August 19, 2002

The Honorable Stephen J. Pronai
Madison County Prosecuting Attorney
23 West High Street
London, Ohio 43140

SYLLABUS: 2002-019

1. Under current Ohio law, no child abuse of a schoolchild occurs when reasonable corporal punishment that is reasonably necessary to preserve discipline is inflicted in accordance with R.C. 3319.41(E), or reasonable and necessary force and restraint is used in accordance with R.C. 3319.41(G), and there is no violation of R.C. 2919.22. (1992 Op. Att'y Gen. No. 92-082, syllabus, paragraph 1, approved and followed.)

2. In investigating a report of child abuse pursuant to R.C. 2151.421, a public children services agency is required to consider the circumstances surrounding the injuries, abuse, or neglect or the threat of injury, abuse, or neglect; the cause of the injuries, abuse, neglect, or threat; and the person or persons responsible for the injuries, abuse, neglect, or threat. Thus, a public children services agency must consider whether, in accordance with R.C. 3319.41(G), a school teacher, principal, administrator, nonlicensed employee, or bus driver has used reasonable and necessary force and restraint to quell a disturbance threatening physical injury to others, to obtain possession of weapons or other dangerous objects upon the person or within the control of the pupil, for the purpose of self-defense, or for the protection of persons or property.

3. If, in investigating a report of child abuse pursuant to R.C. 2151.421, a public children services agency finds that action consisting of reasonable and necessary force and restraint was used by a school teacher, principal, administrator, nonlicensed employee, or bus driver in accordance with R.C. 3319.41(G) to quell a disturbance threatening physical injury to others, to obtain possession of weapons or other dangerous objects upon the person or within the control of the pupil, for the purpose of self-defense, or for the protection of persons or property, the public children services agency is precluded from finding that such action constituted child abuse for purposes of R.C. 2151.421.

August 19, 2002

OPINION NO. 2002-019

The Honorable Stephen J. Pronai
Madison County Prosecuting Attorney
23 West High Street
London, Ohio 43140

Dear Prosecutor Pronai:

We have received your request for an opinion concerning the child abuse of schoolchildren. Your letter of request presents three questions, which may be stated as follows:

1. Did the 1993 revisions of R.C. 3319.41, enacted by the General Assembly in 1993-1994 Ohio Laws, Part I, 335, 336 (Am. Sub. S.B. 29, eff. Sept. 14, 1993), change the conclusion of 1992 Op. Att'y Gen. No. 92-082 that "no child abuse of a school child occurs when reasonable corporal punishment that is reasonably necessary to preserve discipline is inflicted in accordance with R.C. 3319.41(A), or reasonable and necessary force and restraint is used in accordance with R.C. 3319.41(B), and there is no violation of R.C. 2919.22"?

2. In the case of a school administrator who is reported to children's services after an incident in which a student struck the administrator and the administrator struck the student back several times, is the county children services agency required to consider whether the administrator's actions constituted "reasonable and necessary" force and restraint under R.C. 3319.41(B), now R.C. 3319.41(G)?

3. If a county children services agency determines that the school administrator's actions were "reasonable and necessary" force, is the children services agency then precluded from making a finding of child abuse by the administrator?

You have asked about the powers and duties of a county children services agency, which is one of the entities that may serve as the public children services agency of a county. *See* R.C.

5153.02.[1] Because the statutory provisions governing the investigation of reported child abuse use the term "public children services agency," we address this opinion to that broader category. *See* R.C. 2151.421.

Your questions have arisen because of certain statutory changes that took effect in 1993. Prior to the changes, R.C. 3313.20 authorized a board of education to adopt a rule prohibiting the use of corporal punishment as a means of discipline in the schools of the district, but provided that such a rule could not prohibit the use of "such amount of force and restraint as is reasonable and necessary to quell a disturbance threatening physical injury to others, to obtain possession of weapons or other dangerous objects upon the person or within the control of the pupil, for the purpose of self-defense, or for the protection of persons or property." 1983-1984 Ohio Laws, Part I, 1372, 1373 (S.B. 385, eff. Apr. 10, 1985). The use of reasonable and necessary force and restraint was permitted within the scope of the employment of school teachers, principals, administrators, noncertificated employees, and bus drivers pursuant to R.C. 3319.41(B). *Id.*

