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A Critique of Zero Tolerance Policies: An Issue of Justice and Caring

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Introduction

The effectiveness of zero tolerance in elementary and secondary education has received significant attention in the wake of its usage over the past few years. It is an issue that is demanding coverage from several different angles, and each angle warrants scrutiny. One major area of interest concerns the discrepancy between students of color who are subject to suspension and expulsion because of zero tolerance rules (Skiba & Peterson, 1999a; Verdugo, 2002). Researchers (Black, 2004b; Cartledge, Tillman, & Johnson, 2001; Casella, 2003; Keleher, 2000; Mosca & Hollister, 2004; Raffaele-Mendez, Knoff, & Ferron, 2002; Skiba & Peterson, 1999b) have consistently found that students of color, specifically African American students, tend to be disproportionately affected in a negative way when school systems have implemented zero tolerance policies. Peterson (2003) also posited that “Zero tolerance suspensions and expulsions consistently yield racial of incarceration (NCES, 2003). According to Day-Vines and Day-Hairston, (2005), “52% of African American males who departed prematurely from school had prison records by their 30s. Current projections indicate that 32% of African American males are likely to serve prison terms” (p. 237). In Decatur, Illinois, the protesters indicated that expulsion was too harsh, and the school district had an unacceptable disproportionate expulsion rate among students of color. The fact that African American students, in particular males, (Raffaele Mendez et. al., 2002) are being suspended and expelled at such an alarming rate throughout many public schools in the country, echoes the sentiments of the protesters in Decatur and forces educators to address the issue of zero tolerance at all levels.

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An Ethical Analysis of Zero Tolerance

When examining the ethics of zero tolerance, it is worthwhile to observe the ethical decision-making process utilized by school administrators. Scholars (Brown, 2004; Collins, 2003; Decker, 1997; Picucci, Brownson, & Kahlert, 2002; Rooney, 2003) have found that it is the principal who sets the climate of the school. Consequently, if the principal is unconsciously making unethical decisions, it is quite possible that he or she is setting an underlying unethical tone for the entire school culture. According to Calabrese (1989), "Ethical leadership is concerned with fairness, equity, commitment, responsibility, and obligation" (p.16). Green (2001) stated, "In espousing moral leadership, the leader takes into account the best interest of all children, teachers, parents, and himself or herself" (p. 20) Sergiovanni (1992) found that leaders of a school have an ethical responsibility to ensure that all stakeholders experience a sense of belonging. One important concept linked with Calabrese's definition of ethical leadership is fairness. The concept of fairness will be addressed throughout this article to assist in the examination of the zero tolerance policies that are being used in our schools.

With the aforementioned ethical discussion in mind, Starratt (1991) suggested a multi-ethical theory for practicing administrators. His theory blended three ethics: critique, justice, and caring. We will utilize this theoretical framework to examine zero tolerance policies.

Ethic of Critique

Starratt (1991) indicated that society has always consisted of different groups struggling for a form of control, and philosophers from the Frankfurt School such as Adorno (1973), Habermas (1973), Horkheimer (1974), and Young (1990) have been interested in examining social arrangements through critical theory. Critical theory "questions the framework of the way we organize our lives or the way our lives are organized for us" (Foster, 1986, p. 72). Starratt (1991) asserted, "The point of the critical stance is to uncover which group has the advantage over the others, how things got to be the way they are, and to expose how situations are structured and language is used so as to maintain the legitimacy of social arrangements" (p. 189). An individual who subscribes to the ethic of critique might ask a series of questions: who defines; who controls; and who is benefiting by these arrangements (Starratt, 1991)? Thus, the ethic of critique is an excellent way to start examining the disproportionality that may violate students' rights to nondiscriminatory educational practices" (p. 69).

