

#zerotolerance #KeepingupwiththeTimes: How Federal Zero Tolerance Policies Failed to Promote Educational Success, Deter Juvenile Legal Consequences, and Confront New Social Media Concerns in Public Schools

I. INTRODUCTION

The federal government first applied zero tolerance (ZT) disciplinary policies in elementary and secondary public schools both as an expansion of drug control legislation of the 1980s and in response to a string of tragic school shootings in the early 1990s.¹ In compliance with the Improving America's Schools Act of 1994,² a reauthorization of the Elementary and Secondary Education Act (ESEA),³ school districts across the nation instituted complete bans on firearms. The legislation both required and incentivized weapons bans by offering federal funding to states that increased safety in their school districts.⁴ Although the only federally mandated ZT ban was on firearms, most states also mandated ZT for "weapons other than firearms,"⁵ which in some cases included water guns, nail clippers, and toys.⁶ Since then, many school districts have expanded ZT policies to include bans on truancy, drug, tobacco and alcohol use, disrespect, disruption, or noncompliance.⁷ Many praise these policies for effectively prioritizing discipline and instituting consistent and fair penalties that deter unacceptable behaviors and make

1. Shawn Malia Kana'iaupuni & Miriam Gans, *How Effective is Zero Tolerance? A Brief Review*, Pol'y Analysis & System Evaluation Vol. 04-05, 23 (2005); Russell J. Skiba & Reece L. Peterson, *School Discipline at a Crossroads: From Zero Tolerance to Early Response*, *Exceptional Children*, Vol. 66 No. 3, 335, 337 (2000).

2. Improving America's Schs. Act, Pub. L. No. 103-382 (1994).

3. Elementary and Secondary Educ. Act, Pub. L. No. 89-10 (1965).

4. Kana'iaupuni, *supra* note 1, at 25.

5. NAT'L. ASS'N. OF SCH. PSYCHOLOGISTS, *Zero Tolerance and Alternative Strategies: A Fact Sheet for Educators and Policy Makers*, (2001) http://www.nasponline.org/resources/factsheets/zt_fs.aspx (last visited Jul. 28, 2013); Russell J. Skiba, *Zero Tolerance, Zero Evidence: An Analysis of School Disciplinary Practice*, Indiana Educ. Pol'y Center, Report No. SRS2 3-7 (2000).

6. Skiba, *supra* note 5, at 3-4.

7. Skiba, *supra* note 5, at 3-7.

schools safer.⁸ However, as one teacher stated, “[ZT] throws common sense out the window and that’s its defect. We all know in education one size never fits all.”⁹

ZT policies have since undergone many analyses and challenges.¹⁰ ZT critics believe that it is so overly broad that consistent application, regardless of the student’s intent¹¹ or circumstances of the offense, creates an unfair disciplinary model for students.¹² One study explained the injustice with the following illustration:

When two students in school throw a pencil, one because he has finished the assignment and is bored, and the other because he cannot read the directions and thus hasn’t even started the assignment—we do not treat them the same, regardless of the behavioral similarity. Any intervention that treats dissimilar problems with similar behavioral outcomes the same is not only unfair, but destined to fail.¹³

Although unfairness was one problem with ZT application,¹⁴ studies also suggest that ZT policies have failed in making schools safer¹⁵ and indirectly created additional educational difficulties, such as a disparate

8. Kana’iaupuni, *supra* note 1; Skiba, *supra* note 1 at 336-339.

9. Kim Fries & T.A. DeMitchell, *Zero Tolerance and the Paradox of Fairness: Viewpoints from the Classroom*, 36 J.L. & EDUC. 211, 225 (2007).

10. Skiba, *supra* note 5, at 2-3; see generally Kevin Jenkins & John Dayton, *Students, Weapons and Due Process: An Analysis of Zero Tolerance*, 17 ED. LAW REP. 13 (2003); Alicia Insley, *Suspending and Expelling Children From Educational Opportunity: Time to Reevaluate Zero Tolerance*, 50 AM. U.L. REV. 1039 (2001); James Penden, *Through a Glass Darkly: Educating with Zero Tolerance*, 10 KAN. J. L. & PUB. POL’Y 369 (2001).

