

M E M O R A N D U M

ALABAMA EDUCATION ASSOCIATION NETWORK ATTORNEYS' CONFERENCE

Friday, July 27, 2018

RE: *Criminal Matters Affecting Teachers*

Criminal Complaints, Arrest Warrants & Indictments

- * The Educator's administering of discipline; corporal punishment

- * School Board Policy on administering discipline

- * Section 16-28A-1, *Code of Alabama*, 1975

- * Fraternalization beyond the scope of teacher/educator/student

- * Teacher Certification implications, ALSDE (Alabama State Department of Education)

- * Federal law: U.S. Department of Education

Section 16-28A-1**Legislative findings.**

It is the finding of the Alabama Legislature that the people of Alabama have two basic expectations of their public schools: (1) that students be allowed to learn in a safe classroom setting where order and discipline are maintained; and (2) that students learn at the level of their capabilities and achieve accordingly. The Legislature finds further that every child in Alabama is entitled to have access to a program of instruction which gives him or her the right to learn in a non-disruptive environment. No student has a right to be unruly in his or her classroom to the extent that such disruption denies fellow students of their right to learn. The teacher in each classroom is expected to maintain order and discipline. Teachers are hereby given the authority and responsibility to use appropriate means of discipline up to and including corporal punishment as may be prescribed by the local board of education. So long as teachers follow approved policy in the exercise of their responsibility to maintain discipline in their classroom, such teacher shall be immune from civil or criminal liability. It shall be the responsibility of the local boards of education and the administrators employed by them to provide legal support to each teacher exercising his or her authority and responsibility to maintain order and discipline in his or her classroom as long as the teacher follows the local board of education's policy. Such support for the teacher shall include, but not be limited to, providing appropriate legal representation to defend the teacher against charges, filing of a written report pursuant to Section 16-1-24, seeking the issuance of a warrant or warrants for any person or persons threatening or assaulting a teacher, and the timely assistance and cooperation with the appropriate authorities in the prosecution of any person or persons threatening or assaulting a teacher. Local school board authorities and school administrators providing such support shall be absolutely immune from civil and criminal liability for actions authorized or required by this section.

(Acts 1995, No. 95-539, p. 1121, §1.)



STATE OF ALABAMA
DEPARTMENT OF EDUCATION



Michael Santance
State Superintendent of Education

[REDACTED]

SECOND MAILING

CERTIFIED LETTER 91 7199 9991 7036 8394 8262; RETURN RECEIPT REQUESTED

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Under Ala. Code § 16-23-5(a) (1975), "[t]he State Superintendent of Education may revoke any certificate issued under this chapter when the holder has been guilty of immoral conduct or unbecoming or indecent behavior." *Alabama Administrative Code*, r. 290-3-2-.04 (2016), further allows the State Superintendent to refuse to issue, to suspend, to recall a certificate, or to impose other sanctions against a certificate holder for just cause. I have attached a copy of the statute and rule for your information.

Pursuant to the above authorities, you are hereby notified of the Alabama State Department of Education's proposed action, up to and including the revocation and non-renewal of your Alabama Professional Educator Certification ("Certification"). This proposed action applies to any and all certification or licensure issued to you by the Alabama State Department of Education or the Alabama State Superintendent of Education. The proposed action is based upon the following reasons:

1. On or about [REDACTED] while you were employed by the [REDACTED] County School System as an elementary teacher at [REDACTED] Elementary School, you were involved in an incident with a student, you used excessive force toward your student R. M. by physically grabbing and pushing him, causing him to fall into a desk in your classroom. Your actions toward R. M. were unprofessional and outside the scope of your authority as a classroom teacher.
2. On or about March 9, 2016, when you were supervising your students, you had a computer screen facing students and displaying a music video depicting, in the words of your principal, "several sexual acts." When confronted, you minimized your misconduct regarding the video by claiming that the music was soothing and relaxing.
3. This action is brought based upon the facts and circumstances underlying and giving rise to the conduct referenced above.



