

***RECOMMENDATIONS
ON THE
USE OF REASONABLE FORCE
BY SCHOOL PERSONNEL***

***A REPORT OF THE
FLORIDA EDUCATION STANDARDS COMMISSION
AND
FLORIDA EDUCATION PRACTICES COMMISSION***

***SUBMITTED TO THE STATE OF FLORIDA BOARD OF EDUCATION
AND
THE FLORIDA LEGISLATURE***

***FLORIDA DEPARTMENT OF EDUCATION
May 20, 1997***

Table of Contents

	Page
<i>Florida Education Standards Commission (ESC) Membership</i>	<i>3</i>
<i>Florida Education Practices Commission (EPC) Membership</i>	<i>5</i>
<i>Joint Subcommittee of the ESC and EPC.....</i>	<i>6</i>
<i>Executive Summary</i>	<i>7</i>
<i>Recommendations.....</i>	<i>8</i>
<i>Rationale</i>	<i>10</i>
<i>Introduction.....</i>	<i>11</i>
<i>Procedures/Methodology</i>	<i>14</i>

FLORIDA EDUCATION STANDARDS COMMISSION MEMBERSHIP

Rebecca McBride, Chair
Principal, Escambia County

Stephen Bouzianis, 1st Vice Chair
Personnel Officer, Seminole County

Dr. William Proctor, 2nd Vice Chair
President, Flagler College, St. Johns County

Grace Northrop, Immediate Past Chair
Teacher, Alachua County

Herbert Cambridge, Lay Citizen
Collier County

Norma Coto, Teacher
Orange County

Bobbie D'Alessandro, Superintendent
Lee County

Linda Denmark, Teacher
Polk County

Diane Farmer, Teacher
Hillsborough County

Doretha Fedrick, Teacher
Orange County

Patrick Hoag, Lay Citizen
Volusia County

Patricia Horn,
Teacher/Facilitator for Integrated Curriculum & Technology
St. Johns County

George Huckabay, Teacher
Polk County

Dr. Katherine Johnson, Provost/Vice President
Indian River Community College
St. Lucie County

Dr. Gerald Lafferty, Dean
College of Education, Florida Atlantic University
Palm Beach County

Mary Lopez, Teacher
DeSoto County

Suzanne Martin, Teacher on Special Assignment
Santa Rosa Connections Project
Santa Rosa County

Dr. Roderick McDavis, Dean
College of Education, University of Florida
Alachua County

Jim Pippin, Teacher
Okeechobee County

Matty Rodriguez-Walling, Teacher
Dade County

Dr. Susan Sailor, Florida Teacher of the Year 1996-1997
Clay County

Barbara Jean Sharpe, School Board Member
Alachua County

FLORIDA EDUCATION PRACTICES COMMISSION MEMBERSHIP

Diane Porter, Chairperson
Teacher, Leon County

Dr. Patrick Gray, Executive Director
Program Research, Dade County

Aaron Wallace, Teacher on Leave
Bay County

Toni Brummond, Teacher
Hillsborough County

Peggy Wolfe, Teacher
Manatee County

Clarissa Coddington, Teacher
Broward County

Mary Kenney, Teacher
Brevard County

Amy O'Brien Sijan, Teacher
Lee County

Jayne Palmer, Director, Personnel & Employee Relations
Martin County

James Davis, Director, Instructional Employee Relations
Pasco County

Dr. Jean Jolly, Assistant Superintendent (Retired)
Hillsborough County

Ron Wright, Director, Professional Standards
Broward County

Robert Burton, Former School Board Member
St. Johns County

Jordan J. Corbett, Former School Board Member
Polk County

Keith Yarbrough, Lay Citizen
Brevard County

***Florida Education Standards Commission
&
Florida Education Practices Commission
~Joint Subcommittee on the Use of Reasonable Force~***

Diane Porter, Co-Chair

Matty Rodriguez-Walling, Co-Chair

Stephen Bouzianis

Diane Farmer

Patrick Gray

Rebecca McBride

Grace Northrop

William Proctor

Barbara Jean Sharpe

Peggy Wolfe

Ron Wright

EXECUTIVE SUMMARY

The 1996 Florida Legislature directed the Florida Education Standards Commission and the Florida Education Practices Commission to develop standards for the use of reasonable force by school personnel pursuant to Sections 232.27(1)(i) & 232.273, Florida Statutes.

