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McCluney, Roger Stanley, Ed.D.

The University of North Carolina at Greensboro, 1987

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The Legal Aspects of Corporal Punishment in American Public Schools

by
Roger Stanley McCluney

A Dissertation Submitted to
the Faculty of the Graduate School at
The University of North Carolina at Greensboro
in Partial Fullfillment
of the Requirements for the Degree
Doctor of Education

Greensboro
1987

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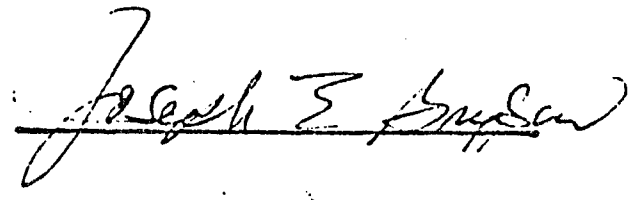
Dissertation Advisor 

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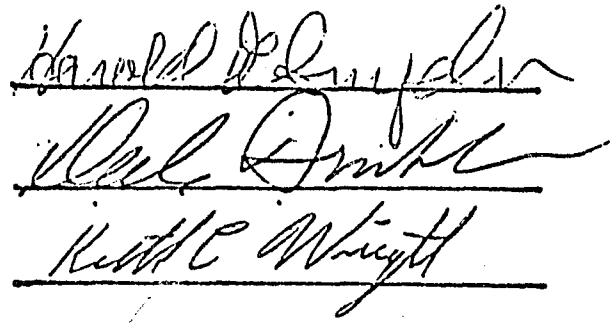

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McCluney, Roger. Ed. D. The Legal Aspects of Corporal Punishment in American Public Schools. (1987). Directed by Joseph E. Bryson. 280 pp.

Corporal punishment is a highly emotional and often litigated issue in public schools. Constitutional issues have involved Eighth Amendment protection from cruel and unususal punishment and Fourteenth Amendment guarantee of due process.

The purpose of this study is to provide educational decision makers with appropriate information, in order that they will be able to make sound decisions in developing school board policy regarding corporal punishment in American public schools.

Based on an analysis of the data, the following conclusions are drawn.

(1) Courts will continue to debate the constitutional aspects of corporal punishment.

(2) The due process clause of the Fourteenth Amendment becomes a moot issue as long as boards of education have well developed policies and school personnel follow them closely. The policies should be

posted and known to all employees, parents, and children in the system.

(3) The issue of assalut and battery in corporal punishment cases will contiune to be decided by state courts. Each case will be decided on its own merits leaving teachers and school administrators susceptible to spurious tort claims.

(4) The doctrine of "in loco parentis" has not been firmly established by the courts in cases where parents deny the schools permission to use corporal punishment. The argument that schools are acting on behalf of the parents is negated when schools use a form of punishment contrary to parental wishes.

(5) If school boards examine the evidence presented in this study, they may conclude that corporal punishment is not essential to maintaining an educational environment conducive to learning. Four states have abolished the use or corporal punishment and three others have abandoned corporal punishment as a viable alternative to other less controversial forms of punishment.

(6) Because boards of education are elected officials and are sensitive to public opinion, policies concerning corporal punishment will become more conservative and restrictive.

(7) School administrators in the Southeastern United States will continue to use corporal punishment more frequently than educators in other national geographic regions.

(8) Discipline or lack of discipline has not been proven as a factor in the number of incidences of corporal punishment reported by school superintendents.

(9) Although the efficacy of corporal punishment appears suspect in the minds of many of the judiciary, they have been hesitant to interfere in local matters involving corporal punishment as long as due process guidelines are established and followed in its application.

ACKNOWLEDGMENTS

Words fail to express the writer's deep sense of gratitude to Dr. Joseph Bryson for his boundless patience and encouragement during this study. Without his help and understanding this undertaking would have been impossible.

This writer also wishes to acknowledge the patience and understanding his family has shown during this period.

To his wife, Joyce, the writer dedicates this study.

TABLE OF CONTENTS

List of Tables

Chapter 1

Introduction

1.0. Overview.

Teachers, school administrators and other educational leaders are sensitive to the shifting of public opinion concerning administration of corporal punishment in public schools. Corporal punishment has received widespread news coverage in the last decade due in part to the emotional aspects attached to it. It is, therefore, the purpose of this study to present the current legal status of corporal punishment in American Public Education by an analysis of current legislation, case law, state board policy and articles pertaining to the topic. The study will supply school administrators and officials with information so that school policy and rules concerning corporal punishment can be developed which satisfy judicial concerns in corporal punishment litigation.

"The most prominent problem in America's public schools is lack of student discipline according to the

1984 Gallup Poll."[1] Discipline must not be confused with punishment. Discipline is the consistent organization of the learning environment necessary to facilitate learning.[2] Discipline of individual children has become a problem for teachers and consumes much time. With increased emphasis on achievement it becomes even more imperative for the teacher to find a method of controlling student behavior without taking time from academic instruction. Research indicates a strong relationship between student achievement and time on task.[3] The less time teachers and school administrators spend on discipline and discipline related matters, the more time there will be for formal instruction.[4] Punishment is the result of the breakdown of discipline. It is the most frequently used method of re-establishing the authority of the teacher in the classroom.[5] It involves either restricting the student in some way or

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1. Johnny Purvis and Rex Leonard, "A Lesson Plan for Effective Studeent Discipline", School Safety Newsjournal , Fall 1985, p. 10.
2. John Dewey, The Public and It's Problems, New York, Henry Holt Co., 1927, p.216.
3. E. L. Deci "Motivating Children to Learn: What You Can Do." Learning, 86 Vol.14, no. 7, March 1986.
4. Ibid.
5. A. Button, The Authentic Child, Random House, 1969 p. 233.

applying some form of physical punishment to the student. Physical punishment is most often described as corporal punishment. It involves striking the student with the hand, fist, or other object with sufficient force to cause pain.[6]

1.1. Status of Corporal Punishment in Public Schools.

A recent sample of teachers in Chicago reported discipline as the greatest cause of stress, second only to involuntary transfer.[7] In another survey 58% of the teachers studied ranked individual discipline of students as the number one cause of stress.[8] A study by the National Institute of Education reported that 36% of the assaults on urban teenagers occured at school. Almost 40% of the robberies which were reported occured at school.[9] High schools have the biggest problem because they are dealing with older children, some of

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6. Robert Dreikurs, Psychology in the Classroom: A Manual for Teachers. New York, Harper and Row, 1957, p. 156.
7. Vern Jones, "An Administrator's Guide to Developing and Evaluating A Building Discipline Program", Phi Delta Kappan , Fall 1985, p 60.
8. Ibid., p. 60.
9. Op. cit., Purvis and Leonard p.10.

whom have reached 18 years of age.[10] Elementary schools have disciplinary problems which prevent them from being as effective as their potential would appear. The top five inappropriate behaviors which often result in corporal punishment, ranked by teachers in order of their frequencies are: not completing homework assignments, tardiness without acceptable excuses, not paying attention in class, littering school grounds and not bringing necessary books and materials to class.[11]

Minorities have expressed concern about the use of punishment because a disproportionate number of minorities have been suspended or expelled.[12]

1.2. Definition of Terms.

Defining terms is difficult because of the complexity of state statutes that do not limit corporal punishment to one category and define terms in a variety of ways. For the purpose of this study:

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10. R. L. Curwin, The Discipline Book: A Complete Guide to School and Classroom Discipline, (Reston, Va., Reston Publishiong Co., 1980) p. 77.
11. Ibid., p.11.
12. Ibid.

(1) Students are those children who attend public supported schools in the United States. There is no restriction as to age, physical or mental condition.

(2) School is defined as a public educational institution comprising grades kindergarten through twelve and supported by public tax money.

(3) Discipline is training that develops self control, character, or orderliness and efficiency.[13]

(4) Punishment is any adverse stimulus which is used to reduce the rate or probability of a reoccurance of some behavior.[14]

(5) Corporal punishment includes paddling, slapping, jerking, hairpulling or other means of inflicting pain by physically touching the student. Corporal punishment does not include physical restraint of a student by a principal or teacher to prevent harm

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13. Websters New World of the English Language, (New York, N.Y., World Publishing Company, 1972), p. 401.

14. Andrew J. Heitzman, Education "Discipline and the Use of Punishment", vol. 104, no. 1, Fall 1983, p. 17.

to the student, another person, anothers property, or self defense.[15]

1.3. Coverage and Organization of Issues Involved.

The apparent need for effective and efficient discipline is the cornerstone of the education process.[16] The maintenance of discipline is contingent on a preventive, problem solving process. Punishment for infraction of rules is imperative.[17] The type of punishment and severity of the punishment should be in relation to the age of the child, severity of the rule infraction, and goals of the school.[18] Too often, teachers do not try to prevent discipline problems but wait until a crisis is reached and administer short term punishments which do not resolve the long term

15. Anne M. Dellinger,"North Carolina School Law-The Principal's Role", The Institute of Government, U.N.C. Chapel Hill, 1981, p. 44.

16. Cary Purcell, "Limiting the Use of Corporal Punishment in American Schools: A Call For More Specific Guidelines", Journal of Law and Education, Vol. 13, Number 2, (April 1984) p. 183.

17. Ivan B. Gluckman, "Court Urges Use of Common Sense in Discipline Cases", N.A.S.S.P. Bulletin, Vol. 69, (March 1985), p. 34.

18. Ibid p. 36.

19. John Chandler, "Linking Child Abuse, Corporal Punishment," National School Safety Center Newsjournal, (Fall 1985) p. 26.

problem.[19] Corporal punishment is just one method of dealing with chronic discipline problems which may be handled better by other means.[20] This is not to say corporal punishment does or does not have a place in public education. It may, however, be used when other means of controlling student behavior would work as well.

Corporal punishment is more often administered in the South than in other geographic regions of the nation. In a national survey, 70% of the teachers from the South used corporal punishment during the previous year. This compared with 54 % from the Midwest and only 34% from the East. The North Carolina Association of Educators reports that it defended about 35 teachers each year who are accused of excessive corporal punishment.[21] State statutes view suspension or expulsion as a much more severe form of punishment than spanking. The Goss[22] type due process hearings,

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20. Ibid. p. 27.
21. Richard Blanton, "If You Spank 'Em , Pay Your Insurance", North Carolina Education, (Nov. '77) , p.12.
22. Goss v. Lopez, 419, U.S., 565, (1975).

affirmed in Baker v. Owen,[23] are still required in either case. The child must be afforded an opportunity to respond to any charges and a witness must be present during the punishment.[24] North Carolina prohibits local boards of education from banning corporal punishment at the local level.[25] The local boards do, however, have the right to determine under what circumstances corporal punishment may be used and the procedures which must be followed in administering it. North Carolina is a Southern State in both its traditions and philosophy. It ranks fifth in the nation in the use of corporal punishment based on the number of times reported and the number of students enrolled.[26]

Public schools are social institutions which allow interaction between students and peers, students and teachers, and teachers and other adults.[27] The educational process is regimented and requires precise time schedules in order to keep the school day going

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23. Baker v. Owen, 395 F. Supp. 294 (M.D.,N.C.) 1975.
24. Ibid.
25. North Carolina State Statute, Section 115-146.
26. Adah Maurer, End Violence Against the Next Generation Newsletter, vol 14, No.1, Fall 1985, p. 24.
27. Morris A Wessel, "The Pediatrician and Corporal Punishment", Pediatrics, 1980, 66, (4), p. 640.

smoothly and meet all the various activities which take place. Social interaction is a necessary part of the childs education. It is necessary to closely monitor the interaction and control certain aspects of it in order to facilitate the education process. All this is part of maintaining good discipline and organization in schools. When a child begins kindergarten he has few options in what he will do. The child's behavior is closely monitored and controlled. As he gets older more freedom is given and more responsibility is assigned when the maturity level of the child is such that he can cope with it. Responsibility develops as experience teaches students the logical consequences of their behavior. Since not all students mature at the same rate, those who do not exhibit self control must be taught by experience and example.[28]

Corporal punishment, detention, suspension, and expulsion are the main external measures of enforcing rules in school. If corporal punishment is removed in

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28. Steven R. Forness and Esther Sinclair, "Avoiding Corporal Punishment in School: Issues for School Counselors", Elementary School Guidance and Counseling, V.18, N. 4, April 1984, p. 274.

the future there will be few alternatives to suspension or expulsion.

Although attitudes about the use and abuse of corporal punishment in public schools have changed drastically over the last few years, it is still deeply imbedded in the American culture and is generally accepted by school systems and parents alike.[29] Only Hawaii, Maine, Massachusetts, New Jersey, and California prohibit it by state statute.[30]

This study will focus on the state statutes and landmark cases which have had the greatest impact on corporal punishment. A review of the literature on corporal punishment reveals many problems which school administrators and teachers face when using spanking as a disciplinary tool. Often, disciplinary measures intended to be minor, result in serious physical damage or in some cases death.[31] In 1975, the Council of the American Psychological Association drafted a resolution

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29. Ibid. p.269.
30. Ibid.
31. Morris A Wessel, "The Pediatrician and Corporal Punishment", Pediatrics, 1980, v. 66,(4), 640.

to oppose corporal punishment.[32] Moreover, local and national organizations have actively opposed corporal punishment and there are several organizations which exist for the sole purpose of abolishing it.[33]

Although Horace Mann opposed the use of corporal punishment in the Common School, it's use has increased over the last several decades and it was still used by seventy four percent of the school administrators surveyed in 1974. Sixty four percent of them believed it was effective. Children and women of the eighteenth and early ninteenth century were considered little more than possessions of the male household members and had few rights.[34] Given the historical perspective that, during Mann's time, the husband was allowed to beat his wife with a stick which was no larger than his thumb, it is not surprising that corporal punishment is still used widely in our society today.[35]

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32. Ibid.
33. Adah Mauer, "Editorial Comment", Newsletter of the Committee to End Violence Against The Next Generation, Inc. Vol. 13, N. 4, Summer 1985, p. 1.
34. John Chandler, "Linking Child Abuse, Corporal Punishment", The National School Savety Center Newsletter Fall, 1985 p. 26.
35. Ibid.

1.4. Questions to be Answered.

The major purpose of this study is to examine the statutory law and common law decisions which have shaped the current policies which affect the use of corporal punishment in public schools.

The questions which this study will address are:

1. What does analysis of State Statutes reveal concerning corporal punishment?

2. What does an analysis of Judicial Decisions reveal concerning the use of corporal punishment?

3. Predicated on an analysis of State Statutes and Judicial Decisions, what are the emerging legal trends and issues?

4. Predicated on Judicial Decisions, what are reasonable policies for school officials concerning corporal punishment?

1.5. Methodology

This is a study of legal issues concerning the status of corporal punishment in American public schools. The methodology is historical and descriptive. The study begins with a search of existing works in the field using Dissertation Abstracts. Computer assisted searches were then initiated using word descriptors from the Thesaurus of the Educational Resources Information Center (ERIC). A search was also made of the Education Index and the Cumulative Index to Journals in Education.

General references include the Encyclopedia of Educational Research, and Phi Delta Kappa's Legal Research for Educators (1984). The National Organization on Legal Problems in Education (NOLPE) publishes the School Law Reporter which reviews the current cases concerning education.

Legal research was assisted by the Corpus Juris Secundum, American Jurisprudence, The American Digest System, Supreme Court Report, and Federal Suppliment. Black's Law Dictionary was helpful in identifying and defining terms. The American Law Reports was valuable

in providing insight into the legal issues involved in corporal punishment.

The research included an analysis of recent literature concerning corporal punishment and covered landmark cases which help shape state and local school board policies. State statutory laws were examined and trends were discussed which affect the use of spanking in the public schools.

State school board policies have a broader influence on the administration of corporal punishment in the public schools than state statutes because many states do not have statutes which address the issue of corporal punishment. Supreme Court cases affect the formation of both state statutes and state board policies. State legislatures have, therefore, been reluctant to establish statutory law where state board policy already exists.

The study began with the assumption that corporal punishment in American Public Schools would decline rapidly because of the public pressure placed on the schools. The formation of state board policies is more susceptible to public or political pressure than

statutory law. Therefore, local and state board policies, along with state statutes and case law, shape the future of corporal punishment in American public schools.

Review of the Literature

2.0. Introduction

Opponents of corporal punishment in public schools think they have momentum on their side. The 1985 General Assembly of North Carolina considered a bill sponsored by Representative Marie Colton of Buncombe County which would give school boards the option to prohibit corporal punishment in school districts. There has been legislation introduced in North Carolina every year since 1985 to prohibit corporal punishment or restrict its use in some way. North Carolina is only one of several states which is currently considering such legislation. There has been strong emotional support for abolishment of corporal punishment across the country. Several organizations have been created for the sole purpose of its abolition. In North Carolina the bill to abolish corporal punishment passed the House on the second reading but failed in the Senate by a narrow margin. There was a study commission established which began work in December of 1985. John Niblock, Executive Director of the North Carolina Advocacy Institute says

"It seems to me to be the very least that we can do-to let the local board decide".[1]

In a panel discussion concerning corporal punishment which was held in Charlotte during the summer of 1985, the speakers generally fell into three categories:

(1)Religious leaders who believe the Bible teaches the use of spanking;

(2)Those who believe parents should have the right to choose if their child is to be corporally punished outside the home;

(3)Those who feel corporal punishment encourages abuse and violence.[2]

The North Carolina Association of Educators has asked that time out centers be located in each elementary school and in-school suspension centers be located in every middle school and high school in the state. The in-school suspension centers would be manned

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1. Paul O'Conner, Daily Courier, "Anti-Spanking Cause Gains Momentum", December 4, 1985, p.2A.
2. Paul O'Conner, The Charlotte Observer, "Panel Hears Emotional Pleas", July 25, 1985, p. 2B.

by trained and certified professionals who would have time and resources to deal with severe disciplinary problems. Some of these suggestions have been included in the basic education plan for the state.

When the legislature develops a package of alternatives which is affordable and appears to have the necessary ingredients to help promote good discipline in the classroom the "teachers of North Carolina will certainly support it".[3]

2.1. Historical Perspective of Corporal Punishment

Horace Mann knew children differ in temperament, ability, and interest. Mann likewise knew that "discipline of a free school must be the self-discipline of the individual".[4] Pre-Civil War writers and practitioners of education had few disciplinary problems in schools because development of universal free school for all children was still in its infancy. Only the privileged few were allowed to attend school and the slightest infraction of the rules was adequate reason

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3. Ibid.
4. Lawrence A. Cremin, The Transformation of the School, (New York: Random House, 1964), p. 11.
5. Ibid. p. 234.

for dismissal. [5] Students were highly motivated because they were there by choice and parents could see the need for formal education. The agricultural revolution was past and the industrial revolution was about to be born. Assembly line manufacturing and power to run automated machines was just developing. It was a time of rapid transition for America and schools were just beginning to develop as tax supported institutions which would one day have the responsibility of educating the entire population.

William Dempster Hoard, the editor of Hoard's Dairyman, said in 1895 "...as it was 60 years ago in our boyhood so it is today in 99 out of 100 schools. Not a grain of progress that will help a country boy to a better understanding of the problems of agriculture."[6] It is still true in schools of today, "much of what is taught is not worth knowing as a child, let alone as an adult, and little will be remembered."[7] When children find material uninteresting and feel there is no need for acquiring that knowledge except to submit to

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6. Op cit. Cremin. p. 45.
7. Charles Silberman, Crisis in the Classroom, (New York, Random House, 1970), p. 174.

authority of the teacher there is little learning and many disciplinary problems. As support for schools entered the mainstream of American politics, education became a plank of most politicians' campaign platforms.[8] National leaders saw the need for an educated and informed populace in order to make intelligent decisions concerning election of government officials. Moreover, the industrial revolution created a need for people with special skills and talents who were able to read technical manuals and fix complicated machines.[9] Schools changed in response to needs of society but lagged behind and became a braking force on society.[10] It became the responsibility of schools to teach those values which employers wanted in their employees.[11] At the beginning of the Great Depression and Stock Market Crash of 1929, Americans were a society of industrialists who were enjoying a standard of living which was unprecedented prior to the twentieth century. Along with mass production came mass marketing and mass advertising which created new needs or wants in the

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8. Ibid.
9. Ibid.
10. Ibid., p. 135.
11. Ibid.
12. Op cit. Cremin, p. 145.

population. [12] Products were introduced creating leisure time and other products were marketed to fill the void created by the new freedom.

As the economy changed, the society which was supported by it changed drastically. Urbanization, industrialization, and mobilization were influencing factors. Big cities grew rapidly due to the need for large work forces in a concentrated area. The advent of cheap rapid transportation combined with easy availability of jobs encouraged people to move often and sometimes for great distances.[13] Stress placed on the family is measured in part by increase in crime rates in large cities and increase in divorce rates across the United States. The development of radio and television in the nineteen thirties and nineteen forties made people more aware of changes. Decreasing stability of the family during the last five decades has also influenced the way schools responded to the problem of discipline.[14] Schools have been negligent in asking for parental support and are partly to blame for the lack of

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13. Neal Postman and Edward Weingartner, The School Book, (New York; Random House, 1961) p. 76.
14. Ibid.
15. Ibid., p. 156.

participation in school related disciplinary matters.[15] Parents are usually only called after the child has broken some rule which cause problems for the school administrator. This tends to make the parent defensive and prone to take the child's side in many disciplinary matters.[16] Churches have assumed more social functions and less leadership in teaching values and working to instill desired social or religious values which are acceptable in our society today.[17]

The machine age is accentuated no where more sharply than in the sudden proliferation of microtechnology.[18] It has provided American people access to masses of information in every area with the touch of one button. Teaching methods are changing only now and will continue as technology provides additional help in the instructional process.[19] Teaching is still a social process and will remain so for generations to come because no machine can provide flexibility and

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16. Morris A. Wessel, "The Pediatrician and Corporal Punishment", Pediatrics, 1980, 66, (4) p. 480.
17. Ibid.
18. Ibid.
19. Ibid.

warmth of a caring teacher in the classroom.[20] The socialization of children is accomplished primarily in the public school classroom under the supervision and direction of the classroom teacher. As the child matures and encounters various situations which promote emotional maturity there will invariably be conflicts and discipline will be necessary to maintain order. Teachers should be aware that "the problem of maintaining personal relationships in our living has become acute in an age of machines, large corporate enterprise, mass pressures and propagandas, all tending toward depersonalization of human relationships."[21]

2.2. Corporal Punishment in Maintaining Discipline

The conception of what democratic government should be is still developing but corporal punishment is rooted in an authoritarian society. It assumes man is incapable of proper action unless he is forced by physical violence or threat of violence. The authoritarian conception of government is characteristic

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20. Ibid.

21. Herbert Arnold Falk, Corporal Punishment, Bureau of Publications, (New york: Teachers College, Columbia University, 1941) , p.117.

of societies in which class distinctions are necessary to maintain the authority of the ruling class.[22] The ideologies of the dominant class support the strong need for discipline to restrict uncontrolled activities of the lower class. John Dewey said ideas, ideals, and values are born out of the conflict of experiences and needs. According to Dewey, any society is an aggregate of individuals losely held together by a common authority. Members of that society will be static and will respond to external authority and rewards and not for the common good of the group.[23] Dewey proposed a society which would discipline itself and monitor its own behavior to the extent that outside laws and forces would be unnecessary. Although this is an ideal social order, Dewey believed it is within the potential of mankind to achieve such a society.[24]

Children are asking for help with their problems when they break rules. Young children are often not able to articulate their problems and do not understand them well enough to communicate their needs to the

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22. Ibid., p. 109.
23. John Dewey, How We Think, (Boston: D.C. Heath and Company, 1933) p.147.
24. Ibid.

authority figure. Clinicians and psychologists agree poor behavior is symptomatic of other problems which require treatment other than harsh discipline.[25] The result of this philosophy is the trend among counselors to act as change agents in teaching educators alternatives to corporal punishment.[26] Although elementary school counselors spend much time in individual or group counseling, the expanded role of the counselor includes being a resource person for discipline problems with teachers and principals. A 1977 survey found that 80% of all classroom teachers used corporal punishment but there was an even higher number which wanted to learn better alternatives to striking a child.[27] Although there are only four states which forbid it by statutory law, there are only 37 states which even define it after authorizing its use. Challenges to the use of corporal punishment are very common and will continue to increase as the public becomes more aware of alternatives which are available

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25. Esther Rothman, The Angel Inside Went Sour, (New York: Van Reese Press, 1970), p.183.

26. Steven R.Forness and Ester Sinclair, "Avoiding Corporal Punishnment in School: Issues for School Counselors", Elementary School Guidance and Counseling, V. 18, N. 4, P. 268.

27. Ibid.

to the teacher. Public tolerance of the practice as a last resort will continue but the professional educator will find it increasingly difficult to garner support in the community because the public tends to be sympathetic to the child, especially when people do not know all the circumstances which precipitated the action. Corporal punishment should never be used as a first method of maintaining order in the school. Its effectiveness depends largely on other factors such as timing, social implications, certainty the punishment is understood and is linked to the behavior which is inappropriate, and presentation of alternatives to the punishable behavior.[28]

If punishment is to be effective, it must be applied quickly and consistently so the child will learn the behavior will result in immediate punishment and the punishment will be applied every time the child displays the behavior. It will also be more effective if it is applied by someone who has the respect of the child and

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28. Ibid. p.114.

has a positive relationship with the student. [29] If the corporal punishment can be applied soon after the incident, it has more meaning and will have a more lasting effect on the child. The person doing the punishing should be certain the child knows the reason for the punishment and is certain that a repetition of the offense will result in the same or worse punishment. The Goss[30] type due process hearings insure recommendations made here are carried out. The most often omitted factor in administering punishment is alternatives to the actions which are being punished should be discussed and explained to the child.

Any positive effect of punishment will be short lived unless the child is given structure and support in developing appropriate behavior. Corporal punishment also has the added disadvantage of creating a violent adult role model for the child to imitate, yet scientific research has not proven that corporal

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29. Robert Curwin, The Discipline Book: A Complete Guide to School and Classroom Discipline, (Reston Virginia: Reston Publishing Comoany 1980), p. 266.

30. Goss v. Lopez, 419 U.S. 95 S. Ct. 42 L.Ed. 2d. 725 (1975).

punishment has any effect on the child in causing him to be more aggressive as an adult.[31] The primary task of any teacher is to insure proper behavior, not just punish improper behavior. It is more effective for a teacher to take hold of a child's arm and prevent him from striking another child than to take him to the principal's office after the incident takes place and punish the child for the behavior only after the act is completed. Preventive discipline or proactive discipline is certainly the most desirable type but is not the norm in the public school classroom.[32] It is obviously impossible to prevent all behavior problems and the teacher needs to be prepared to react in an effectve manner when this happens.

