



TEXAS EDUCATION AGENCY

1701 North Congress Ave. ★ Austin, Texas 78701-1494 ★ 512/463-9734 ★ FAX: 512/463-9838 ★ http://www.tea.state.tx.us

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OPINION COMMITTEE

The Honorable Greg Abbott
Texas Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

FILE # ML-43383-03
I.D. # 43383

Re: Opinion Request on TEC Section 22.0512

Dear General Abbott:

I respectfully request your opinion on an issue regarding the meaning of Texas Education Code Section 22.0512.

Question Presented:

Under Education Code Section 22.0512, may a school district enforce a policy relating to corporal punishment by bringing a disciplinary proceeding against a professional employee of the district for using physical force against a student if such force is permitted by Section 9.62, Penal Code but prohibited by local policy?

Background and Discussion:

Section 22.0512, added by Senate Bill 930, 78th Texas Legislature (Reg. Sess.), appears to protect a professional employee of a school district from being subject to disciplinary proceedings for the employee's use of physical force against a student to the extent that such physical force is justified under Section 9.62, Penal Code. Subsection (a) provides as follows:

A professional employee of a school district may not be subject to disciplinary proceedings for the employee's use of physical force against a student to the extent justified under Section 9.62, Penal Code.

Subsection (b) makes clear that a "disciplinary proceeding" within the meaning of the section includes an action brought by the school district employing a professional employee of a school district to discharge or suspend the employee or terminate or not renew the employee's term contract. In light of the cases and opinions construing Penal Code Section 9.62, this language would appear to mean that a school district cannot adopt a local policy that prohibits forms of corporal punishment that are permitted by that section. However, subsection (c) provides that a school district may adopt and enforce local corporal punishment policies notwithstanding subsection (a):

This section does not prohibit a school district from: (1) enforcing a policy relating to corporal punishment; or (2) notwithstanding Subsection (a), bringing a disciplinary

proceeding against a professional employee of the district who violates the district policy relating to corporal punishment.

Thus, Section 22.0512(a) seems to give teachers the freedom to exercise their own judgment in the classroom, prohibiting school district boards of trustees from passing policies that restrict corporal punishment so long as the corporal punishment does not violate Penal Code Section 9.62. Yet Section 22.0512(c) seems to take this freedom back by expressly permitting districts to enforce such corporal punishment policies "notwithstanding" subsection (a).

It would appear that Section 22.0512 may reasonably be subject to two different constructions. Under the first reading, the local policies authorized by Sec. 22.0512(c) *may* prohibit corporal punishment that would otherwise be allowed by Penal Code Section 9.62. The text of subsection (c)(2) would seem to support this reading (i.e., "notwithstanding Subsection (a)"). The Legislative history of Senate Bill 930 would also seem to indicate this reading. As filed, the bill would clearly have given teachers the freedom suggested by Subsection (a), because as filed Subsection (c) did not include Subsection (c)(2). This language was added on the House floor at second reading by Rep. Hope, R-Conroe.

Under the second interpretation, the corporal punishment policy authorized by Section 22.0512(c) may *not* prohibit conduct that is protected by Subsection (a). Instead, such conduct is protected from local policies adopted by school district boards of trustees except to the extent that the conduct violates the legislative standard in Penal Code Section 9.62. Under this interpretation, corporal punishment policies may be adopted by the school district under Subsection (c) only to the extent that these are consistent with the freedom granted by Subsection (a).

Thank you for your consideration of this matter.

Sincerely,



Robert Scott
Chief Deputy Commissioner

RS/JT/jt