

NSBA GUIDELINES: DISCIPLINING STUDENTS FOR SERIOUS OFFENSES

The American Bar Association (ABA) voted in February 2001 to oppose zero-tolerance policies in schools. The ABA's Resolution and Report on zero-tolerance reflected several misconceptions about how zero-tolerance policies are actually implemented in schools across the country. In response the NSBA Office of the General Counsel, in consultation with the leadership of the NSBA Council of School Attorneys, developed the following guidelines to foster a better understanding in the education and legal communities, as well as the public-at-large, about zero-tolerance policies.

CREATE SAFE SCHOOLS

Schools have an obligation to adopt and enforce strong disciplinary policies that create safe schools. Reasonable student discipline policies can help ensure that the overwhelming majority of children who come to school ready and eager to learn are able to do so in a safe, orderly environment. School boards that work with parents and the community to decide what is and is not acceptable behavior, translate these common sense ideas into school policy, and inform all students of that policy, will find that such policies have a positive influence on the behavior of students and the climate of the school. A clear and consistent message that violence and threats of violence will not be tolerated may help to reduce the actual occurrence of violence.

UNDERSTAND ZERO-TOLERANCE

One policy choice for reducing violence in schools is the "zero-tolerance" approach, which during the past several years has caused a great deal of confusion and controversy. The term is used loosely by journalists, the education community, and the public-at-large, and it is often met with strong opposi-

tion or support. While most people believe the phrase "zero-tolerance" means the same thing in every school district across the country, quite the opposite is true. Zero-tolerance policies vary significantly from one school district to the next.

The federal government, as well as several state governments, require or allow school districts to enact zero-tolerance policies that prescribe a particular punishment for certain misconduct. For example, the Gun-Free Schools Act of 1994¹ says, "[E]ach State receiving Federal funds under this chapter shall have in effect a State law requiring local educational agencies to expel from school for a period of not less than one year a student who is determined to have brought a weapon to a school under the jurisdiction of local educational agencies in that State, except that such State law shall allow the chief administering officer of such local educational agency to modify such expulsion requirement for a student on a case-by-case basis." 20 U.S.C. § 8921. The term "weapon" means "(A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device." 18 U.S.C. § 921.

When most states enacted such laws, they expanded the types of acts and offenses for which a school district may suspend or recommend a student for expulsion. For example, California listed fifteen acts that could potentially lead to suspension or expulsion, including threats to cause physical injury; possessing,

selling, using, or being under the influence of a controlled substance; causing or attempting to cause damage to school property; and committing or attempting to commit sexual assault. See Cal. Edu. Code § 48900.

EXERCISE SOUND DISCRETION

State laws, like the federal law, have discretion built into them. Most state policies allow the superintendent or other school official to lessen the prescribed discipline on a case-by-case basis if circumstances warrant a reduction. For example, Illinois law states, "A student who is determined to have brought a weapon to school, any school-sponsored activity or event, or any activity or event which bears a reasonable relationship to school shall be expelled for a period of not less than one year, except that the expulsion period may be modified by the superintendent, and the superintendent's determination may be modified by the board on a case-by-case basis." 105 ILCS 5/10-22.6. The result, in the words of school attorney Dean Pickett, is "zero-tolerance for the behavior, but not zero thinking regarding the sanction."

PROVIDE DUE PROCESS

If a local school board decides that a zero-tolerance policy makes sense in its district, it should carefully draft the policy to encourage careful consideration of cases involving alleged student misbehavior. This should include the exercise of sound discretion and adherence to the principles of due process. Any policy must provide adequate procedural due process commensurate with the severity of the designated consequence or discipline for the particular offense. In other words, the extent of the procedures due depends on the nature of the interest being taken away. As such, the school must >>



use fair procedures before taking away a student's property interest in receiving an education. In *Goss v. Lopez*, 419 U.S. 565 (1975), the Supreme Court determined that before a student may be suspended for 10 days or less, the student must be provided a fair and impartial hearing, informed of the charges against him, and given the opportunity to respond. Expulsion procedures depend on state law, but typically, students may be represented by counsel and may call witnesses. The process must also comply with state statutory requirements for student discipline and with special federal and state procedures for disciplining students with disabilities.

