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SANCTIONED ABUSE: CORPORAL PUNISHMENT, RESTRAINT AND SECLUSION OF CHILDREN IN PUBLIC SCHOOLS

Seven-year-old first grader Terrence Outley was a boy with Attention-Deficit/Hyperactivity Disorder (ADHD) who went to school in Fort Bend, Texas.¹ His teachers recognized that he would cause disruptions as an expression of his disability, so they put a plan in place to address these behaviors.² The plan directed staff to give Terrence positive reinforcement for good behavior, and when he became overwhelmed, an aide should take him to a quiet place to calm down.³

One day, Terrence was in the hallway working with his aide when Angela Abbott, a fourth-grade math teacher, walked by.⁴ Abbott asked the aide if she needed any help, and the aide responded that the situation was under control.⁵ Despite this, Abbott decided to insert herself in the situation and stood between Terrence and the classroom door.⁶ Terrence became upset and tried to push past Abbott, saying that he wanted to return to class.⁷ Abbott then grabbed the boy by his throat, threw him to the floor, and held him in a choke hold for several minutes until the aide begged her to release him.⁸ While she was choking him, Abbott yelled that Terrence had “hit the wrong one” and needed “to keep his hands to himself.”⁹ Abbott was never fired or disciplined for her actions.¹⁰ In fact, Abbott's actions were completely legal under Texas law.¹¹

Although prohibited in the military, prisons, and mental institutions, corporal punishment is still legal in public schools in nineteen states.¹² As of the writing of this article, Texas is one of these states.¹³ When Terrence's parents *37 brought legal action against Abbott, they claimed a violation of his Constitutional rights to bodily integrity and freedom from unreasonable seizure.¹⁴

Many families have challenged the use of corporal punishment against their children using the Eighth Amendment prohibition against cruel and unusual punishment.¹⁵ However, the majority of these claims have been dismissed because of the Supreme Court decision in *Ingraham v. Wright*.¹⁶

In this 1977 case, the Court held that under the historic context of the Eighth Amendment, the Cruel and Unusual Punishment Clause's protections for prisoners should not be extended to schoolchildren.¹⁷ After this decision, most states passed laws prohibiting corporal punishment, others left discretion to the school districts, and the rest began to use the standard decided in the case *Hall v. Tawney* (1980).¹⁸ The standard posits that a child's constitutional rights have been violated if the punishment they received was malicious or severe enough to “shock the conscience.”¹⁹ This standard is highly subjective, leaving ample room for bias and horrific cases of abuse being excused.²⁰ The Fifth Circuit, which Texas is a part of, does not follow even this standard.²¹

Texas schools that choose to prohibit corporal punishment may do so.²² Otherwise, the Texas Education Code protects employees who deliberately inflict “physical pain by hitting, paddling, spanking, slapping, or any other physical force to the extent justified under Section 9.62 of the Penal Code.”²³ Section 9.62 of the Penal Code specifies that the use of force by an educator against a student is justified “when and to the degree the actor reasonably believes the force is necessary to further

the special purpose or to maintain discipline in a group.”²⁴ The only limit imposed by Section 9.62 is that the force must be “not deadly.”²⁵

***38** Judge Weiner, the Judge presiding over Terrence's case, cited the Education Code as well as past cases where children were forced to perform excessive exercise, shoved, kicked, choked, hit, and dragged along the floor for minor infractions like talking to a friend or questioning a teacher's directive.²⁶ In all of these cases, charges were dismissed because the punishment was “related to a legitimate state goal”; the goal being to maintain discipline and order in school.²⁷ The Judge acknowledged that Abbott's actions were “ill-advised” and “inappropriate,” but stated, “we cannot say that it did not occur in a disciplinary context.”²⁸ He denied any relief to Terrence's family, and protected Abbott from any discipline by her school.²⁹ In 2021, Terrence's case was denied a Writ of Certiorari by the Supreme Court of the United States, officially sanctioning the teacher's abuse.³⁰ Sadly, Terrence is far from the only child who has been subjected to physical punishment in the name of discipline.

