



Hamilton Fish, the late U.S. Congressman from N.Y., was dedicated to youth issues. Our work is a memorial to his efforts.

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# Zero Tolerance: Suspension and Expulsion

by Kirk Bailey, J.D. and Catherine J. Ross, Ph.D., J.D.

## Part Three of a Four-Part Series

Zero tolerance policies generally require mandatory suspension or expulsion of students caught possessing a weapon, engaging in violent behavior or using or possessing drugs. In many cases, the use of such policies is clearly necessary. However, this is not always the case. Increasingly, reports show that students have been suspended or expelled for apparently trivial mistakes, including:

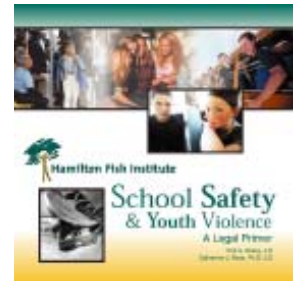
- Pointing a finger at another student and saying "bang,"
- Bringing a nail clipper to school,
- Turning in a gun brought to school by another student.

In addition to these extreme applications, the question of racial bias often arises in the implementation of zero tolerance programs. A study in Michigan, for

example, found that African-American students were suspended and expelled from school at a rate 250 percent greater than white students. This higher rate would only be appropriate if African-American students committed crimes at a rate 250 percent greater than white students.

Clearly then, adoption and application of zero tolerance policies has ventured into unexpected and uncertain territory. These developments raise important civil liberties issues regarding the right to an education and due process. The following review will outline the basic legal issues raised by zero tolerance policies.

*continued on page 3*



## One Size Doesn't Fit All: Programming for Success

Before the term "alternative education" was coined, a few schools in isolated parts of the country were doing things a bit differently. They were operating outside the box in which traditional public school education was packaged.

In these communities, innovators were creating specialized programs for youth whose needs were not being met by the "one size fits all" approach to public education, and an amazing thing started to occur. Students who had previously failed started to succeed. Once engaged in the process of learning, they had fewer be-

havioral issues, and teachers were able to rediscover their joy in teaching.

Alternative schools succeed, according to Robert Barr and William Parrett in "How to Create Alternative, Magnet, and Charter Schools That Work," by connecting students with an active, relevant curriculum that focuses on the individual needs of students, basic skill acquisition, academic preparation linked to careers and opportunities for students to participate in the design and delivery of the learning environment.

*continued on page 2*

Over the past seven years, HFI researchers have worked closely with alternative education programs. While each of these programs has been tested according to scientific criteria, long before the data were collected and crunched, there were tangible signs of how these programs helped to change lives. One such school was in Springfield, Ore.

The middle school served a high-risk neighborhood with high rates of poverty, domestic conflict and drug and alcohol abuse. Its students, not surprisingly, had high arrest rates. HFI researchers established a school-within-a-school for the most at-risk students. For them, the school provided a very structured educational program that addressed students' specific emotional, behavioral and academic needs. A limited enrollment allowed one-on-one instruction from teachers.

One student referred to the program faced unbelievable challenges. His mother was a drug addict and prostitute. The family of four was essentially homeless, but a friend allowed them to stay together in a single room in the back of the house. Often this child's mother would ask him

to take his younger siblings and leave the house while she "turned tricks" to raise money. The child had incredible anger issues as a result of these conditions and past traumas. But, by the time he left the program, he had passing grades and was attending school on a regular basis. For the first time in his life, he'd been able to build important social relationships with other students and his teachers and learned trust. The program's staff even helped him to find a job.

"Another student we had was with the program in sixth and seventh grade," one teacher said. "She was hardly attending school because of a case of chronic head lice. She was homeless, and her mother, who had a drug problem, left the care of her two youngest siblings to the sixth grader.

"When she was referred to the program, she was failing everything. The first few

months, the teachers in the program turned their attention to working to help heal the child's scalp, which had gaping, open sores. They also worked on teaching her social skills and basically had to deal with her on a 'crisis control' basis."

