Offices of Research and Education Accountability

Comptroller of the Treasury
JOHN G MORGAN

OREA

ZERO TOLERANCE

AN UPDATE, 2006

July 2006
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STATE OF TENNESSEE

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Comptroller

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July 3, 2006

The Honorable John S. Wilder
Speaker of the Senate
The Honorable Jimmy Naifeh
Speaker of the House of Representatives
Members of the Select Oversight Committee on Education
and
Members of the House and Senate Education Committees
State Capitol
Nashville, Tennessee 37243

Ladies and Gentlemen:

Transmitted herewith is a report on zero tolerance in Tennessee schools, as required by Public Chapter 871, 1998. The report contains several conclusions concerning the implementation of zero tolerance policies for school years 2002-03, 2003-04, and 2004-05. It also provides recommendations that may be useful to policymakers in considering ways to improve and assist Tennessee's schools.

Sincerely,

John G. Morgan
Comptroller of the Treasury

ZERO TOLERANCE
AN UPDATE, 2006

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The Office of Education Accountability was created in the Office of the Comptroller of the Treasury by *Tennessee Code Annotated* 4-3-308 to monitor the performance of school boards, superintendents, school districts, schools, and school personnel in accordance with the performance standards set out in the Education Improvement Act or by regulations of the State Board of Education. The office is to conduct such studies, analyses, or audits as it may determine necessary to evaluate education performance and progress, or as may be assigned to it by the Governor or General Assembly.

Comptroller of the Treasury, Office of Education Accountability. Authorization Number 307338, 500 copies, July 2006. This public document was promulgated at a cost of $1.50 per copy.

EXECUTIVE SUMMARY

This report continues a series of analyses of zero tolerance data as reported to the Department of Education by local school districts. The Office of Education Accountability has conducted two previous analyses, in 1998 and in 2003. This report examines zero tolerance discipline data for school years 2002-03, 2003-04, and 2004-05. The report is divided into two sections: the first section displays statewide zero tolerance statistics and the second focuses on the zero tolerance statistics of Tennessee's five major urban systems. Both sections include data on the age, grade level, education status, gender, and race of zero tolerance offenders, nature of violations, and disposition of offenses.

For the statewide zero tolerance data, the report concludes:

Zero tolerance offenses have remained at about 4.5 per 1,000 students for the past several years. Zero tolerance offenses increased at an average yearly rate of 5.4 percent between 1999 and 2002, from 3,651 in 1999-2000 to 4,047 in 2001-02.[1] The average yearly rate of growth slowed between 2001 and 2005 to 1.1 percent. This significant reduction brings the increase in zero tolerance offenses close to the increase in total student population. (See page 7.)

Drug offenses continue to be the largest category of zero tolerance offenses. In 2004-05, drug offenses accounted for 63 percent of all zero tolerance offenses. Possession of alcohol accounted for an additional four percent of offenses. (See page 7.)

In 2003-04, superintendents modified the penalties for about 16 percent (683 cases) of zero tolerance offenses. Statewide data for actions taken on zero tolerance offenses were unavailable in 2004-05. Both state law and the federal Gun-Free Schools Act allow superintendents to alter the penalties for zero tolerance offenders on a case-by-case basis. (See pages 8-9.)

During the 2004-05 school year more than half of all zero tolerance offenders were returned to school or placed in alternative school, while 13 percent of zero tolerance offenders were expelled without placement. Students whose education is disrupted for a period of time may have difficulty catching up and may eventually drop out of school. In 2001-02, 19 percent of zero tolerance offenders were expelled without placement. (See pages 9-10.)

Most zero tolerance offenders are male. Although males represent about 50 percent of the student population in Tennessee, they account for 73 percent of zero tolerance offenses. (See page 10.)

African-American students and special education students continue to be disproportionately represented among zero tolerance offenders. The percent of zero tolerance offenders within both of these student populations exceeds the percentage they comprise in the total populations. (See pages 10-11.)

Zero tolerance violations continue to peak at the 9th grade level. In 2004-05, 1,087 violations (26 percent) occurred at the 9th grade level, which is 43 percent higher than the 8th grade and 29 percent higher than the 10th grade. (See page 11.)

Twenty school systems reported no zero tolerance offenses during 2004-05, as well as the State Special Schools and the Alvin C. York Institute. (See page 12.)

[1] Office of Education Accountability, Comptroller of the Treasury, *Zero Tolerance: An Update*, August 2003.

An analysis of the state's five major urban systems resulted in the following conclusions:

In 2004-05, the 35 percent of Tennessee students attending schools in urban settings (Hamilton, Knox, Memphis City, Metro Davidson, and Shelby) accounted for 39 percent of zero tolerance offenses statewide. This represents a decrease in the percentage of the state's students attending school in urban systems, and a decrease in zero tolerance violations committed by urban students as a percent of the state total. (See pages 12-13.)

Since 2001-02, the percentages at which urban systems expel students without placement have declined markedly, although some districts still expel many students without placement. (See pages 18-21.)

In all but one of the urban systems the percentage of zero tolerance violations by special education students is commensurate with the special education population in the system. In Davidson County, the percentage of zero tolerance violations among special education students is nearly double the special education population percentage. (See page 25.)

As in the statewide analysis:

- **Drug offenses comprise the largest category of violations among the five urban systems.** (See pages 14-16.)
- **The zero tolerance gender gap is evident.** (See pages 21-22.)
- **African-American students represent a higher percentage of zero tolerance violations in all urban systems than they represent in the general population.** (See page 22.)
- **The largest number of zero tolerance offenses occurred in the 9th grade.** (See pages 22-25.)

See pages 26-27 for a complete list of recommendations.

LEGISLATIVE RECOMMENDATIONS:

The General Assembly may wish to study several zero tolerance issues, including:

- **The efficacy of zero tolerance punishments in rehabilitating students and preparing them for return to regular classrooms.**
- **Variation in zero tolerance policies among LEAs.**
- **Precision in defining violations that pose a threat to individuals.** Some unusual violations in the 2004-05 zero tolerance database include: toy gun, pencil, stink bombs, dress code, laser gun, and false accusations against a teacher. The General Assembly may wish to define "dangerous weapon" under *T.C.A.* 49-6-4216 more narrowly.
- **Fairness in application of zero tolerance policies among subgroups of students.** Zero tolerance data suggest possible disproportionate representation of various subgroups within the zero tolerance population, including African-Americans and special education students.

The General Assembly may wish to consider encouraging local education agencies to implement more alternatives to expulsion. This recommendation remains unchanged from OEA's 2003 report. Although the number of Tennessee students expelled without placement decreased to 13 percent in 2004-05, that statistic reveals a large number of students receiving no educational services. Research shows that one of the strongest predictors of dropout is prior association with school discipline: "…school suspension and expulsion appear to be effective primarily in removing unwanted students from school. For troublesome or at-risk students, the

most well-documented outcome of suspension appears to be further suspension, and eventually school dropout."[2] Although schools must deal with serious infractions swiftly and decisively, research indicates that students' education should be disrupted as little as possible, not only for their own benefit, but for society as a whole.

ADMINISTRATIVE RECOMMENDATIONS:

The Department of Education and LEAs should examine ways to target the 8th and 9th grades for services to prevent zero tolerance violations. This recommendation remains unchanged from OEA's 2003 report. In most districts the number of violations peak at the 9th grade level and decline steadily in subsequent grade levels. The State Department of Education should consider programs to involve students before and during the 9th grade to prevent zero tolerance violations.

The Department of Education should examine ways to coordinate various programs and to collaborate with other agencies to target zero tolerance drug violations. Despite the Department's efforts to improve the collaboration among various state agencies in resolving the drug problem in Tennessee schools, drug violations continue to comprise the largest category of zero tolerance offenses. Programs to address the problem include "Life Skills" training, Meth-free Tennessee, D.A.R.E., and various other programs dealing with access to treatment and childhood substance abuse.[3] These programs focus on individual aspects of the drug abuse problem, but may be more effective if coordinated into a drug and substance abuse prevention and treatment system. Recommendations in a program audit in Wyoming suggest that substance abuse programs for the general population are more effective if acting from a single, comprehensive plan and when coordinated by a single agency with decision-making authority.[4]

The Department of Education should ensure that all school districts publicize the currently available hotline by which students can anonymously report potential zero tolerance offenses. The TBI maintains a school violence hotline for people to report school violence or threats of such violence at 1-800-824-3463. The phone number for the hotlines should be advertised in the schools, to parents at the beginning of the school year, and on the web sites of the State Department of Education, the districts, and the individual schools. The U.S. Secret Service's study of targeted violence in schools indicated that often other students were aware of the threat the perpetrator posed but failed to report the threat.[5] A publicized hotline may also cause students to feel their likelihood of being caught bringing a weapon to school is greater, reducing the incidences of these violations.

See Appendix A for the letter of response from the Commissioner of Education.

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[2] Russell J. Skiba, *Zero Tolerance, Zero Evidence: An Analysis of School Disciplinary Practice*, Indiana Education Policy Center, Policy Research Report #SRS2, August 2000, p. 14.
[3] After a 20 percent decrease in Federal Title IV funds for 2006-07 the State Department of Education will no longer provide grants for the Drug Abuse Resistance Education, program also known as D.A.R.E. Information provided to OEA through an email from Mike Herrmann, February 17, 2006.
[4] Wyoming Legislative Service Staff, *Substance Abuse Planning and Accountability,* January 2006.
[5] U.S. Secret Service, *The Final Report and Findings of the Safe School Initiative: Implications for the Prevention of School Attacks in the United States,* May 2002.

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INTRODUCTION

In 1997, Public Chapter 151 directed the Comptroller of the Treasury to study the implementation of the policies required by *Tennessee Code Annotated* (*T.C.A.)* 49-6-4216. The study, entitled *Getting Tough on Kids: A Look at Zero Tolerance*,[1] was released in February 1998 and reviewed:

- disciplinary policies in effect in all school districts;
- methods of recording zero tolerance violations by all local education agencies; and
- disciplinary data for the school years of 1994 through 1997.

Following the 1998 report, the General Assembly twice amended the state's zero tolerance law to:

- require the State Board of Education to develop a standard reporting form for zero tolerance violations to be completed annually by each school system and filed with the Department of Education. (P.C. 871, 1998)
- require the Comptroller's Office of Education Accountability (OEA) to analyze the resulting data and report results to the Education Oversight Committee, the General Assembly, the Governor, and the State Board of Education. (P.C. 871, 1998)
- clarify legislative intent that the superintendent/director of schools retains the authority to modify student expulsions in firearms and drug cases and that local school boards retain responsibility for development of disciplinary policies. (P.C. 634, 2000)
- clarify that students suspended or expelled under a zero tolerance policy may be assigned to alternative schools. (P.C. 634, 2000)

In *Zero Tolerance in Tennessee Schools: An Update*,[2] OEA staff replicated the 1998 report with Tennessee Department of Education data collected from school years 1999-2000, 2000-01, 2001-02 as required by *T.C.A.* 49-6-4216.

Continuing the series, this report compares data from the 2003 report with data from the 2003-05 school years. The first section displays statewide zero tolerance statistics and the second analyzes zero tolerance statistics from Tennessee's major urban systems. Both sections include data on the age, grade level, education status, gender, race, nature of violations, and case disposition.[3]

Methodology

In developing this report, OEA staff:

- analyzed data collected and supplied by the Department of Education;
- reviewed generally the Department of Education's role with regard to safety and violence prevention in schools;
- conducted a literature review regarding zero tolerance;
- reviewed federal and state zero tolerance laws and policies; and
- interviewed relevant state and local officials.

[1] Office of Education Accountability, Comptroller of the Treasury, *Getting Tough on Kids: A Look at Zero Tolerance*, February 1998.
[2] Office of Education Accountability, Comptroller of the Treasury, *Zero Tolerance: An Update*, August 2003.
[3] For more background information on zero tolerance, see the previous reports, available online at http://170.142.183.29/RA_RE/OEreports.asp.

BACKGROUND

What is zero tolerance?

The American Heritage Dictionary defines zero tolerance as "the policy or practice of not tolerating undesirable behavior, such as violence or illegal drug use, especially in the automatic imposition of severe penalties for first offenses."

A brief history of zero tolerance in Tennessee

1994 Congress passed the Gun-Free Schools Act of 1994 requiring each state receiving federal funds to pass legislation that required local education agencies (LEAs) to expel for at least one year any student who brought a firearm to school.

1995 The General Assembly passed Public Chapter 268, codified as *T.C.A.* 49-6-3401(g). This law requires that a student who is in possession of a weapon, a controlled substance, or who committed battery against an LEA employee be expelled for at least one calendar year.

1996 Public Chapter 888, codified as *T.C.A.* 49-6-4216, specified three categories of violations that constitute zero tolerance offenses in Tennessee. They include offenses that (1) involve drugs and drug paraphernalia, (2) assault of a teacher, student, or other person, and (3) possession of dangerous weapons. The statute also requires local school boards to file with the Department of Education written policies and procedures annually and to impose swift action against students who bring drugs, weapons, and commit battery.

Public Chapter 988, the Student and Employee Safe Environment Act, provides several general directives pertaining to school discipline codes, and allows local school boards to add other offenses.

1997 Public Chapter 151 requested the Comptroller of the Treasury, Office of Education Accountability, to conduct a study of the implementation of the policies required by *T.C.A.* 49-6-4216 including: disciplinary policies in effect in all school districts; methods of record keeping by all local education authorities to record zero tolerance violations; and analysis of disciplinary data for school years 1994 through 1997. This resulted in the study released in February 1998.

1998 Public Chapter 871, codified as *T.C.A.* 49-6-4216(d) and (e), required the State Board of Education to develop a standard form, which includes grade level, age, gender, race, offense, disposition of each offender, and any modification in penalty, for the collection of statistical data relative to zero tolerance violations in local school systems. The chapter also requires the superintendent or the superintendent's designee to complete the form annually and submit the form to the Department of Education and State Board of Education. The department submits the form to the Office of Education Accountability, which analyzes the data and reports the results to the Education Oversight committee, the General Assembly, the Governor, and the State Board of Education.

2000 Public Chapter 634 reinforced the authority of the superintendent or director to modify zero tolerance expulsions on a case by case basis.

2001 The federal No Child Left Behind (NCLB) Act made changes in states' requirements under the Gun-Free Schools Act.

2003 The Comptroller's Office of Education Accountability released *Zero Tolerance in Tennessee Schools: An Update*.

The state's role in promoting safety and discipline in Tennessee schools

In 1994, the same year Congress passed the Gun-Free Schools Act, the Tennessee State Board of Education adopted a School Safety Policy for Tennessee Schools. The policy lists three general objectives:

1. schools must initiate violence prevention programs and be prepared to respond properly, prior to incidents of violence or threats to the safety of teachers and students;
2. schools must accept responsibility for instructing children and school personnel in the importance of mutual respect and the avoidance of violent actions and reactions; and
3. schools must establish a working relationship with other community agencies, especially the juvenile justice system, in order to properly respond to individual students exhibiting violent or threatening behaviors.

