

ATTACHMENT to Informational Memo No. 3

**ZERO TOLERANCE POLICIES:
AN ISSUE BRIEF**

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Introduction

During the 2005 session of the Virginia General Assembly, House Bill 2202 was introduced that would have amended the *Code of Virginia* as follows:

No disciplinary action shall be imposed against students for possession of a bona fide eating utensil or personal grooming device, unless such utensil or device is brandished or employed as a weapon or otherwise to effect or to threaten an act of violence or intimidation against another or against property.

The bill did not pass; however, the House Committee on Education requested that the Board of Education examine the bill and related issues and report to the General Assembly. Concerns include the appropriateness of harsh penalties being applied to relatively minor offenses and the exercise of discretion by school administrators. A specific incident referenced involved a third-grade student disciplined for possession of a butter knife that his mother packed with his lunch. The knife was observed by another student who reported it to the teacher. Another example is an incident being considered a drug offense when a student is found to be in possession of an over-the-counter medication that is being taken with the knowledge and consent of parents.

In response to concerns expressed, an informational memorandum was sent on February 18, 2005 from the Superintendent of Public Instruction to school division superintendents encouraging the exercise of reasonableness when rendering disciplinary sanctions against students. Cited in the memorandum were applicable sections of the *Code of Virginia* and *Student Conduct Policy Guidelines*, revised and adopted by the Board in September 2004. The memorandum is included as an appendix.

This issue brief has been prepared for the Board of Education in response to the request from the General Assembly House Education Committee. It examines the intent of zero tolerance policies and positions of key education organizations, summarizes issues associated with zero tolerance policies, reviews laws and guidelines in Virginia, and offers conclusions and considerations.

Zero Tolerance Defined

The term “zero tolerance” is not defined in law or regulation; nor is there a single widely accepted practice definition. The U.S. Department of Education, National Center for Education Statistics, defined zero tolerance as “a policy that mandates predetermined consequences or punishments for specified offenses” (NCES, 1998). This is a very broad definition that could encompass very minor offenses resulting in relatively minor disciplinary sanctions. A more limited definition, and one more relevant for this examination, would reflect the role of zero tolerance in sending a message that certain actions will not be tolerated and involving some period of exclusion from school or suspension of educational services.

A National Center for Education Statistics study found that 94 percent of public schools had zero tolerance policies in effect for firearms, 91 percent for other weapons, 88 percent for drugs, 87 percent for alcohol, 79 percent for tobacco, and 79 percent for violence (NCES, 1998). No study examining the nature and prevalence of zero tolerance policies in Virginia has been conducted, but there is no evidence to suggest that Virginia differs markedly from other states.

Background

The roots of zero tolerance are typically traced to 1980's federal drug policies involving the seizure of vehicles and other property when even trace amounts of drugs were found. Such "zero tolerance" approaches, first used in criminal justice settings, began to be applied to educational settings and, by 1989, school districts in California, New York, and Kentucky had mandated expulsion for drugs, fighting, and gang-related activity. Zero tolerance policies continued to be adopted in the early 1990's but grew most rapidly following the *Gun-Free Schools Act of 1994* (GFSA) that required a one-year expulsion for possession of a firearm or bomb (as defined in the *Act*). The GFSA requires that the incident be reported to law enforcement authorities and includes a provision allowing the local chief school officer to waive the one-year expulsion if there are "extenuating circumstances." Over time, state legislatures and local school boards have applied zero tolerance policies to a broader range of offenses including fighting, threats, and sexual harassment (Koch, 2000).

In Virginia, laws were enacted in 1995 and 1998 to require expulsion for defined firearms and drug-related offenses, and to authorize school boards to establish policy and related guidelines for determining whether "special circumstances" exist that would allow for no disciplinary action or another disciplinary action, based on facts of a particular situation. (§§ 22.1-277.07., 22.1-277.08., & 22.1-277.06.C. *Code of Virginia*). A more detailed review of Virginia law and related guidelines is included in a later subsection of this paper.