Health codes prevented the girl from attending school unless she was treated for lice each morning — something her regular teachers would not have been able to do. Through these efforts, the program's teachers were able to slowly gain the student's trust. They advocated for her with social services and were able to get her medical attention when she needed it. She was very likeable and, once they got her medical needs under control, she quickly made friends. She started to set goals for herself and achieved them. Had it not been for this program, she would not have been permitted in school.

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*The teachers used the student's passion for bicycles to help motivate him to succeed in school.*

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In another case, a sixth grade boy was referred to the class after threatening a group of friends with a butcher knife. His mother was single, working full time and had been having a difficult time controlling his outbursts. A very bright child, this boy was identified as being an underachieving Talented and Gifted student.

"By working to give a very emotionally stretched mother some support and giving him some structure," the program facilitator said, "the teachers in the program have been able to help get his attendance up." As an avid bike racer, the teachers used the student's passion for bicycles to help motivate him to succeed in school. They helped him get a job he loved at a bike shop but established a few basic rules: (1) He couldn't go to work if he got a referral at school and (2) He had to attend school. He's in eighth grade now, and has had no more violent incidents since he joined the program two years ago.

Evaluations of student academic records and behavior data show that the program is a success, but, more important, the students like it. It's now being made available to other schools in Oregon and other states. ■ ⓘ



Alternative Education rejects the one-size-fits all approach of traditional education and provides specialized learning opportunities that help youth succeed in school.

ⓘ This symbol means more information is available on this story in our Web site's newsroom at: [www.hamfish.org/newsroom](http://www.hamfish.org/newsroom)

## The Policy of Zero Tolerance: Gun-Free Schools Act of 1994

The zero tolerance policies states have enacted draw much of their inspiration from the federal Gun-Free Schools Act of 1994 (GFSA). In essence, the GFSA requires each state receiving federal funds under the Elementary and Secondary Education Act to expel, for a period of not less than one year, any student found with a weapon on school grounds. Weapons may include firearms designed to propel a projectile by an explosive reaction, including starter guns, the components of any such device, silencers or other destructive devices such as bombs, poison gas, grenades, rockets, missiles or mines.

The GFSA should be distinguished from the Gun-Free School Zones Act (1990), which prohibited the possession of a weapon or firearm within 1,000 feet of a designated school or school property. The Gun-Free School Zones Act was overturned in 1995 by the U.S. Supreme Court as a violation of Congress' power under the Commerce Clause of the Constitution. Subsequently amended, the revised Gun-Free School Zones Act (1996) maintains a prohibition against the possession of a firearm or weapon in a place a person knows, or should reasonably know, is a school zone. It does not, however, address zero tolerance policies.

Under the 1994 GFSA, federal funds may be denied to states that fail to adopt a zero tolerance policy for firearms. The GFSA allows local school officials to modify firearm-related expulsion requirements on a case-by-case basis but does not define modification or outline the circumstances under which such modifications would be appropriate. The federal mandate applies only to firearms, meaning that a zero tolerance policy is not required by federal law for other weapons, substance abuse, or other infractions. A number of states, however, have broadened the definition of "weapons" well beyond firearms to include knives, razors, slingshots, brass

knuckles and any other inherently dangerous object. In addition, some schools view threats of violence from students, including assaults not involving the use of a weapon, as a reason for expulsion.

The GFSA also allows schools to arrange alternative educational opportunities for expelled students at their discretion. Generally, there is no substantive right to public education that requires a state to provide alternative education, so schools may impose expulsion policies provided they are directed at a legitimate government purpose and their implementation is rationally related to achieving that purpose. However, some states do guarantee a fundamental right to education through the state constitution's bill of rights or provisions requiring a free and public education, creating additional conflict between state law and zero tolerance policies. The scope of such issues exceeds the purpose of this guide, so readers are urged to contact their local school counsel for specific advice regarding state constitutional concerns raised by zero tolerance policies in schools.

