

(In)tolerable Zero Tolerance Policy

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Abstract

The spread of zero tolerance policies for school-based scenarios flourished under President William J. Clinton who wanted to close a loophole in the Guns-Free School Zones Act of 1990. Expansion in the coverage of zero tolerance policy to offenses outside the initial scope of weapon and drug offenses has led to a disproportional ratio of African American students and students with disabilities being excluded from schools through punitive measures including suspensions, expulsions, and in many cases, referral to law enforcement agencies. The buck must stop with school administrators; they are in the unique position of determining how discipline matters escalate at the point of interaction with the student. Alternatives to the zero tolerance policy are suggested based on a review of relevant literature.

Introduction

Stories on the over-application of zero tolerance school policies for student behaviors that have typically been characterized as expressions of youthful mischievousness are innumerable. Case in point, Andrew, a 14-year old freshman from Virginia decides to entertain himself during a lunch period by launching small plastic pellets from a tube at other students; spit-balling (Sieff, 2011). While Andrew's peers find it to be an annoyance, a faction of school officials determine Andrew has fashioned a projectile weapon with the purpose of intimidating, threatening, or harming others. In the name of zero tolerance, Andrew is expelled from school for the remainder of the school year for possession of a weapon and a deputy sheriff is called to the school to place Andrew under arrest. The charge? Three counts of misdemeanor assault. Internal email correspondence between school officials shows escalating language in the description of events. Plastic pellets become B-B's and the plastic ink pen casing is now a metal tube. The principal stands firm on their position and explains the need for the harshness of the penalty as a measure to protect students from those who pose a threat to the learning environment.

Andrew's situation reverberates throughout school districts across the country. In an effort to operate to the letter of the law for the protection of the learning environment, school administrators are liberally applying zero tolerance penalties to situations where other alternatives are more effective. The behavior of Andrew does warrant a disciplinary response from administration. Calling in law enforcement to arrest Andrew for misdemeanor assault is absurd and over the top in the use of zero tolerance policy. A safe learning environment is

something everyone wants for their student and other students. However, the way in which punishments in the name of zero tolerance is being doled out to students for minor offenses exhibits negative impacts for the student, the school, and the community as a whole. It is crucial that school administrators place a moratorium on the application of zero tolerance policies.

The policy of zero tolerance is designed to address a specific set of circumstances involving drugs and weapons at school. Along the way, the policy has expanded to include offenses like Andrew's and other infractions including disrespect, tardiness to school, doodling on desks, and many other minor infractions. This paper aims to trace the development of zero tolerance policy and the escalation in the broad application. Embedded within the application of zero tolerance discipline is the issue of disproportionality. While policy language emphasizes equality, researchers point out the existence of disparities showing African American males are especially targeted for the harsher discipline practices of zero tolerance. The disparities in policy over-application for African American males lead to disparities supporting academic underachievement through loss of instructional hours, dropout rates, and school-to-prison pipeline dialogue. School administrators are on the front lines in addressing the use of zero tolerance punishment and this paper ends with suggestions on alternative solutions that can be implemented in schools to replace the harsh extremes for minor offenses.

Policy Development

Zero tolerance policy emerged from the Federal Gun Free Schools Act (GFSA) of 1994. Preceding the GFSA was the Safe and Drug Free School and Communities Act 1986 and Gun-Free School Zones Act of 1990. The Gun-Free Schools Act of 1990 made it illegal for an unlicensed individual to possess a firearm on school property. A person caught possessing a firearm on school property would be fined \$5,000, jailed up to 5 years or both (18 U.S.C. § 924(a)(4)). The constitutionality of the Act was challenged by Alfonso Lopez, Jr. from Texas. In particular, the question was whether Congress had the authority to limit how commerce operated around public schools.