The classroom environment contributes to some of the disciplinary problems which teachers have. It may be necessary to physically relocate the child from one area of the room to the other. Other times it is necessary to give the child more attention and responsibility in class in order to satisfy the need to

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31. Charles Brenner, An Elementary Textbook of Psychoanalysis. (New York: Doubleday, 1955), p.324.
32. Ibid., p. 266.

achieve and be recognized. Children will succeed at something in school. If they cannot compete successfully in academics, the students will either withdraw or succeed at getting attention by poor behavior. The first step in dealing with the misbehavior of any child is to consider the circumstances of the behavior and try to modify that part of the environment which precipitated the undesirable behavior. No child comes to class as John Lock's "tabula rosa" but brings all his prior experiences and attitudes.[33] Teachers must learn to build on these experiences and help the child to see them in the perspective of the school environment. The best type of discipline is self discipline but it requires a lot of time and effort from the school officials to develop in some children.[34] The minority of children will consume the majority of time in handling disciplinary matters.

The hierarchy of punishments used in the public school classroom are as diverse as teachers themselves. Educators have less authority over children than the

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33. Ibid.
34. Ibid.

parents because the schools have them in their care for such a shorter period of time. Parents also have options available to punish children which teachers do not. Parents may restrict privileges at home such as television viewing, bike riding, or movie attendance. The planned experiences available to the students at school are a part of the curriculum which is adopted by the State Board of Education and may not be eliminated or restricted. Alternatives are corporal punishment, suspension and expulsion, the latter two of which are considered more severe than corporal punishment by the courts.[35] Mild and occasional forms of misbehavior are dealt with by the teacher in an informal and casual manner. It is the repeated behavior or the severe behavior problem which requires more severe measures. The main problem with other less controversial forms of punishment is that not all forms of punishment are truly punishment to all children. Taking a child out of class as a punishment may not be a punishment but a reward if

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35. Richard Blanton, "If You Spank'em, Pay Your Insurance," North Carolina Education, (Nov. 1977), p. 14.

the child wanted out of the class to begin with.[36] Suspension and expulsion have the same hazzards.

Many psychologists contend parents should have some say whether their child will be subjected to corporal punishment.[37] Even though some parents may wish to have their children corporally punished, it is good public relations to involve parents in the disciplinary measures which are used in school.[38] One task for all educators is to develop a school atmosphere which is conducive to learning and allows children to succeed without the threat of harsh punishment. Since educators cannot be all things to all people, it is unlikely teachers will achieve this noble goal in the near future but certainly it should remain as one aspiration.[39]

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36. Alvin Button, The Authentic Child, (New York: Random House, 1969), p. 105.
37. Ibid. p. 274.
38. Ibid.
39. Ibid.

2.3. Social Implications of Corporal of Corporal Punishment

Although attitudes about the use and abuse of corporal punishment in public schools have changed drastically over the last few years it is still deeply imbedded in American Culture and is generally accepted by school systems and parents alike. This is especially true in the South East. The civil rights movement of the sixties resulted in the Federal Government using schools to make social and civil changes which society at large resisted.[40] Using schools to force changes upon society was not new but this was the first time it was used to make such sweeping changes in the direction of American social order. The use of schools to force racial integration too often caused alienation and harsh feelings of Southern people toward schools in the South.[41] Schools have received a lot of bad publicity and some of it has been deserved. The education community has not developed educational statesmen who

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40. Mark G. Yudof, "Suspension and Expulsion of Black Students from Public Schools: Academic Capital Punishment and the Constitution", Law and Contemporary Problems, 39, Spring 1975, p. 38.

41. Ibid.

are willing and able to refute some of the unwarrented criticism. Too often salaries have not been competitive with the private sector and many of the best and brightest young potential educators have chosen more lucrative careers in industry. The result is a poor professional public image and poor self esteem by the profession itself. Professional educators have been eager to accept any and all criticism levied against them by any writer who wants to make a name for himself at the expense of public education. Corporal punishment is one area of vulnerability which has attracted numbers of people who are willing to attack schools at their weakest point. Adah Maurer, the Executive director of End Violence Against the Next Generation,[42] is a good example of this kind of attack. The quarterly news letter is comprised mainly of newspaper clippings which have been sensationalized by the press or stories which have been related by parents who have an ax to grind with the teacher or principal who corporally punished their child. It reads much like scandle sheets of the turn of the century which played to the emotions of

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42. Adah Maurer, "End Violence Against the Next Generation" Newsletter, Vol. 14, no. 1, (Fall) 1985, p. 12.

people. It relates much more opinion and prejudice than facts. The result of Maurer's publication is a great deal of sympathy for children who are subjected to corporal punishment and parents of children who have been abused at the hands of some school teachers and administrators.[43]

Schools now have compulsory attendance laws which require a child to attend school for the majority of his childhood. Each state differs in the wording and the number of years which is required but all states require school age children to attend for some period of time. Add to this the tension which has been generated in schools by racial intergration within the last two decades and the result is a climate which is perfect for violence and hostility.[44] Add increased pressure on teachers for higher test scores and teaching has become one of the more stressful occupations. People under stress can over react when faced with open hostility or aggression. This results in punishment being handed out with excessive zeal and children are bruised or injured by people who would not have otherwise used force of any

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43. Op. cit. Paul O'Conner.
44. Ibid.

kind. As Philip Jackson said in his book The Teacher and the Machine: "Our most pressing educational problem is learning how to create and maintain a humane environment in our schools."[45] Unfortunately teachers are not trained in how to maintain a humane environment in their classrooms. Teachers are trained very little when they enter the teaching profession and the result has been to pass the responsibility of teacher preparation along to local schools.[46] Quality of education has been under attack and discipline has been at the heart of the criticism. Teachers have not been taught how to deal effectively with discipline and how to deal with their own stress. As Charles Silberman asserted "Education is not a science or discipline and cannot be made into one."[47] It is, instead, a combination of science and performing arts. Teachers are responsible for organizing material in such a manner to make it easily understood and learned. Teachers must then present material to the student in a way to make it meaningful and the child motivated to learn. The

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45. Phillip W. Jackson, The Teacher and the Machine, (Pittsburgh, Pa: University of Pittsburgh Press, 1968), p. 147.
46. Ibid.
47. Charles Silberman, Crisis in the Classroom, (New York: Random House, 1970), p. 126.

process is nebulous and hard to define even by experts in the field. All this must be done while maintaining a high level of discipline in the classroom and keeping to a strict schedule of school activities.

The United States leads the world in recognizing human rights. Other nations do not enjoy the freedom American democracy gives and do not place value on human dignity or human life as America has done. It was during the mid 1970's that a proliferation of court cases regarding corporal punishment received national attention. It was also near this time former President Jimmy Carter began publicly chastising other nations which did not recognize and respect the worth and dignity of individuals. The mood of America and political climate was such that Americans were more willing to protect the rights of the poor, indigent, and helpless. The rights of children became a popular cause during this period also. Due process was afforded criminals and children. Procedures for insuring children's rights were outlined in Goss and have been

the foundation for many later court cases involving student rights.[48]

2.4 Corporal Punishment: A Global Perspective

In 1979 Sweden adopted a recommendation to abolish corporal punishment. It is the only industrialized nation to adopt such a policy on a national scale. This law applies to parents, schools, nurseries and any institution or agency responsible for rearing or care of children.[49] Prohibition of corporal punishment in 1979 was done in connection with the comprehensive rewrite of the Swedish Parents Code. It was written against a backdrop of renewed awareness of the rights of children. A special commission on childrens' rights was established in 1977 and suggested corporal punishment should be treated separately from the whole act and different regulations should prevail.[50] Supervision of children by schools and other institutions was placed under the Parents Code and use of corporal punishment was placed under the penal code in order to have all the

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48. Op. Cit., Goss v. Lopez
49. Klaus A. Zeigert,"The Swedish Prohibitiion of Corporal Punishment: A Preliminary Report", Journal of Marriage and the Family, Vol 45, No. 4, Nov. 1983, p. 917.
50. Ibid.,

necessary authority and legal sanctions to enforce the new ruling. Such a regulation would leave no doubt that corporal punishment of children would be punishable as any attack on another person.[51]

Sweden recognized the problem it would have with immigrants which enter the country but made no allowances for differences in their background and philosophy concerning corporal punishment. Another group which was of concern to the Swedes were those who claim religious grounds for use of corporal punishment. The community of religious groups traditionally strengthened the traditional values but some segments of the religious community actually prescribe strong discipline and corporal punishment as part of their religious heritage.[52] The United States has many religious groups and sub-cultures which have corporal punishment as part of their heritage and it is so deeply engrained in their lifestyle it would be difficult to change. The Moral Majority has made significant progress

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51. Ibid.
52. Ibid. p. 646.

in influencing education.[53] Jerry Falwell has proposed religious pressure groups or special interest groups should support political causes or certain political candidates which are sensitive to their views. Although this is in direct contradiction to the separation of powers of church and state it is a significant factor in government and will play a role in the future of corporal punishment in America.[54]

There can only be an estimate of the frequency or forcefulness of corporal punishment during the colonial days. It was a religious society which was based on "spare the rod and spoil the child".[55] The book of Proverbs, maintains, "Do not withhold discipline from a child; if you beat him with a rod, he will not die. If you beat him with the rod you will save him from Sheol."[56] The New Testiment of Hebrew states

> "..we have had earthly fathers to discipline us and we respect them. Shall we not much more be subject to the Father of Spirits and live? For they disciplined us for a short time at their pleasure, but he disciplines us for our good, that we may share his holiness.

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53. Ibid.
54. Ibid.
55. Op. cit. Cremmin.
56. Holy Bible, "Proverbs", Chapter 23, Verses 13 & 14.

> For the moment all discipline seems painful rather than pleasant; later it yields the peaceful fruit of righteousness to those who have been trained by it."

[57] The federal report on education of 1900 indicated several trends. There was an increase in the number of communities in which corporal punishment was abolished. There was an increasing tendency to use corporal punishment in schools only as a last resort. There was an increase in the number of cities abolishing corporal punishment in girls' schools, increased record requirements concerning corporal punishment, and a tendency to require permission from parents or supervisors before administering corporal punishment.[58]

2.5 Corporal Punishment as a Disciplinary Tool

Discipline problems have been traditionally resolved through some form of punishment. Any form of punishment implies control through fear or pain of some type and involves the use of negative consequences to

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57. Ibid., "Hebrews", Chapter 12, Verses 9-11.
58. Herbert Arnold Falk, Corporal Punishment, (New York: Bureau of Publications, Teachers Colege, Columbia University, 1941), p. 92.

discourage unacceptable behavior. [59] Thorndike's Law of Effect explains the theory behind this method of behavior change. It says:

> "Of several responses made to the same situation, those which are accompanied or closely followed by satisfaction to the animal will, other things being equal, be more firmly connected with the situation, so that when it recurs, they will be more likely to occur; those which are accompanied or closely followed by discomfort to the animal will, other things being equal, have their connection with the situation weakened so that when it recurs, they will be less likely to occur. The greater the satisfaction or discomfort, the greater the strengthening or weakening of the bond."

[60] Description of the stimulous-response bonding which Thorndike described is related to Skinner's S-R bonding which became popular during this same time period. Sigmond Freud gave another explanation for using corporal punishment as a deterrent through his pleasure-pain principle. [61] The pleasure principle states that the organism attempts to function in such a way as to achieve pleasure and to avoid the opposite. Corporal punishment should make the discomfort so intense and

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59. Ibid.
60. E.L. Thorndike, Animal Intelligence,(New York: Macmillian Publishing Company, 1911), p.244.
61. Ibid.

immediate the child would not consider repetition of the act which precipitated the punishment.[62]

Punishment in public schools often takes the form of corporal punishment because of the restrictions placed upon schools which limit the types of punishments available to them. Many professional educators such as Charles Miller endorse the use of corporal punishment when the teacher has exhausted other approaches.[63] He asserts when corporal punishment is the only effective means of correction, and teachers should not be denied the right to use it. Miller further suggests that failure of the classroom teacher to use corporal punishment in an aggravated situation may reinforce the student's negative concept of the teacher, school and society. Millers statement concerning spanking as a disciplinary tool states:

> "Those who would absolutely deny teachers the right to exercise their judgment as to the efficacy of corporal punishment are not only divorced from the realities of the classroom,

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62. C. Brenner, An Elementary Textbook of Psychoanalysis, (New York: Doubleday, 1955), p. 73.

63. Charles Miller, "Should Corporal Punishment be Abolished in the Elementary School-No", Instructor, March 1980, p. 22.

but are also expressing very directly their doubt that teaching is a true profession."[64]

Although there is limited empirical research concerning discipline models there is not indisputable documentation that one model is superior to others.[65] Brodinski challenged Millers' position by showing that corporal punishment has not been shown to be an effective deterrent to disruptive behavior. According to Brodinski, children who respond only to corporal punishment have not been exposed to other forms of discipline. The defense of corporal punishment as a necessity to defend teachers from attacks by students is illogical because the vast majority of spankings reported occur in the primary grades.[66] Kenneth Clark of the New York Board of Regents uses even stronger language in his criticism of spankings. He said adults who resort to this method of discipline are manifesting symptoms of personal instability and are communicating

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64. Ibid.

65. I.A. Hyman, "Discipline in American Education: An Overview and Analysis", Journal of Education, Spring 1979, p. 61.

66. Burt Brodinski, "Practical Applications of Research", Newsletter of Phi Delta Kappan Center on Evaluation and Research, Vol.4, no.1, September 1981 p. 64.

violence to children as a legitimate way of resolving conflict.[67]

There is a large body of research which indicates a strong relationship between student achievement and time on task, instructional quality, and limited time spent on management problems. [68] One of the most time consuming management problems with which teachers deal is student discipline. Numbers of schools have responded by developing school wide or system wide disciplinary policies to help teachers deal with problems as they arise and to help prevent many disciplinary problems by making sure the student is aware of the consequencies of the student's behavior. Approximately three out of four schools have some form of written disciplinary policy.[69] The single most important problem with discipline is to be consistent in dispensing it and fair in dealing with children. At the same time, teachers should be aware of the tremendous

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67. Kenneth Clark, "Should Corporal Punishment be Abolished in the Elementary School-Yes", Instructor, March 1980, p. 2.

68. Ibid.

69. Vern Jones, "An Administrator's Guide to Developing and Evaluating a Building Discipline Program", National Association of Secondary School Principals Bulletin, April, 1984, p. 60.

responsiblity they have as professional educators to deal with each child as an individual. Educators use written disciplinary policies as an excuse to treat all children alike without regard for individual needs and backgrounds. This is part of the problem of minorities being suspended or expelled more frequently than whites.[70]

Fourteen of the fifteen Gallup Polls conducted between 1969 and 1983 reported Americans view discipline as the most important challenge facing teachers today.[71] Although there is a trend toward preventing misbehavior in schools rather than punishment of the student after the behavior is exhibited, there is still a wide gap between what teachers think should happen in the classroom and what actually takes place. Teacher training has come into the limelight and the result has been impressive. Additional training is being recommended for teachers in many states. North Carolina is currently exploring the possiblity of making teaching a five year degree program. The prospective teacher would receive a liberal arts undergraduate degree and be

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70. Op. Cit. Mark G. Yudof, p. 40.
71. Ibid.

required to take education courses at the masters level. "Research has recently shown that teachers trained in certain classroom organization and instructional skills have significantly fewer problems with student misbehavior and have students whose achievement is significantly higher than teachers who lack these skills."[72] Since most disciplinary codes or rules are made in a response to a perceived need there is a tendency to word rules in a way to emphasize negative aspects of behavior and generate distrust between staff and students. With increased training and close monitoring of new teachers there is an increased probability for teacher success. Principals cannot administer a disciplinary program for an entire school, so the responsibility for managing behavior of students falls mainly on teachers. It is important for the principal to give strong leadership in all disciplinary matters. The principal should also give consistent support to teachers in making decisions about discipline. "Often, after a number of discipline referrals, the principal realizes that the identified

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72. Ibid. p. 64.

student's problem is really a manifestation of the teacher's problem."[73] Problem identification becomes more important in a small school where faculty members tend to discuss specific behavior problems with other faculty members. The teacher who gets the child may already be prejudiced about behaviorial expectations by what the teacher who had the child last year told her. Children will try to live up to, or down to, whatever expectations teachers have of them. This may be the source of many disciplinary problems which escalate to chronic problems in the upper grades. The first step in dealing with a problem is to determine if the problem is the child's, the teacher's, or the peer group. [74] It has become common practice in small elementary or primary schools to assign particular students to specific teachers because their disciplinary methods are more successful than others, or the child may be assigned a particular teacher to separate the student from another student which triggers the undesired behavior.

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73. Howard M. Knoff, "Conceptualizing Discipline; A School Psychologist's Perspective", N.A.S.S.P. Bulletin, April, 1984, p. 23.

74. Ibid.

A survey completed in South Dakota found there was great consistency between parents, teachers, and principals in perception of disciplinary problems in schools and their relative importance in operation of the school and maintenance of high standards in education. [75] Student behavior concerns were divided into nine categories and respondents were asked to rank them from least important to most important.The categories were:

1. Failure to complete assignments
2. Inability to get along with peers
3. Lack of interest/apathy
4. Rude, defiant behavior
5. Talking/interrupting class
6. Thefts of personal property
7. Truancy/missing school

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75. Ibid.

8. Use of drugs, alcohol, tobacco

9. Vandalism/defacing buildings[76]

Parents and teachers agreed with principals that rude and defiant behavior was their number one concern. Except for concerns number one and two, principals and teachers were quite consistent in their concerns. Parents differed from teachers and principals in their concern over drugs and alcohol because they ranked it first while principals ranked ability to get along with others as their number one concern. This would indicate one area of potential conflict between parental expectation and educator performance in dealing with students.[77] The survey concluded there was more consistency between perceptions of teachers and principals than between parents and teachers or between parents and principals. Since principals are not as closely aligned with teachers on completion of work assignments, it may be assumed it is a reflection of their job responsiblities. Concern over rude behavior

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76. Joseph d. Huber, "Discipline in the Middle School-Parent, Teacher, and Principal Concerns", Phi Delta Kappa Hot Topic Series, 1984-5, p. 29.

77. Ibid.

became more intense in larger schools than in small schools. This is due to lack of personal attention to children and perception of the school environment to be more academic and less individualized.

Teachers and students must both be aware of the difference between strict discipline and harsh discipline. Physically punishing a child creates a tension between teacher and child. Punishment is the result of the breakdown of traditional forms of discipline. This does not necessarily imply that all teachers who use corporal punishment are failures in maintaining adequate discipline in school classrooms. Even though internal discipline is the best and most effective type of discipline it is learned through external forces. Self discipline is the tendency to behave in a manner which is mutually beneficial to all people concerned with the situation. There is a tendency in some children to be more self-disciplined than others but the task of teaching self-discipline has its origins

in a strict system of external punishments, including corporal punishment. [78]

2.6 Teacher Liability

Students have become less submissive to demands of schools as they have become more aware of their rights which are assured by the Supreme Court. Most appearances in court by classroom teachers have been associated with disciplinary actions. [79] Americans in general have become increasingly aware of their rights but have neglected to concentrate on their obligations.[80] The proliferation of court cases is not restricted to schools. If a job applicant is denied a job, another person is promoted, or if the doctor is not successful in surgery, there are lawyers standing close by to encourage civil action and encourage its pursuit by the possibility of outrageous settlements which courts have made in the last few years.[81] Teachers and school administrators are not trained in how to avoid

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78. "Practical Applications of Research", Phi Delta Kappa CEDR Newsletter, Vol. 4, No. 1, September 1981, p. 1.
79. Ibid.
80. Ibid.
81. Ibid.

litigation and what to do if litigation cannot be avoided.[82] There is a wide gap in the educational reform movement which allows teachers to be intimidated by the legal profession. Schools do not have specific guidelines concerning corporal puinishment and discipline of students, and the courts have not established academic guidelines where former students have sued their teachers for malpractice when students did not learn as they should.[83]

In maintaining discipline in the classroom teachers have been given "in loco parentis". This concept is not fully defined by statute but common law determines this places teachers in a situation of a lawful parent by assuming obligations incident to the parental relationship.[84] Traditionally parents delegate authority to school personnel, the parent could restrict the actions of school officials and withdaw the authority at any time. This is especially true where corporal punishment is involved. Many court cases have arisen

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82. Ibid,
83. Ibid.
84. Larry Eberlein, "The Teacher in the Courtroom: New Role Expectation?", Clearing House, V. 53, N. 6, Feb. 1980, p. 288.

when the parent refused to give permission for corporal punishment and the teacher or principal administered it anyway. The question arises whether the teacher is acting in behalf of the parents when the parents have expressly asked this form of punishment not be used. "No court has refused permission to teachers for reasonable control and discipline, including striking the child."[85] Public schools are large institutions which handle groups of students of 25 or more. Students are required to go through several schedules and maintain a high degree of order. The teacher is responsible for organizing the group within the confines of an average size classroom. It is necessary to keep children quiet at other activities outside the classroom in order not to disturb other classes. This must be done for approximately 7 hours a day for five days a week and cover the assigned curriculum of academic subjects in the time alloted. It is a very difficult task and creates stress in all educators. To help establish order in schools, teachers and principals have used a variety of methods ranging from the whipping post to behavior modification. Psychologists are constantly

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85. Ibid.

creating new catchphrases and selling them as new methods of discipline when they are really old methods with new names.[86] Assertive discipline is just one such case. Teachers have always relied on common sense to be the guide in determining when and how to punish a child. Unfortunately new teachers do not have the benefit of experience and sometimes make poor decisions concerning child discipline. Next to chastisement, suspension is the most common type of discipline used in public schools of America.[87]

Other forms of punishment are used with varing degrees of success including isolation or "time out areas". If the teacher is to use physical force or isolation as a method of dealing with student behavior it would be in the teacher's best interest to acquire parental permission first.[88] Although isolation as a negative form of teaching is used to encourage a child to conform to group norms in some way, it would be

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86. Ibid.
87. Clinton Collins, "Practical Applications of Research", Phi Delta Kappa CEDR News Letter, Vol. 4, No. 1, September, 1981, p. 38.
88. Ibid.

acceptable in most instances.[89] However, if the child is isolated for rendering the wrong answer, a case could be made against the teacher for false imprisonment.[90] One excellent guideline to follow is that of reasonableness.[91] Punishment should fit the crime and be of such a nature that it will deter reoccurrence of the behavior. Teachers should generally be cautious when dispensing punishment when a parent specifically prohibits it, even though courts have given the authority to school officials to administer corporal punishment whether the parent wishes the child to be corporally punished or not. Observing all the Goss[92] type due process regulations and acting with consent of the parents and board of education will not necessarily prevent the teacher from being brought to court. It will, however, help make certain that chances of winning the case are high if the parent decides to take legal action against the teacher. It creates a lot of pressure

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89. Ibid.
90. Larry Eberlein, "The Teacher in the Courtroom: New Role Expectations?", Clearing House, V. 53, N. 6, Feb., 1980, p. 288.
91. Ibid.
92. Op. Cit. Goss v. Lopez.

on the teacher or principal and generates a lot of adverse publicity for the school system.

The following account is an example of the typical procedures which take place when a parent files criminal assault charges against a teacher or principal. After charges are filed, police arrest the teacher. The school board will suspend the teacher pending the outcome of the trial.[93] The teacher, the teacher organization to which the teacher belongs, or the local board of education will hire a lawyer to defend the teacher. While this is occurring, parents of the child also report the teacher for child abuse to the Department of Social Services or some other appropriate governmental agency which is required to investigate the matter and write a report. This report is maintained in a file for 10 years to determine if there is a pattern of child abuse.[94] Although the teacher usually wins the case, there is a lot of unfriendly publicity in local papers and other news media.[95] If the teacher has liability insurance, the insurance company may also send a lawyer

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93. Op. Cit. Larry Eberlein, p. 124.
94. Ibid.
95. Ibid.

to be a consultant on the case. The career of the teacher or principal is damaged and the public will remember the teacher being sued long after they forget the suit was frivolous and the teacher was cleared of any wrong doing. In a few states, the teacher may countersue for damages but will probably lose. Most teachers will win any reasonable case which is brought against them, but their personal lives and careers will suffer irreparable damage so it is much better to avoid a suit than to win one.[96] Principals must take extreme care in the administration of corporal punishment because state laws regarding it vary, making it difficult to draw generalizations about procedures. It is safest to draw from the guidelines set forth in Goss[97] and the teacher or principal will be covered in almost all states where statutory law permits and board policy gives any discretion. If there is any question about whether a hearing is necessary the rule of thumb would be to take the cautious route and allow it. The

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96. Jo Ann Mazzarella, "Self Defense for Principals: On Staying Out of Court, Part Two", Principal, V. 62, N. 3, Jan., 1983, p. 13.

97. Op. Cit., Goss v. Lopez.

courts will not allow damages for too many procedural safeguards but have awarded damages for lack of them.[98]

Corporal punishment is against the law in only four states and several large school districts such as New York, Washington D.C., and Chicago.[99] Although corporal punishment is considered a valuable tool of correction in the South, it has lost some of its popularity in the North East. Corporal punishment can be abused by the number of instances and with the force by which it is administered.[100] In 1978 there were estimates that one in every seventeen children in the United States received corporal punishment.[101] In spite of the frequency of corporal punishment there has been no increase in instances or severity of disciplinary problems in states where corporal punishment has been abolished.[102] The Supreme Court has debated the issue of corporal punishment and has decide not to interfere with

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98. Ibid.
99. Adah Maurer, End Violence Against the Next Generation Newsletter, Vol. 14, no.1, Fall 1985, p. 26.
100. Ibid.
101. Pana Wilder, "Corporal Punishment: Facts and Alternatives", Humanistic Educator, V. 20, N. 3, March, 1982, p. 109.
102. Ibid. p. 110.

public schools as long as all due process rights are protected and the punishment is not excessive.

Education must change with the needs of society. Special interest groups are constantly striving to restructure some aspect of the social order and schools are a reflection of the prevailing social structure.[103] Actual rebuilding of a social order takes enormous time and resources. The function of education will conform to the prevailing needs of the mass of people. Until there is a protest against corporal punishment in schools which is sufficient in strength to magnify the anti-authoritarian philosophy which is latent in any society, there will be a continuance of the disciplinary code which endorses corporal punishment. As social changes become more pronounced, the conception of democratic ideals become more clearly conceived, and the influence of religious organizations deminishes, support of corporal punishment will become weaker and critics of the practice will become more vocal.

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103. Ibid.

Americans believe that corporal punishment is used very little in public schools and needs little attention. Yet, people perceive the greatest problem in schools as lack of discipline or inadequate discipline.[104] Irwin Hyman, Professor of Psychology and Director of the National Center for the Study of Corporal Punishment and Alternatives in the Schools at Temple University, has studied and written many articles in professional journals concerning the ineffectiveness of corporal punishment. According to Hyman, education is the only institution in our society which does not have regulations prohibiting corporal punishment as an approved method of controlling behavior.[105] To understand the situation in colonial schools it must be remembered the Constitution and Bill of Rights did not deal with rights of children. About 1900, American law recognized that every one in the family had rights, including the husband and father.[106]

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104. Ibid.