In 1994, the Department of Education established the Tennessee School Safety Center, which assists school systems in developing required school safety plans by providing models, training materials, and guidelines on various school safety issues. The Center is responsible for disseminating to schools the latest research information on school safety as well as resources for prevention and intervention programs.

The Tennessee School Safety Center also coordinates training for school personnel in several areas that emphasize violence prevention and conflict resolution, including:

- Life Skills;
- No Bullying Implementation;
- Yes 2 Kids;
- Tennessee Character Education Partnership;
- Multi-Hazard Emergency Planning for Schools;
- Peaceable Schools (identified as a model for statewide implementation by the National Center for Conflict Resolution Education);
- Facing History and Ourselves;
- Aspire – Youth Outreach for a Safe and Drug-Free Tennessee (recruits and trains teams of high school students to take a leadership role in reducing youth drug use and violence);
- Student Disciplinary Hearing Authority Training; and
- Emergency Management Planning.[4]

Additionally, the Department oversees state and federal grants that relate to violence prevention, conflict resolution, and character education, including:

- **Safe Schools Act of 1998** – The funds under this act are awarded to LEAs for one or more of these purposes: innovative violence prevention programs, conflict resolution, disruptive or assaultive behavior management, improved school security, peer mediation, and training for employees on the identification of possible perpetrators of school-related violence. The state distributed $5,420,209 in Safe Schools funds for the 2005-06 school year. (State grants are awarded to LEAs based upon their relative share of BEP funding and are subject to a 25 percent local match requirement. See *T.C.A*. 49-6-4302.)
- **Youth Violence and Drug Use Prevention** – The grant program is provided by Title IV-A of the Safe and Drug-Free Schools and Communities Program from *No Child Left Behind of 2001.* Eligible applicants include LEAs, community-based organizations, and public/private not-for-profit organizations. The grants are given primarily to serve students that have shown a tendency toward violent or disruptive behavior. Successful programs may receive this funding for up to three years.
- **21st Century Community Learning Centers** – The grants help establish or expand out-of-school activities, such as after-school programs, to enrich students' academic opportunities and help them meet state and local standards in the core content areas. LEAs as well as other community-based organizations may apply. (Federal grant awarded from a minimum of $50,000 up to a

[4] Details on the programs provided by the Tennessee School Safety Center are available at http://www.state.tn.us/education/sp/sptssc.htm.

maximum of $125,000 per site with no matching funds required on a three- to five-year grant cycle.)

The Department also:

- maintains a list of schools that have sent personnel to training regarding safe schools at www.state.tn.us/education/sp/spparticipantlist.xls.
- has sponsored an annual discipline conference since 1997, primarily for student disciplinary hearing officers, attendance supervisors, alternative school personnel, and school administrators.
- started a study council for alternative school funding in 2005.
- is developing a plan and a training program to improve collaboration between schools and law enforcement.

Recent thinking about zero tolerance

In 2002, the National Center for Education Statistics (NCES) reported from 1996-97 data that a high percentage of U.S. public schools had zero tolerance policies.[5] Schools indicated zero tolerance policies for firearms (94 percent), weapons other than firearms (91 percent), alcohol (87 percent), and drugs (88 percent). Other reports by the U.S. Department of Education indicate that the number of students expelled nationwide for bringing a firearm to school dropped from 6,093 in 1996-97 to 2,143 in 2002-03 (or by 64.83 percent), suggesting that the policy may be serving as a deterrent.[6]

Despite the policies' widespread prevalence, zero tolerance remains controversial among educators and education researchers. The number of zero tolerance violations per 1,000 students has remained fairly stable over the last few years, 4.5 in both 2001-02 and 2004-05. (See Analysis and Conclusions below for more discussion of these figures.) Whether zero tolerance policies have deterred unsafe behavior and made Tennessee schools safer is unclear. Some critics of zero tolerance policies claim that zero tolerance results in a disproportionate number of minority and special education students receiving severe penalties, and that zero tolerance has become a "catch-all" that administrators use to rid themselves of difficult students.[7] Some unusual violations in the 2004-05 Tennessee zero tolerance database include: toy gun, pencil, stink bombs, dress code, laser gun, and false accusations against a teacher.

Multiple media stories describe zero tolerance punishments meted out for seemingly minor infractions. One web site is exclusively devoted to publicizing "the evils" of zero tolerance school discipline policies. The web site was mentioned in OEA's 2003 report and has expanded its content since then.[8] Reports from more credible sources, including the American Bar Association and Harvard University's Civil Rights Project, make similar charges:

- A June 2000 report of The Civil Rights Project at Harvard University found that African-American students and other students of color are disproportionately affected by zero tolerance policies. The report also noted that suspended students often "fall irretrievably behind, and there is a moderate to strong indication that they will eventually drop out of school."[9]
- In February 2001, the American Bar Association, while acknowledging that schools should have strong policies against gun possession, adopted a resolution opposing zero tolerance policies that

[5] J.F. DeVoe, K. Peter, P. Kaufman, S.A. Ruddy, A.K. Miller, M. Planty, T.D. Snyder, D.T. Duhart, and M.R. Rand, *Indicators of School Crime and Safety: 2002*, U.S. Departments of Education and Justice. NCES 2003-009/NCJ 196753, p. 135.
[6] U.S. Department of Education, Office of Elementary and Secondary Education, Safe and Drug-Free Schools and Communities Program, *Report on State/Territory Implementation of the Gun-Free Schools Act 1996-97*. U.S. Department of Education, Office of Safe and Drug-Free Schools, *Report on the Implementation of the Gun-Free Schools Act of 1994 In the States and Outlying Areas: School Year 2002-03.*
[7] Darcia Harris Bowman, "Interpretations of 'Zero Tolerance' Vary," *Education Week*, April 10, 2002.
[8] See www.ztnightmares.com.
[9] The Civil Rights Project, *Opportunities Suspended: The Devastating Consequences of Zero Tolerance and School Discipline Policies, Executive Summary*, Harvard University. Available at http://www.civilrightsproject.harvard.edu/research/discipline/opport_suspended.php (accessed April 3, 2006), p. vii.

> …have a discriminatory effect, or mandate either expulsion or referral of students to juvenile or criminal court, without regard to the circumstances or nature of the offense or the student's history.[10]

- In February 2003, Building Blocks for Youth, a consortium of juvenile justice organizations,[11] released a report titled *Unintended Consequences: The Impact of "Zero Tolerance" and Other Exclusionary Policies on Kentucky Students*. The report, profiled in *Education Week*, found that although violent crime in Kentucky's public schools is not a critical problem, educators use out-of-school suspension "excessively."[12] In addition, the report's authors found that "school discipline policies fall most heavily on African-American students."[13]

> The combination of broad authority by school officials and vaguely defined "violations" allows non-objective and non-individual factors—preconceived notions and racial stereotyping—to have an impact on school discipline practices.[14]

- Published in June of 2003, a report from the Hamilton Fish Institute on School and Community Violence[15] titled *Zero Tolerance: The Alternative is Education* states that:

> Because suspension and expulsion remove students from constructive learning environments, they are not ideal disciplinary actions. The necessity for using these disciplinary measures should be decreased by reducing behaviors that invoke them. Evidence of programs that are effective in preventing suspension and expulsion is growing.[16]

- In April 2005 OEA released *Tennessee's Alternative Schools*.[17] The report concludes that the quality of alternative schools varies substantially across districts. Many alternative schools do not assess the needs of incoming students; often alternative school teachers must teach subjects other than that which they were licensed to teach; and a proper tracking system is not in place to aid in determining the efficacy of various alternative school programs.

Zero tolerance, school safety, and No Child Left Behind

The No Child Left Behind (NCLB) Act, which Congress passed in 2001 to amend the Elementary and Secondary Schools Act (ESEA), makes some changes in states' requirements under the Gun-Free Schools Act. It requires modified expulsions to be recorded in writing. NCLB also makes two specific exceptions to the expulsion requirement for firearms: 1) firearms may be lawfully stored inside a locked vehicle on school property; and 2) firearms may be brought to school or possessed for school-approved activities that are authorized by the district, so long as the district adopts appropriate safeguards to ensure students' safety.[18]

NCLB also requires every local education agency to implement an unsafe school choice policy. The State Board of Education approved Tennessee's policy on August 22, 2003:

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[10] Juvenile Law Center, ABA Resolution, posted Feb. 2001. Available at http://www.abanet.org/crimjust/juvjus/jjpolicies.html# zero (accessed April 4, 2006).
[11] Building Blocks for Youth is comprised of Youth Law Center, ABA Juvenile Justice Center, Justice Policy Institute, Juvenile Law Center, Minorities in Law Enforcement, National Council on Crime and Delinquency, and Pretrial Services Resource Center. See www.buildingblocksforyouth.org.
[12] David Richart, Kim Brooks, and Mark Soler, *Unintended Consequences: The Impact of "Zero Tolerance" and Other Exclusionary Policies on Kentucky Students*, Building Blocks for Youth, February 2003, pp. 24-25.
[13] Ibid., p. 27.
[14] Ibid.
[15] The Hamilton Fish Institute is housed in the George Washington University Graduate School of Education and Human Development. See www.hamfish.org.
[16] Paul M. Kingery, PhD, *Zero Tolerance: The Alternative is Education*, Washington, D.C.: The Hamilton Fish Institute. Available at http://www.violenceprevention.net/vita/vita/attach/157.htm (accessed April 4, 2006).
[17] *Tennessee's Alternative Schools*, Office of Education Accountability, Comptroller of the Treasury, April 2005.
[18] U.S. Department of Education, Office of Elementary and Secondary Education, *No Child Left Behind: A Desktop Reference, Gun-Free Requirements*. Available at http://www.ed.gov/admins/lead/account/nclbreference/page_pg32.html#iv-a3 (accessed April 4, 2006).

Any public elementary or secondary school, with the exception of a school established specifically for serving suspended or expelled students or students with behavioral disabilities, shall be considered persistently dangerous if it meets the following criteria for three consecutive years:

1. Has violence-related disciplinary actions as reported on the Annual Report of Zero Tolerance Offenses. Violence-related disciplinary actions shall be defined as any of the following: possession/use of a firearm, battery of a teacher or school employee (including a school resource officer assigned to the school), and possession/use of a weapon other than a firearm [each of which is further defined in another section of the draft policy]; or
2. Has students who have been the victim of a violent crime at school [also defined in another section of the draft policy]; and
3. The sum of violence-related disciplinary actions and/or incidents of student victimization identified in criteria #1 and criteria #2 above are equal to or greater than three percent of the school's average daily membership.

The law further provides that any school meeting these criteria for three consecutive years will be designated as a "persistently dangerous school," and its students must be allowed to transfer to a safe school. Students who meet the criteria for "victim of a violent crime" have a similar choice in which schools they attend. According to the director of Tennessee's Safe and Drug Free Schools, no school has been designated as persistently dangerous.

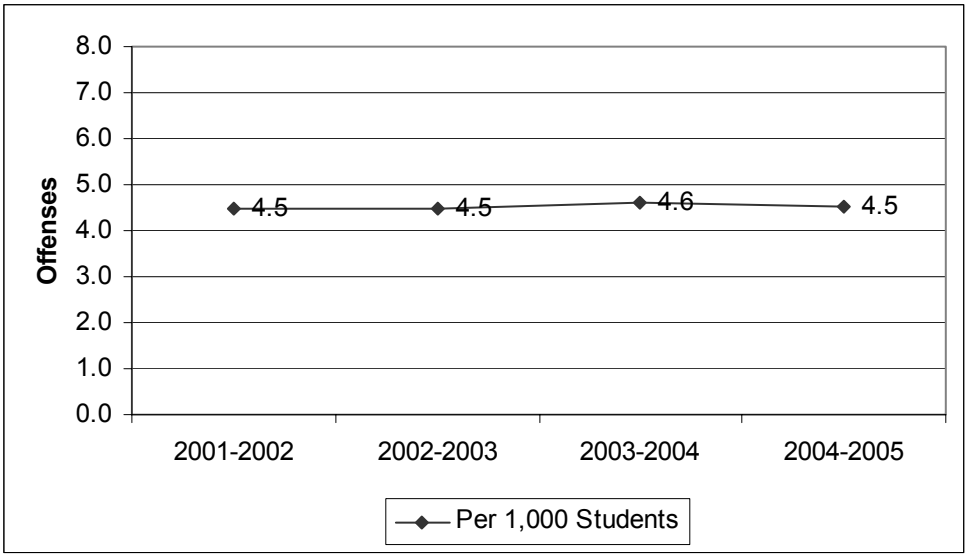
ANALYSIS AND CONCLUSIONS

Statewide Trends

Total zero tolerance offenses

Zero tolerance offenses have remained at about 4.5 per 1,000 students for the past several years. Zero tolerance offenses increased at an average yearly rate of 5.4 percent between 1999 and 2002, from 3,651 in 1999-2000 to 4,047 in 2001-02.[19] The average yearly rate of growth slowed between 2001 and 2005 to 1.1 percent. This significant reduction brings the increase in zero tolerance offenses close to the increase in total student population.

Exhibit 1: Number of Zero Tolerance Offenses per 1,000 Students, 2001-05



Source: Department of Education Data. ADM used for calculation derived from the Department of Education's Annual Statistical Reports.

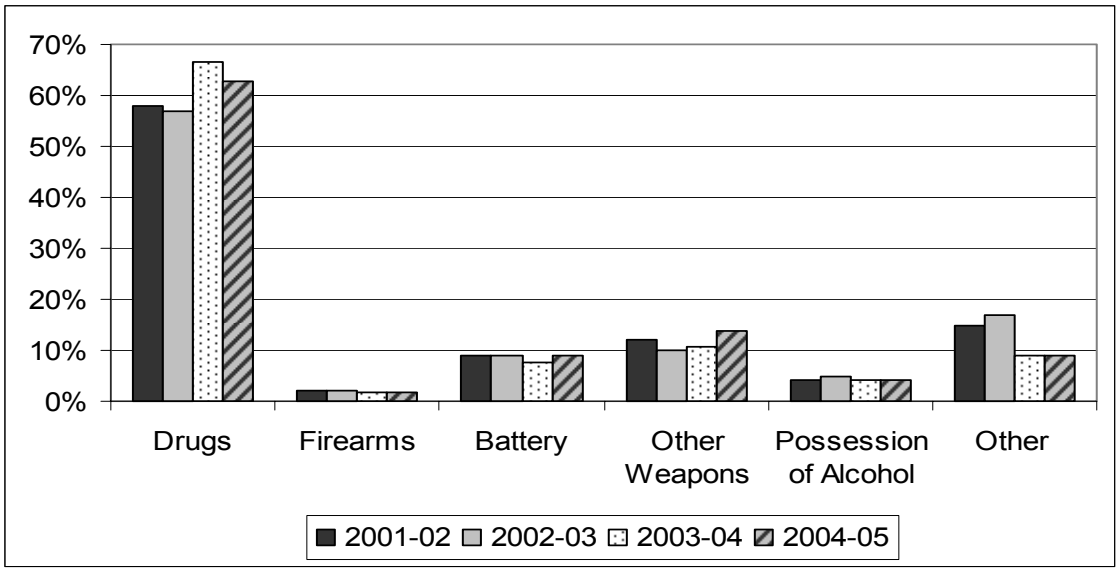
Nature of violations

Drug offenses continue to be the largest category of zero tolerance violations. In 2001-02, drug offenses accounted for 58 percent of all zero tolerance offenses. This category increased to 63 percent by 2004-05.