THE SECRETARY OF EDUCATION

WASHINGTON, DC 20202

November 22, 2016

Dear Governors and Chief State School Officers:

As Governors and Chief State School Officers, you know that public schools are crucial places for nurturing the unique gifts of all children and developing the knowledge and skills they need to grow and thrive in our democracy, and I appreciate the work you are doing — from early learning to postsecondary education — to support our schools in this mission. To fulfill this mission of promoting the positive development of our youth, a school must first ensure that no harm occurs to the children and young people entrusted into its care. It is for this reason that I write to you, to call your attention to a practice in some schools — the use of corporal punishment¹ — which is harmful, ineffective, and often disproportionately applied to students of color and students with disabilities, and which states have the power to change.

If you have not already, I urge you to eliminate this practice from your schools, and instead promote supportive, effective disciplinary measures.² Many of you, and your districts and educators, are leading the way in terms of rethinking how to create positive school climates and improve discipline practices in your schools, and eliminating corporal punishment is a critical piece of that work.³ The use of corporal punishment can hinder the creation of a positive school climate by focusing on punitive measures to address student misbehavior rather than positive behavioral interventions and supports. Corporal punishment also teaches students that physical force is an acceptable means of solving problems, undermining efforts to promote nonviolent techniques for conflict resolution.

In-school corporal punishment generally entails school personnel intentionally inflicting pain on a child as a punishment or in an attempt to change the child's behavior.⁴ As the accompanying map shows,⁵ today, 22 states⁶ allow the use of corporal punishment in their schools as a means to punish students or to otherwise influence student behavior.⁷ Notably, the very acts of corporal punishment that are permissible when applied to children in schools under some state laws would be prohibited as criminal assault or battery when applied to adults in the community in those very same states.

States should also be aware that in-school corporal punishment is often not applied equally to all students. Rather, the use of in-school corporal punishment tends to be associated with characteristics such as a child's race, national origin, sex, and/or disability status. Significantly, such disparities can raise concerns of unlawful race, national origin, sex, or disability discrimination under federal law, although statistics alone would not end an inquiry. According to the Department's Civil Rights Data Collection (CRDC), over 110,000 students were subject to corporal punishment in school during the 2013-2014 academic year.⁸ Yet in-school corporal punishment and its related harm disproportionately impact students of color. Based on the 2013-2014 CRDC, approximately 40,000 — or more than one-third — of those students who were subjected to corporal punishment are black; black students, by comparison, make up only 16 percent of the total public school student population.⁹ Similarly, in states where students were subjected to corporal punishment, black boys were 1.8 times as likely as white boys to be subject

to corporal punishment, and black girls were 2.9 times as likely as white girls to be subject to corporal punishment.¹⁰ Disparities in the use of in-school corporal punishment are not limited to race; boys and students with disabilities experience higher rates of corporal punishment. Based on the 2013-2014 CRDC, boys represented about 80 percent of all students experiencing corporal punishment.¹¹ Similarly, in nearly all of the states where the practice is permitted, students with disabilities were subjected to corporal punishment at higher rates than students without disabilities.¹² These data and disparities shock the conscience.

The use of corporal punishment is also ineffective as a strategy to address inappropriate behavior. When used in an attempt to compel behavioral change, corporal punishment often has antithetical results; for example, physical punishment may make a child more aggressive, defiant, and oppositional.¹³ Moreover, it can be detrimental to a child's health and well-being and may have lifelong repercussions. Research shows, for example, that children who experience physical punishment are more likely to develop mental health issues, including alcohol and drug abuse or dependence, mood disorders, anxiety disorders, and other personality disorders.¹⁴ The excessive use of corporal punishment has been shown to be associated with antisocial behavior in children and later when they reach adulthood.¹⁵

Beyond its alarming health implications, corporal punishment in school is also associated with negative academic outcomes. Research shows, for example, that corporal punishment can impact children's cognitive functioning,¹⁶ potentially affecting verbal capacity,¹⁷ brain development,¹⁸ and the ability to solve problems effectively.¹⁹ Studies also indicate that students as young as those in preschool who experience corporal punishment tend to perform at lower levels, when compared to peers who have not been subjected to such practices, on measures of both academic achievement and social competence.²⁰

While some may argue that corporal punishment is a tradition in some school communities, past practice alone cannot be a sufficient rationalization for continuing to engage in actions that have been proven to have short- and long-term detrimental effects. Indeed, there are many practices which were previously legal in the United States but which we would not tolerate today. There is a growing consensus that we simply cannot condone state-sanctioned violence against children in school.