Alfonso Lopez, Jr. was a senior at Edison High School in San Antonio, TX. On March 10, 1992 he carried a concealed, unloaded .38 caliber gun to school along with five cartridges of ammunition to sell to another individual for \$40. Upon being confronted by school officials through anonymous tips, Lopez, Jr. admitted he was in possession of the firearm and was subsequently charged with violating the Gun-Free School Zones Act. After being convicted in trial court, Lopez, Jr. appealed to the Fifth Circuit Court of Appeals where the original decision was reversed. The United States Government brought the case to the U.S. Supreme Court in *United States v. Lopez* (514 U.S. 549 115 S. Ct. 1624) where the court affirmed the Court of Appeals decision in a 5-4 vote. While this case was essentially about the power of Congress to legislate commerce in and around public school property, a clear gap was left exposed in how guns could make their way onto school grounds.

On the heels of the Supreme Court decision, President William J. Clinton wrote a letter to Congress on May 10, 1995 expressing his concern with the decision and outlined the forthcoming Gun-Free School Zones Amendments Act of 1995 (Clinton, 1995). The amendments closed loopholes of the original act by removing issues related to commerce and

putting the onus on the individuals' knowledge of possessing a firearm on school grounds the primary factor for conviction under the new law.

The amendments were added, approved, and signed into law as the Gun-Free Schools Act of 1995. Keeping guns and drugs off of school grounds was the expressed purpose of GFSA. Following the legislation, guidance was provided to schools by Assistant Secretary Thomas W. Payzant from the U. S. Department of Education Office of Elementary and Secondary Education, that outlined the responsibilities of the state and local educational agencies as it relates to the GFSA. States receiving Federal funds were obligated to have a law in place by October 20, 1995 which required schools to expel students for a minimum of one year for bringing weapons or drugs to school. States scrambled to address the directive of the new legislation in order to limit the interruption of state funds supporting education.

In Florida, the first zero tolerance discipline law was enacted in 1997 and was rewritten three times by 2002 (ACLU, 2011). In Spring 2009, the language of the zero tolerance legislation was once again amended to exclude offenses considered to be "petty disciplinary infractions". The Office of Safe Schools within the Florida Department of Education has guidelines on its website by which educational agencies are to operate within. Explicitly written in the policy language is both the intent and expectation of how the policy is meant to apply in school environments. Acknowledgement is made by the Florida Legislature that promotion of safe schools for students and staff is a priority as is the equal application of the policy for students "regardless of their economic status, race, or disability" (Florida DOE website).

Specific changes to the Florida zero tolerance policy through Senate Bill 1540 in the spring of 2009 were: (1) Schools are encouraged to handle petty disciplinary practices in a way that does not include the intervention of law enforcement. (2) Schools are encouraged to apply alternative solutions such as restorative justice. (3) Equal application of zero tolerance policy to eliminate the discipline disparity is addressed. (4) Students are to be looked at in total rather than applying a one size fits all solution. (5) Due process for the student is made available whereas only those students expelled had that option previously. (6) Corporal punishment policies are to be reviewed every 3 years at a school board meeting with public testimony (ACLU, 2011).

Changes in policy language at both the federal and state level has primarily been words of guidance with the exception of the mandate for expulsion in cases where drugs or guns are involved. Final say in the application of zero tolerance is the responsibility of the school administrator at the point of action; when the behavior of the student necessitates a response. By the written policy using language such as encourage, authority is relinquished to local educational agencies for the expressed purpose of determining under which scenario disciplinary penalties are to be applied. In accordance with zero tolerance policy, schools are encouraged to consider whether or not the behaviors of students warrant punishment from the least severe such as a warning to the severest of penalties leading up to and including expulsion and the involvement from law enforcement personnel. It is important to note, however eloquent and respectful the written language of the policy intent is, application of zero tolerance policy will continue to fall short of equality and equity measures as offenses that fall outside of the mandated actions are subjective at best (Flannery, Fenning, Kato, & Bohanon, 2011; Walker,

2012) or racially biased at worst (McNeal & Dunbar, 2010; Verdugo, 2002). Discrepancies in how administrators interpret and handle the subjective aspects of student behavior increase the disproportionality when suspension and expulsion data is looked at in totality.