11. See Thomas Hutton & Kirk Bailey, *School Policies and Legal Issues Supporting Safe Schools: Effective Strategies for Creating Safer Schools and Communities*, Hamilton Fish Institute on School and Community Violence & Northwest Regional Educational Laboratory, 37 (2007); Christopher D. Pelliccioni, *Is Intent Required? Zero Tolerance, Scierter, and the Substantive Due Process Rights of Students*, 53 CASE W. RES. L. REV. 977, 992-996 (2003).

12. American Psychologist Association Zero Tolerance Task Force, *Are Zero Tolerance Policies Effective in Schools? An Evidentiary Review and Recommendations*, 852, 853-854 (2008) (available at www.apa.org/releases/ZTTFReportBODRevisions5-15.pdf) (hereinafter APA ZT Task Force).

13. Richard L. Curwin and Allen N. Mendlar, *Zero Tolerance for Zero Tolerance*, PHI DELTA KAPPAN Vol. 81.2 (1991) available at www.pdkintl.org/kappan/kcur991_O.html.

14. See generally Fries, *supra* note 9; Mary Sue Backus, *OMG? Missing the teachable moment and undermining the future of the First Amendment – TISFN!*, 60 CASE W. RES. L. REV. 153, 181 (2009).

15. Skiba, *supra* note 1, at 337 (schools that rely heavily on ZT policies continue to be less safe than schools that implement fewer ZT components); See generally Hutton, *supra* note 11; APA ZT Task Force, *supra* note 12; Thalia Gonzales, *Keeping Kids in Schools: Restorative Justice, Punitive Discipline, and the School to Prison Pipeline*, 41 J.L. & EDUC. 281, 282 (2012).

impact on minorities¹⁶ and special education students,¹⁷ strained student relationships with teachers and associations with schools,¹⁸ and an absence of alternative education for students disciplined under ZT.¹⁹

Moreover, the blanket application of ZT policies, which has greatly increased the number of students expelled or suspended, has also increased the number of referrals to the juvenile justice system.²⁰ The referrals have occurred with such frequency that scholars have termed this process the “school-to-prison pipeline,”²¹ claiming that ZT results in the unnecessary criminalization of what many consider to be typical adolescent behavior.²² As a ZT study by the American Psychological Association explained, ZT policies may exacerbate bad student behavior when such behavior stems from the poor judgment, and risk and consequence adverse decision-making that is typical of the developmental and neurological immaturity of adolescence.²³ Perhaps more concerning though, is that these policies are glaringly behind the times in con-

16. See generally Anne Gregory & S.R. Weinstein, *The Discipline Gap and African Americans: Defiance or Cooperation in the High School Classroom*, 46 J. OF SCH. PSYCHOLOGY 455 (2008) (African American students may be disciplined more severely for less serious or more subjective reasons); NAACP Legal Defense and Educational Fund, *Dismantling the School-To-Prison Pipeline*, (2005) (African Americans and Latino students are more likely than white students to be suspended, expelled and arrested for similar conduct at school).

17. See generally P.E. Leone, M.J. Mayer, D. L. MacMillan & F.M. Gresham, *School violence and disruption: Rhetoric, reality, and reasonable balance* 33 Focus on Exceptional Children 1 (2000) (Students with emotional or behavioral disabilities are expelled at rates disproportionate to their representation in the population); Office for Civil Rights, *Civil Rights Data Collection: Data Summary* (2012) <http://ocrdata.ed.gov/Downloads/CMOCRTheTransformedCRDCFINAL3-15-12Accessible-1.pdf> (Students with disabilities are more than twice as likely to receive at least one out-of-school suspension compared to students without disabilities).