A long list of education, medical, civil rights, disabilities, and child advocacy groups, including the National Education Association, American Federation of Teachers, American Psychological Association, American Academy of Pediatrics, and many others, have also been calling for a ban on this practice and citing the harmful long-term effects on children and the need to keep physical violence out of the educational environment.²¹ Corporal punishment has also been banned in Head Start Programs,²² Department of Defense-run schools,²³ U.S. prisons and U.S. military training facilities,²⁴ and most juvenile detention facilities.²⁵ As the evidence against corporal punishment mounts, so does our moral responsibility to eliminate this practice.

A safe, supportive school environment is critical to support effective teaching and learning. I applaud the many states, districts, and educators that are leading the way in fostering positive school climates and improving discipline practices through proven strategies, such as the successful implementation of positive behavioral interventions and supports,²⁶ as well as better

training and professional development for educators, to equip them to administer supportive school discipline approaches in nondiscriminatory and effective ways.²⁷ Still others are exploring promising avenues, such as the greater involvement of mental health specialists and the use of restorative justice practices.²⁸

I am glad to recognize and support these states and districts through our “Rethink Discipline” initiative.²⁹ But there is more that we can do to support the use of school discipline practices that foster safe, supportive, and productive learning environments. One critical step would be to cease the use of corporal punishment in all of our public schools. It is difficult for a school to be considered safe or supportive if its students are fearful of being physically punished by the adults who are charged with supporting their learning and their future.

School-sponsored corporal punishment is not only ineffective, it is a harmful practice, and one that disproportionately impacts students of color and students with disabilities. This practice has no place in the public schools of a modern nation that plays such an essential role in the advancement and protection of civil and human rights. Thank you for your leadership in reconsidering the use of this practice and working toward ensuring that schools are safe and supportive places where all students can thrive.

Sincerely,

/s/

John B. King, Jr.

¹ The American Academy of Child & Adolescent Psychiatry describes “corporal punishment” as “a discipline method in which a supervising adult deliberately inflicts pain upon a child in response to a child’s unacceptable behavior and/or inappropriate language.” American Academy of Child & Adolescent Psychiatry, position statement on corporal punishment in schools (updated September 2014), available at https://www.aacap.org/aacap/policy_statements/1988/Corporal_Punishment_in_Schools.aspx.

² See, for example, “Supporting and Responding to Behavior: Evidence-Based Classroom Strategies for Teachers,” available at <https://www.osepideasthatwork.org/evidencebasedclassroomstrategies/>. In addition, materials are available on the Department’s website, including guidance, technical assistance information, and other resources, that can assist schools and educators seeking to replace corporal punishment with other, more effective discipline practices in schools. Links to those materials can be found at: <http://www2.ed.gov/policy/gen/guid/school-discipline/support.html#tools>.

³ Twenty-eight states and the District of Columbia have banned corporal punishment. For more information on the individual state laws governing the use of corporal punishment in schools, please visit <http://www.edweek.org/ew/section/multimedia/states-ban-corporal-punishment.html>. Statewide bans on corporal punishment were most recently enacted in [Ohio in 2009](#) and [New Mexico in 2011](#); additionally, many large urban school districts, like Atlanta, Houston, and Memphis, have banned corporal punishment even though the practice is still allowed in these districts’ states. See Anderson, Melinda D., “Where Teachers Are Still Allowed to Spank Students,” *The Atlantic* (December 15, 2015) at <http://www.theatlantic.com/education/archive/2015/12/corporal-punishment/420420/>.

