



LAW WISE

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Greetings from the Kansas Bar Association (KBA).

Welcome to this edition of *Law Wise* and the third edition of the 2014-2015 school year.

IN THIS ISSUE

| | |
|--|---|
| Welcome | 1 |
| Lawsuits Challenging Zero-Tolerance Policies have not Generally Succeeded | 1 |
| U.S. Supreme Court Silence on Zero-Tolerance Policy | 2 |
| Should Schools or Judges Decide School Policies? | 2 |
| Lesson Plan: Due Process | 3 |
| Buzzing In! | 4 |
| Important Details for 2015 Mock Trial Coaches | 4 |
| Terrific Technology for Teachers | 4 |
| Dear Readers: NEW <i>Law Wise</i> Group | 8 |

WELCOME

This edition of *Law Wise* looks at zero-tolerance policies in public schools.

The zero-tolerance approach, which started as part of the 1994 Gun-Free Schools Act, has apparently had its intended effect of reducing the rate of violent crime committed in schools. But detrimental effects are alleged as well, such as creating a school-to-prison pipeline and having a disproportionate impact on black students. President Barack Obama has recently recommended ending zero-tolerance policies in schools. The Justice Department and the Education Department issued guidelines this year on school discipline that warn school-based police officers to “not become involved in routine school disciplinary matters,” and the Justice Department has filed lawsuits challenging disciplinary procedures around the country. See *Policing the Halls: For More Teens, Arrests Replace School Discipline*, by Gary Fields and John R. Emshwiller, *The Wall Street Journal*, Oct. 21, 2014.

LAWSUITS CHALLENGING ZERO-TOLERANCE POLICIES HAVE NOT GENERALLY SUCCEEDED

Research has not revealed any reported case in Kansas state or federal court directly challenging zero tolerance policies or examining the Kansas Weapon-Free Schools Act, K.S.A. 72-89a01 *et seq.*

Cases in other jurisdictions have speculated that strict adherence to zero tolerance policies without consideration of the student’s state of mind would violate substantive due process. See *e.g., Seal v. Morgan*, 229 F.3d 567, 578 (6th Cir. 2000) (stating that “the Board’s Zero Tolerance Policy would surely be irrational if it subjects to punishment students who did not knowingly or consciously possess a weapon”). But plaintiffs have not generally been successful in challenging school zero-tolerance policies as arbitrary or capricious, as violating due process, or as discriminatory.

For example, the commissioner of education’s decision to uphold a student’s suspension stemming from his threats to “blow the school up,” was not arbitrary and capricious, where the school’s student handbook warned students that in accordance with its policy of zero tolerance for violence, threats would be taken seriously and students would be disciplined accordingly. *Saad-El-Din v. Steiner*, 101 A.D.3d 73, 953 N.Y.S.2d 326, 327 (N.Y.A.D. 3 Dept. 2012).

CALENDAR OF EVENTS

| | |
|--------------------------|---|
| February 28, 2015 | Regional High School Mock Trial Tournament |
| March 27-28, 2015 | State High School Mock Trial Tournament |
| May 1, 2015 | Law Day |
| May 14-16, 2015 | National High School Mock Trial Tournament, Raleigh, North Carolina |



And where the county school board's "zero-tolerance" drug policy, forbidding board employees from possessing illegal substances on board property under any conditions, was found reasonable, the court upheld a board employee's suspension for bringing to work what she suspected to be marijuana, even though it had been left in the car by her daughter and the employee intended to take it to the police for testing. *Chilton County Bd. of Educ. v. Cahalane*, 117 So.3d 363, 363 (Ala.Civ.App. 2012).

In another case, claims that the school's implementation of a zero-tolerance policy had a discriminatory impact on African Americans did not succeed where the district had used discretion in applying that policy. *J.J. ex rel. Vantress v. Oak Grove School Dist.*, 2013 WL 3158069, 10 (N.D.Cal. 2013) (student was not expelled and was given a second chance at another school).