In carrying out this directive, the following procedure/methodology were undertaken:

An internal Florida Department of Education (DOE) Subcommittee was convened. This subcommittee was chaired by Dr. Charlotte Minnick-Boroto, Executive Director, Education Standards Commission, and Dr. Karen Wilde, Executive Director, Education Practices Commission. Other members included: John Winn, Educational Policy Director, Office of Policy Research and Accountability, DOE; Jerome Gray, Assistant General Counsel, DOE; Evy Friend, Program Specialist, Bureau of Student Services and Exceptional Student Education, Division of Public Schools, DOE; and Dr. Adeniji A. Odutola, Program Specialist, Florida Education Standards Commission. This subcommittee collected national and state data on standards for use of reasonable force.

Chief David Frisby, Police Department, Monticello, Florida, presented a model for use of reasonable force; and Neal Fleisig, Executive Director, Professional Crisis Management (PCM) Association presented and demonstrated the four levels of crisis management training.

A joint Education Standards and Practices Commissions Subcommittee met throughout the six months of the review. The joint Subcommittee reviewed national and state data and developed the initial recommendations on the use of reasonable force by school personnel which were approved by the full Commissions.

Seven (7) regional public hearings were held for additional input from the education profession and the public at large.

Testimonies/data from the regional hearings were transcribed, analyzed, and reviewed by both the Education Standards and Practices Commissions.

Legal and training questions were presented to Mike Olenick, General Counsel, Florida Department of Education, and Betty Coxe, Division Director, Human Resource Development, Florida Department of Education, who addressed the questions.

The two Commissions considered all testimony from the regional public hearings and approved final recommendations for presentation to the State Board of Education and the Legislature.

RECOMMENDATIONS

Written materials and *training* to be provided to each school board employee shall be consistent with statute, rules, and policies concerning use of reasonable force.

The use of reasonable force is permitted to protect the student from:

- a. *conditions harmful to learning,*
- b. *conditions harmful to student's mental health,*
- c. *conditions harmful to student's physical health,*
- d. *conditions harmful to safety, and*
- e. *harm and/or injury to self, school personnel, and others.*

While use of physical force may be needed, alternatives should be attempted, time permitting.

Whether or not force is reasonable may be determined using a set of guidelines that would include but not be limited to:

- a. *severity of offenses,*
- b. *size and physical condition of participants,*
- c. *patterns of behavior,*
- d. *potential danger, physical and other,*
- e. *availability of assistance, and*
- f. *actions taken prior to use of physical force.*

Reasonable force cannot be excessive or cruel or unusual in nature. Physical force being used should cease upon the restoration of a safe and orderly environment.

Nothing in these recommendations should be construed as addressing state or local school board policy on corporal punishment.

Definition of Terms

1. *Learning Environment:*

All events and activities authorized by the School Board requiring an employee to be on duty, in/out of the classroom setting.

2. *Orderly:*

Devoid of disruption or violence; peaceful. An orderly environment is one in which learning can take place.

a. *Disruption:*

An interruption of or impediment to the usual course of harmony.

- 3. *Reasonable Force:***
For the purposes of Section 232.27(1)(i) & 232.273, Florida Statutes, reasonable force shall be defined as: appropriate professional conduct including physical force as necessary to maintain a safe and orderly learning environment.
- 4. *Safe:***
Preventing injury or loss of life; a safe environment is one in which persons are protected from injury or threat of injury.
- 5. *School Personnel:***
Employee/individual hired by the School Board.