### State Interest in Safe Schools

In light of the state's clear responsibility to ensure the safety of teachers and students, school officials may adopt suspension and expulsion policies that require mandatory sanctions for particular offenses and expect those sanctions will

*The federal mandate [GFSA] applies only to firearms, meaning that a zero tolerance policy is not required by federal law for other weapons, substance abuse, or other infractions.*

continued on page 6



### Teacher's Tips for connecting with students:

#### For students of all ages

1. Learn students' names as quickly as possible and use their names in class.
2. Get to know your students. Meet with each individually during the year. Show genuine sincerity when you ask about their lives, their perceptions of school, what they find challenging and what they feel confident about.
3. Circulate around the class as you talk or ask questions. This movement creates a physical closeness to the students. Avoid standing at the chalkboard or sitting behind the desk for the entire period.
4. Provide positive reinforcement whenever possible; give students a respectful answer to any question they ask.
5. Identify the value of the subject. Not all students come to all classes with a clear idea of why a subject is important. You may need to help them understand the significance of the course. The sooner this is done, the sooner the students will be ready to invest time and energy in the task of learning the subject matter.



# A Different Path for Learning

by Allison Seale

## **Around the Web: Resources on the Internet**

Alternative Schools  
Network  
[asnchicago.org](http://asnchicago.org)

No Child Left  
Behind  
[nochildleftbehind.gov](http://nochildleftbehind.gov)

Coalition of  
Essential Schools  
[essentialschools.org](http://essentialschools.org)

Great Schools  
[Greatschools.net](http://Greatschools.net)

The Guidance  
Channel  
[guidancechannel.com](http://guidancechannel.com)

National Coalition  
for Parent Involvement  
in Education  
[ncpie.org/  
AboutNCPIE/](http://ncpie.org/AboutNCPIE/)

State Department  
of Education and  
Alternative Schools  
[criminology.fsu.edu/  
jjclearinghouse/  
jjeducation.html](http://criminology.fsu.edu/jjclearinghouse/jjeducation.html)

Success for All  
Foundation  
[successforall.net](http://successforall.net)

## **PROGRAMS**

Innovative Educa-  
tional Programs  
[ieonline.com](http://ieonline.com)

I'd noticed him earlier, of course. In the post 9/11 environment, I notice everyone on airplanes, particularly those sitting next to me. I'd already made my mental note for the FBI in the event that he attempted to hijack the plane: Soul patch on chin, very short dark hair, baggy jeans, blue T-shirt with grey stripe across the chest, overstuffed backpack beneath feet, CD player on, headphones wrapped casually around neck instead of over head, late teens or early 20s.

I know. I have issues. I'm working on it.

Anyway, with highlighter in hand, I had buried myself in the book I was reading on alternative education (reviewed on page 6). It was not a book I'd considered a conversation starter, so I was surprised when the young man next to me volunteered that he had attended an alternative high school.

When I asked him if he'd mind telling me about his experience with alt-ed, a large smile spread across his face.

"I'm always happy to talk about it," he said. He introduced himself as Sean and explained that he and his parents went through quite a struggle with the school system before they found an alternative high school.

Sean stated that he'd been diagnosed as having Attention Deficit Disorder (ADD) as a child and had been medicated ever since. By his freshman year in high school, he said that his attention span was decreasing. He stopped do-

ing his classwork and started to experiment with drugs and stealing. Ultimately he was expelled from his public school. For his sophomore year, his parents enrolled him in a private preparatory school. Things didn't change much in that environment, but it was there he had a friend who introduced him to the drums and uncovered a passion for music.

"As far as school went, I still had behavior problems," Sean said. "I was pretty defiant. After not being wanted by a couple of schools, I knew something needed to be done. The only option was this [alternative] school my dad found out about."

The school was Oak View in Agoura Hills, Calif. He had an interview with the principal, who explained that the school was really in demand for people, such as he, who lived outside the immediate community.

"She explained to me how it worked," Sean said. "We had self-paced packets that we turned in every week or so, so you could work as fast or slow as you wanted."