⁴ National Association of School Psychologists, Position Statement on Corporal Punishment (2014), available at <http://www.nasponline.org/assets/documents/Research%20and%20Policy/Position%20Statements/CorporalPunishment.pdf> (defining “corporal punishment” as “the intentional infliction of pain or discomfort and/or the use of physical force upon a student with the intention of causing the student to experience bodily pain so as to correct or punish the student’s behavior.”).

⁵ <http://www2.ed.gov/policy/gen/guid/school-discipline/images/2013-14-crdc-corporal-punishment-map-1200.png>

⁶ There are 22 states that either expressly permit in-school corporal punishment or where no state law prohibits it (as of March 2016). The 15 states that expressly permit corporal punishment are Alabama, Arizona, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Wyoming. The seven states where no state law prohibits corporal punishment are Colorado, Idaho, Indiana, Kansas, Maine, New Hampshire, and South Dakota. The Department’s *Compendium of School Discipline Laws and Regulations* provides access to an online catalogue of the laws and regulations related to school discipline in each of the 50 states, the District of Columbia, and Puerto Rico and compares laws across states and jurisdictions. The tool is available at <https://safesupportivelearning.ed.gov/school-discipline-compendium>.

⁷ Gershoff, E.T., Kelly M. Purtell, and Igor Holas, “Corporal Punishment in U.S. Public Schools: Legal Precedents, Current Practices, and Future Policy,” SpringerBriefs in Psychology (2015).

⁸ U.S. Department of Education, Office for Civil Rights, Civil Rights Data Collection (CRDC), 2013-14, available at ocrdata.ed.gov.

⁹ U.S. Department of Education, National Center for Education Statistics, Common Core of Data (CCD), “State Nonfiscal Public Elementary/Secondary Education Survey,” 2013-14 v.1a.

¹⁰ U.S. Department of Education, Office for Civil Rights, Civil Rights Data Collection (CRDC), 2013-14, available at ocrdata.ed.gov.

¹¹ *Id.*

¹² *Id.*

¹³ Gershoff, et al., (2015) note that “Although a substantial literature has shown that corporal punishment by parents is linked with increased behavior problems, increased mental health problems, and decreased school performance, corporal punishment by school personnel has been almost entirely unstudied.” This letter concerns only in-school use of corporal punishment. For examples of the substantial literature on corporal punishment by parents, see Human Rights Watch, et al. (2009); Gershoff, E.T., “Spanking and Child Development: We Know Enough Now to Stop Hitting Our Children,” *Child Dev Perspect* (2013), 7: 133–137; Sheehan, M.J. & Watson, M.W., “Reciprocal influences between maternal discipline techniques and aggression in children and adolescents,” *Aggressive Behavior* (2008), 34, 245–255.

¹⁴ Affifi, T.O., et al., “Physical Punishment and Mental Disorders: Results from a Nationally Representative U.S. Sample,” *Pediatrics*, Volume 130, Number 2 (August 2012), available at <http://pediatrics.aappublications.org/content/early/2012/06/27/peds.2011-2947>.

¹⁵ Gershoff, E.T. (2002). “Corporal Punishment by Parents and Associated Child Behaviors and Experiences: A Meta-Analytic and Theoretical Review.” *Psychological Bulletin*, Vol. 128, No. 4, 539–579.

¹⁶ Straus, M.A., and Mallie J. Paschall. “Corporal punishment by mothers and development of children’s cognitive ability: a longitudinal study of two nationally representative age cohorts.” *Journal of Aggression, Maltreatment & Trauma* (2009); 18: 459-483.

¹⁷ MacKenzie, M.J., Eric Nicklas, Jane Waldfogel, and Jeanne Brooks-Gunn. “Corporal punishment and child behavioral and cognitive outcomes through 5 years-of-age: Evidence from a contemporary urban birth cohort study.” *Infant Child Dev.* (2012 January/February); 21(1): 3–33.

¹⁸ Tomoda, A., Hanako Suzuki, Keren Rabi, Yi-Shin Sheu, Ann Polcari, and Martin H. Teicher, “Reduced Prefrontal Cortical Gray Matter Volume in Young Adults Exposed to Harsh Corporal Punishment,” *Neuroimage* (2009 Aug.), 47 (Suppl 2): T66–T71.