RATIONALE

The Florida legislative directive, in Sections **232.27(1)(i) & 232.273, Florida Statutes**, provides the legal authority for educators to protect students, themselves, and other school personnel from harm, and thus provide a safe and orderly learning environment. The recommendations of the Florida Education Standards Commission and the Florida Education Practices Commission on the use of reasonable force by school personnel provide guidelines to local school boards to establish policies. The issue that formed the basis of the Commissions' recommendations was the fact that they saw the role of educators as fundamentally different from the role of law enforcement officers. Law enforcement officers are trained and have the physical characteristics to use reasonable force. They are trained to deal with conflict and force in the society. The role of educators, on the other hand, is one of caring, nurturing, and shaping the future of our national and global resources, Florida's students.

The Commissions believe very strongly that an educator should not feel compelled to use reasonable force. However, they also believe that an educator cannot choose to do nothing in the face of a potentially disruptive situation. The educator must exhaust all other options to decrease or defuse the situation. The use of common sense and professional judgment is paramount to these recommendations.

Commission members, believing that educators generally are not inclined to use force, recommended "training" as the critical component to the successful implementation of these recommendations. Many of the teachers of students with exceptionalities already have been trained in the techniques of using reasonable force. Commission members believe that with appropriate training, school personnel will be able to defuse many potentially volatile situations. Commission members also believe that it was not necessary to mandate a specific training program from the state level. They believe that each school district should have the flexibility to select the training which best meets its particular needs.

The standards of professional conduct provide for the application of reasonable force and set forth those considerations that govern its use; however, such standards cannot specify the particular degree or mode of force that is appropriate in any and all situations. Professional judgment will remain the critical factor. In this reason the Commissions strongly recommend appropriate training for all school personnel.

The Commissions acknowledge the desire for specificity in regard to the use of reasonable force. However, the Commissions' recommendations embody the opinion of legal counsel that the appropriate use of reasonable force is largely determined by the particular circumstances of any case.

These recommendations are aligned with Florida's strategic plan for educators by promoting a safe and orderly learning environment.

INTRODUCTION

The 1996 Legislature directed the Education Standards Commission and the Education Practices Commission to develop standards for the use of reasonable force by school personnel pursuant to ***Sections 232.27(1)(i) & 232.273, Florida Statutes:***

Section 232.27(1), F. S., provides that:

Within the framework of the school district code of student conduct, teachers and other instructional personnel shall have the authority to undertake any of the following actions in managing student behavior and ensuring the safety of all students in their classes and school:

- (i) Use of reasonable force, according to standards recommended by the Education Standards Commission and the Education Practices Commission and adopted by the State Board of Education, to protect himself or herself or others from injury.

Section 232.273, F. S., provides that:

The State Board of Education shall adopt, based on recommendations of the Education Standards Commission and the Education Practices Commission, administrative standards for the use of reasonable force by school personnel to maintain a safe and orderly learning environment. Such standards shall be distributed to each school in the state and shall provide guidance to school personnel in receiving the limitations on liability specified in s.232.275.

The development of this legislation grew out of the notion:

of getting tough on disruptive kids, and making schools safe and orderly for learning for all children;

to protect teachers; and

that there was a real interest in giving the teacher the kind of authority that teachers used to have many years ago (to empower teachers).

The concept of reasonable force came about with teachers reporting to the legislature and the Department of Education that they feel insecure and lack confidence in what they are allowed to do in a situation when they are confronted with violent behavior from students and when a student just refuses to comply with the teachers' directives. The feeling of insecurity is seen as a road block for teachers to being able to function effectively in dealing with students, particularly those who do not comply with their instructions. The legislature did not presume that the solution to school safety problems is that teachers get physical with their students.

However, this legislation gives teachers the authority to protect students and themselves from injury and conditions harmful to the learning environment. The State Board recognizes that a safe, orderly learning environment is necessary for high student achievement. It is the district school board's responsibility to enact policies to maintain an orderly, safe environment. School personnel shall serve as models of appropriate conduct and positive conflict resolution. However, school personnel must exercise their authority to maintain good discipline.

The purposes of these recommendations are twofold: (1) to clarify the authority of local school personnel; and, (2) to provide guidance on appropriate professional conduct by school personnel to protect the students, school personnel and others as allowed by Florida Statutes.

In accordance with policy developed by local school boards, school personnel may, at times, use reasonable force in order to maintain a safe and orderly learning environment.

