THINGS GET STRANGER WHEN THE MOUSE APPEARS . . .

- A sixth-grader is suspended because of a science project. The project involves cutting an onion. The student brought a kitchen knife to school.
- A fifth-grader is suspended from school for drawing a picture of an airplane flying into a building one month after the 9/11 attack.
- Students in Mississippi were held in jail for throwing peanuts at each other.
- An eleven-year old student in Cobb County, Georgia was suspended for ten days for having a 10’ bead type chain connecting her key ring to her Tweetie Bird wallet in violation of the school’s “Weapon Policy.”
- A school in New Jersey suspended two kindergarten students after they were playing cobs and robbers on the playground and they pointed fingers at each other like guns and said “bang.”
- A public school suspended students for snorting Kool-Aid.
- A second grader from Alexandria, Louisiana was suspended and sent one month to Alternative School for bringing her grandfather’s pocket watch to school which had a tiny knife attached to it.
THINGS GET STRANGER . . . Continued

- Seventeen-year old junior shot a paper clip mistakenly hitting a cafeteria worker and was expelled and charged in court with a misdemeanor of battery.
- Six-year old suspended for possession of “other chemical substances” for sharing organic lemon drops with fellow students on the playground.
- Twelve-year old expelled for fighting when other students taunted him for being fat.
- Six-year old kissed a girl, who asked him to, and received a one-day suspension for violation of school rule prohibiting “unwarranted and unwelcome touching.”
- Fifteen-year old sophomore was found with an unloaded gun in book bag and permanently expelled from school in Atlanta, Georgia.
- A male high school student learns that a suicidal friend has a weapon. He persuades her to give him the weapon. He is expelled for possession of a weapon.

THINGS GET STRANGER . . . Continued

- A nine-year old on the way to school found a manicure kit with a one-inch knife. He was suspended for one day.
- A fourth grader was suspended and ordered to undergo a psychological evaluation after informing a fellow student that he planned to “shoot” another student with a wad of paper from launched from a rubber band.
- A seventh grade student brought a toy cowboy gun for a skit in French class with permission from the teacher and was suspended for five days and received zeros for all work during the period of suspension.
- A student was suspended for ten days for placing into her backpack a butter knife she used to pry lunch money out of her piggy bank.
THINGS GET STRANGER . . . Continued

- An eighth grader was expelled and sent to boot camp for bringing to school a 20-ounce bottle of Cherry 7-Up mixed with a few drops of grain alcohol.
- A 10-year old in Longmont, Colorado was expelled because her mother put a small knife in her lunchbox to cut an apple. When the student realized that the knife might violate the school’s zero tolerance policy, she turned the knife into a teacher. She was still expelled.
- An 11-year old child died of asthma because of school’s zero tolerance policy prohibited him from carrying an inhaler.
- A ten-year old student was expelled from elementary school for taking a paintball gun to show-and-tell.
- A five-year old was suspended from kindergarten for wearing a firefighter costume equipped with a toy ax.
- A five-year old black girl attending kindergarten at a St. Petersburg, Florida elementary school was arrested, handcuffed, and shackled by police for throwing a temper tantrum.

THE MOCK TURLE’S STORY:
SCHOOL-TO-PRISON PIPELINE

- In 2000, there were more than three million school suspensions and 97,000 expulsions. Approximately 50% of black ninth-graders will graduate with peers in four years.
- Studies show that a student that has been suspended is more likely to be retained in a grade, to drop out, to commit a crime, and to become incarcerated as an adult.
- Approximately 32% of youth in correctional institutions had been identified as having special learning needs. In 2003, black youths compromised 16% of the nation’s juvenile population but accounted for 45% of juvenile arrests.
THE MOCK TURLE’S STORY:  
SCHOOL-TO-PRISON PIPELINE

- Between 2000 and 2004, the Denver, Colorado School System experienced a 71% increase in referrals of students to law enforcement for mostly non-violent behaviors even though student population grew by only 2% during this time. Students of color are 70% more likely to be disciplined than white peers. In Chicago Public Schools, more than 3,000 students were arrested for simple assaults and batteries (fights) in 2003. In the 2002-2003 school year, more than 29,700 children were suspended. Chicago Public Schools’ zero tolerance policies list 11 mandatory expulsion offenses and 28 offenses for which students must be arrested. In 2003, more than 40% of arrests were for simple assault and battery. In 2003, black students constituted 50% of student enrollment but more than 77% of arrests in schools. Between 1999-2003, black students averaged 84% of all elementary school students suspended.

