

U.S. Civil Rights Commission

Briefing on the Civil Rights Implications of Zero Tolerance Policies in Schools

Introduction:

Thank you, for the opportunity to participate in this timely briefing. I look forward, from my perspective as Director of ED's Safe and Drug Free Schools Program, to presenting you with a brief overview of what we know regarding zero tolerance policies. I would also like to provide you with a brief overview of some of the activities we are engaged in in this area. My presentation will cover a portion of the issues and programs ED is involved in. Ms. Norma Cantu, Assistant Secretary, Office of Civil Rights, will follow my presentation and will provide additional information on issues their office is involved in. While our presentations will provide a comprehensive perspective of ED's activities specifically targeting these issues, it should be noted that much of what we engage in at ED in regards to improving teaching and learning has an impact on student behavior.

Before presenting an overview of what we know, I would like to make a couple of introductory comments regarding school safety and school discipline policies. First, I want to reiterate that schools remain one of the safest places for children and youth. Over the past several years we have become uniquely aware of the violence that can take place in our schools. At the same time, we have lost sight of the fact that an overwhelming majority of schools [90 percent] do not experience any serious violent crime, and nearly half of all our schools [43 percent], experience no crime at all. I would also like to further mention, that data collected by the Departments of Education and Justice and published in the Annual Report on School Safety, indicate that crime and violence in schools is continuing to decrease. For example, the number of students caught possessing firearms at school has decreased from 5,724 in the 1996-97 school year, to 3,930 in the 1997-98 school year. The overall school crime rate has decreased from 155 crimes per 1,000 students in 1993, to 102 such crimes in 1997. Between 1993 and 1997, we also saw a decrease in the number of students carrying a weapon to school and the number of students fighting on school property.

Second, I would like to point out that schools are safer today not because of any one program, policy, or practice, but because more schools are adopting a comprehensive approach to school safety. An approach that emphasizes the utilization of sound prevention and early intervention strategies that: (1) involve parents, students, clergy, youth serving organizations, law enforcement agencies, health and mental health organizations; (2) begin early and extend throughout a student's educational experience; and (3) emphasize the utilization of sound data in the design and implementation of programs and policies. The implementation of comprehensive prevention and intervention strategies also means that schools need to find ways to link their educational reform activities, e.g., smaller class size, smaller schools, better prepared teachers,

etc., with school safety issues and activities. We have generally found that “good schools” are “safe schools.”

Another key element in creating and maintaining safe schools [aside from the elements cited in the previous paragraph] is holding students accountable for their actions. While this does *not* necessarily mean that students must be suspended or expelled for every minor infraction, it does mean that they need to be held accountable for complying with their school’s discipline policies.

Third, it is important to note that the development and implementation of school discipline policies is primarily the responsibility of State and local educational agencies. The only policy related to school safety that is mandated by the Elementary and Secondary Education Act is the Gun-Free Schools Act which requires school districts to have policies mandating a one-year expulsion of students who bring a firearm to school.

Fourth, it is also important to note that school discipline policies cannot function in isolation. Parents have a key role to play in developing, supporting, reviewing, and providing feedback on school discipline policies.

Fifth, while it is critical that you examine the substance of zero-tolerance policies, it is also essential that you examine the process in which these policies are implemented.

Sixth, as you examine this issue, I urge you to review past and current research. Research shows that in order for discipline policies to be effective they need to contain certain elements.

Effective discipline policies should be:

- Linked to other drug and violence prevention initiatives;
- Consistently and equitably enforced;
- Regularly reviewed for efficacy, effectiveness, fairness, and consistency with other Federal, state, and local laws;
- Developed with input from students, parents, teachers, and other community groups;
- Clear and understandable;
- Available to, and be communicated with parents, students, and faculty on a regular basis;
- Cover a broad range of behaviors, and include broad range of sanctions;
- Ensure that due process is provided, and
- Developed with goal of setting standards of behavior, not as a mechanism to punish.

Finally, to build upon the last element, I want to reiterate a statement Secretary Riley has made on numerous occasions; “It ought to be a basic American principle that no student should be punished by being denied an education.”

What Do We Know About Zero Tolerance Policies?

While we need to continue to learn more about zero tolerance policies, there are many things we know from administering the Gun-Free Schools Act, and from frequent dialogue with school

officials, parents, and students on this issue. We know that:

