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OPINION COMMITTEE

Shirley J. Neeley, Ed.D.
Commissioner

July 27, 2005

FILE # ML-44298-05

I.D. # 44298

The Honorable Gregg Abbott
Attorney General of Texas
P.O. Box 12548
Capitol Station
Austin, Texas 78711-2548

R.Q-0369-GA

Re: Opinion Request/HB383, 79th Regular Legislative Session

Dear General Abbott:

I am writing to seek your opinion regarding the effect, if any, of the provisions of House Bill No. 383, as enacted by the 79th Legislature, Regular Session, on the ability of public schools to use corporal punishment.

Texas law has long recognized that the use of corporal punishment is a decision made by policies of the local school districts. No state agency has authority over local policies involving corporal punishment.¹ While each school district adopts its own local policies, the Texas Association of School Boards provides three model policy options for school districts: one with a prohibition against corporal punishment, one with corporal punishment allowed but conditioned upon parental permission, and one that allows school administrators to determine whether to use corporal punishment.

My questions involve the recent addition of Subsection (e) to Section 151.001 of the Texas Family Code. That Subsection provides:

(e) Only the following persons may use corporal punishment for the reasonable discipline of a child:

- (1) a parent or grandparent of the child;
- (2) a stepparent of the child who has the duty of control and reasonable discipline of the child; and
- (3) an individual who is a guardian of the child and who has the duty of control and reasonable discipline of the child.

¹ Section 7.003, Texas Education Code, provides that "An educational function not specifically delegated to the agency or the board under this code is reserved to and shall be performed by school districts or open-enrollment charter schools." While Chapter 37 of the Education Code contains a number of requirements for local disciplinary actions, it does not address corporal punishment.

"Good, Better, Best—never let it rest—until your good is better—and your better is BEST!"

Section 151.001 is entitled "Rights and Duties of Parent" and is located in Subtitle B of the Family Code entitled "Suit Affecting the Parent-Child Relationship."

Other statutes that are relevant to the use of corporal punishment in schools include Section 9.62, Penal Code, and Section 22.0512, Education Code, which provide as follows:

Sec. 9.62. EDUCATOR-STUDENT. The use of force, but not deadly force, against a person is justified:

- (1) if the actor is entrusted with the care, supervision, or administration of the person for a special purpose; and
- (2) 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.

Sec. 22.0512. IMMUNITY FROM DISCIPLINARY PROCEEDINGS FOR PROFESSIONAL EMPLOYEES. (a) 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.

(b) In this section, "disciplinary proceeding" means:

- (1) 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; or
- (2) an action brought by the State Board for Educator Certification to enforce the educator's code of ethics adopted under Section 21.041(b)(8).

(c) 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.

Section 9.62, Penal Code, and Section 22.0512, Education Code, were not amended or repealed by House Bill No. 383 or any other legislation during the Regular Session of the 79th Legislature. The language of Subsection 151.001(e), Family Code, was substituted during consideration of House Bill 383 by the House of Representatives on second reading of the bill during the 2005 regular legislative session.

There is confusion regarding whether H.B. No. 383 affects the use of corporal punishment as a disciplinary tool in schools. The statutory language added as Section 151.003(e), Family Code, appears on its face to limit the use of corporal punishment to the relationships described in that subsection. However, the location of the language in the Family Code along with other provisions relating solely to the parent-child relationship and the lack of any changes to Section 9.62, Penal Code, and Section 22.0512, Education Code, create the implication that Section 151.003(e), Family Code, does not change the law regarding the use of corporal punishment in schools².

² To some extent compounding the confusion, the legislative discussion of the substituted language appears to have been based upon an assumption that parental permission was required for school districts to utilize corporal punishment prior to the enactment of HB 383. See, House Journal, 79th Regular Session, Pgs. 1819-1820 (April 18, 2005), available at http://www.capitol.state.tx.us/cgi-bin/cqcggi?CQ_SESSION_KEY=VUDRFEPHWP&CQ_QUERY_HANDLE=124055&CQ_CUR_DOCUMENT=2&CQ_HJRNL_DOC_TEXT=YES

My questions are as follows:

1. May an employee of a school district who is not related to a student in the manner described in Section 151.001(e), Family Code, utilize corporal punishment pursuant to a district student discipline policy adopted by the board of trustees?
2. If your answer to question #1 is "yes", may a district adopt a policy authorizing corporal punishment when a parent or other individual named in Subsection 151.001(e), Family Code, has not given permission for corporal punishment?
3. If your answer to question #2 is "no", may any individual listed in Subsection 151.001(e), Family Code, authorize corporal punishment despite objection by another such individual?

Your consideration of this question is greatly appreciated as it affects the policies and practices of schools throughout the state. If you have questions, please contact David Anderson, General Counsel, at (512) 463-9720.

Sincerely,



Shirley J. Neeley, Ed. D.
Commissioner of Education