Disrupted Lives; Diverted Futures: Zero Tolerance Policies’ Impact On Students With Disabilities

Catherine E. Johnson*
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Abstract

The United States of America was founded upon the highest of ideals - the promise of equality for all citizens.

KEYWORDS: disabilities, students, tolerance
Introduction: The Illusive Promise of Equality

The United States of America was founded upon the highest ideals—the promise of equality for all citizens. This pledge is built upon the ideological belief that public education equalizes future opportunities for all students. The societal expectation is for students to matriculate from high school with the core competencies, knowledge, and skills necessary to prepare them for a successful adult life. Students with disabilities experience...
many roadblocks in their public education. These obstacles result in students with disabilities experiencing a lower graduation rate, higher dropout rate, and a higher rate of discipline than students without disabilities. The inherent promise of success based on public education remains tantalizing but elusive for many students with disabilities.4

This Article focuses on an increasingly common obstacle for students with disabilities: Zero Tolerance ("ZT") policies. When applied to students with disabilities, ZT policies can prevent them from completing their public education and divert them into the juvenile justice system. Proactive use of the federal safeguards contained in the Individuals with Disabilities Education Act ("IDEA") are a vital tool in combating ZT policies and retaining students with disabilities in school. In 1975, Congress enacted the Education for All Handicapped Children Act to counter educational practices that were removing students with disabilities from school.6 In 1990, Congress reauthorized the Education for All Handicapped Children Act and changed the title to IDEA.7 IDEA contains safeguards to prevent students with disabilities from being denied admission to school based on disability, being removed from school due to a manifestation of a disability, and being educated in a segregated setting.8 ZT undermines these important protections, returning public schools to a pre-IDEA era.8

4. Kristy A. Mount, Comment, Children's Mental Health Disabilities and Discipline: Protecting Children's Rights While Maintaining Safe Schools, 3 BARRY L. REV. 103, 104 (2002); see also Perez, supra note 2.
8. Id.; see also 34 C.F.R. §§ 300.534, 536 (2015); Joseph B. Tuilman, Disability and Delinquency: How Failures to Identify, Accommodate, and Serve Youth with Education-Related Disabilities Leads to Their Disproportionate Representation in the Delinquency System, 3 WHITTIER J. CHILD & FAM. ADVOC. 3, 8 (2003); infra Parts VII-VIII.
9. See Leone et al., supra note 5; Michael P. Kreznien et al., Juvenile Court Referrals and the Public Schools: Nature and Extent of the Practice in Five States, 26 J. CONTEMP. CRIM. JUST. 273, 274 (2010) (hereinafter Juvenile Court Referrals and the Public Schools); Mount, supra note 4, at 108-09; infra Parts VI-VII.

III. ZERO TOLERANCE POLICIES

ZT is a disciplinary system where school administrators outline the expected or desired behaviors of all students, along with the designated

12. Id.
13. See id.; Lintott, supra note 10, at 560, 563.
17. Id.
many road blocks in their public education. These obstacles result in students with disabilities experiencing a lower graduation rate, higher dropout rate, and a higher rate of discipline than students without disabilities. The inherent promise of success based on public education remains tantalizing, but elusive, for many students with disabilities.

This Article focuses on an increasingly common obstacle for students with disabilities, Zero Tolerance ("ZT") policies. When applied to students with disabilities, ZT policies can prevent them from completing their public education and divert them into the juvenile justice system. Proactive use of the federal safeguards contained in the Individuals with Disabilities Education Act ("IDEA") are a vital tool in combating ZT policies and retaining students with disabilities in school. In 1975, Congress enacted the Education for All Handicapped Children Act to counter educational practices that were removing students with disabilities from school. In 1990, Congress reauthorized the Education for All Handicapped Children Act and changed the title to IDEA. IDEA contains safeguards to prevent students with disabilities from being denied admission to school based on disability, being removed from school due to a manifestation of a disability, and being educated in a segregated setting. ZT undermines these important protections, returning public schools to a pre-IDEA era.

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II. THE IMPORTANCE OF SAFETY IN EDUCATION

Learning and moral development cannot occur in places ripe with chaos or violence. Schools must maintain order and be a safe space free from threats of violence and harm for education to successfully occur. School violence undermines educators’ ability to teach, students’ ability to learn, and the overall quality of a public education.

In today’s educational climate, protecting students and staff from harm has become increasingly more important, creating difficult and complex situations for students with disabilities. The past twenty years have brought repeated and highly publicized incidences of school shootings. Such events have marred our educational environments. Schools are now confronted with public fears of potential violent incidents, along with rare incidents of real violence, creating long-term negative consequences for students, teachers, administrators, school staff, and learning. This results in a perspective that education cannot occur in the absence of safety and discipline that shifts public schools’ priorities toward ensuring safety rather than providing equal education. In 1969, Supreme Court Justice Black stated that: “School discipline, like parental discipline, is an integral and important part of training our children to be good citizens . . . .” Student “violence includes all behaviors that create an environment in which students, teachers, and administrators feel fear or intimidation in addition to being victimized by physical assault, theft, or vandalism.” In such a volatile atmosphere, “[s]tudents cannot learn, teachers cannot teach, and administrators cannot manage effectively . . . .”

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punishments for violating these rules. As each infraction occurs, ZT provides a set of corresponding punishments. Consideration is not given for the student's unique circumstances or the impetus for the behavior. The discipline is predetermined with no deviation from the designated punishment. ZT's primary purpose is to create safer learning environments in schools. ZT was controversial in its origin and remains an extremely controversial approach to addressing school violence.

The policies were enacted after the Safe Schools Act of 1994 which addressed firearms. ZT today has significantly expanded to address a wide-range of violent and on-violent behaviors, including school disruption, truancy, and refusal to obey teachers and administrators. These policies have exploded in the past fifteen years with over 90% of all schools in the United States implementing some form of ZT policy. Clearly today's school administrators believe ZT is their best opportunity for effectively addressing the ever-increasing problem of violence in their schools.

IV. HISTORY OF DISCIPLINE IN EDUCATION

A review of discipline in public education in the United States provides an interesting perspective on how the United States has addressed the delicate balance between providing an interaction and diverse classroom and creating a safe learning environment. Numerous methods have been attempted, and ZT is the newest method used by school administrators in an attempt to end school violence, and ensure education.

The type of disciplinary measures endorsed by educators changed radically from the 17th century to present. Whipping posts and paddling devices used on misbehaving students in front of his peers were used exclusively by teachers from the 17th through the 19th century in the United States. These acts served to deter students from engaging in similar behavior. Educators believed these disciplinary measures served as a tool for developing social norms, morality, and retained the student in school.