On average, one child is hit every thirty seconds in public school in the United States.³¹ According to surveys, more than 160,000 students are subjected to corporal punishment per year.³² In states where corporal punishment is banned, physical discipline in schools seems like an unheard-of practice of the past. In most of the nineteen states that legally allow this practice, corporal punishment has been nearly eliminated, with less than four percent of students attending a school that permits it.³³ However, around half of all students in Alabama, Arkansas, and Mississippi still attend schools that use corporal punishment.³⁴ Mississippi is the state with the highest proportion, with one in every fourteen children subjected to it.³⁵ Prevalence of corporal punishment remains high in Mississippi's surrounding states and progressively decreases by distance.³⁶

The racial disparities of children who are most vulnerable to corporal punishment are egregious.³⁷ In Alabama and Mississippi, Black children are at least ***39** fifty-one percent more likely to receive corporal punishment than white students, with rates being equal between majority Black and majority non-Black schools.³⁸ This is in line with data collected on suspensions and expulsions, which Black children also face at an exceptionally higher rate than their white peers.³⁹ These disparities cannot be explained by higher rates of misbehavior among Black children, as research has concluded that they are largely disciplined more severely for the same behaviors as white children.⁴⁰ Studies also suggest that children of color who perceive racial discrimination in their environment have lower self-esteem, higher depression and anxiety, lower academic engagement, and more negative school behaviors.⁴¹ Schools then respond to these behaviors with more punishment, school exclusion, or even referrals to law enforcement, which pushes children out of education and puts them at a higher risk of violence and incarceration.⁴²

Furthermore, boys are substantially more likely than girls to be punished using physical pain.⁴³ In the majority of school districts that utilize corporal punishment, boys were three times as likely as girls to face corporal punishment, even when correcting for differences in rates of misbehaviors.⁴⁴

Disparities based on disability are also extremely common, with disabled children being fifty percent more likely to face corporal punishment.⁴⁵ Judges have consistently upheld school officials' right to physically punish disabled students, even when their behavior stems from disabilities such as autism, Tourette syndrome, or obsessive-compulsive disorder.⁴⁶ This violates the federal Individuals with Disabilities Education Act (IDEA), which prohibits punishing children for symptoms of their disabilities.⁴⁷ The Council of Parent Attorneys and Advocates (COPAA), a nonprofit group that works to protect the civil rights of children with disabilities, says:

Children with disabilities are a vulnerable population, at special risk of being subject to aversive interventions. Their disabilities may manifest in what appears to be misbehavior, or they may have great difficulty following instructions. ***40** Rather than provide positive behavioral interventions, schools may react with aversive interventions. In addition, children may have communication, emotional, cognitive, or developmental impairments that may impede understanding or the ability to effectively report what happened to them. Moreover, they may be unable to comply with instructions that are made a condition for ending the abusive intervention and unable to communicate pain or danger while in the intervention. Children with these kinds of impairments are

frequently segregated in self-contained classrooms with other children with disabilities, and few witnesses who can describe the occurrence.⁴⁸

RESTRAINT AND SECLUSION

The majority of states have outlawed corporal punishment in schools, and research suggests that the numbers of districts that allow it are shrinking.⁴⁹ However, schools often resort to other physically and mentally harmful punishments when dealing with “problem children” that they otherwise cannot control.⁵⁰ These practices are known as restraint and seclusion.⁵¹

The vast majority of states have no laws prohibiting these forms of punishment.⁵² Even where the use of restraint and seclusion is regulated, advocates suspect it happens much more frequently than schools report.⁵³

Restraint and seclusion refers to a range of techniques used to control or modify challenging behavior by force or isolation.⁵⁴ Restraint is the physical immobilization of a child's body by pinning them down or strapping them to equipment, while seclusion is the involuntary confinement of a student in an enclosed space, often alone.⁵⁵ Both of these practices are extremely damaging to a child's psyche, as well as dangerous to their physical health.⁵⁶ Shockingly, *41 data gathered by COPAA revealed that seventy-seven percent of students subjected to seclusion and eighty percent of students subjected to restraint had disabilities recognized by their schools.⁵⁷

Rachel Shapiro is the managing attorney of special education at Equip for Equality, a Chicago-based organization fighting to advance the rights of people with disabilities.⁵⁸ On the topic of restraint and seclusion, she says “a lot of times schools are using it in situations where there really isn't a danger to the student or to others. They're using it in a way that's more out of frustration, or a lack of ability to positively motivate the student.” She explains that large classroom sizes and teacher burnout can also be a contributing factor.⁵⁹ “I think it's like a level of frustration with a student where you feel like you don't have enough time because you have all these other kids in the room, or you're not appropriately trained. And so you don't know what else to do because your district isn't giving you the supports and the resources you need in order to successfully and appropriately address the behavior issues.”⁶⁰

There are endless accounts of school staff members using restraint and seclusion on children in an egregiously harmful manner.⁶¹ In West Virginia, a four-year-old boy was shut alone in a bathroom until his distressed screams drew other staff to find him.⁶² In Florida, a child with Central Auditory Processing Disorder was shut in a windowless five-foot by six-foot room for a total of seventeen school days as a punishment for failing to follow directions that he could not hear.⁶³ In California, a thirteen-year-old boy with autism was pinned face down on the floor in front of his peers for nearly two hours until he lost consciousness.⁶⁴ The boy died the next day.⁶⁵ In nearly all of the 185 reports of students with disabilities subjected to restraint or seclusion included in the COPAA study, seventy-one percent of parents said the school had not tried any kind of research-based positive behavior interventions for their child.⁶⁶

