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SCHOOL-BASED CORPORAL PUNISHMENT OF STUDENTS WITH DISABILITIES:

A LAW AND POLICY ANALYSIS^{a1}

I. Introduction

In a letter dated 22 November 2016, John B. King, Jr., Secretary of the U.S. Department of Education, urged the nation's governors and state school officers to abolish corporal **punishment** in the schools. "Corporal **punishment**," Secretary King wrote, "teaches children that physical force is an acceptable means of solving problems, undermining efforts to promote nonviolent techniques for conflict resolution."¹ King cited research showing that children who receive corporal **punishment** "are more likely to develop mental health issues, including alcohol and drug abuse or dependence, mood disorders, anxiety disorders, and other personality disorders."²

Moreover, Secretary King wrote, "in-school corporal **punishment** is often not applied equally to all students."³ Boys receive about 80 percent of corporal **punishment** in the schools, and African American students experience about one third of all school-based corporal **punishment**, even though they only make up 16 percent of the total school population.⁴

In addition, Secretary King pointed out, students with disabilities receive corporal **punishment** in disproportionate amounts compared to their nondisabled peers. Indeed, King averred, "in nearly all the states where [school-based corporal **punishment**] is permitted, students with disabilities were *734 subjected to corporal **punishment** at higher rates than students without disabilities." In King's view, "[t]hese data and disparities shock the conscience."⁵

Secretary King's assertions were based on data collected by the U.S. Department of Education's Office for Civil Rights (OCR) for the 2013-2014 school year,⁶ but his letter contained no details regarding corporal **punishment** of disabled children and no state-by-state breakdown. However, researchers have examined OCR data on corporal **punishment** in schools, and they have consistently found that students with disabilities receive a disproportionate amount of school-based corporal **punishment**.

The American Civil Liberties Union (ACLU) and Human Rights Watch (HRW) issued a report in 2009 titled *Impairing Education: Corporal **Punishment** of Students with Disabilities in U.S. Public Schools* that examined OCR data for the 2006-2007 school year. ACLU and HRW found that students with disabilities received proportionately more corporal **punishment** than the general school population in 9 of the 10 states with the highest rates of corporal **punishment**.⁷ Tennessee had the highest disproportionality rate. Disabled students in that state were more than twice as likely to receive corporal **punishment** as the student

population as a whole.⁸ In Georgia and Texas, disabled students were 1.7 times more likely to experience physical discipline than the general school population.

Among the 10 states with the highest corporal-punishment rates during the 2006-2007 school year,⁹ only Oklahoma reported a lower corporal punishment rate for disabled students than the statewide corporal punishment rate for all students.¹⁰

In a subsequent report, Gershoff and Font (2016) examined OCR data for the 2011-2012 school year and found that corporal punishment was administered disproportionately to students with disabilities in 14 Southern states, although not all districts in those states administered corporal punishment to disabled students at higher rates than to nondisabled students.¹¹

Perhaps not surprisingly, states with the highest rates of school-based corporal punishment were those that showed the greatest disparity between corporal-punishment rates for students with disabilities and nondisabled students. According to Gershoff and Font, "Children with disabilities are ***735** over 50% more likely to experience school corporal punishment than their peers without disabilities in 67% of school districts in Alabama, 44% in Arkansas, 34% in Georgia, 35% in Louisiana, 46% in Mississippi, and 36% in Tennessee."¹² Gershoff and Font found that some Southern school districts have particularly high rates of disparity by disability status. "In 12% of districts in Alabama, 9% in Mississippi, and 8% in Tennessee, children with disabilities are *over 5 times more likely* to experience corporal punishment than children without disabilities."¹³

In this brief article, we examine corporal-punishment rates for students with disabilities in the nine Southern states that reported the most school-based corporal punishment during the 2015-2016 school year: Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Oklahoma, Tennessee, and Texas. We compare the corporal-punishment rate for students with disabilities against the rate for students without disabilities for that school year. This analysis demonstrates that students with disabilities continued to receive a disproportionate amount of corporal punishment in the public schools during 2015-2016 in spite of scholarly research calling attention to this problem.

This article discusses recent legislation in three states that have banned or limited the practice of administering physical discipline to students with disabilities. In 2017 and 2018, Louisiana, Oklahoma and Tennessee adopted laws that placed some restrictions on corporal punishment of students with disabilities. In addition, a Colorado law, enacted in 2013, contains a provision that bans corporal punishment of all persons with physical or intellectual disabilities without limitation, although the statutory prohibition makes no mention of schools.