Disproportionality

Zero tolerance is contrary to the best educational practices. Zero tolerance policies set equal expectations on an already unequal playing field, reject developmental needs of children, deny educational opportunities by contributing to dropouts, produce poor achievement, and criminalize student behavior. (Reyes, 2006, p. 8)

Research has continued to point out the ongoing disproportionality in the application of and consequences relating to zero tolerance policies (Carter, Fine, & Russell, 2014; Fenning & Rose, 2007; Gregory & Mosley, 2004; Hoffman, 2014; Losen & Skiba, 2010). Prior to implementation of zero tolerance policy, the historical “unequal playing field” Reyes (2006) describes is highlighted in the Children’s Defense Fund (1975) report, *School Suspensions: Are They Helping Children?* The report looked at suspensions of students by race across 2,862 school districts for the 1972-1973 school year in elementary and secondary schools. Findings showed Black students were twice as likely as their White counterparts to be suspended at least once. Even then, there was evidence to suggest something more was happening in the application of disciplinary measures amongst students.

Fast-forward almost 40 years after that Children’s Defense Fund report and we can see much of the same discrepancies within schools related to discipline. And although Black students are typically a smaller percentage of schools’ enrollments, Black students make up the majority of the students suspended and expelled from school (Gregory & Mosley, 2004). Hoffman (2012) zeroed in on the effects of zero tolerance policy before and after implementation and the policy’s contribution to the racial disparity using data from the National Center for Educational Statistics (NCES). Suspension percentage for a Black student in a public high school increased “from 37% in 1999 to 49% in 2007, compared to a slight decline in the rate for White students, from 18.2% in 1999 to 17.7% in 2007” (p. 71). Skiba, Michael, Nardo, and Peterson (2002) revealed that even when the factor of socioeconomic status is controlled for; Black students still represent the majority of suspensions and expulsions compared to other races. The propensity of local educational agencies to apply harsher disciplinary measures toward marginalized populations shows policy alone will not change the direction of the trend that has been occurring in educational institutions. Research has shown how some of the more vulnerable populations within schools have been subjected to the wrath of zero tolerance policies even when laws are in place to protect them (Brown, 2012; Losen & Martinez, 2013).

In 1975, the Education for All Handicapped Children Act (EAHCA) passed by Congress, eventually becoming known as the Individuals with Disabilities Education Act (IDEA), had the purpose of providing students with disabilities the right to receive a free and appropriate public education. Prior to the passage of EAHCA, students were excluded by the millions. When they were included, discipline was used as a tool to exclude those deemed unable to be served by the existing structural educational offerings due to the students’ needs and the difficulties that came with serving them (Honing v. Doe, 1988). As part of the 1997 amendment of IDEA, parents were

provided procedural protections and the aspects of due process to challenge actions taken by schools to exclude students from school using suspension and expulsion as a tool (Rothstein & Johnson, 2014). This was especially important, as students with special needs could not be suspended or expelled under IDEA if the offending behavior was a manifestation of their specific disability. Prior to this amendment, once the administration had removed the student from the school, parents had very little recourse in getting educational services for their child.

In the 2004 reauthorization of the 1997 version of IDEA, more authority was given to schools in the area of discipline removals due to accountability measures of the No Child Left Behind Act of 2001 (Brown, 2012; McCarthy & Soodak, 2007). Policy language changed to favor schools. Where the language around disproving the students' behavior was not a manifestation of their disability was more rigid and inflexible under the previous version of IDEA, the newer language provides "fewer and less specific" (Brown, 2012, p. 821) conditions by which schools need to adhere to. Parents are required to take a more active role in documenting the needs of their child for schools and be able to show how the school is not meeting those needs under the IDEA due process provision. The task of outlining the educational needs of a child with special needs is an onerous responsibility for those parents ill-equipped with the resources or knowledge to evaluate the child, then articulate to and hold accountable the school for not meeting those needs is one that may fall outside the skill set of many parents. The results of the shift in language can be seen in the data, as "students covered under IDEA are over twice as likely to receive one or more out-of-school suspensions" (Office of Civil Rights, 2012).