THE MOCK TURLE’S STORY:  
Continued . . .

- In Palm Beach Schools, Florida, there were 1,105 arrests of students in 2003, with 64% of these arrests of black youth, which accounted for only 29% of enrollment. The number of students suspended increased from 16,238 in 2002-2003 school year to 18,205 in 2003-2004 school year. Palm Beach County Schools have their own police department which includes as many as 184 police offers and five K-9 officers. The school department’s budget increased from nearly $ million in 2000 to almost $17 million in 2002.
- The application of Zero Tolerance policies has resulted in the overrepresentation of students with disabilities disciplined under such policies. (McFadden et al. 1992; Leitz and Gregory, 1978).
- Teachers and school officials believe that the reasons for harsh disciplinary treatment of students include: cracking down on minor conduct before it becomes serious; deterring misconduct; limiting legal liability; shifting youth to juvenile justice system to receive help that schools cannot provide; and removing children that do not want to learn.
- Advocates, parents and youth believe that the reasons for harsh disciplinary treatment of student include: pushing out low performing students in era of high stakes testing and No Child Left Behind; perpetuating institutional racism that results in over criminalization and incarceration of children of color.
ALICE EXPLORES ZERO TOLERANCE POLICIES IN SCHOOLS

• Definition of Zero Tolerance - predefined mandatory consequence is applied to a violation of school rules without regard to the “seriousness of the behavior, mitigating circumstances, or situational context.” (APA, 2006). The U.S. Department of Education, National Center for Education Statistics, defined zero tolerance as a “policy that mandate predetermined consequences or punishments for specified offenses. (NCES 1998).

• Zero tolerance policies grew out of federal and state government law enforcement programs focused on illegal drug interdiction. (Skiba & Knesting, 2001).

• Beginning in 1989, school systems in California, New York, and Kentucky mandated expulsion for drugs, fighting, and gang related activity. By 1993, zero tolerance policies had been adopted across the country.

ALICE EXPLORES ZERO TOLERANCE POLICIES IN SCHOOLS

• Gun-Free School Zones Act of 1990, 18 U.S.C. § 922 (GFSA) made it a federal offense for anyone to knowingly possess a firearm in a school zone. But this law was overturned by the U.S. Supreme Court in United States v. Lopez, 491 U.S. 565. Subsequently, Congress passed the 1994 Gun Free School Act, 20 U.S.C. § 70 require expulsion of student for one school year for possession or use of a weapon on school property. The Act permits Superintendent of local educational agency to modify the one-year expulsion on a case-by-case basis. State laws have expanded scope of law to include possession and use of drugs and alcohol. See O.C.G.A. § 20-2-751.1

• Zero tolerance policies involve suspension or expulsion for violations involving drugs, alcohol, fights, sexual harassment, and minor non-violent violations such as tardiness, unauthorized use of pagers, and disorderly conduct.