*42 These stories only scratch the surface of the use of restraint and seclusion in schools. What is meant to be a last resort to stop a child from injuring themselves or others is used thousands of times per school day across the country as a punishment for children who are perceived to be misbehaving.⁶⁷ Exact numbers are impossible to calculate, however, because these practices are not consistently monitored or recorded.⁶⁸ Parents are often kept ignorant of the fact that their child was restrained or secluded, especially when that child is unable to communicate what happened to them.⁶⁹ Rachel Shapiro says

“our parents are seeing, you know, ‘my kid has marks on their arm, like bruises that clearly look like fingers. It's not just random bruising, but it's something that really looks like it was a result of someone grabbing their neck or grabbing their arm. But then they haven't been given restraint documentation. And they're the most lost, because their kid can't tell them. They're the most vulnerable students.”⁷⁰

WHERE DO WE GO FROM HERE?

It is a well-known fact that children who are subject to aversive punishment face long-lasting harm.⁷¹ Many sustain serious injuries like whiplash, deep bruising, broken bones, and in severe cases, death.⁷² Additionally, the Society for Adolescent Medicine states that victims of aversive punishment “may endure psychological harm, including difficulty sleeping, suicidal thoughts, anxiety, increased anger, feelings of resentment, and outbursts of aggression.”⁷³ Corporal punishment is also linked to a tendency for school avoidance and school dropout.⁷⁴ Students who already face barriers to education, such as children of color, economically disadvantaged children, and children with disabilities, are further excluded from schools by the use of physical punishment.⁷⁵

***43** School staff, who are often underpaid, understaffed, and burned out, are also harmed by the use of aversive punishments.⁷⁶ Sometimes, children create situations that put themselves or others at risk and cannot be de-escalated with words.⁷⁷ Teachers are generally not trained to respond properly to these situations and may resort to aversive punishment out of desperation.⁷⁸ Teachers report being kicked, punched, slapped, scratched, headbutted, and bitten by students in escalated situations where restraint and seclusion are used.⁷⁹ Conversely, school staff fear retaliation for speaking against these practices.⁸⁰ Nicole Farjani, a teaching assistant in New Jersey, said she faced backlash for reporting other teachers' use of seclusion rooms to her school board.⁸¹ She eventually had to quit after eleven years of working in the district due to the fallout.⁸²

Some argue that aversive punishments are necessary to maintain order and discipline in schools.⁸³ However, research has proven that these practices are not therapeutic or effective in controlling behavior, and actually increase misbehavior in the long run.⁸⁴ All students need to feel safe and supported in their school environment to be able to learn and grow.⁸⁵ The use of aversive punishments such as restraint, seclusion, and corporal punishment cannot be a part of that environment.⁸⁶ Teachers and school staff must be educated on how to respond to problematic behavior before it escalates by addressing the reasons behind it.⁸⁷ In cases where restraint is absolutely necessary to prevent harm, it should only be utilized by properly trained professionals.⁸⁸

Schools around the country have already made changes to their disciplinary models to ban corporal punishment, restraint and seclusion.⁸⁹ Instead, they use methods such as Positive Behavioral Interventions and Supports (PBIS), a ***44** three-tiered system of interventions that helps children manage their emotions, change their behavior, and return to class.⁹⁰ These tiers are:

- “1) rules, routines, and physical arrangements for all students developed to prevent initial problem behavior;
- 2) small group or individual responses for students at risk of problem behaviors, such as mentoring programs and staff support teams for students; and 3) more intensive interventions tailored to meet the specific needs of individual students with patterns of problem behaviors.”⁹¹

Instead of aversive punishments, schools should be using this kind of science-backed intervention plan to address negative behaviors in students before the need for discipline arises.⁹² Additionally, schools should be investing in social workers and mental health professionals to give children support during hardships.

There are currently two bills introduced in Congress that seek to address the issue of corporal punishment in schools--H.R. 1234--the Ending Corporal Punishment in Schools Act of 2021, and H.R. 3474--the Keeping All Students Safe Act.⁹³ These bills aim to ban the use of physical punishment, restraint, and seclusion on a federal level.⁹⁴ Every child should have an education free from the threat of pain and abuse. Whether that be through district, state, or federal regulation, it is past time this becomes a reality in the United States.

