

1 and impose discipline be done in a nondiscriminatory manner, without regard to race, ethnicity,
2 color, national origin, gender, socioeconomics, or other arbitrary basis.

TOPIC 1

THE USE OF FORCE IN RESPONSE TO STUDENT MISBEHAVIOR

3 § 8.10. Use of Force to Control and Punish

4 **In a criminal proceeding or a civil suit alleging an intentional tort, the use of**
5 **reasonable force by a teacher or other school authority with responsibility for the care and**
6 **education of students is privileged if the school authority reasonably believes that the force**
7 **is necessary to maintain order and safety in the school.**

8 **The use of force to punish through the infliction of pain is not necessary to maintain**
9 **order or safety, and therefore corporal punishment is prohibited in public schools unless**
10 **expressly authorized by statute, and any such authorization is to be narrowly construed.**

11 **Comment:**

12 *a. Background and history.* School personnel’s authority to discipline students dates back
13 to English common law, under which teachers acted “in loco parentis,” or “in the place of a parent,”
14 when children were placed by parents in school personnel’s care and control. See William
15 Blackstone, Commentaries * 453. As with parents (see § 3.24), school personnel’s use of force,
16 including corporal punishment, was considered an appropriate exercise of disciplinary authority,
17 and, as with parents, school authorities were afforded a privilege, sometimes called the “school
18 master’s privilege,” against tort and criminal liability for the use of force when that use of force
19 was deemed to be reasonable. With the imposition of states’ constitutional obligation to provide
20 all students with a public education (see Chapter 6), and the implementation of compulsory
21 attendance laws (see Chapter 7), schools’ authority to use force became independent of parental
22 delegation or consent. Although the school and parents’ privileges overlap considerably, the
23 school authorities’ privilege is narrower, as it is limited to achieve the school’s educational
24 purpose.

25 Until the latter half of the 20th century, corporal punishment was the primary form of
26 punishment administered in schools. Although school authorities’ privilege to use corporal
27 punishment, defined as the use of force to inflict pain in order to punish student misbehavior, was
28 held to be constitutional by the U.S. Supreme Court in *Ingraham v. Wright*, 430 U.S. 651 (1977),

1 most states now prohibit the use of corporal punishment in public schools by statute. In the
2 minority of states that continue to permit corporal punishment, that authority is also set out, and
3 limited, in statute. Even in these states, local school boards commonly and increasingly prohibit
4 the practice. In contrast, all states continue to allow school personnel to use the force reasonably
5 necessary to maintain order and keep people safe.

6 State statutes setting out the scope and limits of school authorities' privilege to use force
7 against students build upon the common law's reasonableness standard—whether they limit the
8 use of force to order maintenance, or continue to permit corporal punishment—and courts, in
9 determining whether school authorities are protected by the privilege, continue to look to the
10 common law to guide their assessments of reasonableness. For the majority of states in which
11 corporal punishment is prohibited, this Restatement provides a common, unified, interpretation of
12 the reasonableness standard under statute and common law. Where corporal punishment is still
13 authorized by statute, this Restatement notes that the reasonableness contemplated in those statutes
14 is increasingly out of step with trends in the law. Even in the minority of states where corporal
15 punishment is still permitted, the reasonableness standard increasingly restrains the scope of that
16 privilege.

17 *b. Rationale for the privilege to use force to control disruptive or dangerous behavior.*
18 School personnel's broad authority to exercise control over students is justified by the importance
19 and complexity of their obligation to educate students and to maintain the order required to do so.
20 As the U.S. Supreme Court acknowledged in *Goss v. Lopez*:

21 [O]ur schools are vast and complex. Some modicum of discipline and order is
22 essential if the educational function is to be performed. Events calling for discipline
23 are frequent occurrences and sometimes require immediate, effective action.

24 419 U.S. 565, 580 (1975).

25 In order to achieve that effective control, the law has given school officials "comprehensive
26 authority ... to prescribe and control conduct." *Tinker v. Des Moines Independent Community*
27 *School District*, 393 U.S. 503, 507 (1969).

28 School personnel's privilege to use physical force against students, first recognized in
29 common law and now largely governed by statute, is limited to occasions when the school official
30 reasonably believes that the physical discipline administered is necessary to achieve a proper

1 education-related purpose. These purposes include maintaining a calm, nondistracting, and
2 nondisruptive context in which students can study and learn and keeping students safe.