The increase in school population during the 1960s caused by the baby-boom led schools to move away from corporal punishment and toward out-of-school suspensions and expulsions to rid the problematic, disruptive student from the classroom. School administrators believed that out-of-school suspensions were beneficial to other students because the problem student was removed from class, and class time was not spent disciplining the student.

During the 1970s and 1980s, many students challenged out-of-school suspensions on constitutional and humane grounds to the Supreme Court of the United States. The Supreme Court recognized that a student's success in education is indicative of future success in higher education, employment, and stable family and community life, and negative experiences with education increase that student's likelihood for contact with the juvenile justice and criminal justice systems. The Supreme Court was concerned about the consequences of increased suspensions, expulsions, and drop-outs from school.

In Goss v. Lopez, the Supreme Court held that students subject to expulsion or suspension from school were entitled to due process protections prior to either suspension or expulsion. Subsequent to Goss, school administrators amended their disciplinary measures and relied on in-school suspensions to combat and prevent school violence. In-school suspensions were considered preferable as students remained in school and continued progressing educationally during their punishment period.
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18. Lintott, supra note 10, at 564.
19. Id.
21. Id.
25. JUVENILE COURT Referrals and the Public Schools, supra note 9, at 274.
26. Id.
27. See Bogos, supra note 22, at 367–68.
ZT policies began to emerge in the late 1980s and early 1990s. During this period of time, society increasingly viewed youth as violent and dangerous. Americans perception was that juvenile crime was out of control and at an all-time high. Approximately 71% of people thought that a school shooting occurring in their community was a realistic and possible threat to the safety of their children and community.

Although the perceptions of dangerous youths were prevalent in the 1980s and 1990s, the statistics on reported violent crimes during this period illustrate the threat from juvenile violent crimes was low. During this time frame, there were approximately 55 million students enrolled in school. There were 133,700 violent crimes against teachers at private and public schools were reported; 217,400 thefts from teachers were reported; 2.7 million students reported being a victim of a crime at school, and 3,523 students expelled for bringing a weapon to school. In January 2001, the U.S. Surgeon General released a report on youth violence that indicated that arrest rates for violent youth crimes had decreased since 1983.

Although not based in fact, the public perception of dangerous youth encouraged a movement away from rehabilitation and treatment for youth in the juvenile justice system and placed more emphasis on punishment and retribution of youth. The trend trickled into school policies, including ZT policies. The pendulum swung away from the prevailing practice of keeping students in school for discipline, as ZT mandates the immediately removal of perceived troublesome students from school. During this same period, 3.1 million children were suspended and 87,000 were expelled. This returned schools to policies of the 1960s where students were removed from school and left alone without any formal content or morality guidance from educators.

V. EFFECTIVENESS OF ZEROTOLERANCE POLICIES

The U.S. Department of Education determined that there is little statistical evidence that ZT is effective at suppressing violence in schools. Statistics demonstrate conclusively that juvenile crime was declining prior to the implementation of the Guns Free Schools Act and ZT policies. The Federal Bureau of Investigation’s Uniform Crime Report indicates a decline of 23% in juvenile homicide arrests between 1989 and 1998. According to the U.S. Department of Education, children between the ages of twelve and eighteen are more likely to suffer a violent crime outside of school than inside school property.

Despite these compelling statistics, school administrators continue touting ZT as an effective way to decrease school violence and protect students and teachers. ZT is responsible for an increase in referrals of students with disabilities from school to the criminal and juvenile justice system. Students today are far more likely to be arrested in school than a generation ago. In 2000, 3.1 million students were arrested in school, compared to 1.7 million in 1974. In 2006, data illustrates that one in every

40. Id. at 147.
41. See id.
45. Id.
52. See Adams, supra note 31, at 144; Lithcott, supra note 10, at 565.
53. See Adams, supra note 31, at 148.
56. See Schwartz et al., supra note 42, at 6.
57. See Richards, supra note 20, at 114.
58. See id. at 108.
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40. Id. at 147.
41. See id.
45. Id.
50. See David M. Altschuler, Trends and Issues in the Adulitification of Juvenile Justice, in RESEARCH TO RESULTS: EFFECTIVE COMMUNITY CORRECTIONS 233, 249–
fourteen students was suspended at least once during the school year.\textsuperscript{63} ZT policies have proven ineffective in increasing safety in our schools, and are penalizing our students.

VI. THE IMPACT OF ZERO TOLERANCE POLICIES ON STUDENTS WITH DISABILITIES

Despite the lack of evidence to support its efficacy, ZT continues to be used in direct response to the perceived increase and threat of violence at schools, and in particular, the highly sensationalized school shootings.\textsuperscript{64} ZT policies failed to deliver the promised safe school.\textsuperscript{65} In addition to the increased number of students being disciplined under ZT, the impact of ZT on students with mental illness and emotional or behavioral disabilities has been catastrophic.\textsuperscript{66}

The fundamental failure of ZT policies for students with emotional disabilities is its failure to consider the underlying circumstances, behavior, and the child's disability in conjunction with the alleged misconduct.\textsuperscript{65} Students with emotional disabilities frequently attend schools without the proper educational supports necessary for them to succeed.\textsuperscript{68} It is rare that educators possess the awareness and knowledge of how mental health students with emotional disabilities manifest in educational settings.\textsuperscript{69} Educators commonly label discipline instead of addressing their needs for educational supports and services.\textsuperscript{70}

ZT has exacerbated the issues around how public education addresses children with emotional disabilities. These conflicts will continue as the number of children experiencing mental health disorders and corresponding substantial limitations in their lives is significant and has remained constant for the past twenty years.\textsuperscript{71} The recent U.S. Surgeon

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\textsuperscript{64} See CASELLA, supra note 27, at 24; Mount, supra note 4, at 108.

\textsuperscript{65} See Richards, supra note 20, at 93, 97.

\textsuperscript{66} See ACLU & ACLU OF CONNECTICUT, supra note 61, at 12; Mount, supra note 4, at 109.

\textsuperscript{67} Mount, supra note 4, at 109.

\textsuperscript{68} See id.


\textsuperscript{70} Richards, supra note 20, at 93; see also Mount, supra note 4, at 109.

\textsuperscript{71} U.S. DEPT. OF HEALTH & HUMAN SERVS., supra note 69, at 19-20.