18. Kana'iaupuni, *supra* note 1, at 27-28; Skiba, *supra* note 1, at 340.

19. Insley, *supra* note 10, at 1065-1072; Amy Meek, *School Discipline “As Part of the Teaching Process”: Alternative and Compensatory Education Required by the State’s Interest in Keeping Children in School*, 28 YALE L. & POL’Y REV. 155, 172 (2009).

20. APA ZT Task Force, *supra* note 12, at 856 (“Many schools appear to be using the juvenile justice system to a great extent and, in a relatively large percentage of cases, for infractions that would not previously have been considered dangerous or threatening”).

21. Gonzales, *supra* note 15, at 291-295; see also Heather Cobb, *Separate and Unequal: The Disparate Impact of School-Based Referrals to Juvenile Court*, 44 HARV. C.R.-C.L. L. REV. 581, 582-587 (2009).

22. See generally Terrie Moffitt, *Adolescence-Limited and Life-Course-Persistent Antisocial Behavior: A Developmental Taxonomy*, 100 PSYCHOL. REV. 674, 675 (1993) (explaining that the overwhelming majority of youth who engage in delinquent behavior will desist from such behavior as they mature and that delinquency is a “normal part of teenage life”).

23. APA ZT Task Force, *supra* note 12, at 855 (reporting that ZT policies on behaviors that do not threaten safety may be developmentally inappropriate for secondary school students based on the normative challenges of adolescence).

fronting concerns with student use of social media inside and outside of the classroom.

This note will focus on the history and development of ZT policies, describe their educational and legal shortcomings, and discuss why they are unsuitable for today's tech-world students.

II. A BRIEF HISTORY OF ZERO TOLERANCE

ZT policies are premised on the philosophy that removing students who engage in dangerous, threatening, or disruptive behaviors will deter other students from misbehavior and create an improved learning environment.²⁴ They developed from a series of federal drug and weapon regulations in the 1980s under President Reagan's War on Drugs initiative.²⁵ As early as 1989, school districts in California, Kentucky, and New York implemented ZT policies for drugs, violence and gang related activity.²⁶ With the Clinton Administration's reauthorization of ESEA,²⁷ Congress passed the Gun Free Schools Act of 1994.²⁸ Under this act, Congress tied school safety to federal funds by requiring that any state receiving funding under ESEA to both implement a mandatory, one-year expulsion for any student who brought a weapon to school and adopt a ZT policy on firearms.²⁹ Providing a safe and gun-free school environment seemed even more necessary after the 1999, Columbine massacre, in which two students killed twelve students and one teacher before committing suicide at their high school.³⁰

The federal government then increased regulation when it reauthorized the Gun Free Schools Act under No Child Left Behind (NCLB)³¹ by additionally requiring that schools refer all violations of ZT firearm policies to the juvenile justice system.³² NCLB also linked the adoption

24. APA ZT Task Force, *supra* note 12, at 852.

25. Skiba, *supra* note 5, at 2.

26. *Id.*

27. Improving America's Sch. Act, Pub. L. No. 103-382.

28. Gun Free Sch. Act, Pub. L. No. 103-382 (1994).

29. *Id.*

30. Gina Lamb, *Columbine High Sch.*, N.Y. Times (updated Apr. 17, 2008) (*available at* http://topics.nytimes.com/top/reference/timestopics/organizations/c/columbine_high_school/index.html).

31. Gun Free Sch. Act, 20 U.S.C. 7151 (2002) (reauthorized and amended by No Child Left Behind, Pub. L. No. 107-110 (2002)).