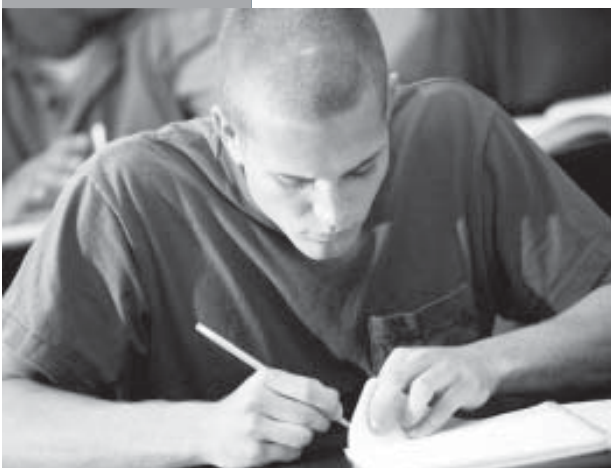
The difference between the alternative school and his previous experiences with both regular public school

and private school was like night and day for Sean.

"The teachers really showed a genuine interest in seeing the kids succeed," Sean said. "The classes were smaller and I got a lot of one-on-one attention."

An alternative school is just that: a school that provides an alternative to a regular public education, and it can take many forms. Some alternative schools are for students with high aptitudes for specific disciplines such as the sciences, math or the arts. Others provide specific vocational education or simply provide a nontraditional approach to teaching, such

*"I still got to the  
end of the road  
the way everybody else  
did. I just took a  
different path."*



as Montessori schools. Others, such as the one Sean attended, are set up for youth who have had behavior problems or are at risk of dropping out.

Sean credited his experience at the alternative school for the success he's enjoying now. His math teacher was an alumnus of Berklee College of Music in Boston and had discussed drums with him on several occasions. She had listened to tapes of Sean's band and saw talent. Ultimately, she encouraged and helped him to apply for a scholarship at Berklee. Sean has just completed his first semester on a full scholarship there.

Though Sean said he probably would

have gone to college anyway, he said he probably wouldn't have had the interest level to succeed. His math teacher had helped him to find a way to pursue his passion while still succeeding in school.

Overall, Sean remarked, an alternative education catered to his individual needs better than traditional public education. It helped him graduate and helped him find a positive direction for his love of music.

"I still got to the end of the road the way everybody else did," Sean concluded. "I just took a different path." ■

## HFI News Briefs

### New Staff at HFI

The Hamilton Fish Institute is pleased to welcome Ruth Marshall to its research staff. Marshall joined the staff in May. Before joining the Institute, Marshall worked for 14 years on substance abuse, health communication/promotion and youth issues.



Ruth Marshall

### HFI Provides Technical Support

In April, several HFI research staffers concluded initial work with a Richmond Public Schools Task Force. Debby Jennings, Lori McGee, Avinash Patwardhan, Madeline Sullivan and Dennis White have been advising and facilitating discussions with the Task Force as it examined the feasibility of opening a new alternative school in the district. The school, which would provide services to youth with disciplinary referrals, was slated to open in September 2003. The group concluded that the district would benefit more by a facility that offers a comprehensive continuum of services that address the whole school climate and provides support to both teachers and students. The board overwhelmingly voted to support the recommendations. Members of the Task Force praised HFI staff for their assistance to the Board.

Lori McGee and Debby Jennings spent some time in April with alternative education practitioners in Prince William County Public Schools in Northern Virginia. They visited five different programs that form a continuum of alternative placements for "at-risk" students. Particularly notable, Jennings said, was the elementary prevention program for second through fifth graders, training for all staff and transition coordination for all students.

### Literature Review Progress

For the past several months, the research staff has been conducting a synthesis of existing literature on school violence. Phase One of the literature review was completed in March and substantial progress has been made in writing reports on the materials collected.

### Safe Schools/Healthy Students Session

Beverly Glenn, HFI's executive director, presented a session on school/university partnerships at the Safe Schools/Healthy Students conference sponsored by the Office of Juvenile Justice and Delinquency Prevention April 6-9. Two members of the HFI research partnership — Steve Rollin, of Florida State University and Bessel van der Kolk, of the Trauma Center — Boston joined Glenn in her presentation. This is the first time that HFI has been asked to participate. ■ i

### Heard in the Halls:

*"Sometimes you have a real problem at home, and the teachers will help you with it instead of just saying you didn't get your homework done."*

*"It's safe here. Everyone knows us, and we know everyone."*

*"When I come here in the morning, every adult says 'Hi' to me. In my old school, no one noticed me. Here I have a place and I count for something. In other schools it's like, do this. Do it our way. You have no power. We're all here because we want to be. If I couldn't go to this school, I'd probably just drop out."*