105. Robert Friedman and Irwin Hyman, "An Analysis of State Legislation Regarding Corporal Punishment", Conference on Child Abuse, Childrens Hospital National Medical Center, Washington D.C., Feb. 20, 1977.

106. A.E. Wilderson, The Rights of Children, Temple University Press, Philadelphia University Press, 1973.

The idea that Americans do not really like children is not new.[107] The average person will, however, strongly deny disliking children when asked specifically about it. Teachers are expected to represent a cross-section of society but all teachers are expected to like children and treat them with respect. In using corporal punishment, teachers must make immediate subjective judgments about what type of punishment to use and how much force to use. It is usually applied at a time when both the student and teacher are in an emotional state which impedes good judgment. Results are often settled in court.

The relevant issue is not the theoretical concern of discipline in a democratic society of a classroom which is operated by democratic principles. John Dewey was one of the leading proponents of applying democratic processes to help children internalize controls through democratic measures.[108] Dewey's concepts are taught in theory courses but they are not used in public school classrooms, or if they are used, they are distorted to

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107. K. Kineston, "Do Americans Really Like Children?", Today's Education, Nov.-Dec., 1975, p. 18.

108. John Dewey, The Public and Its Problems, (New York, Henry Holt Co., 1927) p. 187.

the extent that democratic teaching has been linked with lack of teacher control in the classroom.[109] The real issue facing teachers today is which process should be followed in administering any form of discipline in the classroom. Since public school classes represent all levels of society and reflect attitudes of society at large, it is obvious all teachers will have some disciplinary problems at some time in their career.[110] The best teachers will have fewer problems and will be able to handle them better if the teachers have a strong background in pedagogy and theory of child behavior.[111]

The Constitution and Bill of Rights guarantee due process protection and protection from cruel and unusual punishment but courts are continually processing cases which involve denial of basic rights to children.[112] Along with increasing awareness of child welfare and child rights there has been more research done in the area of discipline and corporal punishment in particular. Records about the frequency of corporal punishment in schools have only been kept since the late

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109. Ibid.
110. Ibid. p. 110.
111. Ibid.
112. Ibid.

1800's. It was about that time people became aware of the size of the problem and the complexity of contributing variables. For instance, large schools which received Title One funds for schools from low income areas, used paddling more than large schools which did not receive Title One funds. The implication is that schools with large proportions of the student population from disadvantaged homes used spanking more often than schools with average income families. It is reasonable that the public should be aware of the frequency of corporal punishment in the nation and know the potential hazzards associated with it.

According to a study done by Herbert Clarizio in 1975, the majority of psychologist spank their own children and have no regret about having done so. They further feel that teachers should have the option to corporally punish children in school when the teacher feels it is necessary.[113] Clarizio endorses the occasional use of corporal punishment but found there was no consistency in its application. Some teachers

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113. Herbert Clarizio, "Some Myths Regarding the Unse of Corporal Punishment in Schools", Paper Presented to American Educational Research Asociation, April 2, 1975, p. 2.

used it constantly while others used it very little or not at all while working in the same school or school district. Clarizio listed four popularly accepted beliefs about corporal punishment which are not necessarily true. They are:

1. Physical punishment is a tried and true method. It helps them develop a sense of personal responsibility, learn self-discipline and develop more character.

2. Occasional paddling contributes substantially to the child's socialization.

3. Corporal punishment is the only recourse in maintaining order.

4. Those involved with schools favor the use of corporal punishment.[114]

There are other recourses to maintaining order in schools. There is the argument that spanking is a more consistant punishment because it is more nearly the same deterrant for all children. Suspension may not be a

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114. Ibid.

punishment for some children while it would be a severe punishment for others.

Although it costs four times as much to keep a prisoner in prison as it does to educate a child in a state supported university, little effort is expended toward keeping young people out of prison. The American legal reform movement is geared to punishment rather than prevention.[115] Traditionally violence has been considered only a law enforcement problem but is becoming a public health problem. Authorities in the field of psychology have agreed that behavior is learned. Violent behavior is often learned at the hands of teachers and administrators who administer corporal punishment in a vicious or heavy handed manner. The number of arrests of juveniles for status offenses has declined between 1971 and 1982 from a peak of 563,709 to 204,803. The decline of juvenile crimes reported during this period corresponds to a period of decline in the

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115. Charles Murray, "Losing Ground; American Social Policy 1950-1980", Harpers Magazine, April 1986, Vol.115, p. 56.

use of corporal punishment in public schools.[116] Statistics do not prove there is a positive correlation between the incidence of corporal punishment and the incidence of juvenile crime. It does prove that use of corporal punishment does not deter the incidence of juvenile crime.[117]

2.7 Delegation of Parental Authority

A school teacher stands in loco parentis to children which have been assigned to the teacher's care. The teacher may exercise any reasonable power to control or restrain a child and to enforce rules of conduct in the class. The goals of teaching are to impart knowledge and wisdom to students. Discipline is considered a minor part of the job responsibilities and only interferes with primary instructional responsibilities. Although early court decisions viewed authority of the teacher in the classroom as deriving from parents, the concept of parental delegation has been replaced by the view more consonant with compulsory education laws, that it is the state itself which may

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116. Barry Krisburg, "The Watershed of Juvenile Justice Reform", Crime and Deliquency Spring, 1983, Vol. 12, p. 143.
117. Ibid.,

impose as much corporal punishment as is reasonably necessary for proper education of the child and for maintenance of group discipline. Baker v. Owen set forth the legal groundwork to free the schools from the necessity of acquiring legal permission. [118] California, followed by several other states, has chosen to require parental permission in order to prevent so much litigation. In a survey sponsored by the National Institute on Education, only 33 states authorize corporal punisment through state statutes. There are a number of state boards of education which have chosen to deal with the guidelines in order to keep the state legislatures from passing laws in the absence of board policy.

The concept of parental delegation has become an issue in several court cases but the judiciary has not yet ruled that parents have authority to over- rule the needs of the classroom teacher in maintenance of discipline.[119] The argument which the plaintiff uses is; if parents would not use corporal punishment and the

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118. Baker v. Owen, 423 U.S. 907, 96 S. Ct. 210 64 L. Ed. 2d 137 (1975).
119. Ibid.

teacher is acting in place of the parents, then the concept of in loco parentis is void. This does not minimize the impact of the Baker v. Owen[120] decision or the Ingraham v. Wright decision.[121]

The Supreme Court issued the Ingraham v. Wright[122] decision on April 19, 1977. The decision was written by Justice William Powell who was writing for Chief Justice Burger. Joining Justice Powell in the majority decision were Justice Blackmun, Justice Rhenquist, and Justice Stewart. Justice Powell first examined the common law tradition of permitting reasonable use of corporal punishment in public schools. Justice Powell considered the constitutional issues involved and noted derivation of the language goes back to the English Bill of Rights which was concerned mainly with conduct of judges in enforcing criminal law. Justice Powell observed that this has not been the paramount issue for the Supreme Court of the United States in interpreting the Eighth Admendment. Justice Powell found no case outside the criminal process which applied to Eighth Admendment.

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120. Baker v. Owen, 423 U.S. 907, 96 S. Ct. 210 46 L. Ed. 2d 137 (1975).
121. Ingraham v. Wright, 97 S. Ct. 1401 (1977).
122. Ibid.

Justice Powell went on to say the Eighth Amendment may evolve to include civil cases but it must be a reflection of society at large. Justice Powell concluded that school children have little need for protection of the Eighth Amendment because of public scrutiny and procedural safegards which effectively "remedy and deter" excessive corporal punishment.[123] Other safeguards include; openness of the school, support of the student by family and friends, and constant accompaniment of other students and teachers, and potential civil and criminal liability. Justice Powell maintained the requirements were met by procedural safegards and state requirements such as those in Florida which require a teacher to contact the principal before corporal punishment is administered. Justice Powell also felt hearings which may be afforded the child being suspended were not necessary for the child being corporally punished because the hearing would substantially impair the teachers ability to deal effectively with daily discipline. Intrusion into the area of primary educational responsibility was not

123. Ingraham v. Wright, 525 F.2d 256.

justifed by the costs.[124]

Justice Powell made the assumption excessive corporal punishment is exceedingly rare in public schools. Justice Powell further stated that when a child is paddled for an infraction which he did not commit it is typically insignificant and should be regarded as minimal.[125] Risk of mistaken punishment was the cause of informal hearings being a part of the suspension proceedings in Goss.[126] Justice Powell chose to place little importance on justification of the action and concentrate on cruel and unusual aspects of the case. It was not technically necessary for Justice Powell to downplay the frequency or severity of corporal punishment but it was an indication that it played an important role in his decision making.

Justice White wrote the opposing or minority opinion and touched on several of the same areas Justice Powell used. The problem with the logic of Justice

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124. Thomas J. Flygare, "The Return of Old Jack Seaver", Inequality in Education, Center for Law and Education, No. 23, September 1978, p. 31.

125. Op Cit. Baker v. Owen.

126. Goss v. Lopez, 419 U.S. 565, 95 S. Ct. 729, 42 L. Ed. 2d. 725 (1975).

Powell's argument is schools are shielded from public inspection for the majority of the day. At the time discipline is administered, there will only be the child and teacher there to know what transpires. Small children have little option but to submit to punishment administered by the adult whether it is administered wisely or not. Parents work and are not there to see the rights of their children are protected. It is incumbent upon teachers and administrative staff to see that rights of children are protected.

The question of reasonableness in criminal or civil cases pivots on whether courts have standards which may apply to the case.[127] The standard of malice or permanent injury may not always apply. Age, physical condition of the child, and the size of the child are all factors which are considered in determining the ability of the child to withstand punishment, and whether the punishment would be considered reasonable by other people in similar circumstances.[128] The teacher who administered the punishment in Tinkham v. Kole lost

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127. Ibid.
128. Tinkham v. Kole, 252 Ia. 1303. 110 N.W. 2d. 258 (1961).

his temper and struck the child across the ear for a minor offense (removing white band gloves too slowly). The court found the teacher acted improperly because the bruises and whelps which resulted were physical evidence the child was treated in a manner which was not consistent with reasonable standards.[129] Some of the cases center on the punishment in relation to the offense. In Anderson v. State of Tennessee, the court found corporally punishing a child the first day of school for talking out loud in class was not reasonable.[130] The court maintained it was unreasonable to expect the child to know the rules of the school on the first day of attendance. It would be more appropriate to punish the child after repeated warnings and other methods of discipline have been tried and failed.

Some states have statutory laws which are similar to the constitution in its wording and address the same issues as amendments.[131] They do not supersede the constitution but may be used as grounds for argument in

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129. Ibid.
130. Anderson v. State. 40 Tenn. 455 (1859) p.798.
131. Washington Constitution, Article 1, section 14.

state courts. Several states are considering limiting the authority of school officials by determining grounds which may give rise to the use of spanking. If states are limiting procedures which must be followed in administering corporal punishment, types of misconduct which may precipitate it, and the amount of punishment inflicted on the child, there appears a trend to have much more state control and court intervention in the future. Ambiguous language surrounding corporal punishment cases results in more people trying to get new legislation passed to restrict corporal punishment rather than to fight it in court.

2.8 Discrimination Issues

School officials defended the use of corporal punishment in the Ingraham v. Wright[132] case by arguing that corporal punishment was used as a more desirable punishment than suspension. There was no evidence to show the frequency or presence of discrimination in schools. The Department of Health, Education, and Welfare's Elementary and Secondary School Civil Rights Survey of 1976 indicated there was a tendency, of

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132. Op Cit., Ingraham v. Wright.

schools who use corporal punishment as a disciplinary measure, to also use suspension more frequently than other schools.[133] The survey showed that boys are spanked more frequently than girls, and blacks are spanked more frequently than whites.[134] The survey reported only the number of instances of corporal punishment and not the number of different students which were punished. The survey reflected only those cases of corporal punishment which were administered by the principal.[135]

There was even greater sex discrimination in corporal punishment than race discrimination. Boys receive spankings four to five times as often as girls. This may be a reflection of social expectations of children or role modeling by the teacher but the results are still the same. Black males are spanked 50% more than white males. Black females are spanked two and one half times more than white females. This difference is

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133. Op. Cit. Flygare.
134. Ibid.
135. "Report of the Task Force on Corporal Punishment",National Education Association, (Washington D.C.) 1972, p. 22.

2.9 Summary

Corporal punishment has been used in American public schools since colonial days. As schools grew larger, the need for discipline grew and corporal punishment became the quickest and easiest way to keep order in the public school classroom. Today, there is an increased awareness of human rights and parents are more apt to seek legal action against a school employee if a student has been treated unfairly. It is important for all people to know the rights and responsibilities which professional educators have toward children in their care.

Questions concerning the efficacy or merits of corporal punishment are not investigated in this study. An investigation of the legal status and future trends in corporal punishment will aid educators in avoiding potential hazzards if they chose to use that form of punishment.

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136. Ibid.

Chapter Three:

An Analysis of State Statutes Related to Corporal Punishment in American Public Schools

3.0 Introduction.

Corporal punishment is under attack through much of the modern world today. It has been abolished in Denmark, Finland, Norway, Sweden, Holland, the Soviet Union, Israel and Japan.[1] Many state legislatures are beginning to face the issue of the legality of corporal punishment in the United States. The states which still use corporal punishment, use "in loco parentis" as the basis for their position. The phrase translates "in place of the parents". [2] Laws of most states, however, give teachers even more power and authority to administer punishment to school children than parents of children. The number of cases of reported child abuse by parents is growing, but there is little supporting evidence to prove child abuse is increasing.[3] Corporal punishment as a means of correcting and training a child

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1. Erwin A. Hyman and James H. Wise Corporal Punishment in American Education, (Los Angeles, Calif., Temple University Press), 1979 p.35.
2. Ibid.
3. Ibid.

has its roots in Biblical times. The King James version of the Bible refers to sparing the rod and spoiling the child.[4] Many people still use this argument to justify the use of physical punishment. In colonial days, children had few if any rights at all. In 1910 there was a law enacted in California making it illegal to abuse children. The punishment to the parents was a fine payable to the dog catcher.[5] In 1980 the Elementary and Secondary Schools Survey of the Department of Education Office for Civil Rights indicated there were 1,408,206 cases of corporal punishment in the United States. The punishments took place in an estimated 77,554 schools.[6] These statistics establish the wide spread use of corporal punishment in the United States.

3.1 National Trends

Although the use of corporal punishment is increasing nationally, high frequency use is mostly in the Southeast. According to the survey taken in the

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4. Holy Bible, "Proverbs", Chapter 23, Verses 13 & 14.
5. Henry Van Dyke, "Corporal Punishment in Our Schools", Phi Delta Kappan, Vol.2, February, 1983 p.87.
6. Ibid., p. 87.

Table One

States Which Do or Do Not Define Corporal Punishment

Alabama	No
Alaska	No
Arkansa	No
California	No
Colorado	No
Connecticut	No
Delaware	Yes
Florida	No
Georgia	No
Hawaii	No
Idaho	No
Illinois	No
Indiana	No
Iowa	No
Kansas	No
Kentucky	No
Louisiana	No
Maine	No
Maryland	No
Massachusetts	No
Michigan	Yes
Minnesota	Yes
Mississippi	Yes
Missouri	Yes
Montana	Yes
Nebraska	No
Nevada	No
New Hampshire	Yes
New Jersey	Yes
New Mexico	Yes
New York	Yes
North Carolina	Yes
North Dakota	Yes
Ohio	No
Oklahoma	Yes
Oregon	Yes
Pennsylvania	No
Rhode Island	No
South Carolina	No
South Dakota	No
Tennessee	No
Texas	No
Utah	No
Vermont	No

Table One Continued

Virginia	No
Washington	No
West Virginia	No
Wisconsin	No
Wyoming	No

1979-80 school year by Henry VanDyke,[7] of the ten states who used corporal punishment most often, nine were from the Southeast. New Jersey was the first state to ban corporal punishment in 1867. There was not another state to follow for over 100 years. Massachusetts banned its use in 1972. It was soon followed by Maine in 1976. Although it is not banned by statute in Hawaii there was a moratorium placed on it in 1973. Only four states have totally outlawed corporal punishment.[8] Vermont reported only 9 cases of corporal punishment in 1980. Of the states which use corporal punishment, the ones who use it the least are predominately Northeastern and Northwestern. The state which used it the most was Texas, followed closely by Florida.[9]

Maryland state statutes give the various counties the privilege of determining the use of corporal punishment. Twenty of the twenty four counties allow the use of it with certain guidelines to protect the child from excess zeal of the teacher. The requirement of obtaining permission to use corporal punishment is

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7. Ibid., p 88.
8. Ibid.
9. Ibid.

not uniform in all states. Forty three states permit administrators to use corporal punishment while other states allow teachers and administrators its use. Seventeen states allow other certified people to use it. Ohio and South Dakota allow even bus drivers to spank the children on their bus.[10] North Carolina allows principals, teachers, substitute teachers, voluntary teachers, teacher aides, assistant teachers, and student teachers to administer corporal punishment as long as they follow Goss type due process procedures.[11]

The status of corporal punishment is in rapid transition because there are several states which are presently reviewing their state statutes or their state board of education policies regarding it. In California, school employees must obtain permission from the parents to administer corporal punishment. The permission must be in writing and renewed annually. Along with California, New York and West Virginia are currently reviewing their policies and considering revision. In West Virginia, the use of the open hand on

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10. Ibid.
11. North Carolina State Statute Section 115-146.

the buttocks of a fully clothed child is the standard which must be met. [12] There was a bill introduced in the state legislature of Virginia to abolish corporal punishment which was defeated by only one vote. Although New York allows its use, the state is seeking legislation to moniter and regulate it. Table Two indicates that Texas is the single most frequent user of corporal punishment but local boards of education may elect to adopt a local policy prohibiting its use. In Illinois, parents may request that their children not be subjected to corporal punishment but state statutes allow local boards to develop their own policies according to the needs of local schools. North Carolina has had a bill introduced into the state legislature to abolish corporal punishment for the last two legislative sessions but it has been defeated. The narrowing gap by which the bill was defeated indicates support for paddling has diminished.[13]

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12. West Virginia State Statute, 18A-5-1.
13. Michael Satchell, "Should Children Be Hit in School?", E.V.A.N.G. Newsletter. Vol. 13, #3 Spring, 1985 p. 3.

In the states where spanking is permitted, there exists guidelines for its administration. Teachers are immune from prosecution in many cases unless there exists the grounds for a case of abuse stemming from excessive force being applied. Prohibition of corporal punishment is viewed by most state legislatures as an effective restraint against the excessive use of force but all states give teachers and administrators the right to use reasonable force to protect themselves or others from injury. In the states where corporal punishment is permitted, there are often strict guidelines for its use. Teachers or administrators must abide by these guidelines or face dismissal for insubordination.[14]

Thirteen states define corporal punishment in some way in their state statutes. Only seven of the states define it as any physical contact. Physical contact is the most common definition of corporal punishment with paddling or reasonable force making up the remainder of the definitions. The State Board of Education of Oregon defined it as spanking while Oklahoma defined it as

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14. Gonyaw v. Gray, 361 F. Supp. 366 (1973), p. 369.

Table Two
Incidents of Corporal Punishment Reported
1979-1980 School Year

Alabama	55,222
Alaska	1,120
Arizona	8,091
California	10,422
Colorado	2,164
Connecticut	257
Delaware	2,673
Florida	181,025
Georgia	71,372
Hawaii	0
Idaho	750
Illinois	15,542
Indiana	29,271
Iowa	997
Kansas	2,747
Kentucky	25,584
Louisiana	34,142
Maine	0
Maryland	3,998
Massachusetts	0
Michigan	10,596
Minnesota	176
Mississippi	37,609
Missouri	17,040
Montana	373
Nebraska	306
Nevada	3,199
New Hampshire	0
New Jersey	0
New Mexico	8,488
New York	836
North Carolina	51,453
North Dakota	38
Ohio	61,436
Oklahoma	29,460
Oregon	1,415
Pennsylvania	15,221
Rhode Island	0
South Carolina	30,128
South Dakota	51
Tennessee	59,228
Texas	191,463
Utah	124

Table Two Continued

Vermont	9
Virginia	12,026
Washington	8,699
West Virginia	16,191
Wisconsin	674
Wyoming	752

striking any student which is enrolled in public school under the supervision of the teacher at the time of the incidence. Since the definition of reasonable force is the broadest and the one used most often it has become the catch-phrase of the education community. North Carolina is home of the Baker v. Owen decision which is considered one of the landmark cases in corporal punishment.[15] North Carolina uses the due process guidelines set forth in Baker v. Owen to insure due process rights of students are met. It even uses some of the same language to define measures to be taken. Thirty one of the states allow the principal or teacher to administer corporal punishment, while other states limit it to school administrators. According to tabled three, Six states give all certified personnel the legal right to paddle school children.[16] Three states, including North Carolina, give this right to non-certified personnel. Ten states give specific restrictions in its use.[17] Due process guidelines must be followed in all states in order to give the child all

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15. Baker v. Owen, 423 U.S. 907, 96 S. Ct. 210 64 L. Ed. 2d 137 (1975).
16. Ibid.
17. Ibid.

Table Three
Corporal Punishment Administered by

	Principal	Teachers	All Certified Personnel
Arkansas			x
California			x
Delaware	x		
Florida	x	x	
Georgia	x	x	
Idaho		x	
Illinois	x	x	
Indiana	x	x	
Iowa	x	x	
Kansas	x	x	x
Kentucky		x	
Louisiana	x	x	
Massachusetts	x	x	
Michigan	x	x	
Minnesota	X	X	
Montana	x	x	
Nevada	x	x	x
New Hampshire	x	x	
New Mexico	x	x	
New York	x	x	
North Carolina	x	x	x
North Dakota	x	x	
Ohio	x	x	
Oklahoma	x	x	
Oregon	x	x	
Pennsylvania	x	x	
South Carolina	x	x	
South Dakota	x	x	x
Tennessee	x	x	
Texas	x	x	
Utah	x	x	
Vermont	x	x	
Virginia	x		
Washington	x	x	
Wisconsin	x	x	

the constitutionally protected rights to which he is entitled.[18] Eight states require a written report to the parents. This is to insure the child has received all the necessary Goss type hearings and rules of common sense and good judgment have been followed.

3.2 Analysis of Statutes by States

Alabama state statutes do not specifically require the use of corporal punishment but allow each administrative unit to make that decision based upon the needs of the community it serves and the necessity of the situation. Specifically it states "Any city, county or other local public school board may prescribe rules and regulations with respect to behavior and discipline of pupils enrolled in the schools under its jurisdiction and may in its discretion require the grouping of the pupils based upon considerations of discipline or may remove, isolate, separate or group pupils who create disciplinary problems in any classroom or other school activity whose presence in the class may be detrimental to the best interest and welfare of the pupils of such

18. Ibid., p 112.

class as a whole."[19] Although Alabama is not the most frequent user of corporal punishment it ranks in the top five states in the nation. Being a Southern state increases the probability that Alabama will continue using corporal punishment for many years.[20]

Alaska has no state statute which would ban corporal punishment nor does it have any law which requires its use. It is left up to the local boards of education to determine its use and decide what guidelines it must follow in its application. There is, however, a bill pending before the state legislature in Alaska which would abolish the use of corporal punishment.[21]

Arizona authorizes the local boards of education to determine if the use of corporal punishment is viable and to determine the guidelines, rules, and procedures for the administration of it. It must be consistent with the following guidelines:

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19. Alabama Statute, Acts 1953, No.826, p. 1113, #2.
20. Ibid.
21. Ibid.

1. Corporal punishment is a serious disciplinary action.

2. Corporal punishment will be administered by spanking the buttocks of the student, to cause no more than temporary pain and not to inflict permanent damage to the body. No other form of corporal punishment is authorized.

3. Teachers, administrators or other educationally certified personnel designated by the Governing Board of the School District may administer corporal punishment. Classified personnel are not authorized to administer corporal punishment.

4. An adult employee of the school must be present to witness the administering of the punishment. It is preferable that the person be an educationally certified employee. Schools with only one adult employee are exempted from this guideline.

5. Parents or guardians of the student shall be notified promptly that corporal punishment has been administered.

6. Each act of corporal punishment shall be documented.[22]

Although the guidelines are quite specific and require a good deal of time on the part of the teacher and the administrator, it is used a great deal in the state of Arizona will continue unless there is an organized and systematic opposition to it by the state legislators.

Colorado does not speak directly to the issue of corporal punishment but does insure the right of the parent, teacher or other adult entrusted with care and supervision of a minor to use whatever reasonable and appropriate force necessary to maintain discipline and promote the welfare of the minor.[23] It further states the force used must meet the criteria of reason and must be administered with the interest of the child as the first concern. The board of education in each school district is required to adopt a discipline code in congruence with state statutes. Board policies are not

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22. Arizona Statute, A.R.S. # 41-1003 Nov. 27, 1984 (supp 84-6).

23. Criminal Code, State of Colorado, Title 18, Article 1, Part 7 p. 165.

state law but carry the weight of law because they are enacted by a publicly elected board of responsible citizens who have the interest of the state and citizens as their first priority. The purpose of the board policy would be to insure each child would have the opportunity to learn in an atmosphere which is conducive to learning and safe from the threat of harm. The state statutes further require the local boards of education to confer with parents, teachers, school administrators and the community at large in the development of policies which would affect the operation of the schools.[24]

The state of Connecticut has no state statute which addresses corporal punishment. "Under common law doctrines, each local or regional board of education may, at its discretion, establish policies regarding corporal punishment."[25] According to Ron Harris a

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24. Ibid., p.165.
25. Correspondence, Ronald Harris, Consultant, Office of Legal Affairs, Connecticut Department of Education, March 5, 1986.

substantial majority of school districts in Connecticut do not authorize the use of corporal punishment.[26]

Senate Bill No. 27 of the State of Delaware specifically addresses the authority of teachers or school administrators to administer corporal punishment. It says, "Every teacher and administrator in public school of this State shall have the right to exercise the same authority as to control behavior and discipline over any pupil during any school activity as the parents or guardians may exercise over such pupils. The above authority may include corporal punishment where deemed necessary, and it may be administered by any public school teacher or administrator in accordance with district board of education policy."[27] This bill was ratified during the period of the mid 1970's following the disposition of the Baker v. Owen case. It did not address the due process issues which were set forth in that case but left this issue up to local boards of education to make certain the Eighth Amendment and

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26. Ibid.
27. Deleware State Statute, Senate Bill 27, January 15, 1975, Chapter 7, Title 14, Section 1.

Fourteenth Amendment of Due Process guidelines were followed.