Some systems have included offenses other than firearm and drug offenses in the zero tolerance category. *T.C.A.* 49-6-4216 allows local education agencies to develop disciplinary policies and student codes of conduct. Examples include fire/bomb threats, sexual harassment, threats of violence, and theft. Some districts have used their statutory latitude to include less serious offenses, such as *accumulation of misbehavior*. In 2004-05, the "other" category dropped to nine percent of zero tolerance violations, from 15 percent in 2001-02.

[19] Office of Education Accountability, Comptroller of the Treasury, *Zero Tolerance: An Update*, August 2003.

Exhibit 2: Zero Tolerance Offenses by Type, 2001-05



Source: Department of Education.

Zero tolerance actions taken and dispositions[20]

State law and the federal Gun-Free Schools Act allow superintendents to alter the penalties for zero tolerance offenders on a case-by-base basis. The rate of superintendent modifications remains fairly stable. Statewide data on the actions taken against zero tolerance offenders for 2004-05 was incomplete; Metropolitan Nashville Public Schools failed to report.[21] However, in 2002-03 and 2003-04, superintendents modified the penalties for 16 percent of zero tolerance offenses (686 cases and 683 cases, respectively). This is a slight increase from 14 percent (558 cases) of offenses in 2001-02.

The percent of offenses for which students were expelled for one calendar year decreased from 18 percent (724 cases) in 2001-02 to 13 percent (531 cases) in 2003-04. The percent of offenses for which students were remanded to alternative school for 12 calendar months increased from 23 percent (908 cases) in 2001-02 to 27 percent (1,128 cases) in 2003-04.

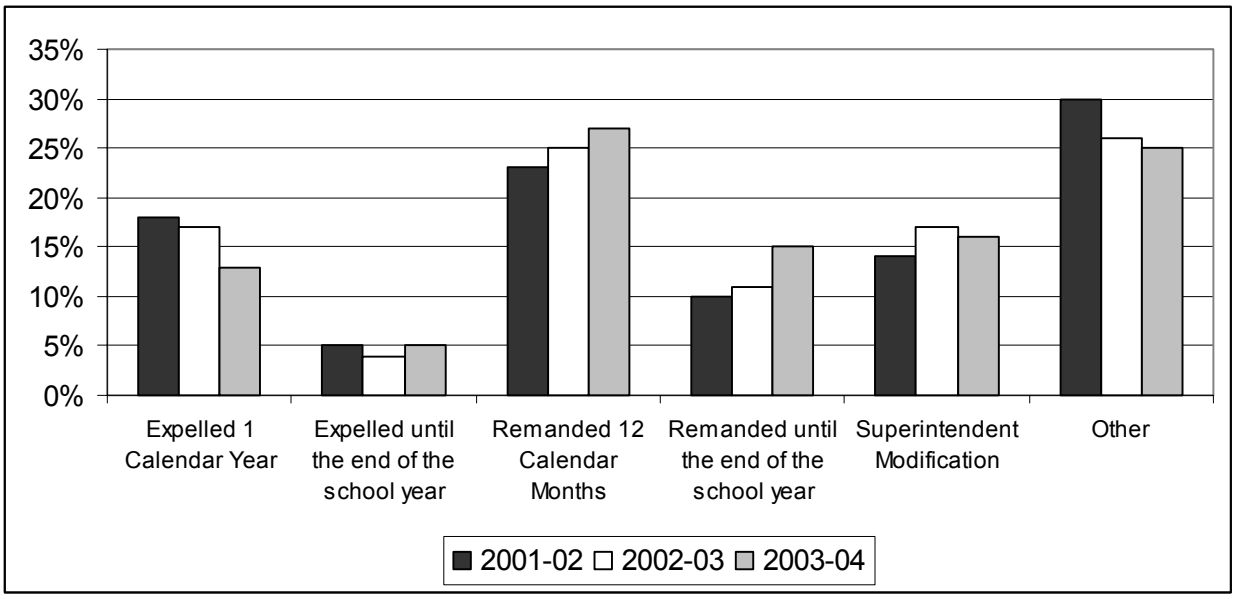
In 2003-2004, systems listed that *other* actions were taken for about 25 percent of the zero tolerance offenses. This category includes such items as:

- suspension followed by in school isolation for specific periods of time
- suspension
- in-school suspension
- permanent expulsion
- evening school
- attend rehab program
- overturned
- paddling
- detention
- adult high school
- juvenile court
- return to appropriate special education program after special education IEP team determined incident to be related to handicapping condition

[20] "Action taken" refers to the sanction imposed at the time of the offense. "Disposition" refers to where the student was on the last day of the school year in which the violation occurred. It is an attempt to capture information about the educational progress of the student.

[21] According to Ralph Thompson (Assistant Superintendent of Student Services), Metro Nashville Public Schools is in communication with the State Department of Education to clarify reporting obligations. Telephone interview, February 27, 2006.

Exhibit 3: Actions Taken for Zero Tolerance Offenses, 2001-04

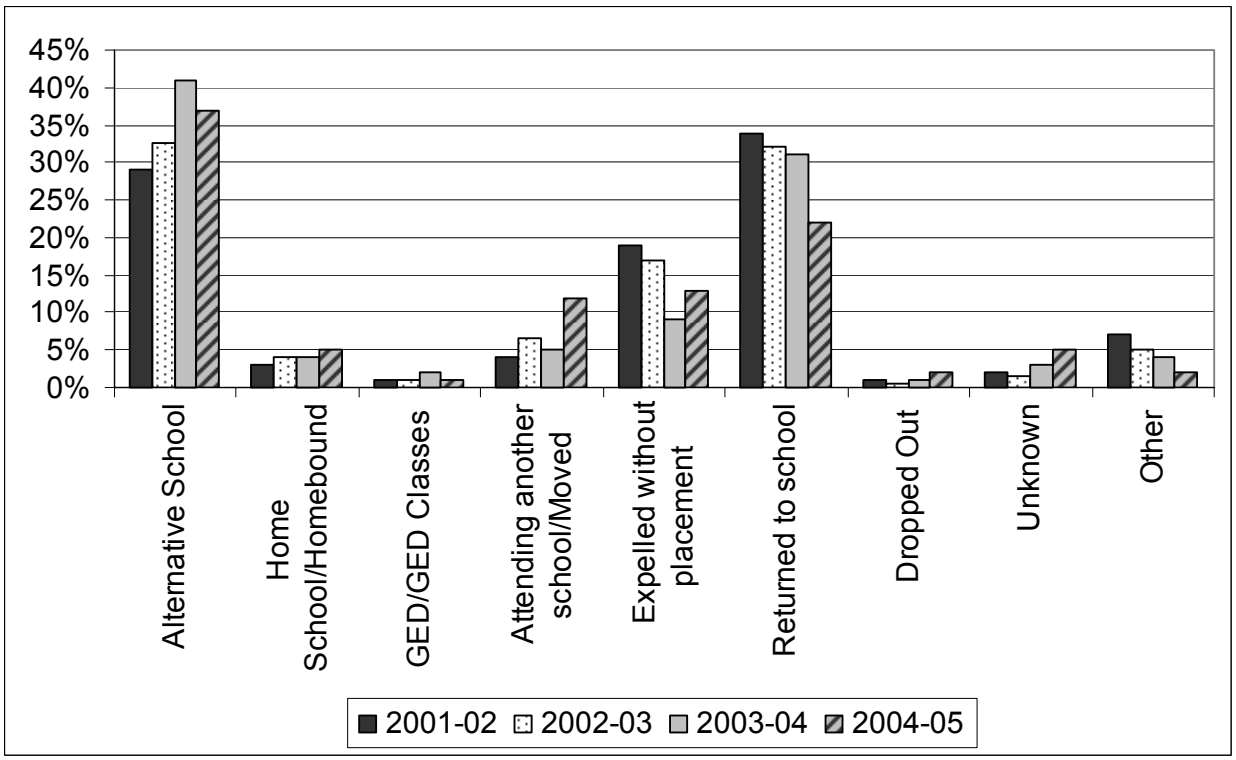


Source: Department of Education Data.
Note that students who are 'remanded' are those sent to an alternative school. Also, "Actions Taken" identifies the sanction initially applied to a student as a result of a zero tolerance offense. Some of these sanctions are later modified.

During the 2004-05 school year more than half of all zero tolerance offenders were returned to school or placed in alternative school. In that year, 1,566 zero tolerance offenders (38 percent) were placed in alternative schools and 933 (22 percent) were returned to school. An additional 515 students (12 percent) moved and attended another school. In 2001-02, 1,163 (29 percent) were placed in alternative schools and 1,377 (34 percent) were returned to school.

Thirteen percent (536 students) of zero tolerance offenders were expelled without placement in 2004-05, compared to 19 percent in 2001-02. Tennessee law requires that all LEAs establish at least one alternative school for expelled students in grades 7 through 12. Attendance at an alternative school for the expelled students may be required by local school boards but is not mandatory under Tennessee law. Students whose education is disrupted for a period of time may have difficulty catching up and may eventually drop out of school.

Exhibit 4: Disposition of Zero Tolerance Offenders, 2001-05

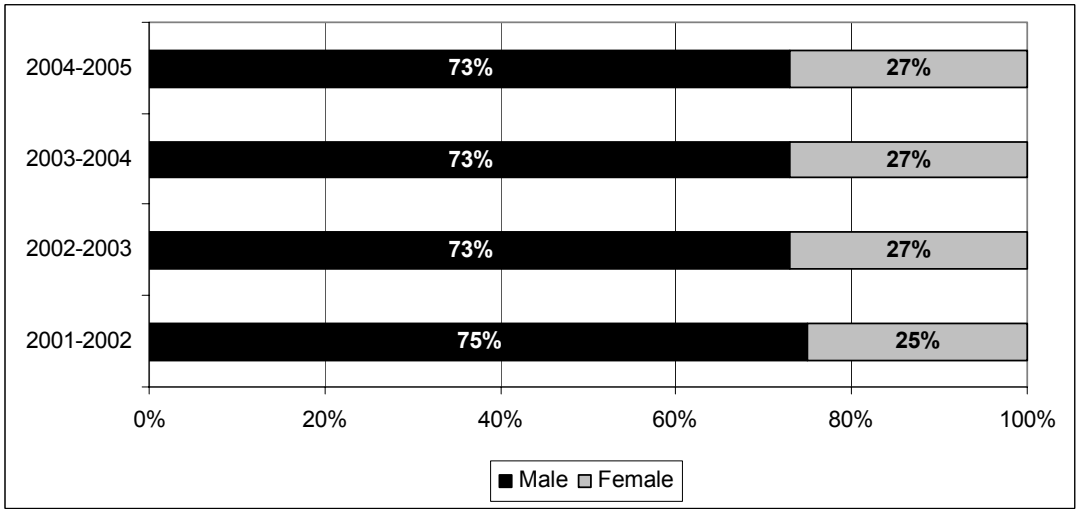


Source: Department of Education.

Zero tolerance violations by gender

Zero tolerance offenders are predominantly male; the gender distribution has changed slightly since 2001-2002. In 2001-2002, male students comprised 75 percent of zero tolerance offenses. In 2004-05, males comprised 73 percent of offenses.

Exhibit 5: Zero Tolerance Offenses by Gender, 2001-05



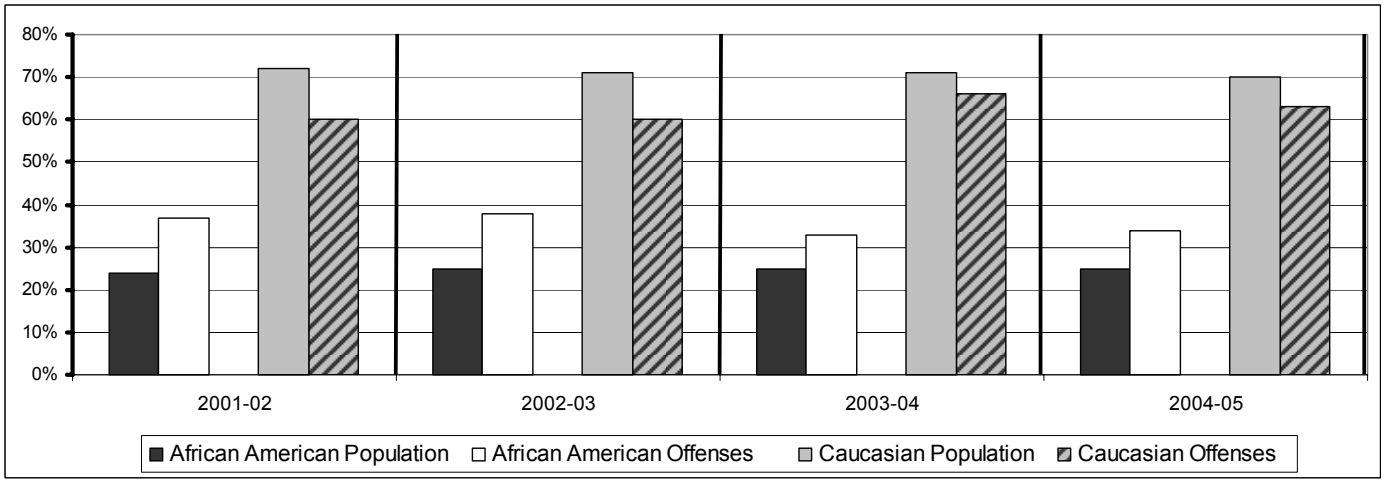
Source: Department of Education.

Zero tolerance violations by race

African-American students continue to be disproportionately represented among zero tolerance offenders. African-American students comprised 25 percent of statewide student enrollment in 2004-05, but accounted for 34 percent of all zero tolerance violations. Caucasian students comprised 71 percent of student enrollment statewide that same year and accounted for 63 percent of all zero tolerance offenses.

In 2001-02 African American students comprised 24 percent of the student population and accounted for 37 percent of zero tolerance offenses.