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General's report on children's mental health states that approximately 20% of all children and youth have a diagnosable mental disorder, 9% to 13% of these children experience a serious emotional disturbance with substantial functional impairment, and 5% to 9% of these children experience an extreme functional impairment.\textsuperscript{72} Approximately 8.6% of public school students are identified as having a disability that qualifies them for special education services.\textsuperscript{73}

Students with emotional and behavioral disorders come into frequent contact with school officials for disciplinary measures.\textsuperscript{74} This is not surprising as mental illness manifests at school causing classroom disruption, disengagement from school, and lack of academic success for that student.\textsuperscript{75} Students with disabilities have higher incident rates for receiving teacher-office referrals for bothering others and unacceptable physical contact.\textsuperscript{76} ZT mandates the student be removed from the classroom, and time away from the classroom is disruptive to the educational process; students subject to disciplinary referrals often suffer negative associations with teaching, learning, and school.\textsuperscript{77} ZT policies and the corresponding time away from education are linked to an increase in school dropouts and arrests for students with disabilities.\textsuperscript{78}

Data consistently demonstrates that students with disabilities are disproportionately suspended from schools.\textsuperscript{79} Leone et al. found that close to 20% of suspended students are students with disabilities.\textsuperscript{80} This is troubling as only 6% to 11% of students are receiving special education services.\textsuperscript{81} Most of the behaviors involved in these suspensions are for non-violent-
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The fundamental failure of ZT policies for students with emotional disabilities is its failure to consider the underlying circumstances, behavior, and the child’s disability in conjunction with the alleged misconduct. Students with emotional disabilities frequently attend schools without the proper educational supports necessary for them to succeed. It is rare that educators possess the awareness and knowledge of how mental health disabilities manifest in educational settings. Educators commonly label students with emotional disabilities as bad and disruptive and subject them to discipline instead of addressing their needs for educational supports and services. ZT has exacerbated the issues around how public education addresses children with emotional disabilities. These conflicts will continue as the number of children experiencing mental health disorders and corresponding substantial limitations in their lives is significant and has remained constant for the past twenty years. The recent U.S. Surgeon General’s report on children’s mental health states that approximately 20% of all children and youth have a diagnosable mental disorder, 9% to 13% of these children experience a serious emotional disturbance with substantial functional impairment, and 5% to 9% of these children experience an extreme functional impairment. Approximately 8.6% of public school students are identified as having a disability that qualifies them for special education services.

Students with emotional and behavioral disorders come into frequent contact with school officials for disciplinary measures. This is not surprising as mental illness manifests at school causing classroom disruption, disengagement from school, and lack of academic success for that student. Students with disabilities have higher incident rates for receiving teacher-office referrals for bothering others and unacceptable physical contact. ZT mandates the student be removed from the classroom, and time away from the classroom is disruptive to the educational process; students subject to disciplinary referrals often suffer negative associations with teaching, learning, and school. ZT policies and the corresponding time away from education are linked to an increase in school dropouts and arrests for students with disabilities.

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68. See id.
70. Richards, supra note 20, at 93; see also Mount, supra note 4, at 109.
74. See LEOINE ET AL., supra note 5; Mount, supra note 4, at 108.
75. See BURRELL & WARBOYS, supra note 73, at 1, 3, 6, 9; LEOINE ET AL., supra note 5; Suspension, Race and Disability, supra note 7, at 223.
76. See Juvenile Court Referrals and the Public Schools, supra note 9, at 274; Leone et al., supra note 11, at 10; National Education Association, Truth in Labeling: Disproportionality in Special Education, NEA.ORG (2007), http://www.nea.org/assets/docs/HE/EW-TruthlnLabeling.pdf; Suspension, Race, and Disability, supra note 5, at 223.
77. See Suspension, Race, and Disability, supra note 5, at 218, 223, 225.
78. See id. at 218; LEOINE ET AL., supra note 5.
79. LEOINE ET AL., supra note 5.
80. Leone et al., supra note 11, at 10.
81. See Suspension, Race, and Disability, supra note 5, at 218; Leone et al., supra note 11, at 10; Students with Disabilities, Nat’l CTR. FOR EDUC. STAT., http://www.nces.ed.gov/fastfacts/display.asp?id=64 (last visited May 1, 2016).
related behaviors. Students with disabilities suffer exponential harms during long-term suspension or expulsion from school through the disruption in their daily routine and loss of contact with their friends, peers, and teachers. Students typically receive significantly less special education and related services during the long-term suspension or expulsion period than they received prior to being removed from school. Categorical long-term suspension because of ZT creates risk for students frequently resulting in the first step toward the path to the criminal and juvenile justice systems.

Students with emotional and behavioral disabilities are at a high risk for not completing high school. The national high school—grades nine through twelve—dropout rate is 24%, but the rate is 48% of students with emotional and behavioral disabilities and 30% of students with other types of disabilities. An additional 8% of students with emotional and behavioral disabilities drop out prior to grade nine. According to the U.S. Department of Education’s Twenty-third Annual Report to Congress in 2001, only 57.4% of the students identified as special education students matriculate.

Removing a child from school frequently acts as an impetus for contact with the juvenile justice system. The numbers of children with emotional and behavioral disabilities entering the juvenile justice system has exploded over the past fifteen years. Texas reports a 27% increase in youth with mental disabilities entering the “juvenile justice system between 1995 and 2001.” Sixty-seven percent of these children were incarcerated for a non-violent offense. A similar study in Louisiana determined that 73% of youth were incarcerated for non-violent offenses. Arrest rates of school-based arrests of students with emotional disabilities are shocking. The dramatic increase in school-based arrests are credited as a contributing factor in the explosion of students with mental illness being placed in the juvenile justice system. “Twenty percent of students with [emotional disabilities] are arrested at least once before” leaving school, compared to the 6% of students without emotional disabilities. Three to five years after matriculation from high school, 58% of students with emotional disabilities have been arrested, and 30% of students with learning disabilities have been arrested. Seventy-three percent of students with emotional and behavioral disorders that drop out of high school are arrested within three to five years after leaving high school.

Two million three hundred thousand children are arrested each year. Over six hundred thousand of these youths are entered into the juvenile justice system, and over one hundred thousand youths are placed in secure juvenile correctional facilities. A recent comprehensive study conducted by the National Center for Mental Health and Juvenile Justice indicates that “70.4% of youth in the juvenile justice system meet criteria for at least one mental health disorder.” These statistics demonstrate a rampant trend across all states of arresting students with emotional and behavioral disabilities instead of providing the required special education and related services.

