

Disrupted Lives; Diverted Futures: Zero Tolerance Policies Impact on Students with Disabilities

By Catherine E. Johnson
Disability Rights Attorney
Disability Rights Center of Kansas, Incorporated

Goals of Public Education?

- American Dream
- Produce educated, productive and responsible citizens
- Safety of students, teachers, staff

Emergence of Zero Tolerance Policies

- 1980's, 1990;s
- Backlash against rehabilitation of youth
- Trend was moving toward retribution
- Decade saw longer sentences for youth, more youth transferred to adult court, lower minimum age for prosecution as adults
- Juvenile courts/system forced to address mental health related issues

ZERO TOLERANCE POLICIES

- Initially created in 1994 after the Safe Schools Act (Federal Gun Free School Act of 1994)
- Dealt with Firearms
- Policies have exploded to include wide range of violent and non-violent behaviors
- 90% of U.S. Schools have some form of ZT policy
- Administrators claim best way to address school violence

SUCCESS OF ZT: CURBING VIOLENCE?

- United States Department of Education found no evidence of success
- Statistics indicate that juvenile crime was decreasing prior to 1994 Act.
- In 1999, United States Department of Juvenile Justice & Delinquency Prevention reported a 31% decrease in juvenile violence between 1993-1997

Counting the ways ZT fails students with disabilities

- Punitive approach, disruptive to education
- No individualized consideration of student's disability
- Frequency suffer serious emotional harm from inappropriate discipline, punishment and treatment by school officials, SRO
- Higher dropout rate
- Creates negative associations with school, teachers, students, learning
- Lead to increase of school-arrest being filed against students for in-school behaviors

CONFLICT IN EDUCATION

- ZT Policies mandate the immediate removal of student from school
- ZT in direct conflict with student's rights to a Free Appropriate Public Education, Procedural Due Process Rights, etc. contained in the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973, Americans with Disabilities Act

REQUIREMENTS OF IDEA

- FAPE for children between 3-22 years of age that have disability
- **Only 10 days disciplinary removal from school**
- **Manifestation Determination Review**
- **Procedural Due Process rights for long-term suspensions, expulsions**
- 11th Day school must **provide services** that allows student to progress toward IEP goals

Pre-IDEA

- 1967 - 200,000 individuals with disabilities lived in state institutions
- Prior to 1970 – no legal requirement that public schools serve children with disabilities
- Children were refused enrollment or inadequately served by the public school
- Schools were permitted to refuse enrollment of any student if deemed “uneducable”

IDEA: Asserting Rights in disciplinary proceedings

- Less than 10 days OSS
- More than 10 days OSS, or serial behavior that constitutes a pattern
- Manifestation Determination Review within 10 school days of decision to change educational placement
- Challenging MDR Decision
- Procedural Due Process Rights in Long-Term Suspensions, Expulsion Hearings
- 11th Day services and FAPE

Two MDR Questions

- 1) Was this conduct caused by, or had a direct and substantial relationship to the child's disability; OR
- 2) Was this conduct the direct result of the school's failure to implement the student's IEP.
- K.S.A. 72-991a(d)(2), (e)(1); 34 C.F.R. 300.530(e)(1)

Advocacy in Manifestation Determination Meeting

- Report(s) of Incident
- Assessments done by Community Mental Health Association, psychiatrists, psychologists, social workers, qualified mental health professions.
- Assessments done by Community Development Disability Organizations.
- Relevant medical records
- Relevant educational records
- SED Waiver eligibility assessment
- Plans of Care

More documents

- Definition of diagnosis – use DSM-IV-TR
- Disability in the school context
- Manifestations of disability
- Case workers from Community Mental Health Association, Community Development Disability Organization, mental health professions, disability professionals

How to determine relationship to disability?

- Important to define conduct in question with as much detail as possible
- “Billy yelled at the teacher, threw his book on the floor and ran out of the classroom.”
- Is this enough information regarding the conduct to determine the relationship to disability?
- What else might be helpful?

Conduct

- What caused Billy to yell, throw his book run out of the classroom?
- Does Billy's IEP contain a list of agreed upon manifestations of his disability?
- If not, what does the team believe to be Billy's manifestations of his disability?
- Team may not agree of manifestations of disability
- Parent may submit own list
- Parent may find DSM-V helpful in discussing manifestations of mental disabilities
- Outside professionals working with student may offer unique and helpful perspective on this question

Failure to Implement IEP

- Must review IEP for required special education and related services; goals
- School required to implement all sections of IEP.
- Any unimplemented section of the IEP may result in undesired conduct.
- Carefully review Positive Behavioral Support Plan
- Carefully review all related services
- Carefully review goals, bench marks, and progress

Yes

- If the answer to either question 1 or 2 is yes, then the conduct is a manifestation of the student's disability.
- Return the child to the placement from which the child was removed. **34 C.F.R. § 300.530(f)**
- If manifestation determined due to failure to implement IEP; school must immediately correct the deficiencies.