U.S. SUPREME COURT SILENCE ON ZERO TOLERANCE POLICY

The U.S. Supreme Court has not accepted a case that directly challenges zero-tolerance policies, although it had an opportunity to do so in *Mikel v. School Board of Spotsylvania County*, (No. 11-1276). That appeal was by a high school student who had been disciplined for shooting plastic BBs or pellets at several other students during lunch, causing welts on their arms. The student was suspended in December for the rest of the school year. The student and his father sued the school district,

claiming it was arbitrary and capricious for the school board to suspend him under its rules against violent criminal conduct. The state judge found that reasonable people could disagree about whether the pea shooter and pellets met the definition of a weapon, but upheld the discipline. Virginia's highest court upheld that ruling, and the Supreme Court declined to review the case in 2012 without comment.

SHOULD SCHOOLS OR JUDGES DECIDE SCHOOL POLICIES?

The most recent school search case decided by the U.S. Supreme Court noted the citizens' ability to challenge "overly harsh" zero-tolerance policies. Justice Clarence Thomas' dissent in that case, *Safford Unified School Dist. No. 1 v. Redding*, 557 U.S. 364, 399-402, 129 S. Ct. 2633, 2656 - 57 (2009), reviewed such policies while making the points that judges do not have a monopoly on common sense and that implementing school policies is beyond the function of judges:

Restoring the common-law doctrine of in loco parentis would not, however, leave public schools entirely free to impose any rule they choose. "If parents do not like the rules imposed by those schools, they can seek redress in school boards or legislatures; they can send their children to private schools or home school them; or they can simply move." See *Morse*, 551 U.S., at 419, 127 S. Ct. 2618 (THOMAS, J., concurring). Indeed, parents and local government officials have proved themselves quite capable of challenging overly harsh school rules or the enforcement of sensible rules in insensible ways.

For example, one community questioned a school policy that resulted in "an 11-year-old [being] arrested, handcuffed, and taken to jail for bringing a plastic butter knife to school." Downey, *Zero Tolerance Doesn't Always Add Up*, *The Atlanta Journal-Constitution*, Apr. 6, 2009, at A11. In another, "[a]t least one school board member was outraged" when 14 elementary-school students were suspended for "imitating drug activity" after they combined KoolAid and sugar in plastic bags. Grant, *Pupils Trading Sweet Mix Get Sour Shot of Discipline*, *Pittsburgh Post-Gazette*, May 18, 2006, at B1. Individuals within yet another school district protested a " 'zero-tolerance' policy toward weapons" that had become "so rigid that it force[d] schools to expel any student who belongs to a military organization, a drum-and-bugle corps or any other legitimate extra-

curricular group and is simply transporting what amounts to harmless props." Richardson, *School Gun Case Sparks Cries For "Common Sense"*, *Washington Times*, Feb. 13, 2009, at A1.^{FN8}

FN8. See also, e.g., Smydo, *Allderdice Parents Decry Suspensions*, *Pittsburgh Post Gazette*, Apr. 16, 2009, at B1 (Parents "believe a one-day suspension for a first-time hallway infraction is an overreaction"); O'Brien & Buckham, *Girl's Smooch on School Bus Leads to Suspension*, *Buffalo News*, Jan. 6, 2008, at B1 (Parents of 6-year-old say the "school officials overreacted" when they punished their daughter for "kissing a second-grade boy"); Stewart, *Camera-Phone-Controversy: Dad Says School Overreacted*, *Houston Chronicle*, Dec. 12, 2007, at B5 ("The father of a 13-year-old ... said the school district overstepped its bounds when it suspended his daughter for taking a cell phone photo of another cheerleader getting out of the shower during a sleepover in his home"); Dumenigo & Mueller, "Cops and Robbers" Suspension Criticized at Sayreville School, *The [New Jersey] Star-Ledger*, Apr. 6, 2000, at 15 ("I think it's ridiculous," said the mother of one of the [kindergarten] boys. "They're little boys playing with each other when did a finger become a weapon?").

These local efforts to change controversial school policies through democratic processes have proven successful in many cases. See, e.g., Postal, *Schools' Zero Tolerance Could Lose Some Punch*, *Orlando Sentinel*, Apr. 24, 2009, at B3 ("State lawmakers want schools to dial back strict zero-tolerance policies so students do not end up in juvenile detention for some 'goofy thing'"); Richardson, *Tolerance Waning for Zero-*

tolerance Rules, Washington Times, Apr. 21, 2009, at A3 (“[A] few states have moved to relax their laws. Utah now allows students to bring asthma inhalers to school without violating the zero-tolerance policy on *402 drugs”); see also Nussbaum, *Becoming Fed Up With Zero Tolerance*, N.Y. Times, Sept. 3, 2000, §14, at 1 (discussing a report that found that “widespread use of zero-tolerance discipline policies was creating as many problems as it was solving and that there were many cases around the country in which students were harshly disciplined for infractions where there was no harm intended or done”).

