projectile by one of the means stated in N.D.C.C. § 12.1-01-04(8), it is my opinion that the gun in question is not a firearm under N.D.C.C. § 15-49-12(1).

Sincerely,



Heidi Heitkamp  
ATTORNEY GENERAL

rel/vkk

**TESTIMONY ON SB 2192**  
**SENATE JUDIARY COMMITTEE**  
**January 19, 1999**  
**Linda Johnson, Director of School health Programs**  
**32-4138**  
**Department of Public Instruction**

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Mr. Chairperson and members of the committee:

My name is Linda Johnson and I am the Director of School Health Programs including Safe and Drug Free Schools for the Department of Public Instruction. I am here to provide information regarding SB 2192.

Attached is the *1994 Improving Americas Schools Act PL103-382, Title XIV – General Provision, Part F-Gun Possession*. Also attached is the *Gun-Free Schools Act Report* used to collect data annually on North Dakota Century Code 15-49-12 as required in the above Act {Sec.14601 (d) (e) }. The definition of firearms can be found on page three of the *Report*. School districts report this information to us annually on their final Safe and Drug Free Schools reports and the Department in turn files this report as required. Since reporting began we have reported the following:

1995-1996	2 handguns	Sr. Hi	
	2 other	Sr. Hi	
	none shortened; none modified		
1996-1997	1 other	Sr. Hi	shortened by districts
1997-1998	1 handgun	Jr. Hi	not shortened

All schools reported having a policy in place.

At the present time the school districts may make their policies broader than what is required by law. They may also define school property as is mentioned in 2 of this bill.

If this bill is adopted, consideration needs to be made for alternative education for these suspended children as some may be quite young. A bill proposed to the Criminal Justice Interim Committee relating to the provision of educational services for suspended and expelled students is attached for your information. The Interim Committee did not chose to forward this bill at this time but if SB 2192 is adopted the interim bill may be wise to consider as an amendment.

An uneducated individual becomes even more of a burden on society. The best way to make a productive citizen is through education.



educational personnel that there will no longer be any failure or inability on the part of such agency or consortium to meet the applicable requirements of section 14503 or any other provision of this Act.

**"(c) PAYMENT FROM STATE ALLOTMENT.**—When the Secretary arranges for services pursuant to this section, the Secretary shall, after consultation with the appropriate public and private school officials, pay the cost of such services, including the administrative costs of arranging for those services, from the appropriate allocation or allocations under this Act.

**"(d) PRIOR DETERMINATION.**—Any by-pass determination by the Secretary under this Act as in effect on the day preceding the date of enactment of the Improving America's Schools Act of 1994 shall remain in effect to the extent the Secretary determines that such determination is consistent with the purpose of this section.

**"SEC. 14507. PROHIBITION AGAINST FUNDS FOR RELIGIOUS WORSHIP OR INSTRUCTION.**

"Nothing contained in this Act shall be construed to authorize the making of any payment under this Act for religious worship or instruction.

**"SEC. 14508. APPLICABILITY TO HOME SCHOOLS.**

"Nothing in this Act shall be construed to affect home schools.

**"SEC. 14509. GENERAL PROVISION REGARDING NONRECIPIENT NONPUBLIC SCHOOLS.**

"Nothing in this Act shall be construed to permit, allow, encourage, or authorize any Federal control over any aspect of any private, religious, or home school, whether or not a home school is treated as a private school or home school under State law. This section shall not be construed to bar private, religious, or home schools from participation in programs or services under this Act.

**"SEC. 14510. SCHOOL PRAYER.**

"Any State or local educational agency that is adjudged by a Federal court of competent jurisdiction to have willfully violated a Federal court order mandating that such local educational agency remedy a violation of the constitutional right of any student with respect to prayer in public schools, in addition to any other judicial remedies, shall be ineligible to receive Federal funds under this Act until such time as the local educational agency complies with such order. Funds that are withheld under this section shall not be reimbursed for the period during which the local educational agency was in willful noncompliance.

**"SEC. 14511. GENERAL PROHIBITIONS.**

**"(a) PROHIBITION.**—None of the funds authorized under this Act shall be used—

"(1) to develop or distribute materials, or operate programs or courses of instruction directed at youth that are designed to promote or encourage, sexual activity, whether homosexual or heterosexual;

"(2) to distribute or to aid in the distribution by any organization of legally obscene materials to minors on school grounds;

"(3) to provide sex education or HIV prevention education in schools unless such instruction is age appropriate and includes the health benefits of abstinence; or

"(4) to operate a program of condom distribution in schools.

**"(b) LOCAL CONTROL.**—Nothing in this section shall be construed to—

"(1) authorize an officer or employee of the Federal Government to mandate, direct, review, or control a State, local educational agency, or schools' instructional content, curriculum, and related activities;

"(2) limit the application of the General Education Provisions Act;

"(3) require the distribution of scientifically or medically false or inaccurate materials or to prohibit the distribution of scientifically or medically true or accurate materials; or

"(4) create any legally enforceable right.

**"SEC. 14512. PROHIBITION ON FEDERAL MANDATES, DIRECTION, AND CONTROL.**

"Nothing in this Act shall be construed to authorize an officer or employee of the Federal Government to mandate, direct, or control a State, local educational agency, or school's curriculum, program of instruction, or allocation of State or local resources, or mandate a State or any subdivision thereof to spend any funds or incur any costs not paid for under this Act.

**"SEC. 14513. REPORT.**

"The Secretary shall report to the Congress not later than 180 days of the date of enactment of the Improving America's Schools Act of 1994 regarding how the Secretary shall ensure that audits conducted by Department employees of activities assisted under this Act comply with changes to this Act made by the Improving America's Schools Act of 1994, particularly with respect to permitting children with similar educational needs to be served in the same educational settings, where appropriate.

**"SEC. 14514. REQUIRED PARTICIPATION PROHIBITED.**

"Notwithstanding any other provision of law, no State shall be required to participate in any program under the Goals 2000: Educate America Act, or to have content standards or student performance standards approved or certified under such Act, in order to receive assistance under this Act.

**"PART F—GUN POSSESSION**

**"SEC. 14601. GUN-FREE REQUIREMENTS.**

**"(a) SHORT TITLE.**—This section may be cited as the 'Gun-Free Schools Act of 1994'.

**"(b) REQUIREMENTS.**—

"(1) **IN GENERAL.**—Except as provided in paragraph (3), each State receiving Federal funds under this Act shall have in effect a State law requiring local educational agencies to expel from school for a period of not less than one year a student who is determined to have brought a weapon to a school under the jurisdiction of local educational agencies in that State, except that such State law shall allow the chief administering officer

of such local educational agency to modify such expulsion requirement for a student on a case-by-case basis.

"(2) **CONSTRUCTION.**—Nothing in this title shall be construed to prevent a State from allowing a local educational agency that has expelled a student from such a student's regular school setting from providing educational services to such student in an alternative setting.

"(3) **SPECIAL RULE.**—(A) Any State that has a law in effect prior to the date of enactment of the Improving America's Schools Act of 1994 which is in conflict with the not less than one year expulsion requirement described in paragraph (1) shall have the period of time described in subparagraph (B) to comply with such requirement.