Footnotes

¹ T.O. v. Fort Bend Indep. Sch. Dist., 2 F.4th 407, 412 (5th Cir. 2021).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² Elizabeth T. Gershoff & Sara A. Font, *Corporal Punishment in U.S. Public Schools: Prevalence and Status in State and Federal Policy*, NAT'L LIBR. OF MED., SOC. POLICY REP. 2016; 30:1 (2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5766273/>.

¹³ *Id.*

¹⁴ Fort Bend Indep. Sch. Dist., 2 F.4th at 412.

¹⁵ Gershoff, *supra* note 12.

¹⁶ Courtney Mitchell, *Corporal Punishment in the Public Schools: An Analysis of Federal Constitutional Claims*, 73 *Law & Contemp. Probs.*, 321, 322 (2010) <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1574&context=lcp>.

¹⁷ *Id.*

¹⁸ *Id.*

19 *Id.* at 324.

20 *Id.* at 325.

21 *Id.*

22 TEX EDUC. CODE §22.0512. (2003).

23 *Id.*

24 TEX PEN. CODE §9.62 (1994).

25 *Id.*

26 Fort Bend Indep. Sch. Dist., 2 F.4th at 412.

27 *Id.* at 414.

28 *Id.* at 415.

29 *Id.*

30 *Id.*

31 Valeria Strauss, *19 States Still Allow Corporal Punishment in School*, THE WASHINGTON POST (2014), <https://www.washingtonpost.com/news/answer-sheet/wp/2014/09/18/19-states-still-allow-corporal-punishment-in-school/>.

32 Gershoff, *supra* note 12.

33 *Id.*

34 *Id.*

35 *Id.*

36 *Id.*

37 *Id.*

38 *Id.*

39 *Id.*

40 *Id.*

41 *Id.*

42 *Id.*

43 *Id.*

44 *Id.*

45 *Id.*

46 *Id.*

47 *Id.*

48 Jessie Butler, *Unsafe in the Schoolhouse: Abuse of Children with Disabilities*, THE COUNCIL OF PARENT ATT'YS AND ADVOCES., INC. (2009), https://cdn.ymaws.com/www.copaa.org/resource/collection/662B1866-952D-41FA-B7F3-D3CF68639918/UnsafeCOPAAMay_27_2009.pdf.

49 Gershoff, *supra* note 12.

50 Emilie Munson et al., *Controversial and Often Used Practices Cause Harm, Even Death, Among Students with Disabilities*, DISABILITY SCOOP (2022), <https://www.disabilityscoop.com/2022/11/29/controversial-and-often-used-practices-cause-harm-even-death-among-students-with-disabilities/30151/>.

51 *Id.*

52 Tim Villegas, *Report: COPAA Advocates to Outlaw Restraint and Seclusion Nationwide (2021)*, <https://www.thinkinclusive.us/post/restraint-and-seclusion>.

53 *Id.*

54 Munson, *supra* note 50.

55 *Id.*

56 *Id.*

57 Villegas, *supra* note 52.

- 58 Virtual Interview with Rachel Shapiro, Managing Attorney, Equip for Equal. Special Educ. Rts. Clinic (Apr. 20, 2023).
- 59 *Id.*
- 60 *Id.*
- 61 Munson, *supra* note 50.
- 62 *Id.*
- 63 Butler, *supra* note 48.
- 64 Munson, *supra* note 50.
- 65 *Id.*
- 66 Butler, *supra* note 48.
- 67 *Id.*
- 68 *Id.*
- 69 *Id.*
- 70 Virtual Interview with Rachel Shapiro, *supra* note 58.
- 71 *Impairing Education, Corporal Punishment of Students with Disabilities in US Public Schools*, AM. CIV. LIBERTIES UNION, 41 (2009) <https://www.aclu.org/sites/default/files/pdfs/humanrights/impairingeducation.pdf>.
- 72 *Id.*
- 73 *Id.* at 42.
- 74 *Id.* at 43.
- 75 *Id.*
- 76 Munson, *supra* note 50.
- 77 *Id.*

78 *Id.*

79 *Id.*

80 *Id.*

81 *Id.*

82 *Id.*

83 *Impairing Education, supra* note 71, at 53.

84 *Id.*

85 *Id.*

86 *Id.*

87 *Id.*

88 *Id.*

89 *Id.* at 54.

90 *Id.*

91 *Id.*

92 *Id.*

93 H.R.1234 - Ending Corporal Punishment in Schools Act of 2021, H.R. 1234, 117th Cong. (2021), <https://www.congress.gov/bill/117th-congress/house-bill/1234/text>; H.R.3474 - Keeping All Students Safe Act, H.R. 3474, 117th Cong. (2021), <https://www.congress.gov/bill/117th-congress/house-bill/3474>.

94 *Id.*

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