

## 52. STUDENT ISSUES: CORPORAL PUNISHMENT

### Definition of Corporal Punishment

Corporal punishment is the use of physical punishment as a form of discipline for school children. Although the term is generally associated with spanking, paddling, or whipping, it can also refer to any physical act that causes discomfort to the student. For example, slapping, striking, grabbing, pulling to the ground or out of the classroom, or requiring the student to stay in a physically difficult posture, are all forms of corporal punishment. Corporal punishment may also include the continuance of strenuous physical activity, for example, running laps around a field. Some of the more interesting and creative forms of corporal punishment found in case law are where: one teacher held the child up in the air by the ankles, while the second teacher spanked the child with a split paddle (Garcia v. Miera, 817 F.2d 650 (10<sup>th</sup> Cir. 1987)); a teacher put a straight pin through the student's upper arm (Brooks v. School Board of Richmond, Va., 569 F.Supp. 1534 (E.D.Va. 1983)); and, a welding teacher on four occasions hit the testicles of students with tongs (Mott v. Endicott School District No. 308, 695 P.2d 1010 (Wash.Ct.App. 1985)).

### Constitutional Rights

Case law involving corporal punishment has focused on two Amendments to the U. S. Constitution: the Eighth and Fourteenth Amendments. In Ingraham v. Wright, 430 U.S. 651 (1977), the U. S. Supreme Court rejected the argument that corporal punishment in the school setting violated the Eighth Amendment's prohibition against "cruel and unusual punishment." Interestingly, the court also rejected the notion that procedural due process, like that required by Goss v. Lopez in suspension situations, was required prior to delivering corporal punishment. The court pointed to the availability of state remedies, such as assault or battery claims, when corporal punishment was unreasonable or the force used was excessive.

Six of the federal courts of appeal have recognized that the Fourteenth Amendment includes among its protections a general interest in privacy, as well as liberty interest in bodily integrity. (See, Garcia v. Miera, 817 F.2d 650 (10<sup>th</sup> Cir. 1987), *cert. denied*, 485 U.S. 959 (1988).) Consequently, the use of excessive force in corporal punishment situations could trigger a successful substantive due process claim. In Hall v. Tawney, 621 F.2d 607 (4<sup>th</sup> Cir. 1980), the Fourth Circuit Court of Appeals said that the standard for deciding if substantive due process is violated is "whether the force applied caused injury so severe, was so disproportionate to the need presented, and was so inspired by malice or sadism rather than a merely careless or unwise excess of zeal that it amounted to a brutal and inhumane abuse of official power literally shocking to the conscience." (621 F.2d at 613.) The Fifth Circuit Court of Appeals, on the other hand, has held that substantive due process rights are not

implicated if unreasonable student discipline is proscribed by the state and if the state provides adequate post-punishment remedies for abuse. Fee v. Herndon, 900 F.2d 804 (5<sup>th</sup> Cir. 1990), *cert. denied*, 498 U.S. 908 (1990).

### **States Where Prohibited**

Legislation or regulation has been adopted to prohibit corporal punishment in the following states: Alaska, California, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Dakota, Oregon, Utah, Vermont, Virginia, Washington, and Wisconsin. (See, Dayton, "Corporal Punishment in the Public Schools: The Legal and Political Battle Continues," 89 West's Education Law Reporter 729 (1994). Also see, LaMorte, School Law: Cases and Concepts 7<sup>th</sup> ed..(Boston: Allyn & Bacon) 2002: p. 142.) In the absence of state legislation or regulation prohibiting corporal punishment, local boards of education are free to permit it, prohibit it, or give parents the right to prohibit it. Even though the Rhode Island legislative branch has not prohibited corporal punishment, every local school board in Rhode Island has chosen to prohibit it.

### **Legislative Immunity**

Neither the Alabama Legislature nor the State Board of Education has prohibited corporal punishment, although a few school boards have done so by local policy. Legislation passed in 1995 (Acts 1995, No. 95-539, p. 1121, § 3) granted immunity to public school teachers when inflicting corporal punishment of students or when maintaining order and discipline in school settings, as long as such disciplinary actions are consistent with local school board policy. Section § 16-28A-2 Code of Alabama (2001 Replacement). Immunity is also granted to principals, assistant principals, and other school personnel to use corporal punishment in accord with local school board policy. Section § 16-28A-5 Code of Alabama (2001 Replacement).

Section § 16-28A-1 Code of Alabama (2001 Replacement) provides:

It is the finding of the Alabama Legislature that the people of Alabama have two basic expectations of their public schools: (1) that students be allowed to learn in a safe classroom setting where order and discipline are maintained; and (2) that students learn at the level of their capabilities and achieve accordingly. The Legislature finds further that every child in Alabama is entitled to have access to a program of instruction which gives him or her the right to learn in a non-disruptive environment. No student has a right to be unruly in his or her classroom to the extent that such disruption denies fellow students of their right to learn. The teacher in each classroom is expected to maintain order and

discipline. Teachers are hereby given the authority and responsibility to use appropriate means of discipline up to and including corporal punishment as may be prescribed by the local board of education. So long as teachers follow approved policy in the exercise of their responsibility to maintain discipline in their classroom, such teacher shall be immune from civil or criminal liability. It shall be the responsibility of the local boards of education and the administrators employed by them to provide legal support to each teacher exercising his or her authority and responsibility to maintain order and discipline in his or her classroom as long as the teacher follows the local board of education's policy. Such support for the teacher shall include, but not be limited to, providing appropriate legal representation to defend the teacher against charges, filing of a written report pursuant to Section 16-1-24, seeking the issuance of a warrant or warrants for any person or persons threatening or assaulting a teacher, and the timely assistance and cooperation with the appropriate authorities in the prosecution of any person or persons threatening or assaulting a teacher. Local school board authorities and school administrators providing such support shall be absolutely immune from civil and criminal liability for actions authorized or required by this section.

Note that the section above grants immunity to teachers from civil or criminal liability "so long as (the) teacher(s) follow approved policy." It also grants absolute immunity for school administrators and school board authorities who provide support for teachers in defense of a claim "for actions authorized or required." Neither statement provides unlimited immunity. If discipline is provided in a manner that procedurally violates policy, it would not be immune. If discipline is provided in a manner that is so severe or excessive that it shocks the conscience, it would not be immune. Even if the corporal punishment meets board policy in all respects, the school employee who corporally punishes can still be reported to the Department of Human Resources, creating potential for personal and professional embarrassment.

Because the legislative immunity provided by the Alabama Legislature points to local board policy, the language of the local board policy can become a critical factor in situations involving alleged wrongdoing related to corporal punishment. Some school districts in Alabama have provided waiver rights to parents, permitting parents to decide that corporal punishment will not be used with their children. A teacher or administrator who spanks a child over the parent's objection, where the local board has given the parent that right, would be outside board policy, and would thus lose immunity.

### **Parental Objections**

In jurisdictions where both state law and board policy permit the administration of corporal punishment, parents may demand that corporal punishment not be used on their child. In Baker v. Owen, 395 U.S. 294 (M.D.N.C. 1975) a three judge panel at the district court level heard the case, where a parent claimed that her right as a parent to

control the upbringing of her child outweighed the right of the school to choose corporal punishment as a means of discipline. The court granted the school district summary judgment, and the U. S. Supreme Court affirmed without comment. 423 U.S. 907 (1975). Based on Baker v. Owen, it would seem that parents don't have the right to demand that corporal punishment not be used on their child, unless the legislature, state board of education, local school board, or administrator intervenes and gives parents that right.