"(B) The period of time shall be the period beginning on the date of enactment of the Improving America's Schools Act and ending one year after such date.

"(4) **DEFINITION.**—For the purpose of this section, the term 'weapon' means a firearm as such term is defined in section 921 of title 18, United States Code.

"(c) **SPECIAL RULE.**—The provisions of this section shall be construed in a manner consistent with the Individuals with Disabilities Education Act.

"(d) **REPORT TO STATE.**—Each local educational agency requesting assistance from the State educational agency that is to be provided from funds made available to the State under this Act shall provide to the State, in the application requesting such assistance—

"(1) an assurance that such local educational agency is in compliance with the State law required by subsection (b); and

"(2) a description of the circumstances surrounding any expulsions imposed under the State law required by subsection (b), including—

"(A) the name of the school concerned;

"(B) the number of students expelled from such school; and

"(C) the type of weapons concerned.

"(e) **REPORTING.**—Each State shall report the information described in subsection (c) to the Secretary on an annual basis.

"(f) **REPORT TO CONGRESS.**—Two years after the date of enactment of the Improving America's Schools Act of 1994, the Secretary shall report to Congress if any State is not in compliance with the requirements of this title.

**"SEC. 14603. POLICY REGARDING CRIMINAL JUSTICE SYSTEM REFERRAL.**

"(a) **IN GENERAL.**—No funds shall be made available under this Act to any local educational agency unless such agency has a policy requiring referral to the criminal justice or juvenile delinquency system of any student who brings a firearm or weapon to a school served by such agency.

"(b) **DEFINITIONS.**—For the purpose of this section, the terms 'firearm' and 'school' have the same meaning given to such terms by section 921(a) of title 18, United States Code.

**"SEC. 14603. DATA AND POLICY DISSEMINATION UNDER IDEA.**

"The Secretary shall—

"(1) widely disseminate the policy of the Department in effect on the date of enactment of the Improving America's Schools Act of 1994 with respect to disciplining children with disabilities;

"(2) collect data on the incidence of children with disabilities (as such term is defined in section 602(a)(1) of the Individuals With Disabilities Education Act) engaging in life threatening behavior or bringing weapons to schools; and

"(3) submit a report to Congress not later than January 31, 1995, analyzing the strengths and problems with the current approaches regarding disciplining children with disabilities.

**"PART G—EVALUATIONS**

**"SEC. 14701. EVALUATIONS.**

"(a) **EVALUATIONS.**—

"(1) **IN GENERAL.**—Except as provided in paragraph (2), the Secretary is authorized to reserve not more than 0.50 percent of the amount appropriated to carry out each program authorized under this Act—

"(A) to carry out comprehensive evaluations of categorical programs and demonstration projects, and studies of program effectiveness, under this Act, and the administrative impact of such programs on schools and local educational agencies in accordance with subsection (b);

"(B) to evaluate the aggregate short- and long-term effects and cost efficiencies across Federal programs under this Act and related Federal preschool, elementary and secondary programs under other Federal law; and

"(C) to strengthen the usefulness of grant recipient evaluations for continuous program progress through improving the quality, timeliness, efficiency, and utilization of program information on program performance.

"(2) **SPECIAL RULE.**—(A) Paragraph (1) shall not apply to any program under title I.

"(B) If funds are made available under any program assisted under this Act (other than a program under title I) for evaluation activities, then the Secretary shall reserve no additional funds pursuant to the authority in subsection (a)(1) to evaluate such program, but shall coordinate the evaluation of such program with the national evaluation described in subsection (b).

"(b) **NATIONAL EVALUATIONS.**—

"(1) **IN GENERAL.**—The Secretary shall use the funds made available under subsection (a) to carry out—

"(A) independent studies of categorical and demonstration programs under this Act and the administrative impact of such programs on schools and local educational agencies, that are coordinated with research supported through the Office of Educational Research and Improvement, using rigorous methodological designs and techniques, including longitudinal designs, control groups, and random assignment, as appropriate, to determine—

**ELEMENTARY AND SECONDARY  
EDUCATION ACT (ESEA), as amended by the  
IMPROVING AMERICA'S SCHOOLS ACT OF  
1994 (IASA), TITLE XIV, PART F**

**FORM APPROVED  
OMB #1810-0602**

Expiration Date: 4/30/00

**GUN-FREE SCHOOLS ACT REPORT**

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1810-0602. The time required to complete this information collection is estimated to average 8 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202-4651. If you have comments or concerns regarding the status of your individual submission of this form, write directly to: Safe and Drug-Free Schools Program, U.S. Department of Education, 400 Maryland Avenue, S.W., Washington, DC 20202-6123.

**RESPONDENT INFORMATION**

<b>State Name:</b> North Dakota
<b>Name of Agency Responding:</b> Department of Public Instruction
<b>Name and Title of Individual Completing this Report:</b> Linda L. Johnson, Director School Health Programs
<b>Mailing Address:</b> 600 E Boulevard Avenue Dept 201 State Capitol Bismarck ND 58505-0440
<b>Telephone and Fax Number of Individual Completing this Report:</b> Phone: ( 7 0 1 ) 3 2 8 - 4 1 3 8 Fax: ( 7 0 1 ) 3 2 8 - 4 7 7 0

## GUN-FREE SCHOOLS ACT REPORT

### INTRODUCTION

The Gun-Free Schools Act (GFSA), Part F of Title XIV of the Elementary and Secondary Education Act (ESEA) of 1965 requires that each State have in effect a State law requiring local educational agencies (LEAs) to expel from school for a period of not less than one year a student found to have brought a weapon to school. In addition, under the GFSA, LEAs receiving ESEA funds must adopt a policy requiring referral to the criminal justice or juvenile delinquency system of any student who brings a firearm to school.

Each State's law also must allow the chief administering officer of the LEA to modify the expulsion requirement on a case-by-case basis. The GFSA also states that nothing in the GFSA shall be construed to prevent a State from allowing a local educational agency that has expelled a student from such student's regular school setting from providing educational services to that student in an alternative setting.

The GFSA also requires States to provide annual reports to the Secretary of Education concerning implementation of the Act's requirements. The Secretary is required to report to Congress if any State is not in compliance with the GFSA.

PLEASE USE THE ATTACHED FORM TO PROVIDE INFORMATION ON IMPLEMENTATION OF THE GFSA.

#### GENERAL DIRECTIONS FOR COMPLETING THE REPORT

1. The time period covered by this report is the 1997-98 school year.
2. Please complete this entire form. If questions are left blank, we will not be able to interpret the results and will have to follow up with a phone call. If a response to a question is "0" or "none," be sure to enter "0" or "none." If information is not available or not applicable, please indicate by using the following abbreviations:

MD = Missing Data

NA = Not Available

3. Please retain a copy of the completed form for your files so that you will have a copy on hand to refer to if we have questions about your responses.
4. Please complete the attached form and mail no later than December 1, 1998 to:

**Westat  
1650 Research Boulevard, Room RA 1216  
Rockville, MD 20850**

If questions arise about completing any of the items on the attached form, please do not hesitate to contact the Safe and Drug-Free Schools Program at (202) 260-3954 for clarification.

