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Has Time Expired for Zero-Tolerance Policies?

By Charles J. Russo, J.D., Ed.D.

More and more districts are questioning the appropriateness of zero-tolerance policies.

Two recent incidents involving the discipline of five-year-old students raise questions about the continuing viability of zero-tolerance policies. In the first case, a child in Pennsylvania was punished for telling friends that she was going to shoot them with a Hello Kitty bubble maker. In the second case, a student in Massachusetts was disciplined for making a gun out of Lego pieces and pointing it at his classmates (Chumley 2013). These events—coupled with the tightening of discipline rules in the wake of the tragic shootings in Newtown, Connecticut—have thrust zero-tolerance policies back into the news.

Zero-tolerance policies call for the consistent application of consequences for student offenses involving violence, bullying, tobacco, alcohol, drugs, and weapons in school or at school-sponsored events. As educators struggled to eliminate student violence during the last 25 years, states adopted zero-tolerance statutes to address the rise of juvenile delinquency and the possession of weapons and drugs in schools.

The term *zero tolerance*, coined during the 1980s' war on drugs, was introduced into public schools a decade later pursuant to the Gun-Free Schools Act of 1994. It was based on the desire to send a clear message to drug users and others that harsh penalties would be imposed on all violators, regardless of the severity of their offenses.

Insofar as debates over zero-tolerance policies rage as violence, bullying, drugs, tobacco, and weapons in schools continue to be a major concern for educators, the remainder of this column is divided into three substantive sections. The first section briefly reviews arguments in favor of and against zero-tolerance policies; the next examines litigation that has involved such policies. The third offers recommendations for school business officials, their boards,

and other education leaders to consider when reviewing their zero-tolerance policies. This section suggests that insofar as time may have expired on such an approach, educators would be wise to avoid strict zero-tolerance policies in favor of no-tolerance approaches that permit administrators to use their discretion in disciplining students.

Support for Zero Tolerance

Zero-tolerance policies in schools have been controversial since their inception. Many educators continue to support zero-tolerance policies because they provide a degree of certainty and consistency by putting students on notice at a time when the epidemic of bullying and violence, coupled with the use of tobacco and drugs, continues to spread throughout schools.

Supporters of zero-tolerance policies concede that widely publicized cases of overzealous punishments for minor infractions, such as those identified in the introduction of this article, have caused educators to reconsider whether these rules should be enforced or even to reevaluate the use of zero-tolerance policies.

Even so, proponents of zero tolerance caution against moving away from strict discipline codes in order to protect student safety because they have helped reduce violence in its many forms while helping reduce the harmful presence of drugs and weapons in schools (Gibbs 2012).

Critics of Zero Tolerance

Critics of zero-tolerance policies raise four related concerns:

1. Insofar as such policies can be broad and overreaching, they often lead to the imposition of disproportionate penalties.
2. A one-size-fits-all approach fails to treat students as individuals and denies educators the opportunity to exercise their

judgment. In this latter regard, critics worry that since zero-tolerance policies are often inflexible, harsh, and lacking in common sense, educators lack the discretion to differentiate between good students who make mistakes and disruptive children who interfere with the learning process. At the same time, even zero-tolerance advocates share the concern that the credibility of such policies is undermined when educators pursue trivial infractions or implement one-size-fits-all punishments without applying discretion.

- By removing students from schools, educators risk unnecessarily criminalizing their actions (Vergon 2012). Echoing these concerns, a recent policy statement from the American Academy of Pediatrics (2013) adds that a zero-tolerance approach can lead to increased juvenile delinquency and school dropout rates.

- Although supporters of zero-tolerance policies maintain that the situation reflects the reality in schools (Cornelius 2012), data suggest that these rules are applied disproportionately according to race (Weiler 2012).

Litigation

When reviewing zero-tolerance policies, courts look to ensure that school officials act with discretion in disciplining students, even if offenses occur away from school. In the first of two such cases from Illinois, an appellate court upheld a high school football player's prohibition from competition after he violated his school's zero-tolerance policy by being picked up by the police in front of a convenience store at 3:00 a.m. because he displayed obvious signs of intoxication (Jordan ex rel. Edwards v. O'Fallon Township High School District No. 203 Board of Education 1999).

In a second case from Illinois, the Seventh Circuit upheld the expulsions of student spectators who took part in a fight at a high school football game (Fuller ex rel. Fuller v. Decatur Public School Board of Education School District 61 2001). The court affirmed that the rule prohibiting students from engaging in "gang-like activity" was not impermissibly vague as written or as applied to those who were disciplined.

Courts reached mixed results when students had knives in schools. When school officials in Tennessee discovered a hunting knife in the glove compartment of a student's car, they decided to expel the student. The student denied knowing that the knife was there, and it was determined that the knife belonged to a passenger. The Sixth Circuit invalidated the proposed expulsion. The court observed that the punishment for possession of a weapon, pursuant to a zero-tolerance policy under which students could have been disciplined for not knowingly possessing weapons, was invalid because it lacked a rational relationship to a legitimate state interest (Seal v. Morgan 2000).