Policy Consequences

Zero tolerance policies were developed to eradicate the perceptions of schools being drug-ridden, violence induced environments unfit for quality learning to happen. Even though the statistical likelihood of a student being killed in school is less than 1 in 1 million (Austin, 2003), massive school shootings like the Columbine High School shooting in 1999 and the more recent event at Sandy Hook Elementary School in 2012 serve as tragic reminders of the level of destruction that can terrorize a community on a large scale and the vulnerabilities of educational institutions. Reaction to both incidents heated up the debate on issues of gun control with Wayne LaPierre, executive vice president for the National Rifle Association (NRA) responding to critics through a highly publicized press address where he called for the expansion of armed guards in schools to protect children (NY Times, 2012). Surely there are those who may not be as boisterous as LaPierre but empathize with his position just the same. Similarly, there are those who vehemently disagree with LaPierre's position of armed guards being the appropriate solution to warding off future tragedies. For many, solutions like LaPierre's increase the likelihood those students already overrepresented in the disproportionality of zero tolerance policy enforcement will add to the number of students going from the schoolhouse to the jailhouse.

Referring offending students to law enforcement agencies for weapons and drug violations while on school grounds is a reasonably clear directive in circumstances of imminent danger and threats to the safety of students and school personnel. However, the literature notes only a small percentage of infractions are comprised of weapons and drug related offenses while the majority of offenses are categorized as defiance, disobedience, insubordination, and other infractions considered more subjective than explicit (Duran, Zhou, Frew, Kwok, & Benz, 2011; Flannery, et

al., 2011; Hall & Karanxha, 2012; Losen, Hewitt, & Toldson, 2014; Mendez & Knoff, 2003). Many students are being introduced to the justice system through a pipeline leading directly from the school to a succession of bad decisions, which lead them further into the depths of the judicial system. Attorney General Eric Holder remarked during his speech at the Department of Justice and Department of Education school discipline guidance rollout that

far too many students across the country are diverted from the path to succeed by unnecessarily harsh discipline policies and practices that exclude them from school for minor infractions. During critical years that are proven to impact a student's later chances for success, alarming numbers of young people are suspended, expelled, or even arrested for relatively minor transgressions like school uniform violations, schoolyard fights, or showing "disrespect" by laughing in class (U.S. Department of Justice, 2014, para. 3).

Walker's (2012) study of nine African American males offered several insights from the group of youth ranging in age from 14-17 years old, one of the themes prevalent in the dialogue was desensitization to the juvenile justice system once they had overcome their initial fears. Growing accustomed to the conditions of the environment, the youth were less concerned with the consequence of being sent back if the situation warranted it.

Primarily in urban school districts, youth are given clues as to the perceived safety of the school environment by the presence of school resource officers (often law enforcement personnel), metal detectors, and surveillance cameras for the purpose of keeping students safe (Hall & Karanxha, 2012). In contrast to the expectation of perceived safety, McNeal and Dunbar (2010) provided research from the perspective of students in urban school districts whom these advanced measures are in place to protect that directly contradict safety discussions. Findings from the study illuminate concerns from students of inadequate security, quality of security services, and lack of consistency in policy enforcement. Tales of security personnel (school resource officers) befriending the students known for getting in trouble, understaffing of security personnel due to budget cuts, and lack of training offered to the personnel presents potential problems for those in and around the school as situations can quickly escalate. Urban schools with metal detectors are sometimes faulty at best or not working at all leaving security personnel or teachers to check bags as students enter. According to Sonya, "Bags are simply often given a quick look-see, and students are told to move on (McNeal & Dunbar, 2010, p. 304). Haphazard measures such as these neither deter those who look to be offenders nor make safe the environment in which the measures are implemented.