II. A Comparison of Corporal Punishment Rates for Students with Disabilities and Students Without Disabilities:

Nationwide, 106,055 students received school-based corporal punishment in 2013-2014 and 94,577 students received it in 2015-2016.¹⁴ These rates are down significantly from the 2011-2012 school year when 163,333 students received school-based corporal punishment.¹⁵

As shown in the table below, students with disabilities received corporal punishment at higher rates than their non-disabled peers in nine Southern states that reported a significant amount of school-based corporal punishment during the 2015-2016 school year (Paired sample t-test=5.4, df=4413, Sig=0.000). The disparity was statistically significant in all nine states except Oklahoma. The disparity was not significant in Oklahoma where 6.49 percent of nondisabled students received physical discipline compared to 6.60 percent for disabled students (t=-0.36, p=0.72) during the 2015-2016 school year. The disparity was highest in Florida, where disabled students received corporal punishment at double the rate of nondisabled students (1.24 percent versus 2.48 percent).

Table 1: Students Affected per 100 Students (2015-2016 School Year)

Not Disabled	Disabled
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State	Average	StDev	Average	StDev	Schools	Total Students
Alabama	5.64	6.97	7.78	10.40	600	16,542
Arkansas	6.68	7.17	9.32	12.25	460	11,905
Florida	1.24	2.99	2.48	5.68	289	1,817
Georgia	4.48	5.56	7.22	8.62	248	6,364
Louisiana	2.81	3.64	5.01	7.31	218	2,979
Mississippi	10.06	12.93	13.97	21.63	525	24,278
Oklahoma ^{a1}	6.49	8.66	6.60	9.74	511	6,393
Tennessee	3.28	5.34	4.53	7.28	391	5,795
Texas	3.63	5.51	6.31	9.90	1282	18,504
Total	5.10	7.68	7.34	11.99	4524	94,577

Total Paired Sample t-test=-15.4, df=4413, Sig =0.000

Footnotes

[a1](#)

Difference between student groups significant in all states except Oklahoma.

***736 III. Legislation Banning or Restricting Corporal Punishment of Students with Disabilities: Louisiana, Oklahoma, and Tennessee**

Beginning in 2017, three states banned or restricted the infliction of physical discipline on students with disabilities: Louisiana,¹⁶ Oklahoma¹⁷ and Tennessee.¹⁸ According to OCR data, all three states had a record of administering corporal **punishment** disproportionately during the 2015-2016 school year. In addition, Colorado passed a law in 2013 that prohibits corporal **punishment** of any individual with a physical or intellectual disability, but this statute makes no mention of schools.¹⁹

A. Louisiana

On 16 June 2017, Louisiana Governor John Bel Edwards signed House Bill 79,²⁰ which prohibits schools from administering corporal **punishment** to students who are identified as having an “exceptionality,” including students identified as being eligible for services under the Individuals with Disabilities Act (IDEA)²¹ or Section 504 of the Rehabilitation Act of 1973.²²

The law, codified as [Louisiana Revised Statute § 17:416.1 \(B\)\(2\)](#), states as follows:

The governing authority of a public elementary or secondary school shall have discretion with respect to the use of corporal **punishment**; however, no form of corporal **punishment** shall be administered to a student with an exceptionality, excluding gifted and talented, as defined in *R.S. 17:1942* or to a student who has been determined to be eligible for services under Section 504 of the Rehabilitation Act of 1973 and has an Individual Accommodation Plan. Each governing authority of a public elementary or secondary school shall adopt such rules and regulations as ***737** it deems necessary to implement and control any form of corporal **punishment** in the schools under its jurisdiction.

The law makes reference to [Louisiana Revised Statute § 17:194 \(B\)](#), which defines a student with an exceptionality:

A “student with an exceptionality,” including a student with a disability, is any student who is evaluated according to state and federal regulation or policy and is deemed to have a mental disability, hearing loss (including deafness), multiple disabilities, deaf-blindness, speech or language impairment, visual impairment (including blindness), emotional disturbance, orthopedic impairment, other health impairment, specific learning disability, traumatic brain injury, autism, or is deemed to be gifted or talented, and as a result requires special education

and related services. A student with an exceptionality may include, as determined by the local education agency, a student experiencing developmental delay ages three through eight.

