

Corporal Punishment in Public Schools: Is the United States Out of Step?

by Martha M. McCarthy

Few topics evoke more emotion than how to discipline children in public schools. And not many people are neutral in their views toward corporal punishment. Surprisingly, the United States stands almost alone on its position regarding the legality of corporal punishment. Among thirty-five industrialized countries, only the United States and the Outback regions of Australia do not ban this disciplinary technique (Center for Effective Discipline 2004a). And other than its use in public education, corporal punishment is banned in most U.S. government institutions, such as prisons and military bases. Although many European countries have prohibited corporal punishment in schools since the 1800s, the practice was not banned in the United Kingdom until the late 1980s, and there was no national ban of this disciplinary technique in Canada until 2004.¹

Despite the absence of a national prohibition on corporal punishment in the United States, an increasing number of states and local school districts have adopted laws or regulations prohibiting corporal punishment in public schools. Only one state, New Jersey, prohibited corporal punishment by law in 1970, but by 2004, twenty-eight states and the District of Columbia had barred this disciplinary strategy in public education. In an additional state, Rhode Island, all local school districts prohibit corporal punishment even though there is no state law to that effect.² Also, in nine states that still authorize corporal punishment in public schools, more than half the students are enrolled in districts that have adopted policies prohibiting this disciplinary technique (Center for Effective Discipline 2004b). Most states still permitting corporal punishment are located in the southern region of the country.

Constitutional Issues

The U.S. Supreme Court has rendered only one decision, *Ingraham v. Wright* (1977), addressing corporal punishment. The plaintiff students

suffered severe injuries from corporal punishment administered by school personnel, but the Court nonetheless ruled that corporal punishment in public schools does not violate the federal Constitution. The Court rejected the contention that this disciplinary strategy violates the Eighth Amendment's prohibition against cruel and unusual governmental punishment or the Fourteenth Amendment's procedural due process guarantees that are triggered when life, liberty, or property rights are implicated.

The Court majority in *Ingraham* did acknowledge that corporal punishment might implicate students' constitutionally protected liberty to remain free from intrusions on their bodily integrity. Even so, the Court ruled that sufficient state remedies, such as assault and battery suits, are available if students are arbitrarily or brutally punished by school personnel. Thus, the Court reasoned that challenges to the administration of corporal punishment should be handled by state courts under provisions of state laws. Distinguishing corporal punishment from suspensions, the Court majority reasoned that denying school attendance is a more severe penalty that necessitates procedural safeguards because it deprives students of their state-created right to attend school.

However, *Ingraham* left the door slightly open for a successful constitutional challenge to corporal punishment. Several federal appellate courts have recognized that excessive corporal punishment in public schools might implicate students' Fourteenth Amendment substantive due process rights (*Johnson v. Newburgh* 2001; *Neal v. Fulton County* 2000; *Metzger v. Osbeck* 1988). For example, the Fourth Circuit concluded that severe corporal punishment may abridge students' substantive due process protections against arbitrary and unreasonable governmental action even though *Ingraham* precludes a Fourteenth Amendment claim on procedural due process grounds. The appeals court held that the standard to apply in determining if such a violation has occurred 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. (*Hall v. Tawney* 1980, p. 613)

The Tenth Circuit ruled that substantive due process rights were impaired when a nine-year-old girl was paddled with a split paddle while she was held upside down by another teacher. The paddling resulted in severe bruises, cuts, and permanent scarring (*Garcia v. Miera* 1987). There are other examples in which corporal punishment has shocked

the conscience and therefore impaired substantive due process rights. For example, a coach knocking a student's eye out of its socket with a metal lock met this standard (*Neal v. Fulton County* 2000). Similarly, a teacher who physically restrained a student until he lost consciousness and fell to the floor was found to have impaired substantive due process rights because of the significant injuries the student sustained (*Metzger v. Osbeck* 1988).