Similarly, an appellate court in Pennsylvania affirmed that educators exceeded their authority when they sought to expel a seventh grader for a year because he found a Swiss Army knife in a school hallway but did not turn it in immediately (Lyons v. Penn Hills School District 1999). The court pointed out that the policy ignored the clear legislative intent that zero-tolerance policies should not be applied blindly.

In like fashion, a federal trial court in Mississippi overturned the expulsion of a student who was suspected of having a disability for bringing a Swiss Army knife to school because officials failed to provide him with the protections he was entitled to under the Individuals with Disabilities Education Act (Colvin ex rel. Colvin v. Lowndes County, Miss. School District 1999). However, the

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court agreed that the board had the authority to enact such a rule.

Conversely, the Fourth Circuit affirmed that educators in Virginia could suspend a student who had a knife in his locker even though he took it from a suicidal schoolmate (*Ratner v. Loudoun County Public Schools* 2001, 2002). The court was satisfied that officials provided the student with due process before he was suspended.

In a case with a twist, the Eleventh Circuit affirmed that the zero-tolerance policy of a school board in Florida as applied to school-related violent crime did not render it liable for constitutional violations when police arrested and strip-searched a student who distributed anonymous pamphlets in which the author wondered what would happen if he shot the principal, teachers, or other students (*Cuesta v. School Board of Miami-Dade County* 2002). The court refused to impose liability on educators for the actions of the police.

In another case from Florida involving a zero-tolerance policy, an appellate court refused to intervene on behalf of a student who was suspended for bringing a gun to school (*D.K. ex rel. Kennedy v. District School Bd. Indian River County* 2008). The court dismissed the claim because it lacked jurisdiction under state law.

In a different kind of a case, the federal trial court in South Dakota rejected the claim of a student who alleged that her being disciplined for violating a zero-tolerance policy with regard to the use of profanity in school violated her First Amendment rights (*Anderson v. Milbank School District 25-4*, 2000). The court explained that insofar as the rule against profanity was in the student handbook, coupled with the fact that educators have the right to discipline students whose in-school speech interferes with the orderly operations of the schools, her claim was without merit.

Recommendations/Discussion

School business officials, their boards, and other education leaders would be wise to think twice about the continuing use of zero-tolerance policies. Rather, board policies should preserve discretion when disciplining students, moving in the direction of no-tolerance language by calling on educators to recognize that zero tolerance, although applicable in specific serious cases, must include due process and common sense in imposing penalties.

By adopting a nuanced and flexible policy approach under no-tolerance rules, educators have more freedom than when operating under one-size-fits-all approaches that often fail to recognize how different types of student offenses may require varying levels of disciplinary sanctions.

To this end, when education leaders enhance their existing discipline policies by adopting more flexible no-tolerance approaches, they should do the following:

- Identify serious infractions that are subject to zero tolerance with as much specificity as possible, demonstrating a clear need to maintaining school safety.
- Spell out discipline procedures available to students who are accused of violating school rules. Needless to say, educators should ensure that all staff member comply with policies by giving each case individual attention, considering all options before acting.
- Identify items of contraband covered by policies, such as weapons and drugs, ensuring that administrators have the right to make final judgments on whether items are subject to board policies.
- Specify who can contact police and state agencies with regard to items such as drugs and weapons and when contact must be made.
- Identify possible exceptions to policies, such as whether students can self-report and avoid harsher penalties if, as in some of the litigation discussed earlier, they inadvertently bring weapons such

as knives or guns to their schools or pick them up in the halls.

- Publish those policies in student handbooks and send them home to parents with the requirement that children and adults sign forms indicating that they have read and agree to abide by these provisions. Policies should be posted on district Websites. Moreover, building-level educators should conduct assemblies and class discussions to better inform students about these policies.
- Provide professional development sessions to ensure that teachers and other staff members understand the rules.
- Create peer-to-peer conflict resolution programs to help stem violence and other unacceptable behaviors.
- Create alternative programs for students who are expelled, because most children typically treat time away from school as little more than an extended vacation. In this regard, smaller school systems might wish to band together to create county-wide programs for these students.
- Consider keeping schools open longer for extracurricular activities.
- Use peer-review panels to hear and resolve selected discipline cases.
- Reexamine school-level security measures annually, including ways to control excessive movement patterns by students during the school day.
- Conduct annual reviews to ensure that policies are up-to-date according to changes in federal and state laws.

Conclusion

Education leaders may face challenges in convincing their school communities to move away from one-size-fits-all zero-tolerance policies in favor of no-tolerance measures to provide students, even disruptive ones, with due process before being disciplined.

No-tolerance approaches should not only restore discretion, flexibility, and common sense to discipline policies but they should also be a more effective means of helping maintain schools as safe, secure places where children can learn.

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