NO!

- If behavior is NOT a manifestation:
 - OSS is allowed
 - Expulsion also allowed
 - School must follow due process contained in K.S.A. 72-8901
- But LEA must provide IEP services after the 10th day.
- 34 C.F.R. 300.530(b)(2).

ZT provisions of IDEA: 45 day removal

- Weapons, Drugs
- Causing serious bodily injury
- Expedited Due Process Hearings
- FAPE issues

Bypassing IDEA rights in Kansas

- Use of the criminal/juvenile justice system as a means of removing students from school building/classroom/education early as age 10.
- Cited behaviors are frequently manifestations of students disabilities

REPORT BY THE AMERICAN PSYCHOLOGICAL ASSOCIATION

- February 1, 2006, Exhaustive review of ZT policies in schools
- ZT has affected relationship between schools and juvenile justice
- ZT increased use and reliance in schools on security technology, security personnel and profiling
- Use of School Resource Offices in schools
- *Are Zero Tolerance Policies Effective in the Schools? Report by the American Psychological Association Zero Tolerance Task Force*

CONSEQUENCES OF NEW RELATIONSHIP

- Increase of referrals to juvenile justice.
- Schools increasingly relying on juvenile justice and arrests to remove students.
- Large percentage of school referrals are for behaviors not considered dangerous or threatening.
- Enrollment of students with disabilities 11-14%
- Suspension and/or expulsions of students with disabilities 20-24%
- WAGNER, 2005 , 47.7 Students in elementary/middle school with emotional disabilities were suspended/expelled and 72.9% in high school

Relationship between IDEA and Juvenile delinquency

- IDEA requires IEP, disciplinary history to be provided to law enforcement when incidents occur at school.
- Whether Juvenile charges will be brought is an independent determination from Manifestation Determination Decision.
- Possible for student to have juvenile charge and for IEP Team to determine conduct was a Manifestation of their disability.

Raising IDEA protections in Juvenile Proceeding

- School decision to refer student for juvenile proceedings is a de facto disciplinary change of placement that requires manifestation determination review
- Motion to Dismiss Juvenile Proceeding based on IDEA violations; IDEA Remedies
- FAPE and LRE requirements
- Corresponding State and Federal Education Complaints

Addressing Zero-Tolerance Policies

- Ensuring Student's rights under IDEA
- Positive Behavioral Intervention Plans – school climate
- Raising IDEA and Section 504 violations in Juvenile Proceedings
- Plans for re-integration of students returning from long-term suspensions, expulsions, detention centers, juvenile justice facilities



QUESTIONS

- THANK YOU!