3 As will be discussed in the following Comment, it is now broadly understood that corporal
4 punishment, the use of force to inflict pain as a punishment for misconduct, is not *necessary* to
5 achieve an educational purpose. In contrast, the use of force is sometimes necessary to calm or
6 restrain a student who is out of control and potentially dangerous to him- or herself and others, and
7 preventing harm and disorder caused by this behavior serves an important educational purpose.

8 *c. Rationale for the prohibition against corporal punishment in schools.* The limited
9 privilege afforded school personnel for the administration of physical discipline grew out of the
10 common-law privilege afforded to parents (see § 3.24), and was first understood as a privilege
11 delegated by parents to those who had assumed some of the parents' responsibility and authority
12 for controlling, training, or educating their children. Today, however, compulsory attendance laws
13 and related educational entitlements have shifted primary responsibility for children's formal
14 education from parents to the state. The distinct roles played by parents and teachers justify a
15 significantly wider privilege for parents than for school personnel.

16 Moreover, while the privileges afforded to parents and school personnel to use physical
17 discipline have a common origin, the modern justifications for protecting parents from liability for
18 corporal punishment (see § 3.24, Comment *c*) do not apply in the school setting. In both the school
19 and family setting, there is a growing social scientific consensus that the use of corporal
20 punishment is ineffective and potentially harmful to children. But as discussed in § 3.24, Comment
21 *c*, family privacy and autonomy interests, the costs imposed on families by state intervention, the
22 disproportionate negative impact this intervention would have on minority families, and the
23 importance of allowing parents some room for error in fulfilling the difficult and highly taxing
24 responsibility of raising children, all argue for affording parents some protection from liability,
25 even where they engage in practices, such as corporal punishment, that are judged by professionals
26 to be less than ideal. None of these same concerns apply in the school context, where there are no
27 important autonomy rights to protect, where teachers and other school personnel can be expected
28 to conform to professional standards, and where the physical discipline itself constitutes the
29 potentially harmful state intervention, with disproportionately harmful consequences for students
30 of color, who have been shown to be disproportionately subject to corporal punishment in schools.

1 Thus, unlike in the parental discipline context, where this Restatement rejects the
2 Restatement Second, Torts requirement that a parent “reasonably believed” the use of force against
3 a child was “necessary” in order to be protected by the privilege in the criminal and child protection
4 contexts (see § 3.24, Reporters’ Note to Comment *d*), in the school context, this “reasonable belief
5 of necessity” requirement is appropriate. Where a broad and growing legal, medical, and social
6 scientific consensus categorically rejects the propriety and efficacy of corporal punishment,
7 corporal punishment cannot be said to be “necessary.” Thus, application of the “reasonable belief
8 in necessity” requirement precludes application of the common-law privilege to corporal
9 punishment.

10 **Illustrations:**

11 1. Lee is a 14-year-old high-school student who has, on several occasions, disrupted
12 his algebra class by shouting, running around, and throwing small objects like pencils and
13 erasers at other students. When his teacher requests that he quiet down and return to his
14 seat, he seems to become more agitated, and he races toward her and reaches for her heavy
15 tape dispenser. Thinking Lee may be planning to throw the dispenser at her or at another
16 student, she grabs his wrist and holds on tight. Lee shouts “Get your hands off me!” and
17 wrenches free, running out of the room. The teacher’s use of force is protected by the
18 privilege.

19 The teacher in Illustration 1 uses physical force and restraint because she
20 reasonably believes that Lee poses an imminent threat of physical danger to the teacher
21 and to the class that could only be prevented in this way. Lee’s previous conduct and
22 current demeanor support this conclusion, as does the likely dangerousness of the
23 dispenser, if it is thrown. While tightly grabbing his wrist could be enough to inflict an
24 injury, it might reasonably have been thought to be the minimal amount of force the teacher
25 could apply to exercise the needed control.

26 2. Same facts as Illustration 1, but this time, in response to the teacher’s instruction
27 to settle down, Lee gives her a contemptuous look and starts walking slowly toward her
28 with his hands on his hips. The teacher reaches out and grabs his hand, pulling back a finger
29 to show that she is serious about his need to settle down and respond to her authority. The
30 teacher’s conduct is not privileged.

