

## **Title IV, Part A**

# **Safe and Drug-Free Schools and Communities**

## Title IV, Part A—Safe and Drug-Free Schools and Communities

### Purpose

The purpose of Title IV, Part A, Safe and Drug-Free Schools and Communities Act (SDFSCA) is to support programs that prevent violence in and around schools; that prevent the illegal use of alcohol, tobacco, and drugs; that involve parents and communities; and that are coordinated with related Federal, State, school, and community efforts and resources to foster a safe and drug-free learning environment that supports student academic achievement.

### Principles of Effectiveness

**Question 1: What are the current principles of effectiveness requirements under the SDFSCA statute?**

The Principles of Effectiveness provide the framework to assist States and local entities in designing, implementing, and evaluating high-quality programs and achieving measurable results. Programs or activities must:

- be based on an assessment of objective data regarding the incidence of violence and illegal drug use in the elementary schools and secondary schools and communities to be served. This assessment must include an objective analysis of the current conditions and consequences regarding violence and illegal drug use that is based on ongoing local assessment or evaluation activities. Analysis of the conditions and consequences must include delinquency and serious discipline problems among students who attend such schools (including private **nonprofit** school students who participate in the drug and violence prevention program).
- be based on an established set of performance measures aimed at ensuring that the elementary schools and secondary schools and communities to be served have a safe, orderly, and drug-free learning environment.
- be based on scientifically based research demonstrating that the program to be used will reduce violence and illegal drug use.
- be based on an analysis of the data reasonably available at the time, of the prevalence of risk factors, including high or increasing rates of reported cases of child abuse and domestic violence; protective factors, buffers, assets; or other variables identified through scientifically based research that occur in schools and communities.
- include meaningful and ongoing consultation with and input from parents in the development of the application and administration of the program or activity.

- The program must be evaluated periodically to refine, improve and strengthen the program. The results must be available to the public for review.

**Question 2: Who must implement the Principles of Effectiveness?**

All entities that receive SDFSCA funds, either through grants or contracts, must comply with the Principles of Effectiveness.

**Question 3: What are the responsibilities of the LEA that receive SDFSCA in implementing the Principles of Effectiveness?**

LEAs will need to examine needs assessment information, review goals and objectives, and determine if the programs proposed meet standards established by the Principles of Effectiveness. LEAs may use a variety of processes and procedures to make these determinations, including applications or progress reports.

### **Definition of Scientifically Based**

**Question 4: How does the LEA know if its programs are scientifically based?**

Section 9101(37) of ESEA, as amended by *No Child Left Behind*, emphasizes that scientifically based research means “research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs.” The statute then explains that scientifically based research includes research that:

- Employs systematic, empirical methods that draw on observation or experiment;
- Involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;
- Relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators;
- Is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random-assignment experiments, or other designs to the extent that those designs contain within-condition or across-condition controls;
- Ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings, and
- Has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review. (It should be noted that a practitioner journal or education magazine are *not* the same as a peer-reviewed academic journal.)

## Needs Assessments

### **Question 5: What is meant by “objective data” in conducting a needs assessment?**

“Objective data” generally means information not influenced by emotion, surmise, or personal opinion. LEAs should use concrete information to assess problems and programs. It is important for LEAs to base decisions about programs, and the allocation of SDFSCA resources, on objective data that can form the basis for achieving consensus on activities and assessing real, measurable progress toward a safe and drug-free learning environment.

Examples of objective data include information from records that detail the number of referrals to law enforcement for bringing a firearm to school, or results from student surveys about the proportion of students engaged in binge drinking. In contrast, subjective data might include information collected in a focus group about teacher perceptions of safety, or student evaluations of a program that assess how much they enjoyed the lessons presented.

### **Question 6: Will a needs assessment that contains only “process” data meet the Principles of Effectiveness requirement?**

Because LEAs are to develop measurable goals and objectives for prevention programs linked to changes in student attitudes and behaviors, needs assessment information that focuses only on process and implementation issues (such as the number of teachers trained or the number of hours of instruction provided) will not provide sufficient support for the goal-setting or evaluation processes embodied in the Principles of Effectiveness.

### **Question 7: How often must data be collected for the needs assessment?**

LEAs must collect data on an ongoing basis, through assessments or evaluation activities. LEAs are in the best position to identify rapidly changing situations in their communities and to know whether existing data should still be included in a strong needs assessment process.

### **Question 8: Must an LEA’s needs assessment include both drug use and violence?**

All assessment efforts must include data about both problems. The decision to focus programs exclusively on a particular problem area should be based on the results of the needs assessment process, and should not precede collection and analysis of information on the nature and extent of the problem in a particular school or neighborhood. LEAs should use the results of their needs assessment to help select programs or activities for implementation.

### **Question 9: Do the Protection of Pupil Rights Amendment (PPRA) requirements apply to surveys used to collect information about drug use and violent behavior?**

PPRA applies to surveys, analyses, or evaluations that: (1) reveal information in eight different categories – political affiliations or beliefs of the student or their parents; mental or psychological problems of the student or the students family; sex behavior or attitudes; illegal, anti-social, self-incriminating, or demeaning behavior; critical appraisal of individuals with whom the respondents have close family relationships; legally

recognized privileged relationships such as those of lawyers, physicians and ministers; religious practices, affiliations, or beliefs of the student or student's parents; or income – (2) are not voluntary (“required”) by LEAs; and (3) are conducted by an LEA that receives funds under any applicable Federal program.

**Question 10: Must the data used in the assessment reflect information about drug use and violence problems in schools and neighborhoods, or are State-level or national data sufficient?**

To the extent possible, data used in the assessment should be focused on the drug use and violence problems in the school or neighborhood. While State-level or national data, taken from surveys, such as Monitoring the Future or the Youth Risk Behavior Surveillance System (YRBSS), may provide interesting benchmarks for comparison, analyses of existing data at those levels indicate that there are regional and other differences that are likely to affect significantly the development of local needs assessment information, measurable goals and objectives, and program selection decisions.