Exhibit 6: Percent Zero Tolerance Offenses and Student Population by Race, 2001-05

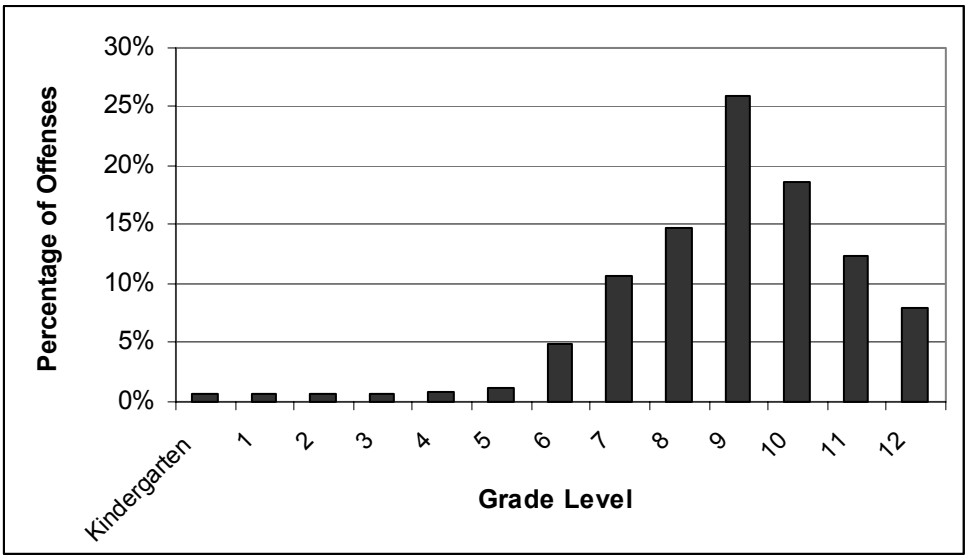


Source: Department of Education Data.

Zero tolerance violations by grade level

As in previous years, students in the 9th grade were much more likely to commit zero tolerance offenses in 2004-05. In 2004-05, zero tolerance violations peaked at the 9th grade level (26 percent of all violations) with 1,087 violations. The sharp spike in offenses at the 9th grade level was observed in the two previous OEA zero tolerance reports. Zero tolerance violations decline steadily from 9th grade until graduation.

Exhibit 7: Zero Tolerance Offenses by Grade Level, 2004-05

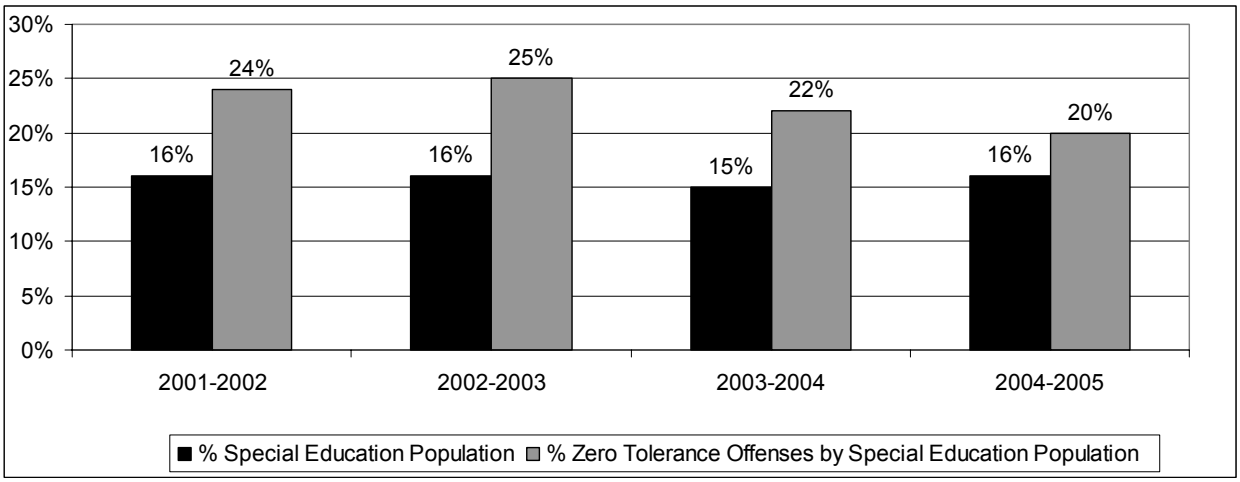


Source: Department of Education

Education status of zero tolerance offenders

The percentage of zero tolerance offenses committed by special education students declined from 2001-02 to 2004-05. In 2004-05, special education students comprised nearly 16 percent of the student population and were responsible for 20 percent of zero tolerance offenses. (See Exhibit 8.) In 2001-02, special education students also comprised 16 percent of the student population, but were responsible for 24 percent of the zero tolerance offenses.

Exhibit 8: Special Education Zero Tolerance Offenses, 2001-05



Source: Department of Education.

The Gun-Free Schools Act of 1994 references the Individuals with Disabilities Education Act (IDEA), which requires certain protocols for children with disabilities. The IDEA provides that any special education student who commits an offense is entitled to a proper hearing to determine if the act was a manifestation of the child's disability. Results determine whether and how long a student may be suspended or expelled and whether he or she must receive educational services during suspension. Approximately 0.57 percent of the special education population committed zero tolerance offenses in 2004-05, compared to 0.45 percent of the total population.

School systems with no zero tolerance offenses

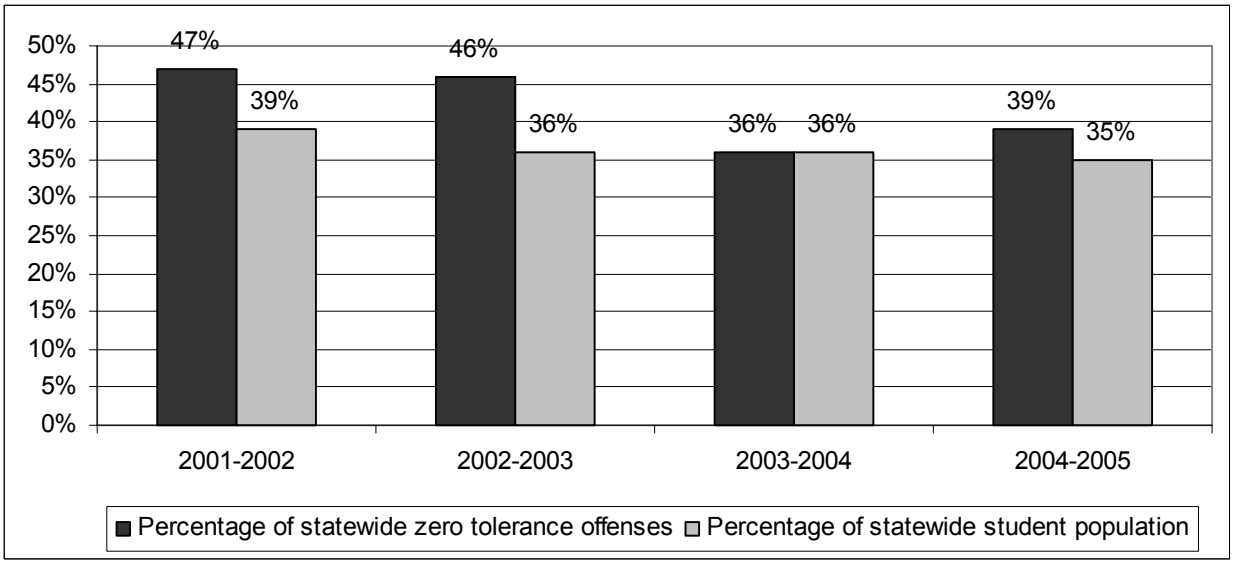
Twenty school systems reported no zero tolerance offenses during 2004-05, as well as the State Special Schools and the Alvin C. York Institute.

- Alamo City Schools
- Athens City Schools
- Bells City Schools
- Bradford Special School District
- Cannon County Schools
- Clinton City Schools
- Dayton City Schools
- Etowah City Schools
- Fayetteville City Schools
- Hollow Rock-Bruceton Special School District
- Lexington City Schools
- McKenzie Special School District
- Newport City Schools
- Paris Special School District
- Richard City Schools
- Rogersville City Schools
- Sequatchie County Schools
- South Carroll Special School District
- Warren County Schools
- West Carroll Special School District

Urban School Systems Trends

In 2004-05, 35 percent of Tennessee students attended schools in urban settings (Hamilton, Knox, Memphis City, Metro Davidson, and Shelby), and accounted for 39 percent of zero tolerance offenses statewide. This represents a decrease in the percentage of the state's students attending school in urban systems, and a decrease in zero tolerance violations committed by urban students as a percent of the state total. In 2001-02 Tennessee's urban school systems comprised approximately 39 percent of the state's student population and accounted for 47 percent of the state's zero tolerance offenses.

Exhibit 9: Percent of Zero Tolerance Offenses Committed by Students in the Five Urban Districts Compared to Statewide Student Population, 2001-05

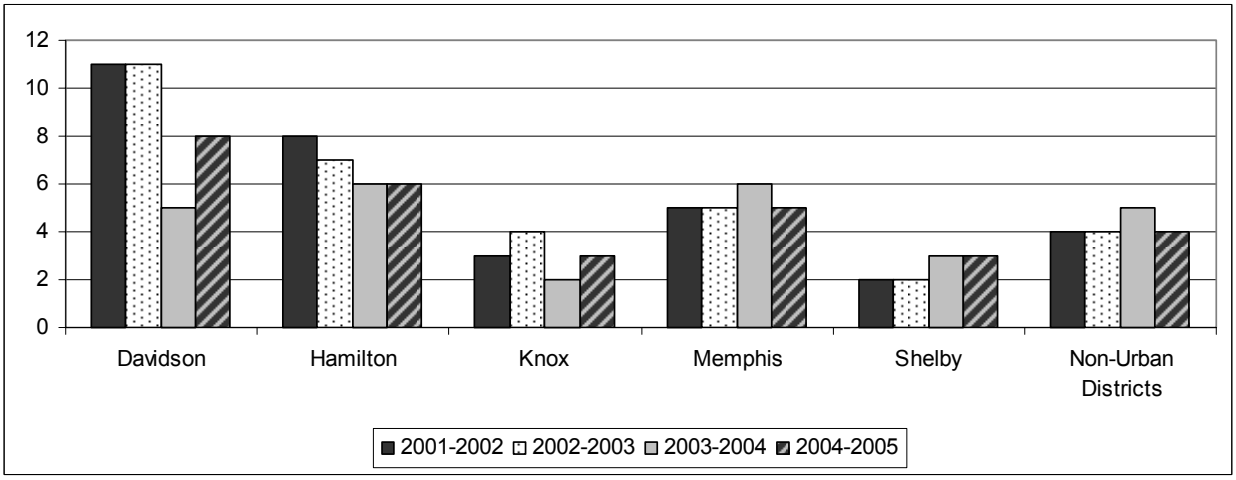


Source: Department of Education.

<u>*Number of zero tolerance offenses*</u>

In 2004-05, most urban systems' zero tolerance offenses per 1,000 students did not substantially exceed that of the non-urban districts. The exception was Davidson County, which had the highest number of offenses per 1,000 students with eight offenses. The remaining urban districts had numbers ranging from six offenses per 1,000 in Hamilton County and five offenses per 1,000 in Memphis City, to three offenses per 1,000 in Knox and Shelby Counties. The non-urban districts averaged four offenses per 1,000 students.

Exhibit 10: Number of Zero Tolerance Offenses per 1,000 Students, by Urban System, 2001-05



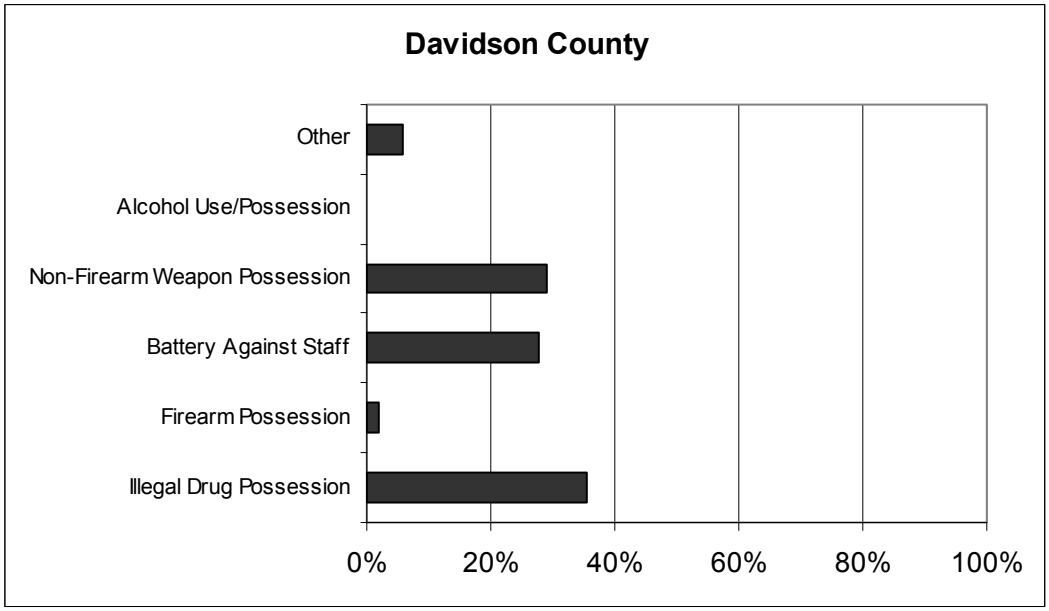
Source: Department of Education.

Nature of Violations

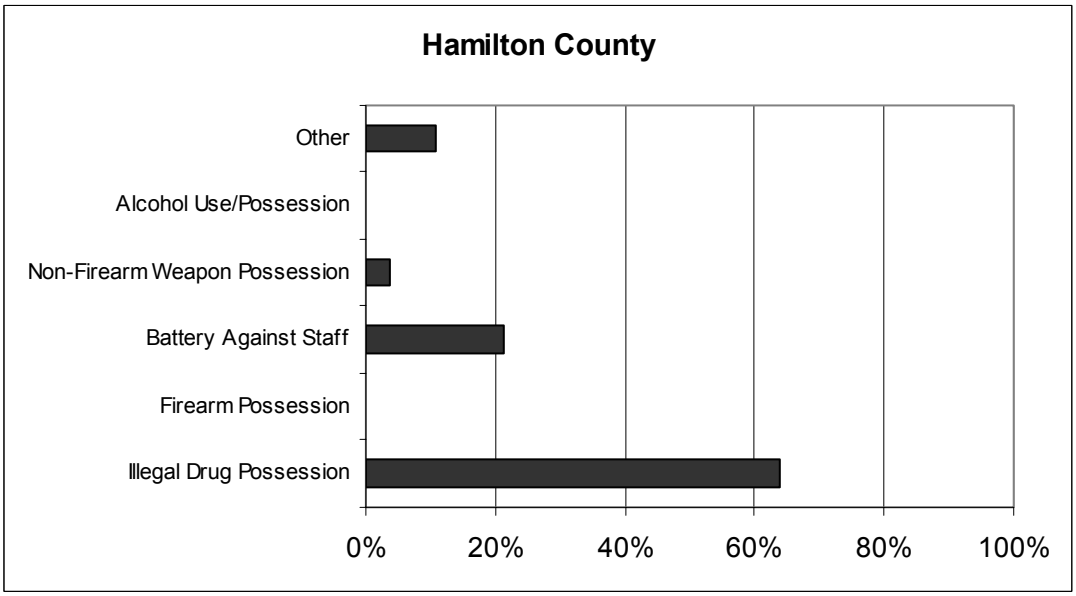
In 2004-05, illegal drug possession comprised an overwhelming majority of zero tolerance offenses in all urban districts except Davidson County. In Davidson County, zero tolerance offenses consisted of 36 percent illegal drug possession, 29 percent possession of a non-firearm weapon, 28 percent battery against staff, and six percent "other" offenses.