The disproportionality of suspension and expulsion rates among African American students has caused the parents of these students to become concerned about their children's chances for equal treatment in schools where zero tolerance policies are designed to push students out the door (Skiba & Peterson, 1999a). Thus, a major consequence of students being suspended and expelled is many decide not to complete their academic preparation (Peterson, 2003; Skiba & Peterson, 1999a). According to Skiba and Peterson (1999a), "Over 30% of sophomores who dropped out of school had been suspended, a rate three times that of peers who stayed in school" (p. 28). Thus, it would seem that the ramification of using such a policy

is that it could possibly create conditions where the undesirables (Peterson, 2003) as well as those who are experiencing a cultural collision (Beachum & McCray, 2004; Day-Vines & Day-Hairston, 2005) within the established mores of the school are more prone to face the ultimate academic consequences.

It could be argued that higher rates of removal among students of color are warranted due to higher rates of misbehavior or more serious disciplinary infractions. However, one must consider the endemic nature of structural racism in American life (schools not being exempt) (Ladson-Billings & Tate, 1995). Skiba and Knesting (2001) asserted, "Yet investigators of student behavior, race, and discipline have found no evidence that African Americans misbehave at a significantly higher rate" (p. 31). Furthermore, these same authors stated that black students are the recipients of "harsher" disciplinary consequences and for "less severe offenses" than their white counterparts (Skiba & Knesting, 2001, p. 31). Researchers at the University of Indiana found no evidence that African American students engaged in more serious disciplinary infractions; in fact, they discovered patterns of differential treatment of African American students for office referrals especially stemming from subjective classroom-level situations (Skiba, Michael, Nardo, & Peterson, 2002).

The issues that will be examined throughout this article are multifaceted, and there are no simple solutions. Indeed administrators have to deal with real issues of violence in their schools (Noguera, 1995). According to Noguera,

The problem of violence in schools, which is part of the overall problem of violence in society, has become one of the most pressing educational issues in the United States.... The escalation of violent incidents and the apparent inadequacy of traditional methods to curtail them has led to a search for new strategies to ensure the safety and security of children and teachers in schools. (p. 189)

Thus, the overwhelming response to the issue of violence in schools seems to be the increasing presence of zero tolerance.

African Americans Students and Zero Tolerance

The issue of zero tolerance was explored in greater detail when six African American students were expelled from school in Decatur, Illinois for fighting in the fall 1999 school year (*Fuller v. Decatur*, 2001). The controversy in Decatur brought masses of demonstrators to the small town where protesting lasted for more than a month. The demonstrations in Decatur centered on what some perceived as the outrageous two-year expulsion, a direct result of zero tolerance policies, the students received as punishment for fighting. "After national publicity and political pressure, the board modified the two year suspensions to two semesters and made an alternative school placement possible" (Stader, 2004, p. 63).

It is with good reason that many of these parents were concerned about their children receiving such stiff punishment from the school board. Today, in the United States, African American students make-up 16.9% of the student population but account for 33.4% of all school suspensions (Day-Vines & Day-Hairston, 2005). To make matters worse, not only is there

research indicating that students who are suspended and expelled from school end up dropping out, but research also indicates that those students who prematurely end their academic career quite possibly face a life of low income earnings and varying degrees ethical issues concerning zero tolerance.

Issues of defining and controlling are the responsibility of educators. The question of who defines with regard to the context of zero tolerance policies, largely falls within the purview of teachers within classrooms and the administrators who make disciplinary decisions. What we mean here is that teachers are largely responsible for establishing a context for zero tolerance decisions to take place (especially with regard to classroom behavioral issues). Racism (although it is more covert than in past years) in society operates on several levels including individual, institutional, and cultural (Harro, 2000; Lipitz, 2002; Scheurich & Young, 1997; Schmidt, 2005; Villegas & Lucas, 2002). Thus, it permeates schools and influences situations and decisions (Kailin, 2002; Obiakor, 2001; Perry, 2003; Tatum, 1997). Skiba et al. (2002) found that “White students were significantly more likely to be referred to the office for smoking, leaving without permission, obscene language, and vandalism. In contrast, black students were more likely to be referred to the office for disrespect, excessive noise, threat, and loitering” (p. 334). According to this information, white students were referred for objective infractions while black students were referred for more subjective infractions (Skiba et al., 2002). This information is consistent with studies that note how students of color perceive the disciplinary procedures of their school to be racially biased (Sheet, 1996). These results are also related to research that notes how white teachers have different and negative perceptions of students of color (Beachum, Dentith, & McCray, 2004; Kailin, 2002). Thus, these perceptions logically can influence who is referred (e.g., African American students) and the insistence on zero tolerance disciplinary tactics as a means of discipline.