• Seventy percent of teachers and 68 percent of parents support zero tolerance policies. (Ed News Nov. 2005).
THE MAD HATTER’S LESSON ON ZERO TOLERANCE

POLICY RESEARCH

- There is no research study that identifies a direct correlation between zero tolerance policies and safe schools.
- A few studies have shown the zero tolerance policies do not result in fewer disciplinary violations, improved behavior, or reduction of repeat offenders. (APA, 2006).
- School violence has decreased and the risk of school shootings is very low (Cornell, 2006). School associated related deaths fell 40% in the 1989-99 school year when compared to the 1988-89 school year. From 1992-2002, nationwide violent crimes at schools against students aged 12 to 18 dropped 50%.
- A 1997 Department of education study showed that only 31% of students that brought a gun to school in 1995-96 were expelled. Forty-nine percent were suspended for five or more days, and 20% were transferred to alternative schools or programs.
- Schools are not any more safer or effective than before zero tolerance policies were implemented and evidence suggests that zero tolerance policies do not increase consistency of discipline in schools. (APA, 2006).
- Students are more likely to be victims of serious violence away from school. In 2003, students ages 12-18 reported being victims of serious crimes at a rate of 12 per 1,000 students away from school and 6 crimes per 1,000 students at school. From July 1, 1992 through June 30, 2002, youth ages 5-19 were more than 70 times more likely to be murdered away from school than at school. (McCord, Hager, & Mattocks, 2007).

THE WHITE RABBIT JUMPS DOWN THE HOLE: EFFECTIVENESS OF ZERO TOLERANCE POLICIES?

- There are few empirical evaluations of the efficacy of school security measures.
- There are no published investigations of the efficacy of fixed metal detectors placed at school entrances and random weekly sweeps with hand-held metal detectors. (Skiba, 2000).
- There is no empirical data regarding whether locker searches are effective in either finding weapons or reducing school violence.
- No published evaluations of the use of video surveillance in school settings, with or without the presence of additional staff to monitor the video feed.
- There is insufficient data to assess extent that support for school uniforms reduces school violence.
THE WHITE RABBIT JUMPS DOWN THE HOLE: EFFECTIVENESS OF ZERO TOLERANCE POLICIES?

- There is little evidence that supports the effectiveness of suspension or expulsion for improving school behavior or contributing to overall school safety.
- There is some evidence that the more intrusive school security measures such as strip searches or the use of undercover agents in schools have the potential for creating short or long term emotional damage to students. (Skiba, 2000).
- Zero tolerance policies may negatively impact students with disabilities to a greater degree than nondisabled students.
- A zero tolerance policy must be integrated into a comprehensive school safety plan that focuses on positive school climate and is balanced with prevention, intervention and enforcement strategies.

THE MAD TEA PARTY AND UNINTENDED CONSEQUENCES OF ZERO TOLERANCE POLICIES

- Multiple suspensions, long term suspensions and expulsions have a deleterious effect on community crime and violence.
- Removes opportunity to provide education and treatment to youth who may be at risk for future violence.
- School suspension is a moderate to strong predictor of drop outs. More than 30% of sophomores that drop out of school had been suspended which is a rate of three times of peers who remained in school. Ekstrom, 1986).
- Zero tolerance policies are pushing more students into the juvenile justice system. (Advancement Project, 2005).
- Zero tolerance policies may result in the over identification with of students with emotional behavioral disorders. (Caraballo, A, 2010).
THE CATERPILLAR SPEAKS AGAINST ZERO TOLERANCE POLICIES

- American Bar Association (ABA) (2001) opposes the use of zero tolerance policies. The ABA cites that zero tolerance policies treat children like adults in taking a mandatory minimum sentencing approach to punishing and deterring children from delinquency. The ABA recommends that school should take into consideration the individual student and alternatives to zero tolerance. The ABA has long opposed mandatory sentencing in criminal cases.
- American Psychological Association opposes the use of zero tolerance policies because they might limit the ability of administrators to consider “the circumstances or nature of the offense or the student’s history.” (APA 2006).
- Hamilton Fish Institute believes that zero tolerance policies outweigh the benefits.
- “Zero tolerance policies and expulsion do not go hand in hand . . . . Zero Tolerance simply means that all misbehavior will have some sanction. It does not mean you bring the maximum punishment for every transgression.” Ronald Stephens, Executive Director of the National School Safety Center in Westlake, CA. (1999).
- Sandra Feldman, President of the American Federation of Teachers, speaking in favor of zero tolerance policies stated that there are examples of adults not properly exercising proper responsibility. “I’m always in favor of just plain common sense.” (1999).