1 Although the teacher in Illustration 2 might argue that sending a message, through
2 the infliction of pain, helps Lee to understand her authority and the importance of obeying
3 her rules, her action cannot reasonably be said to be “necessary” to maintain classroom
4 control and to fulfill the school’s educational purposes in light of the other alternatives
5 available. Indeed, professional educators, a majority of states, and a growing number of
6 school districts within states with statutes authorizing corporal punishment condemn the
7 practice. Statutes continuing to afford a privilege to school authorities to engage in corporal
8 punishment, that is, the intentional infliction of pain for purposes of punishment, now
9 codify a conception of necessity and reasonableness that is out of step with a growing
10 national and international consensus about the meaning of those terms. Even in the
11 minority of states that continue to authorize corporal punishment by statute, the particular
12 action taken (bending back the student’s finger) would likely be proscribed by statute or
13 district policy, and the nature of the pain inflicted—the bending back of the finger—might
14 be taken as evidence of malice, of an intention to injure the student, which would bar
15 application of the statutory privilege. See Comment *e*.

16 *d. Scope of school personnel’s privilege to use force to maintain order—reasonableness*
17 *standard.* A school authority’s use of force against a student is privileged when it is reasonable in
18 scope, and reasonably believed to be necessary to maintain order and safety in the school.
19 Analyzing whether an official’s use of physical force is reasonable requires a context-specific
20 inquiry that takes several factors into account, including: the age and physical and mental condition
21 of the student, the nature of the student’s behavior and previous pattern of behavior, the nature of
22 the school official’s conduct, the purpose and motive of that conduct, the availability of alternative
23 means of responding to the student’s behavior, the nature of any injury caused, and the impact on
24 other students of the student’s behavior and the school authority’s response to that behavior.

25 **Illustration:**

26 3. Same facts as Illustration 1, but this time the student is Vicki, and she is a very
27 small eight-year-old in third grade who regularly suffers from asthma. When Vicki moves
28 toward the desk, the teacher tackles her to the ground. Feeling the weight of her teacher’s
29 body on top of her, Vicki panics and begins to gasp for breath. The teacher’s conduct is not
30 privileged.

1 In Illustration 3, the behavior, and possibly the risk to the teacher and other students,
2 is the same, as is the teacher’s intention to prevent the throwing of the heavy object. But,
3 here, the teacher’s conduct fails the “reasonableness” test for a number of reasons. First,
4 her use of physical force exceeds what was necessary to stop Vicki from reaching and
5 throwing the dispenser. Second, the condition of the child makes the physical force
6 especially dangerous for that child. Third, just as the others students’ interest in being safe
7 and able to learn in an orderly environment should be considered in an assessment of the
8 teacher’s reasonableness, so should the impact of this disciplinary conduct on the other
9 students. In all but the most extreme circumstances, such as when a student is already
10 brandishing a dangerous weapon, a teacher’s tackling of a student will, itself, be frightening
11 to other students, particularly young students.

12 As in the parental context (see § 3.24, Comment *d*), application of the privilege in the
13 criminal and civil contexts considers the same reasonableness factors, but generally requires a
14 higher level of injury to subject the actor’s use of force to criminal liability.

15 The requirement that the actor have a reasonable belief that the force used is necessary to
16 maintain order and safety in the school has both an objective and a subjective element. The belief
17 in the act’s necessity must be objectively reasonable, and the actor must actually believe in the
18 act’s necessity. The objective assessment ties into the assessment of the reasonableness of the force
19 used and considers the same range of factors. The subjective assessment focuses specifically on
20 issues of purpose and motive.