As amended in 1993, R.C. 3319.41 prohibits the use of corporal punishment as a means of discipline in a public school beginning September 1, 1994, unless there is in effect a resolution of the board of education permitting the use of corporal punishment. 1993-1994 Ohio Laws, Part I, 335, 336-37 (Am. Sub. S.B. 29, eff. Sept. 14, 1993). The amended statute sets forth procedures for adopting or repealing such a resolution. *Id.* at 337-39.[2]

Amended R.C. 3319.41 retains the provision that, within the scope of employment, reasonable and necessary force and restraint may be used to quell disturbances, to obtain possession of weapons or other dangerous objects, for self-defense, or for the protection of persons or property; that provision now appears in division (G) rather than division (B). The statute states expressly that the prohibition of corporal punishment by statute or resolution does not prohibit the use of reasonable force or restraint in accordance with division (G). R.C. 3319.41(C). The amended statute also permits corporal punishment pursuant to a properly adopted policy or in a nonpublic school, requiring that the punishment be "reasonable" and "reasonably necessary in order to preserve discipline while the student is subject to school authority." R.C. 3319.41(E).

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[1] The other entities that may be the public children services agency of a county are a county department of job and family services and a private or governmental entity designated under R.C. 307.981. R.C. 5153.02.

[2] R.C. 3319.41 was subsequently amended in 1995-1996 Ohio Laws, Part VI, 10257, 10351-53 (Am. Sub. S.B. 230, eff. Oct. 29, 1996), to change the term "noncertificated" school employee to "nonlicensed" school employee. Otherwise, it remains in effect as amended in 1993.

You have asked about the impact of the 1993 amendments upon a particular conclusion reached in 1992 Op. Att'y Gen. No. 92-082. The 1992 opinion considered the application of R.C. 3319.41, which defined instances in which corporal punishment or force and restraint were permitted in schools. It noted the definition of "abused child" that appeared in R.C. 2151.031.[3] Pursuant to division (C) of R.C. 2151.031, when corporal punishment or other physical disciplinary measures are involved, the standard for child abuse is set forth in the child endangerment provisions of R.C. 2919.22.[4]

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[3] As in effect both in 1992 and currently, the definition of "abused child" states:

> As used in this chapter, an "abused child" includes any child who:
>
> (A) Is the victim of "sexual activity" as defined under Chapter 2907. of the Revised Code, where such activity would constitute an offense under that chapter, except that the court need not find that any person has been convicted of the offense in order to find that the child is an abused child;
>
> (B) Is endangered as defined in section 2919.22 of the Revised Code, except that the court need not find that any person has been convicted under that section in order to find that the child is an abused child;
>
> (C) Exhibits evidence of any physical or mental injury or death, inflicted other than by accidental means, or an injury or death which is at variance with the history given of it. Except as provided in division (D) of this section, a child exhibiting evidence of corporal punishment or other physical disciplinary measure by a parent, guardian, custodian, person having custody or control, or person in loco parentis of a child is not an abused child under this division if the measure is not prohibited under section 2919.22 of the Revised Code.
>
> (D) Because of the acts of his parents, guardian, or custodian, suffers physical or mental injury that harms or threatens to harm the child's health or welfare.
>
> (E) Is subjected to out-of-home care child abuse.

R.C. 2151.031; *see also* [2001-2002 Monthly Record, vol. 1] Ohio Admin. Code 5101:2-1-01(A), at 851. "Out-of-home care child abuse" is also defined by statute. R.C. 2151.011(A)(28); *see also* rule 5101:2-1-01(A).

[4] As in effect both in 1992 and currently, the child endangerment statute contains the following prohibitions:

> (B) No person shall do any of the following to a child under eighteen years of age or a mentally or physically handicapped child under twenty-one years of age:
>
> (1) Abuse the child;
>
> (2) Torture or cruelly abuse the child;

As stated in the 1992 opinion:

> Ohio courts have held that the standards for determining whether corporal punishment inflicted under R.C. 3319.41 is reasonable and reasonably necessary to preserve discipline are those set forth in R.C. 2919.22(B) – that the punishment not be administered in a cruel manner or for a prolonged period, that it not be excessive under the circumstances, and that it not create a substantial risk of serious physical harm to the child.

