# "Spare the Rod and Spoil the Child?" The Law and Corporal Punishment

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Corporal punishment is still common in many parts of the American South and Southwest.

The use of corporal punishment may be as old as society itself. However, the development of compulsory attendance laws has raised questions about its legality.

Under compulsory attendance laws and subject to exceptions for home schooling and nonpublic schools, parents must send their children to public schools or be subject to sanctions. Conflicts arise when school officials seek to impose corporal punishment on children against the wishes of their parents. The use of corporal punishment is based on the common-law presumption of *in loco parentis*, literally, "in the place of a parent."

In seeking to resolve this conflict between the duty of educators to maintain safe and orderly learning environments and the rights of parents to direct the upbringing of their children, there has been a shift in the legal status of corporal punishment. Many school boards have abandoned its use at least in part because of respect for parental wishes.

## Corporal Punishment and the Law

Before the enactment of state statutes, educators had the right to administer reasonable corporal punishment to misbehaving students, even if it was contrary to parental wishes (*Baker v. Owen* 1975a, 1975b). In fact, in one case, an appellate court in Louisiana refused to impose liability on a school board and principal for injuries that a student allegedly sustained in connection with the use of corporal punishment (*Setliff v. Rapides Parish School Board* 2004, 2005). The court explained that since state law authorized the use of corporal punishment under specified conditions and the student subjected educators to a relatively long and continual pattern of misbehavior in school, their actions were justified.

In July, Ohio became the 39th state, in addition to the District of Columbia, to enact statutory prohibitions against the use of corporal punishment in schools (Center for Effective Discipline 2009). However, corporal punishment is still common in many parts of the American South and Southwest.

If not contrary to state-level provisions, board policies on corporal punishment generally control (*McKinney v. Greene* 1979). Even so, the use of unreasonable corporal punishment or behavior that violates board policy or state law can serve as cause for dismissing teachers (*Bott v. Board of Education, Deposit Central School District* 1977; *Madison v. Houston Independent School District* 1999, 2000; *McPherson v. New York City Department of Education* 2006).

## Supreme Court Cases

In its only case on the merits of the issue, *Ingraham v. Wright* (1977), the Supreme Court held that corporal punishment was not unconstitutional. Insofar as the facts speak for themselves, they are presented in some detail. In *Ingraham*, two middle school students sued school officials in Florida alleging the deprivation of their constitutional rights to be free from cruel and unusual punishment under the Eighth Amendment after they were subjected to corporal punishment.

The record in *Ingraham* revealed that pursuant to a state statute, education officials throughout Florida regularly used corporal punishment to preserve school discipline. The law authorized paddling students on the buttocks with a flat wooden paddle measuring less than two feet long, three to four inches wide, and about one-half inch thick. Ordinarily, the punishment was limited to one to five "licks" or blows with the paddle

and resulted in no apparent physical injury to students.

According to the Supreme Court, educators viewed corporal punishment as a less drastic means of discipline than suspension or expulsion. Contrary to the procedural requirements of state law, teachers often paddled students on their own authority without first consulting their principals.

In *Ingraham*, the evidence, consisting mainly of student testimony, suggested that the school administration's use of discipline was harsh. When one of the plaintiffs was slow to respond to his teacher's instructions, he received more than 20 swats with a paddle while being restrained over a table in the principal's office.

The paddling was so severe that the student suffered a hematoma that required medical attention and kept him out of school for what the Supreme Court described as "several days" (*Ingraham* 1977, p. 657). The Fifth Circuit reported that the result of the paddling was much worse, since eight days after the incident, a doctor recommended that the student should rest at home for the next three days (*Ingraham*, 1974a, p. 256).

The other student was paddled multiple times for minor infractions and was twice struck on his arms, once depriving him of the full use of an arm for a week. Based on their injuries, the students filed suit against the educators and their school board.

After a federal trial court, in an unpublished order, rejected the students' claims, the Fifth Circuit initially reversed in their favor (*Ingraham* 1974a). However, after agreeing to a rehearing (*Ingraham* 1974b), an en banc panel of the Fifth Circuit overruled the earlier judgment (*Ingraham* 1976). On further review, the Supreme Court affirmed in favor of the school officials.

In ruling that the Eighth Amendment's prohibition against cruel and unusual punishment was designed to protect those guilty of crimes and did not apply to paddling students in order to preserve discipline, the Supreme Court reviewed the history on corporal punishment, rejecting an analogy between children and inmates.

Yet, the Court did not adequately address whether the egregious behavior by school officials violated the statutory prohibition against being "degrading or unduly severe." In acknowledging that most states at that time permitted school officials to employ corporal punishment, and that the professional and public opinions were divided on this point, the Court deferred to the authority of educators and refused to invalidate its use as unconstitutional.

The Supreme Court's only other case on corporal punishment arose in North Carolina two years before *Ingraham*. In *Baker v. Owen* (1975b), the Court summarily affirmed a judgment in favor of school officials in the face of a challenge by a mother who questioned the use of corporal punishment on her sixth-grade son. The court decided that absent a state law or board policy to the contrary, parental disapproval of corporal punishment did not forbid educators from using it on students.