The District of Columbia addresses the issue of corporal punishment in the D. C. Board of Education. The state board said "Corporal punishment is defined as the intentional use of physical force upon a student as punishment for any alleged offense or behavior, or the use of physical force in an attempt to modify the behavior, thoughts, or attitudes of a student. The use of corporal punishment in any form is strictly prohibited in the public schools. No student shall be subject to the infliction of corporal punishment by any teacher, other student, administrator, or other school personnel. No teacher, administrator, student, or other person shall subject a student to corporal punishment or condone the use of corporal punishment by any person under his or her supervision or control. Permission to administer corporal punishment shall not be sought or accepted from any parent, guardian, or school official."[28] This is one of the few cases where the state legislature failed to act on the matter and the

28. Rules of the D. C. Board of Education, Section 423, Att.311.1.

state board of education took it upon themselves to take a strong stand on the subject.

The state of Georgia gives the authority to corporally punish students to principals and certified teachers. This authority is relinquished when the parents fill out a form on the day of enrollment which states that spanking will be detrimental to the physical or emotional health of the child and is signed by a physican licensed in the State of Georgia. The punishment must be administered in the presence of the principal or assistant principal or his designee. Other restrictions which apply are Goss type due process restrictions which other states have.[29] Principals or teachers will not be held liable in any criminal or civil action for the administration of corporal punishment as long as the punishment was administered in good faith and not excessive.[30]

The state of Hawaii has ratified a bill which in effect placed a moratorium on the use of corporal punishment since 1973. The bill states "No physical

29. Georgia Law 1964, p. 673, s. 2; Ga. L. 1977, 1290, s 1.
30. Ibid.

punishment of any kind may be inflicted upon any pupil, but reasonable force may be used by a teacher in order to restrain a pupil in attendance at school from hurting himself or another person or property and reasonable force may be used as defined in section 703-309(2) by a principal or his agent only with another teacher present and out of the presence of any other student but only for the purposes outlined in section 703-309(2)a."[31] Hawaii does not prevent the use of reasonable force to protect teachers from assault by students and does not imply teachers or administrators could not physically restrain a child which would injure himself or others. It can not be used as a daily method of controlling student behavior.

The Idaho State Board of Education recommends that teachers do not use corporal punishment but do not have a state statute prohibiting it. In the absence of a law prohibiting corporal punishment, the State Board of Education established specific guidelines for the use of it. The statement says "If the local school board permits the use of corporal punishment we would

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31. Hawaii Revised Statutes, 298-16, "Punishment of Pupils Limited".

recommend that a clear policy be written to meet the following legal standards to insure:

- that the teacher is not allowed to inflict corporal punishment on the basis of anger;

- the punishment is reasonable;

- the punishment is related to the age, sex, size and physical condition of the child;

- the punishment leaves no permanent effects;

- the punishment is not performed to enforce an unreasonable rule".[32]

The state board went further by saying each school board should establish policy concerning corporal punishment which would protect the school board from liability and would also protect children from potential abuse. The board recognized the necessity of some method of control which teachers must have. The board also recognized the authority of parents to discipline their children. It was the intent of the Idaho Board of

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32. Idaho State Board of Education, "Statement on Corporal Punishment", 1975.

Education to balance power between the parents and family without infringing on the rights of parents to control their children.[33]

Illinois has no state statutes concerning the use of corporal punishment but allows each local board of education to make the decision about whether or not to use it. The State Board of Education made the following rule for administration of corporal punishment. "If corporal punishment is to be used by school districts as a penalty for misbehavior, the district shall notify parents upon initial enrollment of the student that they may submit a written request that corporal punishment not be administered to their child or children."[34] The popularity of corporal punishment in Illinois is apparent because, even though parents have to request the use of it with their children, Illinois still ranked 17th in the number of cases of spanking in the nation.[35]

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33. Ibid.
34. Illinois Administrative Code, Chapter One, Subtitle A, Section 1.280 Discipline.
35. Ibid.

Indiana has no statutes dealing with corporal punishment. Local boards of education must adopt their own policies concerning it. State statutes on assault and battery protect children from excessive force when it is used.[36] This state ranks 12th in the number of corporal punishment cases reported.

Iowa Department of Public Instruction allows each local district to establish rules or policies covering the use of corporal punishment in accordance with guidelines which were set forth by the State Department of Public Instruction. "Several years ago Iowa Professional Teaching Practices Commission attempted to establish administrative rules or guidelines for corporal punishment, but (then) Governor Robert Phay used his veto power to strike them down. The Iowa Professional Teaching Practices Commission does have within its rules a section or two directed to the use of force by a teacher. The Department has constantly declined to create a Model Policy on the issue."[37] Iowa

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36. Correspondence, Sandra Bickel, Staff Attorney, Indiana Department of Education, March 6, 1986.

37. Correspondence, Kathy Collins, Administrative Legal Consultant, Iowa Department of Public Instruction, March 3, 1986.

teachers cannot be charged with child abuse under state statues because they are not responsible for the care of the child at the same level as parents. In 1985 the Department of Public Instruction was charged with the creation of a system to investigate complaints of abuse but has not yet reached that goal. It will probably recommend the procedures already in place.[38]

Kansas State Statutes do not address the issue of corporal punishment and neither do the appellate courts. In the absence of statutory law and case law to support its use, Rodney Bieker, Director of Legal Services, advised the Kansas State Department of Education that the Kansas appellate courts would probably follow the other State and Federal court decisions in the support of its use.[39] The Local Boards of Education must adopt the policies for its implimentation.

Kentucky also has no state statutes concerning the use of corporal puninshment. Local Boards of Education make local policy decisions concerning its use.[40]

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38. Ibid,. p1.
39. Correspondence, Rodney Bieker, Director of Legal Services, Kansas State Department of Education, February 27, 1986.

The state of Louisiana defines corporal punishment as the infliction of punishment to the body as a penalty or obedience measure for the commission or omission of an act.[41] In an opinion submitted to attorney Robert Hammonds by the State Attorney General, William J. Guste, Jr., the state statutory law is very specific in explaining the required due process procedures necessary for the administration of corporal punishment.[42] The state further prohibits the local boards of education from enacting board policies which would prohibit the use of spankings in public schools. Attorney General's Opinion Number 81-1355 stated any ban on the use of corporal punishment by any local board of education would be invalid. Local Boards of Education may, however, limit the use of corporal punishment or specifically limiting the circumstances under which punishment may be inflicted and the people who are legally qualified to administer it.

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40. Correspondence, J. Gary Bale, General Counsel, Office of Legal Services, Kentuckey Department of Education, March 12, 1986.

41. Louisana Revised Statute, 17:416.1(A).

42. Correspondence, to Robert Hammonds from William Guste, May 5, 1982.

The statute is quoted as follows; "Any teacher or school principal may use corporal punishment in a reasonable manner against any pupil for good cause in order to maintain discipline and order within the public schools, subject to the provisions of R.S. 17:416.1. On or before January 1, 1977, each parish or municipal school board shall adopt such rules and regulations as it deems necessary to implement and control any form of corporal punishment in the schools in its district."[43]

In the state of Louisiana, school is the only remaining institution which allows the use of corporal punishment. Its use in the armed forces and in prisons has been abolished but children are still spanked in schools for any reason which teachers or other school officials feel it is necessary. The only restraints are the due process procedures set forth in Goss v. Lopez. This only guarantees the child has a right to know the charges brought against him and be given a chance to respond to them. It still does not guarantee children freedom from the threat of physical violence from adults under whose care they are placed.

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43. Louisiana State Statute, R.S. 17:223.

Even though courts have ruled that corporal punishment is not illegal, the excessive use of it can result in assault and battery and be grounds for suit for damages or criminal charges. The test of whether corporal punishment is excessive is still within the discretion of the courts to decide. Each individual case will have to be determined on its own merits, considering the seriousness of the offence, age and physical condition of the child, and the lasting effects of the punishment administered.

The state of Maine abolished the use of corporal punishment on May 1, 1976. It was determined that "in loco parentis" was no longer sound legal grounds for striking a child.[44] Although teachers have most of the responsibilities which parents have toward children while they are in their care, it is not within the responsibilities of the teacher to administer punishment to the child which may endanger his health or scar his emotional stability. Several cases which were decided in the state of Maine affected the reasons for changing

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44. Maine Statute, 17- A.M.R.S.A. s.106, sub 2.

the statutes concerning corporal punishment.[45] This case of Brooks v. Jacobs is over 40 years old and was the landmark case in Maine where "in loco parentis" was established in that state's common laws. The case of Stevens v. Fossett[46] set the precedent in which parents could delegate this responsibility to the teachers but does not obligate the teachers to use it.

The final result is that corporal punishment is no longer legal in the state of Maine. Although physical force may be used to control the disturbing behavior of a student and may also be used to remove a child from the scene of the disturbance, it is not viewed in the same way as corporal punishment. Corporal touching is justifiable even though corporal punishment is not. The difference lies in the intent of the touching and the force which is applied. The legislature decided children could be corporally punished only by the parents because they had long term care responsibilities of the children and not shorter custodial care as teachers have.

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45. Brooks v. Jacobs, 139 Me. 371, 374 (1943).
46. Stevens v. Fossett, 27 Me. 266 (1847) 280.

The test of the "reasonable man" will be used to determine if the force used was necessary and reasonable. If a reasonable man would have reacted in a similar manner in the same or similar circumstances then the actions are within the boundaries of common law and state statutes. This test of the reasonable man will have to be applied to each case on a one to one basis to test for the reasonable standard established by the state legislature.[47]

According to Gus A. Crenson, Director of Public Information and Publications, for the Maryland State Department of Education, state statutes do not prohibit the use of corporal punishment but the State Board of Education has passed policy which deals with it. On January 1, 1975, the State Board of Education of the State of Maryland passed the following policy;

"Each county board of education shall adopt a set of regulations designed to maintain within the schools under its jurisdiction the atmosphere of order and discipline necessary for effective learning. These regulations should provide for counseling and may permit

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47. Ibid.

suspension, expulsion, or other disciplinary measures as are deemed appropriate. Because there is a serious doubt as to the efficacy and appropriateness of corporal punishment, the State Board of Education abolishes corporal punishment as a statewide disciplinary measure."[48] Since 1975 ninteen of the twenty-four school systems in the State of Maryland have requested and been given exceptions to the board policy. All the large systems in the state have chosen not to ask for the exception. The result is that in 1980, 3,998 cases of corporal punishment were administered in the state of Maryland.[49]

The Commonwealth of Massachusetts has banned the use of corporal punishment in public schools for several years. It specifically states the power of school authorities to maintain discipline but does not include the use of corporal punishment except to defend a student from harm by others or in self defense. Even then the school employee must file an immediate written

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48. Maryland State Board of Education Policy, 13A.08.01.06.B.

49. Henry Van Dyke, "Corporal Punishment in Our Schools", Phi Delta Kappan, Vol. 2, (February, 1983).

report to the school committee to explain the situation.[50]

The general statutes of the State of Michigan allow the use of corporal punishment. A teacher or superintendent may use reasonable force to maintain order and discipline in the schools and will not be held liable in a civil action except in case of gross abuse of the child.[51] The State Legislature further stated in the general regulations the State Board of Education shall make reasonable regulations concerning policies necessary to govern the conduct of school students and to make regulations concerning the use of corporal punishment.[52] The local boards of education may pass local board policy which limits its use or prohibits the use of corporal punishment all together.

The School Code of Michigan[53] authorizes the use of corporal punishment and also allows the restriction of it. The State Board of Education refers specifically to

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50. Massachusetts General Law, c. 71, s. 37G.
51. Michigan State Statutes, 380.1312.
52. Michigan State Statutes, 380.1300.
53. Michigan State Board of Education, A Recommended Guide to Students' Rights and Responsibilitites in Michigan, Second Edition.

the Baker v. Owen case in establishing due process guidelines to be used in its administration. [54] The four precautions are:

1. " Corporal punishment should never be used as a first means of punishment for misbehavior;

2. A student should be given clear warning that certain behavior will subject the student to physical punishment;

3. A student should be punished corporally only in the presence of a second school official who must be informed beforehand and in the student's presence of the reason for the punishment; and

4. The official who has administered such punishment must provide the child's parents or guardian, upon request, a written explanation of the reasons for the punishment and the name of the second official who was present."[55]

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54. Baker v. Owen, 395 f. Supp 294 MD N.C. 1975.
55. Ibid, p. 398.

The State Board of Education further suggests to the Local Boards of Education they consider the concerns of parents, the possible psychological damage to the student and potential litigation which could arise from it. They suggest several possible alternatives by listing positive methods of discipline such as withdrawing privileges, holding class discussions, establishing student courts, using reward systems, peer counseling, and cooling off places for students and teachers.[56] The State Board of Education does not recommend the use of corporal punishment. But, if Local Boards of Education decide to use it, there should be a clear written policy concerning its use for common reference by the general public.

Minnesota statutory law allows the use of corporal punishment.[57] Reasonable force may be used upon a child when:

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56. Michigan State Board of Education, A Recommended Guide to Students' Rights and Responsibilities in Michigan, Second Edition.

57. Minnesota Statute, 609.379, Criminal Code of 1963.

(a) used by a parent, legal guardian, teacher, or other caretaker of a child or pupil, in the exercise of lawful authority, to restrain or correct the child or pupil;

(b) when used by a teacher or other member of the instructional, support, or supervisory staff of a public or non public school upon or toward a child when necessary to restrain the child from hurting himself or another person or property.[58] Although the state legislature allows the use of corporal punishment, it is used very little. In 1980 there were only 179 cases of corporal punishment used in the entire state.[59]

Missouri allows the use of corporal punishment by parents and teachers who are entrusted with the care of minors for the purpose of education or other specific reasons designated by the State Board of Education.[60] The State Board of Education policy places the responsibility for the care and supervision of students on district school personnel. Educators are held

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58. Ibid, Subsection 1.
59. Op.Cit. Van Dyke, p. 123.
60. Guidelines for Developing Discipline Policies in Missouri School Districts, Missouri Department of Elementary and Secondary Education, 1985.

accountable to the board for children while students are on their way to or from school and participating in school sponsored activities. Teachers and other school personnel are not liable for the exercise of disciplinary measures which may be part of their regular educational responsibilities.[61] Local Boards of Education shall be responsible for development of local policies for the implimentation of state guidelines and statutory laws which prevail in the state of Missouri. Local Boards may also determine the specific offenses which may occasion the use of specific types of punishment.[62] Missouri recognized the need for specific local policy for dealing with discipline in public schools. In accordance with this perceived need, legislators developed a code of conduct for all students in the state. It is incumbent upon local school boards to respond with measures which reflect the needs of communities which they serve.

Disciplinary procedures suggested by the State Board of Education rely heavily on positive remedial disciplinary actions. Conferences with parents, staff

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61. Ibid.
62. Ibid.

evaluations of disciplinary problems, specific objective setting, and other means of punishment should be employed prior to the use of corporal punishment. If corporal punishment is used, there must be at least two other staff members present during the punishment and parents should be contacted before administration of it. In spite of the prior approval of the parents and two witnesses required, Missouri had 17,040 instances of corporal punishment in the state in 1980.[63]

Nebraska allows fairly broad interpretation of the state statutes which apply to corporal punishment. The statute allows the use of force upon or toward the person of another if the actor is a teacher or person otherwise entrusted with the care or supervision for special purposes of a minor.[64] The law requires the action to be necessary for the maintenance of discipline in schools and in accord with the welfare of the child. Local Boards of Education must develop local policy which is in agreement with perceived needs of the community. The implimentation of the policy is also at the pleasure of the local boards and needs to meet the

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63. Op.Cit. Van Dyke, p. 134.
64. Nebraska State Statute, 28-1413,2.

standards of reasonable behavior set forth in case law. According to Table Two, Nebraska had only 308 cases of corporal punishment in that state in 1980.[65]

New Hampshire restricted the use of corporal punishment to only cases of self defense or under very exceptional circumstance.[66] The regulation has effectively eliminated the use of corporal punishment in public schools because no cases of corporal punishment were reported in 1980. There is an appeals process that can be pursued if there is ample evidence to present to the State Board of Education. The appeal must be in writing to the state board and filed with the commissioner. It must contain four specific pieces of information:

(1) The background of the problem;

(2) Any action taken;

(3) The specific grounds upon which any such action is claimed to be in error;

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65. Op.Cit. Van Dyke, p. 127.
66. New Hampshire Code of Administrative Rules, Ed. 203.02.

(4) The complete names and current addresses of all parties.[67]

New Jersey was the first state to pass a law banning the use of corporal punishment in 1867. The law was revised in 1967 which voided any law or policy which was in existence before the issue of this statute which would allow a student to be hit by any school person. "No person employed or engaged in a school or educational institution, whether public or private, shall inflict or cause to be inflited corporal punishment upon a pupil attending such school or institution; but any such person may, within the scope of his employment, use and apply such amount of force as is reasonable and necessary (1) to quell a disturbance threatening physical injury to others, (2) to obtain possession of weapons or other dangerous objects upon the person or within the control of a pupil, (3) for the purpose of self-defense, (4) for the protection of persons or property...."[68]

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67. Ibid, 204.01a.
68. New Jersey Statutes, Ann. 18A:6-1, Rev. 1968.

New Jersey has been the flagship state in leading other states in developing policies opposing corporal punishment in public schools. Even those states which allow the use of spanking restrict its use and control the people and circumstances under which it can be administerd to such a degree that children are granted greater protection now than ever before.

New Mexico state statutes do not address the issue of corporal punishment in public schools but the State Board of Education Policy specifically addresses the issue. Each Local Board of Education determines the use of corporal punishment in that district and determines the written policy determining the forms of punishment which may be used, the procedures used, and the conditions which may precipitate it. The board policy may override the parents objection to the use of corporal punishment unless the board specifically gives the power to veto spanking to the parents.[69]

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69. New Mexico State Board of Education Regulation, No. 81-3 p.7.

North Dakota allows spanking in schools but the State Board of Education has allowed local districts to determine if it is to be used and the guidelines which may be imposed on it by the boards of education. A teacher or other person responsible for the care of a minor may use reasonable force upon a minor to promote safety and proper discipline.[70] The force must not be so severe as to cause permanent injury to the child and must not be inflicted with malice. Bus drivers also have authority over students while being transported to and from the schools, and the operator shall be charged with their control and discipline while they are being transported.[71] Under Title 14 of the domestic Relations and Persons section of the State Statutes it specifies any necessary force may be used to protect one's self from wrongful injury. This may account for the fact that only 38 cases of corporal punishment were reported in 1980.[72]

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70. North Dakota Century Code, 12.1-05-05.
71. Ibid., 15-34.2-11.
72. Op.Cit. Van Dyke, p. 127.

The state of Ohio is the fourth most frequent user of corporal punishment with 61,436 cases reported in 1980.[73] The state statutes are specific about the use of spankings, and local board of education policies may be used to specify what is or is not permissible in administering it.[74] Local boards of education may, at their discretion, choose not to use spankings but the great majority of the school districts opted to make use of this method of discipline. State statutes allow a person employed as a teacher, principal, or school administrator, whether public or private to administer reasonable corporal punishment as they deem necessary to preserve the discipline of the schools.

Conduct codes must be established and the types of misconduct which will precipitate corporal punishment will be listed. The specific types of conduct may be general and the wording may not necessarily be concise but the parents and the children must both be aware of the conduct which will result in spankings. The local boards of education and the local school officials must work cooperatively with local communities to create

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73. Ibid.
74. Ohio State Statute, 3319.41.

policies which are fair and meet the needs of the community. They must also consider the potential consequences of the punishment on the mental and physical health of the child. The local school authorities must also set the guidelines for the administration of the punishment. [75]

Oklahoma has made use of corporal punishment to a high degree for several years. The state leaves the option of using corporal punishment up to local boards of education who must also be responsible for development of local policy to govern the use of it. These local policies must also provide for options for methods of control and establish standards with which teachers must comply. Local community groups and community leaders are involved in the policy development along with students, teachers and parents. The teacher has the same rights and responsibilities toward a child as do the parents when the child is left in custody of the school official.[76]

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75. Code of Conduct, Ohio Department of Education, 1983.
76. Supplement to School Laws of Oklahoma, 1985 Section 127.

The laws of Oklahoma are equally specific about the penalty for abuse of children. Ordinary force is permitted for the discipline of children but any person who uses unreasonable force on a child may face the full consequences of the law. The maximum penality is $5,000 fine and 20 years in prison. The minimum punishment is one year in county jail or $500 fine.[77]

Oregon makes limited use of spanking in schools. In 1980 there were only 1,415 cases of corporal punishment reported by that state.[78] Each school district may elect to accept or reject the use of corporal punishment on the local level. The State Statutory law concerning this type of punishment is specific in giving teachers the authority to use any reasonable force to maintain order in schools. Every school district shall give teachers specific guidelines for the administration of punishment.[79] The teacher or school administrator may furthermore exercise disciplinary authority over students during any school sponsored activity in which they are participating.

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77. School Laws of Oklahoma, 1984, Section 665.
78. Op.Cit. Van Dyke, p. 130.
79. Oregon State Statute, 339.250.

There are various reasons for which a student may be disciplined but willful disobedience and open defiance are the two which are spoken to directly by state statutes.

Pennsylvania uses corporal punishment often enough to rank 18th in the United States in frequency of use with 15,221 cases reported in 1980.[80] The state legislature grants the same general authority to teachers and other school administrators in Pennsylvania as other states have done for educators in their districts. The State Board of Education makes clear reference to local boards of education having the authority to decide the use of corporal punishment on the local level. The state board defines corporal punishment as physically punishing a student for an offense. Reasonable force may be used but bodily injury is not condoned or accepted by school personnel. Where corporal punishment is used, the parents of the children must be notified in writing before the punishment takes place, and the parents have the right to prohibit the schools from its use. Even in districts where the local

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80. Ibid.

board may prohibit corporal punishment there are certain exceptions where it is still acceptable such as:

(1) To quell a disturbance;

(2) To obtain possession of weapons or other dangerous objects;

(3) For the purpose of self defense;

(4) For the protection of personal property.[81]

The state board cautions that corporal punishment should never be used in the heat of anger and always has the potential for excessiveness. Discipline should never exceed the seriousness of the offense and the student should never be required to remove clothing for the administration of punishment.[82]

South Carolina state statutes allow use of corporal punishment in schools and the state board of education established guidelines for its use.[83] The state board defined three levels of misconduct for which a student

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81. Discipline Policies and Guidelines, Pennsylvania Department of Education, 1984, p.12.
82. Ibid.
83. S.C. State Board of Education Conduct and Discipline Codes, August 15, 1985.

may be disciplined. The first level is disorderly conduct or that behavior which impedes orderly classroom activities.[84] When a child is found to be guilty of disorderly conduct such as tardiness, truancy, cheating, bad language, or disobedience to authority, there are several types of punishments which may be used. Detention, corporal punishment, in-school suspension, or verbal reprimand are only a few of the choices.

The second level of misconduct, disruptive behavior, is directed against people or property and could endanger the health and safety of other students or faculty.[85] Punishment for this level of behavior include transfer to other programs or schools, referral to outside agency, expulsion, alternative education, or out of school suspension.

The last and most serious type of misconduct is criminal misconduct. It includes, but is not limited to, assualt and battery, extortion, bomb threat, sexual offense, vandalism, arson, and selling a controled

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84. Ibid.
85. Ibid.

substance.[86] The punishment for these offenses is suspension, expulsion, alternative schools, and other sanctions which the board of education may feel necessary.[87]

It should be noted that corporal punishment was a punishment for first level offenses which implies the state board and public considered it a lesser punishment than the other types of behavior control such as suspension and expulsion or program prescription.

According to Anne Bickmore of the Utah State Office of Education, the state of Utah does not have a statute dealing with corporal punishment but there are several statutes which deal with child abuse and the various categories under which a person may be prosecuted for such crimes.[88] One statute gives the actor's conduct as reasonable conduct when they are acting in loco parentis to minors in their charge. The statute specifically

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86. Ibid.
87. Ibid, p.6.
88. Utah State Statute, 76-2-401.

refers to parents, guardians and teachers and their immunity when exercising this authority.[89]

The law defines abuse as the harm or threatened harm of a child or the non accident or inury to the child. Child is defined as any minor under the age of 17 years. Any person in the state of Utah who abuses a child is guilty of a felony of the second degree. If the act is committed recklessly, the charge is raised to a first degree felony. If the act is committed with criminal negligence, the offense is a class "A" felony.[90]

If the abuse is done by a person who has custodial care of the child such as the parents or teacher the offense is a misdemeanor if done intentionally and a class B misdemeanor if done recklessly. If done through criminal negligence, the offense is a class C misdemeanor. Although it is obvious that teachers in Utah have the legal right to administer corporal punishment it makes it difficult to face all the legal ramifications which could grow out of one careless or

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89. Ibid.
90. Ibid.

misdirected blow. That is the reason Utah only had 124 cases of corporal punishment reported in 1980.[91]

Vermont has joined the ranks of those states which prohibit the use of corporal punishment. State statutes require that no person employed by the school should inflict or cause to be inflicted corporal punishment upon a student attending public school in the state of Vermont. This statute does not prevent school authorities from using reasonable force in certain circumstances such as removing weapons from students, quelling a disturbance, self defense, and protection of others.[92] Although each local board of education makes local policy concerning the discipline and conduct of its students it may not make policy which is in contradiction to State Board of Education Policy.[93]

Reasonable corporal punishment of pupils in the state of Virginia is permitted.[94] Both teachers and principals are allowed to use corporal punishment in the maintenance of good discipline in the schools. The only

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91. Op.Cit. Van Dyke, p. 129.
92. Vermont State Statute, T. 16, 1161a.
93. Ibid.
94. Virginia State Statute, 22.1-280.

restriction mandated by state statute is that the dicıplinary measure be done in good faith and not be excessive.

The state of Washington allows the use of corporal punishment by statutory law.[95] A student's grade or credit in a particular subject may not be affected as a disciplinary measure.[96] Corporal punishment may be administered only in the principal's office or some other area outside the view of other students and only by a certified employee in the presence of another witness who must also be a school district employee.[97] The witness must be informed beforehand the reason for the action and it must be done in the presence of the student. No punishment may be excessive and no child may be struck on or about the head. Parents of the child may be given a written explanation of the punishment and furnished with the name of the person who witnessed the corporal punishment. Washington ranked number 22 in the nation in the frequency of corporal

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95. Washington Statute, WAC 180-40-235.
96. Ibid.
97. Ibid., Section 3.

punishment with 8,699 cases reported in 1980.[98]

Each local school board is responsible for making policy concerning the grievance procedure in disciplinary cases. The state board made broad guidelines for the dispensation of such matters and left the details of application up to local boards.[99]

The state of West Virginia gives statutory authority only to principals to administer corporal punishment.[100] The punishment must be administered without anger, and with respect to the age and physical condition of the child. The pupil must be informed of the rules allegedly violated, and the disciplinary measure must be used only as a last resort. If the principal is not available to administer the punishment it may be administered by his designee. It must be done with the palm of the hand or with a paddle on the buttocks of the child. An informal report of corporal punishment should be made 12 hours after the administration of it and a written report submitted to parents or guardian within 24 hours. State statutes

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98. Op.Cit. Van Dyke, p. 134.
99. Ibid.
100. West Virginia Statute, 18A-5-1.

specifically state that each principal is responsible for the discipline in his school.[101]

Teachers have control of students under their care and stand in place of their parents in establishing and enforcing rules. This responsibility extends from the time they reach school in the morning until they get home in the afternoon. School bus drivers have the same responsibilities for their passengers and children may lose the privilege of riding the school bus if the student cannot follow the rules set forth by the school or school district.