These recommendations take note of the fact that existing provisions of statute and Florida Administrative Code establish the following rights and duties of school personnel:

Rights

1. Use of reasonable force by a teacher or principal as may be necessary for self protection or to protect other students from disruptive students (s.228.041(27), FS).
2. Enhanced criminal penalty for assault/battery of school personnel (s.231.03, FS).
3. Criminal penalties enforced on the general public for interrupting the orderly conduct of school or school activity (s.231.07, FS).
4. Removal of a disruptive student from the education environment and the refusal to accept student back (s.232.26, FS) (s.232.27, FS) (s.232.271, FS) (s.232.28, FS).
5. Control and discipline students as may be assigned to him/her by principal (s.232.27, FS).

Duties

1. School personnel shall keep good order in the educational environment (s.232.27, FS) (s.232.28, FS).
2. School personnel shall refrain from use of excessive force and cruel or unusual punishment (s.232.275, FS).
3. School personnel who hold a Florida Educator's Certificate shall uphold the ethical obligations to the student as specified in State Board of Education Rule 6B-1.006, FAC.

PROCEDURES/METHODOLOGIES

Florida Department of Education Internal Subcommittee:

Betty Coxe, *Division Director, Human Resource Development, Florida Department of Education (DOE)*, convened an internal DOE Subcommittee on Use of Reasonable Force by School Personnel, Co-chaired by **Dr. Charlotte Minnick-Boroto**, *Executive Director, Florida Education Standards Commission*, and **Dr. Karen Wilde**, *Executive Director, Florida Education Practices Commission*.

In July, 1996, Dr. Minnick-Boroto and Dr. Wilde sent letters to **Dr. David Mosrie**, *Division Director, Public Schools, DOE*, **Joe Stephens**, *Division Director, Applied Technology and Adult Education, DOE*, and **Mike Olenick**, *General Counsel, DOE*, requesting that individuals be appointed to represent each division on this subcommittee. Accordingly members of the Internal DOE Subcommittee included:

- **Dr. Charlotte Minnick-Boroto**, *Executive Director, Florida Education Standards Commission*;
- **Dr. Karen Wilde**, *Executive Director, Florida Education Practices Commission*;
- **John Winn**, *Educational Policy Director, Office of Policy Research and Accountability, DOE*;
- **Jerome Gray**, *Assistant General Counsel, DOE*;
- **Evy Friend**, *Program Specialist, Bureau of Student Services and Exceptional Student Education, Division of Public Schools, DOE*; and,
- **Dr. Adeniji A. Odutola**, *Program Specialist, Florida Education Standards Commission*.

From *August to October, 1996*, the Internal DOE Subcommittee collected data through the following activities:

- ~ Presentations by Betty Coxe and John Winn on setting the stage, legislative intent, and historical context;
- ~ Telephone conversations with Cheryl Parker Rose, Staff Director, K-12 Education Committee, Florida House of Representatives and Linda Harkey, Staff Director, K-12 Education Committee, Senate, about legislative intent;
- ~ Sent a survey to all School District Superintendents in Florida to determine which school boards have policies on the use of reasonable force;
- ~ A synopsis of the facts, conclusions of law, and decisions on cases which involve the use of force by educators which came before the Florida Education Practices Commission between the dates of July 1, 1987 to October 2, 1996, were perused;

- ~ Review of literature on reasonable force, including an ERIC search;
- ~ Telephone survey of other Florida agencies (Department of Health and Rehabilitative Services, Juvenile Justice, Corrections) and other states which may have policies on the use of reasonable force;
- ~ Consulted Black's Law Dictionary and Webster's Dictionary for terms to be defined; and,
- ~ Collected information on training currently being offered relating to reasonable force.

Joint Education Standards and Practices Commissions' Subcommittee:

On *September 11, 1996*, a joint Education Standards and Practices Commissions Subcommittee meeting was held at Harbour Island Hotel, Tampa, Florida. Members reviewed collected data and generated questions, issues, and terms for definitions and clarifications.

