

**Education Practices Commission Responses to Excessive Force:  
Establishing Criteria to Define Reasonable Force**

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**ABSTRACT.** This research paper attempts to ascertain what type of teacher behavior the Florida Education Practices Commission (EPC) considers to be reasonable force in Florida classrooms. The author examines the excessive force judgments that the EPC made in school year 1992-93 and identifies the teacher behavior, student behavior, and both mitigating and aggravating factors that apparently influenced the final judgment on the level of punishment by the EPC. Reasonable force has been an educational issue since the Florida Cabinet passed the emergency rule, Zero Tolerance for School Related Violent Crime, in September 1994. Along with its many other initiatives the Zero-Tolerance Rule affirmed and validated the concept of reasonable force in response to student misbehavior, including violence, in Florida education. The author concludes that the EPC is applying its standards with some admirable degree of consistency. Nonetheless, a published list of definitions, criteria and rules, analogous to those provided for law enforcement officers by the Florida Criminal Justice Standards and Training Commission, would seem appropriate and would certainly be valuable to teachers.

In recognition of, and response to, school discipline and violence problems, the Florida Cabinet passed a sweeping administrative rule (Emergency Rule 6AER94-3, Zero Tolerance for School Related Violent Crime September 1994). Along with its many other initiatives the Zero-Tolerance Rule affirmed and validated the concept of reasonable force in response to student misbehavior, including violence in Florida education.

The purpose of this research paper is to identify criteria to define reasonable force using the decisions of the Education Practice Commission. Thus, both teachers and administrators can predict, using these criteria from past examples, what behavior will ultimately be proclaimed acceptable by the Education Practice Commission. The larger intent of this paper is to provide a perspective for developing local school policies that are consistent with state education policy in Florida. This paper examines the teacher behavior, student behavior, and both mitigating and aggravating factors that apparently influenced the final judgment on the level of punishment for exceeding Florida education's administrative standards.

### **Background**

On 13 September 1994 the Florida Cabinet passed an administrative rule called "Zero Tolerance." The Zero-Tolerance rule is, among other things, a declaration of intent to deal with certain types of improper student behavior in a more severe manner. For example, the Zero-Tolerance rule directs local schools to report all part-one crimes to local law enforcement authorities. Part-one crimes are those designated for special tracking by the Florida Department of Law Enforcement. Part-one crimes include homicide, sexual battery, armed robbery, aggravated assault, arson, etc.

The Zero-Tolerance rule declares that Florida teachers are responsible for classroom safety and authorizes those teachers to use "reasonable force" to defend themselves and others. This new rule does not define reasonable force or discuss the likely official response for exceeding "reasonable force" standards. It does direct the local districts to develop local policy to "help" the teachers.

### **The Educational Standards Commission (ESC) and the Educational Practices Commission (EPC)**

Florida Statute establishes two commissions that have responsibility to develop, monitor, and enforce the professional standards of educators; these are the Education Standards Commission (ESC) and the Education Practices Commission (EPC). The following Florida Statutes, quoted directly, define and delineate the two commissions and their relative roles:

#### **FS(Florida Statute) 231.546 The Educational Standards Commission**

1. shall have the duty to ...
  - (a) Recommend to the State board desirable standards....
2. The Commission shall develop through the teaching profession, standards of professional practice including, but not limited to ethical and professional performance.
3. Any apparent violation of these codes and standards so adopted shall be deemed to be sufficient for the bringing of a charge of unprofessional practices, which charge shall be reviewed and acted upon by the Education Practices Commission.
4. The Education Standards Commission and the Education Practices Commission, created pursuant to FS.231.261, shall meet together at least once a year for the purpose of cooperation in the development and implementation of standards.

FS 231.216 The Education Practices Commission ...