In the end, the task of implementing and amending public school policies is beyond this Court’s function. Parents, teachers, school administrators, local politicians, and state officials are all better suited than judges to determine the appropriate limits on searches conducted by school officials. Preservation of order, discipline, and safety in public schools is simply not the domain of the Constitution. And, common sense is not a judicial monopoly or a Constitutional imperative.

Safford Unified School Dist. No. 1 v. Redding, 557 U.S. 364, 399-402, 129 S.Ct. 2633, 2656 - 2657 (2009) (J. Thomas, dissenting).

LESSON PLAN DUE PROCESS

Source: HotChalk Lesson Plans, Lesson Plans by Teacher for Teachers

<http://bit.ly/1u77xvj>

Grades: 9–12 (high school)

GOAL:

Students will investigate zero-tolerance laws and learn about the difficulties schools face when deciding how to handle school violence.

VOCABULARY:

- Zero Tolerance

PROCESS:

1. Ask students if they know what kind of policy their school has for students that are violent. Have they ever seen this policy in action? How is this policy communicated to students?
2. Have students find out their state’s policy on school violence:
3. Introduce students to the concept of zero tolerance. “Zero Tolerance” is a term used to describe a non-discretionary rules enforcement policy. Under a system of zero tolerance, persons in positions of authority – who might otherwise exercise their discretion in making subjective judgments regarding the severity of a given offense – are instead compelled to impose a pre-determined punishment.” (wikipedia.com)
4. Read about zero-tolerance cases in any of the following articles:
 - a. <http://www.thisistrue.com/zt.html>: Losing my tolerance for zero tolerance.
 - b. <http://bit.ly/1vmAdUy>: Pros and cons of the law
 - c. <http://www.ed.gov/offices/OSDFS/gfsaguidance.html>: Description of laws
5. Tell students that today they will be taking on the perspective of a school board council reviewing different cases related to bullying and school violence. Each group should review the cases and rate them in order of severity of the crime committed.

Case 1: Susan creates an “I hate Myra” blog which invites people to list reasons why they dislike Myra. She writes in this blog after school every day. Other students are also starting to write about Myra. Myra’s parents report this to the school board. What should be done?

Case 2: Students and teachers have seen Tyler and three of his friends picking on a boy in a wheelchair. Tyler’s group insults him and threatens to steal his chair. The boy’s parents come to the school board for help. What should be done?

Case 3: Raymond was beaten up after school by a group of kids in a gang. He comes to school with bruises showing. Other students have witnessed this group physically picking on Raymond. His parents want the gang expelled from school.

Case 4: Justin brings a knife to school and another student reports it to a teacher. Justin says he was bringing it in to show another student. He has no history of violence.

Case 5: Louis curses out his teacher and threatens to beat her up. The teacher brings the case to the school board. Louis has had many reports of being disruptive in class, but never to this extent.

6. Students should discuss each case and what kind of action they think should be taken with each of the students involved. Each group should contain school board members, a parent representing the “bully,” and a parent representing the “victim” (if any) of the bullying.
7. They should investigate the following questions:
 - a. Are all of the acts violent?
 - b. What makes one act more violent than another?
 - c. Is an incremental punishment strategy or a “maximum” punishment strategy more effective for these cases?
8. Afterwards, the groups should share their decisions with the class. What made these decisions difficult? Are you surprised by how other groups handled these cases?

B U Z Z I N G I N !

It has been quite a whirl leading up to and including Election Day! Here at Emporia State University, the Teachers College Resource Center, and specifically the Law-Related Collection, we house quite an array of resources devoted to voting. From DVD's to print resources, a student or teacher can find perfect answers to voting related questions that prevail whether or not an election is imminent.