## Lower Courts

In specific cases, the Fourth (*Hall v. Tawney* 1980; *Meeker v. Edmundson* 2005), Tenth (*Garcia v. Miera* 1987), and Eleventh (*Neal v. Fulton County Board of Education* 2000a, 2000b) Circuits, along with lower courts, agreed that students can bring substantive due process claims if punishments are " . . . so brutal, demeaning, and harmful as literally to shock the conscience of a court" (*Hall v. Tawney* 1980, p, 613) even if they are against peers acting under the direction of educators.

In the first of three illustrative cases where courts determined that educators exceeded the scope of their authority in using corporal punishment, the Fourth Circuit, in a dispute from North Carolina, affirmed the denial of a wrestling coach's claim for qualified immunity where a student sued him and other school officials after the coach encouraged members of his team to beat the plaintiff repeatedly (*Meeker v. Edmundson* 2005).

In the case from the Tenth Circuit, the court noted that a school board and officials in New Mexico could be subject to liability where educators twice disciplined a nine-year-old girl by holding her upside down by her ankles and striking her on the shins with a broken stick that broke her skin (*Garcia v. Miera* 1987). Further, in the case from the Eleventh Circuit, the court rejected an immunity request by a high school football coach–teacher in Georgia after he struck a ninth grader in the face with a metal plate that was used in connection with weightlifting (*Neal v. Fulton County Board of Education* 2000a, 2000b). The court observed that the coach hit the student so hard that he literally knocked the player's left eye out of its socket.

On two occasions, the Fifth Circuit refused to impose liability on school officials—once when a teacher bruised the buttocks of a kindergarten student (*Cunningham v. Beavers* 1988, 1989) and on another where an eighth-grade student had to miss three weeks of school as a result of performing strenuous activities, such as squat thrusts, as a form of punishment (*Moore v. Willis Independent School District* 2000, 2001).

In both cases, the court pointed out that state statutory and common-law provisions offered better redress in the way of damages and possible criminal liability rather than vitiate the use of corporal punishment. These cases are consistent with the majority view that most litigation involving corporal punishment has been resolved in favor of educators based on the presumption of correctness that complaining students and parents were unable to overcome.

At the same time, as highlighted by cases from the Second (*Smith ex rel.*

*Smith v. Half Hollow Hills Central School District* 2002), Third (*Gottlieb ex rel. Calabria v. Laurel Highlands School District* 2001), Seventh (*Wallace by Wallace v. Batavia School District 101* 1995), and Eleventh (*Peterson v. Baker* 2007) Circuits, the courts regularly permit educators to use force to remove disruptive students, not treating it as corporal punishment.

In the case from the Seventh Circuit, the court specified that when a teacher in Illinois grabbed a student by her wrist and elbow to escort her from a classroom, he did not violate her rights to substantive due process amounting to corporal punishment. Similarly, federal trial and state appellate courts agreed that teachers did not commit corporal punishment where they paddled a child on the buttocks (*Fox v. Cleveland* 2001), restrained a child with Asperger's syndrome (*Brown ex rel. Brown v. Ramsey* 2000), grabbed the arm of a student and pulled him toward a door (*Widdoes v. Detroit Public Schools* 2000, 2001), grabbed and twisted a child's wrist in an effort to compel her to turn over money she found on the floor (*Bisignano v. Harrison Central School District* 2000), and grasped a student in an attempt to preserve discipline (*Young v. St. Landry Parish School Board* 1999).

## Reflections

Clearly, corporal punishment is a controversial practice that can leave educators and school boards subject to liability in the event that individuals use excessive force in disciplining students even where they have the statutory authority to use it as punishment. At the very least, the use of corporal punishment can create legal and public relations nightmares for boards. If boards choose to employ corporal punishment, school business officials acting in conjunction with other education leaders should consider the following limitations on its use to avoid problems.

Even in states that allow its use, educators should permit the imposition of corporal punishment only pursuant to written school board policies since doing so will allow it to be modified to meet local concerns. Moreover, regardless of one's personal feelings, administrators and teachers should always follow board policy with regard to the use of corporal punishment. To this end, policies should

- Require prior written consent from parents before imposing corporal punishment;
- Limit the number of times that corporal punishment can be used on a child in a given school year (this item requires school officials to keep accurate records of how often they have imposed corporal punishment);
- Obligate parents to come in for conferences if students go over the limit and are subject to additional discipline;
- Mandate the use of witnesses to ensure compliance with policy specifications since this protects both educators and students from any charges of inappropriate behavior;
- Place restrictions on the number and location (buttocks) of swats or "licks," as well as the size and dimensions of paddles, so as to limit the possibility of injuring students; and
- Use reasonable restraint in using force on students.

As with all other policies, school business officials and other education leaders should regularly update all school governance and labor policies, typically on an annual basis to ensure their compliance with emerging legal developments. Although being up-to-date cannot guarantee that either conflicts or litigation will not occur, they can certainly go a long way toward demonstrating good faith to the courts that may well apply the benefit of the doubt in the event that disagreements arise over this controversial form of student discipline.

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