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**American Civil Liberties Union and Human Rights Watch**

**Statement Before the House Education and Labor Subcommittee on Healthy Families and Communities**

**Hearing on “Corporal Punishment in Schools and Its Effect on Academic Success”**

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April 15, 2010

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**I. Introduction**

Dear Chairperson McCarthy, Ranking Member Platts, and Members of the Subcommittee:

On behalf of the American Civil Liberties Union (ACLU), its over half a million members, countless additional supporters and activists, and fifty-three affiliates nationwide and Human Rights Watch, one of the world’s leading independent organizations dedicated to defending and protecting human rights, we applaud the House Education and Labor Subcommittee on Healthy Families and Communities for conducting a hearing concerning the ongoing corporal punishment of American public school children and its impact on their educational success.

The ACLU is a nationwide, non-partisan organization working daily in courts, Congress, and communities to defend and preserve the civil rights and liberties that the Constitution and laws of the United States guarantee everyone in this country. For thirty years, Human Rights Watch has investigated human rights violations wherever they occur, including in the United States, exposed the perpetrators, and advocated for change. We are pleased to submit this written statement for the record on the issue of corporal punishment in public schools – a vitally important issue affecting children’s access to high-quality education and a safe and supportive learning atmosphere.

## **I. The Ongoing Use of Corporal Punishment in Public Schools**

Each year, hundreds of thousands of students are subjected to corporal punishment in public schools.<sup>1</sup> Despite the many problems associated with the hitting or paddling of students, corporal punishment is a legal form of school discipline in 20 states.<sup>2</sup> Of these, thirteen states have reported that corporal punishment was inflicted on over one thousand students<sup>3</sup> -- and eight states reported its use against at least ten thousand students<sup>4</sup>-- during the 2006-2007 school year. While significant, these numbers do not tell the whole story. These statistics only reflect data which has been reported to the Department of Education and they only include the number of students who are subjected to corporal punishment during the school year, not the total number of times that an individual student has been hit over his or her educational career.<sup>5</sup>

Aside from the infliction of pain and the physical injuries which often result from the use physical punishments, these violent disciplinary methods also impact students’ academic achievement and long-term well-being.<sup>6</sup> Despite significant evidence that corporal punishment is detrimental to a productive learning environment, there is currently no federal prohibition on the use of physical discipline against children in public school. In fact, children in some states

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<sup>1</sup> During the 2006-2007 school year, at least 223,190 students in the U.S. were subjected to corporal punishment. See U.S. DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS, CIVIL RIGHTS DATA COLLECTION 2006, [http://ocrdata.ed.gov/Projections\\_2006.aspx](http://ocrdata.ed.gov/Projections_2006.aspx) (last accessed April 1, 2010) [hereinafter CIVIL RIGHTS DATA COLLECTION].

<sup>2</sup> Alabama, Arizona, Arkansas, Colorado, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Wyoming. See AMERICAN CIVIL LIBERTIES UNION & HUMAN RIGHTS WATCH, IMPAIRING EDUCATION 27 (2009), available at <http://www.aclu.org/human-rights/impairing-education-corporal-punishment-students-disabilities-us-public-schools> [hereinafter IMPAIRING EDUCATION].

<sup>3</sup> Alabama, Arkansas, Florida, Georgia, Kentucky, North Carolina, Oklahoma, Louisiana, Missouri, Mississippi, South Carolina, Tennessee & Texas. See *id.* at 27.

<sup>4</sup> Alabama, Arkansas, Georgia, Oklahoma, Louisiana, Mississippi, Tennessee and Texas. See *id.*, at 27.

<sup>5</sup> Many school districts may fail to report corporal punishment data to the Department of Education, and many incidents may not be recorded in the first place. See AMERICAN CIVIL LIBERTIES UNION & HUMAN RIGHTS WATCH, A VIOLENT EDUCATION 45-46 (2008), available at <http://www.aclu.org/human-rights-racial-justice/violent-education-corporal-punishment-children-us-public-schools> [hereinafter A VIOLENT EDUCATION]; IMPAIRING EDUCATION, at 30-31.