Intent of Zero Tolerance Policies

Defenders of zero tolerance policies argue the need for strict policies that send a clear message and are designed to protect students. Such policies proliferated during a period of heightened concern about school violence, and even its defenders observe that the popularity of zero tolerance policies may have less to do with their actual effect than the image they portray of schools taking resolute measures to prevent violence – a stance that provides reassurance to the school community at large (McAndrews, 2001; Ashford, 2000). Some proponents credit zero tolerance policies with declines in crime and weapons cases and, indeed, declines over the past decade have been reported in *Indicators of School Crime and Safety, 2004* (DeVoe et al., 2004).¹ Skeptics argue that the picture is more complex, the data may be flawed, and that, if the improvements are real, they cannot be attributed to zero tolerance policies. Critics argue that zero tolerance policies have unintended negative consequences that far outweigh any benefit derived from such disciplinary policies and practices (Skiba and Knesting, 2001; Skiba, 2004;

Civil Rights Project, 2000; Advancement Project, 2000; Advancement Project, 2005; Weissman et al, 2005).

Public support for zero tolerance, when applied to “persistent troublemakers,” appears solid. A 2004 Public Agenda national survey of middle and high school teachers and parents found substantial support for zero tolerance when dealing with “persistent troublemakers” and for “nip in the bud” types of approaches to addressing minor offenses. Findings from the national survey reported by Public Agenda included the following:

When dealing with “persistent troublemakers,”

- Seventy percent of teachers and 68 percent of parents strongly support the establishment of “zero tolerance” policies so students know they will be kicked out of school for serious violations, and another 23 percent of teachers and 20 percent of parents indicated they support this idea somewhat. Total support: 93 percent teachers; 89 percent parents.
- More than half of teachers (57 percent) and 43 percent of parents also especially liked proposals for establishing alternative schools for chronic offenders, with another 30 percent of teachers and 32 percent of parents liking this idea somewhat. Total support: 87 percent teachers; 74 percent parents.

When enforcing the “little rules,”

- Both teachers and parents surveyed show high levels of support for the “broken windows” approach – strictly enforcing little rules so that the right tone is created and bigger problems are avoided: 61 percent of teachers and 63 percent of parents strongly support this with another 30 percent of teachers and 25 percent of parents supporting the idea somewhat. Total support: 91 percent teachers; 88 percent parents.
- Most teachers surveyed believe putting more emphasis on classroom management skills in teacher education programs would go a long way toward improving student discipline and behavior: 54 percent say this would be a very effective solution and another 37 percent somewhat effective. Total support: 91 percent teachers. (Public Agenda, 2004)

Positions on Zero Tolerance of Key Organizations

Information on the positions on zero tolerance of key educational organizations was derived from reviews of the Web sites of each organization and supplemented by findings from a 2002 survey that relied on telephone interviews with each organization’s spokesperson (Boylan and Weiser, 2002).ⁱⁱ

National Association of State Boards of Education and National School Boards Association

The National Association of State Boards of Education (NASBE) does not take a position on zero tolerance, per se, but proposes alternatives to expulsion and expresses the view that

cessation of educational services is unacceptable. The National School Boards Association (NSBA) issued a statement of intent in 2002 from their General Council stating the following:

“A zero tolerance policy must be integrated into a comprehensive school safety plan that focuses on positive school climate and is balanced with prevention, intervention and enforcement strategies. Discipline policies, in general, 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 part of the learning process. Reasonable zero-tolerance policies specify what types of conduct will result in the automatic penalty of suspension or expulsion. For lesser violations, outlined aggravating and mitigating circumstances should be taken into consideration. Finally, all due process procedures must be followed, and statutory and constitutional rights protected. Schools should establish reasonable zero tolerance policies for students who present a danger to others. Students who pose a threat must be dealt with under school policies and this information should be communicated to local law enforcement to assist in preventing violence in the community. It is also important to establish an assistance program to teach students how to handle substance abuse, violence, anger management, and bullying.” (National School Boards Association, 2002)

In a September 2004 *American School Board Journal* article, Susan Black reviews the status of zero tolerance policies and practices and concludes that schools do not need extreme policies to be safe and secure. The author notes that “school district policies are often implemented haphazardly and fail to achieve the major goals of improving students’ behavior and ensuring safety.”

Education Commission of the States, Council of Chief State School Officers, and American Association of School Administrators

The Education Commission of the States provides information on zero tolerance but takes no official position. The Council of Chief State School Officers also takes no official position and provides no substantive information on its Web site. The American Association of School Administrators (AASA) takes no position on zero tolerance but advocates schoolwide approaches to discipline that go beyond “get-tough policies” to address school climate.

