

Less than zero

Recent student punishments spur debate on rigidity of school disciplinary policies

BY KEITH THOMPSON

Santa Rosa attorney Michael Fiumara says local public school students are regularly being denied due process by inflexible disciplinary codes that use catch-all categories—such as “insubordination” and “disrespect”—to mandate suspension or expulsion without regard to the circumstances or nature of the offense or the student’s history. School lawyer Bob Henry says no such policies exist in any of the K-12 public schools from the Golden Gate Bridge to the Oregon border represented by his firm.

“They’re both right,” says non-attorney Debra Giromini. “One-size-fits-all student punishments don’t exist in name, because school boards have figured out that the Constitution forbids them. But I know the policies exist in practice, because my son was a victim, and I won’t rest until he gets justice and the public schools find their way back to sanity.”

Welcome to the fast and furious debate about “zero tolerance,” a generic term that has come to stand for a variety of get-tough school disciplinary codes that converge on a key point: Certain behaviors are never allowed. The original idea was to punish both major and minor offenses—starting with guns. In 1994, the Gun-Free Schools Act required states to enact legislation mandating that schools expel any student found on school property with a gun. In the wake of Columbine and other horrific school shooting sprees, a number of states went beyond the federal directive by passing laws requiring expulsion or suspension for the possession of all weapons and all objects that could possibly be used as weapons. Yet there remained a crucial gun safety gap to be filled, one that forced vigilant authorities to fix their sights on an Oklahoma terrorist who had not yet become a household name.

Bryson Donaldson is a sixth grade student in the Muskogee Public School District. This 12-year-old was recently suspended for playing a make-believe game using his finger as a “gun” at school. He and several other students pointed their fingers in a manner simulating the shooting of a gun while standing in line in the cafeteria. None of the students at whom Bryson pointed his single-barreled digit was frightened; and every participant in the game understood that there was no intent to harm or threaten each other. Still, a teacher singled out Bryson for a parent-teacher conference.

Despite Bryson’s “explanation” that he was merely playing a game and never intended to threaten anyone, the teacher informed him that his actions constituted a “threat” under school regulations. The principal remanded Bryson to five days in an in-school suspension program, but after his parents appealed, the principal reduced the suspension to three days.

Bryson is not alone. In a possible copycat incident, a Jonesboro, Arkansas, first-grader was suspended for pointing a breaded chicken finger at a teacher and saying, “Pow.” In Austell, Georgia, a sixth-grader was suspended from school for 10 days because the chain on her Tweety



After enduring months of harassment by fellow students, John Giromini (with mother Debra) was expelled when he defended himself.

Bird wallet violates the school district’s zero-tolerance weapons policy. Meanwhile, Colorado school officials say they had no choice but to suspend 6-year-old Seamus Morris under the school’s zero tolerance drug guidelines. The drug? Lemon drops. In Jefferson County, Missouri, a fifth-grader was suspended for drawing a picture of a burning World Trade Center and smiling as he displayed the depiction to classmates. A school district representative called the child’s behavior “threatening.”

Closer to home, Santa Rosa fourth-grader Spencer Oldfield was suspended four days before the beginning of the 2001 summer vacation, for coming to school with his hair dyed blue. “Distracting,” declared focus-minded officials at Schaefer Elementary. “Insane,” responded Spencer’s mother, Julie Markham. “Spencer is a shy boy, and I encouraged him to be an individual. Other kids had bleached hair, so we just went this route instead.” Michael Fiumara began tracking zero-tolerance terrain after Markham retained him to get the district to remove the suspension from her son’s academic record.