21 *e. Scope of school personnel’s privilege to use force to punish when expressly authorized*
22 *by statute.* There is a substantial discrepancy between how the “reasonableness” standard is applied
23 in the majority of states that prohibit corporal punishment and how it is applied in the minority of
24 states that continue to authorize corporal punishment by statute. The same range of factors
25 (including the age and condition of the student, the nature of the student’s offense, the impact of
26 the student’s behavior and the school authorities’ response on other students, the nature of the
27 force used, the purpose of and motive for the use of force, the nature of injuries caused, and the
28 availability of alternative means of addressing the misbehavior) guide a court’s assessment of
29 reasonableness in both contexts. Certain reasonableness factors are applied differently, however,
30 under the statutes that permit corporal punishment. In the states where corporal punishment is
31 banned, the purpose of punishment is identified as inappropriate and therefore unreasonable in all

1 cases. By contrast, the use of force to cause pain for the purpose of punishment is expressly
2 authorized in states with statutes authorizing corporal punishment. Although the statutory
3 authorization of corporal punishment prevents a purpose of punishment or a deliberate infliction
4 of pain from necessarily weighing *against* a reasonableness assessment, the strong trend in law
5 and policy against corporal punishment requires that substantial weight be given to the other
6 reasonableness factors, including the child's age, the child's physical and mental condition, the
7 motivation of the school authority, the nature of the injury caused, and the availability of other
8 means of discipline, to limit the scope of the privilege's application where physical force is used
9 to punish children's misbehavior. Moreover, as has long been true at common law, the privilege
10 does not extend to conduct motivated by anger or animosity or undertaken with an intent to cause
11 bodily injury.

12 **Illustrations:**

13 4. Fifteen-year-old Tracey attends school in a district that authorizes the use of
14 corporal punishment. When she leaves her class without the teacher's permission, the
15 Assistant Principal encounters Tracey in the hallway and tells her to go back to class. When
16 she refuses, he grabs her arm and twists it tightly behind her back and in the protracted
17 struggle that follows, he bangs her head against several lockers. The Assistant Principal's
18 conduct is unreasonable and therefore not protected by a privilege.

19 Many factors reinforce the unreasonableness of the Assistant Principal's actions,
20 whether the Assistant Principal's asserted purpose was merely to restrain and control
21 Tracey or to punish her. First, the nature of the conduct and the force used is excessive,
22 putting Tracey at substantial risk of physical injury. Second, both the trauma associated
23 with the Assistant Principal's conduct and any ongoing pain she may feel in her arm
24 amount to significant emotional and bodily harm. Third, although Tracey violated a school
25 rule, there is no indication that she posed a risk to herself, others, or property, or that her
26 behavior interfered with other students' ability to learn. Fourth, the public nature of the
27 incident makes it likely that the Assistant Principal's behavior was viewed, to disturbing
28 effect, by other students. Finally, although a statutory authorization of corporal punishment
29 allows school authorities to use force for the purpose of punishment, this purpose must be
30 motivated by pedagogical goals and not kindled by anger or malice. In this Illustration, the

1 nature of the Assistant Principal's conduct suggests that he is motivated more by anger
2 than by a dispassionate desire to impart meaningful disciplinary instruction.

3 5. Sixteen-year-old Julian, who attends school in a district that authorizes corporal
4 punishment, has a history of school disciplinary issues and is known for pressuring other
5 students to join him in his misbehavior. In the past, his teachers and principal have
6 punished his misbehavior with loss of privileges and detention on numerous occasions.
7 When he is caught trying to take something out of his teacher's wallet, he is taken to the
8 principal, who administers two strikes with a wooden paddle on his buttocks through gym
9 shorts. After the first strike, Julian tells the principal that he is in a lot of pain, and asks for
10 a break, which the principal agrees to. After a few minutes, the principal hits Julian again.
11 Three days after the paddling, Julian still has dark bruises and complains of pain. His
12 pediatrician examines Julian and concludes, based on his observation of the bruises, that
13 the conduct of the principal qualifies as child abuse. The principal is subject to liability for
14 battery.

15 In the minority of jurisdictions where corporal punishment is expressly permitted,
16 administering corporal punishment in the circumstances described in the Illustration would
17 satisfy the reasonableness factors of the student's age, the purpose of punishment, the
18 nature of the misconduct, the impact of the misbehavior on others, and the ineffectiveness
19 of alternative forms of punishment. The severity of the injury alone, however, is enough to
20 support a finding that the degree of force used was unreasonable.