National Association of Elementary School Principals and National Association of Secondary School Principals

The National Association of Elementary School Principals (NAESP) and the National Association of Secondary School Principals (NASSP) support zero tolerance, but call for discretion in its implementation. In an *Education Week* article written by the two organizations’ executive directors, the authors assert the need to take a tough stand on school violence but express the view that such policies need to be applied with greater flexibility. Practices they advocate are: (1) giving consideration to the age and grade level of the offender; (2) ensuring that the disciplinary sanction is commensurate with the infraction; and (3) ensuring that educational services are not discontinued (Ferrandino and Tirozzi, 2000). Both organizations strongly support prevention and intervention programs and the provision of alternative education for students removed from school on disciplinary grounds.

American Federation of Teachers and National Education Association

The American Federation of Teachers (AFT) has a written position paper supporting the suspension or expulsion of students who bring lethal weapons or illegal drugs to school or who commit violent assaults against others, but advocates that zero tolerance policies be used only in rare circumstances, noting that they represent only a small part of a broader discipline policy. The National Education Association (NEA) has no formal policy statement but cites zero tolerance policies as a part of a larger policy framework for school safety and advocates that such policies be more “child friendly, constructive, and reasonable.” The NEA’s resolution on safe and orderly schools calls for (a) written policies and procedures that are fair, equitable, and consistently enforced; (b) prevention programs; and (c) alternative education (National Education Association, 2002). The September 2005 issue of *NEA Today* contains multiple articles on discipline and, in its “What’s Hot” feature, suggested the need for a reexamination of zero tolerance policies that would “balance their (rigid) policies with a measure of whether the student wanted to do harm or not” (*NEA Today*, 2005, p. 25).

American Bar Association

Although not an education organization, the American Bar Association (ABA) issued a report and adopted a resolution on zero tolerance in 2001 (American Bar Association, 2001). The ABA resolution is as follows:

“RESOLVED, that the American Bar Association supports the following principles concerning school discipline:

- 1) schools should have strong policies against gun possession and be safe places for students to learn and develop;
- 2) in cases involving alleged student misbehavior, school officials should exercise sound discretion that is consistent with principles of due process and considers the individual student and the particular circumstances of misconduct; and
- 3) alternatives to expulsion or referral for prosecution should be developed that will improve student behavior and school climate without making schools dangerous.

FURTHER RESOLVED, that the ABA opposes, in principle, ‘zero tolerance’ policies that have a discriminatory effect, or mandate either expulsion or referral of students to juvenile or criminal court, without regard to the circumstances or nature of the offense or the student’s history.”

Common themes that can be seen in this review of key stakeholder group positions on zero tolerance include the following:

- Offenses that will result in automatic sanctions should be well defined and confined to offenses that represent a danger to others.
- Educators are responsible for examining the circumstances of each case and exercising sound discretion.
- Zero tolerance policy is but one element in a comprehensive approach that includes prevention, intervention, and enforcement strategies.

- Discipline policies should be implemented in a manner that gives emphasis to learning rather than punishment, and allows students to learn about rights, responsibilities, and just consequences.
- Alternative education services should be provided to students removed from school on disciplinary grounds.

Issues Associated with Zero Tolerance

Critics argue that zero tolerance policies have unintended negative consequences that far outweigh any benefit derived from such disciplinary policies and practices. In this section, major issues associated with zero tolerance policies and practices will be summarized.

Harsh Penalties for Minor Incidents.

Early concerns about zero tolerance policies centered on harsh penalties being applied to relatively minor student conduct. Several highly publicized incidents brought attention to decisions by school officials to take disciplinary action against students for bringing Advil to school, for use of Listerine, for possession of everyday items deemed “weapons,” and for written and verbal communications deemed “threats” or “harassment.” Such incidents have continued to be well documented by numerous organizations and serve as a primary source for mounting public opposition to zero tolerance (Heaviside et al, 1998; Skiba and Knesting, 2001; Advancement Project and Civil Rights Project, 2000; Rutherford Institute, 2004).

Disproportionate Application of Zero Tolerance Policies to Minority and Special Education Students.

Racial and gender disproportionality in the use of punitive school discipline has been a highly consistent finding in many studies (Children’s Defense Fund, 1975; Glackman et al., 1978; Wu et al., 1982; Taylor and Foster, 1986; McCarthy and Hoge, 1987; Gregory, 1996; Civil Rights Project, 1999; Advancement Project and the Civil Rights Project, 2000). Overrepresentation of students with disabilities has also been found (McFadden et al., 1992; Lietz and Gregory, 1978).

