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Position Statement 46: Zero Tolerance Policies in Schools

Policy

Mental Health America (MHA) places a high priority on early, equal and effective access to comprehensive mental health services and supports and therefore strongly opposes zero tolerance policies in schools. A “zero tolerance policy” is a school or district policy that mandates predetermined consequences or punishments for specific offenses that are intended to be applied regardless of the seriousness of the behavior, mitigating circumstances, or situational context.¹ MHA’s concern regarding zero tolerance policies results in part from the broad and vague definition of offenses and the inconsistent and sometimes overzealous application of consequences, especially as they relate to students from diverse racial, ethnic and economic backgrounds.² MHA also believes that zero tolerance policies are

authoritarian, ineffective, and contrary to common sense. But MHA's central objection is the effect of rigid zero tolerance policies on students with unmet mental health and emotional needs. Fair treatment for students with mental health conditions or emotional disturbances requires individuated consideration of all of the circumstances and reasonable accommodation of each person's needs, including in particular access to mental health services.

Background

Beginning in the mid-1990s, the United States Congress³ and many State legislatures passed laws that allow, encourage and in some cases mandate that schools and school districts implement harsh disciplinary policies –such as expulsion and out-of-school suspension –to reduce incidents of students bringing guns and other weapons to school. The Columbine and Virginia Tech tragedies and others past and present have made keeping weapons out of schools an urgent priority. Possession and use of drugs on school property have also commonly been included on the lists of offenses to which zero tolerance policies are applied. Many States, school districts and schools have expanded the scope of zero tolerance policies even further to include various non-violent acts, such as insubordination. Schools, school districts and States set their own, often broad or vague definitions for, "threats," "violence," "weapons," and "drugs," with some more stringent than others.

The 2006 American Psychological Association study found some telling examples:

- ▶ March, 2002, Hurst, Texas. A **bread knife** was found in the back of a truck of a high school junior who had been helping his father take a load of possessions from his grandmother to Goodwill the previous weekend. The boy, an honors student and award-winning swimmer at the school, was expelled for one year to the Tarrant County Juvenile Justice Alternative Education Program. Said the boy's father, "It's crushing. That is for hard-core, violent youth" (Mendoza, 2002).
- ▶ September, 2000, Atlanta, GA. An eleven year old girl was suspended for two weeks from Garrett Middle School for possession of a 10 inch **novelty chain** attaching her Tweety Bird wallet to her key ring. School

officials stated that district policy was clear, classifying a chain as a weapon, in the same category as pellet guns, ice picks, and swords. The American Civil Liberties Union filed a lawsuit on behalf of the girl, noting that students had been previously suspended in the district for a plastic knife used to cut a cake, bracelets and necklaces, and a screwdriver used to fix a band instrument (Rodriguez, 2000).

- ▶ November, 1997, Dublin Ohio. A seventh grade boy who brought in a **toy cowboy gun** for a skit in French class with the permission of the teacher was suspended for five days and received zeroes for all work during the period of the suspension. "For a skit on Old Yeller, I had brought in a much larger toy rifle," the boy noted. "I got extra credit" (Ellis, 2003).
- ▶ June, 1998, Brookline, Massachusetts: Nine seniors caught with **alcohol** on a bus going to their senior prom were barred by the principal from attending their graduation, and two were not allowed to compete in the state baseball playoffs. Citing tragic accidents caused by alcohol abuse, Brookline High School Headmaster Robert Weintraub stated, "Every time there's a serious incident, a violation of drugs, alcohol, or weapons, I have taken a very hard line, because it's important for kids to get the message that if they do something that violates some of the fundamental rules we have here, they will be punished" (Abrahms, 1998).
- ▶ October, 1998, East Lake, Florida: High school senior Jennifer Coonce took a sip of **sangria** at a luncheon with co-workers as part of a school-sponsored internship. When her parents called the high school to complain about minors being served alcohol, the district suspended her for the remainder of the semester. Jennifer, an honors student, was offered the opportunity to take her college placement classes at home, over the telephone (Smith, 1998).
- ▶ January, 2004, Bossier Parrish, Louisiana. A fifteen year old girl found in possession of one **Advil** tablet was expelled for one year under a district policy of zero tolerance for any drug. Closer scrutiny of previous school disciplinary actions in the school district revealed cases in which other students had received a lighter punishment for explicitly illegal drugs. As a result of local furor surrounding the case, Bossier Parrish school officials rewrote the policy to allow school principals to have greater discretion in determining which drugs would fall under the policy ("One headache cured", 2004).⁴