The main focus of *Law Wise* this issue is zero tolerance. With that topic in mind, we have several support resources ready for users: "The Heart of Hatred," a DVD featuring several conversations from a variety of people exploring their own hatred; "Learning to Hate" a DVD of the same series that explores how children learn to hate; and "Teens at Risk: Youth and Guns," another DVD that explores issues and gives advice on problem solving. We also have a resource ready for younger learners:

"Fair Bears Learn about Justice", a kit containing a big book, activities, a Teacher Edition, and a CD-ROM, focusing upon realistic issues and problem solving.

For these and more amazing resources largely provided through the generosity of the Kansas Bar Association, begin your online search at emporiastate.worldcat.org and choose Resource Center from the Drop Box. If you would like to call to check out items, our number is (620) 341-5292, and our hours are 9 a.m. – 6 p.m., Monday through Thursday, and 9 a.m. – 5 p.m. on Friday. You may also email me to check items out at jromeise@emporia.edu. These items will come to you postage paid and can be returned the same way, due to the monies provided by the KBA.

Please allow us to help enrich your studies!

IMPORTANT DETAILS FOR 2015 MOCK TRIAL COACHES

The 2015 Mock Trial season is about to start! There is still plenty of time to put together a team of students for the regional competition in February 2015. The details about team composition, roles, and other important rules can all be found on the mock trial website at www.ksbar.org/mocktrial. The following are some of the highlights and most fundamental details. Teams must have between six and eight students. Students from different schools can compete as one team in order to staff a complete team. There is no registration fee and

registration is not due until mid-February 2015. However, the case will be published in early December 2014 on the website, so that teams can begin working on it during the winter break if they choose. Feel free to contact Shawn Yancy, mock trial state coordinator at kansasmocktrial@gmail.com, if you have questions or think you might organize a team (if you are the coach) so that you can be added to the coaches email list.

TERRIFIC TECHNOLOGY FOR TEACHERS

For a perspective from a parent, see "Pros and Cons of Zero Tolerance Policies in Schools" at <http://abt.cm/1v9xH41>

For a perspective from a law enforcement officer, see School Zero Tolerance Pros and Cons at <http://bit.ly/1yDI7HR>

For a perspective from school lawyers, see "What's a "Zero Tolerance" Policy?" <http://bit.ly/1u6Xsip>

National Education Association's site states that research shows that zero-tolerance policies don't work in bullying incidences. This resource offers alternative approaches. <http://www.nea.org/home/alt-zero-tolerance-policies.html>

The National Association of School Psychologists offers a fact sheet for educators and policymakers at http://www.nasponline.org/resources/factsheets/zt_fs.aspx

The Kansas Bar Foundation, with Interest on Lawyers' Trust Accounts funding, provides support for this publication. *Law Wise* provides general information about law-related matters of interest to teachers, students, and the public in Kansas, but does not provide any legal advice, so readers should consult their own lawyers for legal advice. For further information about any projects or articles, contact Kathryn Gardner, Topeka, (785) 338-5366; or Anne Woods, public services manager, (785) 234-5696. *Law Wise* is published by the Kansas Bar Association, 1200 SW Harrison St., Topeka, KS 66612-1806, during the school year.

DEAR READERS,

Law Wise is provided as a public service and is a publication funded by the KBA Law Related Education Committee through a grant from the Kansas Bar Foundation.

We are interested in your thoughts, ideas, and suggestions about current and future issues. In an effort to provide a format for subscribers to share information, we have created a new way to register and to receive *Law Wise*. If you do not currently receive *Law Wise* via your inbox but would like to, we need for you to let us know. Here are some simple instructions to do that.

How to Subscribe

KBA members:

Send Anne Woods, public services manager, an email at awoods@ksbar.org and request to be added to the *Law Wise* group.

Not a KBA member? Not a problem.

To register, follow these steps:

- 1) Visit www.ksbar.org
- 2) Click on the Join/Renew tab at the top left of the main menu
- 3) Click on the New Members "Click here to Join" button at the top
- 4) Scroll to the bottom of the page and select the **Educator** or **Guest** button and click Continue
- 5) Create a **username** and input your **first** and **last names**
- 6) On the Education drop down menu select **Law Wise**
- 7) Complete the form.

Why are we making this change?

You will then be part of the *Law Wise* group and will receive your issue via email. You will also be able to post information and comments to the group that contains like-minded people.

Unsubscribe

If you decide in the future to unsubscribe, simply login, and on the *Law Wise* group page select the "Options" button at the top and select "Leave this Group".