**Question 11: Must the LEA gather all the data used in the assessment process?**

LEAs are encouraged to identify data collected by other programs or agencies that may be incorporated into their needs assessment process.

**Question 12: What do LEAs do with data after they are collected?**

Activities following data collection are the most important part of a needs assessment process. Data collected (or gathered from other sources) should be made an integral part of the planning process. For example, an analysis of various pieces of data collected might help identify:

- what drugs are used in the area;
- whether drugs are used by many students or if their use is concentrated in a more limited segment of the population;
- whether particular drugs are used more prevalently by some student age groups;
- what other prevention resources are available or activities are being implemented in the school or community

Similar analysis can be conducted of data about violence. The answers to these and similar questions should help LEAs understand and prioritize their needs, identify a specific problem for attention, develop measurable goals related to that problem, and select effective programs for implementation.

**Question 13: If an LEA is experiencing some unique challenges with regard to drug use and violence, and has ideas for new approaches that have not yet been fully tested, could the LEA implement a program that does not meet the standard established for “scientifically based research”?**

Consistent with Section 4115(a)(3) of the SDFSCA, LEAs may apply to their SEA for a waiver of the requirement to implement programs that are scientifically based programs. However, LEAs applying for waivers must demonstrate that funded programs or activities are innovative and have a substantial likelihood of success.

**Question 14: What if a program is effective at reducing discipline referrals, but does not meet all the requirements of the scientifically-based definition?**

If the LEA can justify that the program it is implementing is effective through means such as the PEIMS 425 record, discipline referrals, survey data, etc., and the required representatives that develop the LEA's Title IV, Part A program believe that it has the support of schools and community, the LEA may continue to implement that program by completing the Waiver Request for Title IV, Part A—SDFSC Evidence of Effectiveness in the Consolidated NCLB Application (**SAS-NCLBAA-07**) on WV4003.

## **Collaboration**

**Question 15: Does NCLB require a SDFSC Advisory Committee?**

LEAs are no longer required to establish or consult with an existing advisory committee. However, in order to receive funds, LEAs must develop their applications through consultation with State and local representatives, school representatives (including private **nonprofit** schools), teachers, school staff, parents, students, community-based organizations, and others with expertise in violence and drug-prevention efforts, such as medical, mental health, and law enforcement professionals. This consultation must be ongoing as LEAs seek advice on how best to coordinate their activities and related strategies. LEAs may elect to employ an advisory council in this role.

LEAs are required to consult with appropriate representatives and organizations at the initial stages of the design and development of programs and activities, including on efforts to meet the Principles of Effectiveness. [See Section 4114(c)(2) of the SDFSCA.]

The LEA can continue to use its existing SDFSC Advisory Committee or it can assign those duties to another committee that currently has members who represent the required areas, listed above.

## **Consultation with Parents**

**Question 16: Do parents have a role to play in implementing programs and activities supported with SDFSCA funds?**

The statute requires that parents be consulted in the development of, and have an opportunity to provide input concerning, the application for program funds and the administration of any program or activity implemented with SDFSCA funds. Although the statute does not specify how often consultation must take place, it does prescribe a meaningful and ongoing consultation and input process.

## Performance Measures

### **Question 17: What is a performance measure and how many must an LEA have?**

A performance measure is one that permits a quantitative assessment of progress. An example of a performance measure that might be adopted by an LEA is: "To reduce the number of fights between students in the upcoming school year by one-half compared to the previous year." It will be easy to assess progress toward achieving this goal because it includes a quantifiable outcome [provided that baseline (or beginning) data exist and that a process is in place for counting fights during the school year.]

Contrast this with a performance measure on a similar topic that is not as easily measured: "To provide a safe learning environment during the upcoming school year." While the goal is a laudable one, it is difficult to measure success in achieving progress unless quantifiable outcomes are specified and a data collection process is in place.

Local performance measures should be directly related to the results of the local needs assessment, and linked to performance measures. An analysis of data collected as part of the needs assessment should help focus attention on the most problematic issues and guide the development of performance measures that relate to improvement in those areas.

The number of performance measures should be based on individual needs and reflect adequately the outcomes to be achieved. A few, well-chosen performance measures are probably sufficient for most programs.

### **Question 18: Must performance measures focus on "behavioral" or "attitudinal" program outcomes?**

The Principles of Effectiveness require that programs implemented with SDFSCA funds be designed to prevent or reduce violence and illegal drug use. Performance measures, thus, must include goals that relate to reduced violence or drug use. LEAs may also adopt goals related to changing attitudes that are predictors of or precursors to youth drug use or violent behavior or goals related to the quality of program implementation.

## Risk Factors

### **Question 19: Programs and activities must be based on data on risk factors, protective factors, buffers and assets. What is meant by those terms?**

The terms protective factor, asset, or buffer mean any one of a number of the community, school, family, or peer-individual domains that are known, through prospective, longitudinal research efforts, or which are grounded in a well-established theoretical model of prevention, and have been shown to prevent alcohol, tobacco, or illegal drug use, as well as violent behavior, by youth in the community, and which promote positive youth development. For example, one protective factor in the community domain is the establishment of community norms that support students who abstain from drug use.

The term risk factor means any one of a number of characteristics of the community, school, family, or peer-individual domains that are known, through prospective, longitudinal research efforts, to be predictive of alcohol, tobacco, and illegal drug use, as well as violent behavior, by youth in the school and community. An example of a risk factor in the family domain is inconsistent family management and disciplinary practices.

## LEA Funds

**Question 20: What is the formula for distributing SDFSC's funds to LEAs?**

The Agency distributes 60 percent of the SDFSC funds based on the relative amount LEAs received under Part A of Title I for the preceding fiscal year, and 40 percent based on relative enrollments in private and public elementary and secondary schools within the boundaries of the LEAs.