West Virginia specifies the circumstances under which handicapped children can be punished. It may not be administered to a pupil:

"(a) Identified as handicapped, learning, hearing, mentally or behaviorally disabled; or

(b) whose parent has petitioned in writing to the school principal that corporal punishment not be administered to the pupil and attached a certificate from a physician that by reason of physical or emotional

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101. Ibid.

condition the pupil should not be subjected to corporal punishment; or

(c) if medical information available to school authorities indicates that the pupil should not be subjected to corporal punishment."[102]

In spite of the amount of statutory law which the state dedicated to the provisions concerning corporal punishment the state legislature still recommends that spankings not be used unless all other methods of punishment have been exhausted.[103] The legislature provides for the training of teachers and parents in alternative methods of discipline and encourages them to use it. In spite of this stand on the use of spanking, West Virginia ranks 17th in the nation in the use of corporal punishment with 16,191 cases reported in 1980.[104]

Wyoming state statutes do not address the issue of corporal punishment in specific terms but leave the issue up to local boards of education to decide if they

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102. Ibid, p207.
103. Ibid.
104. Op.Cit. Van Dyke, p. 134.

wish to use it and to determine what guidelines will be used in conjunction with its use.[105] Most local boards of education in the state refrained from using corporal punishment and consequently Wyoming has almost eliminated its use. In 1980 there were only 752 cases reported.[106]

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105. Wyoming Statute, 21-4-307.
106. Ibid.

Chapter Four

Court Decisions

4.0 Introduction.

There are many court decisions which affect the use of corporal punishment in the United States. The cases which are discussed in this chapter are of importance because of the impact they had on creation of statutory law in various states. All decisions discussed in this chapter are Federal court decisions, United States Supreme Court decisions, and State Supreme court decisions.

4.1 Supreme Court Decisions In Corporal Punishment.

The Baker v. Owen decision[1] is one of the landmark decisions concerning corporal punishment and is cited more often than any other case in the determination of due process rights in corporal punishment cases. The plaintiff, Russel Carl, was a sixth grader in Greensboro City Schools when he was corporally punished by his teacher. The mother of the plaintiff had gone to the

1. Baker v. Owen. 423 U.S. 907, 96 S. Ct. 210 46 L.Ed. (1975).

principal of the school to express her opposition to corporal punishment on moral grounds. The child had allegedly violated the teacher's rule about not throwing kickballs except in a designated area and at designated times of the school day. Baker, mother of the plaintiff, alleged administration of corporal punishment even after her objections was a violation of her constitutional right to determine the method of punishment for her child. The plaintiff also charged that her child's civil rights were violated because the punishment was a violation of the Fourteenth Amendment right of due process. The plaintiff further alleged the punishment was cruel and unusual in nature and was therefore a violation of the Eighth Amendment. The Supreme Court and Federal courts were presented with the problem of deciding the constitutionality of general statutes of the state which gave teachers and other school authorities the right to administer corporal punishment and use reasonable force in exercise of lawful authority to correct and maintain order. The Supreme Court also had to decide if the pupil was denied due process rights which were granted to him by the Constitution of the United States and to determine if

procedural safeguards imposed by the state were adequate.[2] The Court agreed with the plaintiff's mother that the Fourteenth Amendment of the United States Constitution embraces the right of a parent to determine and chose between means of discipline of children. The Court also recognized that no constitutional right is absolute, especially when it infringes upon another. The Court went further in the inquiry to determine the state's interest in the free public education of school children. The state rejected Mrs. Baker's contention that the right is fundamental and the state can punish her child corporally only if it shows a compelling interest that outweighs her parental right. In Court decisons where the state let parental rights prevail, rights of the parents were considered fundamental by the court because the state's interests were considered to be arbitrary.[3] The Court not only did not elevate parental rights to a fundamental level but held that rights of the state must take precedence over rights of the individual. The Court went further to say that although the state did not officially recognize

2. Ibid.
3. Ibid.

fundamental rights of the parents, failure to do so did not necessarily mean parents did not have their rights precluded. Baker's power to decide whether corporal punishment is to be used with Russel Carl, as one of her parental rights, was accorded the highest degree of constitutional protection. The Court failed to accept the reasoning of Baker because it would require the Court to show both a compelling interest and unavailability of alternative means of fulfilling that interest before it could contravene her decision.[4] The defendants claimed they could justify their use of corporal punishment because it furthered the stated objectives of the school. The plaintiff did not argue the punishment was excessive or was done with malice. The Court therefore had to decide if the statute were constitutional which allowed its use. The Court heard many experts which proposed abandonment of corporal punishment. The Court also acknowledged that many professional educators did not condone the use of corporal punishment. The Court also reinforced the state's legitimate and substantial interest in maintaining order and discipline. Even though opinion

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4. Ibid.

concerning corporal punishment was not unanimous, the Court was aware of the great majority of public sentiment in favor of corporal punishment. The plaintiff, on the other hand, was in the minority in her stand on corporal punishment. The Court maintained he was acting on personal opinion rather than a constitutional issue and could not therefore allow the wishes of the parent to interfere in administration of a public school.[5]

The Court then considered the liberty interest and property interest in avoiding corporal punishment. The Court found the child did have such an interest and would have a vested interest which is protected by the concept of liberty of the Fourteenth Amendment. There are a number of cases dealing with corporal punishment of adults which have come into the Federal Court System. The procedural due process requirements set forth in Baker v. Owen are as follows.

"First, except for those acts of misconduct which are so anti-social or disruptive in nature as to shock the conscience, corporal punishment may never be used

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5. Ibid.

unless the student was informed beforehand that specific misbehavior could occasion its use, and, subject to this exception, it should never be employed as a first line of punishment for misbehavior. The requirements of an announced possibility of corporal punishment and an attempt to modify behavior by some other means-keeping after school, assigning extra work, or some other punishment- will insure that the child has clean notice that certain behavior subjects him to physical punishment. Second, a teacher or principal must punish corporally in the presence of a second school official, who must be informed beforehand and in the student's presence of the reason for the punishment. The student need not be afforded a formal opportunity to present the student's side to the second official; the requirement is intended only to allow a student to protest, spontaneously, an egregiously arbitrary or contrived application of punishment. And finally, an official who has administered such corporal punishment must provide the child's parent, upon request, a written explanation

of his reasons and the name of the second official who was present."[6]

The Court found the Statutory Law of North Carolina to be constitutional on its face. But the court also held that children have the same constitutionally protected rights as adults as expressed in the Fourteenth Amendment. The judgment of the court was not written to dissuade school officials from exercising mandates which it received from the state constitution or state statutory law. It did, however, outline the minimum procedures required in administering corporal punishment.

The Goss v. Lopez,[7] decision set due process rights which are dealt with in the Fourteenth Ammendment in great detail. Two students, Dwight Lopez and Betty Crome, were suspended from school in connection with a disturbance which took place in the school cafeteria which resulted in some school damage. Lopez said there were at least 75 other students suspended on the same day and testified that he was not a participant in the

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6. Ibid.
7. Goss v. Lopez, 419 U.S. 565, 95 S.Ct. 729, 42 L. Ed. (1975).

destructive conduct but was an innocent bystander. Lopez never had a hearing and there was no record indicating the incident happened in any other way. Crome was likewise suspended without a hearing. There was no record of the charges filed against the students and they were not given due process rights according to the Fourteenth Amendment.[8]

The Court declared the suspensions which were imposed on the children to be unconstitutional and required the suspensions to be removed from the records of the pupils and also remove any reference to it in the cumulative records. The district courts did declare that there existed a set of minimum requirements for due process hearings but allowed the educational system opportunity to, in good faith, develop their own set of guidelines to use in enforcement of school rules. In case of emergencies, the courts would allow immediate removal of a student whose conduct disrupts school or endangers fellow students, teachers, school officials, or school property. It would require that a notice of the suspension be sent to the parents within 24 hours

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8. Ibid., p. 729.

and allow the student the opportunity to have a hearing within 72 hours. During the hearing the school need not allow the student to be accompanied by council.

When the plaintiffs won the district court decision, the appellants then went to the court of appeals and argued that the constitution did not guarantee the right of a public education. The courts held that the state created free public schools and required the attendance of the children in them. This would negate the constitutional issue involved in the matter. The courts held that the issue was not the constitutional nature of public education but the due process rights of the students which were disciplined in them.[9] The student has a legitimate right to a public education and has a property interest in it which is protected by the Due Process Clause. This interest may not be taken away without the same due process hearings which the clause insures. The appellants further claimed that a 10 day suspension was not a severe detriment or grievous loss and therefore the Due Process Clause did not apply. The court held that a 10 day

9. Ibid.

suspension is not trivial and may not be imposed without regard to due process.

The court held that education is the most important function of the state and total expulsion or exclusion should be a most serious event in the life of a child. The student has a property interest in his education as well as a liberty interest in his reputation. The court declared that the disciplinarian may informally discuss the nature and degree of the breach of conduct with the student and this would serve as a hearing in many of the milder cases where the suspension was for only one, two or three days. The court recognized the time which would be required to have 75 hearings in a short period of time. Schools were in a situation which required prompt action in order to restore order and to insure the continuation of the academic program. The court did not feel it appropriate to dismiss the students without some hearing in which they were allowed to know the charges which were brought against them and to dispute them or discuss them with school authorities.[10] The

10. Ibid.

court was split down the middle with the deciding vote going to Justice Powell.

In the case of Ingraham v. Wright,[11] a high school student was punished by a high school principal for substantially disrupting a class over the objections of the teacher. Plaintiff Ingram alleges that Principal Wright and two assistants used a wooden paddle to strike repeatedly the plaintiff causing him to need medical attention. The principal initially told the plaintiff he would receive five or more licks with the paddle but when the plaintiff refused to assume a position such that the principal could easily administer the punishment, he then had two or more of the other boys to hold the plaintiff down while the principal administered twenty or more licks to the buttocks of the plaintiff. That evening the plaintiff complained to his parents about discomfort and was taken to the hospital where he was examined and received medical treatment. The treatment consisted of cold compresses, laxatives, and sleeping tablets. The student was unable to attend

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11. Ingram v. Wright, 97 S. Ct. 1401 (1977).

school for a period of two weeks and was not able to sit comfortably for period of at least three weeks.[12]

Another plaintiff by the name of Andrews alleged two incidents of corporal punishment as basis of his complaint. Andrews alledged that he and fifteen other boys were corporally punished in the boys bathroom by the assistant principal. The third complaint was when a teacher brought the child to the assistant principal for tardiness but the child refused to accept the reprimand or punishment for the tardiness. He claimed the bell had not rung and therefore he was not tardy at the time he was taken by the teacher to the office. When the student resisted the administration of corporal punishment, he was then struck across the back, arm, and across the back of the neck.[13]

Three counts constitute a class action suit. The students therefore asked for an injunction prohibiting the use of corporal punishment in Dade County Schools. Although the court did not grant such a plea, the plaintiff further asked for further procedural

12. Ibid. p. 1404.
13. Ibid.

safeguards. The court answered this request by saying that procedural safeguards are not mandated by the constitution and would hinder the education process by slowing the process of punishment and enforcement of rules and regulations. The court also noted that a student's reputation would be damaged worse by a suspension or expulsion than it would be by the administration of corporal punishment because the record of the offense and the punishment would become a part of the student's permanent record.[14] The court, therefore, found less due process mandated by corporal punishment than by suspension, since there would be no property interest or loss of liberty interest. The court found the schools would be hindered and the value of corporal punishment would be severely diluted, if elaborate procedural processes were imposed on schools. It also found the hearing process to undermine the effectiveness of school administrators because of the severe time limitations which it would place on school officials. In brief, the courts refused to set forth constitutionally mandated due process standards for an activity which is not substantial enough, on a consititutional level, to

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14. Ibid. p. 1406.

justify the time and effort which would have to be expended by schools to adhere to the procedures.[15]

The Court did find in favor of the plaintiff, Andrews, because of the excess of punishment and circumstances surrounding it. Andrews received numerous paddlings for being late and not dressing out during physcal education. Andrews alleged on one occasion he was expected to bend over to receive corporal punishment and refused to do so. The coach then proceeded to push him into the urinal and hit him several times in the arm, back, and neck. Examination by his doctor revealed a broken bone in his hand and swollen knuckles. The court maintained the punishment which he used was excessive and went beyond any reasonable expectation of the classroom teacher. The court, therefore, found the defendents to have been deprived of property, liberty and denied procedural due process.

The case of Drum v. Miller[16] in 1904 shows the changes in the way the courts viewed the use of corporal punishment in pubic school over the last several

15. Ibid.
16. Drum v. Miller, 316 U.S. 531, 86 L. Ed. 1655 (1942).

decades. The student was hit in the eye by a pencil which was thrown by the teacher. The student was not doing what the teacher expected and the teacher then threw the pencil at the student as a disciplinary measure. The student turned his head just as the pencil was thrown and was struck in the eye. The injury caused temporary loss of sight in the eye and may have caused permanent loss of vision.[17]

This case was an action brought by the plaintiff to recover damages for an injury to the eye. He claimed the injury was a result of negligence rather than excessive use of punishment. The court charged the jury that the defendant was a school teacher and the plaintiff was a student in his care and under his supervision. The court further stated that a teacher had authority to inflict upon any child under his supervision such punishment as the teacher deems necessary and prudent in the execution of his/her teaching responsibilities.[18] The restriction which applies is whether or not the punishment seriously endangers the life, limb or the health of the pupil, or

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17. Ibid.
18. Ibid., p. 1657.

shall disfigure him or cause some permanent injury. The punishment must also satisfy constitutional requirements of due process. The teacher must also administer corporal punishment without malice and with the interest of the student and school setting as the primary goal.

The court then proceeded to define the terms of the case. Tort was defined as an act which is intended to cause harm without just cause, an act which is contrary to law.[19] It may also be an omission of an act, the result of which could prevent harm. The omission of an act which results in harm is viewed by the courts in the same light as the act which is performed with the intent to cause harm.[20] The courts found also that a person is liable only for those injuries which a reasonable person could have foreseen and prevented. Judge T. J. Shaw instructed the jury in the following manner, "The teacher may inflict temporary pain, but not seriously endanger life, limbs or health, or disfigure the child, or cause any permanent injury. The teacher cannot lawfully beat the child, even moderately, to gratify his

19. Ibid.
20. Ibid.

own evil passions."[21] The judge ruled the case to be invalid because the defendant was given third prayer for instruction and another trial was granted.

4.2 Federal Court Decisions

In the case of Woodward v. LosPresnos Independent School Disrict[22] there was alleged due process and civil rights violations. The issue was whether a high school student was denied due process of law when she was given three punitive spanks with a paddle. The mother had requested the child be suspended three days instead of the spanking. The child, however, requested three punitive spanks instead of the suspension. The parents of the child claimed the child's due process rights were violated due to the departure from established school rules even though it was at the request of the student. The child maintained her innocence throughout the proceedings but her guilt or innocence was not the issue in the case. The student was a sixteen year old child who was accused of using abusive language with a bus driver. The parents requested a three day suspension

21. Drum v. Miller, 316 U.S. 535, 86 L.Ed. 1655 (1942).
22. Woodward v. LosPresnos Independent School Dist., 732 (1984).

instead of corporal punishment. The child chose corporal punishment instead, after the parents had left. The punishment was administered by a female physical education teacher and was done according to all the rules and regulations which governed such actions in the school system.

The complaint does not allege the punishment was abusive or applied with unnecessary force. Neither was there any accusation that the child suffered any injury due to the punishment.[23] In this instance, the school system allowed parents to choose the method of punishment which the parents preferred. The parents do claim, however, the student was denied a hearing and was not given notice before the punishment was administered. They also alleged that the acts of the assistant princpal and the physical education teacher constituted gross negligence and was a willful disregard of the student's constitutional rights. The courts argued whether or not the actions of the assistant principal were technical or procedural. The courts held the deviation from norms to be procedural in nature and not

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23. Ibid.

technical because corporal punishment would not have been administered if the regulations had been followed. The court also held that administration of corporal punishment without the witness required by state law did not amount to a constitutional violation. The courts did hold that corporal punishment is a deprivation of substantive due process when it is arbitrary, capricious, or wholly unrelated to the legitimate stated goal of maintaining an atmosphere conducive to learning. The Fourth Circuit had conducted a different inquiry into whether the force applied in an individual instance caused injury so severe, so disproportionate to the need presented by the evidence, 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.[24]

In the Coffman v. Kuehler decision,[25] students were claiming that their due process rights were violated and Eighth Amendment rights were infringed. The cause of the action was suspension of plaintiff Marlon Coffman.

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24. Ibid., p. 1246.
25. Coffman v. Kuehler, 409 F. Sup. 546 (1976).

On November 21, 1975, Coffman and another student left school without permission of the principal. The students also did not have proper forms filled out to visit a college in a nearby town. After leaving the principal's office, the students returned to one class and then left school to go to the college. They went with the knowledge of their parents but did not follow rules of the high school in acquiring proper permission forms and going through proper channels.[26] The principal had already warned the students that such an action would result in a three day suspension. The students, upon their return to school the following day, were sent to the principal's office. The plaintiff and his companion freely admitted they did not visit the campus but just rode through it and then spent the remainder of the day in other activities. The court stated that it could hardly construe such activity as a college visit as an unexcused absence but merely as a breach of rules established by the principal. It was also a violation of the principal's refusal to grant permission to them. The acts of the plaintiff were in violation of rules of the school and in direct disobedience of school

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26. Ibid.

authorities. The students were well aware of the punishment which they would receive if rules were broken. The two students were suspended for a period of three days. One returned to campus, and received three punitive licks and returned to class. The other student refused to allow himself to be corporally punished and was therefore expelled from school for the remainder of the school year.[27] The teachers, in the mean time, had given the student two weeks homework and all the necessary material to get the work done and get credit for it. The child did not do any of the work and refused to return to school and accept the punishment. The other student who accepted corporal punishment was allowed to return to class and continue his education. Coffman was given the opportunity to return to school but refused the circumstances under which he could return.

The principal made sure the child knew the charges which were brought against him and the plaintiff was given the opportunity to present his side of the case. The courts found for the defendent because the child was

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27. Ibid.

not denied any due process procedures which were set forth in Goss v. Lopez.[28] The students were aware of the rules before the incident took place and there was adequate time for a hearing after the first conference with the principal. Corporal punishment was administered in the presence of another teacher and parents were invited to observe also if they preferred. The plaintiff could not complain that the punishment was cruel or unusual. In fact, the superintendent secured a hearing before the school board. All the procedures which were taken were fair and reasonable and allowed the student to respond to any and all charges which were brought against him.

The plaintiff's conduct on the occasion in question was considered more serious than acts of other students in similar circumstances because the student left school after having been specifically warned that leaving would result in specific punishments. The judgment was found in favor of the defendant.

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28. Goss v. Lopez, 419 U.S. 565, 95 S.Ct. 729, 42 L.Ed. (1975).

The case of Jones v. Parmer[29] was similar to the Ingraham v. Wright case in that both students brought suit against the teacher for using corporal punishment. The plaintiff was told to run from the lunchroom rather than to walk. The last student was promised corporal punishment as he came through the door. It was also alleged he was grabbed by the shoulder, kicked in the lower back, and posterior portion of his body. The difference between the two cases lies in the nature and severity of the injury. Since this case took place after the Ingraham v. Wright case, the procedural due process had been spelled out and the teacher was aware of the conditions which must exist when corporal punishment is administered. The first complaint of the plaintiff is violation of the Eight Amendment but the court dismissed this action on the same basis as all the other cases which involved similar circumstances, namely, the Eighth

29. Jones v. Parmer, 421 F. Sup. 738 (1976).

Amendment does not apply as a sanction against corporal punishment.[30]

The second issue which was brought before the court was the Fourteenth Amendment violation of the Due Process rights of the student. The court accepted as sufficient the principal's delegation of authority to discipline children to the teacher but only in the presence of another adult witness. The most significant statement by the court in this action was the third issue where the judge stated there existed a rational relationship between punishment and discipline in schools. On the issue of procedural Due Process, the court decided punishment and deprivation of liberty did not rise to the constitutional level and was therefore dismissed upon motion of the defendant.[31]

The 1973 Gonyaw v. Gray decision[32] in Vermont was another case where corporal punishment was administered by the principal or teacher, and parents of the children brought suit against school personnel. The plaintiffs in this case were twelve year old students. One child

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30. Ibid. p. 740.
31. Ibid.
32. Gonyaw v. Gray, 361 F. Sup. 366 (1973).

was spanked by the principal for passing dirty notes in class. The other child was struck across the face by the mathematics teacher for questioning a disciplinary action. The state laws of Vermont allow teachers to resort to any reasonable punishment, including corporal punishment, in order to maintain discipline in school.[33]

Once again the plaintiffs sued under the Eighth and Fourteenth Amendments of the Constitution. Again the courts found that the Eighth Amendment applied only to the use of excessive punishment of prisoners. The court also held the due process clause of the Fourteenth Amendment did not imply immunity of a child from imposition of reasonable school discipline. Since plaintiffs did not prove conclusively deprivation of students rights, the court accepted the motion of the defendant to dismiss.[34]

In the case of Rhodus v. Dumiller,[35] a student by the name of Keith Rhodus alleged the defendant, Michael Dumiller, administered corporal punishment to the child by striking him eight times in the area of the kidney.

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33. Ibid.
34. Ibid., p. 370.
35. Rhodus v. Dumiller, 552 F. Supp. 425 (1982).

The plaintiff alleged his due process rights were violated by the teacher administering the punishment in accordance with established board of education guidelines. The plaintiff also alleged the method of administration of punishment denied the child of his Eighth Amendment rights of protection from cruel and unusual punishment. The last assertion was a cause of action under Louisiana law by alleging the defendant's acts constituted battery. Evidence presented to the court resulted in a summary judgment concerning the federal claims.[36]

The Eighth Amendment rights were not applicable and Fourteenth Amendment protection of due process was made by commonlaw restraints and remedies. The plaintiff argued that his federally protected rights were violated because the defendant failed to follow rules mandated by the board of education. The court determined that not every infraction of state law constitutes interference with a constitutionally protected interest.

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36. Ibid.

The findings in the case were in accord with cases filed during the mid 1970's. It stated that failure of the defendant to follow rules of the board do not constitute a federal violation. The plaintiff had adequate state court remedies to protect any rights which may have been infringed. The court therefore accepted a motion from the defendant for summary judgment. The plaintiff was also required to pay court costs.[37]

In the case of Hale v. Pringle,[38] Joseph Wright and several other teachers at Lowndes County High School were late arriving at school due to the weather. Pringle, the school principal, covered the class while waiting on the teacher to arrive. While the principal was in the office, the plaintiff and another child were out of their assigned seats fighting. The principal then applied corporal punishment to both children in the amount of three to five licks. The plaintiff received several small bruises to his buttocks and one to his

37. Ibid.
38. Hale v. Pringle, 562 F. Supp. 598 (1982).

little finger which got in the way during administration of the corporal punishment.[39]

The mother of the plaintiff went to the superintendent of the local administrative unit to lodge a complaint about the excessive use of corporal punishment. The superintendent did not take any action nor did any of the board members, either individually or as a whole. The mother then brought criminal charges against Pringle because of the spanking. He was found not guilty of all charges.[40]

Later that same spring there was a reduction in force due to cuts in funding. Several employees in the Day Care Center had to be laid off. The director of the program and former director consulted with one another and developed a list of people who were least productive and created most of the personnel problems within the system. Sarah Shelby and her assistant, Shirly Hale were the ones which were laid off. Mrs. Hale, being the mother of the plaintiff, felt the reason for her

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39. Ibid. p. 599.
40. Ibid.

termination was the law suit which she had brought against the principal of the school.[41]

As in most cases involving corporal punishment, the plaintiff referred to the Eighth and Fourteenth Amendments concerning cruel and unusual punishment and the due process rights which were constitutionally protected. Many of the landmark cases were not used in the writing of this decision. The court held that the use of corporal punishment was reasonable and prudent in the establishment and maintenance of discipline of public school children. The principal applied the punishment without malice and without prejudice. The marks which were left on the buttocks of the child were to be expected in a corporal punishment situation. He did, however, administer the punishment outside the office which was against board policy and he did not have another adult witness during the paddling. The court held, however, these two procedural mistakes were not in themselves sufficient evidence to establish due process violation.[42]

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41. Ibid.
42. Ibid., p. 604.

The court did hold, however, that governmental employees did have the constitutional rights afforded all other citizens, namely that no public employee could be dismissed for the free and public expression of his or her opinion.[43] In determining whether the mother of the plaintiff was denied any of her constitutionally protected rights the court required the plaintiff to establish that free expression was inhibited by the employer and that there was a preponderance of evidence showing that this was a major factor in determining the dismissal decision. The court held that her dismissal was not based on any decision except the judgment which was presented by the director and the former director. The evidence did not indicate the principal, Pringle, had any substantial input into the decision and her lawsuit concerning her child did not significantly impact on the decision. The court further held that since the decision to lay off the plaintiff was approved by the director and voted upon by the board of education, the decision to lay off the plaintiff would have taken place regardless of any prior motivating

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43. Ibid.

activity. The court then entertained a motion to dismiss.[44]

Another case litigated in 1983 was the case of Brooks v. School Board of Richmond Virginia.[45] The classroom teacher was alleged to have pierced the left upper arm of the plaintiff as a disciplinary measure. The parents of the child claimed her substantive due process rights of the Fourteenth Amendment were denied and there was intent on part of the teacher to deprive the child of specific constitutional rights.

The court found no deprivation of constitutional rights and the acts in question did not intrude upon her liberty interest in avoiding punishment. The teacher did not follow approved procedure in applying the punishment but the court held that this in and of itself did not constitute deprivation of due process or Eighth Amendment protections.

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44. Ibid.
45. Brooks v. School Board of City of Richmond, Va., 569 1534 (1983).

The court, refered to the Ingraham v. Wright case as did most of the other cases, but it also referred to the case of Hall v. Tawney in which the court described the criteria used in determining deprivation of due process. For the sake of clarity and accuracy it is quoted in part below.