1992 Op. Att'y Gen. No. 92-082, at 2-339.[5] The 1992 opinion construed R.C. 3319.41, R.C. 2151.031, and R.C. 2919.22 *in pari materia* and concluded that "no child abuse occurs when a school administrator inflicts reasonable corporal punishment that is reasonably necessary to preserve discipline, or uses reasonable and necessary force and restraint, in accordance with R.C. 3319.41 and in a manner that does not violate R.C. 2919.22." *Id.*

The portion of the 1992 opinion about which you have inquired is the conclusion reached in the first paragraph of the syllabus that, "[u]nder Ohio law, no child abuse of a school child occurs when reasonable corporal punishment that is reasonably necessary to preserve discipline is inflicted in accordance with R.C. 3319.41(A) [now R.C. 3319.41(E)], or reasonable and necessary force and restraint is used in accordance with R.C. 3319.41(B) [now R.C. 3319.41(G)], and there is no violation of R.C. 2919.22." The 1993 amendments to R.C. 3319.41 did not change this conclusion.

The 1993 amendments changed the provisions governing the use of corporal punishment in schools so that, instead of permitting the use of corporal punishment unless a board of

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> (3) Administer corporal punishment or other physical disciplinary measure, or physically restrain the child in a cruel manner or for a prolonged period, which punishment, discipline, or restraint is excessive under the circumstances and creates a substantial risk of serious physical harm to the child;
>
> (4) Repeatedly administer unwarranted disciplinary measures to the child, when there is a substantial risk that such conduct, if continued, will seriously impair or retard the child's mental health or development….

R.C. 2919.22. To establish the offense of child endangerment, it is necessary to prove that an offender acted with the requisite culpability. Pursuant to R.C. 2901.21, unless another standard is provided, recklessness is sufficient culpability. R.C. 2901.21(B); R.C. 2901.22(C); *State v. McGee,* 79 Ohio St. 3d 193, 680 N.E.2d 975 (1997); *State v. Ivey,* 98 Ohio App. 3d 249, 253-54, 648 N.E.2d 519, 522-23 (Cuyahoga County 1994).

[5] *See State v. Hooper*, 5 Ohio App. 3d 207, 450 N.E.2d 710 (Ottawa County 1982); *State v. Albert*, 8 Ohio Misc. 2d 13, 456 N.E.2d 594 (Belmont County Ct. 1983).

education takes action to prohibit its use, the law now prohibits the use of corporal punishment unless a board of education takes action to permit its use. As your letter indicates, this statutory amendment reflects a change in policy on the part of the General Assembly. Nonetheless, it still permits some school districts to allow the use of corporal punishment and others to prohibit it. The amendments changed the circumstances in which action by a board of education was required to permit corporal punishment and the procedures to be followed. They did not change the child endangerment statutes, and they do not appear to have changed the standard by which child abuse of a schoolchild is determined. *See, e.g.,* 2001 Op. Att'y Gen. No. 2001-039; Richard Garner, *Fundamentally Speaking: Application of Ohio's Domestic Violence Laws in Parental Discipline Cases—A Parental Perspective*, 30 U. Tol. L. Rev. 1, 4 n.14 (1998).

Accordingly, we approve and follow the conclusion reached in the first paragraph of the syllabus of 1992 Op. Att'y Gen. No. 92-082. Under current Ohio law, no child abuse of a schoolchild occurs when reasonable corporal punishment that is reasonably necessary to preserve discipline is inflicted in accordance with R.C. 3319.41(E), or reasonable and necessary force and restraint is used in accordance with R.C. 3319.41(G), and there is no violation of R.C. 2919.22.

Even though we have approved and followed a basic conclusion reached in 1992 Op. Att'y Gen. No. 92-082, we must state clearly that we cannot confirm that 1992 Op. Att'y Gen. No. 92-082 is in all respects a valid statement of current law. Whenever an opinion from an earlier time is considered, it is necessary to examine all relevant statutes, rules, and court cases to determine whether the law then in effect has been modified in any manner that might affect the analysis and conclusions. In this instance, we note in particular that the rules then appearing in 9 Ohio Admin. Code Chapter 5101:2-34 have been substantially amended, so that it is necessary to look afresh at the procedure that a public children services agency must follow in investigating a report of an incident involving physical contact between a school administrator and a schoolchild. In addressing your second and third questions, we consider the rules as they have been amended and are currently in effect.