32. Gun Free Sch. Act, §7151(h).

ZT other than firearms with federal funding by requiring schools to adopt ZT policies for violent or persistently disruptive students and empowering teachers to remove such students from the classroom.³³ It also required states to report incidences of drugs or violence, and “persistently dangerous” schools in their district.³⁴

Granted leeway in defining safety requirements, many states enacted additional bans to reduce classroom and school premises disruptions, including ZT for tobacco use, truancy, dress code violations, disruption, alcohol use, inappropriate language, and threats of violence.³⁵ As a result of ZT policy implementation, school districts across the nation saw significant increases in the number of student suspensions, expulsions, and criminal charges.³⁶ However, studies show that suspensions, which is the most commonly used form of ZT discipline, is most often used for disobedience, disrespect, disruption, and truancy rather than for more serious or dangerous behaviors.³⁷

III. SHORTCOMINGS OF ZERO TOLERANCE

A. Educational Implications

Not surprisingly, ZT application began to interfere with school functionality. Because federal legislation failed to mandate alternative education for students suspended, expelled, or incarcerated under ZT,³⁸ affected students were prevented from receiving an education for the duration of their sanctions.³⁹ Not only are these students typically behind in school work and more likely to drop out,⁴⁰ but students in schools with higher rates of suspensions and expulsions have less satisfactory ratings of school climate and lower school-wide academic achievement.⁴¹

33. No Child Left Behind, Pub. L. No. 107-110 (2002); *see also* U.S. Dept. of Educ., *No Child Left Behind*, Exec. Summary, President George W. Bush (2002) available at <http://www2.ed.gov/nclb/overview/intro/execsumm.pdf>.

34. Safe and Drug-Free Sch. and Communities Act, 20 U.S.C. § 7111-7116 (2002).

35. Skiba, *supra* note 5, at 2-3.

36. Kana'iaupuni, *supra* note 1, at 25; Skiba, *supra* note 5, at 10.

37. Skiba, *supra* note 5, at 10.

38. Kana'iaupuni, *supra* note 1, at 28.

39. Insley, *supra* note 10 at 1067 (stating only a few states – including Connecticut, Hawaii and Kentucky, made alternative educational provisions for students adversely affected by ZT).

40. *Id.* at 1064.

41. APA ZT Task Force, *supra* note 12, at 854.

Research also indicates that suspensions and expulsions are not effective disciplinary tools, one estimating that 40% of suspended students had already been expelled, 10% of students suspended more than once remain in school, and that suspensions actually tend to predict an increase in the likelihood of school disruption.⁴² Yet, ZT federal funding incentives made it easier for schools to expel or suspend students for non-dangerous activities, which may mean that teachers can be less interested in understanding the circumstances than in ridding the school of troublesome students.⁴³

Despite the message of consistency, research also showed that race, special needs, and socio-economic background were the best indicators of whether or not a student would be punished under ZT.⁴⁴ For example, a recent report of Philadelphia public schools found that African American students accounted for 35% of ZT suspensions, Latinos for 23%, whites 14%, and Asians 5%.⁴⁵ A similar Maryland school district report found that African Americans represented 38% of the student population, but accounted for 61% of ZT suspensions and disabled students, 12% of the state's student body, accounted for 20% of ZT suspensions.⁴⁶ Another report indicated that both high- and low-income students believed that ZT disciplinary sanctions were unfairly targeted at low-income students.⁴⁷

Finally, a large number of the disciplinary actions stemming from ZT policies are not due to violence, substance abuse, or even juvenile crime. In the Philadelphia study, 26.7% of suspensions were for fighting. Meanwhile, 32.4% were due to "class disruption," which includes bringing a cell phone to class or using offensive language.⁴⁸ Similarly, in

42. Kana'iaupuni, *supra* note 1, at 27.

43. Skiba, *supra* note 1, at 340; see also Marsha B. Freeman, *Bringing Up Baby (Criminals): The Failure of Zero Tolerance and the Need for a Multidisciplinary Approach to State Actions*, 21 QLR 533, 550-551 (2002).

44. Elbert H. Aull, *Zero Tolerance: Frivolous Juvenile Court Referrals, and the School-To-Prison Pipeline: Using Arbitration as a Screening-Out Method to Help Plug the Pipeline*, 27 OH. ST. J. ON DISP. RESOL. 179, 180 (2012).