**Question 21: What is the percentage of SDFSCA funds that an LEA may carryover?**

An LEA may keep up to 25 percent of its allocation for the following fiscal year. An LEA may retain an amount greater than 25 percent of its fiscal year allocation for use in the following year if it can demonstrate, to the satisfaction of the Agency, that it has "good cause" for such a carryover. [See Section 4114(a)(3) of the SDFSCA]

**Question 22: According to Statute, LEAs are limited to 2% administrative costs. What costs are considered to be administrative costs?**

Statute states that an LEA is restricted to 2% of its current entitlement for administrative costs. Administrative costs include both direct administrative costs and indirect costs. Indirect administrative costs include costs associated with human resources, budgeting, accounting, purchasing, and other fiscal activities such as auditing. Salaries and benefits of staff that supervise program staff are part of the LEA's direct administrative costs.

34 CFR 80.3 states: administrative requirements mean those matters common to grants in general, such as financial management, kinds and frequency of reports, and retention of records. These are distinguished from programmatic requirements, which concern matters that can be treated only on a program-by-program or grant-by-grant basis, such as kinds of activities that can be supported by grants under a particular program.

Administration is administering programs and activities designed to enhance the effective and coordinated use of program funds such as—

- Coordination of programs with other federal and non-federal programs;
- Administration of programs;
- Dissemination of information regarding model programs and practices;
- Technical assistance, as appropriate; and
- Training personnel engaged in audit and other monitoring activities. [Title IX, Part B, Section 9201]

Based on this guidance, the LEA should determine which duties are considered administrative and charged to the 2% cap, and which duties are considered programmatic.

**Question 23: Must the LEA allocate funds to all of its campuses, or can it target those campuses with the greatest need?**

The LEA has discretion on how SDFSC funds are allocated. However, the use of these funds is targeted to schools and students with the greatest need, based on the LEA's needs assessment.

Note: The LEA must continue to develop, implement, and evaluate a comprehensive program for all students and all teachers that is coordinated with other school community based services. The LEA's comprehensive program must be for all grade levels and may be funded from other allowable fund sources.

### **Supplement, Not Supplant**

**Question 24: Is there a "Supplement not Supplant" requirement under the SDFSC program?**

Yes, an LEA must ensure that SDFSC funds awarded are used only to supplement the level of State, local, and other non-Federal funds and not to replace funds that would have been available to conduct activities if SDFSC funds had not been available. [For more information, see Section 4113(a)(8) of the SDFSCA]

**Question 25: What restriction does the supplement, not supplant requirement impose on the use of SDFSC funds?**

By enacting the supplement, not supplant provision contained in Section 4113(a)(8) of the SDFSC Program, the Congress intended that SDFSC funds be used only to supplement the level of funds from non-Federal sources that would, in the absence of the SDFSC funds, be available for the purposes listed in Sections 4112(a), 4112(c) and 4115 of the SDFSCA. To be in compliance with this requirement, therefore, LEAs may not divert State and local funds from an activity merely because SDFSC funds are available. In other words, the use of SDFSC funds may not result in a decrease in State and local funds for a particular activity, which, in the absence of SDFSC funds, would have been available to conduct the activity.

Although the application of the supplement, not supplant provision must be analyzed in the context of the facts and circumstances of each particular case, it is possible to give general guidance by way of examples. Two examples of the application of the supplanting prohibition follow:

- Assume that State law requires each LEA to provide at least five hours of classroom instruction each semester on conflict resolution to all ninth grade students. Because each LEA is required to provide the five hours of instruction from its own or the State's resources regardless of the existence of SDFSC funds, the LEAs may not use SDFSC funds to comply with the State mandate. SDFSC funds are intended to supplement State and local expenditures for the purposes of the SDFSC Program; they are not intended to replace State or local funds that would have been spent for the purposes of the SDFSC in the absence of Federal funds. In this particular case, the Federal funds could be used to supplement the expenditure of State and local funds for instruction on conflict resolution to ninth grade students and to expand programs and services beyond the

level that would be provided in the absence of Federal funds. But they could not be used to provide the five basic hours of instruction.

- An LEA, on its own initiative, already provides with its own resources what it regards as an appropriate drug and violence prevention program for its seventh grade students. The program is successful, and the LEA would continue it with its own funds, but intends instead to continue that same seventh grade program with SDFSC funding and spend its own funds for another activity not authorized by SDFSC, such as providing drug treatment or rehabilitation services for school dropouts. Shifting the support of the seventh grade program from local funds to SDFSC in these circumstances would violate the supplement, not supplant provision. By using SDFSC funds to continue the seventh grade drug and violence prevention program, the LEA is merely replacing local funds that would have been expended anyway – not supplementing or expanding the amount of program activities authorized by the SDFSC Program.

## LEA Programs

**Question 26: What does “clear and consistent message” mean?**

Drug and violence prevention programs supported under the SDFSCA Program must convey a clear and consistent message that the **illegal use** of drugs and acts of violence is **wrong and harmful**.

**Question 27: How may an LEA go about developing its SDFSC Program?**

LEAs may carry out a broad range of drug and violence prevention programs with SDFSC funds. Funded programs and activities must be coordinated with other school and community-based services and programs and must:

- Foster a safe and drug-free learning environment that supports academic achievement;
- Be consistent with the Principles of Effectiveness;
- Be designed to—
  - o Prevent or reduce violence; the use, possession and distribution of illegal drugs; and delinquency; and
  - o Create a well-disciplined environment conducive to learning, which includes consultation between teachers, principals, and other school personnel to identify early warning signs of drug use and violence and to provide behavioral interventions as part of classroom management efforts; and
- Include activities to—
  - o Promote the involvement of parents in the activity or program;
  - o Promote coordination with community groups and coalitions, and with government agencies; and
  - o Distribute information about the LEA’s needs, goals, and programs under the SDFSC Program.

The list of activities in Section 4115(b)(2) of the SDFSCA that may be implemented by LEAs includes: age-appropriate and developmentally based activities; activities that engage families, community sectors, and a

variety of prevention providers in setting clear expectations against violence and illegal drug use; drug and violence prevention activities; and the evaluation of any activities authorized under SDFSC. A full list of authorized activities can be found in Section 4115(b)(2) of the SDFSC.