Building administrators (and sometimes superintendents) are mainly the ones who control the actual implementation of zero tolerance as a policy. They are the ones who ultimately use the policies. Similarly, their decisions too could be influenced by conscious or unconscious bias. Numerous scholars still note the connections of racial/ethnic bias and zero tolerance policies (Black, 2004b; Skiba & Kesting, 2001; Skiba et al., 2002; Stader, 2004). Within an ethic of critique it is critical to note the role of ethical leadership. Starratt (2004) asserted:

The work of educational leadership should be the work that is simultaneously intellectual and moral; an activity characterized by a blend of human, professional, and civic concerns; a work of cultivating an environment for learning that is humanly fulfilling and socially responsible. (p. 3)

Therefore, leaders must work diligently to be cognizant of such concerns. This means that leaders have to muster the moral courage to challenge zero tolerance policies that are overly formulaic in their application and take away “their discretionary authority in student discipline situations” (Gorman & Pauken, 2003, p. 29).

So exactly who is benefiting from a zero tolerance policy? Many administrators, educators, and proponents of zero tolerance might emphatically indicate that the majority of students in the

school building are benefiting from such a policy. They might argue that the zero tolerance policy helps eliminate “trouble makers” and allows the overwhelming majority of students to receive a quality education. However, there are individuals who disagree with the notion that the majority of students benefit from zero tolerance policies and would even indicate that the zero tolerance policy exerts a negative impact on certain segments of society. For example, the number of African Americans expelled from school because of the zero tolerance policy is not benefiting African American people. Instead, this increase rate in suspension and expulsion also increases the possibility that many African Americans will experience a life of crime and violence (Day-Vines & Day-Hairston, 2005; NCES, 2003). Under the zero tolerance policy, there is little latitude for students to be reprimanded in some other way than severe penalties by teachers.

The ethic of critique is designed to initiate a dialogue concerning rules and policies. It is the administrator’s job to critique and question any school policy that might be detrimental to a particular segment of society (Starratt, 1991). Thus, Starratt clearly defined the role of the school administrator concerning his or her greater responsibilities to society.

Hence, the ethic of critique, based as it is on assumptions about the social nature of human beings and on the human purposes to be served by social organizations, calls the educational administrator to a social responsibility, not simply to the individuals in the school or school system, not simply to the education profession but to the society of whom, and for whom he or she is an agent. In other words, schools were established to serve a high moral purpose, to prepare the young to take their responsible place in and for the community. (p. 190)

Here, Starratt has clearly posited that administrators and policymakers must take into account the ramifications of a policy outside the “immediate boundaries” of the organization. In this instance, the “immediate boundaries” would be the classroom or even the school system; the “outside boundaries” would certainly consist of society in general (that is our criminal justice system).

Ethic of Justice

The ethic of justice addresses the issues of governance and fairness. According to Walker and Snarey (2004), “Justice means liberating others from injustice and orientating oneself away from biases and partial passions and toward universal ethical principles” (p. 4). These aforementioned issues are negotiated through the balancing of two competing interests: individual versus community (Cunningham & Cordeiro, 2003).

The situation resulting from these two schools of thought is a dichotomous framework for ethical decision-making. The first school of thought places the most value on the individual. Starratt (1991) wrote, “In this school, the primary reality is the individual, independent of social relationships; the individual is conceived as logically prior to society” (p. 192). This means that ethical decisions would protect individuals against majorities. Conversely, the second school of thought views the community prior to the individual. Thus, the individual thinks about his or her role and life experience in relationship to the greater community (or society). Consequently, ethical decisions are ones

that benefit the community (even over the individual).

In the following analysis of the ethic of justice, the utilitarian, libertarian, and liberal egalitarian principles (philosophical values of the liberal democratic tradition) will be used to further investigate the ethical and moral ramifications of zero tolerance policies.