<sup>6</sup> See generally A VIOLENT EDUCATION, at 57; IMPAIRING EDUCATION, at 4-5.

receive greater protections against corporal punishment in detention facilities than they do in their public schools.<sup>7</sup> For this reason and others, the ACLU and HRW are encouraged that this subcommittee is seeking to address the problems stemming from corporal punishment in schools.

## II. The Disproportionate Use of Corporal Punishment

Students of color and students with disabilities are disproportionately subjected to corporal punishment, hampering their access to a supportive learning environment. According to the Department of Education, while African Americans make up 17.1 percent of public school students nationwide, they accounted for 35.6 percent of those who were paddled during the 2006-2007 school year.<sup>8</sup> In *A Violent Education* and *Impairing Education*, two joint reports published by the ACLU and HRW detailing the effects of corporal punishment in public schools, interviewees noted the disproportionate application of corporal punishment:

- One Mississippi high school student described the administration of corporal punishment in her school this way: “every time you walk down the hall you see a black kid getting whipped. I would say out of the whole school there’s only about three white kids who have gotten paddled.”<sup>9</sup>
- A Mississippi teacher also noted the racial disparity in the administration of corporal punishment: “I’ve heard this said at my school and at other schools: ‘This child should get less whips, it’ll leave marks.’ Students that are dark-skinned, it takes more to let their skin be bruised. Even with all black students, there is an imbalance: darker-skinned

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<sup>7</sup> Corporal punishment of children in juvenile justice facilities has been prohibited by the Courts of Appeals in several Federal Circuits. See *Nelson v. Heyne*, 491 F.2d 352 (7th Cir. 1974), cert. denied 417 U.S. 476 (paddling of children in juvenile detention was a violation of the Eighth Amendment’s ban on cruel and unusual punishment); *Morales v. Turman*, 562 F.2d 993, 998 (5th Cir. 1977) (corporal punishment and physical abuse in juvenile detention facilities subject to prohibition as a violation of Eighth Amendment), rev’d on other grounds, 535 F.2d 864 (5th Cir. 1976), rev’d and remanded, 430 U.S. 322 (1977). See also, *Santana v. Collazo*, 533 F. Supp. 966 (D.P.R. 1982) (corporal punishment against juveniles in industrial schools and juvenile camps violates Eighth Amendment and is barred “for any reason”), aff’d in part and vacated in part, 714 F.2d 1172 (1st Cir. 1983), cert. denied, 466 U.S. 974 (1984). The American Correctional Association has also issued standards banning use of corporal punishment in juvenile facilities. See also Steven J. Martin, *Staff Use of Force in United States Confinement Settings*, 22 WASH. U. J.L. & POL’Y 145 (2006). In addition, corporal punishment and other harsh disciplinary practices are prohibited in publicly-funded non-medical substance abuse and long-term medical care facilities. See, e.g., 42 U.S.C. § 290jj (banning corporal punishment in “non-medical community-based facilities for children and youth.”); 42 C.F.R. § 483.13 (banning corporal punishment in long-term medical care facilities).

<sup>8</sup> CIVIL RIGHTS DATA COLLECTION, *supra* note 1. See also A VIOLENT EDUCATION, at 5 (“In the same year [2006-2007], in the 13 states with the highest rates of paddling, 1.4 times as many African American students were paddled as might be expected given their percentage of the student population. Although girls of all races were paddled less than boys, African American girls were nonetheless physically punished at more than twice the rate of their white counterparts in those 13 states during this period”).

<sup>9</sup> A VIOLENT EDUCATION, at 72 (interview with Abrea T., Dec. 10, 2007).

students get worse punishment. This really affected me, being a dark-skinned person myself.”<sup>10</sup>

Evidence shows that students with disabilities are also disproportionately subjected to corporal punishment. The Department of Education has reported that although students with disabilities constitute 13.7 percent of all public school students, they make up 18.8 percent of those who are subjected to corporal punishment.<sup>11</sup> In many of these cases, students were punished for exhibiting behaviors related to their disabilities, such as autism or Tourette’s syndrome.<sup>12</sup> The effects of corporal punishment on students with disabilities can dramatically impact their behavior and hamper their academic performance. In *Impairing Education*, parents and grandparents of students with disabilities noted the changes in behavior and barriers to educational achievement stemming from the use of corporal punishment:

- A grandmother of a student who has Asperger’s syndrome withdrew him from his Oklahoma school in part because of the hostile environment stemming from frequent use of corporal punishment: “It made him much more introverted. He very much didn’t want to go to school . . . No one’s supposed to go to school to be tortured, school is supposed to be fun.”<sup>13</sup>
- A mother of a student with autism reported that her son’s behavior changed after he was struck in his Florida school: “He’s an avoider by nature, before he was never aggressive. Now, he struggles with anger; right after the incidents he’d have anger explosions.”<sup>14</sup>

Hitting any student should be an unacceptable practice, but the disproportionate application of corporal punishment further undermines the educational environment for minority groups and students with disabilities.<sup>15</sup> A federal prohibition on corporal punishment in public schools is necessary to protect students from the discriminatory impact and the academic harms which it brings.

### **III. The Impact of Corporal Punishment On Students’ Academic Performance**

Harsh physical punishments do not improve students’ in-school behavior or academic performance. In fact, one recent study found that in states where corporal punishment is frequently used, schools have performed worse academically than those in states that prohibit

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<sup>10</sup> A VIOLENT EDUCATION, at 75-76 (interview with Catherine V., Nov. 7, 2007).

<sup>11</sup> In the 2006-2007 school year, 41,972 students with disabilities were subjected to corporal punishment during the 2006-2007 school year. See CIVIL RIGHTS DATA COLLECTION, *supra* note 1.

<sup>12</sup> See IMPAIRING EDUCATION, at 35-40.

<sup>13</sup> IMPAIRING EDUCATION, at 44 (interview with Sarah P. May 22, 2009).

<sup>14</sup> IMPAIRING EDUCATION, at 43 (interview with Anna M., March 9, 2009).

<sup>15</sup> See A VIOLENT EDUCATION, at 75.

corporal punishment.<sup>16</sup> While most states demonstrated improvements in their American College Testing (ACT) scores from 1994 to 2008, “as a group, states that paddled the most improved their scores the least.”<sup>17</sup> At the same time “the ten states with the longest histories of forbidding corporal punishment improved the most” with improvement rates three times higher than those states which reported frequent use of corporal punishment.<sup>18</sup>

Many children who have been subjected to hitting, paddling or other harsh disciplinary practices have reported subsequent problems with depression, fear and anger.<sup>19</sup> These students frequently withdraw from school activities and disengage academically.<sup>20</sup> The Society for Adolescent Medicine has found that victims of corporal punishment often develop “deteriorating peer relationships, difficulty with concentration, lowered school achievement, antisocial behavior, intense dislike of authority, somatic complaints, a tendency for school avoidance and school drop-out, and other evidence of negative high-risk adolescent behavior.”<sup>21</sup> One Mississippi student interviewed for *A Violent Education* described the effects of corporal punishment on his attitude towards school:

- “[Y]ou could get a paddling for almost anything. I hated it. It was used as a way to degrade, embarrass students. . . I said I’d never take another paddling, it’s humiliating, it’s degrading. Some teachers like to paddle students. Paddling causes you to lose respect for a person, stop listening to them.”<sup>22</sup>

Corporal punishment places parents and teachers in positions where they may have to choose between educational advancement and students’ physical well-being. For instance, some parents who learn that their children are being struck at public school find themselves without recourse, unable to effectively opt-out from the practice, and unable to obtain legal or other redress when their children have been paddled against their wishes. Ultimately some parents find that the only way they can protect their children from physical harm is to withdraw them from school altogether.<sup>23</sup> Similarly, teachers who work in schools where corporal punishment is administered are often reluctant to send disruptive students out of the classroom because they are afraid the students will be beaten.<sup>24</sup>

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<sup>16</sup> MICHAEL HICKMON, STUDY: PADDLING VS. ACT SCORES AND CIVIL IMMUNITY LEGISLATION (2008), available at <http://www.stophitting.com/index.php?page=paddlingvsact>.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> See *A VIOLENT EDUCATION*, at 54; *IMPAIRING EDUCATION*, at 42-43.

<sup>20</sup> See *A VIOLENT EDUCATION*, at 54; *IMPAIRING EDUCATION*, at 43-44.