Possession of a firearm comprises a very small proportion of zero tolerance offenses. In 2004-05, the Memphis City Schools had the highest percentage of firearm zero tolerance offenses with five percent.

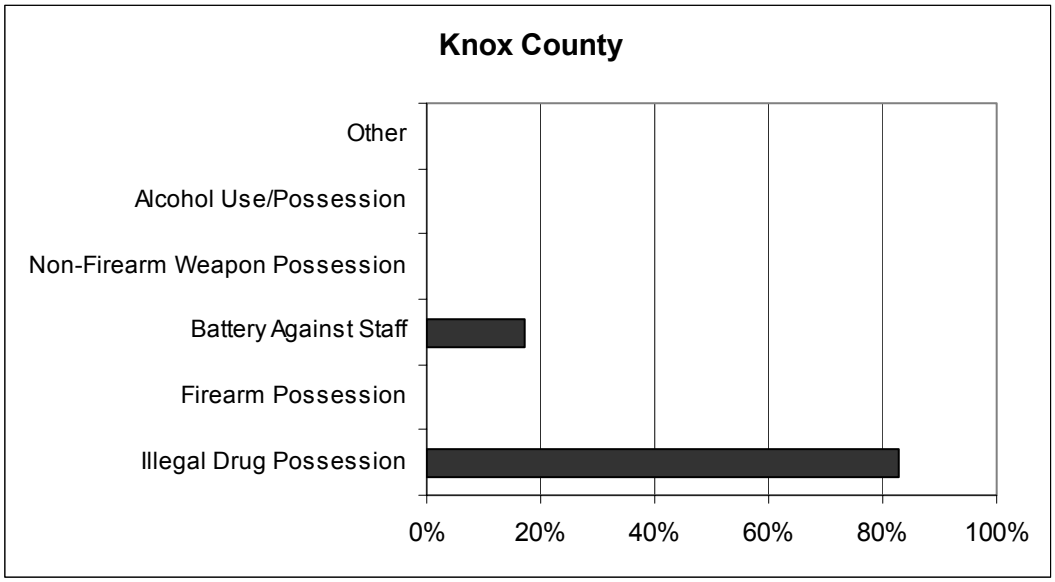
Exhibit 11: Zero Tolerance Offenses by Type in Urban Schools, 2004-05



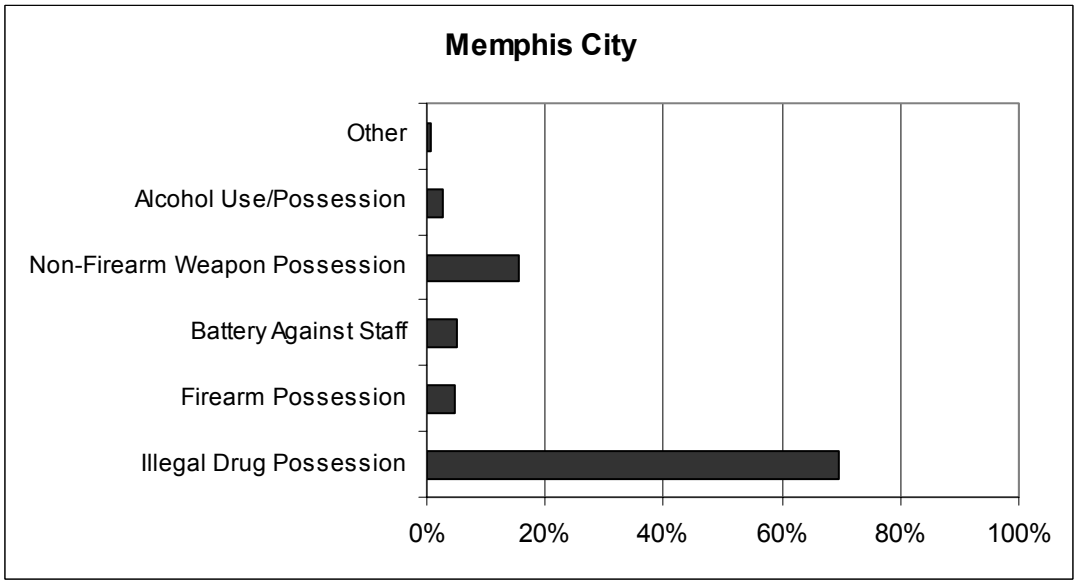
Source: Department of Education.



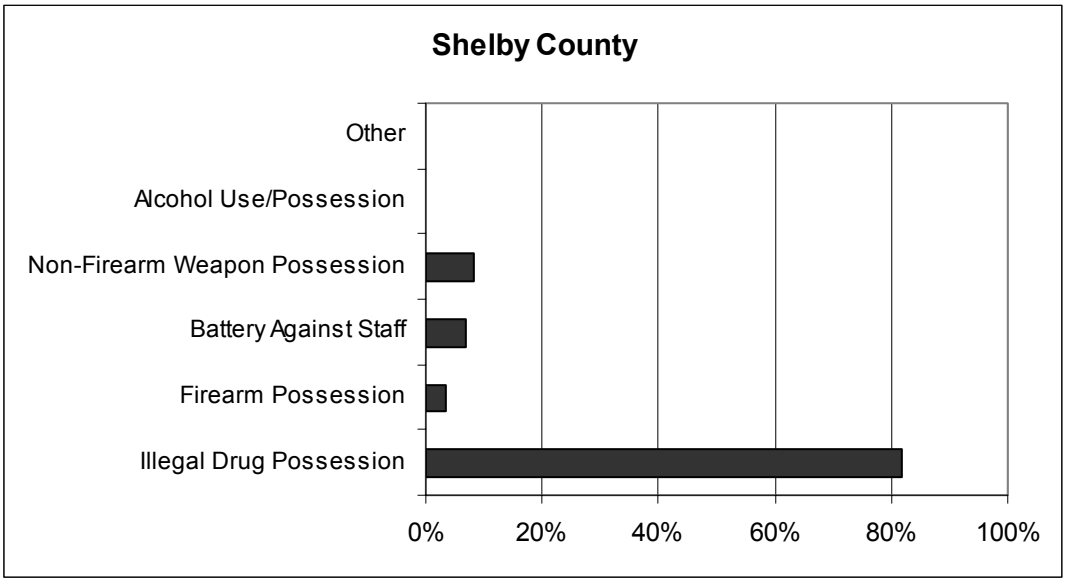
Source: Department of Education.



Source: Department of Education



Source: Department of Education.

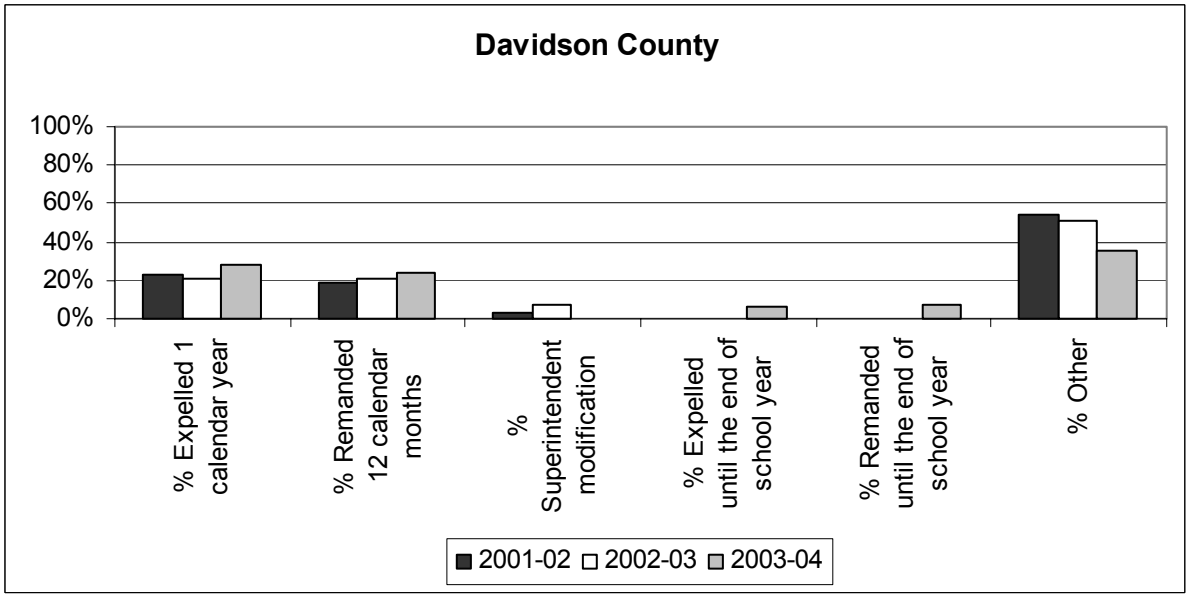


Source: Department of Education.

Zero tolerance actions taken and dispositions[22]

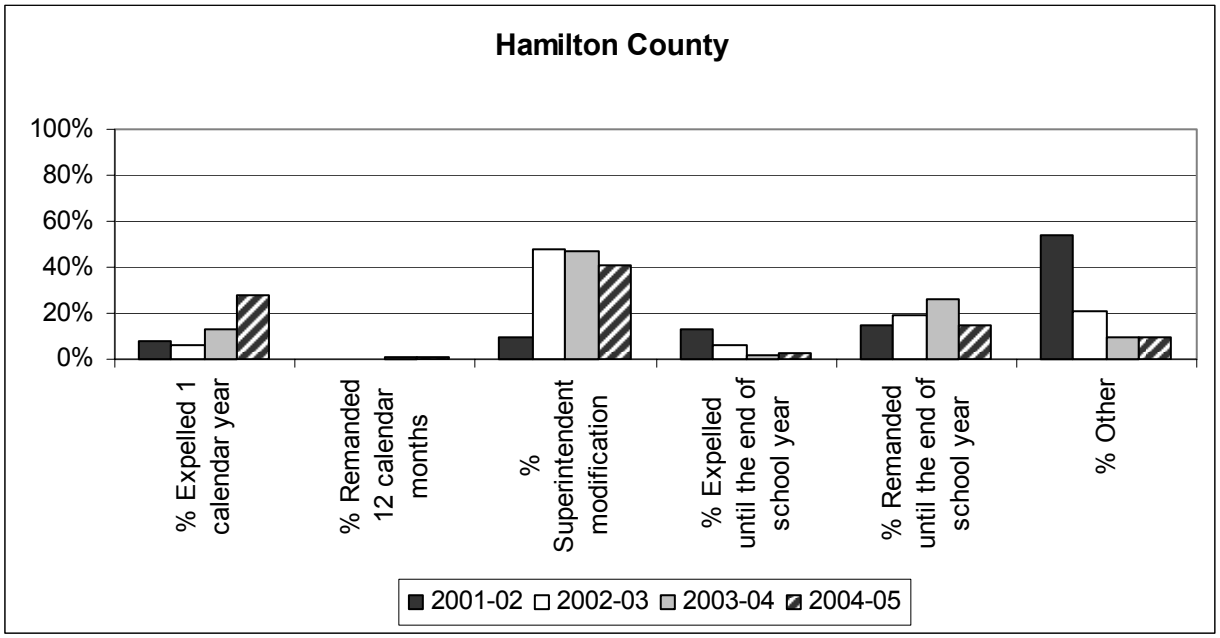
In 2004-05, the Hamilton County Schools Superintendent modified the penalties for 41 percent of zero tolerance offenses. The Hamilton County Deputy Superintendent and hearing officer for zero tolerance offenses explained to OEA staff that often the action is modified for first time drug offenders who pass a drug test.[23] Nearly 40 percent of Memphis City violators served punishment in the *other* category, often receiving suspensions of one to three weeks.

Exhibit 12: Actions Taken for Zero Tolerance Offenses, by Urban System, 2001-05

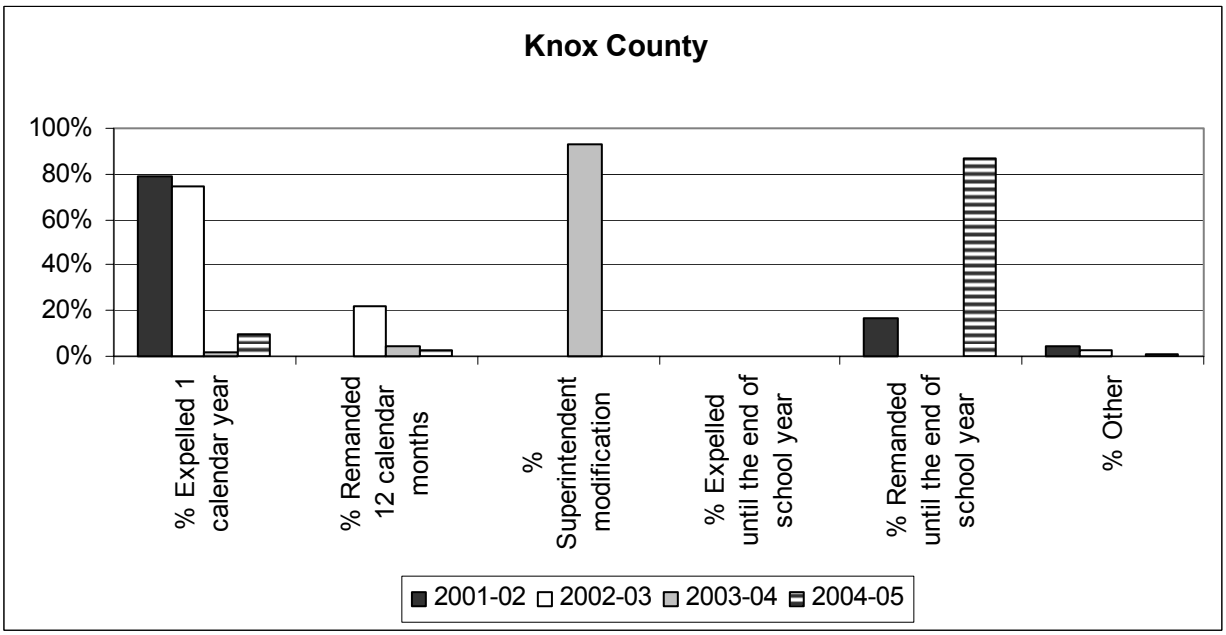


Source: Department of Education.
Note: Data not available for 2004-05.[24]