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82. See Leone et al., supra note 11, at 10.
83. Lintott, supra note 10, at 567.
84. Id. at 565, 567.
85. See Leone et al., supra note 5; Suspension, Race, and Disability, supra note 5, at 217.
86. See CHESAPEAKE INST., supra note 3, at 2; Suspension, Race, and Disability, supra note 5, at 218.
87. See CHESAPEAKE INST., supra note 3, at 2.
88. Id.
90. Suspension, Race, and Disability, supra note 5, at 225.
92. Id.
93. Id.
95. CHESAPEAKE INST., supra note 3, at 2.
96. See id.
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96. See id.
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VII. IDEA PROCEDURAL PROTECTIONS

IDEA requires school districts to provide a free appropriate public education to children from three years old through twenty-one years of age.102 “Free Appropriate Public Education ["FAPE"] means special education and related services that meet state standards in an appropriate setting and in accordance with the student’s individualized education program ["IEP"].103 Students with disabilities are entitled to receive special education services in the least restrictive environment "to the maximum extent appropriate" for them.104 This requirement emphasizes the schools’ obligation to provide students with an education in an integrated setting.105

IDEA places limits on a school district’s ability to exclude students with disabilities from school through disciplinary action.106 Students able to assert the procedural protections of IDEA in a disciplinary proceeding are students identified as eligible for special education and related services, students who are being evaluated for special education and related services, and any student where the school had knowledge of the student’s disability before the behavior occurred.107

If a school district seeks the removal of a student for longer than ten school days, this removal constitutes a change in the student’s educational placement, which triggers the procedural protections of IDEA.108 The procedural protections were added by Congress to ensure that school districts are not removing students with disabilities in a discriminatory manner109 or for behavior that is a manifestation of their disabilities.110 IDEA procedural protections require the district to conduct a manifestation determination review within ten days of the decision to change a student’s educational placement.111

VIII. IDEA AND ZERO TOLERANCE

Ninety-four percent of public schools in the United States have ZT policies regarding drugs, alcohol, weapons, violence, and tobacco in schools.112 These policies require the immediate removal of students from school for possessing drugs, alcohol, weapons, tobacco, or that commit violence in schools.113

ZT policies create inherent legal issues for school districts when implemented against a student with a disability.114 The Supreme Court of the United States addressed the issue of disciplining a student with a disability in 1988.115 In Honig v. Doe,116 the Supreme Court held that school officials may not unilaterally remove even dangerous or disruptive children with disabilities from their educational placements.117 The Supreme Court held that exclusion from school for more than ten days constitutes a change of placement for purposes of IDEA and is subject to all the procedural requirements governing such change.118

In Honig, the Supreme Court determined that only a court may authorize a school to temporarily remove a child from school despite the protections contained within IDEA and only in the event the district can prove (1) that exhaustion of administrative remedies would be futile, and (2) that maintaining the child’s placement is "substantially likely to result in injury either to himself, herself, or to others."119

Congress recognized that historically students with disabilities were excluded from school based on manifestations of their disabilities.120 IDEA was amended to prevent students with disabilities from being pushed out of school based on behaviors that were manifestations of their disabilities.121 IDEA now contains procedural due process rights for students prior to long-term suspensions and expulsion proceedings.122 IDEA requires a manifestation determination review to determine whether the "conduct in question was caused by, or had a direct and substantial relationship, to the child’s disability"123 for removals from school longer than ten days.124

104. Id. § 1412(a)(5)(A).
105. See id.
106. See id. § 1415(k)(5).
107. See id.; 34 C.F.R. § 300.534(a)-(d).
110. See 20 U.S.C. § 1415(k)(1)-(F); 34 C.F.R. § 300.530(e)-(f).
112. Juvenile Court Referrals and the Public Schools, supra note 9, at 274.
113. Mount, supra note 4, at 108.
115. Id.
117. See id. at 328-29.
118. See id.
119. Id. at 326-28.
121. Honig, 484 U.S. at 325-26; see also 20 U.S.C. § 1415(k)(1)(B).
123. Id. § 1415(k)(1)(E)(i)(I); see also 34 C.F.R. § 300.530(e)(1)(I) (2015).
VII. IDEA PROCEDURAL PROTECTIONS

IDEA requires school districts to provide a free appropriate public education to children from three years old through twenty-one years of age.\(^{102}\) “Free Appropriate Public Education (["FAPE"]]) means special education and related services that” meet state standards in an appropriate setting and in accordance with the student’s individualized education program (“IEP”).\(^{103}\) Students with disabilities are entitled to receive special education services in the least restrictive environment “to the maximum extent appropriate” for them.\(^{104}\) This requirement emphasizes the schools’ obligation to provide students with an education in an integrated setting.\(^{105}\)

IDEA places limits on a school district’s ability to exclude students with disabilities from school through disciplinary action.\(^{106}\) Students able to assert the procedural protections of IDEA in a disciplinary proceeding are students identified as eligible for special education and related services, students who are being evaluated for special education and related services, and any student where the school had knowledge of the student’s disability before the behavior occurred.\(^{107}\)

If a school district seeks the removal of a student for longer than ten school days, this removal constitutes a change in the student’s educational placement, which triggers the procedural protections of IDEA.\(^{108}\) The procedural protections were added by Congress to ensure that school districts are not removing students with disabilities in a discriminatory manner\(^{109}\) or for behavior that is a manifestation of their disabilities.\(^{110}\) IDEA procedural protections require the district to conduct a manifestation determination review within ten days of the decision to change a student’s educational placement.\(^{111}\)


\(^{103}\) 20 U.S.C. § 1401(9)(B)-(D).

\(^{104}\) Id. § 1412(a)(5)(A).

\(^{105}\) See id.

\(^{106}\) See id. § 1415(k)(5).

\(^{107}\) See id.; 34 C.F.R. § 300.534(a)-(d).


\(^{109}\) 20 U.S.C. § 1415(k)(1)-(6); 34 C.F.R. § 300.530(b)(1).

\(^{110}\) See 20 U.S.C. § 1415(k)(1)(E)-(F); 34 C.F.R. § 300.530(c)-(f).

the eleventh day of removal, schools are required to provide services to assist
a student toward achieving their education goals as outlined in their IEP and
to progress with the general curriculum. 125

IDEA substantially impacts a school districts’ ability to exclude
students with disabilities from school. 126 If it is determined that the student’s
behavior is substantially related to his disability, then the school is prohibited
from suspending or expelling the student through the school’s disciplinary
system. 127 The school is required to provide additional educational supports
and related services to maintain that student in his current education
placement. 128 The student is entitled to the development of a positive
behavior plan that addresses the manifestations of his disability and provides
support to the student in their classroom. 129