45. Advancement Project, *Zero Tolerance in Philadelphia: Denying Educational Opportunities and Creating a Pathway to Prison 15* (2011) available at http://www.philafound.org/Portals/0/Uploads/Documents/Public/Zero_Tolerance_in_Philadelphia.pdf (hereinafter ZT in Philadelphia).

46. Open Society Inst., *Suspension Fact Sheet: Maryland and Baltimore City, 2006-2007*, Baltimore City Public Sch. System (Jan. 2008) http://www.opensocietyfoundations.org/sites/default/files/factsheet_suspension_20080123.pdf.

47. Skiba, *supra* note 1, at 338.

48. ZT in Philadelphia, *supra* note 45, at 16.

Baltimore, approximately 12% of students or were subject to out-of-school suspension.⁴⁹ Of those suspended students, 37% of the suspensions were for disrespect, insubordination, and disruption, while only 6% were for dangerous weapons, violence, or sexual offenses.⁵⁰

Because ZT eliminate the concept of “innocent until proven guilty,”⁵¹ students in ZT schools also feel less satisfied with their school environments, are less willing to learn or confide in teachers and other adult authority figures, and view most disciplinary problems as the result of unjust or unfairly applied rules.⁵²

B. Legal Implications

As a condition of receiving funds, federal ZT policy incentivized schools to not only report their ZT incidences, regardless of whether they fell under federally mandated ZT, but also refer matters falling under any ZT policy to the criminal justice system.⁵³ While such referrals evidenced the schools compliance with federal policy and thus permitted schools to receive increased federal funding, they also allowed schools to circumvent the expense and burden of their own discipline.⁵⁴ In consequence, today’s public schools are permitted and encouraged to spend more money on security measures than on, for examples, anti-bullying programs, anti-drug programs, social workers, and counselors.⁵⁵

This resulted in the criminalization of even minor student infractions, including many charges that would never be considered criminal if brought against an adult.⁵⁶ For example, one Kentucky study of status

49. Open Society Inst., *supra* note 46.

50. *Id.*

51. Fries, *supra* note 9, at 241; Cherry Henault, *Zero Tolerance In Schools*, 30 J.L. & EDUC. 547, 548-549 (2001).

52. Kana’iaupuni, *supra* note 1, at 27-28; Skiba, *supra* note 5, at 14-15.

53. Skiba, *supra* note 1, at 340.

54. Michael Krezmien et al., *Juvenile Court Referrals and Public Schools: Nature and Extent of the Practice in Five States*, 26 J. CONTEMP. CRIM. JUST. 273, 274 (2010); *see generally* Advancement Project, *Education on Lockdown: The Schoolhouse to Jailhouse Track 1*, 7 (2005) available at http://www.advancementproject.org/sites/default/files/publications/final_eolrep.pdf.

55. ZT in Philadelphia, *supra* note 45, at 15 (Philadelphia school district’s student-to-school safety personnel ratio was 310: 1, while student-to-school psychologist or social worker ratio is 1657: 1).

56. Aull, *supra* note 44, at 179-180, 185 (New York student arrested and sentenced to community service for doodling on desk with erasable marker; Wisconsin student arrested for stealing when he ate his friend’s chicken nugget); *see also* Augustina Reyes, *The Criminalization of Student Discipline Programs and Adolescent Behavior*, 21 ST. JOHN’S J. LEGAL COMMENT 73, 95

offenses, guns and weapons charges, drug and alcohol charges, and other crimes found that violent juvenile crime was not a serious problem in the state's public schools.⁵⁷ Rather, the majority of referrals to the juvenile justice system were for truancy, being "beyond the reasonable control of the school," and other behaviors that were "obnoxious and typically adolescent, but not dangerous."⁵⁸ The study additionally found that overwhelming majority of reported "law violations" were not serious enough to warrant referral to court.⁵⁹