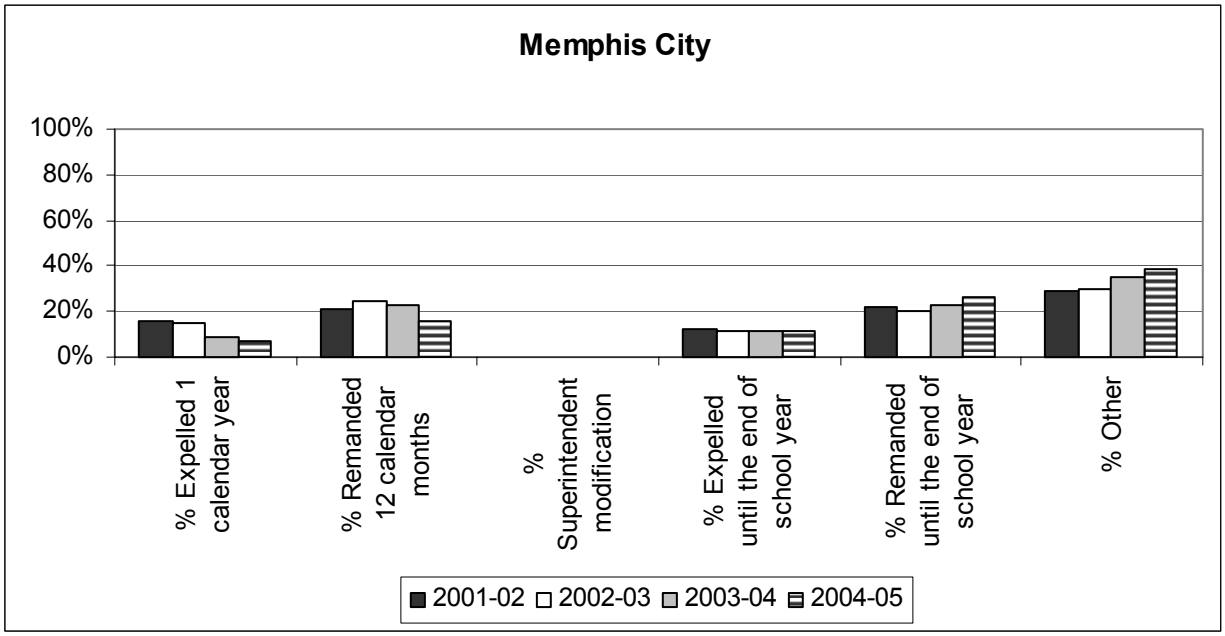
[22] "Action taken" refers to the sanction imposed at the time of the offense. "Disposition" refers to where the student was on the last day of the school year in which the violation occurred. It is an attempt to capture information about the educational progress of the student.
[23] OEA telephone interview with Rick Smith, Hamilton County Deputy Superintendent and zero tolerance hearing officer, February 3, 2006.
[24] According to Ralph Thompson, Assistant Superintendent of Student Services, Metro Nashville Public Schools is in communication with the State Department of Education to clarify reporting obligations. Telephone interview, February 27, 2006.



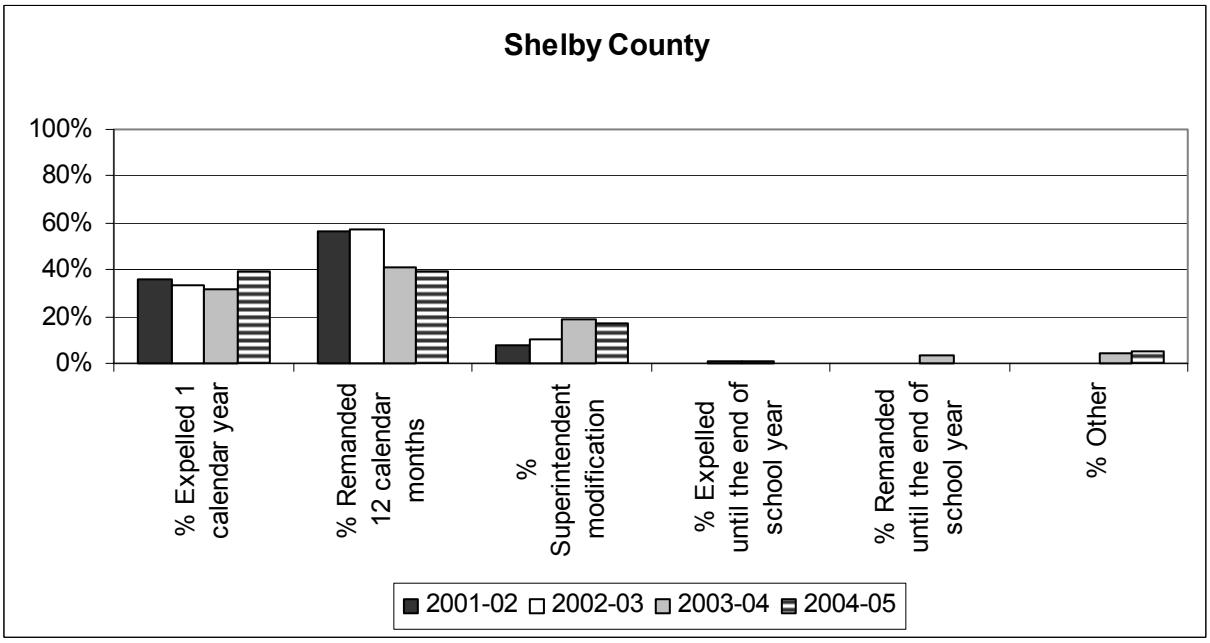
Source: Department of Education.



Source: Department of Education.



Source: Department of Education.



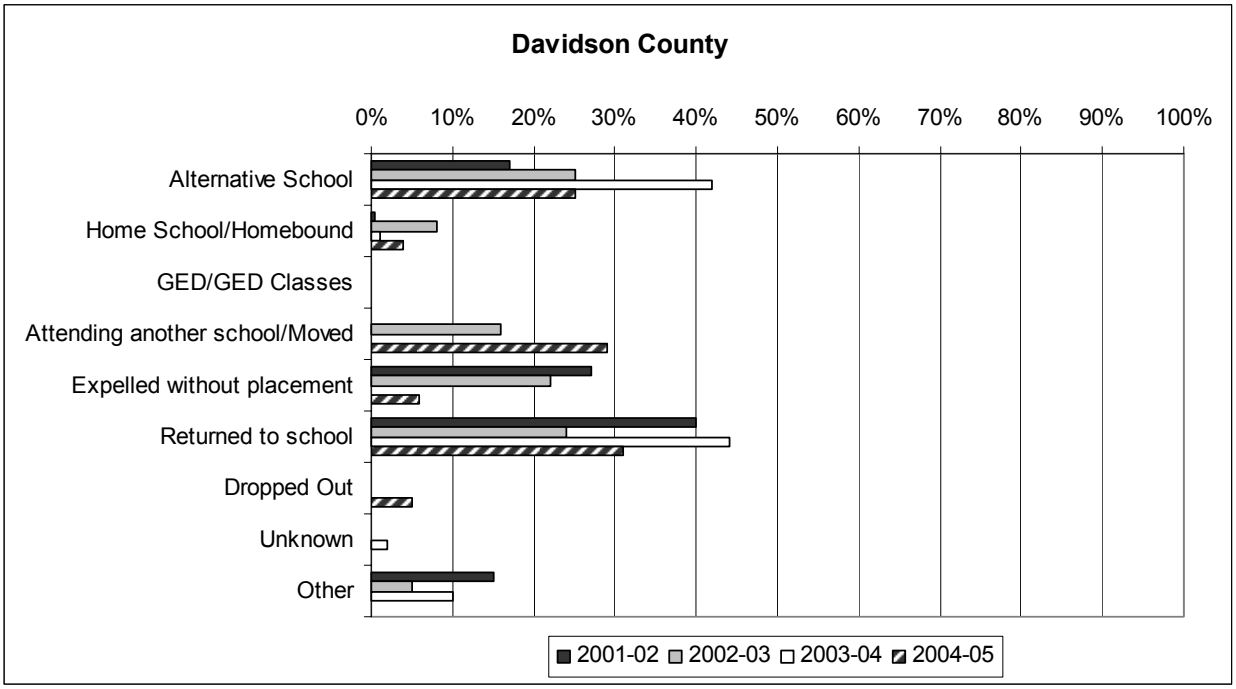
Source: Department of Education Data. Note that students who are 'remanded' are those sent to an alternative school. Also, "Actions Taken" identifies the sanction initially applied to a student as a result of a zero tolerance offense. Some of these sanctions are later modified.

Since 2001-02, fewer urban students have been expelled without placement. Studies have cited the correlation between less education and unemployment, participation in criminal activity, and dependency on government assistance.[25] In 2004-05, both Memphis City and Shelby County Schools expelled more than 20 percent of their zero tolerance offenders without placement, compared to over 30 percent in 2001-02. Knox County had the largest decline, from 75 percent of students in 2001-02 to 10 percent in 2004-05. Hamilton County had an unusually high number of expulsions in which the educational progress

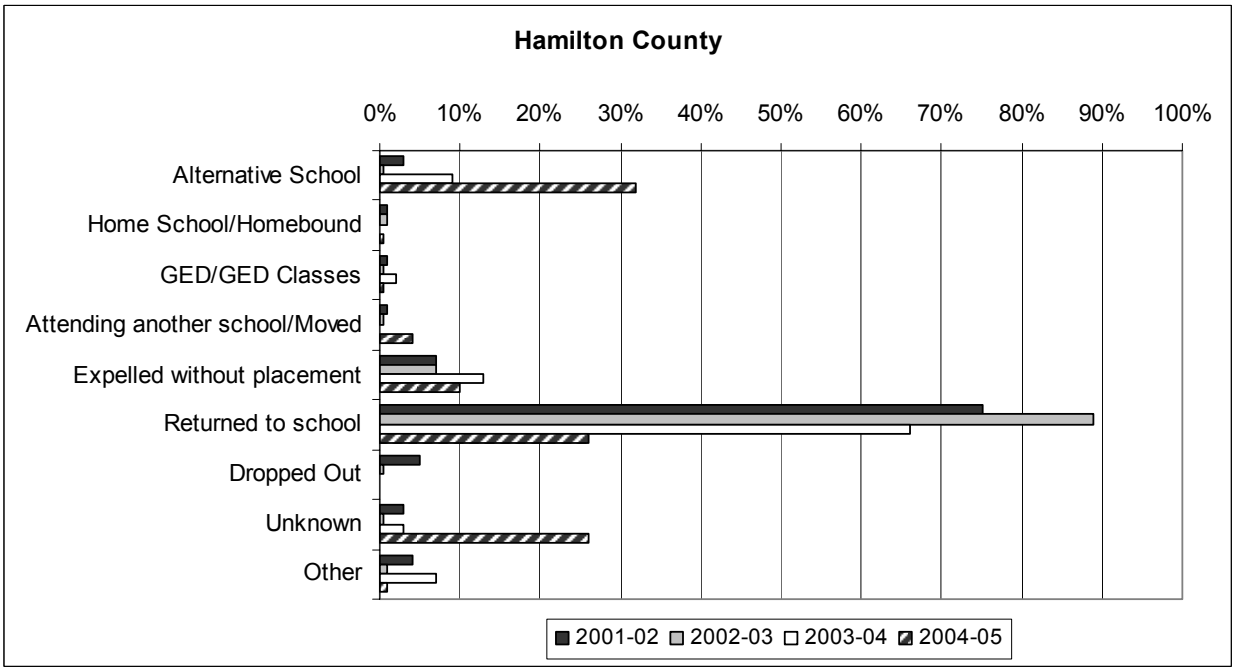
[25] Phillip Kaufman, Martha Naomi Alt, and Christopher D. Chapman, "Dropout Rates in the United States: 2001," National Center for Education Statistics, November 2004.

of the student is unknown.[26] Such expulsions comprised about 25 percent of Hamilton County zero tolerance expulsions in 2004-05, up from three percent in 2001-02.

Exhibit 13: Disposition of Zero Tolerance Offenders, by Urban System, 2001-05

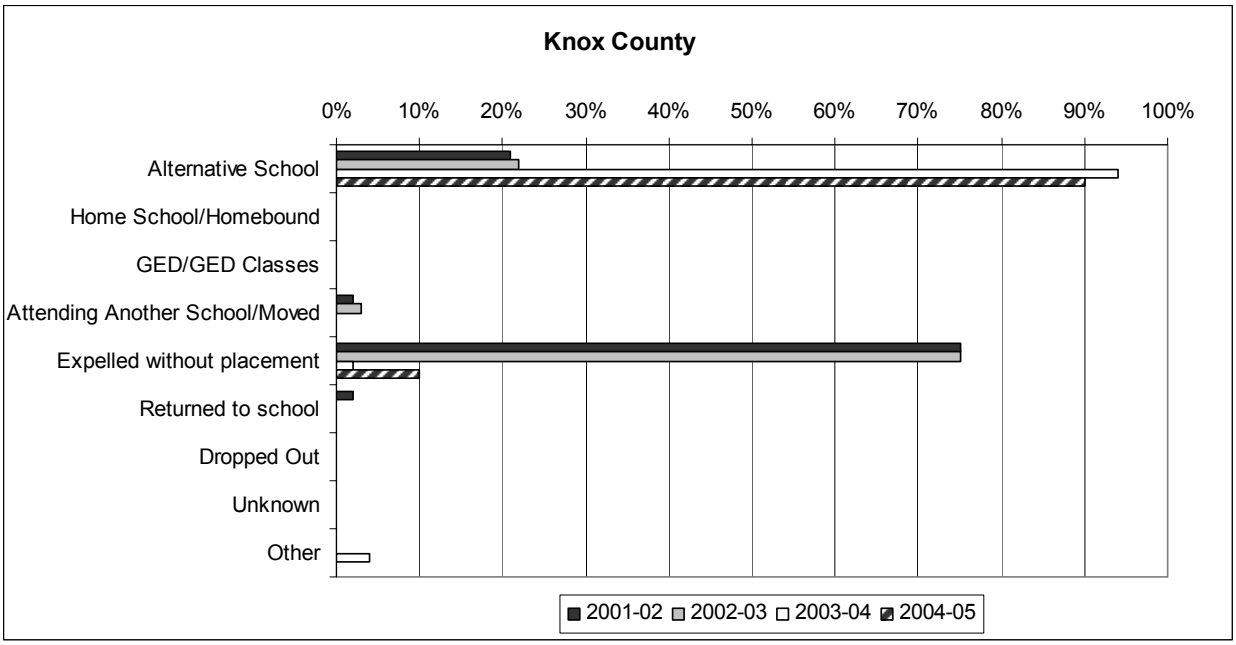


Source: Department of Education.