ZT changed how educators address students’ behaviors. 130 In
implementing ZT, an educator focuses on the removal of a perceived
troublesome student, not on meeting educational goals or moral
development. 131 ZT affords educators several avenues to remove the
student from school. 132 They may attempt to use the discipline code and
suspend or expel the student from school for behaviors that violate ZT. 133 As
stated previously, students with disabilities have procedural protections
under the IDEA against exclusion from school based on behaviors that are a
manifestation of their disabilities, 134 and some successfully employ these
procedural protections and retain their right to remain in school. 135
Educators must comply with the procedural requirements of IDEA and the
procedural due process requirements of state regulations concerning long-
term suspensions and expulsion proceedings. 136 However many students

with disabilities are unable to successfully use IDEA procedural protections
and are expelled for behaviors that are a manifestation of their disabilities. 137
One way educators may attempt to subvert IDEA requirements is to
assert that the student is dangerous. 138 ZT provisions of IDEA maintain that
certain behaviors are so inherently dangerous and unsafe that regardless of
whether the behavior is a manifestation of the student’s disability, safety for
all dictates that he or she be removed immediately from the classroom. 139
Students with disabilities still have due process rights in such situations. 140
Schools are required to file a notice of due process asserting the basis of the
dangerousness and the reasons for the student’s removal. 141 The student
remains in his current educational placement during the pendency of the
expedited due process hearing regarding dangerousness. 142

Educators may attempt to immediately remove a student with a
disability by asserting that student has brought a weapon or drugs to
school. 143 Students accused of this type of behavior are immediately
removed from the classroom but are entitled to education in a different
setting. 144 IDEA limits a school’s ability to remove a student for dangerous
behavior or weapons to forty-five school days. 145

ZT policies offer educators a final opportunity for removing a
student from school. 146 Educators that are not successful in expelling a
student with a disability, have turned to the police and the juvenile courts for
assistance in removing the perceived troublesome student from their
school. 147 Schools report students with in-school behavioral disorders to the
police for juvenile filings and removal to juvenile detention centers. 148 This
punitive approach to disciplining students with disabilities circumvents the

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125. See id. §§ 1401(14), 1412(a)(3), 1414(d); 34 C.F.R. § 300.536; Honig, 484
U.S. at 314.
126. See 20 U.S.C. § 1415(b)(3), (5); 34 C.F.R. § 300.536.
127. 20 U.S.C. § 1415(k)(1); Honig, 484 U.S. at 315-16, 328.
128. 34 C.F.R. § 300.539(f).
129. See id.
130. See Bogos, supra note 22, at 358-60.
131. See Mount, supra note 4, at 109.
132. See Cloud, supra note 14, at 883-84.
133. Vito A. Gagliardi, Jr., In Defense of Zero Tolerance: The Law Gives
136. See U.S. CONST. amend. XIV; 20 U.S.C. § 1415(a)-(b); 34 C.F.R. § 300.530 (2015); Bogos, supra note 22, at 369.
137. See 20 U.S.C. § 1415(b), (k); Mount, supra note 4, at 111.
138. See 20 U.S.C. § 1415(k)(1)(G); 34 C.F.R. § 300.530; Mount, supra note 4, at 108-09.
140. 34 C.F.R. § 300.530(h); see also U.S. CONST. amend. XIV.
141. See 20 U.S.C. § 1415(k)(1)(H); 34 C.F.R. § 300.530(h); Honig, 484 U.S. at 316, 325-26.
142. 20 U.S.C. § 1415(k)(4); 34 C.F.R. § 300.533.
143. 20 U.S.C. § 1415(k)(1)(G); 34 C.F.R. § 300.530(g).
144. 20 U.S.C. § 1415(k)(1)(G); 34 C.F.R. § 300.530(g).
146. EILEEN L. ORDOVER, CTR. FOR LAW & EDUC., CHALLENGING ABUSIVE
FILING OF JUVENILE PETITIONS AGAINST CHILDREN WITH DISABILITIES BY SCHOOL OFFICIALS 2
(1996).
147. Id. at 2.
148. Id. at 2, 4-5.
the eleventh day of removal, schools are required to provide services to assist a student toward achieving their education goals as outlined in their IEP and to progress with the general curriculum.\textsuperscript{125} IDEA substantially impacts a school districts’ ability to exclude students with disabilities from school.\textsuperscript{126} If it is determined that the student’s behavior is substantially related to his disability, then the school is prohibited from suspending or expelling the student through the school’s disciplinary system.\textsuperscript{127} The school is required to provide additional educational supports and related services to maintain that student in his current education placement.\textsuperscript{128} The student is entitled to the development of a positive behavior plan that addresses the manifestations of his disability and provides support to the student in their classroom.\textsuperscript{129} ZT changed how educators address students’ behaviors.\textsuperscript{130} In implementing ZT, an educator focuses on the removal of a perceived troublesome student, not on meeting educational goals or moral development.\textsuperscript{131} ZT affords educations several avenues to remove the student from school.\textsuperscript{132} They may attempt to use the discipline code and suspend or expel the student from school for behaviors that violate ZT.\textsuperscript{133} As stated previously, students with disabilities have procedural protections under the IDEA against exclusion from school based on behaviors that are a manifestation of their disabilities,\textsuperscript{134} and some successfully employ these procedural protections and retain their right to remain in school.\textsuperscript{135} Educators must comply with the procedural requirements of IDEA and the procedural due process requirements of state regulations concerning long-term suspensions and expulsion proceedings.\textsuperscript{136} However many students with disabilities are unable to successfully use IDEA procedural protections and are expelled for behaviors that are a manifestation of their disabilities.\textsuperscript{137} One way educators may attempt to subvert IDEA requirements is to assert that the student is dangerous.\textsuperscript{138} ZT provisions of IDEA maintain that certain behaviors are so inherently dangerous and unsafe that regardless of whether the behavior is a manifestation of the student’s disability, safety for all dictates that he or she be removed immediately from the classroom.\textsuperscript{139} Students with disabilities still have due process rights in such situations.\textsuperscript{140} Schools are required to file a notice of due process asserting the basis of the dangerousness and the reasons for the student's removal.\textsuperscript{141} The student remains in his current educational placement during the pendency of the expedited due process hearing regarding dangerousness.\textsuperscript{142} Educators may attempt to immediately remove a student with a disability by asserting that student has brought a weapon or drugs to school.\textsuperscript{143} Students accused of this type of behavior are immediately removed from the classroom but are entitled to education in a different setting.\textsuperscript{144} IDEA limits a school’s ability to remove a student for dangerous behavior or weapons to forty-five school days.\textsuperscript{145} ZT policies offer educators a final opportunity for removing a student from school.\textsuperscript{146} Educators that are not successful in expelling a student with a disability, have turned to the police and the juvenile courts for assistance in removing the perceived troublesome student from their school.\textsuperscript{147} Schools report students with in-school behavioral disorders to the police for juvenile filings and removal to juvenile detention centers.\textsuperscript{148} This punitive approach to disciplining students with disabilities circumvents the