- (1) [is] to consist of thirteen members including five teachers , five administrators and three lay citizens (two of whom shall be school board members), appointed by the State Board of Education from nominations by the Commissioner of Education and subject to Senate confirmation....
- (7) The duties and responsibilities of the commission are to
  - (a) Interpret and apply the standards of professional practice established by the State Board of Education
  - (b) Revoke or suspend a certificate or take other appropriate action as provided in FS 231.262. and in S. 231.17 (6)(b)
  - (c) Report to and meet with the Education Standards Commission at least once a year
  - (d) Have rule making authority pursuant to chapter 120.
- (8) (b) Panels of the commission shall have final agency authority in all cases involving the revocation and suspension of certificates of teachers and school administrators.

The clear legislative mandate for these two commissions is to establish, interpret, and enforce State policy in the area of professional standards for educators. By making decisions on specific unacceptable behavior, the EPC can interpret and clarify ESC rules in much the same way courts interpret and clarify legislation.

Because they are required to meet and cooperate, the EPC and the ESC can be expected to act in a more coordinated way than the legislature and the judiciary. For example the EPC should never need to declare an ESC rule improper, voids or unenforceable as the judiciary sometimes does with legislation.

Even without specific, definitive ESC policy on a particular teacher's case, the EPC reflects state policy positions when it makes a decision on that case. One area of behavior the EPC must regularly address is excessive force by teachers. Teacher excessive force supplies the central focus of this study.

#### **EPC Decisions on Excessive Force**

Considering the preceding information, a study on EPC decisions on excessive force seems warranted. Such a study should help define and more clearly operationalize the types of force that the EPC determines to be inappropriate and excessive, or appropriate and reasonable. The study will thereby begin to clarify the idea of reasonable force in a state-wide context.

#### The Data Base

In January 1994, the Executive Director of the EPC supplied the author with a 30 page summary of all the cases that it reviewed from July 1, 1992 to June 30, 1993. This information is still

available from the Executive Director of the EPC.

In the 1992-93 school year the EPC ruled on two hundred twenty-four (n=224) teacher discipline cases. Of that number, twenty (n=20) were for inappropriate corporal punishment or some variant term signifying excessive force. These variant terms include inappropriate physical force, inappropriate touching and inappropriate discipline techniques. The data base for this paper is the EPC cases of excessive force for the school year 1992-93, (n=20).

Since the EPC does not provide an index for excessive force with its case summaries, it was necessary to read all (n=224) case summaries to find likely candidates for the database. The author originally identified thirty-one (n=31) cases in the published 1992-93 EPC discipline summary where excessive force might have been a factor. A careful reading of the complete unpublished investigative case files produced the database of (n=20) cases where teachers interacted forcefully with students in school and were disciplined by the EPC. Because this study examined the teacher behavior, student behavior, and both the mitigating and aggravating factors that apparently influenced the final judgment on the level of EPC punishment, the author both identified the factors that the EPC deemed significant enough to list in their published summary and provided a subjective assessment of factors evident in the unpublished investigative files.

For data analysis the levels of student disruption were classified as:

S1 = Verbal Disruption, S2 = Property Damage, and S3 = Personal Threat. Levels of teacher response were classified as: T1 = Verbal Control, T2 = Touch Control, and T3 = Defense.

#### Definition of Terms

S1 = Verbal Disruption. The essential defining element of *Verbal Disruption* is its physically nonviolent nature. Verbal disruption may appear violent and disturbing but it is disruptive behavior that poses no immediate threat of property damage or personal injury. The acting-out behavior, includes body language and all vocal student behaviors ranging from making faces, screaming and cursing, to refusing to leave the classroom.

S2 = Property Damage. This disruptive behavior results, or is likely to result, in either private or public property destruction. It is beyond pencil-breaking, attention-getting behavior, and has independent financial or budgetary consequences.

S3 = Personal Threat. Personal Threat behavior involves injury or the threat of injury. Considering the teacher's responsibility to ensure safety under Zero-Tolerance, this category will necessarily authorize a teacher's defense of students and other faculty.