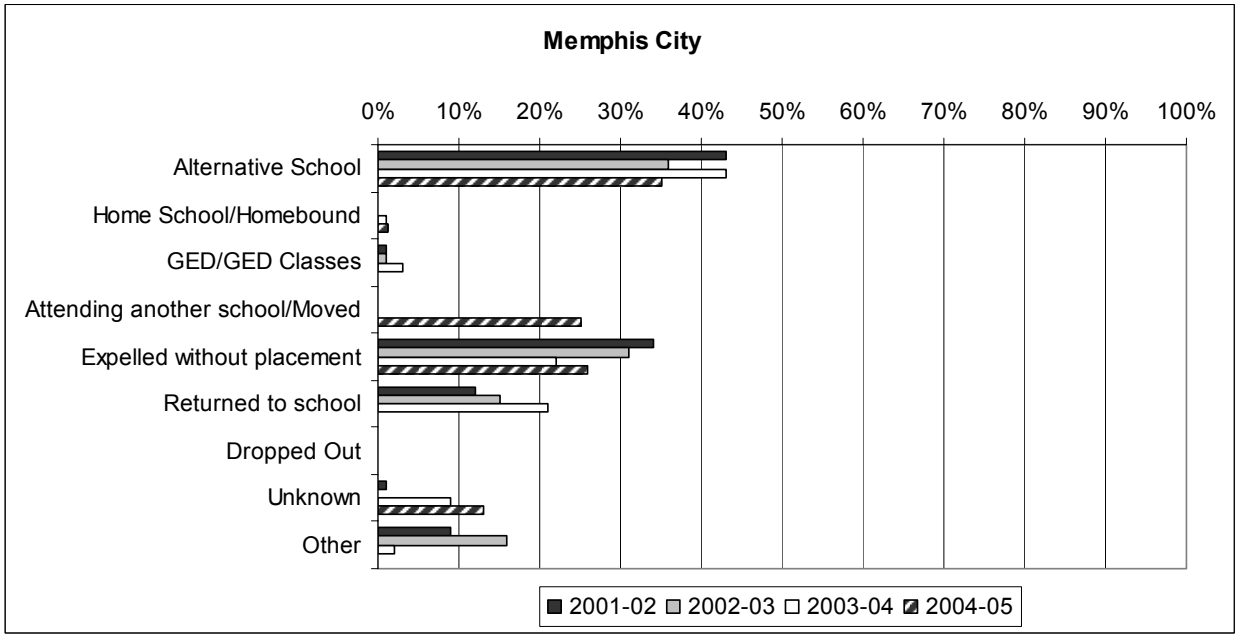


Source: Department of Education.

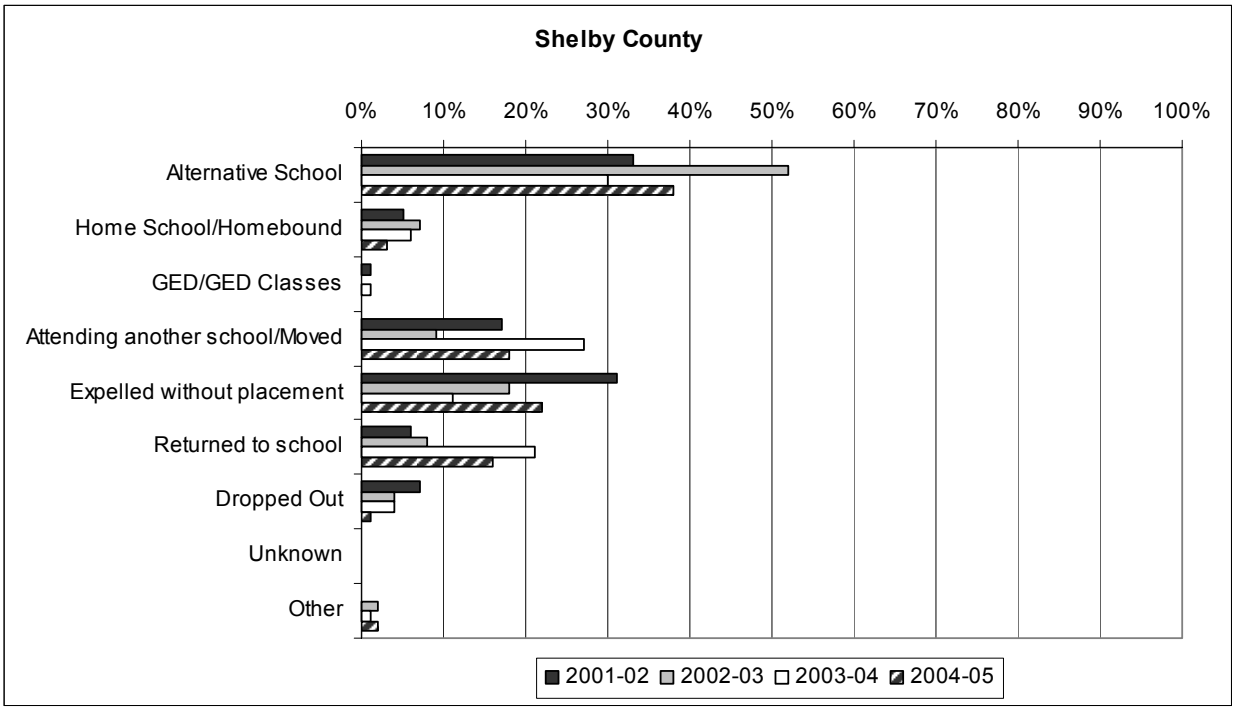
[26] The Hamilton County Schools hearing officer was unaware of this situation and indicated that he would address it with school-based administrators.



Source: Department of Education.



Source: Department of Education.

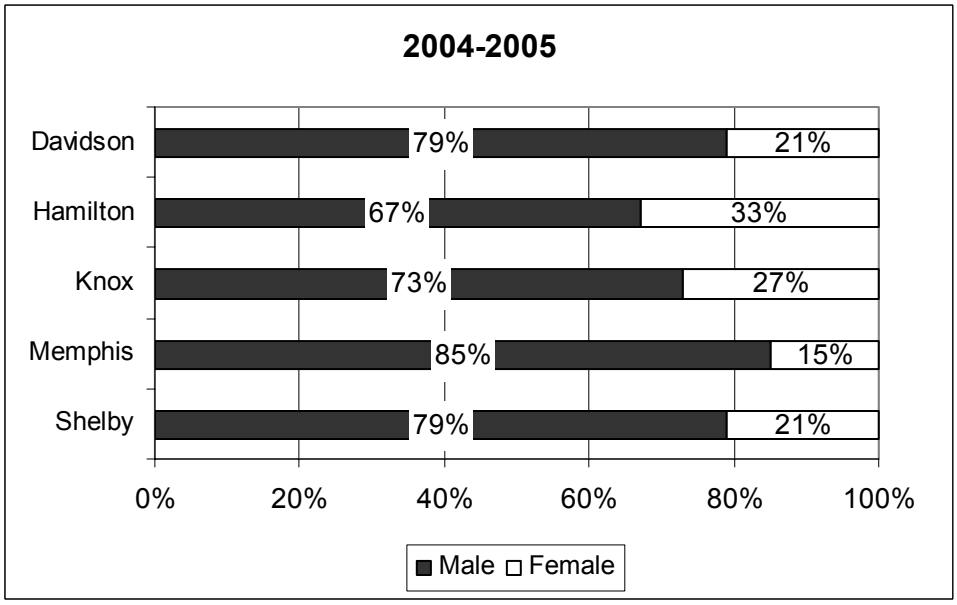


Source: Department of Education.

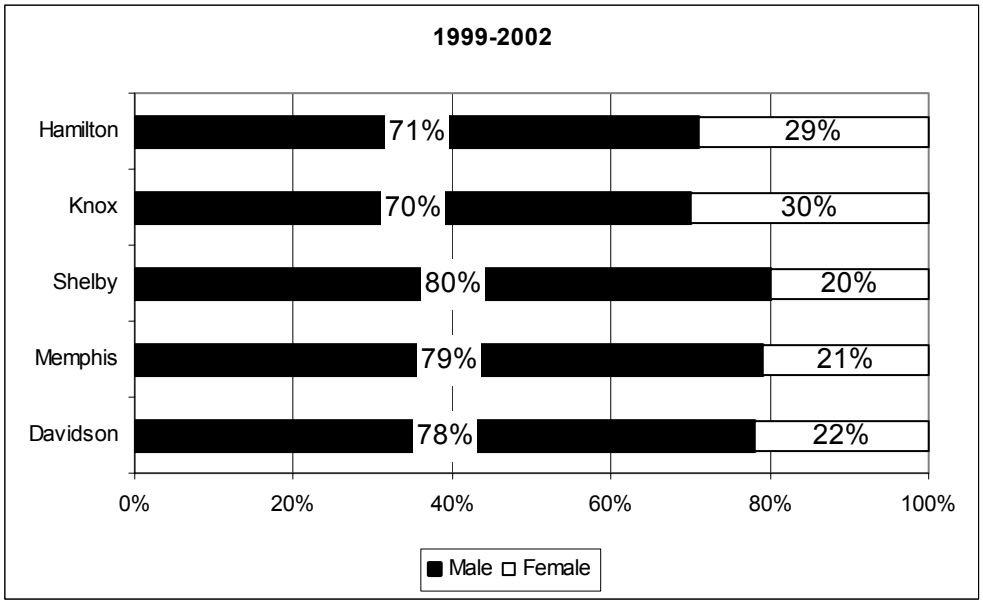
Zero tolerance violations by gender

The zero tolerance gender gap evident in the statewide statistics is also evident in urban areas. Although the gender distribution of zero tolerance violations varies significantly, males account for significantly more violations than females in all urban districts. Memphis has the lowest percentage of females (15 percent) while Hamilton has the highest (33 percent).

Exhibit 14: Urban Zero Tolerance Violations by Gender, 2004-05 and 1999-2002



Source: Department of Education.



Source: Department of Education Data.

Zero tolerance violations by race

African-American students continue to be disproportionately represented among zero tolerance offenders in most urban systems. This mirrors the statewide trend. Exhibit 15 shows the percentage of African-American students in the student population and the percentage of zero tolerance violations accounted for by African-American students in the urban districts.

Exhibit 15: African-American Student Population Compared to Zero Tolerance Offenses, by Urban System, 2001-02 and 2004-05

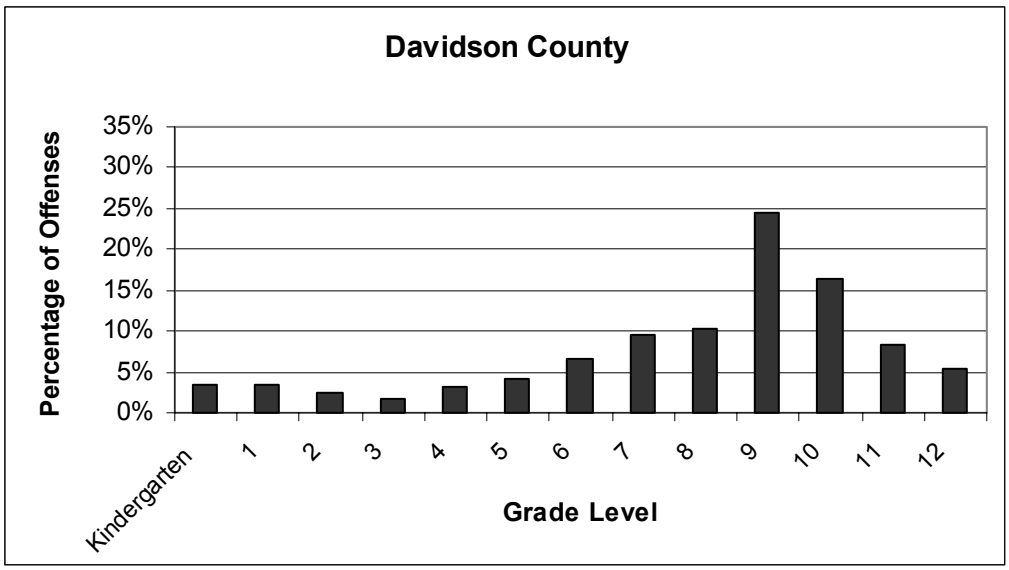
District	2001-02 African-American Student Population	2001-02 African-American Zero Tolerance Violations	2004-05 African-American Student Population	2004-05 African-American Zero Tolerance Violations
Davidson	47%	68%	46%	60%
Hamilton	34%	47%	33%	47%
Knox	14%	15%	15%	32%
Memphis City	87%	91%	85%	93%
Shelby County	22%	35%	28%	37%

Source: Department of Education data.

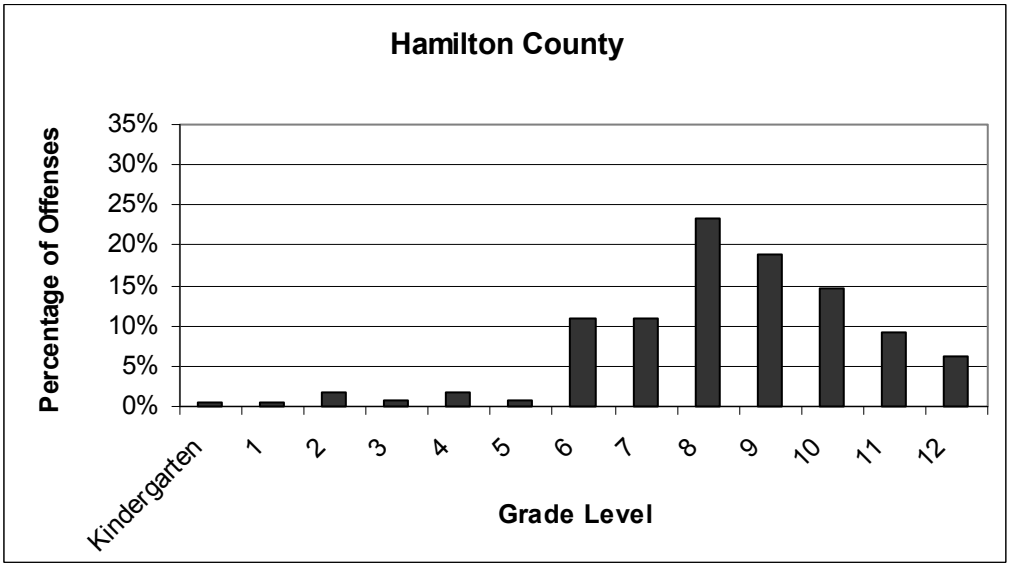
Zero tolerance violations by grade level

As in the 2004-05 statewide analysis and previous analyses, almost half of all zero tolerance offenses occur in grades 8, 9, and 10. Zero tolerance violations in most urban systems peaked at the 9th grade level, ranging from 22 percent to 33 percent of violations. Hamilton County was the exception, with a peak at the 8th grade level (23 percent).

