

SUBJECT: Requiring parent consent for use of corporal punishment in public schools

COMMITTEE: Public Education — favorable, without amendment

VOTE: 6 ayes — Eissler, Hochberg, Allen, Guillen, Shelton, Strama

5 nays — Aycock, Dutton, Huberty, T. Smith, Weber

0 absent

WITNESSES: For — Lindsay Coley, Usiel Phoenix, National Youth Rights Association; Julie Shields, Texas Association of School Boards and Texas Association of School Administrators; (*Registered, but did not testify*: Yannis Banks, Texas NAACP; Lauren Dimitry, Texans Care for Children; Kathryn Freeman, Texas Appleseed; Frank Knaack, American Civil Liberties Union of Texas; Carrie Kroll, Texas Pediatric Society; Diana Martinez, TexProtects and the Texas Association for the Protection of Children; Jeff Miller, Disability Rights Texas; Nagla Moussa, Rona Statman, The Arc of Texas)

Against — MerryLynn Gerstenschlager, Texas Eagle Forum

On — David Anderson, Texas Education Agency; Monty Exter, Association of Texas Professional Educators

BACKGROUND: Atty. Gen. Opinion, GA-0374, November 7, 2005, determined that a school district employee could use corporal punishment, without the consent of a parent, to the extent permitted by Penal Code, sec. 9.62; Education Code, sec. 22.0512; and the school district's student code of conduct adopted by the district's board of trustees.

Penal Code, sec. 9.62 permits the use of force, but not deadly force, within the educator-to-student relationship if the actor is entrusted with the care, supervision, or administration of the person for a special purpose and 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.

Education Code, sec. 22.0512 grants a professional employee of a school district immunity from disciplinary proceedings for using physical force against a student to the extent justified under Penal Code, sec. 9.62. Disciplinary action can be taken if the employee's use of corporal punishment violates the district's corporal punishment policy.

DIGEST:

HB 359 would allow an educator in a school district that had adopted a policy permitting corporal punishment to use corporal punishment only if the student's parent or guardian had previously provided written, signed consent and if the student was the same sex as the educator.

HB 359 would define corporal punishment as the deliberate infliction of physical pain by hitting, paddling, spanking, slapping, or any other physical force used as a means of discipline. The term would exclude physical pain caused by reasonable physical activities associated with athletic training, competition, or physical education, or the use of restraint as authorized in limited circumstances by Education Code, sec. 37.0021.

The parental consent would have to be obtained each school year. The parent or guardian could revoke the consent at any time during the school year. If the school district received a written, signed consent from one parent or guardian and a written, signed revocation of consent from another parent or guardian, then the revocation would control. The bill would require the school district to maintain the original consent and revocation of consent documents in its administrative office.

A school district choosing to permit corporal punishment would have to adopt procedures to inform parents and guardians of their right to revoke consent to use corporal punishment and would have to maintain the consent and revocation of consent documents.

The education commissioner would have to adopt rules to require the superintendent of a school district that adopted a policy permitting corporal punishment to provide the State Board for Educator Certification prompt written notice if an educator employed by the district used corporal punishment in violation of the bill's provisions. The commissioner also would have to adopt rules to require the superintendent of a school district in which corporal punishment was not permitted to provide the State Board for Educator Certification prompt written notice if an educator employed by the district used corporal punishment as a method of student discipline.

The bill would apply beginning with the 2011-2012 school year.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2011.

**SUPPORTERS
SAY:**

CSHB 359 would preserve local control, protect parental rights, and codify a definition of corporal punishment.

The bill no longer would permit a school district's code of conduct to supersede a parent's right to disallow the use of corporal punishment on his or her child. Parental rights should always trump the rights and decisions of a school district, especially when it relates to corporal punishment.

The bill would preserve local control by permitting a school district to include corporal punishment as a means of discipline. School districts that permit corporal punishment choose the disciplinary measure as a last resort.

A codified definition of corporal punishment, as defined in CSHB 359, would afford a uniform understanding of what the disciplinary measure could include and what would be "going too far."

**OPPONENTS
SAY:**

CSHB 359 includes too many prescriptive mandates for school districts. School districts should retain local discretion to determine the implementation of a corporal punishment policy.

The bill would require parents to provide their consent each year, which is unnecessary and impractical. Initial consent does not need to be verified annually because a parent or guardian could notify the school district if they changed their minds. A school district should retain the discretion to require annual consent or not.

State law should not mandate how the school district should maintain records pertaining to corporal punishment. The school district is capable of determining the best method to maintain its records.

State law should permit, not mandate, school districts to adopt procedures related to corporal punishment and should not require the commissioner to adopt rules.

The state should not micro-manage by imposing a requirement that an educator be the same sex as the student for the educator to administer corporal punishment.

The bill would provide that the written, signed revocation of one parent would supersede the consent of another, which could create confusion and legal discrepancies concerning the division of custody between parents not married to each other.

OTHER
OPPONENTS
SAY:

CSHB 359 should ban the use of corporal punishment by school districts. Hitting is not a punishment; it is abuse. The allowance of corporal punishment violates Title 9 of the Penal Code, which prohibits disorderly conduct, public indecency, and harassment.

Corporal punishment is used disproportionately on minorities and has negative effects on a student's psyche, such as spurring aggressive behavior or the desire to drop out of school.

NOTES:

Representative T. Smith intends to offer a floor substitute to CSHB 359, which the author intends to accept. The floor substitute would not require consent to be obtained each year, and consent would remain valid until revoked or the student left the school district. The floor substitute would permit a school district board of trustees to adopt rules that would require a student's parent or guardian to renew the consent each school year and would not require the education commissioner to adopt rules.

The floor substitute also would remove the provisions that would require:

- the written, signed revocation of one parent to supersede the consent of another;
- a school district to maintain original consent and revocation of consent documents in the district's administrative office; and
- an educator to be the same sex as the student for the educator to administer corporal punishment.