“What are we thinking?” Fiumara asks, citing the case of a student who, dressed as a firefighter, brought a toy ax to school on Halloween. “Can anyone really imagine that incidents like these pose any real danger to teachers or classmates? Zero tolerance emerged in response to legitimate safety concerns that cannot be ignored. But the poli-

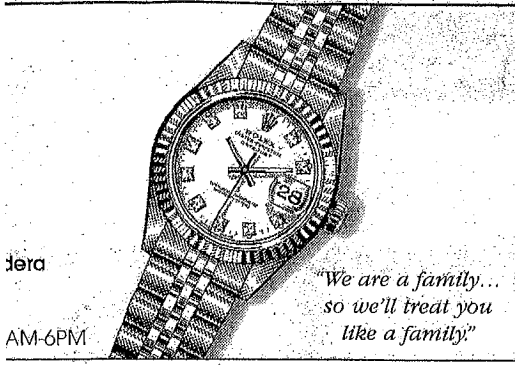
cy has morphed into a nightmare that treats too many different kinds of offenses equally, regardless of age, intent, prior behavior or magnitude of the offense. The case of John Giromini is especially troubling.”



JOHN IS A big kid, weighing 250 pounds. From the day he entered Mountain Shadows Middle School, he was subjected to overt and continuous name-calling, beatings and other acts of violence perpetrated by particular students, both individuals and groups. “The whole school knew this was going on, but teachers and administrators wouldn’t intervene to stop the harassment,” recalls a former classmate, asking to remain anonymous. Debra Giromini says things progressed to the point where her son’s tormentors chased him home from the school bus stop, brandishing knives. John, who suffers from childhood obesity, transferred to two different schools; at both he was verbally and physically abused for being so large.

Things came to a head on March 19, 2002. John says that’s the day he got shoved against a locker by a student who threatened to bring his gang to finish John off. “My son doesn’t even know this kid, who’s calling him fat and spitting, shouting, cursing. John finally puts his arm up and pushes the kid away in self-defense,” his mother

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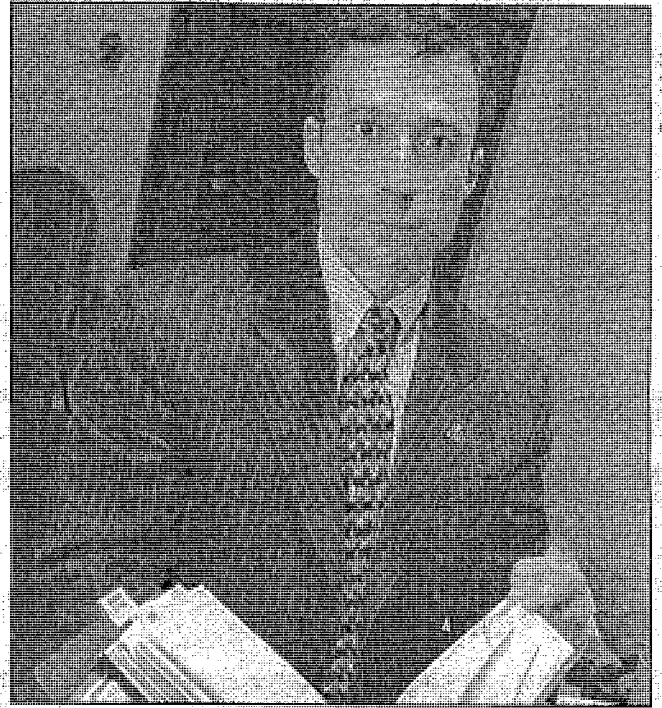
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recalls. "This was later called 'violent.'"

John was expelled for disrupting school activities. The incident occurred around 7:30am, prior to the start of the school day.

"The expulsion hearings were like something out of Kafka," says Fiumara, who represented John and his parents. "John's assailant later said John had caused no injury, and he even refused to testify at the proceedings. One witness who had planned to testify in John's behalf told the panel that the principal had prohibited her from making a statement. Another witness made it



Barry McManis

Attorney Michael Fiumara sees a problem with inflexible disciplinary codes.

Student rights

The highest law in our land is the U.S. Constitution. The first 10 amendments, the Bill of Rights, guarantee that the government can never deprive Americans of certain fundamental rights including the right to freedom of religion and to free speech and the due process of law. Many federal and state laws give us additional rights as well.