State-specific studies in Tennessee, Kentucky, Michigan, and Indiana have produced findings of disproportionality consistent with earlier studies. (Potts and Njie, 2003; Richart and Soler, 2003; Michigan Nonprofit Association, 2003; Karega and Skiba, 2004). No comparable Virginia-specific study has been conducted.

Constitutionality Questioned.

The Rutherford Institute, an active and vocal critic of zero tolerance policies, contends that “disciplinary action imposed without regard to a child’s behavioral record or mitigating circumstances violates the constitutional rights of due process and equal protection” (Rutherford Institute, 2005). Cited on the Institute’s Web site as “perhaps the most outrageous example of the inevitable harshness of ‘zero tolerance’ policies,” is a Loudoun County, Virginia case involving an eighth-grader who was suspended for a semester for weapons possession after he took a knife away from a suicidal friend and put it in his locker for safekeeping. According to the Institute, although the school division called his actions “heroic” and “noble,” it applied a zero tolerance penalty. The school division decision was upheld when a federal judge in

Alexandria threw out the case, holding it presented “no federal constitutional issues,” and the dismissal was affirmed by the U.S. Court of Appeals for the 4th Circuit, based in Richmond. Although the three-member panel ruled unanimously for the school division, one judge filed a separate opinion in which he stated that the student was a victim of “good intentions run amuck” and issued the following caution:

“The panic over school violence and the intent to stop it has caused school officials to jettison the common sense idea that a person’s punishment should fit his crime in favor of a single harsh punishment, namely mandatory school suspension. Such a policy has stripped away judgment and discretion on the part of those administering it; refuting the well established precept that judgment is the better part of wisdom [Separate Opinion by Judge Clyde Hamilton, 2001 U.S. App. LEXIS 16941 (4th Cir. 2001)].”

A recent examination of The Rutherford Institute’s Web site revealed descriptions of 37 cases in which the Institute has been involved of which six were Virginia cases. Other Virginia cases are described on the Web sites of several other organizations opposed to zero tolerance policies.

Serious Negative Consequences for Schools.

Some critics argue that rather than promoting learning in a safe environment, zero tolerance policies promote an irrational climate of fear and that the first casualty is the student-teacher relationship (Ayers et al., 2001). These critics view zero tolerance policies as doing serious harm to efforts to build school “connectedness,” a critical element in preventing truancy and school dropout. In fact, higher rates of out-of-school suspension are associated with poorer school climate, higher dropout rates, and lower achievement, making it difficult to argue that zero tolerance is an important tool for creating effective school climates.

Schoolhouse to Jailhouse Track.

According to the Advancement Project, zero tolerance policies are pushing more and more students into the juvenile justice system (Advancement Project, 2005). The Project has produced an action kit aimed at helping advocates “organize campaigns against the over use of zero tolerance school discipline and the growing reliance on police and juvenile courts as disciplinarians.” A publication developed by the Advancement Project and the Civil Rights Project at Harvard University in 2000 examined the impact of zero tolerance policies and concluded they were unfair, contrary to developmental needs of children, denied children educational opportunities, and often resulted in the criminalization of children. A later publication examines how zero tolerance policies are “derailing students from an academic track in schools to a future in the juvenile justice system” as the result of “an inflexible and unthinking zero tolerance approach” (Advancement Project, 2003).

The National Association for the Advancement of Colored People (NAACP), the Advancement Project and the NAACP Legal Defense Fund conducted public hearings during October 2005 on school discipline policies in Florida’s public schools. A posting on the Advancement Project Web site (<http://www.advancementproject.org/>) states the following:

“The purpose of the hearings is to raise public awareness about the emergence of draconian school discipline policies that rely on zero tolerance and the use of law enforcement in schools. These policies are pushing students off of an academic track to a future in the juvenile and criminal justice systems.

We are using these hearings as a platform to gather evidence to hold Florida school officials and law enforcement accountable for criminalizing our children for trivial offenses. We intend to ignite a dialogue about the negative impact of reliance upon law and order approaches to address typical student misbehavior, to expose the connections between disparities in educational opportunities and extreme discipline policies, and to encourage efforts toward reform (www.advancementproject.org, accessed 9/15/05).”