"The existence of this right to bodily security-the most fundamental aspect of personal privacy- is unmistakeably established in our constitutional decisions as an attribute of the order liberty that is the concern of substantive due process. Clearly recognized in persons charged with or suspected of crime and in the custody of police officers, we simply do not see how we can fail also to recognize it in public school children under the disciplinary control of public school teachers....As in the cognate police brutality cases the substantive due process inquiry in school corporal punishment cases must be 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

the official power literally shocking to the conscience."[46] The Supreme Court already decided a battery or other tort against a teacher or other state official does not necessarily create a constitutional violation. The plaintiff must, therefore, prove the defendant not only stuck her with a pin but that she did so with the intention of depriving her of specific constitutional rights. The court, therefore, decided that only after an assault and battery case has been tried, can the Circuit Court determine whether they have jurisdiction to try the case. The judge then entertained a motion to dismiss the case with the provision that the plaintiff had 10 days to file an amended complaint setting forth a claim consistent with the opinion.

The case of Givens v. Poe[47] is another decision where suspensions were given to children without due process afforded by the Fourteenth Amendment. The reason for this case being relevant to cases of corporal punishment is proximity of the case to people in North Carolina. The case took place in Charlotte in 1973 and

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46. Ingram v. Wright, 97 S.Ct. 1401 (1977).
47. Givens v. Poe, 346 F. Supp. 202 (W.D.N.C. 1972).

was decided by District Court Judge McMillan. The findings of facts in the case are that Rosemary and Peggy Givens had been involved in fights at school and school personnel considered the family to be combative and uncooperative. The two girls were two of six children of black parents who were uncooperative with the school and hostile toward school authorities. Peggy left her classroom and went to her sister's classroom. She then got her sister and returned to her classroom and began a fight which was particularly violent. When the classroom teacher intervened in the fight, the girls turned on the teacher. The girls claimed the teacher was at fault because they were merely discussing what someone had said about the older girl when the girls themselves were attacked by the teacher.[48] The court made note of the findings only to establish the necessity of discipline of the two girls.

The girls were sent home immediately by the principal. The next day the children were to return to school with their parents to tell them of the reason for the suspension. The mother was sick and unable to

48. Ibid., p. 206.

attend the meeting so she sent her oldest girl who was an eighth grade dropout. Followup procedures included a letter to the school superintendent requesting the children be excluded from school, some staff investigation followed but there was still no mention of a hearing or the opportunity for the girls to present their side of the story. A month after the girls were suspended there was a letter sent to the mother telling her the girls would not be allowed back in public school.

The court found the board had never formally adopted any procedures for disciplinary hearings.[49] A child had no right to a hearing before a suspension but the superintendent felt it would be a good idea. After a child had been suspended for bad conduct the principal was expected to ask the parents to come into the school for a conference and not a hearing. At this conference the principal explained the reason for the suspension but there was still no way a parent could get a written statement of the reasons for the suspension.

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49. Ibid.

"The North Carolina Constitution provides that people shall have the privilege of education and schools, libraries, and means of education shall be encouraged. Public schools shall be maintained nine months of the year and provide equal opportunity to all students. Every child of school age and of sufficient mental and physical ability shall attend public schools unless other arrangements have been made. The State Board of Education shall supervise and administer the free public school system. Statutory law G. S. 115-150 of the state of North Carolina says the teachers have the duty to maintain good order and discipline. G.S. 115-146 says the principal and the teacher may use reasonable force in the exercise of the lawful authority to restrain or correct pupils and maintain order. The State Constitution and State Statutory law does not allow the use of any disciplinary measure without the necessary constitutionally applied due process procedures. G.S. 115-36 and G.S. 115-165 authorize appeals from decisions of school personnel to the local boards of education." aware of the great majority of the public sentiment in favor of spanking. The plaintiff, on the other hand, was in the minority in her stand on

corporal punishment. The judge felt he was acting on personal opinion rather than a constitutional issue and could not therefore allow the wishes of a parent to interfere in administration of a public school.

4.3 State Supreme Court Decisions.

The case of Kurtz v. Board of Education involved a probationary teacher from Winston-Salem/Forsyth School System in North Carolina.[50] The Superintendent of Schools notified Mrs. Kurtz of her termination based on three reasons:

(1) Inadequate performance;

(2) Insubordination;

(3) Failure to comply with a reasonable requirement the Board had prescribed for imposition of corporal punishment.[51]

Mrs. Kurtz had been accused of striking several children in the face as a means of disciplinary action. She also was accused of grabbing two or more children by

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50. Kurtz v. Board of Education, 39 App 412 (1978).
51. Ibid.

the arm with such force as to cause bruises on their arms.

The Board of Education had four specific guidelines which must be followed in administration of corporal punishment.

(1) Corporal punishment should be used only when other methods of discipine have failed.

(2) Students should be advised beforehand that specific acts of misconduct could result in corporal punishment.

(3) School officials should not administer corporal punishment when angry or upset.

(4) Only a paddle will be used in administering corporal punishment.

The courts upheld the judgment of the Board of Education only on the last charge which was brought against her. There was not sufficient evidence to prove inadequate performance or insubordination but the court upheld the board's decision to dismiss Kurtz on failure to comply with rules governing use of corporal punishment. The petitioner appealed to the superior

court and the higher court upheld the lower courts findings in dismissing Kurtz on grounds of not following board guidelines in spankings.

The Board of Education Policy No. 5131, Article 8, states corporal punishment shall be administered in the principal's office by the principal or teacher with an adult witness present; pupils may not be struck or slapped about the face or head; and the parents of the child shall be notified by a school official by telephone, if possible, or in writing. It further states corporal punishment should be used only when other methods of discipline have failed.[52] The court recognized instances where striking a child is not punishment but used only to get his attention for the purpose of instruction. It was evident to the court that Mrs Kurtz used striking as a disciplinary tool and did so without following established guidelines.

The case of State v. Hoover in Oak Harbor, Ohio concerned an assistant superintendent who was sentenced to 45 days in jail and fined $1,000 for assaulting Dane

52. Ibid.

Gorton.[53] The defendant appealed to the higher court and sought to have the decision reversed. Melvin Hoover had been employed by Oak Harbor School System for twenty one years and had been appointed to the office of assistant superintendent. Students were being transferred from one bus to another when Gorton yelled "Hey Melvie". Hoover then took Gorton by the lapel area of his sweatshirt and pulled him into the school office. He then shook him and verbally admonished him.

There was some conflict in testimony concerning injuries which were sustained by the student. The student did not miss school due to the incident and did not require care of a doctor. Some testimony was adduced that the child had been involved in an incident in the afternoon with another boy which could have caused an eye injury. The superintendent had the boy in his office the following day due to a related incident and discovered no observable injury. The incident took only a few minutes and the boy was able to get on the bus the afternoon the confrontation took place.

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53. State v. Hoover, 450 N.E. 2d 710 (1982).

The appellant court found four assignments of error, the first being the denial of a motion of aquittal at the end of the state's case because the state failed to produce evidence to sustain a conviction. The court had also erred by imposing an affirmative defense on the defendant. The trial court had erred by not applying the standard of reasonable corporal punishment for disciplinary purposes as established by the state statutes of Ohio. The court further determined that in order for the state to secure a conviction for a violation of state statutory law concerning assault, it must prove not only the elements of assault contained therein but also must prove beyond a reasonable doubt that the corporal punishment inflicted upon the child was not reasonably necessary to preserve discipline.[54] Teachers in the state of Ohio have a qualified privilege to inflict corporal punishment which is reasonable in light of all the circumstances, and which is not used as an excuse for personal vengeance. Such punishment does not constitute assault and battery, and is not cruel and unusual

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54. Ibid.

punishment within the meaning of the Eighth Amendment of the Constitution.[55]

Although there is no way to be certain litigation will not follow corporal punishment, adhering to the Goss type guidelines set forth here will increase the probability of the teacher winning if taken to court. Teachers and school administrators need to be increasingly aware of the rights of students. Court decisions have been lenient toward educators in the Southeast and more restrictive in the Northeast. As the review of the court decisions will indicate, the legal system has placed great confidence in the public schools. It is incumbent upon the schools to live up to the trust which has been placed in them.

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55. Ibid.

Chapter Five

Review of Court Decisions

5.1 Introduction

The courts have had many cases brought before them in the last several decades which deal with legal aspects of corporal punishment and the impact of the Eighth and Fourteenth Amendments on how corporal punishment is administered. The cases selected for review in this chapter are those which deal with related issues such as the doctrine of in loco parentis', Fourteenth Amendment due process, and Eighth Amendment protection against cruel punishment.

School systems now find themselves in the position of having to control the use of corporal punishment and set specific guidelines for its administration. A review of the cases in this chapter will indicate the courts have been reluctant to question the authority of local school administrators or teachers in administration of reasonable punishment necessary to maintain a good learning environment.

5.2 Organization of Cases Selected for Review

Cases chosen for review in this chapter were selected because they met one or more of the following criteria:

(1) The case is considered to have been a landmark case in administration of corporal punishment.

(2) The case helped establish case law in a particular area such as due process or protection against cruel and unusual punishment.

(3) The issues in the case helped in formation of state statutory law or state board of education policy.

The first series of court cases selected for review are those United States Supreme Court landmark decisions relating to the broad constitutional issues of corporal punishment and denial of due process rights. Included in this category are the following cases:

1. Baker v. Owen (1975);

2. Goss v. Lopez (1975);

3. Ingraham v. Wright (1977).

4. Drum v. Miller (1942).

The second category of cases reviewed in this chapter consists of those United States District Court and Circuit of Appeals cases that have significantly contributed to the establishment of the "case law" or legal precedent in the area of corporal punishment. Cases selected for review in this category include:

1. Brooks v. School Board of City of Va. (1983);

2. Coffman v. Kuehler (1976);

3. Givens v. Poe (1972);

4. Gonaw v. Gray (1973);

5. Hale v. Pringle (1982);

6. Jones v. Palmer (1976);

7. Rhodus v. Dumiller (1982);

8. Woodward v. LosPresnos Independent School District (1984).

Most of the decisions rendered in the cases reported in this category were based on legal precidents established by the United States Supreme Court landmark cases cited in category number one.

The third category of cases reviewed in this chapter consists of State Supreme Court Cases. The cases selected for review in this category include:

1. Anderson v. State (1859);

2. Kurtz v. Board of Education (1978);

5.3 United States Supreme Court Landmark Decisions Concerning Corporal Punishment.

Baker v. Owen 423 U.S. 907, 96 S. Ct. 210 64 L. Ed. 2d 137 (1975).

Overview.

Since this was the most far-reaching landmark decision regarding the constitutionality of corporal punishment in American Public Schools, it is referred to in almost every judicial decision related to corporal punshment and due process rights of children.

Facts.

The major constitutional questions in this case were:

1. Do school children have liberty or property interest in freedom from corporal punishment such that Fourteenth Amendment requires some procedural safeguards against its arbitrary imposition?

2. Was the state statute authorizing use of reasonable force by teachers in disciplining students arbitrary, even if authorities needed parental consent in order to resort to corporal punishment.?

3. Are safeguards necessary in order for force to be reasonable and authority to be lawful?[1]

4. Does the Fourteenth Amendment concept of liberty embrace the right of parents to determine and choose between means of discipline for their children and is that right a fundamental right granted by the constitution?

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1. Baker v. Owen. 423 U.S. 907, 96 S. Ct. 210 64 L. Ed. 2d 137 (1975).

Decision.

The Supreme Court acknowledged the constitutional stature of parental rights and the liberty interests in raising children according to the beliefs of the parents. These rights were first given case law stature in the decision of Meyer v. Nebraska (1923)[2] and reinforced in the case of Pierce v. Society of Sisters (1925).[3] The Meyer and Pierce decisions have been accepted by the courts since then as establishing the parental right to control the upbringing of the child. The plaintiff tried to show the state must have a compelling interest in the dispensation of corporal punishment to the child in order to override parental interest in not using corporal punishment. The court agreed with plaintiff the Fourteenth Amendment concept of liberty embraces the right of a parent to determine and choose between means of discipline of children, but the court also determined that few rights are absolute.

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2. Meyer v. Nebraska, 262 U.S. 390, 43 S. Ct. 625 L. Ed. 1042 (1923).

3. Pierce v. Society of Sisters, 268 U.S. 510, 45 S. Ct. 571, 69 L. Ed. 1070 (1925).

The Supreme Court held that the North Carolina State Statute which allows use of corporal punishment in public schools is constitutional. The court further held that to implement the statute without procedural due process would be a violation of the Fourteenth Amendment. The court also suggested minimal procedures that would satisfy the Fourteenth Amendment. The court held that the punishment of Russell Carl was not cruel or unusual according to the interpretation of the Eighth Amendment protection against cruel or unusual punishment.

Discussion.

Plaintiff believed that school officials can and should maintain discipline in the public schools without the use of corporal punishment. The court did not decide the issue of the justification of corporal punishment but dealt with the constitutional issues involved. The court felt it improper to determine the appropriateness of corporal punishment because any judgment would be personal preference of the judge about an issue which is not resolved by professional educators. The court said the force must be reasonable

and must be done without malice or intended harm to the child. If these guidelines were followed, the court maintained the rights of the child would be protected and the school officials were free to employ corporal punishment as disciplinary measures until a concerted effort on part of the public opposing corporal punishment causes its harm to outweigh its utility.

The court decided, after due consideration, that North Carolina school children have a liberty interest and should have procedural due process safeguards. The state recognized that elaborate and time consuming procedures would negate the effectiveness of corporal punishment as a disciplinary tool. The court then proceeded to accommodate the child's interest with the state's interest in effective discipline. First, except for those acts of misconduct which are so anti-social or disruptive in nature as to shock the conscience, corporal punishment may never be used unless the student was informed beforehand that specific misbehavior could occasion its use and it should never be used as a first line of punishment for misbehavior. The teacher or principal can punish only in the presence of a second official and not in the presence of other children.

The second official must be informed beforehand and in the presence of the child the reason for the punishment. This is to provide the child with the opportunity to protest the punishment if he or she maintains it is unfair or is being administered without an opportunity to respond to the charges. The court did not intend to provide the student the formal opportunity to present his side of the story to the second official but to give him the opportunity to react spontaneously.

Goss v. Lopez. 419 U.S. 95 S. Ct. 42 L. Ed. 2d. 725 (1975).

Facts.

This case came to the Supreme Court on an appeal from the lower court. The school administrators of the Columbus, Ohio Public School System appealed a decision by the Federal District and Circuit Court of Appeals regarding due process of law as it pertained to the suspension of students. The lower court had ruled that the appellees, who were high school students in the Columbus School System, had been denied their constitutional rights to due process when the appellants were suspended from high school. The facts of the case

revealed that the students were not given a hearing prior to the suspensions or within a reasonable time thereafter.[4] Ohio law allowed the suspension of pupils for up to 10 days without written notice or an opportunity for a hearing. The court had held that any child excluded from school has a property interest which is protected by the due process clause of the constitution.

The school administrators appealed the decisons of the lower court based on the contention that there was no constitutional right to an education at public expense, and therefore, students suspended from school were not protected by the due process clause of the constitution. The school officials contended that a 10 day suspension was neither grevious nor severe and therefore does not come under the due process protection of the constitution.[5]

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4. Goss v. Lopez. 419 U.S. 95 S. Ct. 24 L. Ed. 2d. 725 (1975).
5. Id. at 566.

Decision.

The United States Supreme Court held that education is a property right protected by the United States Constitution. Protected interests in property within the Fourteenth Amendment are normally not created by the Constitution but rather they are created by state statutes or rules entitling people to certain rights. Ohio State Statutes directed local authorities to provide free education to all residents between the age of six and sixteen and compulsory attendance laws require attendance not less than thirty two weeks each year. The court determined that if the state of Ohio extends the right of free public education to all people and requires attendance for children between ages six and sixteen, it must have a fair procedure to determine if the right is withdrawn due to inappropriate behavior of the child. "Young people, who under Ohio statutes, are required to attend school, do not shed their constitutional rights at the schoolhouse door."[6] The state, having chosen to extend the right to an education to all people of the appellees' class generally, the

6. Id. at 565.

state may not withdraw that right on grounds of misconduct without fundamentally fair procedures to determine whether the misconduct has occurred, and the state must accept the student's entitlement to a public education.

Discussion.

Although this case did not involve the use of corporal punishment it is a landmark case in the development of due process procedures in corporal punishment cases. One of the greatest legal principles this case set forth is that once a public school system makes free public education available to all school age children it becomes a property right of the individual student and is protected by the Due Process Clause of the Constitution. Even a short term suspension cannot be imposed on a student without providing a minimum due process hearing for the student.[7] A short suspension is a far milder deprivation than expulsion but the courts perceived education of the public to be one of its most important functions. The result was the perception of any suspension as being important in the life of a child

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7. Id. at 566.

and should be protected by due process. The property interests in the educational benefits or the liberty interest in the reputation of the child being suspended may not be arbitrarily denied. The court felt interference by the courts in school operations would raise problems and should be done with restraint. Once the question of due process was settled, the problem of what process is due arises. The process must not be arbitrary and must be flexible enough to allow for free operation of the school and be applicable to every situation.

The student has an interest in avoiding an unfair or unjust suspension or expulsion from school. The due process procedures will not guarantee that a child will not be suspended unfairly but should create a situation in which this occurrence will be less likely to happen. Unfortunately, disciplinary actions take on a more urgent nature when the safety of other students is in question or if the student being removed from the school setting is of potential danger to himself. Events calling for discipline are frequent occurrences and sometimes require immediate action. Students who have been given 10 days or less suspension may be informally

allowed to discuss the case with school administration and not be required to follow full due process procedures which would be necessary for longer suspensions or expulsions. The court required at least these simple procedures to be followed to insure the legal rights of students have been followed and the child has received a fair hearing. Justice Rehnquist wrote the only dissenting opinion. He felt the decision to affirm the lower court would only serve to open the public schools up to judicial intervention and could adversely affect the quality of education in America.

Ingraham v. Wright, 97 S. Ct. 1401 (1977).

Facts.

The district court dismissed the civil rights action brought by junior high boys in the state of Florida. The Fifth Circuit Court of Appeals affirmed the findings of the lower court and the case was then appealed to the United States Supreme Court. The Florida Legislature allowed the use of corporal punishment with several limitations and restrictions. The punishment given was considered by the court of appeals to be so severe as to violate the Eighth and

Fourteenth Amendments and failed to satisfy requirements of the Due Process Clause. The court, therefore, reversed the decision of the lower court and the appellant then took the case to the Supreme Court.

At the time the petitioners took the complaint to the State District Court, they were students at Charles R. Drew Junior High School in Dade County Florida. The defendants named in the case were principal of the school, Willie Wright, two assistant principals, and the superintendent.

Normal punishment in public schools consisted of one to five licks with a wooden paddle less than two feet long. Corporal punishment was viewed by the schools as a less severe form of punishment than suspension or expulsion. Ingraham was subjected to more than 20 licks with a paddle while being held down across the principal's desk. The reason for his punishment was responding too slowly to the instructions of the teacher. The paddling was so severe the student

suffered a hematoma requiring medical attention and keeping him out of school for several days.[8]

Decision.

The Supreme Court held that the Eighth Amendment prohibition against cruel and unusual punishment is inapplicable to school paddlings. The Fourteenth Amendment concerning due process was satisfied by Florida's common law restraints. Justice Powell wrote the majority opinion for the court while Justice Brennan, Justice Marshall, and Justice Stevens wrote the dissenting opinion. According to Justice Powell, at some point, the benefit of an additional safeguard to the individual affected and to society in terms of increased assurance that the action is just, may be outweighed by the cost.[9] The court felt the openness of the schools, low incidence of abuse, and common-law safeguard were adequate protection for children. Imposing additional safeguards would unnecessarily burden the disciplinary procedures which schools use to control student conduct and insure an atmosphere

8. Ingraham v. Wright. 97 S. Ct. 1401 (1977).
9. Ingraham v. Wright 97 S. Ct. 1418 (1977).

conducive to learning. The court concluded that the Due Process Clause does not require notice and a hearing prior to the imposition of corporal punishment in the public schools.

Discussion.

The court found that corporal punishment of school children was punishment which involved an institutionalized response to the violation of certain conduct and was imposed for the purpose of detering the child from committing the violation again in the future. The court also noted that one of the children who attended Drew Junior High received 50 licks for making an obscene phone call. The same offense would have been dealt with in the juvenile courts as a misdemeanor and the officers would have had to satisfy the Eighth Amendment requirements if the child had been struck by an officer of the law rather than a school official. The purported explaination of the anomaly was the assertion that school children did not need Eighth Amendment protection because corporal punishment was subject to less abuse than in the prison system. It cannot be reasoned that just because the abuse was

seldom seen that it did not occur and there are no procedural safeguards necessary to take care of the few abuses which happen.

School officials are protected from personal liability by common law immunity in applying punishment to a child who is innocent. The student may seek damages for excessive punishment but not for punishment mistakenly given as long as the school official acted in good faith and without malice. Even if the child could sue in the case of a good-faith error, the punishment would already have been administered and the pain could not be removed. It is, therefore, imperative that there be a give and take session before the administration of corporal punushment to insure the student receiving the punishment deserves it. The court admitted that even rudimentary precautions would burden the disciplinary process of the schools but maintained the protection provided to the student outweighed the burden. The disciplinarian only needs to afford the student the opportunity to respond to the charges and be given the

opportunity to present his side of the story or present extenuating circumstances.[10]

5.4 Federal Decisions Which Contributed to the Establishment of Case Law or Legal Precedent in the Area of Corporal Punishment

Brooks v. School Board of the City of Richmond, Virginia, 569 F. Supp. 1534 (1983).

Facts.

The United States District Court, Richmond Division, heard the complaint from school student, Neita Brooks concerning conduct of a classroom teacher. The plaintiff brought action against the teacher for piercing the plaintiff's arm with a straight pin. The plaintiff further alleged the incident was a deprivation of the Fourteenth Amendment which guaranteed the due process right to be free from physical intrusion. Brooks further claimed the action to be an intrusion on her liberty interest in avoiding physical punishment.

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10. Ibid.

The plaintiff alleged physical injury and psychological injury, both of which required medical attention.[11]

Decision.

In the complaint, the plaintiff did not allege the defendant had any intent to deprive the plaintiff of any constitutional right. The plaintiff failed to prove the amount of force used, nor the justification for the force applied, deprived the plaintiff of any constitutionally protected rights. District Court Judge Warriner held the necessary element of intent to violate a constitutional right is missing and therefore granted the defendant's motion to dismiss.[12]

Discussion.

Judge Warriner relied on three related questions in determining the challenge of whether the teacher denied the student of any constitutional right.

1. Is corporal punishment of a school child by the teacher a deprivation of substantive due process?

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11. Brooks v. School Board of Richmond Va., 569 F. Supp. 1534 (1983).
12. Ibid.

2. May violation of due process rights be determined upon the motion to dismiss?

3. Is the type and degree of punishment inflicted on the plaintiff truly shocking to the conscience.[13]

Corporal punishment of a school age child by a school employee does not cross the threshold of constitutionally protected rights. Although all children and adults are protected by the Eighth and Fourteenth Amendments of the constitution, reasonable punishment used in establishing discipline in public schools is not a constitutional issue when guidelines are followed which were established in Ingraham v. Wright.[14]

The lack of evidence beyond the mere allegations and denials of the pleadings deprived the Court of facts needed to determine if the actions of the defendant were truly shocking to the conscience. Due process rights violations cannot be determined upon the motion to dismiss.

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13. Ibid.
14. Op Cit. Ingraham v. Wright.

Although the actions of the defendant were subject to question, intrustion upon the plaintiff did not reach the constitutional level. The allegation of intent could not be proved and the defendant's motion to dismiss was granted.

Coffman v. Kuehler. 409 F. Supp. 546 (1976).

Facts.

Plaintiff, Marlon Coffman, was enrolled as a high school student when the principal discovered Coffman had been absent from school without an excuse. Upon the student's return to school, Principal Dodds warned Coffman the next absence would result in a three day suspension and corporal punishment in the amount of three licks with a paddle.

The next day the student left campus during the school day without the permission of the principal. The student went by home and told the plaintiff's parents about the intended trip to visit the campus of a nearby Junior College. The plaintiff did not visit the college but instead rode around and did not return to school.

Dodds learned of the truency and called Coffman to the school office. The plaintiff was suspended for three days and told corporal punishment would be administered upon the student's return to campus. Coffman's parents were sent a certified letter notifing the parents of the suspension and pending corporal punishment.[15]

Decision.

The question whether the punishment was cruel and unusual hinged on whether it was used as a first line of defense. The principal had previously reprimanded the student for truency and told the plaintiff of the next level of punishment if the behavior occurred again. Corporal punishment was never administered because the student did not return to school. If the plaintiff had returned, punishment would have been administered in the presence of a witness. There were three or more hearings before the school board and other bodies which heard the evidence presented. The plaintiff had knowledge of the rule beforehand and was aware of the results of the breach of the rule. The rule and the announced

15. Coffman v. Kuehler. 409 F. Supp. 546 (1976).

punishment associated with it were considered reasonable by the court. Judge Woodward determined due process guidelines had been followed because the suspension was for less than ten days and corporal punishment had not been administered.

Equal protection was afforded the plaintiff according to the evidence presented. Other students were excused without punishment for unauthorized absences but the principal had specifically refused permission for Coffman to leave school campus. The principal's specific refusal to allow Coffman to leave campus created a different set of circumstances.

The plaintiff failed to establish any deprivation of due process, or equal protection. Coffman further failed to prove the punishment was cruel or unusual. Judge Woodward accepted a motion from the defendant to deny any and all relief.[16]

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16. Ibid.

Discussion.

The court found in favor of the defendant because the principal followed the guidelines set forth in Goss v. Lopez.[17] Judge Woodward found more intent to break the rules of the school because the student had just been reprimanded the day before the incident took place. The plaintiff showed no intent to continue in school refusing to complete assignments made by teachers in the interim. Evidence presented to the court indicated the defendant showed greater interest in the student continuing an education than the plaintiff showed.

This case is different from other cases discussed in this chapter because corporal punishment was not inflicted but the court held school officials were justified in using it in the future if the plaintiff decided to return to school.[18]

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17. Op. Cit. Goss V. Lopez.
18. Op Cit. Coffman v. Kuehler.

Givens v. Poe. 346 F. Supp. 202 (1972).

Facts.

Peggy Givens and Rose Mary Givens got into a dispute with teacher Charlotte Thoden. The children were sent home immediately. A conference was held the next day and the plaintiffs were notified one month later of the expulsion. Documentary evidence of the plaintiff's poor attendance, and aggressive behavior was presented to the court. Judge McMillan of the Fourth Circuit Court of Appeals heard the case.