**Question 28: Are there any prohibited LEA activities?**

Yes, Section 4154 of the SDFSCA details the prohibited uses of funds. According to this section, construction (except minor remodeling needed to accomplish SDFSCA purposes) medical services, and drug treatment and rehabilitation are prohibited activities. Pupil services, or referral to treatment for students who are victims of, or witnesses to, crime or who illegally use drugs, are allowed.

**Question 29: Is there a Parental Consent under the SDFSCA Program?**

Yes, LEAs must make a reasonable effort to inform parents or legal guardians of students of the contents of programs or activities funded under the SDFSCA Program (except in the case of classroom instruction). LEAs must withdraw a student from any program or activity supported with SDFSCA Program funds upon written notification from the parents or legal guardians of students.

**Question 30: May SDFSCA funds be used for drug testing students and employees? For background checks of employees?**

Section 4115(b)(2)(E)(xiv) of the SDFSCA states that authorized LEA activities include testing students for illegal drugs, consistent with the Fourth Amendment to the Constitution. Allowable activities include tests that are at the request, or have the consent, of parents or legal guardians. Inspections of students' lockers for weapons or illegal drugs may also be conducted.

Section 4115(b)(2)(E)(xx) of the SDFSCA authorizes the use of funds to conduct national background checks of LEA employees to determine whether an employee or prospective employee has been convicted of a crime that bears on the employee's ability to be responsible for the safety of children, serve in the particular capacity for which he or she was hired, or be otherwise employed by the LEA.

LEAs need to ensure the fact that they have board policies in place which address their ability to test for drugs. LEAs also need to familiarize themselves with all legal ramifications of drug testing.

**Question 31: Are there caps on spending for security costs?**

Section 4115(b)(2)(E) of the SDFSCA imposes limits on funding certain activities with SDFSCA funds. A cap is imposed on the following LEA activities:

- (a) acquiring and installing metal detectors, electronic locks, surveillance cameras, or other related equipment and technologies
- (b) reporting criminal offenses committed on school property
- (c) developing and implementing comprehensive school security plans or obtaining technical assistance concerning those plans
- (d) supporting safe zones of passage activities, including bicycle and pedestrian safety programs, that ensure that students can travel safely to and from school

- (e) hiring and mandatory training of school security personnel who interact with students in support of youth drug and violence prevention activities implemented in schools

An LEA may use up to 40 percent of its allocation to support the activities described in clauses (a) through (e) listed above, but not more than half of that amount (or a maximum of 20 percent) may be used to support the activities described in clauses (a) through (d). LEAs may use the entire 40 percent to support the hiring and training activities in clause (e).

Funds may be used for the activities in clauses (a) through (e) only to the extent that an LEA does not receive funding for those activities from other Federal agencies. These activities are also subject to the requirements of the Principles of Effectiveness.

### **An Example**

ABC School District receives a grant of \$10,000 under the program. The district can use no more than \$4,000 in total for the "capped" activities. Of that \$4,000, no more than \$2,000 can be used for the activities described in clauses (a) through (d) above.

ABC could use the entire \$4,000 for hiring and training school security personnel, or could choose to spend \$1,000 on safe zones of passage, and \$3,000 on hiring and training school security personnel, or could shift its planned spending to include \$2,000 for school security plans and \$2,000 for school security personnel.

### **Question 32: What kinds of purchases for "school security" are covered?**

Section 4115(b)(2)(E)(ii) of the SDFSCA lists the types of security hardware that may be purchased with SDFSCA funds. Funds may be used to buy and install metal detectors, electronic locks, surveillance cameras, and other related equipment and technologies.

### **Question 33: May the whole security cap be used for equipment and technology?**

No, only half of the total security cap (i.e., a maximum of 20 percent of an LEA's allocation) may be spent on school security items listed in Section 4115(b)(E)(ii-v) of the SDFSCA. See "Cap on Spending on Some Activities," above.

The SDFSCA requires an LEA to use program funds in a manner consistent with the Principles of Effectiveness. The Principles of Effectiveness require that programs supported with SDFSCA funds be based on scientifically based research that provides evidence that the program will reduce violence and illegal drug use. An LEA may use funds only for authorized activities that meet this standard, unless it receives a waiver from the Agency.

**Question 34: May an LEA apply for a waiver of the requirement to implement programs that are scientifically based?**

Consistent with Section 4115(a)(3) of the SDFSCA, LEAs may apply to the Agency for a waiver of the requirement to implement programs that are scientifically based. However, LEAs applying for waivers must demonstrate that funded programs or activities are innovative and have a substantial likelihood of success.

The Agency, in considering requests for waivers, will apply criteria that will permit the implementation of services and activities highly likely to be successful. For example, the Agency will consider to what extent proposed programs address the elements of the definition of scientifically based research.

**Question 35: May SDFSCA funds be used to support the work of social workers, counselors or mental health professionals?**

The SDFSCA authorizes the use of funds for a broad range of drug and violence prevention programs and activities including counseling, mentoring, referral services, and other student assistance practices and programs provided by qualified school-based mental health services providers. LEAs may also use funds for the training of teachers by school-based mental health services providers in appropriate identification and intervention techniques for students at risk of violent behavior and illegal use of drugs.

**Question 36: Are academic activities (such as a tutoring program) that are unrelated to drug and violence prevention allowable activities under Section 4115(b)(2)(A)(vi), which authorizes the use of funds for activities that “engage students in the learning process”?**

While effective drug and violence prevention programs create safe and drug-free learning environments and foster academic achievement, activities funded under SDFSCA must directly support a safe and drug-free learning environment.

**Question 37: Are costs associated with evaluation of drug and violence prevention programs considered program costs?**

Yes, the evaluation of drug and violence prevention programs can be considered a program cost.

**Question 38: Section 4114(d)(2)(E) of the SDFSCA requires LEAs to describe how they will target schools and students with the greatest need. May LEAs make subgrants to schools with the greatest need?**

LEAs must target services and activities on high-need schools and students; however, the SDFSCA does not authorize LEAs to subgrant funds. While staff at individual schools may be heavily involved in determining the kinds of activities that will be implemented in their schools, LEAs must maintain administrative control over grant funds.