REFERENCES

- Robert Fraser, Student Discipline from the Perspective of the School Attorney, 34 NEW ENG.L.REVV. 537 (2000).
- Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503, 524 (1969) (Black, J., dissenting)
- Joseph Lintott, Teaching and Learning in the Face of School Violence, 11 GEO.J on Poverty L. & Pol'y 553 (2004).
- Paul Bogos, Expelled. No Excuses, No Exceptions – Michigan's Zero Tolerance Policy in Response to School Violence, 74 U.DET.MERCY.L.REV. 357, 367-68 (1997).
- Anthony DeMarco, From the Jail Yard to the School Yard, Zero Tolerance 43 (William Ayers, et al, eds, 2001). In 2001 the American Bar Association recommended ending Zero Tolerance policies in schools. "No" to "Zero Tolerance" WASH. POSTT, Feb. 20, 2001, A14.
- Vito A. Gagliardi, In Defense of Zero Tolerance Policies (2001), at http://www.pbhlaw.com/PressRoom/zero_tolerance.shtml.
- 7 U.S.C. Section 701
- Casella, R. At zero tolerance: Punishment, prevention, and school violence. New York: Peter Lang, (2001a).
- Kay Hymowitz, 'Zero Tolerance' Is Schools' First Line of Defense, NEWSDAY, Apr. 18, 2001, http://www.manhattan-institute.org/html/_newsday-zero_tolerance.htm
- Irwin A. Hyman & Eileen McDowell, An Overview, in Corporal Punishment in American Education, 4 (Irwin A. Hyman & James H. Wise ed., 1979).
- Troy Adams, The Status of School Discipline and Violence, 567 Annals Am. Acad. Pol. & Soc. Sci. 140 (2000).
- Troy Adams, The Status of School Discipline and Violence, 567 Annals Am. Acad. Pol. & Soc. Sci. 140 (2000).
- Troy Adams, The Status of School Discipline and Violence, 567 Annals Am. Acad. Pol. & Soc. Sci. 140 (2000).
- See Goss v. Lopez, 419 U.S. 565, 572-73, 581 (1975).
- Troy Adams, The Status of School Discipline and Violence, 567 Annals Am. Acad. Pol. & Soc. Sci. 140 (2000).
- Altschuler, D.M., Trends and issues in the adultification of juvenile justice. In Research to Results: Effective Community Corrections, edited by P. Harris. Lanham, MD: American Correctional Association (1999).
- Troy Adams, The Status of School Discipline and Violence, 567 Annals Am. Acad. Pol. & Soc. Sci. 140 (2000).
- Snyder & Sickmund, U.S. Dept. of Just., Juvenile Offenders & Victims: 1999 National Report at 62, 82-83.
- U.S. Dep't of Just. And Fed. Bureau of Investigation, Crime in the United States: Uniform Crime Reports, 1998 at 214 tbl.32
- Ira M. Schwartz, Neal Alan Weiner, Tammy White & Sean Joe, School Bells, Death Knells, and Body Counts: No Apocalypse Now, 37 Hous. L. Rev. 1, 6 (2000).
- Jill Richards, Zero Room for Zero Tolerance: Rethinking Federal Funding for Zero Tolerance Policies, 30 University of Dayton Law Review 91 (2004).
- Howard N. Snyder & Melissa Sickmund, U.S. Dep't of Just., Juvenile Offenders and Victims, 1999 National Report 62.
- TEXAS APPLESEED, Texas' School-to-Prison Pipeline: Dropout to Incarceration: The Impact of School Discipline and Zero Tolerance (October, 2007).

REFERENCES, CONTINUED

- TEXAS APPLESEED is a nonprofit public interest law center working in pro bono collaboration with nine law firms and corporate legal departments, consulting team of interdisciplinary experts and other organizations such as Texas Public Policy Foundation, Advocacy Inc., and the Harvard Civil Rights Program to document the impact of a school-to-prison pipeline in Texas (www.texasappleseed.net)
- TEXAS APPLESEED, *Keeping Schools Safe While Reducing Dropouts: Breaking the School-to-Prison Pipeline* (2007).
- TEXAS APPLESEED, *Texas' School-to-Prison Pipeline: Dropout to Incarceration: The Impact of School Discipline and Zero Tolerance* (October, 2007), pgs 115-133.
- *Id.* at 2.
- TEXAS APPLESEED, *Keeping Schools Safe While Reducing Dropouts: Breaking the School-to-Prison Pipeline: Texas School Discipline Policies: A Statistical Overview* (2007).
- TEXAS APPLESEED, *Texas' School-to-Prison Pipeline, Dropout to Incarceration: The Impact of School Discipline and Zero Tolerance*, (October, 2007) pgs 47-56.
- Hogg Foundation for Mental Health, *School Discipline and Children with Serious Emotional Disturbances* (2004).
- TEXAS APPLESEED, *Texas' School-to-Prison Pipeline, Dropout to Incarceration: The Impact of School Discipline and Zero Tolerance*, (October, 2007), pgs 47-56.
- Cassella, R. *At zero tolerance: Punishment, prevention and school violence*. New York: Peter Lang. (2001a)
- 20 U.S.C. Sections 1400 et. seq.
- 20 U.S.C. Sections 1400 et. seq.
- *Honig v. Doe*, 484 U.S. 305, 108 S.Ct. 592 (1988)
- 484 U.S. at 327-28
- Eileen L. Ordovery, Center for Law and Education, *Challenging Abusive Filing of Juvenile Petitions Against Children with Disabilities by School Officials*, (September, 1996).
- Kristy A. Mount, *Children's Mental Health Disabilities and Discipline: Protecting Children's Rights While Maintaining Safe Schools*, 3 *Barry L.Rev.* 103 (2002).
- Robin F. Goodman, *Zero Tolerance Policies: Are They Too Tough or Not Tou*