The plaintiffs were readmitted to a special school in October after the expulsion in January so the request to be readmitted was moot. The question of due process was the constitutional issue to be decided. The parent was asked to attend a meeting with the principal but was unable to attend because of illness. No hearing was conducted and no fact finding inquiry was done. The plaintiff's older sister attended the meeting in the mother's absence. The purpose of the meeting was to tell the family the reason for the expulsion rather than to make the meeting part of the appeals process. The principal sent a letter to the superintendent requesting

the children be expelled from school and the superintendent sent a letter to the parent notifying Givens that the children would not be allowed to attend public school any more.[19] Decision.

Judge McMillan held the class action suit brought against the defendants was valid. The Plaintiffs were excluded from school without a hearing or similar opportunity to present the student's side of the case. There was no fact finding inquiry into the incident and no record was made of the procedures.[20]

Discussion.

This decision was rendered before the Baker v. Owen[21] case but many of the same issues were involved. Although this case did not involve corporal punishment it is relevant because it helps establish legal groundwork for the Baker decision. McMillan held that all school age children had the same due process rights as adults. The schools are not held to the same level

19. Givens v. Poe 346 F. Supp. 202 (1972).
20. Ibid.
21. Id. Baker v. Owen.

of investigation as branches of the law enforcement community.

From the testimony of the superintendent and assistant superintendent, Judge McMillan determined the school board had never adopted any formal procedures for disciplinary hearings. The child had no right to a hearing before the suspension but parents were required to come to a conference after the decision to suspend the child had been reached. The result of the decision Judge McMillan rendered in this case was establishment of procedural guidelines in cases involving suspensions or expulsions.[22]

Gonyaw v. Gray 361 F. Supp. 366 (1973).

Facts.

The plaintiff, Lee Gonyaw, alleged he was punished by defendant Gray, the principal of the school. Gonyaw received several strokes with a belt from Gray for passing dirty notes to a classmate. The plaintiff sought damages under Vermont State Law. The plaintiff also sought to have the law declared unconstitutional

22. Id.Givens v. Poe.

which allowed teachers or other school officials to resort to any reasonable punishment to maintain order in public schools. The defendants moved to dismiss on the ground that punishment administered to a student was within the state statute and did not remove rights protected by the United States Constitution.[23]

Decision.

Judge Feinberg concluded the Vermont State Statute allowing corporal punishment was constitutional. The law provided a legal framework for resolving day to day problems which schools encounter without infringing on the constitutional rights of students or parents. Since the plaintiffs failed to prove deprivation of constitutional rights the judge accepted the defendants motion for summary judgment.[24]

Discussion.

The plaintiffs argued the vagueness of Vermont law which permitted the use of corporal punishment rendered it unconstitutional. There was also the question of

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23. Ibid.
24. Ibid.

whether the authorization of corporal punishment in Vermont law was legitimately related to the purpose of school discipline. Vermont had civil and criminal penalities for the abuse of children. If a teacher used corporal punishment to maintain discipline and used restraint in its application, there should have been little cause for litigation.

The judge determined Vermont law concerning corporal punishment was not unconstitutionally vague. The judge further decided it was not within the competence of the court to determine if Vermont law concerning corporal punishment was legitimately related to the purpose of maintaining discipline.[25]

Hale v. Pringle. 562 F. Supp. 598 (1983).

Facts.

Principal Pringle was supervising the class of teacher Josephine Wright because Wright was late for work due to incliment weather. Shawn Hale was spanked by Pringle for fighting while under his supervision. Both Hale and the student with whom he fought received 3

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25. Ibid.

to 5 licks with a paddle. Hale suffered slight bruises to the buttocks and one small bruise to the little finger which got in the way during the administration of the corporal punishment. Hale's mother complained to the superintendent that Pringle had not followed board policy which required students to be punished in the presence of a second adult and in the principal's office. Hale then brought criminal charges against Pringle but the criminal charges were dismissed.

Shirley Hale, mother of Shawn Hale was an employee of the school system. When a reduction in force resulted in Hale's dismissal, Hale brought charges against the school board and Pringle. Hale was not employed by Pringle but Hale asserted the litigation brought against Pringle influenced the decision to dismiss Hale as an employee of the school system.[26]

Decision.

Judge Myron Thompson held that Shirley Hale's dismissal was in no way related to the decision to dismiss because of reduction in force. The decision was

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26. Hale v. Pringle, 562 F. Supp. 598 (1983).

made by people who were not directly affected by Hale's suit against Pringle and would not have been influenced by it. The constitutionality of corporal punishment had been decided in other landmark cases. Pringle did not follow established guidelines but that did not raise the issue to the constitutional level. Judge Thompson held that Hale did not establish evidence of a relationship between the layoff and prior litigation so judgement was entered in favor of the defendant.[27]

Discussion.

District Court Judge Thompson held that infliction of corporal punishment which causes physical dammage to the student is unconstitutional. The plaintiff, however, failed to show proof of permanent damage or the intent to cause permanent damage to the plaintiff's son. Judge Thompson also held imposition of corporal punishment did not require prior notice or due process hearing. If the child was given the opportunity to respond informally in the presence of a second witness due process requirements were satisfied.

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27. Ibid.

Jones v. Parmer. 421 F. Supp. 738 (1976).

Facts.

The plaintiff, Curtis Jones, was told to run from the lunchroom to the next class. When the plaintiff refused to walk fast enough to satisfy the defendant, Gerald Parmer, the student was subjected to corporal punishment. When the plaintiff refused to submit willingly to corporal punishment, the teacher grabbed the student by the shoulder and kicked the child in the back and posterior portion of the body causing the plaintiff physical pain and temporary and permanent injuries. The board of education had adopted regulations which governed the use of corporal punishment but the regulations were not followed.[28]

Decision.

This decision was on behalf of the individual rather than a class action suit such as the Ingraham v. Wright[29] decision. The defendant did not follow guidelines established by the board of education in the

28. Jones v. Parmer. 421 F. Supp. 738 (1976).
29. Id. Ingraham v. Wright.

administration of corporal punishment. The student received injuries which required medical attention. A broken bone in the student's right hand was one result of the punishment administered. Bruises and sprains to the back were also alleged. Judge Pittman accepted a motion from the defendant for dismissal. The determination of impropriety should have been made by the state courts or the board of education, for the court found no violation of constitutional rights.[30]

Discussion.

The Ingraham v. Wright[31] decision was a class action decision and helped to establish procedural guidelines at the state and local school board level. The Jones V. Parmer[32] decision concerned an individual who did not follow the guidelines which were established by the board of education. Judge Pittman did not rule on the constitutionality of corporal punishment but suggested the plaintiff may seek relief in the state courts or with the local board of education.

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30. Id. Jones v. Parmer.
31. Id. Ingraham v. Wright.
32. Id. Jones v. Parmer.

Rhodus v. Dumiller. 552 F. Supp. 425 (1982).

Facts.

Plaintiff, Keith Rhodus, alleged the defendant, Michael Dumiller, applied corporal punishment to the plaintiff in the amount of eight blows to the kidney area. Dumiller was a teacher and coach at Southside Junior High School in Livingston Parish, Louisiana, at the time of the alleged incident. The plaintiff claimed the type and degree of corporal punishment violated the board of education policy which limited the number of blows to three and required the presence of a second adult as a witness.[33]

Decision.

The civil rights suit was brought against the teacher for not following board policy. District Court Judge Polozola held that the Eighth Amendment to the constitution was not applicable to school paddlings. Common law remedies of the State of Louisiana satisfy the requirements of the Fourteenth Amendment. The judge further held that failure to follow board of education

33. Rhodus v. Dumiller. 552 F. Supp. 425 (1982).

rules did not constitute a federal violation. The teacher moved for summary judgment and the judge granted the motion.[34]

Discussion.

The material facts of the case were not in dispute. The defendant did violate school board policy by administering excessive blows to the student. The policy of the school board was examined by the court and found to be constitutional. The judge found the common law restraints of Louisiana sufficient to protect the rights of school age children. The plaintiff may then seek relief in the state courts.[35]

Woodward v. Los Fresnos Independent School District. 732 F. 2d 1243 (1984).

Facts.

Plaintiff, Rayellea Woodward, filed a complaint against the local school district because of three punitive licks administered as punishment for using abusive language toward a bus driver. The complaint did

34. Ibid.
35. Ibid.

not claim any excessive punishment or permanent injury due to the infliction of the corporal punishment. The plaintiff used abusive language to a bus driver. The assistant principal called the parents of the student and gave the parents the option to choose from three forms of punishment: (1) three days suspension (2) three punitive spanks with a paddle or (3) thirty days off the school bus. The mother chose the three days suspension. The assistant principal accepted her recomendation but was approached later that day by the student who wanted the three licks instead of the suspension. The assistant principal agreed to give corporal punishment as the student requested.[36]

Decision.

The court held noncompliance with local school board policy was neither arbitrary nor capricious. Three swats administered by the assistant principal were neither inhumane nor a shocking abuse of official power. Simple failure to comply with regulations was not considered by the court to be a constitutional issue.

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36. Woodward v. Los Fresnos Independent School District. 732 F. 2d 1243 (1984).

Judge Vela found no grounds for Federal Court action since a constitutional issue was not involved. The judgment was therefore affirmed for the defendant.[37]

Discussion.

Corporal punishment was not interpreted as cruel and unusual punishment under the Eighth Amendment to the Constitution as long as the student received due process and the punishment was within the limits of reason. The plaintiff did not claim excessive punishment or unjustified punishment. The assistant principal deviated from established procedures when the defendant used corporal punishment against the wishes of the parent. Three conferences between parents and the assistant principal gave adequate time and opportunity for the student to present extenuating circumstances.

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37. Ibid.

5.5 State Supreme Court Decisions

Kurtz v. Board of Education. 398 N.C. 412 (1978).

Facts.

Judith Kurtz was dismissed by the Winston-Salem Forsyth Board of Education in 1976. Kurtz brought action against the board of education claiming the school board's allegation of insubordination and inadequate performance were not supported by the evidence presented. Kurtz was a new third grade teacher accused of hitting children over the head with books, pinching children's arms hard enough to cause bruises, slapping students' faces, and not following regulations concerning the administration of corporal punishment. Five children testified concerning injuries which were inflicted by the plaintiff. Parents gave testimony concerning bruises which were observed.[38]

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38. Ibid.

Decision.

The plaintiff refused the summary hearing and chose to appear before the board of education to present the teacher's version of the events. The board voted to dismiss the teacher based on testimony and the recommendation of the superintendent of education in the school district. The teacher brought suit in State Supreme Court. The court found in favor of the teacher and ordered the teacher reinstated. On appeal to the State Supreme Court, the judge reversed the decision and upheld the boards decision to dismiss the teacher on grounds of insubordination. The claim of inadequate performance was not proved but the judge chose not to substitute court judgment for that of the board of education.[39]

Discussion.

The plaintiff claimed the board of education's policy requiring private hearings involving personnel was a breach of the open meetings law of North Carolina. The judge rule the board had no alternative in following

39. Ibid.

the guidelines concerning closed hearings and the court refused to rule on the constitutionality of the state requirement concerning open meetings. The board of education changed the policy of closed meetings in personel hearings and the plaintiff did not prove damage by the closed hearing. Although this decision was based on contract renewal of a non tenured teacher, the basis of the decision not to renew the contract was insubordination by not following board policy in administering corporal punishment. There were no constitutional issues raised except whether the closed meeting of the board hearing met the open school concept of the Ingraham v. Wright decision.[40] The judge accepted the concept that schools are open to public scrutiny and children are afforded protection from cruel and unusual punishment. This openness is not a constitutionally protected right in a board hearing and the judge dismissed the case on those grounds.

Supreme Court decisions and Federal Court decisions both deal with the constitutional issues involved in the use of corporal punishment. There are several landmark

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40. Id. Ingraham v. Wright.

cases which are cited in the Federal Courts and State Supreme Courts. The issues revolve around the Eighth Amendment right to protection from cruel and unusual punishment and the Fourteenth Amendment protection of due process rights. The courts consistently refused to establish procedural guidelines concerning corporal punishment when the exercise of the conduct did not rise to the constitutional level. The courts have also been reluctant to interfere with school board decisions concerning discipline and substitute the courts' judgment for that of the school board.

Chapter Six

Summary, Conclusions, and Recommendations

The educational system of the United States is one of the most important foundations of the democratic form of government. European schools had great influence on the design and focus of colonial schools in America but there were many obstacles which European schools did not face. European schools were not concerned with education of all people. They educated the nobility and clergy and were not concerned with establishing and promoting a common language over a geographic area as large as the United States. America was spread over an entire continent and required popular support for financing. The agricultural and industrial revolutions changed what was expected of the schools in preparing graduates for employment. Specialization, leisure time, compulsory attendance laws, and racial integration all contributed to unique problems which American schools have faced for several decades.

Technology is the modern revolution challenging America and is just now being addressed by school personnel. Social, moral and ethical changes have

resulted in schools developing broader responsibilities toward students. Curriculums now include such topics as political science and sex education. Discipline in American Public schools has become one of the great stressful factors which teachers face. Corporal punishment has come under close scrutiny by the general public. Litigation proliferated in this area during the mid nineteen seventies. Several Supreme Court Landmark decisions were handed down during this period. An increasing awareness of student rights made educators more acutely aware of the need for specific guidelines which would satisfy all the due process guideline set forth in the Eighth and Fourteenth Amendments.

Based on an analysis of the research, it is apparent that there is widespread use of corporal punishment in American Public Schools and it will continue to be used by educators. If boards of education and school administrators are going to be responsible for formation of policy governing corporal punishment, they should have access to appropriate information concerning trends and current legal status of corporal punishment as well as case law which influenced formation of school policy.

Question One:

What does analysis of State Statutes reveal concerning corporal punishment?

Analysis of state statutes reveal there are a number of states which have specific statutes dealing with corporal punishment while others do not address the issue at all. In the definition of terms in chapter one, punishment was defined as any adverse stimulus which is used to reduce the rate or probability of a reoccurrence of some behavior. States statutes differ in the definition of corporal punishment but all states which define it, define it as punishment inflicted directly on the body. Whether it is called spanking, corporal touching, whipping, or paddling, it results in physical pain in some amount to the recipient. State statutes often leave it up to the state board of education or to each local board of education to establish guidelines concerning its use.

Northeastern states use corporal punishment less than any other geographic region of the nation. While there are only four states which specifically ban

corporal punishment by state statute, there many states which have bills pending in their state legislatures which would abolish it. Southeastern states use corpoal punishment proportionaly more than the rest of the nation. One result of increased frequency of use is increased litigation. Both the Baker v. Owen decision and the Ingraham V. Wright decision are North Carolina cases.

Question Two:

What does an analysis of Judicial Decisions reveal concerning the use of corporal punishment?

An analysis of Judicial Decisions reveals concern over constitutional rights in the use of corporal punishment. Supreme Court decisions deal mostly with the Eighth and Fourteenth Amendments to the constitution. The Supreme Court has consistently held corporal punishment to be constitutional when applied with all the Goss type due process procedures and is not applied with malice toward the child. The Eighth Amendment has been held to apply only to prisoners because school children are protectd by public scrutiny. Teachers and other school personnel are still vulnerable

to tort claims in state courts when no constitutional issues arise.

Question Three:

Predicated on an analysis of State Statutes and Judicial Decisions, what are the emerging legal trends and issues?

Legal trends and issues can be addressed in three areas.

(1) The constitutional issues involved in the use of corporal punishment are clearly defined and established by the Supreme Court. Further litigation of constitutional issues will arise in other areas of the disciplinary process.

(2) State legislators are reluctant to address the issue of corporal punishment. However, other states will gradually join the ranks of those who ban its use but the south will be the last stronghold of corporal punishment in the United States unless Congress passes federal regulations establishing national laws prohibiting it.

(3) State and local boards of education will have the greatest impact on changes in policy concerning corporal punishment. There are many larger metropolitan cities which already have school board policies banning corporal punishment. Teacher organizations, medical boards, and parent groups have gone on record publicly opposing corporal punishment.

Question Four: Predicated on Judicial Decisions, what are reasonable policies for school officials concerning corporal punishment?

Based on the results of this study, the following guidelines concerning corporal punishment are recommended. These guidelines are based on the legal principles established by the United States Supreme Court landmark decisions and on discernable trends revealed by lower federal court decisions in cases related to corporal punishment. While these appear to be legally acceptable criteria to follow, school officials need to remember that this still does not give protection from judicial grievances.

Guidelines for Developing Policies Concerning Corporal Punishment.

(1) All practices involving corporal punishment should follow the due process guidelines set forth in Goss v. Lopez. These practices should be reviewed by the local board of education and discussed with local administrators and teachers to insure complete understanding and cooperation.

(2) Parental permission is not necessary to administer corporal punishment but if a parent specifically requests it not be used with the child, it would reduce the probability of litigation to adhere to the parents request. The greatest area of vulnerablilty for the schools in the area of corporal punishment is the doctrine of "in loco parentis". A teacher cannot act in place of the parent if the parent would not use that form of punishment in an a similar or identical situation.

(3) Any policies developed by local boards of education should be publicized to all segments of the community. If the policies are public information and

receive no challenge, the defendant can claim support of the policy by the general public.

(4) Although excessive procedural safeguards will inhibit the disciplinary process in school, it is in the best interest of the school staff to use more safeguards than necesary rather than ommit one which the courts hold necessary to protect some constitutional right or privilege. It is better to be "safe than sorry".

(5) A comprehensive disciplinary policy will include alternatives to corporal punishment which may be used instead of requiring school personnel to corporally punish children for every minor infraction of rules.

6.1 Conclusions

Since each case is composed of a unique set of circumstances and personalities, it is difficult to draw generalities. However, based on an analysis of the data collected and cases studied, the following conclusions can be made.

(1) Courts will continue to debate the constitutional aspects of corporal punishment.

(2) The due process clause of the Fourteenth Amendment becomes a moot issue as long as boards of education have well developed policies and school personnel follow them closely. The policies should be posted and known to all employees, parents, and children in the school system.

(3) The issue of assault and battery in corporal punishment cases will continue to be decided by state courts. Each case will be decided on its own merits leaving teachers and school administrators susceptible to spurious tort claims.

(4) The doctrine of "in loco parentis" has not been firmly established by the courts in cases where parents deny the schools permission to use corporal punishment. The argument that schools are acting on behalf of the parents is negated when schools use a form of punishment contrary to parental wishes.

(5) If school boards examine the evidence presented in this study, they may conclude that corporal punishment is not essential to maintaining an educational environment conducive to learning. Four states have abolished the use of corporal punishment and

three others have abandoned corporal punishment as a viable alternative to other less controversial forms of punishment.

(6) Because boards of education are elected officials and are sensitive to public opinion, policies concerning corporal punishment will become more conservative and restrictive.

(7) School administrators in the Southeastern United States will continue to use corporal punishment more frequently than educators in other national geographic regions.

(8) Discipline or lack of discipline has not been proven as a factor in the number incidences of corporal punishment reported by school superintendents.

(9) Although the efficacy of corporal punishment appears suspect in the minds of many of the judiciary, they have been very hesitant to interfere in local matters involving corporal punishment as long as due process guidelines are established and followed in its application.

6.2 Recomendations

The stated purpose of this study was to provide educational decision makers with appropriate information regarding the legal aspects of certain practices related to corporal punishment which would enable them to create educationally and legally sound policy.

The decision whether or not to use corporal punishment is a policy decision of many local boards of education. The decision should be based on local need, the history of the setting, and trends which may influence short term benefits or liabilities of the policy decision. State Board of Education policies concerning corporal punishment are generally broad. Local school boards may find it necessary to make guidelines which are more specific. Although local boards of education may not create policy which is contrary to state board policy or state statutory law, they may create policies which are stricter and more detailed than those laws and regulations established at a higher level.

6.3 Recommendations for Further Study

Further study in the area of corporal punishment should include a comparative study of Federal Court Districts to determine if there are differences in judicial interpretation of Constitutional protections concerning corporal punishment. Another potential area of investigation is a comparative study of state board of education policies which would reveal trends in different geographic regions.

6.4 Postscript

The decision whether to use corporal punishment will continue to be a controversial issue. It should be done in an open atmosphere with ample opportunity for input from all interested parties. If the school board decides to use corporal punishment, it will create a high probability of some type of legal action initiated by the student or a class action suit brought on behalf of several students.

Although no disciplinary policy will insure immunity against litigation, school boards and school personnel can reduce the probability of having school

disciplinary practices invalidated by formulating and implementing a comprehensive set of guidelines governing administration of corporal punishment. If litigation arises, it will increase the probability of courts supporting schools in their disciplinary efforts.

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Appendix A

its jurisdiction. Its authority in this respect shall include but shall not be limited to prescribing the grouping and classification of students within the same grade level, based upon considerations of native ability as indicated by intelligence tests; the general academic achievement, and level of achievement in a particular subject area. Any such grouping of pupils within a class or grade shall be prescribed by the local board of education only after consultation with the superintendent of the school, teachers, students and parents of various pupils concerned, and the decision reached shall be solely within the discretion of the board.

The local board may prescribe the times and hours and place of instruction for any grouping within schools and classrooms as it may consider advisable and may assign special teachers, prescribe special subjects or remedial courses, advanced courses, vocational courses and take such other action with respect to the time and place for teaching such separate groupings as it may consider in the best interest of the students and the entire student body of the school. (Acts 1963, No. 522, p. 1126.)

§ 16-1-14. Removal, separation or grouping of pupils creating disciplinary problems.

Any city, county or other local public school board may prescribe rules and regulations with respect to behavior and discipline of pupils enrolled in the schools under its jurisdiction and may in its discretion require the grouping of pupils based upon considerations of discipline and may remove, isolate, separate or group pupils who create disciplinary problems in any classroom or other school activity and whose presence in the class may be detrimental to the best interest and welfare of the pupils of such class as a whole. (Acts 1963, No. 460, p. 995, § 1.)

Collateral references. — 79 C.J.S., Schools & School Districts, §§ 494, 495.

§ 16-1-15. Classification and grouping of pupils upon consideration of social attitudes, etc.

For the purpose of preventing or minimizing disciplinary problems, the local school board may classify and group pupils upon consideration of their social attitudes, their amenability to discipline, their hostility toward the school environment and their health, morals, cleanliness and habits of personal behavior. (Acts 1963, No. 460, p. 995, § 2.)

§ 16-1-16. Special courses, tutoring, counseling, etc., for special groups of pupils.

A local board of education may in its discretion prescribe special courses in citizenship, health, morals or any other subject it may consider necessary to meet the needs of special groups of pupils and may prescribe individual tutoring, counseling or group instruction and may assign special teachers and special

ARTICLE 1
Provisions Applicable to Offenses Generally

PART 7
JUSTIFICATION AND EXEMPTIONS FROM CRIMINAL RESPONSIBILITY

18-1-703. Use of physical force - special relationships. (1) The use of physical force upon another person which would otherwise constitute an offense is justifiable and not criminal under any of the following circumstances:

(a) A parent, guardian, or other person entrusted with the care and supervision of a minor or an incompetent person, and a teacher or other person entrusted with the care and supervision of a minor, may use reasonable and appropriate physical force upon the minor or incompetent person when and to the extent it is reasonably necessary and appropriate to maintain discipline or promote the welfare of the minor or incompetent person.

* * * *

PART 8
RESPONSIBILITY

18-1-801. Insufficient age. The responsibility of a person for his conduct is the same for persons between the ages of ten and eighteen as it is for persons over eighteen except to the extent that responsibility is modified by the provisions of the "Colorado Children's Code", title 19, C.R.S. 1973. No child under ten years of age shall be found guilty of any offense.

PART 9
DEFINITIONS

18-1-901. Definitions. (1) Definitions set forth in any section of this title apply wherever the same term is used in the same sense in another section of this title unless the definition is specifically limited or the context indicates that it is inapplicable.

(2) The terms defined in section 18-1-104 and in section 18-1-501, as well as the terms defined in subsection (3) of this section, are terms which appear in various articles of this code. Other terms which need definition but which are used only in a limited number of sections of this code are defined in the particular section or article in which the terms appear.

(3) (a) "To aid" or "to assist" includes knowingly to give or lend money or extend credit to be used for, or to make possible or available, or to further the activity thus aided or assisted.

(b) "Benefit" means any gain or advantage to the beneficiary including any gain or advantage to another person pursuant to the desire or consent of the beneficiary.

(c) "Bodily injury" means physical pain, illness, or any impairment of physical or mental condition.

(d) "Deadly physical force" means force, the intended, natural, and probable consequence of which is to produce death, and which does, in fact, produce death.

(e) "Deadly weapon" means any of the following which in the manner it is used or intended to be used is capable of producing death or serious bodily injury:

(I) A firearm, whether loaded or unloaded;

(II) A knife;

(III) A bludgeon; or

(IV) Any other weapon, device, instrument, material, or substance, whether animate or inanimate.

423 CORPORAL PUNISHMENT

423.1 Corporal punishment is defined as the intentional use of physical force upon a student as punishment for any alleged offense or behavior, or the use of physical force in an attempt to modify the behavior, thoughts, or attitudes of a student.

423.2 The use of corporal punishment in any form is strictly prohibited in the public schools. No student shall be subject to the infliction of corporal punishment by any teacher, other student, administrator, or other school personnel.

423.3 No teacher, administrator, student, or other person shall subject a student to corporal punishment or condone the use of corporal punishment by any person under his or her supervision or control. Permission to administer corporal punishment shall not be sought or accepted from any parent, guardian, or school official.

The privilege of such release shall be withdrawn by the department in case the pupil does not actually attend the sessions of religious instruction. No teacher of the public schools shall participate in such religious instruction during the school hours for which he is employed to teach in the public schools, and no public funds shall be used directly or indirectly for such religious instruction, at any time when its use would otherwise be required in connection with the regular program of the school. [L 1929, c 134, §§1-4; RL 1945, §1835; am L 1945, c 21, §1; RL 1955, §40-15]

Attorney General Opinions

The federal and state Constitutions are not violated when county-owned buses are rented by sectarian institutions to transport public school students to religious education classes. Att. Gen. Op. 66-24.

§298-16 Punishment of pupils limited. No physical punishment of any kind may be inflicted upon any pupil, but reasonable force may be used by a teacher in order to restrain a pupil in attendance at school from hurting himself or any other person or property and reasonable force may be used as defined in section 703-309(2) by a principal or his agent only with another teacher present and out of the presence of any other student but only for the purposes outlined in section 703-309(2)(a). [L 1896, c 57, §34; RL 1925, §307; RL 1935, §722; RL 1945, §1836; RL 1955, §40-16; HRS §298-16; am L 1973, c 145, §1]

Section 1.280 Discipline

Section 24-24 of The School Code states that teachers and other certificated educational employees shall maintain discipline in the schools.

a) To prevent misuse of this broad concept as set out in Section 24-24 of The School Code, the district shall comply with the following:

b) If corporal punishment is to be used by school districts as a penalty for misbehavior, the district shall notify parents upon initial enrollment of the student that they may submit a written request that corporal punishment not be administered to their child or children.