Representative Franklin Foil, a Republican legislator from Baton Rouge, was lead sponsor of the bill, but the legislation had broad bipartisan support. The bill had 30 co-sponsors, both Republicans and Democrats; and Governor Edwards, a Democrat, was a strong backer of the bill.²³ HB 79 was adopted by both houses of the Louisiana Legislature without a single dissenting vote.²⁴

B. Oklahoma

The Oklahoma Legislature passed legislation in 2017 that provides students with disabilities with some protection against school-based corporal **punishment**. The Oklahoma law, however, provides less protection than the Louisiana statute.

The law permits corporal **punishment** of disabled students if corporal **punishment** is included in a student's individualized education program (IEP), and it also permits parents to waive the statute's protections by giving written authorization to school authorities to administer corporal **punishment** to their disabled child. Moreover, the Oklahoma law does not mention students designated as being disabled under Section 504, so apparently these students are not protected by the statute.

The Oklahoma law, codified as Oklahoma Statute § 13-116, states as follows:

A. School district personnel shall be prohibited from using corporal **punishment** on students identified with the most significant cognitive disabilities according to criteria established by the State Department of Education unless addressed in an annual individualized education program (IEP) developed in accordance with the Individuals with Disabilities Education Act (IDEA).

B. A waiver to the provisions of subsection A of this section shall be granted if the parent or legal guardian of a student provides written consent.

***738** C. As used in this section, "corporal **punishment**" means the deliberate infliction of physical pain by hitting, paddling, spanking, slapping or any other physical force used as a means of discipline.

C. Tennessee

In 2018, the Tennessee Legislature passed a law that prohibits school personnel from administering corporal **punishment** to students with disabilities.²⁵ Like the corresponding Oklahoma statute, the Tennessee law permits parents to give written permission for school personnel to impose physical discipline on their disabled child, and the Tennessee law even allows parents to select the type of physical **punishment** they will permit. The Tennessee statute was enacted on May 3, 2018 and is codified as [Tennessee Code Annotated § 49-6-4402 \(c\)](#).

²⁶ Relevant provisions of the statute are set forth below:

(1) [T]eachers, school principals, or other school personnel are prohibited from using corporal **punishment** against any student who has a disability; unless an LEA's discipline policy permits the use corporal **punishment** and a parent of a child who has a disability permits, in writing, the use of corporal **punishment** against the parent's child. The written permission must state the type of corporal **punishment** that may be used and the circumstances in which the use of corporal **punishment** is permitted. The school's principal must keep the written permission on file at the school. The school's principal must notify the parent any time corporal **punishment** is used.

The school's principal must inform the parent, when the written permission for the use of corporal **punishment** is submitted, that the parent may revoke the permission to use corporal **punishment** at any time by giving written notice to the school's principal that corporal **punishment** may no longer be used against the parent's child who has a disability.

(2) As used in this subsection (c), "student who has a disability" means a student who has an individualized education program (IEP) under the Individuals with Disabilities Education Act ([20 U.S.C. § 1400 et seq.](#)), or a Section 504 plan under the Rehabilitation Act ([29 U.S.C. § 701 et seq.](#)).

Also, in 2018, Tennessee adopted legislation requiring school districts to file annual reports of corporal-**punishment** incidents to the Tennessee Department of Education. These reports must indicate for each incident whether the student who was **punished** had been designated as a student with a disability under IDEA or Section 504.²⁷

D. Colorado

The Colorado Legislature adopted a law in 2013 that includes this simple provision: "Corporal **punishment** of persons with an intellectual and developmental disability is not permitted."²⁸ This statutory prohibition does ***739** not mention schools, but it contains no limitations. One legal commentator has interpreted Colorado law as prohibiting school personnel from administering corporal **punishment** to students with disabilities.²⁹ Corporal **punishment** is otherwise permitted in Colorado schools, but it is exceedingly rare. A bill to ban the practice in Colorado schools was defeated in the Colorado legislature in 2017.³⁰

Policy Implications and Recommendations

In states that report a significant amount of school-based corporal **punishment**, students with disabilities receive more of it than the students without disabilities. This has been documented by multiple analyses of OCR data: the ACLU/HRW report in 2009 (analyzing data for 2006-2007 school year), Gershoff and Font's study published in 2016 (analyzing data for 2011-2012), and Secretary of Education King's letter of 2016 (citing OCR data for 2013-2014 school year). This study documents that the disparity continued through the 2015-2016 school year.