**Question 39: May LEAs use SDFSCA program funds to support programs or activities designed to prevent victimization associated with prejudice and intolerance?**

Yes. However, the implementation of any curricula, programs, or activities designed to prevent victimization associated with prejudice and intolerance must include safeguards to prevent harassment directed against any particular religion, religious practice, or religious organization.

**Question 40: Do the provisions of the SDFSCA prohibit the presence of prescription medication (or paraphernalia used to administer such medication) at school?**

No, a student's prescription drugs, and related equipment, are not illegal drugs and are not prohibited by the SDFSCA. The SDFSCA defines drug prevention as prevention, early intervention, rehabilitation referral, or education related to the illegal use of drugs. Under the SDFSCA, the term "drug" includes controlled substances, the illegal use of alcohol and tobacco, and the harmful, abusive, or addictive use of substances, including inhalants or anabolic steroids.

Many students suffer from short term or chronic illnesses that require them to take prescription medication and, in some cases, these medications must be taken during the school day. For example, students that have been diagnosed with diabetes may have to receive insulin during the school day, and as a result would need to have both the medication and a syringe for administration of the medication available. The provisions of the SDFSCA do not prohibit these activities.

LEAs may develop policies regarding the custody or control of prescription drugs, the equipment necessary to administer the drugs as prescribed, and the equipment necessary to monitor the illness. The Agency encourages LEAs to consider the needs of all of their students in developing policies that address this issue.

## **Private Nonprofit School Participation**

**Question 41: What are requirements for serving Private Nonprofit Schools?**

LEAs are subject to the requirements in Section 9501 regarding participation of private school children and teachers. Generally, the provisions require that children enrolled in private elementary and secondary schools (and their teachers) must be provided equitable educational services or other benefits, compared to services and benefits received by public school children and teachers.

LEAs must consult with appropriate private school officials during the design, development, and implementation of programs on issues such as how the children's and teachers' needs will be identified; what services will be offered; how, where, and by whom the services will be provided; how the services will be assessed and how the results of the assessment will be used to improve those services; the size and scope of the equitable services; the amount of funds available for those services; how and when the LEA will make decisions about the delivery of services; and a thorough consideration and analysis of the views of the private school officials on the provision of contract services through potential third-party providers. If the needs of private school students and teachers are different from those of public school students and teachers, the LEA, in consultation with private school representatives, is required to develop a separate

program. Decisions affecting the opportunities of eligible private school students' and teachers' participation in Title IV, Part A programs are made only after consultation has taken place.

The services must be secular, neutral, and non-ideological, and must be furnished following timely and meaningful consultation with private school officials.

Funds provided for programs and services for private school students and teachers must be equal on a per-pupil basis, taking into account the number and educational needs of the children to be served, to the funds provided for participating public school students and teachers. Hence, on a per-pupil basis, expenditures for public and private school students and teachers must be equal. Costs for administering programs for public and private school students and teachers must come "off the top" of the allocation before determining how much of the allocation should be used for public and private school students and teachers. In addition, funds used to provide services to private school students and their teachers must remain under the control of the LEA or public agency; title to materials, equipment, or property purchased to support services or benefits to private school children must remain with a public agency. (See Section 9501, Title IX, Part E, Subpart 1 of the ESEA).

In order to facilitate consultation between public and private school officials and the effective implementation of programs and services for private school students and teachers, LEAs are encouraged to create *Non-Public School Working Groups* made up of representatives from the full spectrum of private schools. Such groups meet on a regular basis, and smooth the progress of federal education program implementation for private school students and teachers.

## Periodic Review/Evaluation

**Question 42: The Principles of Effectiveness in Section 4115 requires programs and activities supported with SDFSCA funds to undergo a periodic evaluation. What kinds of evaluation activities are required?**

Evaluation is the systematic collection and analysis of data needed to make decisions. Periodically, recipients will need to examine the programs they implement to determine if they meet established performance measures. The nature and extent of such evaluation activities will vary, and evaluation methods should be selected that are appropriate and feasible to measure success of a particular intervention.

**Question 43: How often should a "periodic evaluation" be conducted?**

LEAs must determine how often they need to re-examine their progress toward reducing violence and illegal drug use in schools to be served, based on established performance measures.

**Question 44: How must the "periodic evaluation" results be used?**

Evaluation results must be used to refine, improve, and strengthen the program, and to refine the performance measures. In addition, the results must be made available to the public upon request with public notice that results can be obtained.

**Question 45:** If a review of the effectiveness of an LEA program results in a need to modify its goals and objectives, is it possible to make other changes in materials on file with the agency?

Consistent with Section 76.770 of EDGAR, the agency has procedures for amending applications.

**Question 46:** When must a program that cannot demonstrate reduced drug use or violent behavior be terminated?

Decisions regarding the termination of locally executed programs are made at the State level. In determining the effectiveness of a program, TEA will consider (in addition to the Principles of Effectiveness and other SDFSCA Program requirements) the needs of the area, the goals of the program, and the evaluation results. Effectiveness will be monitored through the PBMAS and compliance review systems.

### **Flexibility and Accountability Provisions**

**Question 47:** What are the conditions for an LEA to implement the provisions for flexibility and accountability under the SDFSCA Program?

Title VI of the ESEA contains flexibility and accountability provisions that apply to the implementation of the LEAs program under SDFSCA. The provisions are described in greater detail on the United States Department of Education's website at <http://www.ed.gov/nclb/landing.jhtml>.

- An LEA may enter into a performance agreement with the Agency to consolidate its SDFSCA funds with certain other Federal funds, and use those funds for any ESEA purpose consistent with the SEA's State-Flex plan in order to meet the State's definition of adequate yearly progress, improve student academic achievement, and narrow achievement gaps.

The LEAs will provide for the equitable participation of students and professional staff in private schools, consistent with Section 9501. Sections 9502, 9503, and 9504 shall apply to all services and assistance provided with funds in the same manner as such sections apply to services and assistance provided in accordance with Section 9501. (See Section 6141(c)(1)(K))

- **Transferability** is a new ESEA flexibility authority that allows LEAs to transfer a portion of the funds that they receive under certain Federal programs to other programs that most effectively address their unique needs.