On *September 12 & 13, 1996*, as part of the data gathering process on the use of reasonable force, the following persons presented pertinent information at the Education Standards Commission meeting:

- **Chief David Frisby**, *Police Department, Monticello*
- **Neal Fleisig**, *Executive Director, Professional Crisis Management*
- **Betty Coxe**, *Division Director, Human Resource Development, and*
- **John Winn**, *Educational Policy Director, Office of Policy Research and Accountability, Florida Department of Education.*

On *October 3 & 4, 1996*, joint EPC & ESC Subcommittee Meeting was held in the Ralph Turlington Building, Tallahassee, Florida. Members received clarifications on their questions, issues and terms for definitions from the Department of Education staff; members began initial draft of recommendations and designed the October 24, 1996, Full Joint EPC & ESC meeting in Celebration, Florida.

On *October 24, 1996*, a joint Education Standards and Practices Commissions Subcommittee meeting was held in Celebration, Florida. Dr. John Hansen, Director, Center for the Study of Teaching and Learning, Florida State University, was the facilitator for these sessions. Dr. Hansen presented the work of the subcommittee of the Commissions on the Use of Reasonable Force from October 3 & 4, 1996. The Commissions addressed the following issues and concerns raised by Representative Luis C. Morse (the sponsor of the reasonable force legislation), Florida House of Representatives:

What constitutes reasonable force?

What constitutes conditions harmful to learning?

What level of force would be allowed, i.e., what is reasonable?

What type of force may be used in self defense?

What alternatives are appropriate as interventions?

How immediate must the threat be before resorting to force?

What factors need to be considered in deciding to use reasonable force?

Commission members deliberated their charge and Representative Morse's letter in light of the draft of initial recommendations from the subcommittee. From this deliberation, they generated several issues and questions.

Dr. Hansen divided both Commissions' members into four groups which met in worksessions. After the worksessions, the four groups came back as one body and deliberated on the product of each group, and made the initial recommendations.

In the afternoon, the joint subcommittee met in a worksession. The following Commission members, staff, and guests were present: Grace Northrop, Dr. Susan Sailor, Robert Burton, Norma Coto, Stephen Bouzianis, Diane Farmer, Linda Denmark, Matty Rodriguez-Walling, Peggy Wolfe, Diane Porter, Rebecca McBride, Renee Powell, John Winn, Dr. Karen Wilde, Dr. Charlotte Minnick-Boroto, and Dr. Adeniji A. Odutola.

Regional Public Hearings:

The subcommittee expanded and clarified their initial recommendations. The revised recommendations were then taken to regional public hearings held at the following locations, dates, and times:

DATES & TIMES

December 4, 1996

6:00 p.m. - 8:00 p.m.

December 5, 1996

4:00 p.m. - 7:00 p.m.

December 11, 1996

4:00 p.m. - 6:00 p.m.

LOCATIONS

Hyatt Regency West Shore Hotel

6200 Courtney Campbell Causeway

Tampa, Florida

800-233-1234

Indian River Community College

Building S, Room 207

3209 Virginia Avenue

Ft. Pierce, Florida

407/462-4702

Ralph Turlington Building, Suite 1704

325 West Gaines Street

Tallahassee, Florida

904/488-1523

December 12, 1996
4:00 p.m. - 7:00 p.m.

School Board of Escambia County, Board Rm.
215 W. Garden Street
Pensacola, Florida
904/469-6155

December 16, 1996
4:00 p.m. - 7:00 p.m.

School Board of Broward County, Board Rm.
600 S. E. Board Avenue
Ft. Lauderdale, Florida
954/765-7077

December 17, 1996
4:00 p.m. - 7:00 p.m.

School Board of Duval County, 6th Floor
Conference Room 613
1701 Prudential Drive
Jacksonville, Florida
904/390-2115

December 18, 1996
4:00 p.m. - 7:00 p.m.

School Board of Marion County, Board Rm.
512 S. E. 3rd Street
Ocala, Florida
352/620-7700

On January 23, 1997, the joint Education Standards and Practices Commissions' meeting was held in Orlando to review testimonies/data provided during the regional public hearings. Honorable Frank T. Brogan, Commissioner of Education, Florida Department of Education, addressed both Commissions. He commended the Commissions' members for the work they do for the State of Florida on improving the quality of education for Florida's students and for the education profession in Florida. Commissioner Brogan addressed and supported the Commissions' recommendations on the use of reasonable force by school personnel.

