

# Newsletter TEPSA

Texas Elementary Principals & Supervisors Association

## Zero Tolerance: Where Are We Now?

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Joey Goodfella is a model student on your campus. He is a top student academically and he has never received a discipline referral. Joey's teachers simply gush when they discuss his bright future. One day, however, Joey showed up at school with a pocketknife in his coat pocket that is prohibited under the district's student code of conduct. Apparently, Joey went on a camping trip with his family over the weekend and forgot to remove the knife when he rushed out the door to school on Monday morning. As the administrator, you do not want to remove Joey to the disciplinary alternative placement. What are your options?

Zero tolerance policies have evolved in Texas public schools over the last 10 to 15 years. Originally, the policies were geared to combat dramatic increases in the possession and use of weapons and drugs in the school setting. The policies further coincided with legislative changes affecting discipline, such as the advent of disciplinary alternative education placements and juvenile justice alternative education placements. Through the implementation of zero tolerance policies, the number of students removed to such alternative placements has dramatically increased over the last five years.

Although many believe zero tolerance policies have been effective in curbing school violence, the debate is certainly unsettled. Some believe that the extreme punishments that sometimes occur under the policies simply do not fit the crimes. In response to these concerns, several groups of parents and educators advocated changes to the current zero tolerance provisions outlined in Chapter 37 of the Texas Education Code. In essence, the debate focused on the administrator's ability to use his or her discretion when determining consequences to violations of the student code of conduct.

On June 17, 2005, the Governor signed into law House Bill 603, which allows school districts to relax their zero tolerance policies by providing school administrators with more discretion in evaluating individual circumstances relating to disciplinary infractions. Specifically, House Bill 603 requires a district's student code of conduct to stipulate whether consideration is given to the student's intent or lack of intent, the student's disciplinary history, or a disability that impairs the student's ability to appreciate the wrongfulness of the conduct, before deciding to suspend, remove, or expel the student. Of course, the 2003 Legislature had previously stated that a district's code of conduct may also specify whether self-defense is a factor in setting forth an appropriate consequence.

So how does this new legislation affect your role as an elementary administrator? Basically, if your district chooses to adopt these factors as part of the student code of conduct, your discretion and legal exposure may both be increased. First, keep

in mind that the district is not required to adopt the factors listed in HB 603 when considering disciplinary consequences. Thus, if your school board does not choose to integrate these factors into your discipline code for the 2005-2006 school year, you continue to apply consequences as before. However, if your district does implement the changes, then you will apply the factors and your discretion in meting out disciplinary consequences.

If you will be applying the statutory factors, it is important that you remain consistent in your application of the code of conduct. Discrimination claims and student grievances often arise out of actual or perceived inequities in the application of disciplinary consequences. As the administrator, you must apply the factors in a uniform manner, particularly with respect to students covered by the IDEA or Section 504. In that regard, keep in mind that although a student's disability may be a consideration in your decision to take disciplinary action, it does not relieve the school of its duties under federal law to conduct a manifestation determination under the proper circumstances.

Finally, nothing in the statute prevents you from maintaining high expectations and standards on your campus with respect to behavior. HB 603 is simply intended to provide administrators with a level of discretion to prevent against the minimal number of inequities caused by the application of zero tolerance policies. It is important to provide notice to your campus community of the high expectations required of all students.

So what options do you have with Joey? If your district has adopted the factors outlined in HB 603, you can certainly choose a punishment less severe than a removal to the alternative placement, or possibly no punishment at all. However, if your district has chosen not to adopt the factors, the issues are fairly straightforward and you must follow whatever consequences are outlined in your student code of conduct. In either event, it is critical to remain consistent with all of your students when applying disciplinary consequences.

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Buechler & Associates, P.C. is an Austin-based law firm which practices exclusively in the area of education law. In addition to representing school districts and educators throughout Texas, Cynthia and William Buechler also conduct extensive training on school law related issues at the state and national levels.

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