<sup>21</sup> Society for Adolescent Medicine, *Position Paper: Corporal Punishment in Schools*, 32:5 J. ADOLESCENT HEALTH 385, 388 (2003).

<sup>22</sup> *A VIOLENT EDUCATION*, at 55 (interview with Sean D., Dec. 14, 2007).

<sup>23</sup> See *IMPAIRING EDUCATION*, at 6.

<sup>24</sup> See *id.* at 5.

Moreover, a public school's use of corporal punishment affects every student in that school, including those who are not personally subjected to hitting or paddling. The prevalent use of physical violence against students creates an overall threatening school atmosphere that impacts students' ability to perform academically.<sup>25</sup> Often, children who experience or witness physical violence will themselves develop disruptive and violent behaviors, further disturbing their classmates' learning as well as their own.<sup>26</sup>

Corporal punishment is a destructive form of discipline that is ineffective in producing educational environments in which students can thrive. Rather than relying on harsh and threatening disciplinary tactics, schools and teachers should be encouraged to develop positive behavior supports (PBS), which have proven effective in reducing the need for harsh discipline while supporting a safe and productive learning environment.<sup>27</sup> The Positive Behavior for Safe and Effective Schools Act (H.R. 2597) would help states and Local Education Agencies (LEAs) create positive learning environments by allowing them to use Title I funds to develop PBS practices. This bill would also require the Department of Education to provide assistance and support so that states may fully realize the potential of supportive and flexible behavior discipline practices. By abandoning ineffective and brutal disciplinary practices, and by encouraging the adoption of PBS methods, our nation can provide opportunities for all students to achieve academic success in a supportive and safe school environment.

#### **IV. Recommendations**

In order to prevent the continued use of violence against children in our schools, we recommend that Congress:

- Introduce and pass federal legislation prohibiting the use of corporal punishment in public schools, conditioned on the receipt of federal funding.
- Define corporal punishment as any punishment by which physical force is used with the intention of causing some degree of pain or discomfort, however light.
- Promote the use of positive behavioral supports by passing H.R. 2597, and provide teachers and school administrators with the tools and resources necessary to develop safe and effective methods for encouraging positive student behavior

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<sup>25</sup> See A VIOLENT EDUCATION, at 25-29.

<sup>26</sup> This is often because students who have been subjected to corporal punishment have learned through their experiences that physical violence is an appropriate way to handle conflict. The American Academy of Pediatrics has noted that "corporal punishment may adversely affect a student's self-image and school achievement and it may contribute to disruptive and violent behavior." American Academy of Pediatrics, *Committee on School Health, Corporal Punishment in Schools*, 106:2 PEDIATRICS 343 (2000), available at <http://aappolicy.aappublications.org/cgi/content/full/pediatrics;106/2/343>.

<sup>27</sup> See, e.g., Stephen P. Safran & Karen Oswald, *Positive Behavior Supports: Can Schools Reshape Disciplinary Practices?*, 69:3 EXCEPTIONAL CHILD. 361 (2003), available at <http://www.casenex.com/casenex/cecReadings/positiveBehavior.pdf>.

- Provide students and their families with a private right of action to enforce their rights to be free from physical punishment and to a safe and supportive learning environment in administrative or judicial actions.
- Require all schools and LEAs to report *all instances* where corporal punishment is used, not just the number of students who are punished in a given year. This data should be collected and disaggregated by student subgroups to assess disproportionate application.
- Provide funding to those states which implement PBS practices so that teachers may be effectively trained to create safe and supportive school discipline plans.

## V. Conclusion

The ACLU and HRW would like to thank Chairperson McCarthy and the Subcommittee on Healthy Families and Communities for their efforts to address the problems arising from corporal punishment in public schools. The use of violence against students is never an acceptable means of punishment – it harms students physically, psychologically and academically. The use of corporal punishment in schools is interfering with students’ right to be treated with dignity and, as a result, is interfering with their right to a quality education. By prohibiting the use of corporal punishment and helping states to develop safe and effective behavioral practices, this Congress could help to ensure that our nation’s children are able to achieve their full educational potential in a supportive learning environment.