

In the instant case, Superintendent Morgan would be entitled to qualified immunity only if he can establish that his action in refusing to modify the Board's suspension of Dustin was within the scope of his duty and was taken with the reasonable belief that it was lawful. As previously discussed, the law is well established that a student's due process rights are violated if he is expelled from school for being in possession of a weapon when all of the proof suggests that he never knew he was in possession of that weapon. Superintendent Morgan either implicitly or explicitly approved of the Board's implementation of the Zero Tolerance policy whereby a student would be responsible for a dangerous weapon in his vehicle, even without any knowledge of its presence in the vehicle. In all likelihood, Superintendent Morgan was advised by some member of the Board that Dustin had signed a written confession as to the weapons charge.<sup>13</sup> However, even a cursory review of that purported confession would have revealed it was ambiguous as to when Dustin knew the knife was in his automobile and when he felt "uneasy." And those ambiguities would have been completely clarified by a review of the transcript of the disciplinary hearing before Mr. Thacker. Under these circumstances, Superintendent Morgan is not entitled to qualified immunity. As previously stated, Dustin's due process rights were violated and Superintendent Morgan, along with the Board, must be held accountable. Zero hour has indeed arrived for the Zero Tolerance policy.

---

<sup>13</sup>This was the same argument advanced to the court during the October 13th hearing.

## VII.

*Conclusion*

Reluctantly, this court finds itself immersed in an area which should be purely local and not federal. The Board, not this court, should determine how to best implement its Zero Tolerance policy. Nevertheless, that being said, due process requires that the Board and the Superintendent pay careful attention to all of the evidence and testimony presented to them as to each case and then to make an independent and impartial decision based on the specific facts of that case — not just a decision based solely on general policy.

Here, the court finds that the Board, in its zeal to implement the Zero Tolerance policy, trampled upon the rights of a student who was simply in the presence of someone who probably violated that policy by being in constructive possession of a knife in the glove box of Dustin's vehicle.<sup>14</sup> Perhaps Dustin could have chosen his friends with greater care. But a student's poor choice in the selection of his friends cannot necessarily be equated with what is now an unforgivable decision under the Zero Tolerance policy -- to intentionally carry a weapon onto school property. In implementing its Zero Tolerance policy, the court would remind the Board and Superintendent Morgan that the

---

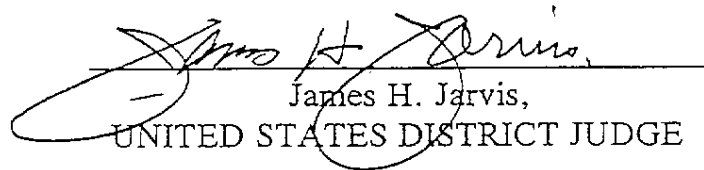
<sup>14</sup>It is unclear from the record whether Ray even knew the knife was in the glove box.

due process rights of all students must be protected and zealously guarded just as much as the students' and teachers' right to be secure in their school. The imposition of a one-year suspension or expulsion by the Board is a harsh and drastic penalty. And it is an appropriate and just penalty when the Zero Tolerance policy has been intentionally violated. But due process mandates that it be applied only when the facts indicate the policy was intentionally violated. This is, in the court's opinion, an appropriate case to draw the line as to what extent students must be responsible for what is present in their vehicles, lockers, and backpacks.

Under the Board's current interpretation of its Zero Tolerance policy, a student will be suspended from school even if he does not intend to violate the Zero Tolerance policy. In other words, a student is now "held responsible" for whatever is in his vehicle, locker, or backpack, even if another student surreptitiously placed an offending object there. This is indeed too broad a stroke for the brush of Zero Tolerance. Moreover, the Board and school superintendent must be willing to reverse the decision of a principal or disciplinary hearing officer in appropriate cases; otherwise, this court will continue to be called upon to protect the rights of individual students in these cases.

This court can only hope that this opinion will provide some degree of constitutional clarification to the Board and the superintendent as they seek to further define and refine the contours of their Zero Tolerance policy.

Order accordingly.

  
James H. Jarvis,  
UNITED STATES DISTRICT JUDGE