Your remaining questions concern a situation in which the public children services agency receives a report of an incident involving a school administrator and a student. The allegation is that the student struck the administrator and the administrator struck the student back several times. You have asked whether the public children services agency is required to consider whether the administrator's actions constituted reasonable and necessary force and restraint under R.C. 3319.41(B), now R.C. 3319.41(G).[6] You have also asked, if the agency

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[6] R.C. 3319.41(G) states:

> Persons employed or engaged as teachers, principals, or administrators in a school, whether public or private, and nonlicensed school employees and school bus drivers may, within the scope of their employment, use and apply such amount of force and restraint as is reasonable and necessary to quell a disturbance

determines that the administrator's actions did constitute such reasonable and necessary force, whether the agency is then precluded from making a finding of child abuse by the administrator.

Your questions thus address the nature and extent of a public children services agency's duty to investigate alleged child abuse and to report its findings. To address these questions, let us begin with a review of the current provisions governing an investigation by a public children services agency pursuant to R.C. 2151.421.

R.C. 2151.421 describes circumstances in which people are required or permitted to report known or suspected child abuse or neglect or threatened child abuse or neglect to the public children services agency or a municipal or county peace officer. R.C. 2151.421(A) and (B). Information contained in such a report includes "the nature and extent of the child's known or suspected injuries, abuse, or neglect or of the known or suspected threat of injury, abuse, or neglect, including any evidence of previous injuries, abuse, or neglect." R.C. 2151.421(C)(2); *see* 13 Ohio Admin. Code 5101:2-34-06(A).[7]

When a public children services agency receives a report of known or suspected child abuse or neglect or threatened child abuse or neglect, the agency must, within twenty-four hours, investigate "to determine the circumstances surrounding the injuries, abuse, or neglect or the threat of injury, abuse, or neglect, the cause of the injuries, abuse, neglect, or threat, and the person or persons responsible." R.C. 2151.421(F)(1). The investigation is made in cooperation with the law enforcement agency and in accordance with a memorandum of understanding that sets forth the normal operating procedure to be employed by various public officials in carrying out their responsibilities. R.C. 2151.421(F)(1) and (J); 13 Ohio Admin. Code 5101:2-34-71.[8]

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threatening physical injury to others, to obtain possession of weapons or other dangerous objects upon the person or within the control of the pupil, for the purpose of self-defense, or for the protection of persons or property.

[7] If information received by a public children services agency does not constitute a report, the agency may decline to accept the information as a report, request that the allegations be submitted in writing, or refer the individual to the county prosecutor or an appropriate agency or service provider. The agency must have standards for logging and maintaining information that is not accepted as a report. 13 Ohio Admin. Code 5101:2-34-06(B) and (C).

[8] The memorandum of understanding is required to include procedures to be followed by various officials in executing their responsibilities under several statutes that govern matters of child abuse and neglect: R.C. 2151.421 (reporting and investigation of child abuse); R.C. 2919.21(C) (contributing to a child becoming a dependent or neglected child); R.C. 2919.22(B)(1) (endangering children); R.C. 2919.23(B) (interfering with custody of child or ward of juvenile court); R.C. 2919.24 (contributing to unruliness or delinquency of a child).

Special procedures apply if a child was brought from another county to live in a shelter for victims of domestic violence or a homeless shelter. R.C. 2151.412(F)(1); R.C. 2151.422.

The procedure for investigating a report of a child at risk of abuse and neglect is set forth in 13 Ohio Admin. Code Chapter 5101:2-34. First, the public children services agency must determine the immediacy of need. [2001-2002 Monthly Record, vol. 1] Ohio Admin. Code 5101:2-34-32(A), at 1361. An emergency exists if "there is imminent risk to the child's safety or there is insufficient information to determine whether or not the child is safe at the time of the report." Rule 5101:2-34-32(C). In case of an emergency, the agency must attempt to achieve face-to-face contact within one hour of receipt of the report. Rule 5101:2-34-32(D). In other cases, the agency must attempt face-to-face or telephone contact with a principal or collateral source within twenty-four hours to ensure that the child is safe, and must attempt face-to-face contact with the child within three calendar days. Rule 5101:2-34-32(E).

The General Assembly has given a public children services agency authority and discretion to conduct an appropriate investigation and gather relevant facts. The public children services agency conducts an investigation by means of interviews and the gathering of other pertinent information. Rule 5101:2-34-32(G) and (H); 13 Ohio Admin. Code 5101:2-34-34; 13 Ohio Admin. Code 5101:2-34-36. The agency may request assistance from law enforcement, the county prosecutor, the agency's legal counsel, or the court. Rule 5101:2-34-32(B) and (J).