As Gershoff and Font observed in their 2016 report, the findings that students with a disability are more likely to receive corporal **punishment** is troubling for two reasons. First, IDEA was adopted to provide more support and assistance for students with disabilities than children who are not disabled. "Given that children with disabilities are often more, rather than less, likely to experience corporal **punishment** than their peers without disabilities, this suggests that school staff are often responding to their challenging behaviors with harsh, rather than positive, disciplinary methods."³¹

Second, as Gershoff and Font noted, the ACLU/HRW report found that educators "sometimes administer corporal **punishment** to children with disabilities for behaviors that stem from their disability, such as those endemic to autism, Tourette syndrome, or obsessive compulsive disorder."³² **Punishing** children for exhibiting symptoms of their disabilities is unlawful under IDEA, as Gershoff and Font pointed out.³³

Louisiana passed legislation in 2017 banning all corporal **punishment** of students with an "exceptionality," which includes children identified as having a disability under either IDEA or Section 504. Oklahoma also passed a law that year that prohibits corporal **punishment** of students with a disability designation under IDEA. In 2018, Tennessee adopted legislation that bans schools from administering corporal **punishment** of disabled children identified under both IDEA and Section 504. Colorado law generally prohibits ***740** corporal **punishment** of any individual with an intellectual or physical disability without making reference to schools.

In our view, the Louisiana law provides children with disabilities with the greatest protection from physical discipline, as it protects students with disability designations under both IDEA and Section 504 and contains no provision allowing parents of disabled children to authorize their children to receive corporal **punishment**. Thus, the Louisiana statute provides a good model for abolishing corporal **punishment** of disabled students in the public schools.

School-based corporal **punishment** is on the decline in the United States, and 28 states have specifically banned the practice.³⁴ Research has established that corporal **punishment** is not an effective means for teaching children to behave, and incontrovertible research has established that the corporal **punishment** of children has long-term unintended negative consequences on children's mental health.³⁵ The practice has been condemned by virtually every professional organization in the fields of medicine, education, and law.³⁶

All education professionals should work toward the complete elimination of corporal **punishment** in the nation's schools. No child should be paddled or beaten by a school administrator wielding a board--whether or not a child has been identified as having a disability. Until the day arrives, however, when corporal **punishment** is banned completely in all 50 states, a step in the right direction is to at least prohibit the physical discipline of students with disabilities, as the states of Louisiana, Oklahoma and Tennessee have done.

Footnotes

[a1](#)

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[1](#)

Secretary of Education John B. King, Jr. to Governors and State School Officers (Nov. 22, 2016), <https://www2.ed.gov/policy/gen/guid/school-discipline/files/corporalpunishment-dcl-11-22-2016.pdf>.

[2](#)

Id., citing Tracie O. Afifi, Natalie P. Mota, Patricia Dasiewicz, Harriet L. MacMillan, & Jitender Sareen, *Physical **Punishment** and Mental Disorders: Results from a Nationally representative U.S. Sample*, 30 PEDIATRICS (Aug. 2012), <http://pediatrics.aappublications.org/content/early/2012/06/27/peds.2011-2947>.

[3](#)

Id.

[4](#)

Id.

[5](#)

Id.

[6](#)

U.S. Dep't of Educ., Office for Civil Rights Data Collection (CRDC), 2013-2014, ocrdata.gov.

[7](#)

AM. CIVIL RIGHTS UNION & HUMAN RIGHTS WATCH, IMPAIRING EDUCATION: CORPORAL **PUNISHMENT** OF STUDENTS WITH DISABILITIES IN US PUBLIC SCHOOLS, Table 2 (2009), <https://www.hrw.org/report/2009/08/10/impairing-education/corporalpunishment-students-disabilities-us-publicschools>.

[8](#)

Id.

[9](#)

The ten states listed in the ACLU/HRW report as having the highest school-based corporal **punishment** rates during the 2006-2007 school year are: Mississippi (7.50%), Arkansas (4.67%), Alabama (4.54%), Tennessee (1.47%), Louisiana (1.69%), Oklahoma (2.33%), Georgia (1.12%), Texas (1.08%), Missouri (0.55%), and Kentucky (1.33%). *Id.*

[10](#)

AM. CIVIL RIGHTS UNION & HUMAN RIGHTS WATCH, IMPAIRING EDUCATION, *supra* note 7, at 22.