Under this authority, an LEA may transfer up to 50 percent of the non-administrative funds allotted to it to carry out local-level activities under each of the following provisions to one or more of its allotments under any of the other programs listed below:

- Title II, Part A, Section 2113(a)(3) (Teacher and Principal Training and Recruitment)
- Title II, Part D, Section 2412(a)(1) (Enhancing Education Through Technology)
- Title IV, Part A, Section 4112(a)(1) (Safe and Drug-Free Schools and Communities Governor's funds, with the agreement of the Governor)

- Title IV, Part A, Section 4112(c)(1) (Safe and Drug-Free Schools and Communities SEA funds)
- Title IV, Part B, Section 4202(c)(3) (21<sup>st</sup> Century Community Learning Centers)
- Title V, Part A, Section 5112(b) (Innovative Programs)

An LEA (except an LEA identified for improvement or subject to corrective action under section 1116(c)(9)) may transfer up to 50 percent of the funds allocated to it by formula under certain other programs to its SDFSCA allocation (or to other specified allocations) or to its allocation under Part A of Title I. An LEA may also transfer up to 50 percent of its SDFSCA allocation to certain other programs. An LEA identified for improvement under Title I may transfer not more than 30 percent of the funds allocated to it under the programs listed above to its allocation for school improvement under section 1003 or to any other allocation provided that funds are used only for LEA improvement activities consistent with Section 1116(c). An LEA identified corrective action may not transfer funds under these provisions.

Each LEA that transfers funds under this section must conduct consultation in accordance with Section 9501, if that action transfers funds from a program that provides for the participation of students, teachers, or other educational personnel, from private schools. (See Section 6123(e)(2))

For more information on transferability, please visit the U.S. Department of Education's ESEA website and discussion of flexibility provisions: <http://www.ed.gov/nclb/freedom/local/flexibility/index.html>

- An LEA eligible under the **Rural Education Initiative** (Title VI, Part B Section 6202) may combine its SDFSCA funds with certain other Federal funds and use its funding to carry out local programs. Accordingly, an LEA may spend all or part of its SDFSCA funds for this purpose.

Similarly, an LEA that receives funds under the Rural and Low-Income School Program may use those funds for activities authorized under the SDFSCA. (See Section 6211 of Title VI, Part B, Subpart 1 of the ESEA)

#### **Question 48: What other provisions should an LEA be familiar with?**

LEAs that are participating in the SDFSCA Program should also be familiar with the following other provisions related to the implementation of drug and violence prevention programs.

#### **Pro-Children Act**

- The Pro-Children Act (PCA) of 2001 was re-enacted as Part C of Title IV of the ESEA. The PCA requires that smoking not be permitted in any indoor facility, or in some cases a portion of a facility, used routinely or regularly for the provision of certain types of "children's services" to persons under age 18, if the services are funded by specified Federal programs either directly or through State or local governments. Applicable Federal funds for these types of children's services include grants, cooperative agreements, loans, loan guarantees, contracts, and funds for construction, maintenance, and operations awarded by the Departments of Health and Human Services, Education or Agriculture. For Agriculture, the requirements apply only for the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)]. In general, private schools, including private schools whose students and teachers participate in federal education programs, are not subject to the provisions of the PCA.

### **Protection of Pupil Rights Amendment (PPRA)**

- The NCLB contains a major amendment to the Protection of Pupil Rights Amendment (PPRA) that gives parents more rights with regard to the surveying of minor students, the collection of information from students for marketing purposes, and certain non-emergency medical examinations. PPRA has been referred to as the "Hatch Amendment" and the "Grassley Amendment." The recent changes to the law may be referred to as the "Tiahrt Amendment." The statute is found in 20 U.S.C. 1232h and the regulations (not yet updated) are found in 34 CFR Part 98. In general, private schools, including private schools whose students and teachers participate in federal education programs, are not subject to the provisions of the PPRA.

### **Family Educational Rights and Privacy Act (FERPA)**

- FERPA is a Federal law that applies to educational agencies and institutions that receive Federal funds under any program administered by the Secretary of Education. Generally, FERPA prohibits the funding of an educational agency or institution that has a policy or practice of disclosing a student's "education record" without the consent of the parent or eligible student. The FERPA statute is found in 20 U.S.C. 1232g and the regulations (not yet amended to reflect the most recent legislative changes and Supreme Court decisions) are found in 34 CFR Part 99. In general, private schools, including private schools whose students and teachers participate in federal education programs, are not subject to the provisions of FERPA.

### **Transfer of School Disciplinary Records**

- FERPA permits schools to transfer education records on a student who is transferring to another school. See Section 99.31(a)(2) and Section 99.34 of the FERPA regulations. A provision requires States that receive funds under the ESEA, within two (2) years, to provide an assurance to the Secretary that the State "has a procedure in place to facilitate the transfer of disciplinary records, with respect to a suspension or expulsion, by local educational agencies to any private or public elementary school or secondary school for any student who is enrolled or seeks, intends, or is instructed to enroll, on a full- or part-time basis, in the school."

### **LEA Responsibilities Under the Gun-Free Schools Act**

**Question 49: What part of the Gun-Free Schools Act (GFSA) stayed the same as result of the reauthorization ESEA?**

LEAs are still required to have an expulsion policy consistent with the required State law to be eligible to receive ESEA funds. LEAs must have a policy requiring referral to the criminal justice or juvenile delinquency system of any student who brings a firearm to a school under the control and supervision of an LEA. In accordance with the GFSA, no ESEA funds may be made available to an LEA unless that LEA has the required referral policy.