The public children services agency must make a cross referral to law enforcement if it appears that a criminal offense occurred, if the agency requires assistance in the assessment, or if a third-party investigation is required because the allegations involve facilities or persons under the operation or supervision of the agency. 13 Ohio Admin. Code 5101:2-34-35(A); *see* rule 5101:2-34-34(D). The public children services agency must share information with law enforcement and with various licensing and supervising authorities as provided by rule and in the memorandum of understanding. Rule 5101:2-34-35(B) and (C); 13 Ohio Admin. Code 5101:2-34-38. When a report involves a primary or secondary school setting, the superintendent of the local schools and the Ohio Department of Education must be contacted no later than the next working day. Rule 5101:2-34-35(C)(5).[9]

The public children services agency is required to complete a case disposition no later than thirty days from the receipt of the report, or forty-five days if information cannot be compiled sooner and the reasons are documented in the record. Rule 5101:2-34-32(T) and (U). The public children services agency must enter each case into the central registry on child abuse

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[9] Reports and investigations of alleged child abuse or neglect are confidential and may be shared only as provided by rule. 13 Ohio Admin. Code 5101:2-34-38.

and neglect maintained by the Ohio Department of Job and Family Services[10] and must submit a written report of its investigation to the appropriate law enforcement agency. R.C. 2151.421(F)(1); rule 5101:2-34-32(V); 13 Ohio Admin. Code 5101:2-35-16.[11]

The public children services agency "shall make any recommendations to the county prosecuting attorney or city director of law that it considers necessary to protect any children that are brought to its attention." R.C. 2151.421(F)(2). The agency also must make protective services and emergency services available as required. R.C. 2151.421(I); rule 5101:2-34-32(I); 13 Ohio Admin. Code 5101:2-34-37. Within three days of completing its investigation, the public children services agency must provide notice of the case disposition to the child (unless the child is not of an age or developmental capacity to understand); the child's parent, guardian, or custodian; and the alleged perpetrator. Rule 5101:2-34-32(L).

Let us turn now to your second question. That question asks whether, in investigating an incident in which an administrator was struck by a student and struck the student back several times, the public children services agency is required to consider whether the administrator's actions constituted "reasonable and necessary force and restraint" under R.C. 3319.41(G).

The statutes and the rules indicate that a public children services agency is required to conduct a prompt and thorough investigation of a report of child abuse, through such means as are appropriate in a particular case, to determine the circumstances surrounding the injuries, abuse, neglect, or threat, the cause of the injuries, abuse, neglect or threat, and the person or persons responsible. R.C. 2151.421(F)(1); rule 5101:2-34-32; rule 5101:2-34-34.[12] The

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[10] Information contained in the central registry on child abuse and neglect is confidential and may be released only as provided by rule. 13 Ohio Admin. Code 5101:2-34-381.

[11] The report of the investigation may be one of several types. A report designated "[s]ubstantiated" is one in which there is an admission or adjudication of child abuse or neglect, or confirmation through other forms deemed valid. [2001-2002 Monthly Record, vol. 1] Ohio Admin. Code 5101:2-1-01(A), at 851, 864. A report designated "[i]ndicated" is one "in which there is circumstantial, or other isolated indicators of child abuse or neglect lacking confirmation; or a determination by the caseworker that the child has been abused or neglected based upon completion of an assessment/investigation." *Id*. at 856. A report designated "[u]nsubstantiated report-no evidence" is a report "in which the investigation determined no occurrence of child abuse or neglect." *Id*. at 865.

[12] 13 Ohio Admin. Code 5101:2-34-34 governs investigations of abuse in out-of-home care settings and third party investigations of situations under the operation or supervision of the public children services agency. Schools are not included in the statutory definition of "[o]ut-of-home care." R.C. 2151.011(A)(27); rule 5101:2-1-01(A). A public or nonpublic school,

investigation of these matters will necessarily require the public children services agency to consider whether the reported child abuse involved a situation in which a school teacher, principal, administrator, nonlicensed employee, or bus driver used force and restraint to quell a disturbance threatening physical injury to others, to obtain possession of weapons or other dangerous objects upon the person or within the control of a pupil, for the purpose of self-defense, or for the protection of persons or property. If such facts emerge in a particular investigation, the public children services agency must consider them, along with other relevant facts, in making its findings and report.