¹⁹ Talwar V., Carlson S.M. and Lee K. (2011), “Effects of a Punitive Environment on Children’s Executive Functioning: A Natural Experiment,” *Social Development*, 26 July 2011; *see also* Hyman, I.A., “Corporal punishment, psychological maltreatment, violence, and punitiveness in America: Research, advocacy, and public policy.” *Applied and Preventive Psychology* (1995), 4, 113–130.

²⁰ Hyman 1995; *see also* Dupper, David R., and Amy E. Montgomery Dingus, “Corporal punishment in US public schools: A continuing challenge for school social workers,” *Children & Schools* 30(4) (2008): 243-250, available at http://ewasteschools.pbworks.com/f/Corporal_punishment_2009.pdf.

²¹ Groups that have publicly taken positions against the use of corporal punishment in school include but are not limited to: American Psychological Association, American Academy of Pediatrics, National Education Association, American Federation of Teachers, National Association of Secondary School Principals, National Association of Elementary School Principals, American Civil Liberties Union, National Parent Teacher Association, Dignity in Schools, Human Rights Watch, NAACP, National Disability Rights Network, National Council of La Raza, Council for Exceptional Children, Bazelon Center for Mental Health Law, American Academy of Child & Adolescent Psychiatry, American Academy of Family Physicians, American Academy of Pediatrics, American School Counselor Association, Center for Effective Discipline, National Association for the Education of Young Children, National Association of School Nurses, National Association of School Psychologists, National Association of State Boards of Education, and Society for Adolescent Medicine.

²² Head Start Program Performance Standards, 45 CFR Chapter XIII, RIN 0970-AC63 (§1302.90), <https://eclkc.ohs.acf.hhs.gov/hslc/hs/docs/hspss-final.pdf>.

²³ Department of Defense Education Activity, Regulation Number 2051.1 (March 23, 2012), available at http://www.dodea.edu/Offices/Regulations/upload/DoDEA-Regulation-2051_1a.pdf; Center for Effective Discipline, “Organizations Against Corporal Punishment,” <http://www.gundersenhealth.org/ncptc/center-for-effective-discipline/resources/organizations-against-corporal-punishment>.

²⁴ Block, N., “Would you hit Grandma?” *Children’s Legal Rights Journal* (1997), 17, 3-4; *Jackson v. Bishop*, 404 F.2d 571 (1968); Society for Research in Child Development: “Social Policy Report, Corporal Punishment in U.S. Public Schools: Prevalence, Disparities in Use, and Status in State and Federal Policy,” volume 30, number 1 (September 2016).

²⁵ Bitensky, S.H., “Corporal punishment of children: A human rights violation,” Ardsley, NY: Transnational Publishers (2006); Society for Research in Child Development: “Social Policy Report, Corporal Punishment in U.S. Public Schools: Prevalence, Disparities in Use, and Status in State and Federal Policy,” volume 30, number 1, (September 2016).

²⁶ Florida’s Positive Behavioral Interventions and Supports (PBIS) State Project, based on 2014-2015 school year data, is an example of the benefit of PBIS efforts in reducing incidences of corporal punishment. Non-PBIS implementation districts used corporal punishment 26 times more often than active implementation PBIS districts. For more information, please visit <http://flpbs.fmhi.usf.edu/>.

²⁷ For more information on positive behavioral interventions and supports, please visit www.pbis.org.

²⁸ Fronius, T., et al., “Restorative Justice in U.S. Schools: A Research Review,” (2016), available at: http://jprc.wested.org/wp-content/uploads/2016/02/RJ_Literature-Review_20160217.pdf.

²⁹ The Department’s “Rethink Discipline” page is an online tool that contains data, graphics, and other information on the prevalence, impact, and legal implications of suspensions and expulsions; resources on effective alternatives; and ways to effectively create positive school climates. For more information on this and the Department’s school discipline guidance package, please visit www.ed.gov/school-discipline.