The GFSA still must be construed in a manner consistent with the Individuals with Disabilities Education Act (IDEA). By using the case-by-case exception, LEAs will be able to discipline students with disabilities in accordance with the requirements of Part B of the IDEA and Section 504 of the Rehabilitation Act (Section 504) and maintain eligibility for Federal financial assistance. The Department has issued separate, more detailed guidance on discipline of students with disabilities, which includes clarification on the implementation of the GFSA consistent with IDEA and Section 504. More information can be found at [www.ed.gov/offices/OSERS/Policy/IDEA/Discipline\\_qa.doc](http://www.ed.gov/offices/OSERS/Policy/IDEA/Discipline_qa.doc)

**Question 50: What part of the Gun-Free Schools Act changed as result of the reauthorization ESEA?**

Under the NCLB, certain statutory provisions were clarified to ensure that LEAs comply fully with the intent of the GFSA. Clarifications to the GFSA include:

- (1) That the existing one-year expulsion requirement in each State's law include students who are determined to have possessed a firearm at school;
  - (2) A requirement that the chief administering officer of the LEA develop a written record of any case-by-case modifications of the one-year expulsion requirement;
  - (3) That the GFSA does not apply to a firearm that is lawfully stored inside a locked vehicle on school property, or if it is for activities approved and authorized by the local educational agency (LEA), so long as the LEA adopts appropriate safeguards to ensure student safety.
- LEAs may wish to consider implementing or revising its policies to address the revised GFSA requirements.

**Question 51: Are private schools subject to the requirements of the GFSA?**

Private schools are not subject to the provisions of the GFSA, but private school students who participate in LEA programs or activities are subject to the one-year expulsion requirement to the extent that such students are under the supervision and control of the LEA as part of their participation in the LEA's programs. For example, a private school student who participates in a Federal program, such as Title I, is subject to a one-year expulsion, from participating in any Federal program funded under the ESEA, not a one-year expulsion from the private school. Of course, nothing prohibits a private school from imposing a similar expulsion from the private school on a student who brings a weapon to school or possesses a weapon at school.

**Question 52: Is compliance with the requirements of the GFSA a condition for the receipt of Federal financial assistance under the ESEA?**

Yes, compliance with the requirements of the GFSA is a condition for the receipt of funds made available to the LEA.

**Question 53: Will failure to comply with the requirements of the GFSA result in the termination or withholding of funds made available to the State under the ESEA?**

Under the provisions of the General Education Provisions Act, failure to comply with the requirements of the GFSA could result in the withholding of funds made available to the LEA.

**Question 54: Does the GFSA's one-year expulsion requirement preclude any due process proceedings?**

No. Students facing expulsion from school are entitled under the U.S. Constitution and most State constitutions to the due process protection of notice and an opportunity to be heard. If, after due process has been accorded, a student is found to have brought a firearm to school, or to have possessed a firearm at school, the GFSA requires an expulsion for a period of not less than one year (subject to the case-by-case exception discussed below).

**Question 55: What does the GFSA require of LEAs?**

The GFSA requires that LEAs (1) comply with the State law requiring the one-year expulsion; (2) provide an assurance of compliance to the SEA; (3) provide descriptive information to the SEA concerning the circumstances surrounding any LEAs' expulsions; and (4) adopt a referral policy for students who bring a firearm to school or possess a firearm at school. Details follow.

*One-Year Expulsion Requirement*

LEAs must comply with the State law requiring a one-year expulsion; that is, subject to the case-by-case exception, and for children with disabilities, the requirements of IDEA, any student who brings a firearm to school, or possesses a firearm at school, must be expelled for not less than one year. A case-by-case exception must be in writing and may include children with disabilities in order to meet the requirements of IDEA.

*LEA Assurance*

An LEA must include in its application to the SEA for ESEA assistance an assurance that the LEA is in compliance with the State law requiring the one-year expulsion.

*Descriptive Report to SEA*

An LEA must include in its application for ESEA assistance a description of the circumstances surrounding expulsions imposed under the one-year expulsion requirement, including:

- (A) the name of the school concerned;
- (B) the number of students expelled from the school; and
- (C) the type of firearms concerned.

*Referral Policy*

LEAs must also implement a policy requiring referral to the criminal justice or juvenile delinquency system of any student who brings a firearm to school or possesses a firearm at school.

**Question 56: In annual compliance reports, must LEAs include information about an infraction under the GFSA even if the case-by-case modification provisions are used and no penalty is imposed?**

Information about any incidents covered by the GFSA must be included in annual reports furnished by LEAs. Each incident in which a student is found to have brought a firearm (meeting the definition at 18 U.S.C. 921) to school, or to have possessed a firearm at school, must be reported as an infraction, even if

the chief administering officer elects to shorten the expulsion or impose no penalty. Any incidents in which a student covered by the provisions of the IDEA brings a firearm to school must also be included, even if it is determined that the incident is a manifestation of the student's disability and that the GFSA penalties should be modified or not imposed. Modifications of the one-year expulsion requirement must also be reported.

**Question 57: When must an LEA submit the required assurance?**

In its application to the Agency for ESEA funds, the LEA must include an assurance that the LEA is in compliance with the State law. The assurance must be included each time the LEA files such an application.

**Question 58: What is the role of the Agency in determining whether an LEA is in compliance with the GFSA?**

The GFSA requires States to report to the Secretary of Education on an annual basis concerning LEA compliance. Therefore, before awarding any ESEA funds to an LEA, the Agency must ensure that the LEA has: (1) implemented a policy requiring referral to the criminal justice or juvenile delinquency system of any student who brings a firearm to school; and (2) included in its application for ESEA funds the assurance and other information required by the GFSA. SEAs must ensure that the LEA application contains:

- (1) an assurance that the LEA is in compliance with the State law requiring the one-year expulsion; and
- (2) a description of the circumstances surrounding expulsions imposed under the one-year expulsion requirement, including:
  - (A) the name of the school concerned;
  - (B) the number of students expelled from the school; and
  - (C) the type of firearms concerned.

**Question 59: Who is an LEA's "chief administering officer"?**

The GFSA allows only the LEA's chief administering officer to modify the one-year expulsion requirement on a case-by-case basis. However, the term "chief administering officer" is not defined by the GFSA. Each LEA should determine, using its own legal framework, which officer or authority (e.g., Superintendent, Board, etc.) is the chief administering officer under the GFSA and has the power to modify the expulsion requirement.