We conclude, accordingly, that in investigating a report of child abuse pursuant to R.C. 2151.421, a public children services agency is required to consider the circumstances surrounding the injuries, abuse, or neglect or the threat of injury, abuse, or neglect; the cause of the injuries, abuse, neglect, or threat; and the person or persons responsible for the injuries, abuse, neglect, or threat. Thus, a public children services agency must consider whether, in accordance with R.C. 3319.41(G), a school teacher, principal, administrator, nonlicensed employee, or bus driver has used reasonable and necessary force and restraint to quell a disturbance threatening physical injury to others, to obtain possession of weapons or other dangerous objects upon the person or within the control of the pupil, for the purpose of self-defense, or for the protection of persons or property.

Let us now consider your third question, which asks if a public children services agency determines that the school administrator's actions constituted reasonable and necessary force and restraint, is the public children services agency precluded from making a finding of child abuse by the administrator. If, in carrying out an investigation under R.C. 2151.421, a public children services agency finds that any force and restraint used and applied was reasonable and necessary for one of the purposes stated in R.C. 3319.41(G), such a finding indicates that the action was authorized by statute. It does not appear that any action so authorized by statute can support a finding of child abuse. *See* R.C. 2151.031; R.C. 2919.22. It should be noted that R.C. 3319.41 does not authorize or condone blows rendered for the purpose of expressing anger or seeking retaliation, either as discipline or as reasonable and necessary force and restraint under division (G).[13]

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however, is included by rule as an "[o]ut-of-home care setting" and thus is subject to provisions of rule 5101:2-34-34. Rule 5101:2-1-01(A).

[13] R.C. 3319.41(G) permits the use of "force and restraint" for defined purposes but does not authorize the general use of violence. As used in the Revised Code, "[f]orce" is defined to mean "any violence, compulsion, or constraint physically exerted by any means upon or against a person or thing." R.C. 2901.01(A)(1). In connection with the supervision and education of students, "force and restraint" ordinarily connotes the use of physical efforts for the purpose of preventing a student from creating a disturbance or endangering persons or property. *See State v. Cortner,* 76 Ohio App. 3d 648, 649-50, 602 N.E.2d 779, 780 (Seneca County 1992) (teacher of

The language of R.C. 3319.41(G) providing that school teachers, principals, administrators, nonlicensed employees, and bus drivers may, for certain purposes, use reasonable and necessary force and restraint "within the scope of their employment" indicates that they will not be subject to civil liability for such action. *See* R.C. 2744.03(A)(6)(a). Similarly, a determination that a teacher's conduct involved reasonable force and restraint as provided in R.C. 3319.41 prevents the conviction of that teacher on a criminal charge. *See State v. Cortner*, 76 Ohio App. 3d 648, 602 N.E.2d 779 (Seneca County 1992).[14]

The child endangerment provisions of R.C. 2919.22, referenced in the abused child definition of R.C. 2151.031, prohibit physical restraint of a child only if it is carried out "in a cruel manner or for a prolonged period, … is excessive under the circumstances and creates a substantial risk of series physical harm to the child." R.C. 2919.22(B)(3). A finding of reasonable and necessary restraint precludes a finding that restraint was excessive under the circumstances.

Thus, in carrying out an investigation under R.C. 2151.421, a public children services agency has a duty to find out about the circumstances of reported abuse. If the agency finds that particular action comes within the reasonable and necessary force and restraint authorized by

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severe behaviorally handicapped class placed her arms around a student's arms and body to prevent him from injuring other students in the room); *see also City of Galion v. Martin*, No. 3-91-6, 1991 Ohio App. LEXIS 6092, at *3 (Crawford County Dec. 12, 1991) ("[s]triking a child in anger is not the same as disciplining an unruly child").

[14] *State v. Cortner* involved a charge of disorderly conduct against a teacher who had enclasped a child with behavioral problems to keep the child from endangering the class and later had held the child's arm behind the child's back to get the child under control and back to the classroom. The court held that the state had the burden of proving all elements of disorderly conduct contained in R.C. 2917.11(A)(1) and also of proving that the teacher's conduct was not reasonably necessary to preserve discipline as provided in R.C. 3319.41. *State v. Cortner*, 76 Ohio App. 3d at 652, 602 N.E.2d at 781. Considering R.C. 2919.22(B), the court stated:

> The record contains nothing from which it could be found that appellant's conduct constituted unreasonable restraint which was not used to quell a disturbance that threatened physical injury to other students in the classroom as well as to [the teacher] and her aide…. We find nothing in the record to indicate that appellant restrained [the student] in a cruel manner or for a prolonged period which was excessive and created a substantial risk of serious physical harm to him.

