

'ZERO TOLERANCE' AND SPECIAL EDUCATION

Most school districts have enacted tough "zero tolerance" policies in an effort to quell fear over the acts of school violence that first gained national attention in the 1990's. Such policies impose harsh, mandatory disciplinary sanctions for certain acts of misconduct, such as those involving weapons or drugs. Many districts have gone beyond this, applying zero tolerance policies to less serious acts of misconduct, such as acts of defiance, noncompliance, or disrespect.

A key feature of virtually all zero tolerance policies is that they eliminate school authorities' discretion: if a student commits a particular act of misconduct, the district is required to impose harsh discipline, regardless of the student's individual circumstances. In this way, zero tolerance policies really mean zero thinking policies.

This approach is in sharp conflict with the special education laws, which require a detailed, highly individualized inquiry before a disabled student is subjected to significant discipline (expulsion or suspension for more than ten days).

When a school district seeks to expel or suspend a student with a disability for more than ten days, the threshold question that must be answered is whether the conduct at issue was a manifestation of the student's disability. The law provides a very favorable standard for making this determination. In order to find that the misconduct was not a manifestation of the student's disabilities, all of the following must be found to be true:

- (1) the child's IEP and placement were appropriate, and the school provided services consistent with the IEP;
- (2) the child's disability did not impair the child's ability to understand the impact and consequences of the behavior subject to disciplinary action; and
- (3) the child's disability did not impair the child's ability to control the behavior.

If any of these conditions are not met, the school district may not discipline the child. In such a case, it is necessary for the IEP team to consider strategies for preventing the behavior in the future. If the IEP team concludes that the behavior was not a manifestation of the student's disability, it may impose whatever discipline it would impose on a non-disabled student, with the important exception that it must continue to provide educational services to the child even if the conduct warrants expulsion.

In addition to conducting a manifestation determination, the IEP team must conduct a functional behavior assessment and implement a behavioral intervention plan, or, if these steps were already taken in the past, it must review and modify the previous plan.

Many school administrators are either unaware of or ignore the detailed procedures required when discipline is sought for a student with disabilities. Often, school officials claim that their zero tolerance policies must be applied to all children, disabled or not, to be effective. However, the special education laws, which are based on federal law, override local policies such as a zero tolerance policy.

To read more about the damaging effects of Zero Tolerance, see the Harvard Graduate

School of Education study *Opportunities Suspended: The Devastating Consequences of Zero*

Tolerance and School Discipline at:

http://www.law.harvard.edu/groups/civilrights/conferences/zero/zt_report2.html