

STUDENTS

3311

Page 1 of 3

FIREARMS AND WEAPONS

Firearms

For the purposes of the firearms section of this policy, 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 pursuant to 18 U.S.C. 921 (4). Such term does not include an antique firearm pursuant to 18 U.S.C. 921 (16).

It is the policy of the Bainville K-12 Schools to comply with the federal Gun Free Schools Act of 1994 and state law 20-5-202 (2), MCA, pertaining to students who bring a firearm to, or possess a firearm at, any setting that is under the control and supervision of the school district. In accordance with 20-5-202 (3), MCA, a teacher, superintendent, or a principal shall suspend immediately for good cause a student who is determined to have brought a firearm to, or possess a firearm at, any setting that is under the control and supervision of the school district. In accordance with Montana law, a student who is determined to have brought a firearm to, or possess a firearm at, any setting that is under the control and supervision of the school district must be expelled from school for a period of not less than 1 year.

However, on a case-by-case basis, the Board of Trustees will convene a hearing to review the underlying circumstances and, in the discretion of the Board, may authorize the school administration to modify the requirement for expulsion of a student.

A decision to change the placement of a student with a disability who has been expelled pursuant to this section must be made in accordance with the Individuals with Disabilities Education Act.

Possession of Weapons other than Firearms

The District does not allow weapons on school property. Any student found to have possessed, used or transferred a weapon on school property will be subject to discipline in accordance with the District’s discipline policy. For purposes of this section, “weapon” means any object, device, or instrument designed as a weapon or through its use is capable of threatening or producing bodily harm or which may be used to inflict self-injury, including but not limited to air guns; pellet guns; BB guns; fake (facsimile) weapons; all knives; blades; clubs; metal knuckles; numchucks (also known as nunchucks); throwing stars; explosives; fireworks; mace or other propellants; stun guns; ammunition; poisons; chains; arrows; and objects that have been modified to serve as a weapon.

No person shall possess, use, or distribute any object, device, or instrument having the appearance of a weapon, and such objects, devices, or instruments shall be treated as weapons, including but not limited to weapons listed above which are broken or non-functional, look-alike guns; toy guns; and any object that is a facsimile of a real weapon. No person shall use articles designed for other purposes (i.e., lasers or laser pointers, belts, combs, pencils, files, scissors, etc.) to inflict bodily harm and/or intimidate, and such use will be treated as the possession and use of a weapon.

The District will refer to law enforcement for immediate prosecution any person who possesses, carries, or stores a weapon **in a school building**, and the District may take disciplinary action as well in the case of a student. In addition the District will refer for possible prosecution a parent or guardian of any minor violating this policy on grounds of allowing a minor to possess, carry, or store a weapon in a school building. (45-8-361 (1) (2))

For the purposes of this section only, “school building” means all buildings owned or leased by a local school district that are used for instruction or for student activities. (45-8-361 (5a))

The Board may grant persons and entities advance permission to possess, carry, or store a weapon in a school building. All persons who wish to possess, carry, or store a weapon in a school building must request permission of the Board at a regular meeting. The Board has sole discretion in deciding whether to allow a person to possess, carry, or store a weapon in a school building. (45-8-361 (3b))

This policy does not apply to law enforcement officers acting in his or her official capacity. (45-8-361 (3a))

The trustees shall annually review this policy and update the policy as determined necessary by the trustees based on changing circumstances pertaining to school safety.

Note: Section (g) of the NCLB Section 4141 – Gun Free Requirements, carves out a very significant exception to the Gun Free Schools Act in that it allows a student to have “a firearm that is lawfully stored inside a locked vehicle on school property. . .” Montana law (20-5-202, MCA), on the other hand, does not provide for any exception to the expulsion requirement if a student has a firearm that is lawfully stored inside a locked vehicle on school property. The only reference to federal law in 20-5-202(2), MCA is the federal definition of a firearm. As you well know 20-5-202(2), MCA provides that:

(2) The trustees of a district shall adopt a policy for the expulsion of a student who is determined to have brought a firearm, as defined in 18 U.S.C. 921, to school and for referring the matter to the appropriate local law enforcement agency. A student who is determined to have brought a firearm to school under this subsection must be expelled from school for a period of not less than 1 year, except that the trustees may authorize the school administration to modify the requirement for expulsion of a student on a case-by-case basis.

So, Montana schools are required, by state law, to expel a student from school for a period of not less than 1 year if it is determined that the student brought a firearm to school, subject to the case-by-case exception noted in the statute. Based upon the exception noted in federal law and in circumstances where a student is found to have a firearm on school property in a locked vehicle, Montana schools should be citing state law (20-5-202, MCA) and district policy to support any recommendation for expulsion.

*There is one significant inconsistency between the Federal Gun Free Schools Act and Montana is that under federal law it provides that “State law **shall** allow the chief administering officer of a local educational agency to modify such expulsion requirement for a student on a case-by-case basis if such modification is in writing,” whereas 20-5-202(2), MCA, provides that the trustees **may** authorize the school administration to modify the requirement for expulsion of a student on a case-by-case basis.*

Cross Reference: Policy 3310 Student Discipline
 Policy 4332 Conduct of School Property

Legal Reference: § 20-5-202, MCA Suspension and expulsion
 § 45-8-361, MCA Possession or allowing possession of
 20 U.S.C. § 7151, et seq. a weapon in a school building
 18 U.S.C. § 921 Gun Free Schools Act of 1994
 NCLB, Section 4141 Definitions
 Gun Free Requirements

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