

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date June 17, 1976

To H. Sawin Millett, Jr., Commissioner Dept. Educational and Cultural Service
From Joseph E. Brennan, Dept. Attorney General
Subject Corporal Punishment

QUESTION:

Your memo of April 13, 1976, basically poses the question: What affect does 17-A M.R.S.A. § 106, sub-§ 2, have upon the use of corporal punishment in Maine schools?

ANSWER:

As a result of enactment of the Maine Criminal Code, effective on May 1, 1976, corporal punishment is no longer a justifiable means of punishing a student although the use of reasonable physical force is recognized as being a justifiable means of bringing a disturbance under control or of removing a student who is causing a disturbance. 17-A M.R.S.A. § 106, sub-§ 2.

REASONS:

In Maine, the relationship of teachers to their pupils has been in the nature of "in loco parentis." Brooks v. Jacobs, 139 Me. 371, 374 (1943). In Stevens v. Fossett, 27 Me. 266 (1847) at 279-80, the Court noted that parents have the authority to discipline their children as needed and that the parent may delegate that authority to a tutor or an instructor in conjunction with the education of their children.

"(a)lthough the town school is instituted by authority of the statute, the children are to be considered as put in charge of the instructor (sic) for the same purpose, and he clothed with the same power, as when he is directly employed by the parents. The power of the parent to restrain and coerce obedience in children, cannot be doubted, and it has seldom or never been denied. The power delegated to the master, by the parent, must be accompanied for the time being, with the same right as incidental, or the object sought must fail of accomplishment." Ibid, at pg. 280

In Patterson v. Nutter, 78 Me. 509 (1886), the Court held that in the absence of school board guidelines, it was largely within the discretion of the teacher as to what punishment should be imposed in a given situation. The Court further held that the teacher would be held to the "reasonable man" standard as to whether the corporal punishment was excessive:

"A schoolmaster has the right to inflict reasonable corporal punishment. He must exercise reasonable judgment and discretion, in determining when to punish and to what extent. . . . (T)he teacher is not to be held liable on the ground of the excess of punishment, unless the punishment is clearly excessive, and would

be held so in the general judgment of reasonable men.'
... The correct rule holds the teacher liable if he
inflicts a punishment which the general judgment of
... (reasonable) men, after thought and reflection,
would call clearly excessive." Ibid at pgs 512-13.

The "in loco parentis" relationship between teachers and their students has thus been recognized at least since 1847. This relationship remained unchanged until the Maine Criminal Code became effective on May 1, 1976. Chapter 5 of the Code (Title 17-A of Maine Revised Statutes Annotated) deals with specific acts which are justifiable and therefore constitute defenses to what might otherwise be crimes. It should be noted that "(t)he fact that conduct may be justifiable under this chapter does not abolish or impair any remedy for such conduct which is available in any civil action." (emphasis supplied) 17-A M.R.S.A. § 101, sub-§§ 1 and 2.

In 17-A M.R.S.A. § 106, sub-§ 2 the Legislature defines justifiable uses of force by a teacher upon a student as being only such "a reasonable degree of force against any such person who creates a disturbance when and to the extent that he reasonably believes it necessary to control the disturbing behavior or to remove a person from the scene of such disturbance." (emphasis supplied). Corporal touching is, therefore, justifiable although corporal punishment is not. Corporal punishment of a child may only be imposed by a parent or others who have similar "long term general care and welfare" responsibilities towards the child. 17-A M.R.S.A. § 106, sub-§ 1. The Legislature contemplated that a teacher is "entrusted with the care or supervision of a person for special and limited purposes" only, rather than the "long term general care" which a parent has for the child.

The end result is that corporal punishment may no longer be inflicted upon a student by a teacher. A teacher who inflicts corporal punishment on a student after May 1, 1976, may no longer assert as a defense in a criminal proceeding that such punishment was justifiable because of the "in loco parentis" relationship between himself and the student.

Physical force may be used by a teacher to control the disturbing behavior of a student or to remove the student from the scene of the disturbance. The teacher should be satisfied that his use of physical force is, in his judgment, necessary to bring the disturbance under control. The standards as to the amount of physical force which he may use will most likely be that which was enunciated by the Court in Patterson v. Nutter, supra. That is, the "reasonable man" standards.

What constitutes a disturbance necessitating the use of reasonable physical force to bring it under control must be dealt with on a case-by-case basis. The Legislature has apparently left this to the discretion of the teacher.

As an example, the resort to the use of physical force in a case similar to the set of facts in Stevens v. Fossett, supra, would probably be justifiable under the Criminal Code. There, the teacher was allowed to use such physical force and call to his assistance such aid from other persons as was necessary to remove a student who had taken control of the teacher's desk and who had refused to surrender control of the desk to the teacher after having been requested to do so by the teacher.

JEB:jg

Joseph E. Brennan
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