THE CATERPILLAR SMOKES HOOKAH AND EXPLAINS HOW YOU CAN BE SUSPENDED, EXPELED, AND ARRESTED WHILE BLACK

- Black and Latino students are overrepresented in the use of corporal punishment, suspension and expulsion - schools that rely heavily on suspension and expulsion have the highest rates of minority overrepresentation in school disciplinary violations.
- The rates of suspension for black students are between two and three times higher than suspension rates for white students at elementary, middle and high school. Studies show that 29 states suspended more than 5% of total black enrollment and only four states suspended more than 5% of white students.
- There is no evidence that black students misbehave at a significant higher rate than white students.
- For the period 1997-98, nearly one out of eight black students was suspended from school while only one out of 30 white students was suspended.
- In 1989-90, blacks comprised only 17% of the student population but represent 33% of the out-of-school suspensions.
- In 2002, black youth made up 16% of juvenile population but were 43% of juvenile arrests.
- Correlation between race and severity of punishment imposed for less severe behavior.
- Overrepresentation of low-income students in the use of disciplinary measures.
ADVICE FROM THE CATERPILLAR:
LEGAL CHALLENGES TO ZERO TOLERANCE POLICIES

• First Amendment - Speech. The circuit court in United States v. Dinwiddle, 76 F.3d 913, 925 (8th Cir. 1996), applied a five-part test to determine if the speech is protected under the first Amendment:

  • the reaction of those who heard the alleged threat
  • whether the threat was conditional
  • whether the person who made the threat communicated it directly to the object of the threat
  • whether the speaker had a history of making threats against the person purportedly threatened
  • whether the recipient had a reason to believe that the speaker had a propensity to engage in violence.

ADVICE FROM THE CATERPILLAR:
Continued . . .

In Porter by Breen v. Ascensibion Parish School Board, 2004 U.S. Dist. LEXIS 1175 (M.D. La. Jan. 28, 2004), aff’d, 393 F.3d 608 (5th Cir.), cert. denied, 544 U.S. 1062 (2005), a student sketched a graphic and violent drawing of his school that included obscene and racial expletives and students holding guns and throwing a brick at the principal. After school officials discovered the drawing, they questioned him and searched his book bag. The search revealed notebooks that contained references to death, drugs, and sex; gang signals; a fake ID; and a box cutter. His mother signed a form waiving his right to an expulsion hearing so that he could enroll at an alternative school. The court held that First Amendment protection could not be provided to the drawing under a pure-Tinker analysis, a true-threat inquiry, or the Fifth Circuit's approach in Canady.
ADVICE FROM THE CATERPILLAR:

Continued . . .

• The court found that the drawing and other circumstances met the reasonableness requirement for the search. There was no procedural due process violation because even though no formal hearing was held, the brother had admitted drawing the picture and his mother had waived his right to a hearing. Accord: Boim v. Fulton County School District, 2006 U.S. Dist. LEXIS 53129 (N.D. Ga. August 1, 2008), aff’d, 494 F.3d 978 (11th Cir. 2007)(court held that student who wrote in notebook about shooting her math teacher caused and was reasonably likely to further cause a material and substantial disruption to the maintenance of order and decorum at the school and suspension did not violate student’s First Amendment rights).

ADVICE FROM THE CATERPILLAR:

Continued . . .

Individuals with Disabilities Education Improvement Act of 2004

Students that misbehave frequently may have unmet mental health disabilities, or emotional and educational needs that require a comprehensive evaluation under the child find mandates of the IDEA. 20 U.S.C. §1412(a)(3). A comprehensive evaluation must assess the student in all areas of suspected disability. 20 U.S.C. §1414(b)(3)(B).

Students with behaviors that impede their learning or the learning of others who qualify under the IDEA should have IEPs that include strategies, including positive behavioral interventions, supports, and other strategies to address those behaviors. 20 U.S.C. § 1414(d)(3)(B).