Another problem is that when student disciplinary occurrences are referred to the criminal justice system, federal policy allows schools to provide law enforcement agents with what would otherwise be considered the student's private information.⁶⁰ Frequently, schools provide prosecutors with information from school disciplinary hearings or investigations for use in the state's criminal case against the student.⁶¹ Because students are not in "custody" when speaking to school officials, including school security personnel, investigative protections do not apply.⁶² This also means that schools have no duty to contact parents, give *Miranda* warnings, or certify whether the student even desires to make a statement.⁶³

As a result, many juvenile defense attorneys frequently discourage students from making statements to administrators in order to protect students in potential future criminal prosecutions.⁶⁴ However, limiting open conversations between school officials and students also makes ZT policies more dangerous to students because they fail to require an individualized understanding of the circumstances, wrongdoing, and appropriateness of punishments for each incident.

(2006) (Ohio student was handcuffed and taken to the county detention center for wearing a mid-drift, a dress code violation.); Naomi Sheehan Groce, *Kentucky Students Victimized by Zero Tolerance Policies*, International Committee of the Fourth International (Mar. 11 2005) <http://www.wsws.org/en/articles/2005/03/kent-m11.html> (high school student arrested at school and charged with felony terroristic threatening after discussing his fictional English class assignment, in which zombies take over a high school).

57. David Richart, et. al., *Unintended Consequences: The Impact of "Zero Tolerance" and Other Exclusionary Policies on Kentucky Students*, Center for Children's Law and Learning 4 (Feb. 2003), www.cclp.org/documents/BBY/kentucky.pdf.

58. *Id.* at 10-16.

59. *Id.* at 16-18.

60. Hutton, *supra* note 11, at 18-19.

61. Kevin Lloyd Collins, *Juvenile Defense: It is not child's play*, *Juvenile Criminal Defense Strategies*, 2012 WL 3279188 (Sept. 1, 2012).

62. *Id.*

63. Penden, *supra* note 10, at 381-382; Collins, *supra* note 61, at 5.

64. *Id.*

IV. SOCIAL MEDIA: TODAY'S PROBLEM

By the early 2000s, ZT policies were already failing by creating more educational problems, straining relationships between students and school officials, criminalizing typical adolescent behavior, and maybe making ZT schools less safe and more disruptive than schools that did not implement such policies.⁶⁵ Yet these failing policies now face a greater problem - the presence of student social media use.⁶⁶ Since secondary and primary school students often have laptops, tablets, and smart phones for use in and out of school,⁶⁷ social media have come to play a highly significant role in disciplinary matters. One only need look at the new existence of state anti-cyber bullying legislation⁶⁸ and student online First Amendment Rights case law⁶⁹ for evidence of a problem that did not exist twenty years ago.

In some ways, student technological use fits easily in broad ZT policies – social media can be disruptive to class, unreasonable for teachers to control, and contain messages of bullying or worse. In other cases, it may help prevent disasters like Columbine, as teachers and students have greater access to the private lives of fellow students. However, ZT policies have intensified schools' problems in regulating, incorporating, and monitoring student behavior because not only are students constantly using social media, often for typical adolescent posts, but also students are being punished and sometimes criminalized for expressing themselves.

65. Skiba, *supra* note 1, at 336-337.

66. Consumer Reports, *That Facebook Friend Might be Troubling News*. Consumer Reports Magazine (Jun. 2011) available at <http://www.consumerreports.org/cro/magazine-archive/2011/june/electronics-computers/state-of-the-net/facebook-concerns/index.htm> (in 2011, report estimates that worldwide 20 million users are under age 18, including 7.5 million are under age 13, the age required by Facebook to create a profile).

67. David Nagel, *Report: Students Use Smart Phones and Tablets for School, Want More*, Transforming Education Through Technology Journal (May 8, 2013) (last visited August 1, 2013) <http://thejournal.com/articles/2013/05/08/report-students-use-smart-phones-and-tablets-for-school-want-more.aspx> (reporting that 47% of surveyed elementary students used their smart phone for education, in class or otherwise, 77% use tablets, e-book readers or netbooks, and 75% used desktops or laptops).