Utilitarianism is a principle that is based entirely on the consequences of a policy. This principle weighs the virtue of a policy against the results of the policy. “An action or policy is right if, from among the available alternatives, it is one that maximizes total benefit, or more technically, satisfies the principle of utility” (Howe, 1993, p. 29). According to McCollum (1998), utilitarianism is “the school of philosophy that holds that the purpose of government is to foster the happiness of the individual, and the greatest happiness of the most people should be the goal of human existence” (p. 28). The principle utilitarianism would indicate that zero tolerance is good policy because they are removing the “difficult” students from the classroom, and the consequence of the policy is that it enables other “desirable” students to learn without being subject to any disruptions and distractions. The principle of utilitarianism would also indicate that the purpose of zero tolerance policies is to achieve benefit maximization in the classroom.

Many skeptics (Black, 2004a; Mosca & Hollister, 2004; Peebles-Wilkins, 2005; Stader, 2004) of the utilitarian principle assert that the blade of the sword is too wide, and the results often end up doing more harm than good. However, the utilitarian principle seemingly would not take into consideration the negative impact that policies, such as zero tolerance, might have on a presumed small segment of students and society. As long as there is a perceived positive impact on the majority of the students in the classroom and in our society, the utilitarian principle supports it. Even so, it could be perilous to sacrifice the liberty and equality of others (that is the undesirable students) for perceived benefit maximization.

Libertarianism is the second sub-principle the authors have chosen to explore to better understand the ethic of justice. When probing the libertarian perspective of zero tolerance, one word that is directly associated with it is “liberty.” The principle of libertarianism is interested in equality among all individuals. Thus, a question to explore concerns how would libertarians respond to zero tolerance policies in our schools? Howe (1993) indicated that libertarians are nonconsequentialist, they are not interested in the results of the policy but rather the procedures that are used to arrange and enforce the policies. The principle of libertarianism would find it irrelevant whether a policy led to bad results (that is a large discrepancy in groups who were suspended and expelled from school). Libertarianism is mostly concerned with the equality of the policy. For instance—is everyone being treated equally under the zero tolerance policy? The principle of libertarianism is against social inequality based on the race or ethnic background of individuals (Howe, 1993); and would not subscribe to a policy that makes certain exceptions based on race or gender. Thus, the libertarian philosophy would not inquire into the

discrepancies of zero tolerance policies as it relates to race unless it was clearly obvious that the policy was designed to disproportionately target one group over the other.

In the absence of evidence that zero tolerance policies specifically target students of color in schools, libertarianism explicates that the expulsion in Decatur, Illinois, was warranted because equality existed in the school; all students were subject to the same punishment for violating certain school rules. The students who were involved in the fighting incident were aware of the zero tolerance policy but chose to participate in the fight. Consequently, these students disrupted a school function and broke several school rules. As was noted earlier, libertarianism is in general a nonconsequentialist philosophy; therefore, no other issue would concern them with a zero tolerance policy other than everyone is subject to the same policy and is aware of its penalty in advance.

The third and final principle examined here is the principle of liberal egalitarianism. Liberal egalitarianism is quite different from the aforementioned libertarian philosophy. One of the distinct differences between libertarians and liberal egalitarians is that liberal egalitarians believe in the concept of equity. Curwin and Mendler (1999) posited that zero tolerance policies raise serious ethical challenges with regards to the liberal egalitarian principle. The argument can be made that the concept of zero tolerance originated to help our children—to shield our children from the undesirables, but in this effort, some would argue, it has done more harm than good. The liberal egalitarian principle would dispute the notion that students regardless of the infraction committed should be treated the same. Instead of using the zero tolerance policy in every situation, administrators must begin to implement corrective measures for individual students (Curwin & Mendler, 1999).