The 14th Amendment to the Constitution guarantees everyone in the United States "due process of law," which means you have the right to be treated fairly by people who are in positions of authority—teachers, school administrators and the police.

Let's say a teacher or school official accuses you of having done something wrong and wants to suspend you. You have a right to a hearing so you can tell your side of the story. This right was established by the U.S. Supreme Court way back in 1975 when it decided the case *Goss v. Lopez* that involved some high school students who had been suspended without a hearing.

Another thing: If you're found guilty of something, the punishment can't be more serious than the misconduct was. So a school can't suspend you for just a minor violation. Or for something other

kids did and only got detention for.

If you're about to be suspended, remember that no matter how long the suspension, you have a right to notice of the charges against you. That means you have a right to be told exactly what you did that was wrong. You also have the right to a hearing before a person or people who are impartial, meaning they don't have anything to do with the incident, and they don't have any attitude toward you one way or the other.

If you deny the charges, the school officials have to tell you what evidence they have, and give you the chance to tell your side of the story. And if you're facing serious punishment, such as suspension for more than 10 days, you have the right to be represented by a lawyer who can call witnesses. You also have the right to question or cross-examine your accusers and the witnesses against you. And you have the right to ask that a record be made of everything that happens at the hearing. You can use this record if you decide to appeal the decision.

Oh, and just in case you wondered: You don't have the right to a hearing for a minor punishment, such as being made to sit at the back of the class or detention.

(Source: American Civil Liberties Union, www.aclu.org)



Schools superintendent Mary Jane Burke feels "zero tolerance" policies demonstrate poor thinking.

clear at the hearing that the principal had coerced her into negatively altering her written statement against John's interest."

The expulsion tribunal consisted of teachers and administrators in the school system, Debra recalls. "Gradually it became clear that John's size was being used against him. He was being cast as the bully, despite evidence that he had been hazed for months in full view of school officials. The simple fact is that my son was expelled for standing up to his tormentor and saying he had had enough. It was obvious that the fix was in from the start, contrary to the school's declaration that no zero tolerance policy was in place. John's expulsion was basically automatic."

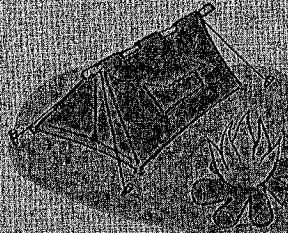
Bob Henry denies that zero tolerance policies exist in any Sonoma or Marin County schools. "A 1998 ruling by California's attorney general rejected a school district's right to enact a zero tolerance policy mandating the expulsion of a student," Henry says. Citing that same ruling, Marin County Superintendent of Schools Mary Jane Burke argues that state education codes stipulate that an expelled student is specifically entitled to a hearing.

"School districts are obliged to proceed on a case by case basis, looking for instance at the individual circumstances of the pupil's academic record to determine whether other means of correction have been attempted," Burke says. "To do otherwise may damage the pupil's right to due process." She adds, "The whole concept of zero tolerance is that people of good character aren't thinking and attempting to use good judgment. It's crucial that individual circumstances be taken into consideration."

Michael Fiumara agrees, but adds that words need to match deeds. "It's true that California school districts seldom if ever use the phrase 'zero tolerance' because that term is now widely criticized by groups ranging from the American Bar Association to Harvard's Civil Rights Project as synonymous with severe, pre-determined penalties for student misconduct. I am suggesting that some Northern California school districts have de facto zero tolerance policies, in much the same way many American school districts prac-

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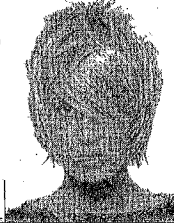
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ticed stealth segregation after the 1954 Supreme Court decision forbidding official segregation."



AS PRESIDENT OF the Sonoma County Board of Education, Bob Goodman says he "witnessed countless examples of kangaroo expulsion trials" during his 1990-2002 tenure. "I believe in student discipline," he notes. "I simply never bought the idea that it has to come at the expense of due process."