However, federal circuit courts have not spoken in unison about such Fourteenth Amendment substantive due process challenges to corporal punishment. Disagreeing with the majority of federal appellate courts, the Fifth and Seventh Circuits have rejected substantive due process claims under the Constitution. The Fifth Circuit recognized that Texas law provides adequate civil and criminal remedies for corporal punishment considered extreme (*Moore v. Willis* 2000). Similarly rejecting a substantive due process claim where the state prohibits unreasonable student discipline, the Seventh Circuit further noted that a teacher acted reasonably to prevent a fight by grasping a student's elbow to escort her from the classroom (*Wallace v. Batavia* 1995).

Even those courts allowing substantive due process claims have recognized that students must satisfy a very high standard to substantiate that corporal punishment violates the Fourteenth Amendment. Actions must actually shock the conscience to implicate substantive due process rights; minor pain and embarrassment are not sufficient. The Tenth Circuit found no constitutional impairment when teachers required a ten-year-old boy to clean out a stopped-up toilet with his bare hands (*Harris v. Robinson* 2001). Also, no substantive due process violation was found in a single slap to a student's face (*Lilliard v. Shelby County* 1996), two blows with a paddle that caused bruises on a sixth-grade boy (*Wise v. Pea Ridge* 1988), or a push to a student's shoulder causing her to fall against a doorjamb (*Gottlieb v. Laurel Highlands* 2001).

Of course, students cannot be corporally punished, even if mildly, for exercising their constitutional rights, such as those protected by the First Amendment. To illustrate, the Eleventh Circuit ruled in 2004 that an Alabama student was unconstitutionally paddled by his teacher and principal for silently raising his fist in protest during the Pledge of Allegiance. The student was protesting the treatment of a classmate, who previously had been chastised publicly for not reciting the Pledge. The Eleventh Circuit concluded that the principal and teacher were not entitled to summary judgment on qualified-immunity grounds. Thus, the student's free-speech claim was allowed to proceed. Because no disruption resulted from the student's silent protest, the court declared that the disciplinary action was an unwarranted infringement on his expression rights (*Holloman v. Allred* 2004).

State Law Issues

As noted previously, in the absence of a Supreme Court decision prohibiting corporal punishment or a federal law to that effect, states and local school districts have discretion to bar this disciplinary technique. Public educators can be disciplined or discharged for insubordination if they violate state or local provisions regulating or banning corporal punishment. In an illustrative case, a Michigan teacher was dismissed because he violated board policy by using corporal punishment after repeated warnings to cease (*Tomczik v. State* 1989). Other disciplinary measures also may be taken against teachers. A Nebraska teacher who “tapped” a student on the head was suspended without pay for thirty days under a state law prohibiting corporal punishment (*Daily v. Board* 1999).

There are legal remedies beyond statutory or school board restrictions to challenge unreasonable corporal punishment in public schools. Teachers can be charged with *criminal* assault (putting another individual in fear of bodily harm) and battery (touching another in a hostile manner), which might result in fines, imprisonment, or both. Also, *civil* suits for assault and battery can be brought against school personnel for monetary damages. Although courts are hesitant to interfere with the authority of school personnel to discipline students, some students have successfully sued school districts for damages in connection with corporal punishment that constituted assault and battery. To illustrate, a Louisiana appeals court awarded damages to a student who sustained a broken arm when a teacher shook him, lifted him against the gymnasium bleachers, and let him fall to the floor (*Frank v. Orleans Parish* 1967).

Even where corporal punishment is not prohibited by law or board policy, some local school councils have banned the strategy. Furthermore, individual teachers increasingly are electing to use other disciplinary techniques. Incidents of corporal punishment have declined steadily since 1976, when more than 1.5 million students were corporally punished in American public schools. Still, however, more than 340,000 students were subjected to corporal punishment in 1999–2000 (U.S. Department of Education 2003).

Teachers electing to use corporal punishment must be certain it is never administered with malice, and they should have another staff member present as a witness in case their actions later are challenged as unreasonable. In evaluating the reasonableness of corporal punishment, courts assess the child’s age and maturity; the behavior eliciting the punishment; the instrument used; the motivation of the person administering the punishment; and the nature of the child’s injuries (Cambron-McCabe, McCarthy, and Thomas 2004). Teachers always should keep a record of incidents involving corporal punishment, and they should adhere to minimum procedural safeguards, even though

such procedures may not always be legally required. For example, they should notify students and parents of behavior that will result in such punishment and advise parents when their children have been paddled.