1. Almost every school district in the country has adopted some sort of zero tolerance policy:
 - 94 percent of schools have adopted zero tolerance policies for firearms;
 - 91 percent for weapons other than firearms;
 - 88 percent for drug related offenses; and
 - 87 percent for alcohol-related offenses.
2. Zero tolerance policies are implemented differently across different States, school districts and schools. Aside from the requirement that students caught bringing a firearm to school be expelled for a period of one year, sanctions for violating zero tolerance provisions can mean anything from short term suspension to long term expulsion.
3. Requiring schools to adopt specific discipline, violence, or drug prevention policies as a condition for receipt of Federal funds can be traced back to 1990 amendments to the Drug Free Schools and Communities Act. Section 5145 of the Drug Free Schools and Communities Act states “no educational agency shall be eligible to receive funds or any other form of financial assistance under any Federal program unless it certifies to the State educational agency that it has adopted and has implemented a program to prevent the use of illicit drugs and alcohol by students or employees that, at a minimum, includes:
 - o standards of conduct that are applicable to students and employees in all the applicant’s schools and that clearly prohibit, at a minimum, the unlawful possession, use, or distribution of illicit drugs and alcohol by students and employees on school premises or as part of any of it’s activities;
 - o a clear statement that sanctions (consistent with local, State, and Federal law), up to and including expulsion or termination of employment and referral for prosecution, will be imposed on students and employees who violate the standards of conduct required by paragraph (3) and a description of those sanctions.
4. While zero tolerance has been part of some school discipline codes for decades the types of offenses covered by so-called zero tolerance policies have expanded since 1994, when the Gun Free Schools Act was passed. In California, for example, students face mandatory expulsion, not only for possession of a firearm at school, but for brandishing a knife at someone or selling drugs.
5. In the area of firearms, zero tolerance policies, in combination with other prevention and early intervention strategies, have proven to be successful in reducing the number of firearms on school property. For example, data from the 1996-97 and 1997-98 Gun-Free Schools Act Reports indicates that there has been a significant reduction in the number of students who have been expelled for bringing a firearm to school [from 5,724 to 3,930].
6. Students of all ages/grades are impacted by zero tolerance policies. For example, in 1997-98, 10 percent of the 3,930 students expelled for carrying a firearm at school were elementary school

students.

7. Expulsion for violating a zero tolerance policy does not automatically mean that educational services will be denied. Some school districts require a continuation of educational services for the period of expulsion, while others permit students to take courses in alternative settings or on alternative dates [Saturday] or times. The GFSA Report indicates that 43 percent of all students expelled for bringing a firearm to school were referred to an alternative educational placement. Further, information from the 1997 Fast Response Survey System, "Principal/School Disciplinarian Survey on School Violence," indicates that about 20 percent of students caught possessing/using a weapon, and about 20 percent who are caught in possessing, using, or selling alcohol or drugs are transferred to alternative schools or programs.
8. Students attending alternative high schools are significantly more likely than students attending regular high schools to drink alcohol, use drugs, engage in physical fights, attempt suicide, and carry a weapon. While it is important to ensure that students expelled under zero tolerance policies are not denied educational services, it is equally important to provide them with necessary support mechanisms to address violent or dangerous behavior.
9. Certain provisions of zero tolerance policies, such as providing the person responsible for administering the sanctions with flexibility based upon extenuating and mitigating situations, e.g., case by case basis, are key to ensuring that injustices and inappropriate penalties do not take place.

We realize that denying students educational services is not in the best interest of students or the community. However, we also understand and support the need to maintain order, discipline, and safety in the classroom. We have developed a handout listing various Department of Education activities to provide you with an idea of the activities we are engaging in to help address the problem of inappropriate suspensions and expulsions. I would like to note that the list is, in some ways, incomplete, as it does not include any of the school reform programs designed to improve teaching and learning. As stated very early in this briefing paper, programs such as the 21st Century Community Learning Centers, class size reduction program, GEAR-UP, and the many programs designed to improve teacher quality, all play a role in our efforts to improve teaching, learning, and discipline.

I would like to focus special attention on three of the activities listed on the handout. These activities have the promise of changing the way schools deal with disciplinary problems. Included on this list of activities is

- Reauthorization of the Elementary and Secondary Education Act—Title XI;
- A joint Department of Education and National School Boards Association School Discipline Policy Manual; and
- A SDFS discretionary grant program focusing on identifying alternatives to expulsion and strategies for continuing to provide educational services to those students who have been expelled.

I would also like to briefly mention another effort we are engaged in that, while not designed specifically to address this issue, will have a considerable impact on it. That effort is the Safe Schools/Healthy Students Initiative. This is an inter-agency initiative that provides school districts with funding—from three different agencies—so students and families can be provided with a wide range of services, activities, and programs that promote healthy childhood development and safety. In order to receive funding—funding of up to \$3 million per year for three years—school districts must design and implement a safe school strategy that addresses seven areas: safe school environments, school discipline policies, drug and violence prevention programming, early childhood programs, family strengthening programs, education reform, and mental health assessment and referral. This comprehensive approach—an approach that requires schools to address issues related to school safety in a very broad and comprehensive fashion—holds a considerable amount of hope as it recognizes that the best approach to creating safe schools and healthy students is through a comprehensive strategy that involves the entire community.

In closing, let me state that we are interested in working with you and other interested groups and organizations in finding ways to maintain safe, disciplined, and drug-free learning environments without denying students the high quality educational services they need to succeed in life.