Id. at 651, 602 N.E.2d at 781.

R.C. 3319.41(G), that finding indicates that the action is authorized by law, and the agency is precluded from making a finding of child abuse with respect to that action.

We conclude, accordingly, that if, in investigating a report of child abuse pursuant to R.C. 2151.421, a public children services agency finds that action consisting of reasonable and necessary force and restraint was used by a school teacher, principal, administrator, nonlicensed employee, or bus driver in accordance with R.C. 3319.41(G) to quell a disturbance threatening physical injury to others, to obtain possession of weapons or other dangerous objects upon the person or within the control of the pupil, for the purpose of self-defense, or for the protection of persons or property, the public children services agency is precluded from finding that such action constituted child abuse for purposes of R.C. 2151.421.

We are aware that there will be disputes as to whether particular action constitutes reasonable and necessary force and restraint. A public children services agency must investigate as required by law and proceed on the basis of the authority and discretion granted by law. *See Brodie v. Summit County Children Servs. Bd.,* 51 Ohio St. 3d 112, 554 N.E.2d 1301 (1990). Final determinations will be made through the judicial system. *See, e.g., In re Jandrew,* No. 97 CA 4, 1997 Ohio App. LEXIS 5999 (Washington County Dec. 29, 1997); *State v. Hart,* 110 Ohio App. 3d 250, 673 N.E.2d 992 (Defiance County 1996); *City of Shaker Heights v. Wright,* No. 69517, 1996 Ohio App. LEXIS 2717 (Cuyahoga County June 27, 1996); *Murray v. Murray*, 89 Ohio App. 3d 141, 623 N.E.2d 1236 (Cuyahoga County 1993); *State v. Cortner*; *In re Schuerman*, 74 Ohio App. 3d 528, 531, 599 N.E.2d 728, 730 (Paulding County 1991) ("the trial court, in its broad discretion, is to make its determination of abuse on a case-by-case basis"); 2001 Op. Att'y Gen. No. 2001-039, at 2-232 n.4 ("[b]y its very nature, the determination of what is proper and reasonable corporal punishment can only occur on an individual basis, thus requiring each court to take into account the particular facts and circumstances … in the case before it").

For the reasons set forth above, it is my opinion, and you are advised, as follows:

1. Under current Ohio law, no child abuse of a schoolchild occurs when reasonable corporal punishment that is reasonably necessary to preserve discipline is inflicted in accordance with R.C. 3319.41(E), or reasonable and necessary force and restraint is used in accordance with R.C. 3319.41(G), and there is no violation of R.C. 2919.22. (1992 Op. Att'y Gen. No. 92-082, syllabus, paragraph 1, approved and followed.)

2. In investigating a report of child abuse pursuant to R.C. 2151.421, a public children services agency is required to consider the circumstances surrounding the injuries, abuse, or neglect or the threat of injury, abuse, or neglect; the cause of the injuries, abuse, neglect, or threat; and the person or persons responsible for the injuries, abuse, neglect, or threat. Thus, a public children services agency must consider whether, in accordance

with R.C. 3319.41(G), a school teacher, principal, administrator, nonlicensed employee, or bus driver has used reasonable and necessary force and restraint to quell a disturbance threatening physical injury to others, to obtain possession of weapons or other dangerous objects upon the person or within the control of the pupil, for the purpose of self-defense, or for the protection of persons or property.

3. If, in investigating a report of child abuse pursuant to R.C. 2151.421, a public children services agency finds that action consisting of reasonable and necessary force and restraint was used by a school teacher, principal, administrator, nonlicensed employee, or bus driver in accordance with R.C. 3319.41(G) to quell a disturbance threatening physical injury to others, to obtain possession of weapons or other dangerous objects upon the person or within the control of the pupil, for the purpose of self-defense, or for the protection of persons or property, the public children services agency is precluded from finding that such action constituted child abuse for purposes of R.C. 2151.421.

Respectfully,

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