Throughout this article it has been made clear how utilitarians might respond to a zero tolerance policy, and their response is directly opposite from the liberal egalitarian view of zero tolerance as it relates to the concept of equity. For example, Howe (1993) has indicated that for most liberal egalitarians “If a school of choice plan were to maximize overall benefits but also result in racial discrimination, the essential interest in, and right to nondiscrimination would ‘trump’ the principle of utility” (p. 32). It is clear that the liberal egalitarian philosophy would not support a zero tolerance policy if the policy has flaws concerning discrepancies in the students who are expelled. On the other hand, what about the libertarian who insists that such a policy is effective because everyone is subject to the same rules and, therefore, believes equality exists? The one common denominator between libertarians and liberal egalitarians is that both support an effort to bring about equality in our schools. Yet, the divergence in philosophy between the two originates as it relates to the concepts of equity and equality—equality being the process of treating everyone in all situation the same, while equity consists of the notion of recognizing differences and implementing policy accordingly. Liberal egalitarians would move beyond the idea of equality and endorse the notion of equitable policymaking in our schools to try to ensure that students do not have the misfortune of experiencing irrational

punishment without opportunity for corrective measures and feedback.

The Ethic of Caring

The ethics of caring is a principle that examines the quality of relationships or interactions between individuals. According to Starratt (1991), “such an ethic does not demand relationships of intimacy; rather, it postulates a level of caring that honors the dignity of each person and desires to see that a person enjoys a fully human life” (p. 196). Beck (1994) has found that individuals mostly care about ideas and concepts they deem as important. According to Blustein (1991) and Noddings (1992), individuals have the capacity to “care for” and to “care about.” It is the “caring for” aspect that allows interpersonal relationships to form. When an individual has decided that he or she will care for another individual, a certain amount of growth and development should be derived from the relationship. “Care means liberating others from their state of need and actively promoting their welfare; care additionally means being orientated toward ethics grounded in empathy rather than dispassionate ethical principles” (Walker & Snarey, 2004, p. 4). Mayeroff (1971) has indicated that the essence of a caring relationship is the ability to promote growth in another individual. A caring relationship requires patience from the caregiver; the caring relationship requires the caregiver to be committed in assisting an individual to realize his or her potential (Mayeroff, 1971).

Thus, with the non-malleable aspect of zero tolerance, it is questionable as to whether language such as patience and caring actually exists in such policies. Pipho (1998) asserted that the message being sent by such policies is that there is little or no flexibility for any mistakes to be made by students, which is the result of the reactionary response that has taken place as an answer to the wave of school shootings around the country. The true losers of such policies are the students who do not pose a terrible threat and are caught-up in an inherent dichotomous struggle within the school system surrounding equal respect of all students and consequentialist policies (that is policies that generate strict enforcements for rule violations) that supposedly produce the maximum benefit.

As a result of this dichotomy, policymakers and administrators need to examine the ethics of policies such as zero tolerance to ensure that infractions are handled equitably. Over the last half decade, several incidents in zero tolerance schools have lacked certain components of caring as it relates to students. One case dealt with a student who was suspended for waving a stapler around on a school bus; another case dealt with a young female student who was suspended for bringing a finger nail file on the school premises (Leo, 1999).

Scholars, such as Casella (2003), have concluded that the wrong message is being sent to children concerning real world issues as it relates to the notion of second chances in life. This in turn may result in children questioning their self-worth and taking a zero tolerance attitude into society after their tenure in school has been completed, leading to individuals exhibiting no tolerance for mistakes on any level. School leaders who subscribe to an ethic of caring would ultimately be concerned with whether or not care is involved in zero tolerance policies, which at the end of the day is when opportunities to correct misbehavior are a part of the

discipline process.

In summary, critique, justice, and caring work together in paradigmatic union. Starratt (1991) opined, “each ethic needs the very strong convictions embedded in the other...Uniting themes from different theoretical foundations attempts to use the genuine strengths and the genius of each theoretical position in the interests of building a rich and pluriform ethical environment” (p. 198). At the heart of the matter is an issue of ethical courage and integrity that causes one to ask broader questions, adjudicate fairly, and make caring decisions on the best behalf of all students.

Leadership Implications

After reviewing the ethical principles (i.e., the ethic of critique, care, and justice) and applying them to zero tolerance policies, it has been revealed that there are a plethora of ethical concerns. However, one final component that needs to be added to the discussion is the leadership implications for administrators who are in school districts where zero tolerance policies exist. Thus, the question has to be asked as to whether administrators perceive themselves as acting ethically when enforcing zero tolerance policies? According to Beauchamp and Childress (1984), “Absolute rules undermine the freedom and discretion of moral agents, and it sometimes results in moral victims who suffer the consequences of overly rigid adherence to rules” (p. 58). Beauchamp and Childress recognized the possibility that some rules are absolute and should never be broken. But Beauchamp and Childress also posited that “It may be true that in some cases, such as emergencies, the consequences of following some rules would be so terrible that those rules should be overridden” (p. 58).