A student with a mental disability may qualify for special education or related services under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794; 34 C.F.R. § 104.30-37.

Students with emotional and behavioral disorders are often placed in highly structured and restrictive settings such as alternative schools. These type of placements should be challenged. See, e.g. Center Grove Community School Corp., 105 LRP 32170 (SEA IN 2005)(hearing officer found that alternative school placement inappropriate); Medford Pub. Schs., 27 IDELR 1020 (SEA MA 1998)(hearing officer ruled that student required placement at a day program operate by a residential school rather than alternative school); Tyrone Area Sch. Dist., 31 IDELR 20 (SEA PA 1999)(district failed to comply with procedural safeguards under IDEA in changing student’s placement to an alternative school).
Continued . . .

Individuals with Disabilities Education Improvement Act of 2004

A 1997 U.S. Department of Education study found that zero tolerance policies often resulted in suspension or expulsions for: (a) possession or use of a firearm (80%); (b) possession or use of a weapon other than a firearm (78%); (c) possession or distribution of alcohol, drugs or tobacco (80%); and (d) physical fighting (81%).

The IDEA permits school systems to remove a student with a disability to an interim alternative educational setting for not more than 45 school days without regard to whether the student’s behavior was caused by or directly related to his disability when the student: (1) carries or possesses a weapon to or at school, on school premises, or to or at a school function; (2) knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school, on school premises, or at a school function; or (3) has inflicted serious bodily harm upon another person while at school, on school premises, or at a school function. 20 U.S.C. § 1415(k)(1)(G).

An interim alternative educational setting shall be determined by the IEP team. 20 U.S.C. § 1415(k)(2).

Substantive Due Process

• Under a school’s zero tolerance policy, a student was expelled for having a knife in the glove compartment of his vehicle on school property that was placed in the compartment by another student without his knowledge. The Court stated that “suspending or expelling a student for weapons possession, even if the student did not knowingly possess any weapon, would not be rationally related to any legitimate state interest.” Seal v. Morgan, 229 F.3d 567, 575 (6th Cir. 2000). The Board’s zero tolerance policy is irrational in that it subjects to punishment students who did not knowingly or consciously possess a weapon. In conclusion, the Court stated that “the Board may not absolve itself of its obligation, legal and moral, to determine whether students intentionally committed the acts for which their expulsions are sought by hiding behind a Zero Tolerance Policy that purports to make the student’s knowledge a non-issue. Id. at 581.

• Court held that school board violated a student’s right to due process when it blindly followed unwritten blanket zero tolerance policy requiring a one-year expulsion of student without considering all independent circumstances and facts of the infraction Colvin v. Lowndes County, 114 F.Supp.2d 504 (N.D. Miss. 2000).
ADVICE FROM THE CATERPILLAR:  
Continued . . .

• A teacher found a child with a miniature knife that the child had found in a school hallway. The child told a principal that he had intended to turn the knife over to his teacher. The child was suspended for a year under the terms of the school district’s unwritten zero tolerance policy on weapons. A hearing examiner noted that the result was harsh but that he had no discretion to make an exception to the policy. The unwritten policy violated Pennsylvania law that requires a school district to develop a written policy concerning weapons expulsions. The school district failed to provide its superintendent with the discretion to modify discipline, which discretion was provided for under Pennsylvania law. The legislature expressly authorized the superintendent of each school district to recommend a modification of the mandatory expulsion requirement on a case-by-case basis. The school district exceeded its authority in adopting a zero tolerance policy that denied the superintendent discretion that was statutorily provided for under the law. Lyons v. Penn Hills Sch. Dist., 723 A.2d 1073,1075 (Pa. Commw. 1999).

ADVICE FROM THE CATERPILLAR:  
Continued . . .