## ABBREVIATIONS AND DEFINITIONS

<b>LEA</b>	local educational agency
<b>GFSA</b>	Gun-Free Schools Act
<b>IDEA</b>	Individuals with Disabilities Education Act
<b>ESEA</b>	Elementary and Secondary Education Act
<b>Elementary school</b>	A school classified as elementary by state and local practice and composed of any span of grades not above Grade 6. Combined elementary/junior high schools are considered junior high schools and combined elementary and secondary schools (e.g., K-12 buildings) are classified as high schools for this report.
<b>Junior high school</b>	A separately organized and administered school intermediate between elementary and senior high schools, which might also be called a middle school, usually includes Grades 7, 8, and 9; Grade 7 and 8; or Grades 6, 7, and 8. Combined elementary/junior high schools are considered junior high schools for this report; junior/senior high school combinations are defined as senior high schools.
<b>Senior high school</b>	A school offering the final years of school work necessary for graduation, usually including Grades 10, 11, and 12; or Grades 9, 10, 11, and 12. Combined junior and senior high schools are classified as high schools for this form; combined elementary and secondary schools (e.g., K-12 buildings) are classified as high schools.
<b>Other firearms</b>	<p>Firearms other than handguns, rifles or shotguns as defined in 18 USC 921. According to Section 921, the following are included within the definition:</p> <ul style="list-style-type: none"><li>- 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 any explosive;</li><li>- the frame or receiver of any weapon described above;</li><li>- any firearm muffler or firearm silencer;</li><li>- any destructive device, which includes:<ul style="list-style-type: none"><li>(a) any explosive, incendiary, or poison gas<ul style="list-style-type: none"><li>(1). bomb;</li><li>(2). grenade;</li><li>(3). rocket having a propellant charge of more than four ounces;</li><li>(4). missile having an explosive or incendiary charge of more than (5). one-quarter ounce;</li><li>(6). mine, or</li><li>(7). similar device</li></ul></li><li>(b) any weapon which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter</li><li>(c) any combination or parts either designed or intended for use in converting any device into any destructive device described in the two immediately preceding examples, and from which a destructive device may be readily assembled.</li></ul></li></ul>

## FIREARMS EXPULSIONS

1. Please indicate the number of students expelled in your State under your State's law that requires a one-year expulsion for a student who brings a firearm to school. *[Do not include in your response to this question students who have brought a firearm to school but who have not been expelled, whether because of disability, an intervening court order, delays in the process, or any other reason.]*

School Level	Handguns	Rifles/Shotguns	Other Firearms	Total
Elementary School				
Junior High School				
Senior High School				
Total				

2. How many of the expulsions reported in item #1 were shortened to a term of less than one year by the chief administering officer of an LEA under the case-by-case modification provisions of Section 14601(b)(1) of the GFSA? *[Do not include in your response to this question modifications under the case-by-case exception provision of Section 14601(b)(1) other than those that shorten the term of the expulsion to less than one year.]*

Number of Shortened Expulsions:

3. How many of the modifications reported in item #2 were for students who are not students with disabilities as defined in Section 602(a)(1) of the IDEA?

Number of shortened expulsions in #2, NOT disabled:

*[The GFSA explicitly states that the Act must be construed in a manner consistent with the Individuals with Disabilities Education Act (IDEA). Compliance with the GFSA can be achieved consistent with the IDEA as long as discipline of such students is determined on a case-by-case basis under the GFSA provision that permits modification of the expulsion requirement on a case-by-case basis. A student with a disability who brings a firearm to school may be removed from school for ten school days or less, and in accordance with State law, placed in an interim alternative educational setting that is determined by the student's individualized education program team, for up to 45 calendar days. If the student's parents initiate due process proceedings under the IDEA, the student must remain in that interim alternative educational setting during authorized review proceedings, unless the parents and school*

*district can agree on a different placement. Before an expulsion can occur, the IDEA requires a determination by a group of persons knowledgeable about the student on whether the bringing of a firearm to school was a manifestation of the student's disability. A student with a disability may be expelled only if this group of persons determines that the bringing of a firearm to school was not a manifestation of the student's disability, and the school follows applicable IDEA procedural safeguards before the expulsion occurs. Under IDEA, students with disabilities who are expelled in accordance with these conditions must continue to receive educational services during the expulsion period. Under Section 602 (a)(1) of the IDEA, the term "children with disabilities" is defined as:*

*children –*

*(i) with mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments, including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and*

*(ii) who, by reason thereof, need special education and related services.]*

4. How many of the expulsions reported in item #1 resulted in a referral of the expelled student to an alternative school or program?

Number of expelled students in #1 referred to an alternative placement:

### LEA COMPLIANCE

5. List the name and address of each LEA that has not provided an assurance that it is in compliance with the State law that requires that a student who brings a firearm to school be expelled for one year. (If all LEAs have provided the necessary assurance, please indicate "none" in response to this item.)

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(Attach a separate sheet if more space is required to list LEAs.)

6. List the name and address of each LEA that has not provided an assurance that it is in compliance with the requirement in Section 14602 that an LEA receiving ESEA funds have in place a policy requiring referral to the criminal justice or juvenile delinquency system of any student who brings a firearm to a school. (If all LEAs have provided the necessary assurance, please indicate "none" in response to this item.)

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(Attach a separate sheet if more space is required to list LEAs.)



Table 2

Number of students expelled for GFSA violations, by school level, 1996-97

State	School Level						Data Caveats	
	Elementary	%	Junior High	%	Senior High	%		Total
Alabama	12		31		48		91	
Alaska	4		2		13		19	
Arizona	32		38		81		152	Row does not add to the total because one expulsion was from a non-graded school.
Arkansas	10		40		12		62	
Colorado <sup>1</sup>	44		202		229		475	Reported figures are expulsions for ALL weapons, not just firearms.
Connecticut	0		3		16		19	
Delaware	1		0		6		7	
District of Columbia <sup>2</sup>	0		0		0		0	The District of Columbia SDFSCA coordinator reported that the District has a policy in place, but the policy was not enforced in 1996-97. The District is now surveying each school to determine whether the school had a policy of expulsions in place in 1996-97 and whether students were expelled. <sup>2</sup>
Florida	8		73		121		202	
Georgia	11		82		151		244	
Hawaii	0		0		0		0	
Illinois	39		62		149		250	
Indiana	3		46		60		109	
Iowa	4		18		18		40	
Kansas	3		10		30		43	
Kentucky	4		30		36		70	
Louisiana	16		30		42		88	
Maine	1		2		10		13	
Maryland <sup>1</sup>	4		13		56		73	Reported figure is for the number of incidents, rather than the number of expulsions.
Massachusetts	3		23		28		54	
Minnesota	0		7		11		18	
Mississippi <sup>3</sup>	0		4		7		11	Information submitted for handguns only.
Missouri <sup>1</sup>	43		134		141		318	Reported figures may include other weapons such as knives, air guns, or brass knuckles.
Montana	3		2		7		12	
Nebraska <sup>3</sup>	MD		6		14		20	Nebraska did not collect expulsion data from elementary schools.
Nevada	2		20		32		54	
New Hampshire	0		7		8		15	
New Jersey	7		23		27		57	
New Mexico	3		24		44		71	Twenty expulsions were reported separately as an unknown firearm. These were added to the "other firearms" expulsions.
New York <sup>3</sup>	4		48		76		128	The data reported for 1996-97 represents 71% of all LEAs. All 5 of the largest LEAs are included.
North Carolina	5		54		104		163	
North Dakota	0		0		1		1	