Ineffectiveness of Zero Tolerance Policies

Aside from the harm some critics say zero tolerance policies cause, other critics charge that there is no credible evidence that zero tolerance policies have resulted in improved school safety or student behavior. These critics argue that many more effective alternatives to zero tolerance exist and are available to promote a productive school climate and to address disruptive behavior (Skiba, Rausch, and Ritter, 2004). One model of violence prevention being promoted by the American Institutes of Research employs a three-tiered approach:

- I. Creating a safe and responsive school climate. At the first level, all students benefit from interventions that improve school climate and teach social or problem-solving skills.
- II. Early identification and intervention. At the second level, students who are at greater risk for disruption and violence benefit from a more specialized focus, including procedures for early identification and intervention.
- III. Effective responses to disruption and crisis. At the third level, a small but significant number of students will require a more intensive level of intervention, grounded in proven strategies for responding to disruption and violence (Osher et al., 2004).

Failure to Exercise Discretion.

Numerous critics of zero tolerance have asserted for over a decade that confusion over the degree of flexibility or discretion persists and that, in too many cases, existing administrative and legal discretion is not exercised or is inconsistently exercised (Koch, 2000; McAndrews, 2001; Bowman, 2002). An ERIC Digest publication on zero tolerance policies stated the following:

“A weak link in the chain connecting policy to practice is that those responsible for implementation often haven’t heard of, or don’t clearly understand, the policy. In the absence of training on how to deal with infractions, administrative ignorance or ineptitude is largely to blame for lawsuits over disciplinary actions (McAndrews, 2001).”

Bill Modzeleski, director of the U.S. Department of Education’s Office of Safe and Drug-Free Schools, has said that zero tolerance policies have gone far beyond the original intent. Modzeleski explains, “The federal law is very narrowly defined. It says a child should be expelled for bringing a firearm or bomb to school. Not drug-abusing behavior, not nail clippers, not nail files, not water pistols, not pellet guns” (Koch, 2000). Some critics assert zero tolerance

is overused by schools because of fear of lawsuits and because it is just easier than exercising discretion. Peter Blauvelt, president of the National Alliance for Safe Schools (NASS), states, "There are a lot of administrators who are comfortable having no discretion, especially when they have to discipline the mayor's child. It's much easier to say they must treat all kids the same because of zero tolerance laws." (Koch, 2000).

From this review, it can be seen that critics of zero tolerance policies have declared such policies unjust, discriminatory, unconstitutional, harmful to schools and students, ineffective in achieving intended results, and ineptly implemented. Opposition to zero tolerance policies appears to be mounting. The number of Web sites dedicated to ending mandatory zero tolerance policies, as well as blogs where groups exchange information, has increased rapidly in the past two years. Several organizations are actively monitoring legislation, seeking cases for possible lawsuits, and seeking to mobilize opposition in each state.

A Review of Virginia Laws and Guidelines in Light of Zero Tolerance Issues

Virginia Laws

Virginia laws requiring school boards to expel students are confined to defined firearms- and drug-related offenses, and specific exclusions are made for the Junior Reserve Officers Training Corps and other authorized extracurricular activities involving the use of firearms, as well as the possession of knives used in food preparation and service. Virginia laws also authorize the exercise of administrative discretion and define factors to be considered in exercising discretion. Procedures to ensure due process in cases of short-term suspension, long-term suspension, and expulsion, including requirements for notice, rights of appeal, and timelines are defined by law. The use of alternative education for suspended and expelled students is authorized but not required.

Firearms.

Section 22.1-277.07. of the *Code of Virginia*, enacted in 1995 to parallel the Gun-Free Schools Act of 1994, requires school boards to expel for a period of not less than one year any student determined to have brought a firearm or destructive device onto school property or to a school-sponsored activity. Definitions of "firearm" and "destructive devices" are set forth in § 22.1-277.07.E. of the Code, and are consistent with the federal Gun-Free Schools Act. Additionally, § 18.2-308.1. of the Code prohibits the possession of a firearm, stun weapon, or other weapon on school property and provides definitions of several prohibited items. The prohibition of firearms does not apply to Junior Reserve Officers Training Corps (JROTC) programs. An exception to this policy may be made for students participating in an authorized extracurricular activity or team involving the use of firearms, and not subject to mandatory expulsion is possession of a knife that is customarily used for food preparation or service and is possessed by the student for the sole purpose of personal food preparation and service (§ 18.2-308.1. of the *Code of Virginia*).

Drugs.

Section 22.1-277.08. of the Code, enacted in 1997, requires school boards to expel for a period of not less than one year any student determined to have brought a controlled substance, imitation controlled substance, or marijuana as defined in § 18.2-247. on to school property or to a school-sponsored activity.