Criminalization of student behavior has also played a key role in supporting the school-to-prison pipeline (Giroux, 2003; Rocque & Paternoster, 2011) due in large part to the expansion of zero tolerance policies. "(Z)ero tolerance policy attempts to prevent violence by punishing young people because of their potential for violence and for their displayed dangerousness" (Casella, 2003, p. 875). Aligning with the general trend in policing tactics towards the latter part of the 20th century from punishing past crimes to the use of incarceration as a preventative tactic for the potential of future violations from offenders. Local education agencies have strategically adopted this method under the guise of zero tolerance policy to the detriment of students and the overall school environment as this method does not prove to be successful in deterring students (American Psychological Association Zero Tolerance Task Force, 2008) or empowering school

personnel to respond to behaviors appropriately (Bon, Faircloth, & LeTendre, 2006; Brownstein, 2009; Rabile & Irizarry, 2010; Gonsoulin, Zablocki, & Leone, 2012).

Considering Alternative Solutions

For all of the documented outcomes associated with the implementation of zero tolerance policies in schools, a statistic that should concern everyone interested in the education of generations of students is the academic underperformance of those students suspended or expelled from school. At the school administrator level, providing each and every student with a quality education to ensure they are better global citizens prepared for what the future holds should be the absolute priority. Arica (2006) as cited in Gregory, Skiba, and Noguera (2010) followed two cohorts of students over two years, one cohort consisted of students who had been suspended at least once and the other cohort was comprised of students never suspended to that point and the results were telling. At the end of year 1, students that were suspended at least one time were three grade levels behind their peer cohort in reading. After year 2, the suspended cohort was almost five years behind their peers. When students are disproportionately removed from school environments even for a short time, research shows the underachievement that can occur leading to increased chances of those individuals not graduating on time or simply dropping out altogether (Brownstein, 2010; Villarruel & Dunbar, 2006). Identifying solutions school administrators can utilize to address the gaps zero tolerance policies have left is the right thing to do for the students, the school environment, and communities that are also directly impacted by the disproportionalities in policy application.

Alternative solutions are being implemented successfully in a myriad of school districts across the country (Reyes, 2014). In Florida's sixth-largest school district, Broward County, Superintendent Robert Runice has put a moratorium on the use of zero tolerance punishments for minor infractions. As opposed to calling in law enforcement personnel for non-violent offenses, the procedure is to refer offending students to social workers and drug abuse counselors as needed. The positive results are noticeable. A drop in suspensions, expulsions, and arrests by 66 percent, 55 percent, and 45 percent respectively has been realized for the school district (Reyes, 2014). Bringing in counselors and social workers is one alternative for school administrators to implement as a way of addressing minor infractions. Themes surfacing from the literature and practitioners include violence prevention programs, positive behavioral supports, early intervention, and personnel development strategies (ACLU, 2011; Hall & Karanxha, 2012; Lamont, 2013; National Association of School Psychologists, 2008; Shippen, Patterson, Green, & Smitherman, 2012; Sullivan, Dollard, Sellers, & Mayo, 2010; U.S. Department of Education, 2014; Walker, 2012). There is no assumption every alternative works for every school. The buck stops with the school administrators as the responsibility to identify effective alternative solutions lies with them.

In a report issued early 2014, the U.S. Department of Education offered three guiding principles for schools to consider in developing local approaches to ensure safe and successful school environments. Considering the results of research, evaluation, and consultation throughout the educational field, the principles are: (1) create positive climates and focus on prevention; (2) develop clear, appropriate, and consistent expectations and consequences to address disruptive student behaviors; and (3) ensure fairness, equity, and continuous improvement (U.S.

Department of Education, 2014). School administrators should use these principles as a tool to develop alternative practices that are fair and equitable for all students. In doing so, a moratorium is placed on zero tolerance discipline practices for the minor infractions and the policy is reserved for its original intent, drugs and weapons violation.

Conclusion

Three misdemeanor assault charges and an arrest record, that is the punishment Andrew received for spit-balling at fellow students. The use of zero tolerance as a measure to remove students from the school environment is overused and in many cases causes irreparable damage to the potential of the student. Policy intent is to address issues of drugs and weapons on school grounds. Considering this, it is imperative a moratorium is placed on the use of zero tolerance discipline practices by school administrators. In doing so, room for alternative solutions to this tragic phenomenon is created whereby school administrators can institute the three guiding principles offered by the U.S. Department of Education.

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