Table 2 (cont'd)

State	School Level						Data Caveats	
	Elementary	Junior High	Senior High	Total				
Oklahoma	0	0	0	0				
Pennsylvania	19	50	131	200				
Rhode Island	1	1	5	7				
South Carolina	5	40	49	94				
South Dakota	0	2	5	7	The reported figure includes air guns.			
Texas	72	171	289	532				
Utah	14	32	34	80				
Vermont	1	1	3	5				
Virginia	7	21	64	92	Virginia does not differentiate between handguns and rifles.			
Washington	6	39	101	146				
West Virginia	0	7	20	27				
Wisconsin	0	18	36	54				
Wyoming	0	0	0	0				
Puerto Rico	0	0	0	0				
Guam	0	0	0	0				
Northern Marianas	0	0	1	1				
Virgin Islands	0	0	1	1				
Total	391	9%	1,416	34%	2,317	56%	4,125	Refer to the caveats shown on the individual state lines for a full picture of the data submitted under the GFSA.
<b>Data Notes:</b> MD=Missing Data <sup>1/</sup> The figure reported by this state may overstate the number of actual GFSA violations. <sup>2/</sup> The U.S. Department of Education is working to address this issue. The District of Columbia SDFSCA coordinator also reported that the policy is being enforced this year (1997-98) and that so far, four students have been expelled for firearms violations. <sup>3/</sup> The figure reported by this state may understate the number of actual GFSA violations.								
Percent of expulsions reported by school level:					68%			
Number of states reporting information by school level:					49			

Introduced by

1 A BILL for an Act to create and enact four new sections to chapter 15-40.1 of the North Dakota  
2 Century Code, relating to the provision of educational services for suspended and expelled  
3 students.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** A new section to chapter 15-40.1 of the North Dakota Century Code is  
6 created and enacted as follows:

7 **Suspended and expelled students - Education.** Each school district shall provide an  
8 alternative school, class, or educational program for suspended and expelled students.

9 **SECTION 2.** A new section to chapter 15-40.1 of the North Dakota Century Code is  
10 created and enacted as follows:

11 **Suspended and expelled students - Individualized learning plan.** Each suspended  
12 and expelled student, except a student who has reached the age of sixteen and has voluntarily  
13 terminated enrollment in the school district, must attend an alternative school, class, or  
14 educational program during regular school hours. A school district shall prepare an  
15 individualized learning plan for each suspended and expelled student required to attend an  
16 alternative school, class, or educational program. The individualized learning plan must  
17 prescribe the educational, job training, and counseling programs in which the student is  
18 required to participate.

19 **SECTION 3.** A new section to chapter 15-40.1 of the North Dakota Century Code is  
20 created and enacted as follows:

21 **Suspended and expelled students - Education - Rules.** The superintendent of public  
22 instruction shall adopt rules regarding the provision of alternative schools, classes, and  
23 educational programs for suspended and expelled students and the preparation of  
24 individualized learning plans for suspended and expelled students.

North Dakota Department of Public Instruction

Preliminary Data from the Suspension/Expulsion Survey\*

Conducted 5/96

Follow-up 8/96

Student Population Represented

Respondents Grades 7-8	17119
Respondents Grades 9-12	32391
Totals 7-12 respondents	49510
Total statewide 7-12	56384
% of respondents to statewide total 7-12 populat.	87.8%
# of secondary schools responding	176/230
% of respondents to total # of secondary schools	76.5%

1995-96 Suspension/Expulsion Totals

Suspensions Reg. Ed.	2020
Suspensions Sp. Ed.	451
Expulsions Reg. Ed.	29
Expulsions Sp. Ed.	5
Totals	2485

\* Data reflect out-of-school suspensions and expulsions only (Surveys completed by principals, counselors, or others who maintain records on suspension/expulsion.)



STATE OF NORTH DAKOTA  
OFFICE OF ATTORNEY GENERAL

STATE CAPITOL  
600 E BOULEVARD AVE  
BISMARCK, ND 58505-0040  
(701) 328-2210 FAX (701) 328-2226

Heidi Heitkamp  
ATTORNEY GENERAL

August 6, 1996

Dr. Wayne G. Sanstead  
Superintendent of Public Instruction  
600 East Boulevard Avenue  
Bismarck, ND 58505

Dear Dr. Sanstead:

Thank you for your letter asking whether a North Dakota public school district is responsible for paying the educational costs prescribed by North Dakota Century Code (N.D.C.C.) § 15-40.2-08 for a student resident in that public school district but who has been expelled from the schools of that district. You cite prior opinions of this office and ask whether the application of N.D.C.C. § 15-40.2-08 affects the school district's financial obligation for expelled students.

The opinions you refer to are Letter from Attorney General Nicholas J. Spaeth to Dr. Wayne G. Sanstead (November 19, 1990) and Letter from Attorney General Nicholas J. Spaeth to Dennis E. Johnson (August 18, 1992). Those opinions determined that a North Dakota public school district did not have the responsibility to arrange for education services at an alternative location if the subject public school district had expelled the student from its schools, regardless of the financial status of the student's parents, unless a specific legislative mandate provided otherwise.

The circumstances dealt with in the two opinions noted above related to the expulsion of a student from the schools of a particular school district, and the responsibilities of that district to undertake, on its own volition, the provision of alternative education services. N.D.C.C. § 15-40.2-08 was not discussed nor asked about in those two prior opinions.

N.D.C.C. § 15-40.2-08 relates to the provision of educational services and the payment therefor when a child is placed in a school district other than the child's school district of residence by orders of state or tribal courts or juvenile supervisors, by county or state social service agencies, placement at a state-operated institution, or admission to a state licensed child care home or state-operated institution. These placements are, as indicated by the title to the section, made "for purposes other than education." N.D.C.C.

Dr. Wayne G. Sanstead  
August 6, 1996  
Page 2

§ 15-40.2-08 establishes the "district of residence" for children placed at such facilities, and places on the district of residence certain financial responsibilities and the method for determining those responsibilities.

The above-noted opinion to Dennis E. Johnson stated, in part, that

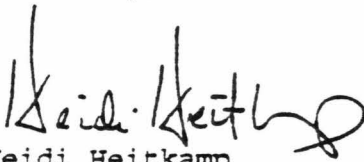
It is my further opinion that when a student engages in proscribed conduct authorizing his removal from school pursuant to statute, and when due process has been extended in the process of the suspension or expulsion, the public school district has no affirmative duty to provide for an alternative education program absent a specific legislative mandate to do so.

(Emphasis supplied.)

N.D.C.C. § 15-40.2-08 provides a specific legislative mandate to which school districts are subject independently from their power and authority to expel a student pursuant to N.D.C.C. § 15-29-08(13). These two statutes must be read together to give meaning to both. N.D.C.C. § 1-02-07. Therefore, even though North Dakota statutes do not impose on a school district the duty to provide for alternative educational facilities after an expulsion of one of its students under its general authority to expel, the provisions of N.D.C.C. § 15-40.2-08 provide a legislative mandate for financial responsibility for the education of a school district's resident students where circumstances in addition to the mere expulsion have occurred pursuant to that section.