21 *f. Official immunity for the use of force against students.* In addition to the protection from
22 liability afforded to school personnel through the common-law "school master's" privilege and its
23 subsequent statutory codifications, these personnel are often also shielded from liability for the use
24 of force in response to student misbehavior by "official immunity" provisions. Official immunity
25 affords government agents immunity from liability for discretionary (as opposed to ministerial)
26 acts done pursuant to their official duties, unless the acts were outside their authority or were done
27 with malice or intent to injure. Controlling or disciplining students is a discretionary act, but
28 departures from the standard of reasonableness established at common law and in statutes
29 addressing the use of force against students commonly constitute actions "outside the authority"
30 of the school personnel, thereby incorporating the specific reasonableness limits on school
31 personnel's privilege into the more generic immunity provision. Moreover, many exercises of

1 force found to be excessive also satisfy the exceptions for acts motivated by malice and intent to
2 harm that limit the availability of official immunity.

3 *g. School personnel authorized to use force against students.* School personnel entrusted
4 with students' education, care, and supervision are protected by the privilege to use reasonable
5 force. Specific job categories are commonly set out by statute. Commonly included on statutory
6 lists are teachers, teachers' assistants, principals, assistant principals, and board-level
7 administrators, including superintendents. The range of school personnel protected by the privilege
8 to use reasonable force to maintain order and safety is broader than the range of personnel
9 permitted to use force to punish children in the minority of states that statutorily authorize corporal
10 punishment. School personnel such as bus drivers, for example, may need to use force to ensure
11 the safety of those riding the bus, but have no authority to use force to punish misbehavior that
12 occurs on the bus.

13 Schools increasingly employ personnel with law-enforcement authority, frequently called
14 "school resource officers," in their schools to maintain order and to keep students safe. Such
15 officers are, like teachers and administrators, limited to the use of "reasonable" force. Moreover,
16 these officers are not authorized to participate in routine classroom discipline. Such interventions
17 would undermine effective classroom management and the proper care and education of children
18 at school. The presence of agents with law-enforcement authority increases the possibility that
19 students' disruptive behavior will be treated as a law-enforcement, rather than a school-discipline,
20 matter, which, in turn, increases the risk that the response to students' misbehavior will be shifted
21 from the school system to the justice system. (See § 14.20, Comment *e*). Thus, their involvement,
22 even their presence, in schools threatens to undercut the connection between a school's response
23 to student misconduct and the educational mission that justifies the response.

24 For this reason, school resource officers are not protected by statutory or common-law privileges
25 that protect teachers engaging in school discipline. However, these officers will commonly be
26 protected by their own form of official immunity when they exercise their discretion pursuant to
27 their law-enforcement authority.

28 **Illustrations:**

29 6. Sam, a high-school senior, has a reputation for being extremely loud and
30 rambunctious in the hall, and is often sent out of the classroom for distracting students with
31 his burps and farts. At these times, he is supposed to stand quietly outside the classroom

1 door until he is summoned back in, but on one occasion he walks away. A school resource
2 officer assigned to the school witnesses this behavior and, knowing that it is not what the
3 teacher intended, the officer races over and grabs Sam by the shoulders to stop his progress.
4 He then holds Sam against the nearby lockers to prevent him from running away. The
5 school resource officer is subject to liability in tort.

6 7. Same facts as Illustration 6, only this time Sam flashes a pocket knife in class,
7 jumps up, and says “Who’s ready to rumble?” before running out the door. The teacher
8 calls out for help in the hall, warning that “Sam has a knife.” The response of the school
9 resource officer is the same as in Illustration 6. The school resource officer is immune from
10 liability.

11 In Illustration 6, the school resource officer is attempting to exercise control over Sam for
12 a non-law-enforcement purpose. He has no protection from liability under the so-called “school
13 master privilege” or its statutory equivalent, because he has no authority to use physical force to
14 further the educational purpose of the school. He also has no protection from liability in the
15 exercise of his lawful authority as a school resource officer, because this protection is limited to
16 criminal enforcement and order maintenance. Although teachers and school resource officers have
17 some overlapping authority to use physical restraint to exercise control and maintain order in the
18 school, there is no threat to order suggested by these facts after the teacher sends Sam out of the
19 classroom. Even within the classroom, the level of disorder created by Sam’s behavior, although
20 disruptive to his own educational progress and that of his classmates, would not justify any
21 intervention from law-enforcement personnel.