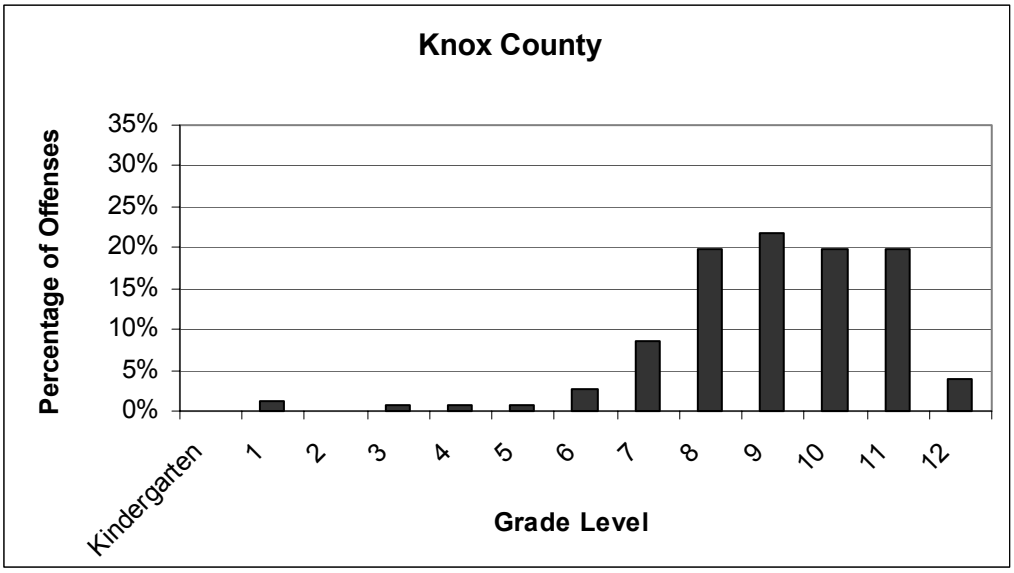
Exhibit 16: Urban Zero Tolerance Offenses by Grade Level, 2004-05



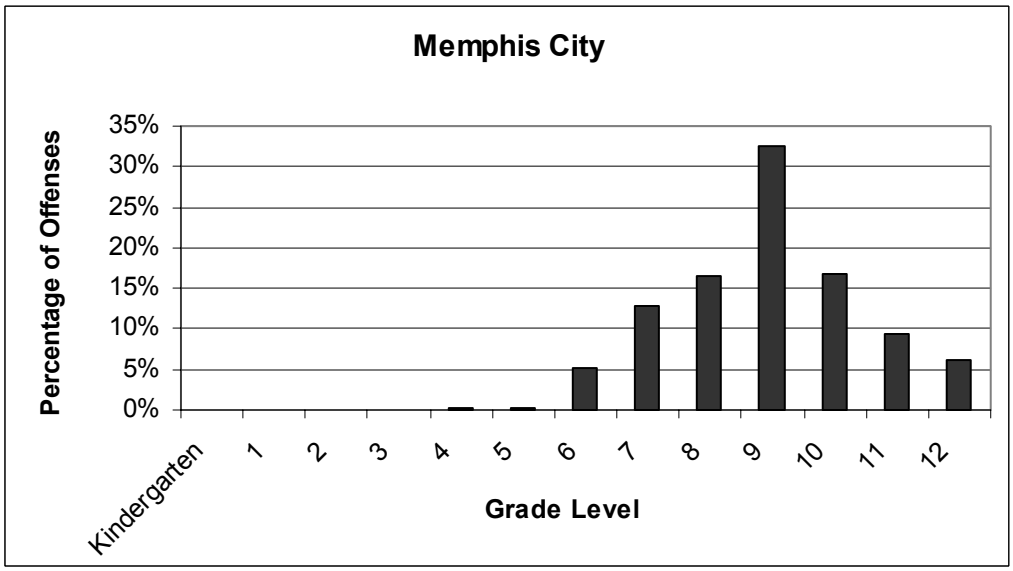
Source: Department of Education.



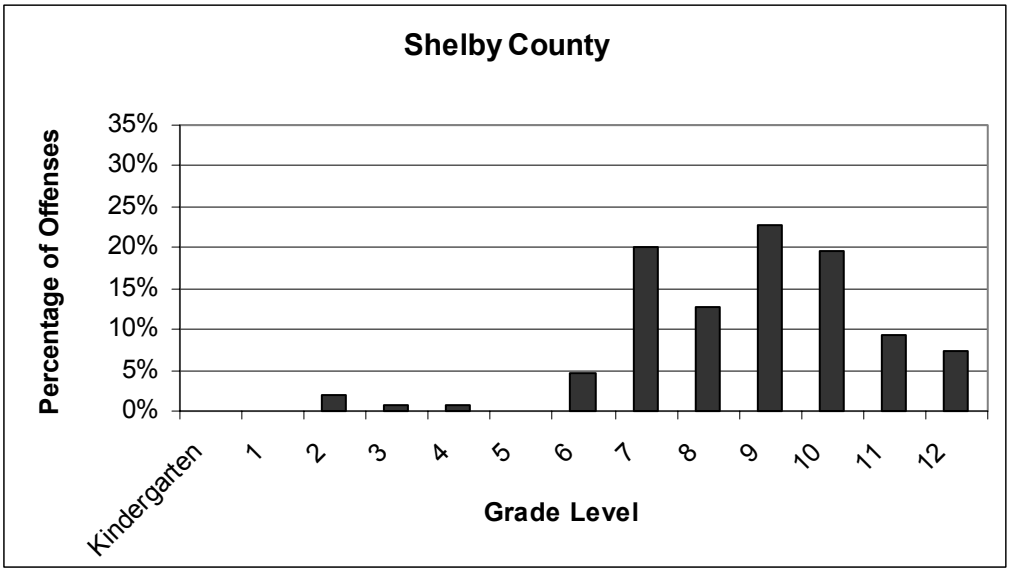
Source: Department of Education.



Source: Department of Education.



Source: Department of Education.

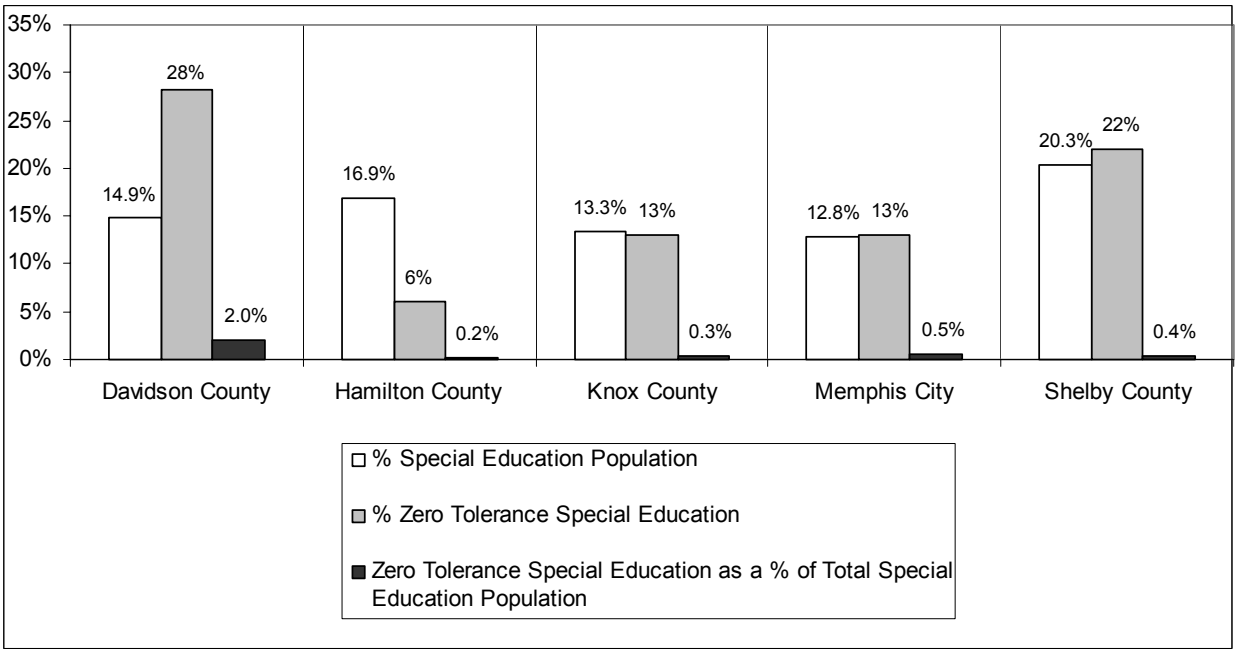


Source: Department of Education Data.

Education status of urban zero tolerance offenders

In all but one of the urban systems, the percentage of zero tolerance violations by special education students is commensurate with the special education population in the system. In Davidson County, however, the percentage of zero tolerance violations among special education students is nearly double the special education population percentage. In all cases special education zero tolerance violators comprise a small percentage of the total special education population.

Exhibit 17: Education Status of Urban Zero Tolerance Offenders, 2004-05



Source: Department of Education.

RECOMMENDATIONS

LEGISLATIVE:

The General Assembly may wish to study several zero tolerance issues, including:

- **The efficacy of zero tolerance punishments in rehabilitating students and preparing them for return to regular classrooms.**
- **Variation in zero tolerance policies among LEAs.**
- **Precision in defining violations that pose a threat to individuals.** Some unusual violations in the 2004-05 zero tolerance database include: toy gun, pencil, stink bombs, dress code, laser gun, and false accusations against a teacher. The General Assembly may wish to define "dangerous weapon" under *T.C.A.* 49-6-4216 more narrowly.
- **Fairness in application of zero tolerance policies among subgroups of students.** Zero tolerance data suggest possible disproportionate representation of various subgroups within the zero tolerance population, including African-Americans and special education students.

The General Assembly may wish to consider encouraging local education agencies to implement more alternatives to expulsion. This recommendation remains unchanged from OEA's 2003 report. Although the number of Tennessee students expelled without placement decreased to 13 percent in 2004-05, that statistic reveals a large number of students receiving no educational services. Research shows that one of the strongest predictors of dropout is prior association with school discipline: "…school suspension and expulsion appear to be effective primarily in removing unwanted students from school. For troublesome or at-risk students, the most well-documented outcome of suspension appears to be further suspension, and eventually school dropout."[27] Although schools must deal with serious infractions swiftly and decisively, research indicates that students' education should be disrupted as little as possible, not only for their own benefit, but for society as a whole.

ADMINISTRATIVE:

The Department of Education and LEAs should examine ways to target the 8th and 9th grades for services to prevent zero tolerance violations. This recommendation remains unchanged from OEA's 2003 report. In most districts the number of violations peak at the 9th grade level and decline steadily in subsequent grade levels. The Department of Education should consider programs to involve students before and during the 9th grade to prevent zero tolerance violations.

The Department of Education should examine ways to coordinate various programs and to collaborate with other agencies to target zero tolerance drug violations. Despite the Department's efforts to improve the collaboration among various state agencies in resolving the drug problem in Tennessee schools, drug violations continue to comprise the largest category of zero tolerance offenses. Programs to address the problem include "Life Skills" training, Meth-free Tennessee, D.A.R.E., and various other programs dealing with access to treatment and childhood substance abuse.[28] These programs focus on individual aspects of the drug abuse problem, but may be more effective if coordinated into a drug and substance abuse prevention and treatment system. Recommendations in a program audit in Wyoming suggest that substance abuse programs for the general population are more effective if acting from a single, comprehensive plan, and are coordinated by a single agency with decision-making authority.[29]

The Department of Education should ensure that all school districts publicize the currently available hotline by which students can anonymously report potential zero tolerance offenses. The Tennessee Bureau of Investigation (TBI) maintains a school violence hotline for people to report

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[27] Russell J. Skiba, *Zero Tolerance, Zero Evidence: An Analysis of School Disciplinary Practice*, Indiana Education Policy Center, Policy Research Report #SRS2, August 2000, p. 14.

[28] After a 20 percent decrease in Federal Title IV funds for 2006-07 the State Department of Education will no longer provide grants for the Drug Abuse Resistance Education, program also known as D.A.R.E. Information provided to OEA through an email from Mike Herrmann, February 17, 2006.

[29] Wyoming Legislative Service Staff, *Substance Abuse Planning and Accountability,* January 2006.

school violence or threats of such violence at 1-800-824-3463. The phone number for the hotlines should be advertised in the schools, to parents at the beginning of the school year, and on the web sites of the Department of Education, the districts, and the individual schools. The U.S. Secret Service's study of targeted violence in schools indicated that often other students were aware of the threat the perpetrator posed but failed to report the threat.[30] A publicized hotline may also cause students to feel their likelihood of being caught bringing a weapon to school is greater, reducing the incidences of these violations.

[30] U.S. Secret Service, *The Final Report and Findings of the Safe School Initiative: Implications for the Prevention of School Attacks in the United States,* May 2002.

APPENDIX A: LETTER OF RESPONSE FROM THE COMMISSIONER OF EDUCATION

STATE OF TENNESSEE
DEPARTMENT OF EDUCATION
6th FLOOR, ANDREW JOHNSON TOWER
710 JAMES ROBERTSON PARKWAY
NASHVILLE, TN 37243-0375

PHIL BREDESEN
GOVERNOR

LANA C. SEIVERS, Ed.D.
COMMISSIONER

June 12, 2006

Ms. Ethel R. Detch, Director
Office of Research and Education Accountability
Comptroller of the Treasury
505 Deaderick Street, Suite 1700
Nashville, TN 37243-0268

Dear Ms. Detch:

Thank you for the opportunity to review the draft report on zero tolerance policy and practice in Tennessee's schools. We concur with the report's administrative recommendations for the Tennessee Department of Education.

In response to the data showing the alarming concentration of zero tolerance violations by 9th grade students, the report recommends that the Department focus strategies on the eighth and ninth grades. The Department encourages school districts to target services to students at greatest risk – specifically those in transition from middle to high school. A number of school districts have initiated transition programs with state Safe Schools Act or federal Safe and Drug-Free Schools funding. More recently, Lottery Education for Afterschool Programs (LEAPS) and 21st Century Community Learning Centers grants have been awarded to support afterschool programming that facilitates successful transitions for at-risk students.

The report recommends that the Department take an interagency approach to addressing zero tolerance drug violations. The Department is actively involved in several interdepartmental initiatives relative to the coordination of alcohol and drug abuse services, including the Strategic Prevention Framework State Incentive Grant (SPF-SIG) administered by the Department of Health and the Tennessee Adolescent Coordination of Treatment (T-ACT) project that is being administered by the Governor's Office of Children's Care Coordination.

The report also recommends that the State widely publicize the TBI school violence hotline. The Department believes that the TBI school violence hotline is an important and valuable resource. However, because of the time-sensitive nature of weapons reporting, the current school safety training programs emphasize the need for established and confidential channels at the building level for students to report illegal or dangerous behavior.

We appreciate these recommendations and the sustained attention to Tennessee's efforts to ensure a safe, supportive, and successful educational environment for all students.

Sincerely,

Lana C. Seivers

Lana C. Seivers

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