It is, therefore, my opinion that N.D.C.C. § 15-40.2-08 constitutes a specific legislative mandate to school districts when its provisions apply to a school district's resident students even if the subject school district has expelled the student in question from its schools.

Sincerely,



Heidi Heitkamp  
ATTORNEY GENERAL

rel/pg

# Title 18, sect. 921, USC

## CHAPTER 44—FIREARMS

### Sec.

- 921. Definitions.
- 922. Unlawful acts.
- 923. Licensing.
- 924. Penalties.
- 925. Exceptions: Relief from disabilities.
- 926. Rules and regulations.
- 927. Effect on State law.
- 928. Separability clause.<sup>1</sup>

<sup>1</sup> Analysis does not conform to section catchline.

### Historical Note

1968 Amendments. Pub.L. 90-613, Title I, § 102, Oct. 22, 1968, 82 Stat. 1214, re- 1968, 82 Stat. 228, added chapter 44 and enacted chapter analysis without change. Items 921 to 928.

### Cross References

Unlawful possession or receipt of firearms, see Title VII of Pub.L. 90-351, June 19, 1968, 82 Stat. 236, set out in the Appendix to this title.

## § 921. Definitions

(a) As used in this chapter—

(1) The term "person" and the term "whoever" include any individual, corporation, company, association, firm, partnership, society, or joint stock company.

(2) The term "interstate or foreign commerce" includes commerce between any place in a State and any place outside of that State, or within any possession of the United States (not including the Canal Zone) or the District of Columbia, but such term does not include commerce between places within the same State but through any place outside of that State. The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States (not including the Canal Zone).

(3) The term "firearm" means (A) 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; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm.

(4) The term "destructive device" means—

(A) any explosive, incendiary, or poison gas—

- (i) bomb,
- (ii) grenade.

(iii) rocket having a propellant charge of more than four ounces,

(iv) missile having an explosive or incendiary charge of more than one-quarter ounce,

(v) mine, or

(vi) device similar to any of the devices described in the preceding clauses;

(B) any type of weapon (other than a shotgun or a shotgun shell which the Secretary finds is generally recognized as particularly suitable for sporting purposes) by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter; and

(C) any combination of parts either designed or intended for use in converting any device into any destructive device described in subparagraph (A) or (B) and from which a destructive device may be readily assembled.

The term "destructive device" shall not include any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety, or similar device; surplus ordnance sold, loaned, or given by the Secretary of the Army pursuant to the provisions of section 4684(2), 4685, or 4686 of title 10; or any other device which the Secretary of the Treasury finds is not likely to be used as a weapon, is an antique, or is a rifle which the owner intends to use solely for sporting, recreational or cultural purposes.

(5) The term "shotgun" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

(6) The term "short-barreled shotgun" means a shotgun having one or more barrels less than eighteen inches in length and any weapon made from a shotgun (whether by alteration, modification, or otherwise) if such weapon as modified has an overall length of less than twenty-six inches.

(7) The term "rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

(8) The term "short-barreled rifle" means a rifle having one or more barrels less than sixteen inches in length, or a rifle converted from a rifle (whether by alteration, modification, or otherwise) if such weapon, as modified, has an overall length of less than sixteen inches.

(9) The term "importer" means any person who is engaged in the business of importing or bringing firearms or ammunition into the United States for purposes of sale or distribution; and the term "licensed importer" means any such person licensed under the provisions of this chapter.

(10) The term "manufacturer" means any person who is engaged in the manufacture of firearms or ammunition; and the term "licensed manufacturer" means any such person licensed under the provisions of this chapter.

(11) The term "dealer" means (A) any person who is engaged in the business of selling firearms or ammunition at retail prices; (B) any person engaged in the business of repairing, fitting special barrels, stocks, or trigger mechanisms; or (C) any person who is a pawnbroker. The term "licensed dealer" means any dealer who is licensed under the provisions of this chapter.

(12) The term "pawnbroker" means any person whose occupation includes the taking or receiving of any firearm or ammunition as security for a loan or the payment of money.

(13) The term "collector" means any person who is engaged in the business of disposing of firearms or ammunition as curiosities; and the term "licensed collector" means any such person licensed under the provisions of this chapter.

(14) The term "indictment" includes any indictment returned in any court under which a crime punishable under this title may be prosecuted.

(15) The term "fugitive from justice" means any person who has fled from any State to avoid prosecution or the giving of testimony in any criminal proceeding.

(16) The term "antique firearm" means—

(A) any firearm (including any rifle, shotgun, or handgun) with a flintlock, percussion cap, or similar type of ignition system, manufactured in or before 1898; and

(B) any replica of any firearm described in (A)—

(i) is not designed or redesigned to use rimfire or conventional centerfire fixed ammunition; and

(ii) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States.



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(8) The term "short-barreled rifle" means a rifle having one or more barrels less than sixteen inches in length and any weapon made from a rifle (whether by alteration, modification, or otherwise) if such weapon, as modified, has an overall length of less than twenty-six inches.

(9) The term "importer" means any person engaged in the business of importing or bringing firearms or ammunition into the United States for purposes of sale or distribution; and the term "licensed importer" means any such person licensed under the provisions of this chapter.

(10) The term "manufacturer" means any person engaged in the manufacture of firearms or ammunition for purposes of sale or distribution; and the term "licensed manufacturer" means any such person licensed under the provisions of this chapter.

(11) The term "dealer" means (A) any person engaged in the business of selling firearms or ammunition at wholesale or retail, (B) any person engaged in the business of repairing firearms or of making or fitting special barrels, stocks, or trigger mechanisms to firearms, or (C) any person who is a pawnbroker. The term "licensed dealer" means any dealer who is licensed under the provisions of this chapter.

(12) The term "pawnbroker" means any person whose business or occupation includes the taking or receiving, by way of pledge or pawn, of any firearm or ammunition as security for the payment or repayment of money.

(13) The term "collector" means any person who acquires, holds, or disposes of firearms or ammunition as curios or relics, as the Secretary shall by regulation define, and the term "licensed collector" means any such person licensed under the provisions of this chapter.

(14) The term "indictment" includes an indictment or information in any court under which a crime punishable by imprisonment for a term exceeding one year may be prosecuted.

(15) The term "fugitive from justice" means any person who has fled from any State to avoid prosecution for a crime or to avoid giving testimony in any criminal proceeding.

(16) The term "antique firearm" means—

(A) any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898; and

(B) any replica of any firearm described in subparagraph (A) if such replica—

(i) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition, or

(ii) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States

and which is not readily available in the ordinary channels of commercial trade.

(17) The term "ammunition" means ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in any firearm.

(18) The term "Secretary" or "Secretary of the Treasury" means the Secretary of the Treasury or his delegate.

(19) The term "published ordinance" means a published law of any political subdivision of a State which the Secretary determines to be relevant to the enforcement of this chapter and which is contained on a list compiled by the Secretary, which list shall be published in the Federal Register, revised annually, and furnished to each licensee under this chapter.