Goodman recalls instances where a teacher took abusive verbal or physical actions toward a student; the teacher was never subject to any form of disciplinary actions but the student was expelled. "Some of these expulsion hearings have lasted the equivalent of four 24 hour days, and have cost school districts many thousands of dollars per hearing. What message are we sending to our young people when we replace judgment with edicts? We've got kids—most of them male—growing up to be incredibly hostile to our system."

Author Warren Farrell agrees zero tolerance controversies have important things to say about gender. He believes any worthwhile critique has to begin by taking seriously the growing body of evidence indicating that males and females have different styles of learning, based

on their unique biological inheritances.

For example, he notes that as a society we greatly encourage young males to be highly competitive and risk-taking, even to the point of playing football with dislocated shoulders and broken legs. We cheer for the willingness of young males to risk a kind of disposability in organized sports where they hurt other boys in a supervised context.

"But in any other area where that male activity may spill over into creating risks for girls or other boys...we chastise those particular boys...Should we be surprised that far more boys than girls get targeted by zero tolerance behavior policies that place a huge emphasis on the system's desire for control?"

Michael Gurian, whose books about gender include *The Wonder of Boys* and *The Wonder of Girls*, thinks it would be a good idea if we all paused to remember that our entire public school system is an experiment reflecting a mere hundred years of development. "In a very short period of time, schools had to become suited to the industrial age, after centuries of intergenerational learning, with lots of mentoring from older to younger kids and a huge amount of daily outdoor time. Our rapid evolution toward our more sedentary, tend-and- defend mass education model makes it inevitable that the kids we're going to lose are the [more aggressive] kids, both male and female."



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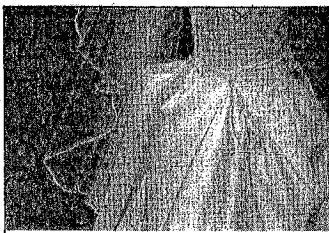
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Clues for schools

Schools step into this area when they deviate dramatically from the principle of making the punishment fit the crime. Given the increased scrutiny now being devoted to discipline policies and procedures, schools should be wary of any one-size-fits-all discipline policies. Schools may want to ask the following questions before adopting or enforcing any policy that mandates a predetermined penalty, particularly expulsion.

• Do they really need a written zero-tolerance policy that allows no exceptions? Reputable schools can impose consistent, well-penalized for serious misconduct with due notice to students without creating a zero-tolerance policy that precludes a uniform penalty.

• Have they carefully determined whether the offense was actually committed? Just because an offense is serious does not mean school authorities have a responsibility to demand sufficient and reliable evidence that it occurred. School boards should try to rely exclusively on hearsay evidence if possible.

• Was the offense known and intentional? If the context is unintentional, think about what the penalty is really designed to address through schools and minimize safety issues or the need to make the seriousness of the incident clear to other students.

Is the offense covered by the policy as currently defined? That is, would weapons or look-alike as defined in the school policy cover a "light-colored shirt" coat? Does the policy provide adequate notice of the penalty for the offense, particularly if it is a subtle, three-term exclusion?

• Is there a reasonable relationship between the punishment and the age of the student? A suspension offense by a kindergarten girl for the nature of an offense, such as possession of a plastic knife?

• Does the policy allow any flexibility? Can the board or superintendent alter the penalty if necessary? Building flexibility can make policies less vulnerable to legal challenge.

• If the policy is deliberately designed to be zero tolerance, is it sound in a nondiscriminatory manner in how it is not "hot lines"? Consistent research shows that students of color are more likely to be suspended for nonviolent minor misconduct such as defiance, disrespect and disruption of authority.

Consider these questions and the issues they raise, and remember that imposing consistent penalties for similar offenses is generally the best practice.

Sources: Zero Tolerance Discipline in Illinois Public Schools, Illinois State Board of Education, Illinois State Board of Education, May 2001; The Civil Rights Project, Harvard University.