T1 = Verbal Control. The operating concept of Verbal Control is one of eliciting compliance or cooperation from the student. Verbal Control includes plain language, body language, voice tone and volume, and even the gentle holding of a student's hand or the patting of a child's shoulder.

T2 = Touch Control. Touch Control involves the forceful "laying on of hands." The most common example of Touch Control is the firm grip, but Touch Control can also include techniques using leverage or pain. Touch Control is intended to force compliance from the student but does not cause injury.

T3 = Defense. Defense is forceful behavior on the part of a school official that is intended to protect that official or someone else from personal injury. Possible injury to the object of the Defense behavior is a possible, and sometimes necessary, consequence.

Teachers have a responsibility to protect students (and others), to assure the continuation of the "educational process" and to "...keep good order in the classroom..." (FS 232.27). Physical retaliation for real or perceived injuries or threats from a student is not authorized in Statute or any State policy including the *Zero-Tolerance* rule.

### The Analysis

The published 1992-93 EPC summary documents 14 cases that the author classified as S1-T2 (Verbal Disruption-Touch Control) interactions and 6 cases of S1-T3 (Verbal Disruption-Defense) interactions. The typical case of teacher-discipline for excessive force, settled by the EPC in 1992-93, was a case of a teacher using some form of forceful hands-on control (T2) which did not injure the student, in response to a student's verbal disruption (S1) of the educational process. Two cases without additional aggravating factors brought the expected EPC response of a reprimand and a year of probation. Aggravating factors like a history of previous warnings for related behavior brought additional EPC response in eleven cases, often as extended probation, or the requirement of college courses. In one S1-T2 (92-148 RT) case, an extensive previous history was significant enough to warrant an extremely severe suspension. In one S1-T3 (92-140 RT) case, no aggravating and many mitigating factors resulted in only probation.

Notwithstanding those two exceptions, the EPC punishments for the remaining group of S1-T3 cases were much more severe than for S1-T2 cases. Whereas the S1-T2 cases tended to result in probation, the S1-T3 cases tended to result in suspension and probation.

The EPC did not deal with any incidents of excessive force in the face of S2 disruption in 1992-93. However, destruction of school property is becoming more common and is normally recognized as a more serious offense than verbal disruption, so it was retained in the analysis for the purpose of continuity.

There was one significant case in the 1992-1993 EPC case summaries, not part of the data base which, based on the investigator's findings, the author classified as S1-T3. In this case, the accused teacher successfully argued that a S3 situation really existed and that the teacher had responded at a T2 level. The EPC hearing officer found no probable cause, and dismissed the complaint. See case # 91-231 RT.

### Mitigating Factors

- The EPC panel seemed to be influenced by the appearance of contrition. A respondent who came to the hearings, provided letters of endorsement, and wrote an apology letter usually suffered less than a no-show.
- Injury or lack of injury is actually a T2 verses T3 classification factor. However, in cases that were clearly T3, like battery with a broom handle or choking, the lack of student injury appeared to be mitigating.
- A previously exacted, uncontested penalty from local school officials for the offense in question appeared to mitigate for the teacher at a State level.
- A lack of criminal findings by the police appeared to mitigate for the teacher in serious cases.
- No court action, a nol-prossed (not processed) case, or a criminal case with adjudication withheld by the court, was also considered mitigating in serious S1-T3 cases.

### Aggravating Factors

- A previous history of warnings usually brought a more serious EPC punishment.
- Youth (tender age) of the student-victim appeared to be a factor.
- Bad faith, deception, or lack of contrition was sometimes noted or inferred by the case investigator and appeared to have an effect.
- Criminal charges or a criminal conviction were especially important in S1-T2 encounters.