(20) The term "crime punishable by imprisonment for a term exceeding one year" shall not include (A) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices as the Secretary may by regulation designate, or (B) any State offense (other than one involving a firearm or explosive) classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less.

(b) For the purposes of this chapter, a member of the Armed Forces on active duty is a resident of the State in which his permanent duty station is located.

Added Pub.L. 90-351, Title IV, § 902, June 19, 1968, 82 Stat. 226, and amended Pub.L. 90-618, Title I, § 102, Oct. 22, 1968, 82 Stat. 1214; Pub.L. 93-639, § 102, Jan. 4, 1975, 88 Stat. 2217.

#### Historical Note

References in Text. Section 4684(2), 4685, or 4686 of title 10, referred to in subsec. (a)(4), is section 4684(2), 4685, or 4686 of Title 10, Armed Forces.

1975 Amendment. Subsec. (a)(4). Pub. L. 93-639 substituted "to use solely for sporting, recreational or cultural purposes" for "to use solely for sporting purposes".

1968 Amendment. Subsec. (a). Pub.L. 90-618 added the definitions of the terms "collector", "licensed collector", and "crime punishable by imprisonment for a term exceeding one year", amended the definitions of the terms "person", "whoever", "interstate or foreign commerce", "State", "firearm", "destructive device", "dealer", "indictment", "fugitive from justice", "antique firearm", "ammunition", and "published ordinance", and reenacted without change the definitions of the terms "shotgun", "short-barreled shotgun", "rifle", "short-barreled rifle", "importer", "licensed importer", "manufac-

turer", "licensed manufacturer", "licensed dealer", "pawbroker", and "Secretary" or "Secretary of the Treasury".

Subsec. (b). Pub.L. 90-618 substituted provisions determining that a member of the armed forces on active duty is a resident of the state in which his permanent duty station is located for provisions defining the terms "firearm", "destructive device", and "crime punishable by imprisonment for a term exceeding one year".

Effective Date of 1968 Amendment. Section 105 of Pub.L. 90-618 provided that:

"(a) Except as provided in subsection (b), the provisions of chapter 44 of title 18, United States Code, as amended by section 102 of this title [amending this chapter], shall take effect on December 16, 1968.

"(b) The following sections of chapter 44 of title 18, United States Code, as

amended by section 102 of this title [amending this chapter] shall take effect on the date of the enactment of this title [Oct. 22, 1968]: Sections 921, 922(1), 925(a)(1), and 925(d) [this section, section 922(1) and section 925(a)(1), and (d) of this title]."

Effective Date. Section 907 of Pub.L. 90-351 provided that: "The amendments made by this title [enacting this chapter and provisions set out as notes under this section and repealing sections 901 to 910 of Title 15] shall become effective one hundred and eighty days after the date of its enactment [June 19, 1968]; except that repeal of the Federal Firearms Act [sections 901 to 910 of Title 15] shall not in itself terminate any valid license issued pursuant to that Act [sections 901 to 910 of Title 15] and any such license shall be deemed valid until it shall expire according to its terms unless it be sooner revoked or terminated pursuant to applicable provisions of law."

Short Title of 1968 Amendment. Section 1 of Pub.L. 90-618 provided: "That this Act [which enacted sections 5822, 5871 and 5872 of Title 28, amended this section and sections 922 to 928 of this title, and Appendix to this title, and sections 5801, 5802, 5811, 5812, 5821, 5841 to 5849, 5851 to 5854, 5861, 6806, and 7273 of Title 28, repealed sections 5082 and 6107 of Title 26, omitted sections 5803, 5813, 5814, 5831, 5855, and 5862 of Title 28, and enacted material set out as notes under this section and Appendix to this title, and section 5801 of Title 26] may be cited as the 'Gun Control Act of 1968'."

Congressional Findings and Declaration. Section 101 of Pub.L. 90-618 provided that: "The Congress hereby declares that the purpose of this title [which amended this chapter] is to provide support to Federal, State, and local law enforcement officials in their fight against crime and violence, and it is not the purpose of this title to place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, or use of firearms appropriate to the purpose of hunting, trapshooting, target shooting, personal protection, or any other lawful activity, and that this title is not intended to discourage or eliminate the private ownership or use of firearms by law-abiding citizens for lawful purposes, or provide for the imposition by Federal regulations of any procedures or requirements other than those reasonably necessary to implement and effectuate the provisions of this title."

## CHAPTER 15-49

## PENALTIES, FINES, AND FORFEITURES

Section  
15-49-12. Definitions. firearm — Prohibitions — Ex-  
15-49-13. Weapons policies — Possession of a ceptions.

**15-49-12. Definitions.** As used in section 15-49-13:

1. "Firearm" has the meaning given in 18 U.S.C. 921 [Pub. L. 90-351; 82 Stat. 197].
2. "School property" includes all school land, buildings, structures, facilities, and school vehicles whether owned or leased by a school district, and the site of any school-sponsored event or activity.

Source: S.L. 1995, ch. 203, § 1.

**Effective Date.**

This section became effective August 1, 1995.

**15-49-13. Weapons policies — Possession of a firearm — Prohibitions — Exceptions.**

1. Each school board shall by resolution implement a policy governing the possession of weapons on school property and at school functions and provide for the punishment of any student found to be in violation.
2. The weapons policy must prohibit the possession of a firearm by a student on school property and at school functions and provide for the punishment of any student found to be in violation. Punishment must include immediate suspension from school and expulsion for at least one year. The policy must authorize the school district superintendent or the school principal if the school district does not have a superintendent to modify an expulsion under this section on a case-by-case basis in accordance with criteria established by the board. Before expelling a student, a school board shall, within ten days of the student's suspension, provide the student with a hearing before the school board at which time the school board must take testimony and consider evidence, including the existence of mitigating circumstances. A school board that expels a student under this subsection may provide educational services to the student in an alternative setting.
3. Actions taken under this section must be in accordance with chapter 15-59 and the Individuals With Disabilities Education Act [Pub. L. 91-230; 84 Stat. 121; 20 U.S.C. 1400 et seq.].
4. This section does not apply to any student participating in a school-sponsored shooting sport, provided the student informs the school principal of the student's participation and the student complies with all requirements set by the principal regarding the safe handling and storage of the firearm.

Source: S.L. 1995, ch. 203, § 2.

**Effective Date.**

This section became effective August 1, 1995.

question + answer

From: Phil Johnston@philjohn on 01/28/99 11:54 AM

To: Ray E. Holmberg/NDLC/NoDak@NoDak, Wayne K. Stenehjem/NDLC/NoDak@NoDak, Rich P. Wardner/NDLC/NoDak@NoDak, Duane L. DeKrey/NDLC/NoDak@NoDak, Kathy K. Hawken/NDLC/NoDak@NoDak, John J. Mahoney/NDLC/NoDak@NoDak

cc:

Subject: SB 2192

Ladies & Gentlemen; While the intentions are well directed in SB 2192, the impetus is so wide that unless it is amended, it appears that the bill in its current form would eliminate hunting on the various school lands scattered throughout the state--many of these plots are located miles from the nearest human being. Many provide prime pheasant habitat and great opportunities each fall. In addition, occasionally school gyms in rural areas provide a "natural" arena for hunter safety classes or even rigidly supervised junior air gun competition.