— Students at Oregon Alternative Schools

**Fact:** One-fourth of all American youth drops out of high school; few of these students ever achieve middle class status during their lifetime. Most of these students face lives of unemployment, or at best, underemployment. -- *Saving Our Students: Saving Our Schools* by Robert D. Barr and William H. Parrett

survive legal challenges so long as the student receives the necessary due process protections. Such policies are not a violation of state compulsory education laws. Schools may ban weapons and impose suspension or expulsion for possessing a weapon but should exercise discretion based on the circumstances as allowed by the federal statute. This is particularly true in the rare case where a student's religious practices may be violated, such as the possession of a knife for ceremonial or symbolic reasons.

### **Discipline for off-campus activity**

A student generally may be disciplined for off-campus conduct if school authorities can show that the student's actions have a direct and immediate effect on either school discipline or the safety and welfare of students and staff.

### **Due Process - Suspension & Expulsion**

It is clear that certain procedural requirements must be followed if a student is to be suspended for a substantial period of time or expelled from a school. The Supreme Court noted in a famous line from the case of *Tinker v. Des Moines School District* that students do not "shed their constitutional rights... at the schoolhouse gate." The Supreme Court held in a later case, *Goss v. Lopez*, that a "student's legitimate entitlement to a public education [is] a property interest which is protected by the Due Process Clause and... may not be taken away for misconduct without adherence to the minimum procedure required by that clause."

### **Suspensions**

In cases involving suspensions of 10 days or less, a student must be provided with the following due process:

- (1) Oral or written notice of the charges against him or her,
- (2) An explanation of the reasons for the charges i.e., the evidence and
- (3) An opportunity to present his or her side of the story.

The requirement of a hearing does not mean it must be as formal as a trial: an

## **Case at a Glance:**

### **Colvin v. Lowndes County**

In February 1999, Jonathan Colvin, a sixth grade student at New Hope Middle School in New Hope, Mississippi, was found to be in possession, on school premises, of a weapon, specifically, a miniature Swiss Army type knife (The "weapon" in question is a miniature Swiss Army knife/key chain approximately two inches in length containing a fingernail file, small pair of scissors, and closed-end cuticle knife). When confronted, Jonathan admitted having the knife, stated that he was not aware that he had brought it to school, said that it apparently had fallen into his book bag by accident, and handed the knife over to his teacher without incident. Jonathan made no threatening gestures with the knife and fully cooperated with his teacher and the school officials after its discovery.

School officials suspended Jonathan for one day, and subsequently, the school board overruled a hearing officer's recommendation and approved Jonathan's expulsion for one year. The case was returned to the school board by the court with directions to reconsider the penalty with proper regard for due process. The court stated:

"Formalistic acceptance or ratification . . . of the scope of punishment, without independent Board consideration of what, under all the circumstances, the penalty should be, is less than full due process. . . . Employing a blanket policy of expulsion . . . precludes the use of independent consideration of relevant facts and circumstances. Certainly, an offense may warrant expulsion, but such punishment should only be handed down upon the Board's independent determination that the facts and circumstances meet the requirements for instituting such judgment. . . . The school board may choose not to exercise its power of leniency. In doing so, however, it may not hide behind the notion that the law prohibits leniency for there is no such law."

### **Heard in the Halls: Alt Ed Challenges**

*"Sometimes the teacher only sees that a student wasn't turning in her homework. What they don't realize is that sometimes these students don't have a home in which to do their homework. Teachers don't feel successful because these kids (our kids) are not measuring up by the yardstick they're using. The kids feel like failures because the message they are getting is they are never doing enough. Anytime we can provide some interventions to help these kids succeed, both sides win. It improves morale with the teachers and the students."*

**— Teacher at an alternative education site funded by HFI in Oregon**

informal review of the evidence is sufficient. In addition, no delay between notice to the student and the hearing is necessary, since a school official "may informally discuss the alleged misconduct with the student minutes after it has occurred."