### **General Conclusions**

Based on this small sample, the author concludes that:

- The EPC expects teachers to control verbal disruption with verbal control techniques.
- The EPC exacts more serious punishments as the level of force used by a teacher to control verbal disruption rises from touch control to Defense level force.
- The EPC allows teachers to use higher levels of force to protect themselves.
- Mitigating and aggravating factors are significant. They influenced most EPC decisions and accompany any variance from standard responses.
- In 1992-93, the EPC was consistent in punishing teachers for using excessive force.

### **Recommendations**

The EPC appeared to be quite consistent in the level of punishment relative to the level of offense. The EPC also appeared to consistently weigh mitigating and aggravating factors in punishment decisions. However, written standards and criteria by which the EPC rendered judgments are not published (by the ESC or the EPC) and distributed to teachers. This analysis has attempted to demonstrate that those criteria can be deduced from an investigation of EPC decisions. Local school authorities can develop policy that is consistent with State policy from such an analysis. Most importantly, teachers can know more precisely what behavior will ultimately be acceptable to the EPC

and avoid behavior which the EPC would judge to be excessive.

The Criminal Justice Standard and Training Commission (CJST) is a Florida statutory entity (FS 943.11) with authority to establish and enforce professional standards for law enforcement officers. In most aspects, its behavior is quite parallel to that of the EPC and the ESC. One difference is that the CJST has proactively established professional standards by publishing the definitions, criteria, and guidelines to be used when administratively determining reasonable force in specific cases. Thus, it is not necessary to research decisions and infer standards based on CJST disciplinary practices. Law enforcement officers have concrete written standards that apply to specific, real situations. Along with law enforcement administrators, Florida civil and criminal courts have taken note of CJST published standards and regularly admit testimony concerning them.

Since the EPC is applying its standards with some admirable degree of consistency, a published list of definitions, criteria and rules, analogous to those provided by the CJST, would seem appropriate and would certainly be valuable to teachers. The Zero-Tolerance rule is a praiseworthy attempt to establish a behavior standard to Florida classrooms. A published ESC explanation of reasonable force would provide effective guidance and needed direction for Florida teachers in the face of increasing classroom violence. Teachers would appreciate some "concrete standards that apply to specific, real situations" in Florida classrooms to guide their own behavior. Administrators would appreciate some help in achieving the Zero Tolerance directive to develop local policy to "help" the teachers.

### **Education Practices Commission Excessive Force Cases 1992-93**

This section contains five annotated case summaries from the data base. In each summary, the case number, the EPC Findings, and EPC Action are reproduced verbatim from the EPC 1992-93 summary. They follow under the subheading EPC Documentation. After the EPC Documentation the author's review of the facts as reported in the EPC investigative files follows under the category Research Summary. Although these cases are closed and public information according to Florida's Sunshine Law, no names are mentioned. The author's analysis of the EPC investigative files is labeled Research Findings. The author's summary lists Aggravating Factors, Mitigating Factors, Punishments and Level. "Level" is the author's evaluation of the interaction, labeled S1-T2 or S1-T3.

Conditions of probation always include quarterly performance reports with the submission of copies of all evaluations to the EPC. A written reprimand is customary. Sometimes the EPC requires associated psychological evaluation and follow-through on its recommendations (like treatment for substance abuse if appropriate). These customary punishments are not repeated in each Summary of Punishment. In cases where semester hours are assigned, the summary indicates college courses at the rate of three hours to one course. These annotated case summaries were chosen for inclusion because they are cited in the text or because they are typical.

Education Practices Commission Case: 92-140 RT.

EPC Documentation

EPC Findings. Respondent grabbed a student around the neck and held him in a choke hold.

EPC Action. The panel accepted a settlement agreement for a written reprimand and a 3-year probation. Conditions of probation include quarterly performance reports, submission of copies of all evaluations, and completion of 3 credit hours of course work in adolescent behavior.

Research Summary

Research Findings. The student exhibited verbal disruption in the form of defiance. The teachers use of a self defense level technique was certainly excessive. A choke hold indicates T3 response to S1.