I respectfully request that SB 2192 be withdrawn unless it can be amended to reflect the above concerns prior to consideration by the full Legislature.

Sincerely,

Phil W. Johnston  
Forest River

*answery*



Ray E. Holmberg  
01/28/99 04:26 PM

To: Phil Johnston@philjohn@uslink.net@SMTP@Hub  
cc: WSTENEHJEM [SMTPMAIL.WSTENEHJ]@GATEWAY, Rich P. Wardner/NDLC/NoDak@NoDak, Duane L. DeKrey/NDLC/NoDak@NoDak, Kathy K. Hawken/NDLC/NoDak@NoDak, John J. Mahoney/NDLC/NoDak@NoDak  
Subject: Re: SB 2192

Phil:

SB2192 is a school safety bill, not a restriction on hunting. As the recipient of the NRA's Legislator of the Year award in 1985, I believe my record is supportive of the rights of gun owners.

SB 2192 does not impact or expand the problem you describe. The language in the bill about "school property" is law that has existed since 1995. It refers to school lands leased or owned by **a school district**. State school lands are not subject to the restrictions covered by this section of the law.

The next section of the code, 15-49-13, requires school boards to implement a policy governing the possession of weapons on school property. Clearly a district with the "rural gym" you describe could accommodate your concerns. The section goes on to say: "[this section] does not apply to any student participating in a school-sponsored shooting sport, provided the student informs the school principal of the student's participation and the student complies with all requirements set by the principal regarding the safe handling and storage of the firearm."

You are probably aware that this law on school weapons was enacted in 1995 as a result of a federal mandate that states enact such a statute. Our mistake at that time was not using our states definition of firearm rather than utilizing the federal definition.

Please contact me if you would like any further information.

Ray

**TESTIMONY ON SB 2192**  
**HOUSE JUDIARY COMMITTEE**  
**February 16, 1999**  
**Linda Johnson, Director of School Health Programs**  
**328-4138**  
**Department of Public Instruction**

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Mr. Chairperson and members of the committee:

My name is Linda Johnson and I am the Director of School Health Programs including Safe and Drug Free Schools for the Department of Public Instruction. I am here to support SB 2192 if amended.

The Department of Public Instruction stands in support of providing safe schools where learning is the first priority but we also need to assure the education of all students. The current statute expels students in possession of firearms on school property for one year. The current definition of "firearms" includes weapons of a lethal nature as defined in federal law 18 U.S.C. 921. This law is attached and the definition can be found under (a) (3) p. 213-215. Our current law also allows the local superintendent to modify an expulsion on a case-by-case basis, and the student to have a hearing before the school board. Alternative education may be provided. Discipline and placement of students with disabilities must be in accordance with the Individuals with Disabilities Education Act.

Attached is the *1994 Improving Americas Schools Act PL103-382, Title XIV – General Provision, Part F-Gun Possession*. Also attached is the *Gun-Free Schools Act Report* used to collect data annually on North Dakota Century Code 15-49-12 as required in the above Act {Sec.14601 (d) (e) }. The definition of

firearms can also be found on page three of the *Report*. School districts report this information to DPI annually on their final Safe and Drug Free Schools reports and DPI files this report as required with the US Department of Education. Since reporting began North Dakota has reported:

1995-1996	2 handguns	Sr. Hi	2 other	Sr. Hi	none shortened
1996-1997	1 other	Sr. Hi	shortened by district		
1997-1998	1 handgun	Jr. Hi	none shortened		

All schools reported having a firearms policy in place. The sample school board policy is attached. At the present time the school districts may make their policies broader than what is required by law.

If this bill is adopted, alternative education for these expelled children needs consideration. The attached Attorney General's ruling states "North Dakota public schools do not have the responsibility to arrange for education services at an alternative location if the subject public school district had expelled the student from its school, regardless of the financial status of the student's parents, unless a specific legislative mandate provided otherwise." Mandates now provide for education for disabled and adjudicated youth. Therefore, a student without a disability who does not have a history bad enough to warrant adjudication could find themselves with no educational opportunities for one calendar year, affecting as much as three semesters of work.

Expanding the "firearms" definition may be advantageous to the educational environment. School security guards state they can not tell the difference between look-alike "toy" guns and the real thing and must treat them all as potential live firearms. Some of these offenders may be quite young for school expulsion for one year. Absenteeism is a high indicator of dropouts. Three years after leaving

school, 70% of antisocial youth have been arrested at least once. Eighty-two percent of persons in state and local prisons are high school dropouts. When an administrator expels a student who does not want to be in school, they may be rewarding that student.

Therefore, consider the proposed amendment relating to alternative education for expelled students. Rules need to be adopted for this provision. The local school district would still receive foundation aid to educate this child. An uneducated individual becomes even more of a burden on society. The best way to make a productive citizen is through education.



PROPOSED AMENDMENTS TO SENATE BILL NO. 2192

Page 1, after line 13, insert:

**SECTION 2.** A new section to section 15-49-12 of the North Dakota Century Code is created and enacted as follows:

**Expelled students – Education.** Each school district shall provide an alternative school, class, or education program for expelled students.

**SECTION 3.** A new section to section 15-49-12 of the North Dakota Century Code is created and enacted as follows:

**Expelled students – Education – Rules.** The superintendent of public instruction shall adopt rules regarding the provision of alternative schools, classes, and education programs for expelled students.

**SECTION 4.** A new section to section 15-49-12 of the North Dakota Century Code is created and enacted as follows:

**Expelled students – Per student payments.** School districts are eligible to receive per student payments under chapter 15-40.1 for students participating full time in alternative schools, classes, or education programs under section 2 of this Act and proportionately reduced student payments under 15-40.1 for students participating on a part-time basis.

Renumber accordingly

2-16-99

Fifty-sixth  
Legislative Assembly  
of North Dakota

**SENATE BILL NO. 2192**

*PRO - Reg. Joanne DeKrey*

Introduced by

Senators Holmberg, W. Stenehjem, Wardner

Representatives DeKrey, Hawken, Mahoney

*DO PASS  
w.  
Reg. Hawken*

*Linda Johnson - DPI  
(prog. am.) Dir. of School  
Health  
Nancy Sand - NDEA*

1 A BILL for an Act to amend and reenact section 15-49-12 of the North Dakota Century Code,  
2 relating to the scope of school weapons policies.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 15-49-12 of the 1997 Supplement to the North  
5 Dakota Century Code is amended and reenacted as follows:

6 **15-49-12. Definitions.** As used in section 15-49-13:

7 1. "Firearm" has the meaning given in 18 U.S.C. 921 [Pub. L. 90-351; 82 Stat. 197] .  
8 *and also means any weapon commonly referred to as a BB gun, pellet gun, air*  
9 *rifle, or CO<sub>2</sub> gun that will expel or is readily capable of expelling a projectile by the*  
10 *action of a spring, compressed air, or compressed gas.*

11 2. "School property" includes all school land, buildings, structures, facilities, and  
12 school vehicles whether owned or leased by a school district, and the site of any  
13 school-sponsored event or activity. *It does not include school trust lands*  
*not managed by the Board of University and School Lands.*

## CARRYING WEAPONS

The (Name of District) School Board determines that possession and/or use of a weapon by a student is detrimental to the welfare and safety of the students and school personnel within the district.