Discretion.

Section 22.1-277.06.C. lists factors that *must* be considered when students are recommended for expulsion for other than weapons- and drug-related violations and that *may* be considered in weapons- and drug-related violations. These factors are listed below:

1. The nature and seriousness of the violation;
2. The degree of danger to the school community;
3. The student's disciplinary history, including the seriousness and number of previous infractions;
4. The appropriateness and availability of an alternative education placement or program;
5. The student's age and grade level;
6. The results of any mental health, substance abuse, or special education assessments;
7. The student's attendance and academic records; and
8. Such other matters as deemed to be appropriate.

Due Process.

Procedures to ensure due process in cases of short-term suspension, long-term suspension, and expulsion are set forth in some detail in the Code. These include requirements for notice, rights of appeal, and timelines for action. (§§ 22.1-277.04., 22.1-277.05., and 22.1-277.06. of the Code).

Alternative Education and Services.

Virginia statute permits school boards to permit or require students expelled for weapons- or drug-related offenses to attend an alternative education program provided by the school board for the term of the expulsion. In addition to students who have been expelled, school board policy may permit or require students suspended for more than 10 days to attend an alternative education program provided by the school board for the term of the suspension in accordance with procedures set forth in § 22.1-277.2:1. of the Code. Alternative education programs are authorized but not required to be established. Additionally, in accordance with § 22.1-277.2:1. of the Code, school boards may require any student who has been found in possession of, or under the influence of, drugs or alcohol in violation of school board policy to undergo evaluation for drug or alcohol abuse, or both, and, if recommended by the evaluator and with the consent of the student's parent, to participate in a treatment program.

Student Conduct Policy Guidelines

Virginia's *Student Conduct Policy Guidelines* address numerous concerns expressed by critics of zero tolerance policies. Among the issues addressed are the following:

- The need to clearly define the purpose and intent of student conduct policies to reflect board philosophy and place it within the context of broader prevention and intervention efforts;
- The need to clarify roles and responsibilities, parameters of authority, and relationship to related policies (i.e., search and seizure; suspension of students with disabilities);
- The need for careful policy development and review, dissemination of information, and in-service training of school personnel;
- Parental involvement and responsibility;
- Use of a broad array of graduated sanctions;
- The importance of taking into account student grade/developmental level;
- Self-defense as a factor in determining disciplinary action;
- The importance of defining administrative discretion clearly; and
- The importance of clearly defining the parameters of legal and administrative authority when working with law enforcement officials.

Conclusions

There is mounting opposition to the ways that zero tolerance policies are being implemented, particularly at the local level. Defenders of zero tolerance policies argue the need for strict policies that send a clear message and are designed to protect students. Numerous critics have declared such policies unjust, discriminatory, unconstitutional, harmful to schools and students, ineffective in achieving intended results, and ineptly implemented.

The position statements of national educational and legal organizations on zero tolerance policies and related issues can provide a blueprint for “best practices” in student conduct policy implementation. Common themes include the following:

- Offenses that will result in automatic sanctions should be well defined and confined to offenses that represent a danger to others.
- Educators are responsible for examining the circumstances of each case and exercising sound discretion.
- Zero tolerance policy is but one element in a comprehensive approach that includes prevention, intervention, and enforcement strategies.
- Discipline policies should be implemented in a manner that gives emphasis to learning rather than punishment, and allows students to learn about rights, responsibilities, and just consequences.
- Alternative education services should be provided to students removed from school on disciplinary grounds.

A limitation in examining zero tolerance policies is the absence of any objective study of local zero tolerance policies and practices in Virginia. We do not know how local policies are implemented, the levels and degrees of discretion authorized or exercised, or the strategies used by school divisions to ensure that building- and division-level administrators exercise sound discretion. Although data are available on the number of annual suspensions and expulsions, it is not known how many are attributable to zero tolerance policies. Also not known are how many school divisions provide alternative education (or other educational services) to students excluded from their home schools due to disciplinary action, or the number of students who are subsequently re-admitted, who drop out, or who enter the juvenile justice system.