68. See *Cyberbullying Enacted Legislation: 2006-2010; State Cyberstalking and Cyberharassment Laws*, NATIONAL CONFERENCE OF STATE LEGISLATURES (last updated Nov. 2010) available at www.ncsl.org/issues-research.aspx.

69. See generally *Colvin ex. rel. Colvin v. Lowndes County, Mississippi Sch. Dist.*, 114 F. Supp.2d 504 (1999); *Harper v. Poway Unified School Dist.*, 445 F.3d 1166 (9th Cir. 2006); *J.C. ex rel. R.C. v. Beverly Hills Unified School Dist.*, 711 F. Supp. 2d 1094 (C.D. Cal. 2010).

For example, in Indiana, three eighth grade girls were expelled when the school determined that their private Facebook post joking about classmates they would kill, which included the frequent use of emoticons and smiley faces, violated its ZT bullying policy.⁷⁰ The American Civil Liberties Union (ACLU) filed suit on the students' behalf alleging violation of the girls' free speech because their posts were not true threats or disruptive to schools.⁷¹

In Texas, a student was suspended and investigated by police officers after he made a parody Facebook profile making fun of one of his teachers.⁷² Criminal charges were never filed, and the student later brought successful First Amendment claims against the school.⁷³

In Pennsylvania, school officials confiscated and looked through several students' phones, and found "sexting" photographs of some female students.⁷⁴ After suspending the girls photographed in the sexts, the school referred the evidence to the juvenile criminal prosecutor, who then directly contacted twenty high school students, asked them to sign plea deals, and threatened to bring felony child pornography charges against all students involved.⁷⁵

There is no federal cyberbullying legislation, and the U.S. Supreme Court has yet to rule on a school's ability to regulate off-campus speech, including social media. Yet the problem lies not in the responses of the courts, but rather in the unnecessary presence of ZT policy enforcement for many social media based disciplinary matters in the legal system in the first place. Federal policy should not use funding to encourage school districts to take students out of school for disciplinary issues that they have traditionally handled and can handle without legislative or judicial involvement. The courts should be a last resort for only the most serious adolescent behavioral concerns, because removing students from school for any but the most necessary reasons quite literally prevents them from learning from their mistakes, their peers, and their teachers.

70. *Three Indiana Girls Expelled Over Facebook Jokes*, THE ASSOCIATED PRESS (Apr. 25, 2012) available at www.foxnews.com/us/2012/04/25/3-indiana-girls-expelled-over-facebook-jokes.

71. *S.M. v. Griffith Public Schools*, 2012 WL 4811435 (N.D. Ind. complaint filed Apr. 24, 2012).

72. *Layshock v. Hermitage School Dist.*, 650 F.3d 205 (3d Cir. 2011)

73. *Id.*

74. *Miller v. Skumanick*, 605 F.Supp.2d 634 (M.D. Pa. 2009)

75. *Id.*

V. CONCLUSION

ZT policies once seemed like an appropriate solution to threats against the safety of the nation's public schools. However, research continues to indicate that school violence and disruption have decreased or remained stable since before the implementation of ZT discipline by any state or federal legislation.⁷⁶ Despite the necessary inference that violence and substance use still must be addressed in public education, a federal policy that does not achieve this goal and creates additional educational and legal burdens for students is not an effective means to that end. The consequences of ZT policies are even more disturbing in light of their failure to adapt with the times, as evidenced by the recent, conflicting civil student rights claims and juvenile criminal charges regarding students' social media use and ZT disciplinary consequences. Adolescence involves tests - academic and personal. In such a difficult time, elementary and secondary students and teachers deserve federal legislation that supports their goals of educating, disciplining, and providing a safe, tolerant, and fair learning environment.

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76. APA ZT Task Force, *supra* note 12, at 853.