\begin{itemize}
\item See id. §§ 1401(14), 1412(a)(3), 1414(d); 34 C.F.R. § 300.536; Honig, 484 U.S. at 311.
\item See 20 U.S.C. § 1415(b)(5); 34 C.F.R. § 300.536.
\item 20 U.S.C. § 1415(k)(1)(F); Honig, 484 U.S. at 315–16, 328.
\item 34 C.F.R. § 300.536(j).
\item See id.
\item See Bogos, supra note 22, at 358–60.
\item See Mount, supra note 4, at 109.
\item See Cloud, supra note 14, at 883–84.
\item 20 U.S.C. § 1415(k)(1)(E) (2012); Mount, supra note 4, at 115.
\item See U.S. CONST. amend. XIV; 20 U.S.C. § 1415(a)-(b), (k); 34 C.F.R. § 300.530 (2015); Bogos, supra note 22, at 369.
\item See 20 U.S.C. § 1415(b), (k); Mount, supra note 4, at 111.
\item 20 U.S.C. § 1415(k)(1)(G); 34 C.F.R. § 300.530(g); Mount, supra note 4, at 108–09.
\item 20 U.S.C. § 1415(k)(1)(H); 34 C.F.R. § 300.530(h); see also U.S. CONST. amend. XIV.
\item See 20 U.S.C. § 1415(k)(1)(H); 34 C.F.R. § 300.530(h); Honig, 484 U.S. at 316, 325–26.
\item 20 U.S.C. § 1415(k)(4); 34 C.F.R. § 300.533.
\item 20 U.S.C. § 1415(k)(1)(G); 34 C.F.R. § 300.530(g).
\item 20 U.S.C. § 1415(k)(1)(G); 34 C.F.R. § 300.530(g).
\item Eileen L. Ordover, CTR. FOR LAW & EDUC., CHALLENGING ABUSIVE FILING OF JUVENILE PETITIONS AGAINST CHILDREN WITH DISABILITIES BY SCHOOL OFFICIALS 2 (1996).
\item Id. at 2.
\item Id. at 2, 4–5.
\end{itemize}
procedural protections contained in IDEA and Honig. The cited behavior is frequently a manifestation of the student's disability or related to the school's failure to follow the student's IEP and provide appropriate related services, such as mental health counseling and behavioral support. Students subject to these tactics are removed from school in handcuffs, placed in a police car, and taken to a juvenile detention or processing center. A student may remain in detention for hours, days, weeks, or months. These students are charged with juvenile offenses, although frequently, these charges are dismissed months or years in the future. This experience proves to be life altering, as many of these students do not return to their classroom that school year; and never return at all. This process has proven highly efficient and effective in removing students with perceived difficult behaviors from their schools. Schools' reliance upon the police and the juvenile justice system to address behavioral issues related to a student's disability subverts their responsibility to comply with IDEA procedural protections. School administrators implicitly understand their decision to call the police, report a student's behavior, and file a police report will cause that student to be immediately removed from the classroom or building. This decision triggers a change in placement under IDEA, and educators that call the police should be required to comply with the procedural protections contained in IDEA. To allow schools to ignore a student's protections under IDEA in this way is educational malpractice and should not be allowed to continue.

IX. REMAINING IN SCHOOL THROUGH IDEA ADVOCACY

Combating ZT tactics requires that parents, students, and special education attorneys understand the protections IDEA provides and be immediately proactive in asserting them. Parents constitute an integral part of their child's IEP team and have the authority to request an IEP team meeting to discuss any issue that impacts their child's education. If a student receives a short-term suspension—less than ten days—IDEA procedural protections are not triggered, although, even short-term suspensions can impact a student's relationship with his school and educational progress. Parents may use their power under IDEA to immediately request an IEP team meeting to discuss the basis for the out-of-school suspension and request necessary amendments to the IEP services to prevent future out-of-school suspensions. This meeting is an opportunity for parents to explain in depth their child's disabilities, manifestations of their disabilities, how the behavior precipitating the suspension was substantially related to their disability, and what additional services their child needs in the IEP to alleviate a future occurrence. Future suspensions may be prevented by a discussion and agreement with school officials of the student's manifestations of his disability. Agreed manifestations of behavior should be identified and a positive behavior intervention plan developed to appropriately support the student in their classroom.

For long term suspension or expulsion, parents possess a powerful tool under IDEA to fight the school if the disciplinary action is related to the student's disability. IDEA prohibits schools from removing students from school for longer than ten days unless it has been determined that the precipitating behavior is not a manifestation of the student's disability. Parents must not underestimate the importance of the outcome of the manifestation determination review. A properly conducted manifestation determination review considers two questions: (1) Was the conduct "caused by, or had a direct and substantial relationship to the child's disability; or (2) ... [Was this conduct] the direct result of the [school's] failure to implement the [student's] IEP?"

To prepare for this review, parents should request copies of the incident reports, witness statements, and other documents prior to the
procedural protections contained in IDEA and Horig.149 The cited behavior is frequently a manifestation of the student’s disability or related to the school’s failure to follow the student’s IEP and provide appropriate related services, such as mental health counseling and behavioral support.150 Students subject to these tactics are removed from school in handcuffs, placed in a police car, and taken to a juvenile detention or processing center.151 A student may remain in detention for hours, days, weeks, or months.152 These students are charged with juvenile offenses, although frequently, these charges are dismissed months or years in the future.153 This experience proves to be life altering, as many of these students do not return to their classroom that school year; and never return at all.154 This process has proven highly efficient and effective in removing students with perceived difficult behaviors from their schools.155

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149. Id. at 2, 8; see also Honig v. Doe, 484 U.S. 305, 325–28 (1988); BURRELL & WARBOYS, supra note 73, at 7.
150. ORDOVER, supra note 146, at 4–5.
152. BURRELL & WARBOYS, supra note 73, at 8.
153. Id. at 7–8.
154. Id.
155. Id.
156. Id. at 7.
158. See Mount, supra note 4, at 117–18.
159. See OBER ET AL., supra note 151, at 7–9; Mount, supra note 4, at 108–09.
161. Mount, supra note 4, at 117.
162. See OBER ET AL., supra note 151, at 9; Richards, supra note 20, at 107–08.
163. See Mount, supra note 4, at 106, 116–17.
164. See 34 C.F.R. § 300.530(c)(1)–(2); Richards, supra note 20, at 113.
165. See 34 C.F.R. § 300.530(b)(1)(i); Richards, supra note 20, at 113.
166. 34 C.F.R. § 300.530(e)(1)(i), (o)(1)(i), (o)(1)(iv).
167. Id. § 1415(k)(1)(B)(i), (C).
168. Id. §§ 1415(k)(1)(E)(i), (ii).
meeting and review them carefully with an eye toward the relationship between their child’s disabilities and their cited behavior.\textsuperscript{169} Parents may invite any person with knowledge of their child to the meeting.\textsuperscript{170} Students receiving mental health services outside of the school may find the presence of their mental health professionals, mental health assessments, mental health plans, and services beneficial during this meeting.\textsuperscript{171}