Considerations

1. Conduct a study of zero tolerance policies and practices in Virginia designed to identify effective practices and to inform the development of training, technical assistance, and related resources to support the appropriate implementation of such policies.
2. In a second but related study, examine the status of alternative education for suspended and expelled students, and consider the development of guidelines to support the implementation of programming designed to achieve positive outcomes.
3. Engage education leadership organizations in Virginia in collaborative efforts to strengthen student conduct policy development and implementation. Efforts might include the identification and “showcasing” of effective models and strategies and the joint sponsorship of training and other capacity-building activities. Some emphasis on the appropriate exercise of administrative discretion appears to be warranted.
4. Actively promote comprehensive approaches to school safety that include prevention, early intervention, and effective responses to problem behaviors. A model approach advocated by the U.S. Department of Education and described in *Safe, Supportive and Successful Schools* could provide content for examples of “best practices,” resources, training, and technical assistance. It should be noted that no state funding is specifically earmarked for prevention programming; only federal funding authorized by the Safe and Drug-Free Schools and Communities Act and intended to supplement local and state programming is currently available.

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Appendix: SUPTS. INFORMATIONAL MEMO NO. 39

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF EDUCATION
P.O. BOX 2120
RICHMOND, VIRGINIA 23218-2120

SUPTS. MEMO NO. 39
February 18, 2005

INFORMATIONAL

TO: Division Superintendents

FROM: Jo Lynne DeMary
Superintendent of Public Instruction

SUBJECT: Student Discipline

During the 2005 session of the Virginia General Assembly, Delegate Bradley Marrs introduced House Bill 2202. The bill proposed to amend the Code of Virginia to state that

No disciplinary action shall be imposed against students for possession of a bona fide eating utensil or personal grooming device, unless such utensil or device is brandished or employed as a weapon or otherwise to effect or to threaten an act of violence or intimidation against another or against property.

Although this piece of legislation was not enacted by the legislature, the Department of Education is issuing this memo to encourage school divisions to exercise reasonableness when rendering disciplinary sanctions against students.

Section 22.1-277 of the Code of Virginia permits the suspension or expulsion of pupils from attendance at school for sufficient cause. Pursuant to § 22.1-279.6, the Board of Education has established guidelines for codes of student conduct to aid local school divisions in the implementation of student discipline policies. The *Student Conduct Policy Guidelines* were revised and adopted by the board in September of 2004. Those guidelines state as follows:

Carrying, bringing, using, or possessing dangerous instruments in any school building, on school grounds, in any school vehicle, or at any school-sponsored

activity on or off school property is grounds for disciplinary action. Examples of dangerous instruments include knives with blades less than three inches [A knife with a blade of more than three inches is defined as a weapon by § 18.2-308.1; however any knife has the potential to be used as a dangerous instrument.], letter openers, screwdrivers, hammers, hatchets, and other devices that could be used to inflict harm upon another person. Not subject to mandatory expulsion is possession of a knife that is customarily used for food preparation or service and is possessed by the student for the sole purpose of personal food preparation and service.

Section III of the *Student Conduct Policy Guidelines* also states:

Disciplinary action will be determined based on the facts of each incident in the reasonable discretion of the school board and other appropriate school officials.

School divisions should examine the circumstances of each incident, and disciplinary actions should be evaluated carefully and reasonably with all facts considered. Application of the model *Student Conduct Policy Guidelines* may address the concerns raised by the General Assembly members during the 2005 session.

A complete copy of the *Student Conduct Policy Guidelines* may be found at the department's Web site:
http://www.doe.virginia.gov/VDOE/Instruction/Sped/stu_conduct.pdf

If you have questions, please contact the Division of Policy and Communications, by phone at (804) 225-2403 or 225-2092 or by e-mail to Policy@doe.Virginia.gov.

End Notes

¹According to *Indicators of School Crime and Safety, 2004* (DeVoe et al., 2004),

- The percentage of students who reported being afraid of being attacked at school or on the way to and from school decreased from 12 percent in 1995 to 6 percent in 2001.
- Between 1993 and 2003, the percentage of students in grades 9-12 who reported carrying a weapon such as a gun, knife, or club on school property within the previous 30 days declined from 12 percent to 6 percent.

The victimization rate for students ages 12-18 generally declined both at school and away from school between 1992 and 2002; the violent victimization rate declined between 1992 and 2002 from 48 to 24 crimes per 1,000 students at school and from 71 to 26 crimes per 1,000 students away from school.

² The survey of key education stakeholders on zero tolerance student discipline policies was conducted by the Education Law Center in Newark, New Jersey and was funded by grants from the Hamilton Fish Institute and the Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice. Findings were intended to inform efforts to influence organizations to adopt positions in opposition to anti-zero tolerance.