Dr. Elaine Liftin, Associate Dean, School of Education, Barry University, facilitated the deliberations of Commission members. Seven Commission members were asked to present testimonies received from the public hearings they attended. Other Commission members in attendance at the public hearings also presented data from the hearings. After Commission members reported their findings, Dr. Liftin divided them into four groups and instructed them to identify:

- 1) *the pluses, minuses, and agreements in the data presented from the regional hearings; and*
- 2) *legal questions they wanted to pose to General Counsel Michael Olenick, Florida Department of Education.*

Commission members reported the deliberations in each group and General Counsel Olenick responded to specific legal questions from each group. The following are questions that were asked at regional public hearings on the initial recommendations on the use of reasonable force by school personnel:

1. What constitutes reasonable force, e.g. restraint, placing a hand on a student, hitting, striking with a weapon?
- 2a. What constitutes "conditions harmful to learning," e.g. verbal disruption, destruction of property, ridiculing another student?
- 2b. What level of force would be allowed in these cases?
3. What type of force may be used in self defense, e.g. blocking the way of the attacker, restraining a student, use of weapon?
4. What alternatives are appropriate interventions and how immediate must the threat be before resorting to force?
5. Are there other factors that need to be considered by a teacher in deciding to use reasonable force?
6. Does the term "reasonable force" fit an educational setting?
7. In the legal context, or the law enforcement context of reasonable force, one can go all the way to deadly force. Are we going to embrace that notion and say that the teacher may kill a student?
8. Are the courts going to be willing to accept the fact that the use of reasonable force is merely permissible and not a compulsory duty? If my son gets injured and the teacher could have used reasonable force and did not, do I have a right to sue because the teacher did not use reasonable force?
9. Who is going to actually determine whether the force is reasonable or not?
10. Is there going to be an obligation for me (teacher) to use force?
11. Do these standards imply an obligation or a permission?
12. Should training be mandated?
13. What level of training will be imposed upon the districts?
14. If you have poorly trained teachers trying to apply reasonable force, are you going to decrease or increase the level of violence in the schools? If you try to do something you cannot do, you give rise to increased violence because you get a whole problem of students' disrespect, taking advantage of the situation, and overcoming the poorly trained teachers.

15. One of the biggest factors in the use of reasonable force initiative is the liability factor. If teachers are not properly trained or if they have a misconception about their training, who is liable?
16. Will lack of training in this area be a legal problem?
17. Should training be geared toward different developmental levels (elementary, middle, and high school)?
18. Who is going to pay for the training?
19. This is a public relations problem/question. Is the public willing to accept the notion of reasonable force in a school setting?
20. This legislation refers to "school personnel," does that include janitors and volunteers?
21. What about the interpretation of the language (recommendations)? How do both Commissions set up the language so that everyone (school districts) interprets it the same way?
22. If the recommended standards are specific, that is, if there is a matrix that has offenses and consequences, is the teacher, bus driver, etc., liable if they do not conform to the recommended option?

General Counsel Olenick presented court cases dealing with use of reasonable force in other states. He specifically identified variables that the courts reviewed in reaching a verdict: apparent necessity, reasonable mistake, state of mind, past conduct, size and strength, nature of injury, seriousness of threat, element of time, and defense of others. Commission members had extensive discussions on the testimonies reported.

Betty Coxe, Division Director, Human Resource Development, Florida Department of Education, addressed both Commissions on the issue of training. There was a motion to accept the initial recommendations on use of reasonable force for school personnel without modification. The motion was seconded without objection, and passed unanimously.

FOR FURTHER INFORMATION
CALL, WRITE OR EMAIL:

Florida Education Standards Commission
Ralph Turlington Building, Suite 323
325 West Gaines Street
Tallahassee, Florida 32399-0400
850/245-0441, SUNCOM 205-0441, FAX 850/245-0657
E-mail: judy.etemadi@fldoe.org