Title VI of Civil Rights Act and Section 504

• Title VI of Civil Rights Act prohibits discrimination on the basis of race, color, or educational institutions that receive federal financial assistance. 42 U.S.C. § 2000(d). There are two separate claims under Title VI: disparate or different treatment and adverse impact. Disparate impact claim requires proof of both differential treatment based on race and discriminatory intent. . See In Re Benedictine Military School, 22 IDELR 643 (OCR 1995)(OCR found that school policy violated Title VI in that black students were routinely expelled under school’s disciplinary point system scheme but white students were rarely, if ever, routinely expelled or suspended for similar or even more serious offenses).
ADVICE FROM THE CATERPILLAR:  
Continued . . .

• An adverse impact claim does not require proof of discriminatory intent. Title VI regulations state that a recipient of federal financial assistance may not “utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination.” 34 C.F.R. § 100.3(b)(2). There is a three-part test to determine if an educational policy is discriminatory under adverse impact theory. First, does not practice or procedure in question have a disproportionate impact based on race, color, or national origin? Second, is the practice or procedure an educational necessity? Third, is there an alternative practice or procedure that would be feasible and achieve the same purpose with less discriminatory impact. Larry P. v. Riles, 793 F.2d 969, 982 n.9 (9th Cir. 1984).

ADVICE FROM THE CATERPILLAR:  
Continued . . .

• Advocates can use this theory to compare the percentage of students in a particular racial or ethnic group with the expected value based on random selection from the student body population. (e.g. if black students constitute 10% of the population then black students should constitute 10% of those individuals that are suspended under zero tolerance policy). Ross v. Saltmarsh, 500 F.Supp. 935. 946 (S.D.N.Y. 1980)(court required school district to set goal to reduce the overall number of suspensions to reduce the racial disparity in suspensions).
• Section 504 disparate treatment and adverse impact claim theories mirror the analysis under Title VI: does the practice or procedure in question have a disproportionate impact based on disability; does the practice or procedure an educational necessity; and is there an alternative practice or procedure that would be feasible and achieve the same purpose with less discriminatory impact? 34 C.F.R. § 104.4(b)(4).
• A 2000 Civil Rights Project of Harvard university found that in many circumstances school systems are ignoring parental rights under the IDEA and parents are unaware of their rights or unable to enforce them. Advocates should insure that parents are fully informed to assert any claims against school systems that circumvent IDEA protections under Zero Tolerance policies.
DODO, MARCH HARE, AND DORMOUSE SHARE ALTERNATIVES TO ZERO TOLERANCE POLICIES

- Conflict Resolution
- School-wide discipline plans
- Screening and Early Identification and Intervention of troubled youth
- School Safety Plans and Behavior Support Teams
- Emergency and crisis planning
- Violence Prevention
- Peer Mediation
- Challenging curriculum
- Social skills training and positive behavior supports
- Training of teachers for conflict and disruption in the classroom
- Anti-bullying and anger management programs
- Training of teachers and administrators in cultural competence.

DODO, MARCH HARE, AND DORMOUSE . . . Continued . . .

- Training of teachers and administrators in cultural competence.
- School districts should establish school discipline oversight committees.
- States should adopt legislation to collect data in reporting of arrests in schools including offense, age, gender, race, ethnicity, disability and disposition.
- School police and officers should receive special training to deal effectively with youth and children with disabilities.
- School districts should adopt budgets that provide adequate resources for prevention and intervention programs.
- Community Panels for Youth as substitute for juvenile court referrals.
- Student Codes of Conduct that include broad array of graduated sanctions, self-defense in determining disciplinary action, and defining the parameters of legal and administrative authority when working with law enforcement.
BILL THE LIZARD’S RECOMMENDATIONS FOR CHANGING ZERO TOLERANCE POLICIES

• Allow more flexibility with discipline
• Give teachers and administrators more discretion in their own school buildings
• Use zero tolerance disciplinary removals only for the most serious and disruptive offenses
• Replace one-size fits all discipline.
• Require school security officers more training in adolescent development.
• Early identification of at risk students.