**Question 60: May any individual or entity other than the LEA's "chief administering officer" modify the one-year expulsion requirement on a case-by-case basis?**

No. While, the chief administering officer may allow another individual or entity to carry out preliminary information-gathering functions and prepare a recommendation for the chief administering officer, the chief administering officer retains the responsibility for the final decision.

**Question 61: What procedural requirements must the LEA's chief administering officer follow in modifying the one-year expulsion requirement?**

Modifications of the one-year expulsion requirement must be issued in writing by the chief administering officer.

**Question 62: Is it permissible for an LEA to use the case-by-case exception to avoid compliance with the one-year expulsion requirement?**

No, this exception may not be used to avoid over-all compliance with the one-year expulsion requirement.

**Question 63: How is the term "firearm" defined?**

For the purposes of the GFSA, the term "firearm" is defined in Section 921(a) of Title 18 of the United States Code.

According to Section 921(a), the following are included within the definition:

- any weapon (including a starter gun) that will be, or is designed to or may readily be, converted to expel a projectile by the action of an explosive
- the frame or receiver of any weapon described above
- any firearm muffler or firearm silencer
- any destructive device, which includes:
  - (a) any explosive, incendiary, or poison gas, including a
    - (1) bomb,
    - (2) grenade,
    - (3) rocket having a propellant charge of more than four ounces,
    - (4) missile having an explosive or incendiary charge of more than one-quarter ounce,
    - (5) mine, or
    - (6) similar device
  - (b) any weapon that will, or that may be readily converted to, expel a projectile by the action of an explosive or other propellant, and that has any barrel with a bore of more than one-half inch in diameter
  - (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

According to Section 921, antique firearms are not included in the definition. In addition, we have been advised by the Bureau of Alcohol, Tobacco, and Firearms that Class-C common fireworks are not included in the definition of firearm. For additional information about whether a particular weapon is a "firearm" under this definition, contact the Safe and Drug-Free Schools Program at (202) 260- 3954 for a referral to the nearest Bureau of Alcohol, Tobacco, and Firearms field office.

**Question 64: Does the GFSA preclude classes such as hunting safety or military education, or activities such as before- or after-school hunting, or rifle clubs, that may involve the handling or use of weapons?**

No. The statute specifically states that the requirements of the GFSA do not apply to a firearm lawfully stored inside a locked vehicle on school property, or to activities approved and authorized by an LEA, provided that the LEA has adopted appropriate safeguards to ensure student safety.

The Secretary interprets the GFSA not to forbid school districts from allowing firearms at school when students intend to use firearms solely for before- or after-school hunting purposes, provided the school district's determination to permit firearms is made and disseminated in advance, as part of LEA policy, and is consistent with the intent and purposes of the GFSA to prevent violence and create an environment conducive to learning. For example, if a local school district approves an extra-curricular program such as a rifle club, or allows students to bring firearms solely for before- or after-school hunting, the activities would not violate the GFSA if the school district:

- determines that the activity is consistent with the intent and purposes of the GFSA;
- provides notice as part of its GFSA policy that the activities are approved and authorized; and
- adopts appropriate safeguards to ensure student safety.

If any firearms are to be allowed for these limited purposes, local school districts are cautioned to consider all applicable local, State, and Federal laws pertaining to the possession of firearms. In particular, school districts should be aware that Federal and some State laws prohibiting juveniles from possessing handguns may be applicable. School districts that permit students to bring firearms to school for these limited purposes must adopt appropriate safeguards to ensure student safety, consistent with the purposes of the GFSA.

**Question 65: Are knives considered firearms under the GFSA?**

No, for the purposes of the GFSA, the definition of firearm does not include knives.

**Question 66: What is meant by the term "expulsion"?**

The term "expulsion" is not defined by the GFSA; however, at a minimum, expulsion means removal from the student's regular educational program. Expulsion does not mean merely moving a student from a regular program in one school to a regular program in another school. Care should be taken by local officials to ensure that a student who is determined to have brought a firearm to school, or to have possessed a firearm at school, is effectively removed from that setting. (Refer to the Texas Education Code, Chapter 37)

**Question 67: Is an LEA required to provide alternative educational services to students who have been expelled for bringing a firearm to school?**

The GFSA neither requires nor prohibits the provision of alternative educational services to students who have been expelled. Texas Education Code Laws require that students receive alternative educational services in certain circumstances. (Refer to the Texas Education Code Chapter 37)

**Question 68: What is an "alternative setting" for the provision of educational services to an expelled student?**

An alternative setting is one that is clearly distinguishable from the student's regular school placement. Alternative settings are typically established for students who have been removed from the regular school program. (Refer to the Texas Education Code, Chapter 37)

**Question 69: Is Federal funding available to provide educational services in alternate settings?**

Yes, formula grants awarded under the Safe and Drug-Free Schools and Communities Act (SDFSCA) may be used for alternative educational services. However, SDFSCA funds may be used only to supplement, and not supplant, existing funds that support such activities. In addition, other Federal funds may be available for alternative educational services, consistent with each program's statutory and regulatory requirements.

**Question 70: Do the requirements of the GFSA conflict with requirements that apply to students with disabilities?**

No. Compliance with the GFSA may be achieved consistent with the requirements that apply to students with disabilities, so long as discipline of those students is determined on a case-by-case basis in accordance with the IDEA and Section 504. The Department has issued separate, more detailed guidance on discipline of students with disabilities, which includes clarification on the implementation of the GFSA consistent with IDEA and Section 504 [www.ed.gov/offices/OSERS/Policy/IDEA/Discipline\\_qa.doc](http://www.ed.gov/offices/OSERS/Policy/IDEA/Discipline_qa.doc)

**Question 71: Is it permissible to expel a student for a school year rather than a year?**

No. The statute explicitly states that expulsion shall be for a period of not less than one year.

**Question 72: Does the expulsion requirement apply only to violations occurring in the school building?**

No. The one-year expulsion requirement applies to students who bring firearms to, or possess firearms at, any setting that is under the control and supervision of the LEA.