22 In contrast, in Illustration 7, the school resource officer has good reason to believe that the
23 student represents an ongoing threat of violence to himself and others in the school, and that the
24 teacher is not capable, or has chosen not to, address the threat on her own. In such circumstances,
25 a school resource officer is justified in taking reasonable action to address the threat. The severity
26 and dangerousness of Sam’s conduct, the officer’s limited use of force and likely modest injuries
27 incurred, the lack of other available methods to promptly address the threat, and the officer’s use
28 of force, all suggest that the officer exercised discretion, acting within his law-enforcement
29 authority, and is therefore entitled to official immunity.

30 *h. Substantive constitutional constraints on the school’s use of force against students.* In
31 limited circumstances, a school authority’s use of force can violate a student’s constitutional rights

1 under the Fourth or the Fourteenth Amendment. Under substantive due process doctrine, which
2 protects an individual’s right to bodily integrity, a school authority is liable for the use of force
3 against a student when that use of force “shock[s] the conscience” or “amounts to a brutal and
4 inhumane abuse of power.” *Hall v. Tawney*, 621 F.2d 607, 613 (4th Cir. 1980). Although the
5 standard applied is generally understood to be more difficult to satisfy than the reasonableness
6 standard applied in the tort context, the inquiry focuses on similar factors, particularly: the severity
7 of the injury caused by the discipline, the justification for the use of physical force, whether the
8 force used was proportional to any legitimate purposes of discipline, and whether the use of force
9 was motivated by malice.

10 The Fourth Amendment’s prohibition of unreasonable seizures also imposes some limits
11 on a school authority’s use of force, though the reasonableness assessment in the school context is
12 a deferential one, to ensure that school officials are afforded the discretion required to pursue their
13 educational mission. Fourth Amendment claims are asserted not only to challenge conduct that
14 clearly qualifies as corporal punishment, but also to challenge other uses of restraint and
15 confinement of students in disciplinary contexts. And, in some circumstances, such confinement
16 leads or threatens to lead to a student’s involvement in the criminal or juvenile justice system,
17 implicating minors’ criminal procedural rights. (See § 14.20, Comment *e*).

18 Fourth Amendment rights also protect students from the use of excessive force and other
19 forms of unreasonable seizures by school resource officers and other personnel whose role in the
20 school is order maintenance. Unlike school authorities, however, no heightened deference applies
21 to school resource officers, whose role is order maintenance and law-enforcement and who do not
22 bear the educational responsibility borne by teachers and school administrators in the execution of
23 their duties.

24 *i. Procedural constraints on the school’s use of force against students.* The U.S. Supreme
25 Court in *Ingraham* concluded that students have no right under the Due Process Clause of the U.S.
26 Constitution to notice or to an opportunity to be heard before they are subject to corporal
27 punishment. Although the Court recognized that students facing corporal punishment have a
28 constitutionally protected liberty interest in being free from “bodily restraint and punishment,” it
29 concluded that common-law remedies were adequate, and that any added benefits that came from
30 providing advance procedural safeguards would be offset by the costs. In particular, the Court
31 concluded that the general openness of the school setting and the low incidence of abuse in the use

1 of corporal punishment argued against a need for advance procedures to ensure accurate
2 decisionmaking, and that the costs to the effectiveness of school discipline of providing pre-
3 punishment process would be significant. *Ingraham v. Wright*, 430 U.S. 651 (1977).

4 In the minority of states that continue to permit corporal punishment in schools, the
5 increasing imposition of procedural safeguards by school districts and state legislatures reflect a
6 growing legal sensitivity to the risks associated with corporal punishment. These procedural
7 safeguards sometimes include the requirement of a warning, the administration of corporal
8 punishment in the presence of a witness, or pre-punishment parental consent and/or post-
9 punishment explanations to parents, in writing, noting the reason for the punishment.

10 As states have shifted heavily away from the use of corporal punishment, school
11 personnel's ongoing use of force is focused increasingly on the maintenance of order and the
12 protection of students' safety. These uses of physical force, when justified as reasonably believed
13 to be necessary, will almost universally require immediate action in order to be effective.
14 Therefore *Ingraham's* procedural due process analysis is particularly straightforward when applied
15 to the nonpunitive use of force.

