THE UNIVERSITY OF THE STATE OF NEW YORK
THE STATE EDUCATION DEPARTMENT

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Formal Opinion of Counsel

The State Education Department (SED) has received questions regarding the applicability of corporal punishment to nonpublic schools. While the law separately defines "child abuse" (intentional infliction of physical harm) and "corporal punishment" (physical harm as a disciplinary measure), school personnel in all schools, public and nonpublic alike, are prohibited from physically harming students.

Physical force against another is prohibited by the Penal Law. For example, assault in the third degree is defined as intentionally or recklessly injuring another "[w]ith intent to cause physical injury…."[1] The Penal Law also prohibits "knowingly act[ing] in a manner likely to be injurious to the physical … welfare of a child less than seventeen years old."[2] If such incidents occur in a school, they can, and should, be referred to local law enforcement.

Regulations of the Board of Regents, approved in 1985, further prohibit the use of "corporal punishment" as a disciplinary measure in public schools. These regulations define corporal punishment as "any act of physical force upon a pupil for the purpose of punishing that pupil." With the exception of "reasonable physical force" to defend oneself or others, corporal punishment is prohibited. The regulation also requires public schools to report all complaints of corporal punishment to SED.[3]

Since 2001, the Education Law (Article 23-B) has prohibited school employees or volunteers in public and nonpublic schools[4] from engaging in "child abuse," defined as intentional/reckless conduct that causes, or creates a substantial risk of causing, physical injury.[5] Physical harm is an example of child abuse in an educational setting. School employees who witness or receive an allegation of child abuse must complete a written report and submit it to a school administrator. If the report presents "reasonable suspicion" that child abuse occurred, the school administrator must, among other steps, submit the form to law enforcement authorities.[6] An employee, school administrator, or superintendent's willful failure to submit a report is a class A misdemeanor.[7] All

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[1] Penal Law § 120.00.
[2] Penal Law § 260.10 (1) (endangering the welfare of a child).
[3] 8 NYCRR 100.2 (l) (3) (ii) (School districts must "submit a written semiannual report to the Commissioner of Education ... commencing July 1, 1985, setting forth the substance of each complaint about the use of corporal punishment received by the local school authorities during the reporting period, the results of each investigation, and the action, if any, taken by the school authorities in each case").
[4] Nonpublic schools were explicitly included in 2019 (Chapter 363 of the Laws of 2018, with subsequent chapter amendments as reflected in Chapter 164 of the Laws of 2019). Since 2019, "school" has been defined, in relevant part, as "a school district, public school, charter school, nonpublic school, [or] board of cooperative educational services …." Education Law § 1125 (10).
[5] Education Law § 1125 (1); *see Appeal of A.M.*, 61 Ed Dept Rep, Decision No. 18,124.
[6] Education Law § 1126. Law enforcement authorities are defined as "a municipal police department, sheriff's department, the division of state police or any officer thereof" (Education Law § 1125 [7]).
[7] Education Law § 1129.

schools must offer "ongoing" training on child abuse to employees as well as annual written notice "concerning the reporting of child abuse in an educational setting."[8]

The above legal requirements amount to the same prohibition: school personnel cannot inflict physical injury on students. While violations thereof may be addressed by a school (through discipline of employees, up to and including termination[9]) or SED (through Part 83 of the Commissioner's regulations), Article 23-B of the Education Law makes clear that the primary authority to enforce this prohibition rests with local law enforcement.

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[8] 8 NYCRR 100.2 (hh) (2), [3].
[9] *E.g., Bott v. Bd. of Ed., Deposit Cent. Sch. Dist.*, 41 NY2d 265 (1977) (corporal punishment justified termination of a teacher's employment); *Giles v. Schuyler-Chemung-Tioga Bd. of Co-op. Educ. Servs*., 199 AD2d 613 (3d Dept 1993) (district introduced substantial evidence that teacher engaged in corporal punishment that justified his termination).