The harshness and breadth of current zero tolerance policies not only result in many children being labeled delinquents or criminals, but also result in lost educational opportunities for youth, which studies show have long-term negative consequences for both the child and society as a whole.⁵ In addition, student misbehavior frequently results from unmet mental health, emotional or educational needs, and it is the children with these existing needs who typically bear the brunt of zero tolerance policies, despite the statutory protections afforded to them through the Individuals with Disabilities Education Act (IDEA) of 1990⁶, the Americans with Disabilities Act (ADA) of 1990⁷ and Section 504 of the Rehabilitation Act of 1973⁸. These statutes all forbid discrimination based on physical or mental disability or the perception of such a disability and require reasonable accommodation of disabilities that affect major life activities. The 2000 Harvard University Civil Rights Project found continuing court deference to school authorities despite these protections, which are generally limited by school policy to special education students identified under the IDEA, leaving others subject to zero tolerance.⁹

Finally, instead of being coupled with the school- and community-based supports and services that children in trouble need, zero tolerance policies often result either in placement in highly structured, restrictive settings such as the juvenile detention system or in being “pushed out” into environments with minimal supervision and maximum exposure to trouble.¹⁰ The American Bar Association has condemned zero tolerance policies in a compelling statement:

"It is easy to imagine school discipline policies that are grounded in common sense, and that are sensitive to student safety and the educational needs of all students. Such policies are the kind that most parents would want if their own children were being disciplined. Unfortunately, most current policies eliminate the common sense that comes with discretion and, at great cost to society and to children and families, do little to improve school safety."¹¹

Similarly, in 2006, the American Psychological Association adopted an extensive task force report concluding that zero tolerance policies have been ineffective and should be discontinued.¹²

Call to Action

MHA advocates tailoring zero tolerance policies narrowly to deal with deadly weapons as required by federal law and to allow individuated consideration of appropriate discipline in all other cases.

- MHA strongly supports the application of disciplinary actions and policies that promote the health and well-being of students. In particular, MHA supports school-wide positive behavior support and “no reject, no eject” policies aimed at providing a child with a mental health condition or a serious emotional disturbance with the necessary supports and resources that support behavior change in positive, non-punitive ways.
- These policies stipulate that only in the most severe cases –such as those for which zero tolerance policies were originally created --possession of a deadly weapon –should a student with a mental health condition or an emotional disturbance be subjected to out-of-school suspension or expulsion; otherwise, students should be dealt with in an individuated way that is appropriate for their age, sex, mental health condition, emotional development, and special educational needs and the misbehavior committed. See MHA Position Statement No. 45.
- Concretely, this means that advocates and MHA affiliates should sponsor and support legislation and policy changes that narrowly tailor rigid zero tolerance policies and replace them with required consideration of individual mental health and emotional conditions and early, equal and effective access to comprehensive mental health services.
- In addition, advocates and affiliates should demand that schools and school districts liberally construe their obligations under the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973 to preclude the application of zero tolerance policies in cases where a mental health condition or a serious emotional disturbance allows or requires a reasonable accommodation.
- In §504, the focus is on non-discrimination. As applied to the schools, the language prohibits the denial of public education participation or enjoyment of the benefits offered by public school programs because of a

child's disability. Congress conditioned future receipt of federal funds on a district's compliance with these requirements. Thus, advocates should threaten federal intervention if the implementation of a zero tolerance policy threatens educational access for a child with a disability.

- ▶ The Americans with Disabilities Act ("ADA") picks up where the Rehabilitation Act left off. Borrowing from the §504 definition of disabled person, the ADA applied those standards to most private sector businesses, including private schools. The passage of the ADA does nothing to change a public school's or school district's obligations to provide educational services to its disabled students. The courts have interpreted §504 and the ADA almost identically, applying doctrines and interpretations freely between the two laws.

Effective Period

The Mental Health America Board of Directors adopted this policy on June 13, 2009. It is reviewed as required by the Mental Health America Public Policy Committee.

Expiration: December 31, 2014

1. American Psychological Association Zero Tolerance Task Force Report, "Are Zero Tolerance Policies Effective in the Schools? An Evidentiary Review and Recommendations (2006), p. 2, 26.

Each State, school district or school may have its own zero-tolerance policy, and each policy needs to be consulted to determine how it should be changed.

2. *Id.*, p. 6-7
3. The Gun-Free Schools Act of 1994, 20 U.S.C. Chapter 70, as amended, requires zero tolerance weapons policies as a condition for access to federal funds.
4. American Psychological Association, *op. cit.*, p. 27, 28 and 31.
5. *Id.*

6. (Amended in 1997), 20 U.S.C. §1400 et seq
7. 42 USC § 12101 et seq.; 42 USC § 12131 et seq.;
8. 29 U.S.C. § 794(a).
9. Harvard University Civil Rights Project, “Opportunities Suspended: The Devastating Consequences of Zero Tolerance and School Discipline Policies” (2000),
10. *Id.*
11. American Bar Association, ABA Juvenile Justice Policies, Zero Tolerance Policy (February, 2001)
<http://www.abanet.org/crimjust/juvjus/zerotolreport.html>
12. American Psychological Association, op. cit.



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