No student will knowingly possess, handle, carry, or transmit any weapon or dangerous instrument in any school building, on school grounds, in any school vehicle or at any school-sponsored activity. Such weapons include but are not limited to any knife, razor, ice pick, explosive smoke bomb, incendiary device, gun (including pellet gun), slingshot, bludgeon, brass knuckles or artificial knuckles of any kind, or any object that can reasonably be considered a weapon or dangerous instrument.

Violation of this policy will result in disciplinary action. All weapons will be confiscated and may be turned over to the student's parents or to law enforcement officials at the discretion of the administration.

Bringing a firearm, as defined in 18 U.S.C. 921, to school will require that proceedings for the expulsion of the student involved for a minimum of one year be initiated immediately by the principal. The Superintendent may recommend a modification of the expulsion on a case by case basis. This modification shall be based on the circumstances revealed in the investigation into the incident conducted by the Superintendent or other person designated by the Superintendent to conduct the investigation. **[Alternate education may be provided for students who are expelled under this section.]** The [principal] [Superintendent] will notify law enforcement.

Other violation of this policy will require that proceedings for the suspension and/or expulsion until the end of the current school term be initiated immediately by the principal.

Proper due process proceedings as defined in Policy FHDA (Suspension and Expulsion) will be observed in all suspensions and expulsions under this policy.

A student who is defined as having a disability under the Individuals with Disabilities Education Act may be placed in an alternative educational setting for up to 45 calendar days, during which time a determination will be made as to whether bringing the firearm to school was a manifestation of the student's disability. Discipline and placement of the student will be in accordance with the Individuals with Disabilities Education Act.

REFERENCE  
July, 1995

POLICY ADOPTED:  
POLICY AMENDED:

Cross Ref:	Policy FHBC	Searches of Lockers
	Policy FHBD	Searches of Students
	Policy FHDA	Suspension and Expulsion
Legal Ref:	NDCC Ch 14-02.4	Discrimination
	NDCC 15-29-08(13)	General powers and duties of school board
	NDCC 15-49-12	Definitions
	NDCC 15-49-13	Possession of a firearm - Prohibitions - Exceptions
	<u>Tinker v. Des Moines</u>	393 U.S. 503 (1969)
	<u>Honig v. Doe</u>	
	PL 103-227	Goals 2000: Educate America Act, Title X, Section 1032
		Elementary and Secondary Act of 1965 as amended by the Gun Free Schools Act of 1994
		<u>1973 Rehabilitation Act</u> , Section 504
	45 <u>CFR</u> Part 84	Regulations
	20 U.S.C. 1413	Individuals with Disabilities Education Act
	42 U.S.C. 12183(b)	American With Disabilities Act
	18 U.S.C. 921	Definitions

REFERENCE  
July, 1995

POLICY ADOPTED:  
POLICY AMENDED:



GARY J. NELSON  
State Senator  
Chairman

JOHN D. OLSRUD  
Director

JAY E. BURINGRUD  
Assistant Director

CHESTER E. NELSON, Jr.  
Legislative Budget  
Analyst & Auditor

JOHN WALSTAD  
Code Revisor

# North Dakota Legislative Council

STATE CAPITOL, 600 EAST BOULEVARD, BISMARCK, ND 58505-0360 (701) 328-2916 TTY: 1-800-366-6888

February 25, 1999

Honorable Ray Holmberg  
State Senator  
State Capitol  
Bismarck, ND 58505

Dear Senator Holmberg:

You asked that we examine Senate Bill No. 2192 and determine whether the definition of "school property" in that bill extends to state land under the control of the Board of University and School Lands. Senate Bill No. 2192, a copy of which is enclosed, amends North Dakota Century Code (NDCC) Section 15-49-12. That section incorporates the following definition:

"School property" includes all school land, buildings, structures, facilities, and school vehicles whether owned or leased by a school district, and the site of any school-sponsored event or activity.

When viewed by itself, the reference to "school land" within the definition of "school property" could be understood to include all state-owned land under the control of the Board of University and School Lands. However, Section 15-49-12 was not enacted as a stand-alone provision. It was Section 1 of 1995 House Bill No. 1178 (1995 S.L., ch. 203), a copy of which is also enclosed. Section 2 of 1995 House Bill No. 1178, which was codified as NDCC Section 15-49-13, provides that:

1. Each school board shall by resolution implement a policy governing the possession of weapons **on school property** . . . (emphasis added)

A school district, as a political subdivision, has no statutory or legal control over any land belonging to the state nor does it have any statutory or legal control over activities on any land belonging to the state. That authority is clearly within the purview of the Board of University and School Lands. North Dakota Century Code Section 15-01-02 provides:

The board [of university and school lands] has:

1. Full control of the selection, appraisal, rental, sale, disposal, and management of:
  - a. Lands donated or granted by or received from the United States or from any other source for the support and maintenance of the common schools.

- b. All lands which fall to the state by escheat.
- c. All lands donated or granted by or received from the United States or from any other source for the maintenance of the educational, penal, or charitable institutions.
- d. All lands acquired by the state through the investment of the permanent school funds of the state as the result of mortgage foreclosure or otherwise.

...

A school district is, however, statutorily given **full custody and control over all school property belonging to the district**. North Dakota Century Code Section 15-29-08 provides:

The powers and duties of the school board of a public school district shall be as follows:

...

- 9. To have the custody and control of all school property belonging to the district, and, when the school district is located within a city, to see that the ordinances and bylaws of the city in relation to such school property are observed.

...

It would therefore appear that the definition of "school property" in Senate Bill No. 2192 is not intended to include state school lands but rather school land belonging to the school district.

We hope this information assists you.

Sincerely,



L. Anita Thomas  
Counsel

LAT/JFB  
Encs.

Phone: (701) 328-2800  
Fax: (701) 328-3650  
[www.land.state.nd.us](http://www.land.state.nd.us)

North Dakota  
**STATE LAND DEPARTMENT**  
1707 N 9th Street  
PO Box 5523  
Bismarck, ND 58506-5523



Robert J. Olheiser  
COMMISSIONER

**TESTIMONY OF ROBERT OLHEISER**  
State Land Commissioner

A handwritten signature in black ink, appearing to read "R. Olheiser".

Concerning  
SB2192  
House Judiciary Committee

March 8, 1999

I have been asked to comment on page 1, lines 11-13 of SB 2192. This portion of the bill references the definition of "school property". The question we have been asked is; "are the school trust lands that are managed by the Board of University and School Lands, 'school property', as defined in SB 2192?"

The school trust lands that are managed by the Board of University and School Lands were given to the State of North Dakota, by the U. S. Congress, for the purpose of funding "common schools" (public grades K-12). It is clear in the 1889 Federal Enabling Act and the North Dakota Constitution that these lands are owned by the State and managed for the benefit of K-12 students, statewide. None of these school trust lands are owned or leased by a specific school district.

SB 2192 references "school land... owned or leased by a school district..." Because none of our land is owned or leased by a school district, the Land Board would not consider the school trust land that it manages to come under the definition of "school property" as defined in SB 2192, unless directed by an appropriate Court to think otherwise.