16 *j. Constraints on the use of force against students in private schools.* Private schools are
17 less constrained than public schools in their use of force against students. Unlike public school
18 personnel, who are protected by a distinct privilege derived from their official educational
19 obligations (see Comment *a*), private school personnel continue to act as parental delegates, absent
20 statutory limitations or contractual terms to the contrary. In most states that prohibit the use of
21 corporal punishment by statute, the prohibition applies only to public schools, although the number
22 of state statutes prohibiting corporal punishment in private schools appears to be growing.

23 As parental delegates, school personnel are generally governed by the same standard that
24 applies to parents (see § 3.24), although limited to exercises of force to serve educational and
25 related order maintenance purposes. Moreover, unless expressly prohibited by parents under the
26 terms of their child's enrollment, school authorities' use of reasonable force by school personnel
27 where reasonably believed to be necessary to maintain safety and order will be protected from
28 liability, even over the objection of a parent.

29 Constitutional constraints on the use of force generally do not apply to private school
30 personnel. These constraints only apply to state actors, and, in most cases, private school personnel
31 are not considered state actors. However, personnel in specialized schools that have a particularly

1 extensive relationship with the state are an exception to this rule. If the state provides a private
2 school with substantial funding, imposes extensive regulations on the school, and routinely places
3 students in the school to meet its educational obligations, personnel within the school can qualify
4 as state actors.

REPORTERS' NOTE

5 *Comment a. Background and history.* In his Commentaries on the Laws of England,
6 William Blackstone described the authority of a parent to “lawfully correct his child . . . in a
7 reasonable manner, for this is for the benefit of his education,” and noted that this authority could
8 be delegated to teachers: “[A parent] may also delegate part of his parental authority, during his
9 life, to the tutor or schoolmaster of his child: who is then *in loco parentis*, and has such a portion
10 of the power of the parents viz. that of restraint, and correction, as may be necessary to answer the
11 purposes for which he is employed.” See 1 William Blackstone, Commentaries *441.

12 A minority of states have expressly incorporated the *in loco parentis* doctrine into their
13 statutes regulating school discipline, see, e.g., Ind. Code § 20-33-8-8(b)(1) (“In all matters relating
14 to the discipline and conduct of students, school corporation personnel . . . stand in the relation of
15 parents to the students of the school corporation”), and courts continue to invoke the doctrine in
16 justifying the law’s shielding of school personnel from liability for their use of physical force or
17 other unwanted touching. See, e.g., *Austin B. v. Escondido Union Sch. Dist.*, 149 Cal. App. 4th
18 860, 874 (2007) (“Because this state recognizes that, both under common law and by statute, in a
19 school setting a teacher stands *in loco parentis* to his or her students, the teacher may maintain that
20 degree of control over a student that is ‘reasonably necessary to maintain order, protect property,
21 or protect the health and safety of pupils, or to maintain proper and appropriate conditions
22 conducive to learning’”) (citing Cal. Educ. Code § 44807). Although the *in loco parentis* doctrine
23 continues to inform the analysis of schools’ use of force, school authorities now have a distinct
24 privilege in both tort and criminal law tied to, and limited by, their special educational mission and
25 their need to exercise some degree of control over students to accomplish this mission.

26 Corporal punishment is defined as the “infliction of bodily pain as a penalty for
27 disapproved behavior.” *Daily v. Bd. of Educ. of Morrill County School Dist.*, 588 N.W.2d 813,
28 821 (Neb. 1999) (citing Nadine Black and Robert Fathman, *Convincing State Legislatures to Ban*
29 *Corporal Punishment*, Children’s Leg. Rts. J., Spring 1988 at 21). Both the intent to inflict pain
30 on the body and the purpose of punishment are required for conduct to qualify as corporal
31 punishment. *Id.* The definition includes not only striking of a student but also other acts that inflict
32 pain on the student’s body for the purpose of punishment, such as “forcing a student to stand on
33 tiptoes with fingertips outstretched against the wall or to crouch and bend over and remain in
34 cramped, painful positions for a long time.” *Id.* The use of physical contact to maintain order and
35 control that is not intended to cause pain and is not inflicted for the purpose of punishment does
36 not fall within the definition of “corporal punishment,” and is generally allowed, subject to
37 reasonableness constraints. See *id.*; *Daniels v. Gordon*, 503 S.E.2d 72 (Ga. Ct. App. 1998) (holding
38 that a teacher’s grasping of a student’s face and turning it toward her to get her attention with no