There are some reasons that administrators might approach zero tolerance policies as absolute. First, some districts require administrators to enforce zero tolerance policies, and administrators simply have no choice in reprimanding students. Second, in circumstances where administrators are provided flexibility in punishing students, many administrators still consider the district’s zero tolerance policy as an unconditional rule in order not to seem biased against certain groups. Some administrators perceive zero tolerance policies as a safety net that will protect them against accusations of being biased and any potential lawsuits for treating students differently (Portner, 1997). Administrators who subscribe to this type of thinking have a supposition that students are being treated equally because students are subject to the same rules and regulations. This also leads them to the belief that the majority of students in the school are benefiting by doing away with the “trouble makers” who commit infractions. However, those who have limited cultural capital within society might disagree with this type of logic. African American students who are more likely to experience expulsion or suspension than any other group would disagree with the principle of benefit maximization. Students who are more prone to drop out of school because of zero tolerance policies would also disagree with the utilitarian principle. Black (2004a) posited that zero tolerance policies are having a negative impact on teaching children certain values such as understanding, kindness, and justice.

Viewing zero tolerance policies as fixed or absolute seems to

be the prevailing way of dealing with them. Another way to address such policies is to work to reconstruct them. Ironically, ethical frameworks like critique, justice, and caring become a way to work towards initiating such a change. An ethic of critique compels the leader to carefully examine the outcomes of zero tolerance policies. Starratt (1991) asserted, "From a critical perspective, no organizational arrangements in schools 'have to be' that way; they are all open to rearrangement in the interest of greater fairness to their members. Where unjust arrangements reflect school board or state policy, they can be appealed or restructured" (p. 190). Starratt highlighted the leader's ethical duty to address and if necessary reconstruct policies that are unfair or unethical. An ethic of justice forces the leader to deal with issues of fairness. With this viewpoint, leaders must see beyond utilitarianism (greatest good for the greatest number), and libertarianism (liberty as the standard for all), to understanding that liberal egalitarianism too, is an ethical position that is rational (not overly sentimental) and deserves parity with its ideological colleagues. An ethic of caring guides administrators into action. This ethic requires skillful handling of complex relationships and organizational politics (Starratt, 1991). Furthermore, "Care means liberating others from their state of need and actively promoting their welfare; care additionally means being orientated toward ethics grounded in empathy rather than dispassionate ethical principles" (Walker & Snarey, 2004, p. 4). Thus, educational leaders should not be totally bound by policies that are unethical, in fact, they have an ethical duty to challenge such policies. What would schools be like if leaders openly challenged and changed policies that disproportionately impacted poor students and students of color?

Because of these implications that a zero tolerance policy might have on a student, school districts should implement such policies cautiously and make every effort to understand how they affect the decision-making ability of school leaders as well as the impact it has on students and parents. If the policy is administered carelessly, it could be devastating for a student who would ordinarily not be subject to any type of suspension or expulsion. It is the ethical leadership styles of school leaders that will have an impact on the entire school. Administrators must inquire (Ethic of Critique) as to what their role is in shaping a student's life (Ethics of Caring) and are they overzealously using zero tolerance policies to the detriment of students (Ethic of Justice). This approach is crucial because it gets to the foundation of the controversies surrounding zero tolerance. School boards and administrators must ask the tough questions. Were zero tolerance policies designed to be unconditional in the enforcement of infractions, and are we acting in a good faith effort when administering such policies? Can we defend our actions under ethical scrutiny when we do administer them? These are questions that will need to be further explored to determine administrators' perceptions of zero tolerance and its implementation; however, there is strong preliminary evidence to suggest that school districts along with school leaders are overzealously administering zero tolerance policies and are maybe teaching the wrong lessons to our children.

REMINDER:

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