REFERENCES, CONTINUED

- U.S. Dept. of Educ., 2000 Annual Report on School Safety, <http://www.ed.gov/offices/OESE/SDFS/annreptoo.pdf> (2000)
- U.S. Dept. of Educ., Natl. Ctr. For Educ. Stat., Indicators of School Crime and Safety 2000, Exec. Summary v. <http://nces.ed.gov/pubs2001crime2000> (October, 2000).
- U.S. Dept. of Educ. Report on State Implementation of the Gun-Free Schools Act Report: 1998-1999: <http://www.ed.gov/offices/OESE/SDFS/GFSA> (October 2000).
- Casella, R. At zero tolerance: Punishment, prevention and school violence. New York: Peter Lang. (2001a).
- U.S. Surgeon General, Youth Violence: A Report of the Surgeon General (Jan. 2001): <http://www.surgeongeneral.gov/library/youthviolence/toc.html>
-
- Kristy A. Mount, Children's Mental Health Disabilities And Discipline: Protecting Children's Rights While Maintaining Safe Schools, 3 Barry L. Rev. 103 (2002).
- Ivan Eugene Watts, Nirmala Erevelles, These Deadly Times: Reconceptualizing School Violence by Using Critical Race Theory and Disability Studies, Vol. 41, American Educational Research Journal, pp. 271-299 (Summer 2004).
- McFadden, A.C. Marsh, G.E. Price, B.J. & Hwang. A study of race and gender bias in the punishment of handicapped school children. 24(4) Urban Review, pg 239-251 (1992).
- Rumberger, R.W. Larson, K.A., Student mobility and the increased risk of high school drop out. 107 American Journal of Education, 1-35 (1998).
- Kronick, R.F. & Hargis, C.H., Dropouts: Who drops out and why – and the recommended action (2nd Ed.). Springfield, IL, Charles C. Thomas, (1998).

REFERENCES, CONTINUED

- Wagner, M. Dropouts with disabilities: What do we know? What can we do? Report from the National Longitudinal Transition Study of Special Education Students. Menlo Park, CA: SRI International (1991).
- Wagner, M. Outcomes for youths with serious emotional disturbance in secondary school and early adulthood. *The Future of Children: Critical Issues for Children and Youths*, 5(4), 90-112 (1995).
- Sickmund, M. *Juvenile in Corrections*. Washington DC: Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention (June, 2004).
- Sue Burrell and Loren Warboys, *Special Education and the Juvenile Justice System*, U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention (July, 2000).
- Joseph J. Cocozza and Kathleen R. Skowyra, National Center for Mental Health and Juvenile Justice, *Youth With Mental Health Disorders: Issues and Emerging Responses*, originally published in Vol. 7(1) *Juvenile Justice*, pgs 3-13, Office of Juvenile Justice and Delinquency Prevention, Washington, D.C. (2000).
- United States Department of Health and Human Services. *Report of the Surgeon General's Conference on Children's Mental Health: A National Action Agenda*. Washington, D.C.: Department of health and Human Services (2002).
- National Center for Mental Health and Juvenile Justice, Jennie L. Shufelt, & Joseph J. Cocozza, *Youth with Mental Disorder in the Juvenile Justice System: Results from a Multi-State Prevalence Study* (June, 2006).

REFERENCES, CONTINUED

- Leone, P.E., Zaremba, B.A. Chapin, M.S. and Iseli, C., Understanding the overrepresentation of youths with disabilities in juvenile detention. 3 District Columbia Law Review pg 389-4-1 (Fall, 1995).
- Schwank, J., Espinosa, E., Tolbert, V. Mental Health and Juvenile Justice in Texas. Austin, TX, Texas Juvenile Probation Commission (2003).
- Id.
- Chesapeake Institute. National Agenda for Achieving Better Results for Children and Youth with Serious Emotional Disturbance. Washington, D.C.; U.S. Department of Education, Office of Special Education and Rehabilitative Services, Office of Special Education Programs (1994).
- SRI International, Center for Education and Human Services. The National Longitudinal Transition Study: A Summary of Findings. Washington, D.C. U.S. Department of Education, Office of Special Education Programs (1997).
- U.S. Department of Education, National agenda for achieving better results for children and youth with serious emotional disturbance. Washington, D.C. (1994).
- The Bazelon Center for Mental Health Law is nonprofit, national legal advocate for children and adults with mental disabilities.
- Testimony of Tammy Seltzer, Senior Staff Attorney, Bazelon Center for Mental Health Law, Before the Committee on Governmental Affairs United States Senate, Out of Luck & Behind Bars: The Unnecessary Incarceration of Children and Youth Who are Awaiting Community Mental Health Treatment and Supports (July, 7, 2004).
- Id. at pg 5.