School officials commonly do not possess a significant enough understanding of mental illness and its impact on an individual to properly answer the first required question in a manifestation determination review: whether a student’s “conduct . . . was caused by, or had a direct and substantial relationship to, [their] disability.”\textsuperscript{172} Mental health professionals are uniquely positioned to explain the student’s mental health diagnoses, and their impact upon the student in the educational setting.\textsuperscript{173} If the evidence presented from the mental health professionals, the student, and the parents convinces the school officials that the behavior “was caused by, or had a direct and substantial relationship to [his] disability,” then the student’s conduct is a manifestation of his disability, and the student must be returned to his prior educational placement.\textsuperscript{174}

If the evidence presented fails to convince the school officials that the conduct was a manifestation of the student’s disability, then the relationship between the conduct and the schools ability to implement the IEP will be considered.\textsuperscript{175} The school is required to implement all sections of the IEP.\textsuperscript{176} Any unimplemented sections of the IEP may result in a determination that the identified undesired behavior of the student is a manifestation of his disability.\textsuperscript{177} Parents and advocates should carefully review all sections of the IEP to establish whether all identified services were provided, how the failure to provide a service impacted the student’s behavior, and the relationship between any unimplemented service and the identified troublesome behavior.\textsuperscript{178} Sections of the IEP that discuss a student’s behavior must receive a heightened review\textsuperscript{179}—in particular, the student’s positive behavior intervention plan, listed related services, and listed goals.\textsuperscript{180} If the team determines that the student’s conduct was “the direct result of the [school’s] failure to implement the IEP,” then the conduct is a manifestation of the student’s disability.\textsuperscript{181} The student must be returned to his prior educational placement, and the school must immediately correct the IEP deficiencies.\textsuperscript{182}

If the determination is made that the student’s behavior is not a manifestation of his disabilities, then the school may proceed with the long-term suspension or expulsion proceedings.\textsuperscript{183} Parents may appeal the decision of the manifestation determination review and the alternative education placement by filing an expedited request for due process.\textsuperscript{184} Stay-put provisions of IDEA are not implicated in a disciplinary proceeding, and the student will remain in the disciplinary placement during the pendency of the due process hearing.\textsuperscript{185}

All of these protections are not immediately available if the student is arrested and removed from school.\textsuperscript{186} Schools do not schedule a manifestation determination meeting, long-term suspension, or expulsion proceeding.\textsuperscript{187} The student is merely gone from the building without any apparent ability to assert his procedural due process rights contained in IDEA.\textsuperscript{188} Parents cannot prevent the school from reporting their child to the police; although parents do retain the right to challenge the school’s decision pursuant to IDEA.\textsuperscript{189} IDEA contains specific legal remedies for parents to use in challenging school decision’s regarding special education identification, evaluation, educational placement, and provision of a free appropriate public education.\textsuperscript{190} A parent may file a state or federal education complaint or a request for due process alleging the school’s actions of reporting the student to the police caused an educational change of placement for their child that implicates the procedural protections of IDEA.\textsuperscript{191}

\begin{footnotesize}
\begin{itemize}
\item[169.] See id.
\item[170.] See id. §§ 1414(d)(a)(B), 1415(k)(1)(E)(i).
\item[171.] See 20 U.S.C. §§ 1414(d)(a)(B), 1415(k)(1)(E)(i); Mount, supra note 4, at 111.
\item[172.] See 20 U.S.C. § 1414(d)(1)(E)(i); Mount, supra note 4, at 109.
\item[173.] See 20 U.S.C. §§ 1414(b)(3)(A)(iv), (d)(1)(B)(v), 1415(k)(1)(E)(i)(I); (2); Mount, supra note 4, at 111.
\item[174.] See id. § 1415(k)(1)(E)(i)(II).
\item[175.] See id. § 1414(d)(2)(A).
\item[176.] Id. § 1415(k)(1)(E)(i).
\item[177.] See id. § 1415(k)(1)(E)(i)(II).
\item[178.] See 20 U.S.C. § 1415(b)(6)(A), (F)(1)(A), (k)(6).
\item[179.] See id. § 1415(b)(6).
\item[180.] See id.; BURRELL & WARBOYS, supra note 73, at 6.
\item[182.] 34 C.F.R. § 300.530(e)(3), (f)(2) (2015).
\item[183.] 20 U.S.C. § 1415(k)(1)(C).
\item[184.] Id. § 1415 (f)(1)(A), (k)(3)(A).
\item[185.] See id. § 1415 (f), (k)(4)(A).
\item[186.] See id. § 1415(k)(1)(G).
\item[187.] See id.
\item[189.] See id. § 1415(b)(6)(A), (F)(1)(A), (k)(6).
\item[190.] Id. § 1415(b)(6).
\item[191.] See id. § 1415(b)(6), (F)(1)(A), (k)(3)(A).
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meeting and review them carefully with an eye toward the relationship between their child’s disabilities and their cited behavior.¹⁶⁹ Parents may invite any person with knowledge of their child to the meeting.¹⁷⁰ Students receiving mental health services outside of the school may find the presence of their mental health professionals, mental health assessments, mental health plans, and services beneficial during this meeting.¹⁷¹

School officials commonly do not possess a significant enough understanding of mental illness and its impact on an individual to properly answer the first required question in a manifestation determination review: whether a student’s “conduct . . . was caused by, or had a direct and substantial relationship to, [their] disability.”¹⁷² Mental health professionals are uniquely positioned to explain the student’s mental health diagnoses, and their impact upon the student in the educational setting.¹⁷³ If the evidence presented from the mental health professionals, the student, and the parents convinces the school officials that the behavior “was caused by, or had a direct and substantial relationship to [his] disability,” then the student’s conduct is a manifestation of his disability, and the student must be returned to his prior educational placement.¹⁷⁴

If the evidence presented fails to convince the school officials that the conduct was a manifestation of the student’s disability, then the relationship between the conduct and the schools ability to implement the IEP will be considered.¹⁷⁵ The school is required to implement all sections of the IEP.¹⁷⁶ Any unimplemented sections of the IEP may result in a determination that the identified undesired behavior of the student is a manifestation of his disability.¹⁷⁷ Parents and advocates should carefully review all sections of the IEP to establish whether all identified services were provided, how the failure to provide a service impacted the student’s behavior, and the relationship between any unimplemented service and the identified troublesome behavior.¹⁷⁸ Sections of the IEP that discuss a student’s behavior must receive a heightened review.¹⁷⁹—In particular, the

student’s positive behavior intervention plan, listed related services, and listed goals.¹⁸⁰ If the team determines that the student’s conduct was “the direct result of the [school’s] failure to implement the IEP,” then the conduct is a manifestation of the student’s disability.¹⁸¹ The student must be returned to his prior educational placement, and the school must immediately correct the IEP deficiencies.¹⁸²