[11](#)

Elizabeth Gershoff & Sarah A. Font, *Corporal Punishment in U.S. Public Schools: Prevalence, Disparities in Use, and Status in State and Federal Policy*, 30 SOCIAL POL'Y REP. 11 (Figure 5), <https://www.srcd.org/sites/default/files/documents/spr301.pdf>.

[12](#)

Id. at 12.

[13](#)

Id. (emphasis added).

[14](#)

U.S. Dep't of Educ., Office for Civil Rights Data Collection (CRDC), 2013-2014, 2015-2016, ocrdata.gov.

[15](#)

Gershoff & Font, *supra* note 11, at 3.

[16](#)

[LA. REV. STAT. § 17:416.1 \(B\)\(2\) § 17:416.1 \(B\)\(2\).](#)

[17](#)

OKLA. STAT. § 13-116.

[18](#)

[TENN. CODE ANN. § 49-6-4402 \(c\).](#)

[19](#)

[COLO. REV. STAT. § 25.5-10-221 \(1\).](#)

[20](#)

Richard Fossey, *A Small Step Forward: By Unanimous Vote, the Louisiana Legislature Bars Schools from Administering Corporal Punishment to Students with Disabilities*, TEACHERS COLL. REC. ID Number 22195 (Nov. 4, 2017).

[21](#)

[29 U.S.C. §§ 1400-1419.](#)

[22](#)

[29 U.S.C. §§ 705 and 794.](#)

[23](#)

LSU Manship School News Service, *Gov. Edwards wants to exclude disabled students from corporal punishment*, NEW ORLEANS TIMES-PICAYUNE, April 5, 2017, <https://www.nola.com/education/index.ssf/2017/04/govedwardswantstoexcluded.html>.

[24](#)

Fossey, *A Small Step Forward*, *supra* note 20.

[25](#)

2018 Tenn. Pub. Ch. 900, enacted May 3, 2018, codified as [TENN. CODE ANN. § 49-6-4402](#). (c).

[26](#)

The statutory prohibition against corporal **punishment** of students with disabilities is also contained in [TENN. CODE ANN. § 49-6-4103 \(b\)](#).

[27](#)

TENN. CODE ANN. § 41-6-4108.

[28](#)

Colo. Sess. Laws ch. 323, p. 1772, § 1 (HB 13-1314), enacted May 28, 2013 and codified as [COLO. REV. STAT. § 25.5-10-221 \(1\)](#).

[29](#)

See, e.g., E. A. Gjelten, Colorado Laws on Corporal **Punishment** in Schools, Lawyers.com (n.d), <https://www.lawyers.com/legal-info/research/education-law/coloradolaws-on-corporal-punishment-in-schools.html>.

[30](#)

Nic Garcia, *Corporal **Punishment** Bill Goes Down in Colorado Senate Committee*, CHALKBEAT, March 13, 2017, <https://www.chalkbeat.org/posts/co/2017/03/13/corporal-punishment-bill-goes-down-in-colorado-senate-committee/>.

[31](#)

Gershoff & Font, *supra* note 11, at 12. The IDEA mandates that when developing IEPs for children whose behavior impedes their learning or that of others, school personnel should “consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.” [20 U.S.C. § 1414\(d\)\(3\)\(B\)\(i\)](#).

[32](#)

Id.

[33](#)

Id.

[34](#)

King, *supra* note 1, at n 3.

[35](#)

See, e.g., Gershoff & Font, *supra* note 11, at 14 (corporal **punishment** linked to mental health problems); Elizabeth T. Gershoff & Andrew Grogan-Kaylor, *Spanking and Child Outcomes: Old Controversies and New Meta-Analyses*, 30 J. FAM. PSYCHOL. 453-69 (2016) (corporal **punishment** is not effective in increasing short-term compliance and finding link between spanking and detrimental child outcomes).

[36](#)

See, e.g., American Academy of Child and Adolescent Psychiatry, American Bar Association, American Medical Association, American School Counselor Association, National Education Association, Society for Adolescent Medicine. Gershoff & Font, *supra* note 11, at 15.
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