Conclusion

There are mounting criticisms of the efficacy of corporal punishment, and research is mixed at best regarding its effectiveness in modifying behavior (Paolucci and Violato 2004). More than forty organizations, including the American Bar Association, the American Psychological Association, and the National Education Association, have gone on record opposing the use of corporal punishment in schools. For example, the National Association of School Psychologists has adopted a position statement condemning the use of corporal punishment in schools because it “negatively affects the social, psychological, and educational development of students and contributes to the cycle of child abuse and pro-violence attitudes of youth” (NASP Delegate Assembly 1998). The American Academy of Pediatrics (2000) also has recommended abolishing corporal punishment in all states because of its detrimental effect on students’ self-image and achievement as well as its possible contribution to disruptive and violent behavior. Given current trends across states and school districts, the use of this disciplinary strategy in public schools is likely to decline. If so, the United States will move more in line with the policies and practices of other countries.

References

- American Academy of Pediatrics. 2000. “Corporal Punishment in Schools.” *Pediatrics* 106 (August): 343.
- Cambron-McCabe, N., M. McCarthy, and S. Thomas. 2004. *Public School Law: Teachers’ and Students’ Rights*. Boston: Allyn-Bacon.
- Center for Effective Discipline. 2004a. *Discipline at School*. Retrieved February 11, 2005, from <www.stophitting.com/disatschool/worldwide.php>.
- Center for Effective Discipline (2004b). *U.S.: Statistics on Corporal Punishment by State and Race*. Retrieved February 11, 2005, from <www.stophitting.com/disatschool/statesBanning.php>.
- Daily v. Bd. of Educ.*, 588 N.W.2d 813 (Neb. 1999).
- Frank v. Orleans Parish Sch. Bd.*, 195 So.2d 451 (La. Ct. App. 1967).
- Garcia v. Miera*, 817 F.2d 650 (10th Cir. 1987).
- Gottlieb v. Laurel Highlands Sch. Dist.*, 272 F.3d 168 (3d Cir. 2001).
- Hall v. Tawney*, 621 F.2d 607 (4th Cir. 1980).
- Harris v. Robinson*, 273 F.3d 927 (10th Cir. 2001).
- Holloman v. Allred*, 370 F.3d 1252 (11th Cir. 2004).
- Ingraham v. Wright*, 430 U.S. 651 (1977).
- Johnson v. Newburgh Enlarged Sch. Dist.*, 239 F.3d 246 (2d Cir. 2001).
- Lilliard v. Shelby County Bd. of Educ.*, 76 F.3d 716 (6th Cir. 1996).

- Metzger v. Osbeck*, 841 F2d 518 (3d Cir. 1988).
- Moore v. Willis Indep. Sch. Dist.*, 233 F3d 871 (5th Cir. 2000).
- National Association of School Psychologists Delegate Assembly. 1998, April 18. *Position Statement on Corporal Punishment*. Retrieved February 11, 2005, from <<http://www.nospank.net/nasp2.htm>>.
- Neal v. Fulton County Bd. of Educ.*, 229 F3d 1069 (11th Cir. 2000).
- Paolucci, E. O., and C. Violato. 2004. "A Meta-analysis of the Published Research on the Affective, Cognitive, and Behavioral Effects of Corporal Punishment." *Journal of Psychology* 138: 197-221.
- Tomczik v. State Tenure Comm'n*, 438 N.W.2d 642 (Mich. Ct. App. 1989).
- U.S. Department of Education, Office for Civil Rights. 2003. *2000 Elementary and Secondary School Civil Rights Compliance Report*. Washington, D.C.: U.S. Government Printing Office.
- Wallace v. Batavia Sch. Dist. 101*, 68 F3d 1010 (7th Cir. 1995).
- Wise v. Pea Ridge Sch. Dist.*, 855 F2d 560 (8th Cir. 1988).

Notes

1. Iceland is the only country known to have banned corporal punishment in schools when the nation was founded.
2. For a list by state, see Center for Effective Discipline (2004b).