Legal Office

The Commonwealth of Massachusetts
Department of Education

1385 Hancock Street, Quincy, Massachusetts 770-7315

To: Roger McCluney

From: Sandra L. Moody
Acting General Counsel

Date: April 28, 1986

Enclosed please find a copy of the Massachusetts statute governing corporal punishment in the public schools, M.G.L. c. 71, s.37G.

CHAPTER VII: STUDENT DISCIPLINE, SUSPENSION, EXPULSION

A. Discipline

1. Each school district must adopt a district wide school discipline policy which must include written rules of conduct for students, and grounds and procedures for removal of students from class. (M.S. §127.41, Subd. 1)

2. Grounds for removal from class include:

   a. Conduct which disrupts the rights of others;

   b. Conduct which endangers other persons;

   c. Willful violation of specified rules of conduct adopted by the board.

   (M.S. §127.41, Subd. 2)

3. Policy components shall include rules, grounds for student removal, authorities, time constraints, parental involvement, referral, remediation, etc. (M.S. §127.41, Subd. 3)

B. Grounds for Dismissal

1. A student may be dismissed on the following grounds:

   a. Willful violation of any reasonable school board regulation. Such regulation must be clear and definite to provide notice to students that they must conform their conduct to its requirements;

   b. Willful conduct which materially and substantially disrupts the rights of others to an education;

   c. Willful conduct which endangers the student or other students, or the property of the school.

   (M.S. §127.29, Subd. 1)

2. No school shall dismiss any student without attempting to provide alternative programs of education prior to dismissal proceedings, except where it appears that the student will create an immediate and substantial danger to himself/herself or to persons or property around him/her. Such programs may include special tutoring, modification of the curriculum for the student, placement in a special class or assistance from other agencies. (M.S. §127.29, Subd. 1)

C. Suspension

1. Suspension is a prohibition against a student attending school for a period of more than one day to a maximum of five school days. (M.S. §127.27, Subd. 10)

1985-86 Legislature STATE OF WISCONSIN LRB-4106/1
BF:tm

1985 SENATE BILL 519

February 4, 1986 - Introduced by Senators ULICHNY, FEINGOLD, CZARNEZKI, OTTE, CULLEN, ANDREA, LORMAN, LEEAN and LASEE; cosponsored by Representatives FERGUS, SHOEMAKER, BARRETT, ZEUSKE, MAGNUSON, KRUG, MARK LEWIS, MUSSER and PLIZKA. Referred to Committee on Judiciary and Consumer Affairs.

AN ACT to amend 939.74 (2) (a); and to create 939.74 (2) (c) of the statutes, relating to statute of limitations for certain crimes against children.

Analysis by the Legislative Reference Bureau

Under present law, a criminal prosecution must be commenced within a certain time or be barred. Generally, a misdemeanor prosecution must be brought within 3 years and a felony prosecution must be brought within 6 years of the date the offense was committed. An example of one of the exemptions is a prosecution for theft, which may extend beyond the normal time limits in situations where the discovery of the loss occurs some time after the theft occurs.

This bill extends the statute of limitations to 15 years for certain crimes involving bodily harm, sexual assault, incest, sexual exploitation and enticement in which the victim is a child. The bill applies to offenses occurring on or after the bill's effective date.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 939.74 (2) (a) of the statutes is amended to read:

939.74 (2) (a) A prosecution for murder may be commenced at any time~~.~~

SECTION 2. 939.74 (2) (c) of the statutes is created to read:

939.74 (2) (c) If the alleged victim has not attained the age of 18 years at the time of the alleged offense, a prosecution for the commission or the attempt to commit any offense specified in s. 940.201, 940.203,

28-1413. Use of force by person with special responsibility for care, discipline, or safety of others. The use of force upon or toward the person of another is justifiable if:

(1) The actor is the parent or guardian or other person similarly responsible for the general care and supervision of a minor or a person acting at the request of such parent, guardian or other responsible person and:

(a) Such force is used for the purpose of safeguarding or promoting the welfare of the minor, including the prevention or punishment of his misconduct; and

(b) Such force used is not designed to cause or known to create a substantial risk of causing death, serious bodily harm, disfigurement, extreme pain or mental distress or gross degradation; or

(2) The actor is a teacher or a person otherwise entrusted with the care or supervision for a special purpose of a minor and:

(a) The actor believes that the force used is necessary to further such special purpose, including the maintenance of reasonable discipline in a school, class or other group, and that the use of such force is consistent with the welfare of the minor; and

(b) The degree of force, if it had been used by the parent or guardian of the minor, would not be unjustifiable under subdivision (1)(b) of this section;

(3) The actor is the guardian or other person similarly responsible for the general care and supervision of an incompetent person, and:

(a) Such force is used for the purpose of safeguarding or promoting the welfare of the incompetent person, including the prevention of his misconduct, or, when such incompetent person is in a hospital or other institution for his care and custody, for the maintenance of reasonable discipline in such institution; and

(b) Such force used is not designed to cause or known to create a substantial risk of causing death, serious bodily harm, disfigurement, extreme or unnecessary pain, mental distress, or humiliation;

(4) The actor is a doctor or other therapist or a person assisting him at his direction, and:

(a) Such force is used for the purpose of administering a recognized form of treatment which the actor believes to be adapted to promoting the physical or mental health of the patient; and

(b) Such treatment is administered with the consent of the patient or, if the patient is a minor or an incompetent person, with the consent of his parent or guardian or other person legally competent to consent in his behalf, or the treatment is administered in an emergency when the actor believes that no one competent to consent can

be consulted and that a reasonable person, wishing to safeguard the welfare of the patient, would consent;

(5) The actor is a warden or other authorized official of a correctional institution, and:

(a) He believes that the force used is necessary for the purpose of enforcing the lawful rules or procedures of the institution, unless his belief in the lawfulness of the rule or procedure sought to be enforced is erroneous and his error is the result of ignorance or mistake as to the provisions of sections 28-1406 to 28-1416, any other provision of the criminal law, or the law governing the administration of the institution;

(b) The nature or degree of force used is not forbidden by section 28-1408 or 28-1409; and

(c) If deadly force is used, its use is otherwise justifiable under sections 28-1406 to 28-1416;

(6) The actor is a person responsible for the safety of a vessel or an aircraft or a person acting at his direction, and:

(a) He believes that the force used is necessary to prevent interference with the operation of the vessel or aircraft or obstruction of the execution of a lawful order, unless such belief in the lawfulness of the order is erroneous and such error is the result of ignorance or mistake as to the law defining such authority; and

(b) If deadly force is used, its use is otherwise justifiable under sections 28-1406 to 28-1416; and

(7) The actor is a person who is authorized or required by law to maintain order or decorum in a vehicle, train or other carrier or in a place where others are assembled, and:

(a) He believes that the force used is necessary for such purpose; and

(b) Such force used is not designed to cause or known to create a substantial risk of causing death, bodily harm, or extreme mental distress.

Source: Laws 1972, LB 895, § 8; R.R.S.1943, § 28-840, (1975).

28-1414. Mistake of law; reckless or negligent use of force. (1) The justification afforded by sections 28-1409 to 28-1412 is unavailable when:

(a) The actor's belief in the unlawfulness of the force or conduct against which he employs protective force or his belief in the lawfulness of an arrest which he endeavors to effect by force is erroneous; and

Ed 203.02 Corporal Punishment. Corporal punishment shall be allowed only in cases of self defense or under very exceptional circumstance. Such punishment is not recognized by the state board of education as a desirable method of discipline in New Hampshire schools.

Source. #2055, eff 6-16-82; ss by #2714, eff 5-16-84

PART Ed 204 APPEALS OTHER THAN FROM LOCAL SCHOOL BOARD DECISIONS

Statutory Authority: RSA 189:13, 14-a and 14-b, 541-A

Ed 204.01 Prehearing Procedure.

(a) An appeal to the state board shall be in writing and filed with the commissioner. It shall concisely allege:

(1) The background of the problem;

(2) Any action taken below;

(3) The specific grounds upon which any such action is claimed to be in error; and

(4) The complete names and current addresses of all parties.

ARTICLE 1. PUBLIC AND PRIVATE EDUCATIONAL INSTITUTIONS

18A:6-1. Corporal punishment of pupils

No person employed or engaged in a school or educational institution, whether public or private, shall inflict or cause to be inflicted corporal punishment upon a pupil attending such school or institution; but any such person may, within the scope of his employment, use and apply such amounts of force as is reasonable and necessary:

(1) to quell a disturbance, threatening physical injury to others;

(2) to obtain possession of weapons or other dangerous objects upon the person or within the control of a pupil;

(3) for the purpose of self-defense; and

(4) for the protection of persons or property;

and such acts, or any of them, shall not be construed to constitute corporal punishment within the meaning and intendment of

this section. Every resolution, bylaw, rule, ordinance, or other act or authority permitting or authorizing corporal punishment to be inflicted upon a pupil attending a school or educational institution shall be void.

Historical Note

Source: R.S. 18:19-1, amended L.1964, c. 182, § 1.
Prior Laws: L.1903 (2d Sp.Sess.), c. 1, § 112, p. 44 [C.S. p. 4767, § 112].

Library References

Schools and School Districts ⇐⇒5, 176.

C.J.S. Schools and School Districts §§ 9, 11, 502.

(2) The board of education shall adopt such a policy, review it on an annual basis and amend it when appropriate. Each school district's policy on school conduct and discipline shall be filed in each school building, and shall be available for review by any individual.

(3) Corporal punishment. (Attached is a copy of the Amendment to the Rules of the Board of Regents prohibiting corporal punishment.)

(i) The term corporal punishment, as used in this section, shall mean any act of physical force upon a pupil for the purpose of punishing that pupil. Such term, as used in this section, shall not mean the use of reasonable physical force for any of the following purposes:

(a) to protect oneself from physical injury;

(b) to protect another pupil or teacher or any other person from physical injury;

(c) to protect the property of the school or of others; or

the appropriate officer or employee of the school the student attended. Such officer or employee may develop a plan of services for such student and shall contact the welfare department of the county or city where such student resides, the court service unit of the juvenile and domestic relations district court for the county or city where such student resides, or any other public agency or agencies in the county or city where such student resides, to determine if such agency can provide appropriate services to such student. Any such welfare department, court service unit, or other agency which provides counseling, treatment or other services to such student shall submit reports on the progress of the student to such officer or employee during the period in which it provides such services and such officer or employee shall thereafter promptly furnish such reports to the school board. (Code 1950, § 22-230.3; 1975, c. 651; 1976, c. 601; 1978, c. 544; 1980, c. 559.)

§ 22.1-280. Reasonable corporal punishment of pupils permitted. — In the maintenance of order and discipline and in the exercise of a sound discretion, a principal or a teacher in a public school or a school maintained by the State may administer reasonable corporal punishment on a pupil under his authority, provided he acts in good faith and such punishment is not excessive. (Code 1950, § 22-231.1; 1958, c. 293; 1980, c. 559.)

Law Review. — For note on school discipline and the handicapped child, see 39 Wash. & Lee L. Rev. 1453 (1982).

§ 22.1-280.1. Reports of certain acts to school authorities. — A. Any assaults, assault and batteries, "unlawful woundings," maimings, and homicides, other than involuntary manslaughter, committed by a student on school personnel brought to the attention of the school administrator shall be reported to the superintendent of the school division. The division superintendent shall report all such incidents to the Department of Education for the purpose of recording the frequency of such incidents on forms which shall be provided by the Department.

B. A statement providing a procedure and the purpose for the requirements of subsection A shall be included in the policy manual of all school divisions. (1981, c. 189.)

ARTICLE 4.

Triennial Census.

§ 22.1-281. Triennial census of school population. — At a time to be designated by the Superintendent of Public Instruction prior to September first, nineteen hundred eighty, and thereafter every three years, a census of (i) all persons residing within each school division who, on or before the December thirty-first next succeeding the census, will have reached their fifth birthday but not their twentieth birthday and (ii) all handicapped children as defined in § 22.1-213 by type of handicap residing in each school division who have been identified as handicapped children shall be taken on forms furnished by the Superintendent of Public Instruction. Such persons and handicapped children who are domiciled in orphanages or eleemosynary institutions or who are dependents living on any federal military or naval reservation or other federal property shall be included in the census for the school division within which the institution or federal military or naval reservation or other federal property is located. Such persons and handicapped children who are confined in

TITLE 12.1—CRIMINAL CODE

USE OF FORCE

12.1-05-05. Use of force by persons with parental, custodial, or similar responsibilities.—The use of force upon another person is justified under any of the following circumstances:

1. A parent, guardian, or other person responsible for the care and supervision of a minor, or teacher, or other person responsible for the care and supervision of such a minor for a special purpose, or a person acting at the direction of any of the foregoing persons, may use reasonable force upon the minor for the purpose of safeguarding or promoting his welfare, including prevention and punishment of his misconduct, and the maintenance of proper discipline. The force may be used for this purpose, whether or not it is "necessary" as required by subsection 1 of section 12.1-05-07. The force used must not create a substantial risk of death, serious bodily injury, disfigurement, or gross degradation.
2. A guardian or other person responsible for the care and supervision of an incompetent person, or a person acting at the direction of the guardian or responsible person, may use reasonable force upon the incompetent person for the purpose of safeguarding or promoting his welfare, including the prevention of his misconduct or, when he is in a hospital or other institution for care and custody, for the purpose of maintaining reasonable discipline in the institution. The force may be used for these purposes, whether or not it is "necessary" as required by subsection 1 of section 12.1-05-07. The force used must not create a substantial risk of death, serious bodily injury, disfigurement, or gross degradation.
3. A person responsible for the maintenance of order in a vehicle, train, vessel, aircraft, or other carrier, or in a place where others are assembled, or a person acting at the responsible person's direction, may use force to maintain order.
4. A duly licensed physician, or a person acting at his direction, may use force in order to administer a recognized form of treatment to promote the physical or mental health of a patient if the treatment is administered:
   a. In an emergency;
   b. With the consent of the patient, or, if the patient is a minor or an incompetent person, with the consent of his parent, guardian, or other person entrusted with his care and supervision; or
   c. By order of a court of competent jurisdiction.
5. A person may use force upon another person, about to commit suicide or suffer serious bodily injury, to prevent the death or serious bodily injury of such other person.

BREACH OF DUTY

12.1-11-06. Public servant refusing to perform duty.—Any public servant who knowingly refuses to perform any duty imposed upon him by law is guilty of a class A misdemeanor.

Section 664. Child Beating. Any parent or other person who shall wilfully or maliciously injure, torture, maim, or use unreasonable force upon a child under the age of eighteen (18), or who shall cause, procure or permit any of said acts to be done, shall be punished by imprisonment in the State Penitentiary not exceeding twenty (20) years, or by imprisonment in a county jail not exceeding one year (1), or by a fine of not less than Five Hundred Dollars ($500.00) nor more than Five Thousand Dollars ($5,000.00), or both such fine and imprisonment. (21-843)

Section 665. Ordinary Force for Discipline of Children Permitted. Provided, however, that nothing contained in this act shall prohibit any parent, teacher or other person from using ordinary force as a means of discipline, including but not limited to spanking, switching or paddling. (21-844)

Section 666. Tag Agent's Fees to Schools in Counties Having Population Exceeding 300,000. After the payment of the actual itemized necessary expenses of the operation of the office of the motor license agent have been determined and paid, including reasonable business losses of whatever nature not resulting from the actual negligence or malfeasance of said agent, there shall be set aside by the motor license agent a sufficient reserve to provide for the continued operation of such office. The amount of such reserve shall be determined by the Commission. The gross receipts of such agent from all sources, less the costs for operation of the office, the compensation of the agent and such reserve, shall annually be distributed by the Commission to the public schools of the county to be placed in the general funds of such schools as nonchargeable income. Such distribution shall be computed and made in the following manner:

The fiscal year ending June 30 shall be used by the Commission to determine the amount of distribution. The amount to be distributed to each school shall be determined by the Commission based upon the average daily attendance of each such school during the preceding school year. In determining such average daily attendance, the Commission shall be entitled to rely upon the information thereof furnished to it by the State Department of Education and the school districts within that county, which Department and school districts are hereby directed to furnish such information to the commission as soon as possible after the close of each school year. Such distribution shall be made by the commission on September 30 of each year or as soon thereafter as practical, and prorated in accordance with the average daily attendance of each such school within such county. (47-22.30m)

§ 1161a. Discipline

(a) Each public and each approved school shall have a policy on discipline. The policy shall include standard procedures, and it shall be consistent with this section and with the school district's regulations on suspension and dismissal.

(b) For the purpose of this chapter, corporal punishment means the intentional infliction of physical pain upon the body of a pupil as a disciplinary measure.

(c) No person employed by or agent of a public or approved school shall inflict or cause to be inflicted corporal punishment upon a pupil attending the school or the institution. However, this section does not prohibit a person from using reasonable and necessary force:

(1) to quell a disturbance;

(2) to obtain possession of weapons or other dangerous objects upon the person of or within the control of a pupil;

(3) for the purpose of self defense; or

(4) for the protection of persons or property.—Added 1983, No. 145 (Adj. Sess.), § 1.

§ 1162. Suspension or dismissal of pupils

A superintendent or principal may, pursuant to regulations adopted by the governing board, suspend, or with the approval of a majority of the members of the governing board of the school district, dismiss or expel a pupil for misconduct when the misconduct makes the continued presence of the pupil harmful to the welfare of the school. Nothing contained in this section shall prevent a superintendent or principal from removing immediately from a school a pupil who poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process of the school.—Amended 1977, No. 33.—Amended 1978, No. 130.

§ 1163. Repealed. 1969, No. 298 (Adj. Sess.), § 79, eff. July 1, 1970.

Former § 1163 related to truancy or moral delinquency.

§ 1164. Repealed. 1977, No. 33.

Chapter 9A.16
DEFENSES

Sections

9A.16.010 Definitions. In this chapter, unless a different meaning is plainly required:

"Necessary" means that no reasonably effective alternative to the use of force appeared to exist and that the amount of force used was reasonable to effect the lawful purpose intended. [1975 1st ex.s. c 260 § 9A.16.010.]

9A.16.020 Use of force——When lawful. The use, attempt, or offer to use force upon or toward the person of another is not unlawful in the following cases:

(1) Whenever necessarily used by a public officer in the performance of a legal duty, or a person assisting him and acting under his direction;

(2) Whenever necessarily used by a person arresting one who has committed a felony and delivering him to a public officer competent to receive him into custody;

(3) Whenever used by a party about to be injured, or by another lawfully aiding him, in preventing or attempting to prevent an offense against his person, or a malicious trespass, or other malicious interference with real or personal property lawfully in his possession, in case the force is not more than is necessary;

(4) Whenever reasonably used by a person to detain someone who enters or remains unlawfully in a building or on real property lawfully in the possession of such

(4) An employee's contract of employment shall be separate from the extracurricular assignment agreement provided for in this section and shall not be conditioned upon the employee's acceptance or continuance of any extracurricular assignment proposed by the superintendent, a designated representative, or the board. (1981, c. 100; 1982, c. 58.)

Editor's note. — References in this section to "auxiliary personnel" should be deemed references to service personnel, in light of the 1981 amendment to § 18A-1-1.

ARTICLE 5.

AUTHORITY; RIGHTS; RESPONSIBILITY.

Sec.

As to right of county school boards to enter into collective bargaining contracts, see Op. Att'y Gen., June 26, 1974.

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§ 18A-5-1. Authority of teachers and other school personnel; exclusion of pupils having infectious diseases; suspension or expulsion of disorderly pupils; authority of principals to administer corporal punishment.

The teacher shall stand in the place of the parent or guardian in exercising authority over the school, and shall have control of all pupils enrolled in the school from the time they reach the school until they have returned to their respective homes, except that where transportation of pupils is provided, the driver in charge of the school bus or other mode of transportation shall exercise such authority and control over the children while they are in transit to and from the school. Subject to the rules of the state board of education, the teacher shall exclude from the school any pupil or pupils known to have or suspected of having any infectious disease, or any pupil or pupils who have been exposed to such disease, and shall immediately notify the proper health officer, or medical inspector, of such exclusion. Any pupil so excluded shall not be readmitted to the school until such pupil has complied with all the requirements of the rules governing such cases, or has presented a certificate of health signed by the medical inspector or other proper health officer. The teacher shall have authority to suspend any pupil guilty of disorderly, refractory, indecent or immoral conduct, and the district board of education may expel or exclude any such pupil if, on investigation, the conduct of such pupil is found to be detrimental to the progress and the general conduct of the school.

The principal shall have the authority to administer moderate corporal punishment by means of the open hand or a paddle subject to the following restrictions:

(1) Corporal punishment should be administered only as a last resort after use of alternative methods of discipline have failed to correct the inappropriate pupil behavior;

(2) Pupils are informed of the rules and regulations that govern the school;

(3) The pupil is informed of the school rule or rules allegedly violated and is given an opportunity to explain his or her behavior prior to the administration of corporal punishment;

(4) Punishment is administered without anger or malice. The amount of physical force used is not wanton or in excess of the offense, is suitable to the pupil's age and mental and physical conditions and is applied without discrimination;

(5) The punishment is administered by the school principal or by a specific designee authorized by the principal to administer such punishment and in either

Appendix B

Georgia Department of Education
Office of Administrative Services
Twin Towers East
Atlanta, Georgia 30334

Charles McDaniel
State Superintendent of Schools

H. F. Johnson, Jr.
Associate State Superintendent

April 1, 1986

Mr. Roger McCluney
Route 6, Box 49
Rutherfordton, North Carolina 28139

Dear Mr. McCluney:

Enclosed is a copy of the state statue covering corporal punishment in Georgia, in which you requested.

Sincerely,

Norris F. Long
Division Director
Regional Education Services

NFL:cfb

STATE OF DELAWARE

DEPARTMENT OF PUBLIC INSTRUCTION
THE TOWNSEND BUILDING
P O BOX 1402
DOVER, DELAWARE 19903

WILLIAM B KEENE
STATE SUPERINTENDENT
JOHN J RYAN
DEPUTY STATE SUPERINTENDENT

SIDNEY B COLLISON
JAMES L SPARTZ
ASSISTANT STATE SUPERINTENDENTS

February 27, 1986

Mr. Roger McCluney
Route 6, Box 49
Rutherfordton, North Carolina 28139

Dear Mr. McCluney:

The attached copy taken from the Delaware Code is in response to your request for information regarding corporal punishment.

Good luck with your dissertation.

Sincerely,

Sidney B. Collison
Assistant State Superintendent
Instructional Services Branch

SBC:lpd
Attachment
0186L

STATE OF CONNECTICUT

DEPARTMENT OF EDUCATION

March 5, 1986

Roger McCluney
Route 6
Box 49
Rutherfordton, North Carolina 28139

RE: Corporal Punishment

Dear Mr. McCluney:

This is in response to your letter concerning the above matter.

Please be advised that the Connecticut General Statutes do not address corporal punishment. Under common law doctrines, each local or regional board of education may, at its discretion, establish policies regarding corporal punishment. It is my understanding that a substantial majority of the school districts in Connecticut do not authorize the use of corporal punishment.

I trust that the aforementioned is responsive to your letter.

Sincerely,

Ron Harris

Ronald C. Harris, Esquire
Consultant
Office of Legal Affairs

RCH:gw
3:RM
cc: Mark A. Stapleton, Esquire, Chief, Office of Legal Affairs

Phone: (203) 566-3044
Box 2219 • Hartford, Connecticut 06145

INTEROFFICE
MEMO
Illinois State Board of Education

DATE: 2/28/86 259

FROM:

TO:
Roger McCluney

Legal Section
Illinois State Board
of Education

☐ PLEASE READ, COMMENT AND RETURN TO ME
☐ FOR YOUR INFORMATION
☐ PLEASE TAKE SUITABLE ACTION
☐ IN COMPLIANCE WITH YOUR REQUEST

REMARKS:

Please be advised that Illinois has no statutes relative to corporal punishment. Enclosed please find the State Board of Education rule dealing with discipline.

ISBE 51-10 (9/79)

DAVID W. HORNBECK
STATE SUPERINTENDENT

SPECIAL EDUCATION TTY 659-2666*
VOC-REHABILITATION TTY 659-2252*
*FOR DEAF ONLY

MARYLAND STATE DEPARTMENT OF EDUCATION
200 WEST BALTIMORE STREET
BALTIMORE, MARYLAND 21201-2595
(301) 659- 2205

March 5, 1986

Mr. Roger McCluney
Route 6, Box 49
Rutherfordton, N.C. 28139

Dear Mr. McCluney:

I am enclosing a copy of the bylaw of the Maryland State Board of Education on corporal punishment. You should also understand that 19 of 24 school systems in Maryland have gained legislative exception to the bylaw. All of the large systems, however, continue to be covered by the bylaw.

Sincerely,

Gus A. Crenson Jr

GUS A. CRENSON
Director
Public Information & Publications

GAC:lb
enclosure

STATE OF NEW MEXICO
DEPARTMENT OF EDUCATION – EDUCATION BUILDING
SANTA FE, NEW MEXICO 87501-2786

ALAN D. MORGAN
SUPERINTENDENT OF PUBLIC INSTRUCTION

April 29, 1986

Mr. Roger Cluney
Route 6, Box 49
Rutherfordton, N.C. 28139

Dear Mr. Cluney:

Pursuant to your request, I am enclosing a copy of the pertinent portion of State Board of Education Regulation No. 81-3 relating to corporal punishment. The statutes do not address this issue.

Good luck with your research.

Sincerely,

John J. Duran
General Counsel

JJD:do

Enclosure

STATE OF HAWAII
DEPARTMENT OF EDUCATION
P. O. BOX 2360
HONOLULU, HAWAII 96804

OFFICE OF THE SUPERINTENDENT

March 21, 1986

Mr. Roger McCluney, Principal
Route 6, Box 49
Rutherfordton, N.C. 28139

Dear Mr. McCluney:

In response to your request for a copy of our state statutes on corporal punishment, I am sending you a copy of the Hawaii Revised Statutes, 298-16, Punishment of pupils limited. This is the rule governing corporal punishment in the public schools, and the Department of Education abides by it.

I wish you well on your dissertation.

Sincerely,

Linda A. Wheeler

Linda A. Wheeler
Public Relations Specialist

Enclosure

STATE OF VERMONT
DEPARTMENT OF EDUCATION
MONTPELIER
05602-2703

February 28, 1986

Mr. Roger McCluney
Route 6, Box 49
Rutherfordton, N.C. 28139

Dear Mr. McCluney:

Enclosed you will find a copy of the Vermont statutes that relate to corporal punishment as you requested. I hope this information is helpful in your dissertation.

Very truly yours,

Anne Wyeth S. Thaanum
Legal Counsel

sd
encl.