If the determination is made that the student’s behavior is not a manifestation of his disabilities, then the school may proceed with the long-term suspension or expulsion proceedings.¹⁸³ Parents may appeal the decision of the manifestation determination review and the alternative education placement by filing an expedited request for due process.¹⁸⁴ Stay-put provisions of IDEA are not implicated in a disciplinary proceeding, and the student will remain in the disciplinary placement during the pendency of the due process hearing.¹⁸⁵

All of these protections are not immediately available if the student is arrested and removed from school.¹⁸⁶ Schools do not schedule a manifestation determination meeting, long-term suspension, or expulsion proceeding.¹⁸⁷ The student is merely gone from the building without any apparent ability to assert his procedural due process rights contained in IDEA.¹⁸⁸ Parents cannot prevent the school from reporting their child to the police; although parents do retain the right to challenge the school’s decision pursuant to IDEA.¹⁸⁹ IDEA contains specific legal remedies for parents to use in challenging school decision’s regarding special education identification, evaluation, educational placement, and provision of a free appropriate public education.¹⁹⁰ A parent may file a state or federal education complaint or a request for due process alleging the school’s actions of reporting the student to the police caused an educational change of placement for their child that implicates the procedural protections of IDEA.¹⁹¹
Only a few cases have determined that a school’s action of reporting a student to the police implicates the procedural protections of IDEA. The Sixth Circuit upheld an administrative law judge’s determination in Morgan v. Chris L. that the school district violated IDEA when it filed a juvenile court petition against a student with Attention Deficit Hyperactivity Disorder for in-school behavior. The Morgan court determined the school’s actions of filing a juvenile petition constituted a change in placement. The school was required to follow the procedural protections in IDEA by evaluating the student in a timely manner, by conducting an IEP Team meeting to review the behavior, before filing a juvenile petition. The court upheld the administrative law judge’s ruling directing the school to withdraw the juvenile court petition that it had filed.

The national trend of educators reporting students to police for in-school behaviors was identified as a concern by Congress as early as 1997. The 1997 Amendments to IDEA clarified that IDEA does not prohibit schools from referring alleged criminal activity by a child with a disability to proper authorities, nor does the law keep police and courts from handling such matter. However, Congress did not intend for schools to rely on the 1997 Amendment to subvert their responsibilities under IDEA. The legislative history behind the 1997 Amendments to IDEA made clear that schools are not prohibited from reporting criminal activity of their students, but schools may not report students to even appropriate authorities when doing so would circumvent the school’s obligations to the child under IDEA. The U.S. Department of Education publically stated that the new IDEA provision on reporting crimes clarified the legal authority of schools to report crimes, but it “does not authorize school districts to circumvent any of their responsibilities under the Act.”

Recently, the U.S. Department of Education weighed in more concretely on the national debate concerning the impact of ZT on students. In 2014, the U.S. Department of Education issued a Dear Colleague Letter recommending that schools put an end to the failed ZT policies.

X. Conclusion

Disciplinary measures have been an integral part of the public school system since its inception. Educators have employed a variety of techniques from corporal punishment and suspensions to the immediate removal of a student from school. While using a particular method, educators tout it as an effective tool for maintaining control and providing education, but history illustrates that new disciplinary measures replace older ones once they are criticized by parents, the public, or the legal system.

Data and evidence demonstrate that ZT has failed to improve school safety. A school shooting in Oregon in September 2015 provides yet another example of ZT’s inability to impact its state goal. Study after study illustrates the negative and punitive impact of ZT on students with disabilities. Ignoring the mounting evidence, school administrators continue to advocate the use of and expand the behaviors punished by ZT policies.

There exists a growing national public awareness of the cost associated with the current disciplinary practice of ZT and a national outcry for schools to stop penalizing students and return to teaching them. U.S. Assistant Attorney General for Civil Rights, Thomas Perez, has acknowledged that: “We have failed all our children—and our society—if . . . education becomes a pathway to prison. It is a moral imperative that education instead serves as a road to success.” History has shown that disciplinary policies reach a critical mass. It is the responsibility of all who


See supra note 28, at 33, 59.

See supra note 28, at 33, 59.

See supra Part VI.

ACLU & ACLU OF CONNECTICUT, supra note 61, at 5; see also Bogos, supra note 22, at 380–81.

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\textsuperscript{193} 927 F. Supp. 267 (E.D. Tenn. 1994), aff’d, 106 F. 3d 401 (6th Cir. 1997).
\textsuperscript{194} Id. at 270–71.
\textsuperscript{195} Id. at 269.
\textsuperscript{196} Id.
\textsuperscript{197} Id. at 271.
\textsuperscript{200} See IDEA Senate Debate, supra note 198, at S4403.
\textsuperscript{201} Id. ("The bill also authorizes . . . proper referrals to police and appropriate authorities when disabled children commit crimes, so long as the referrals, do not circumvent the school’s responsibilities under IDEA.").
\textsuperscript{202} Analysis of Comments and Changes, 64 Fed. Reg. 12537, 12631 (March 12, 1999).
\textsuperscript{204} See id. at 19.
\textsuperscript{205} See Hyman & McDowell, supra note 28, at 33, 59.
\textsuperscript{206} Id. at 39.
\textsuperscript{207} Id. at 14–16.
\textsuperscript{209} See supra Part VI.
\textsuperscript{210} ACLU & ACLU OF CONNECTICUT, supra note 61, at 5; see also Bogos, supra note 22, at 380–81.
\textsuperscript{211} Perez, supra note 2.
work with students with disabilities—parents, educators, advocates, and attorneys—to be knowledgeable and timely in challenging new policies, to assert IDEA protections, and to proactively hasten the demise of discriminatory educational practices. For public education to remain the pathway to true equality for citizens with disabilities, it must remain free, equal, and accessible to all students. ZT practices divert students with disabilities out of school and halts their forward progress toward future prosperity and equal opportunities. Achieving the promise of equality for students with disabilities mandates the cessation of ZT policies.

THE RIGHT TO REMAIN SILENT IN NEW ORLEANS: THE ROLE OF NON-POLITICALLY ACCOUNTABLE CHARTER SCHOOL BOARDS IN THE SCHOOL-TO-PRISON PIPELINE

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