

**OPINION NO. 73-129****Syllabus:**

A board of education may not adopt a rule or regulation under R.C. 3313.20 which denies teachers, administrators or principals the authority to inflict corporal punishment pursuant to R.C. 3319.41.

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**To: Lee C. Falke, Montgomery County Pros. Atty., Dayton, Ohio**  
**By: William J. Brown, Attorney General, December 17, 1973**

I have before me your request for my opinion which reads:

Section 3319.41 of the Ohio Revised Code deals with the use of Corporal Punishment by school employees. May a Board of Education nevertheless adopt a rule or regulation prohibiting the use of Corporal Punishment?

The board of education has the power to make rules concerning the government of its internal affairs under R.C. 3313.20 which provides in part as follows:

The board of education shall make such rules and regulations as are necessary for its government and the government of its employees, pupils of its schools, and all other persons entering upon its school grounds or premises. Rules and regulations regarding entry of persons other than students, staff, and faculty upon school grounds or premises shall be posted conspicuously at or near the entrance to such grounds or premises, or near the perimeter of such grounds or premises if there are no formal entrances, and at the main entrance to each school building. \* \* \*

In addition R.C. 3313.47 vests the management and control of public schools in the board of education and courts will not interfere with a rule adopted by the board of education unless it is arbitrary, unreasonable or an abuse of discretion. Holroyd v. Eibling, 90 O.L.A. 78, 188 N.E. 2d 208 (1961); State ex rel Idle v. Chamberlain, 39 Ohio Op. 2d 262 (1961).

On the other hand, R.C. 3319.41 specifically permits certain school personnel to inflict corporal punishment upon pupils in certain circumstances. It provides:

A person employed or engaged as a teacher, principal, or administrator in a school, whether public or private may inflict or cause to be inflicted, reasonable corporal punishment upon a pupil attending such school whenever such punishment is reasonably necessary in order to preserve discipline while such pupil is subject to school authority. Such persons and noncertificated school employees and school bus drivers may also, within the scope of their employment, use and apply 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.

It follows from the wording of these two provisions that for the board of education to adopt a rule under R.C. 3313.20 which prohibits the use of corporal punishment allowed under R.C. 3319.41 would be an abuse of discretion, for such a rule would conflict with the statute. It has frequently been held that a board of education has a wide discretion to adopt such rules and regulations as it deems necessary for the conduct of the schools. Greco v. Roper, 145 Ohio St. 243, 249 (1945); Opinion No. 71-024, Opinions of the Attorney General for 1971; Opinion No. 71-026, Opinions of the Attorney General for 1971. Specific statutory limitations on the board's authority must not, however, be exceeded. Where, for instance, a board of education adopted a rule requiring its employees in the classified service to retire at sixty-five the Court held the rule arbitrary and unjustified in view of a Section of the General Code fixing seventy as the age for mandatory retirement. Verberg v. Board of Education, 135 Ohio St. 246 (1939).

There is no evidence, either in the wording of R.C. 3313.20 and R.C. 3319.41, or in case law, that the legislators intended the authority granted in R.C. 3319.41 to be subject to rules adopted by a board of education. On this point, see R. Drury, Ohio School Guide p. 179, Section 636 (3rd ed. 1966), in which the matter of corporal punishment is discussed as follows:

It is generally considered that the discipline of pupils is a matter committed for the most part to teachers. The authority of teachers in such respect, however, may be controlled by rules and regulations adopted by a board of education. However, in reference to a teacher using corporal punishment as a disciplinary measure, the state now specifically grants a teacher, principal or administrator the legal right to use reasonable corporal punishment upon a pupil attending school whenever such punishment is reasonably necessary to preserve discipline while such pupil is subject to school authority.

In addition, the Legislative Service Commission, in an analysis of S.B. No. 358, 131 Ohio Laws 805, stated that R.C. 3319.41, as enacted in 1965, "permits" teachers, principals, and administrators to inflict reasonable corporal punishment, and in Opinion No. 68-161, Opinions of the Attorney General for 1968, my predecessor described this authority to administer corporal punishment as a "statutory right." I conclude, therefore, that although R.C. 3313.20 gives a board of education power to regulate its internal affairs and its employees, these regulations may not conflict with specific grants of authority such as are set out in R.C. 3319.41.

R.C. 3319.41 appears to be the codification of a well settled rule of law in this state. Under Ohio common law, teachers and administrators of schools stand in loco parentis. State v. Lutz, 65 Ohio L. Abs. 402 (1953); Quinn v. Nolan, 7 Ohio Dec. Reprint 585 (1879). Not only are teachers charged with the task of maintaining order and discipline within the classroom, but they may also be called to account for failure to maintain discipline. Powell v. Young, 148 Ohio St. 342 (1947); Guyten v. Rhodes, 65 Ohio App. 163 (1940).

In State v. Lutz, supra, the court stated the presumption involved in cases of teachers inflicting corporal punishment. Teachers, standing in loco parentis, have the authority to inflict corporal punishment and are not liable for their actions as long as such punishment is reasonably necessary, is not malicious, and is not so excessive as to shock ordinary sensibilities. R.C. 3319.41, in authorizing the use of corporal punishment only when "reasonably necessary", does not define that term. Nor does it provide guidelines or procedures to be followed in making such a determination. In the absence of such provisions a board of education would be within its authority under R.C. 3313.20 in adopting guidelines assessing situations in which corporal punishment would be reasonably necessary. While such rules could not prohibit corporal punishment, they could establish procedures designed to insure that the administration of corporal punishment is reasonable. Such guidelines would still be subject to review by the court in any action challenging the reasonableness of a teacher's actions.

In specific answer to your question it is my opinion, and you are so advised, that a board of education may not adopt a rule or regulation under R.C. 3313.20 which denies teachers, administrators or principals the authority to inflict corporal punishment pursuant to R.C. 3319.41.