Suspensions beyond 10 days in length may require more formal procedures. These procedures are outlined in *Due Process Checklist for Suspensions* found in the full article available online at hamfish.org.

### **Expulsions**

Suspensions for a substantial period of time or expulsions typically involve a greater level of procedural protection, which may include the following:

- (1) Notice to the student and parents,
- (2) A fair hearing and right to appeal,
- (3) An impartial hearing board,
- (4) Right to be represented by counsel,
- (5) Reasonable time to prepare for the hearing,
- (6) An opportunity to review evidence against the student,
- (7) An opportunity to examine witnesses against the student,
- (8) Opportunity to present evidence and witnesses on the student's behalf,
- (9) Recorded proceedings and
- (10) Requirement that board's decision be based on substantial evidence.

A school board should make an independent assessment of the facts and circumstances of the case in light of any

adopted zero tolerance policy and not simply endorse the decision of a school official or the effect of the policy. [See Case at a Glance: Colvin v. Lowndes County (Mississippi).] Of course, an expulsion policy should be developed in compliance with the GFSA, but schools must be careful in implementing zero tolerance policies, as expulsion may be an excessive consequence when weapons are brought to school unknowingly and without a threat of harm to others. Generally, expulsion is warranted only in cases of repeated or extreme misconduct, such as attacking a fellow student or teacher, repeatedly pulling fire alarms without cause, drug use and weapons possession or use.

### **Emergency situations**

Generally, notice and a hearing must precede a student's removal from school, except where the student presents an imminent threat to himself or the safety of others.

Notice should be sent to the student's parents within 24 hours of a decision to conduct disciplinary proceedings, and a hearing should be held within 72 hours (three days) of the student's removal.

**Note:** For more information on this topic and for checklists on suspension and expulsion, please see the full text of the Legal Primer on HFI's Web site. ■ ⓘ



### **Heard in the Halls: Alt Ed Challenges**

*One of the big battles the teachers in the alternative school in the intervention school in Oregon face on a regular basis is that teachers are under pressure to demonstrate academic success. They often don't have time to get into their students' personal lives and situations. "Sometimes academic success is just not the first concern we should have for some of these students."*

**– Teacher at an alternative education site funded by HFI in Oregon**



# OJJDP

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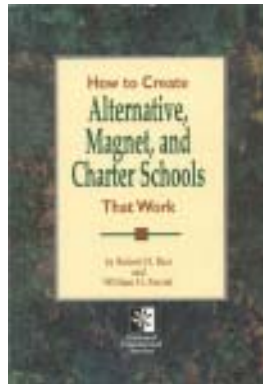
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## BOOK REVIEW

### How to Create Alternative, Magnet, and Charter Schools That Work



If you're in education, this just may be the "feel good" book of the season. Granted, the book was published six years ago, but if you're in education and you haven't read it yet, do.

Most of us have a pretty good idea of what the problems are with public education. But when it comes to solutions, few people are quick to suggest they have the answers.

Robert Barr and William Parrett's book is almost certain to give anyone down on public schooling an "a-ha" moment. The book provides a thorough and straightforward look at the alternative education movement.

As the title implies, the book presents a compelling case for alternative, magnet and charter schools, with input from those pioneers who dared to abandon the "one size fits all" approach to public education.

The book also includes a helpful resource section, frequently asked questions and evaluation criteria.

"Public education must abandon the idea that learning can occur only inside a classroom at a particular time of day, in a prescribed set of minutes, with a group of 15 to 30 students," say Barr and Parrett.

Traditional public education, the authors conclude, focuses too much on the 20 percent of kids who will graduate from college. This book provides inspiration for those seeking solutions so that no child is left out in public education.

NOTE: The authors' have a new book, *Saving Our Students, Saving Our Schools: 50 Proven Strategies for Revitalizing At-Risk Students and Low-Performing Schools*, which will be reviewed in a future issue. – **by Allison Seale**

*How to Create Alternative, Magnet, and Charter Schools*

By Robert D. Barr and William H. Parrett  
National Educational Service, 1997  
ISBN: 1-879639-48-3

### In Our Next Issue:

"Use of Student Records," Part Four of our Legal Primer Series, plus a look at planning for success in the new school year.