The policy should use clear and concise definitions that do not unintentionally include behavior that the school board does not wish to cover. Vague and overly broad policies are more vulnerable to court challenge because they do not adequately inform students of prohibited conduct. Schools should also ensure that the designated consequences are consistent with substantive due process considerations. Basically, the rule and the punishment must be reasonable. Schools must be certain that the punishment does not "shock the conscience." The state's interest in disciplinary situations is to maintain order in the school or to protect students. Therefore, a school district must show that its rules are reasonably related to these purposes to pass the substantive due process test.

APPLY WITH CONSISTENCY AND BALANCE

School district officials should be consistent in applying the policy and consider mitigating circumstances. If discrepancies in enforcement become apparent, the "get tough" message is nullified and may lead to charges of discrimination. In addition, student discipline policies must be integrated into a comprehensive school safety plan that focuses on a positive school climate and is balanced with prevention, intervention, and common sense enforcement strategies. Discipline policies are an opportunity to teach students about their rights and responsibilities to themselves and others. It is important that all school rules are reasonable and are a part of the learning process.

Schools should not be a haven for mis-

behavior. They should be places where students learn civic responsibility and where appropriate behavior is expected so that learning can take place. Schools are the safest place for children in America. See *Violence and Discipline Problems in U.S. Public Schools: 1996-1997*, National Center for Education Statistics, 1998. Implementing reasonable student discipline policies with a clear and consistent message that violence and threats of violence will not be tolerated, can help keep them that way.

The sample policy above is provided only for consideration in those states whose laws do not preclude school boards from prescribing in advance the penalties students will face for being found guilty of engaging

SAMPLE POLICY:

The following student discipline policy is a sample provided as a reference only. If legal advice is required, consult your school district legal counsel.

Guidelines for Student Discipline

In order to ensure a safe and secure learning environment, the following offenses will not be tolerated:

A. WEAPONS & DANGEROUS INSTRUMENTS

Students shall not possess, handle, transmit, use or attempt to use any dangerous weapon in school buildings or on school grounds at any time, or in school vehicles and/or buses or off school grounds at a school-sponsored activity, function or event. In accordance with state law, (include citation for state law), the Board of Education shall suspend for 365 days (use the specific words included in the state law, i.e. 365 days, one calendar year, period of not less than twelve consecutive months) any student found to be in violation of this section, unless modified on a case-by-case basis as recommended by the Superintendent (or other individual or group of individuals specified in state law or designated by this policy). Weapons and dangerous instruments as used in this section are defined as:

- (1) a firearm – include state or federal definition here;
- (2) a powerful explosive (be specific about other things you want to include in the definition of weapon here) – which includes any dynamite cartridge, bomb, grenade, mine, as well as nitroglycerin, trinitrotoluene (TNT) and blasting caps, detonators, and fuses for the explosion thereof;
- (3) a knife – which includes any instrument that is capable of ready use as a stabbing weapon that may inflict great bodily injury or death; an instrument with a blade at least 3 inches in length, dagger, dirk, switchblade knife, stiletto, or any other deadly or dangerous weapon of like character;
- (4) other dangerous instruments – any other object or instrument capable of being readily used by one person to inflict bodily harm upon another individual with the intention to do so.

in certain infractions. In states where districts are required to take into consideration all of the circumstances surrounding the student's actions, such as self defense for fighting, zero-tolerance policies may be inapplicable and policies such as this may not be relied upon. **I&A**

¹ This statute was enacted under Congress' spending power to prevent students from bringing weapons to school. It is different than the Gun-Free School Zones Act of 1990, which the U.S. Supreme Court struck down in 1995, holding that it exceeded Congress' power under the Commerce Clause of the U.S. Constitution. *U.S. v. Lopez*, 115 S.Ct. 1624 (1995). Congress amended the Gun-Free School Zones Act in 1996, adding a jurisdictional requirement which states, "It shall be unlawful for any individual knowingly to possess a firearm that has moved in or that otherwise affects interstate or foreign commerce at a place that the individual knows, or has reasonable cause to believe, is a school zone." 18 U.S.C. § 922(q)(2)(A).