Aggravating Factors. None.

Mitigating Factors. Civil case by child's family dismissed with court costs to the plaintiff, no injury to the student, no prior history by the teacher.

Summary of Punishment. A 3-year probation and one college course.

Level. S1-T3

Education Practices Commission Case: 92-142 RT.

EPC Documentation

EPC Findings. Respondent misused corporal punishment on numerous occasions, made disparaging remarks to students, prevented students from going to the bathroom, and brought pocket knives to class for students to handle.

EPC Action. The panel accepted a settlement agreement for a written reprimand and a 2-year probation. Conditions of probation include quarterly performance reports, submission of copies of all evaluations, and completion of 3 college hours in assertive discipline.

Research Summary

Research Findings. In several cases where students were being verbally disruptive, the respondent slapped and pushed the students. The students were exhibiting a number of behaviors in the verbal disruption category. The respondent's force was touch control or self defense either of which was excessive.

Aggravating Factors. Slap, possible battery.

Mitigating Factors. No injury, no charge.

Summary of Punishment. A 2-year probation, one college course.

Level. S1-T2

Education Practices Commission Case: 92-148 RT.

EPC Documentation

EPC Findings. As a basketball coach, the respondent received five letters of reprimand from the Florida High School Activities Association for rules violations. He received a reprimand in 1983 for leaving students unsupervised. In 1987 he was charged with issuing worthless checks and for purchasing a stolen television in 1988. He failed to acknowledge the withheld adjudication for those



two charges on his application for certification. He made inappropriate comments to students, He made disparaging comments about a student's sexual orientation; and he inappropriately grabbed a student.

EPC Action. The panel accepted a settlement agreement to bar the Respondent from applying for a new certificate for four years when his certificate expires on 06-30-93, and to bar him from applying for renewal during the current validity period.

#### Research Summary

Research Findings. The student grabbed by the respondent was verbally disruptive and the teacher laid hands on him. There was no trespass, no danger, and it was not a friendly touch.

Aggravating Factors. five consecutive letters of reprimand, history of concealing unrelated criminal charges.

Mitigating Factors. None, did not respond.

Summary of Punishment. A 4-year additional suspension, de facto 5-year suspension.

Level. S1-T2 (Verbal Disruption-Touch Control)

#### Education Practices Commission Case: 92-203 RT.

##### EPC Documentation

EPC Findings. Respondent "tied up" a student to demonstrate the impropriety of his having tied up another student, and she wrapped students in their seats with a jump rope as punishment.

EPC Action. The panel modified a recommended order for a written reprimand by adding a 1-year probation. Conditions of probation include submission of quarterly performance reports and of copies of all evaluations.

#### Research Summary

Research Findings. These examples of touch control are not directly associated with student disruption on a property damage or trespass level and so are excessive.

Aggravating Factors. None.

Mitigating Factors. None.

Summary of Punishment. A 1-year probation.

Level. S1-T2

Comments on 92-203 RT. This is a model case for the EPC. The teacher was found to use T2 in response to S1, with no mitigating or aggravating factors, such as prior bad history or injury to the student.

#### Education Practices Commission Case: 92-204 RT.

##### EPC Documentation

EPC Findings. Respondent used inappropriate discipline techniques, including tying a student to a chair and taping students mouths.

EPC Action. The panel accepted a settlement agreement for a two-year probation. Conditions of probation include quarterly performance reports, submission of copies of all evaluations and completion of three college semester hours in assertive discipline or classroom management.

Research Summary

Research Findings. Children were exhibiting verbal disruption. Tying children to a chair is touch control.

Aggravating Factors. Taped students mouth shut.

Mitigating Factors. None.

Summary of Punishment. A two-year probation.

Level. S1-T2 (Verbal Disruption-Touch Control)

Comments. This case shows the significance of aggravating factors. The facts are essentially the same as 92-203RT. This case even happened in the same county. The additional aggravating factor of taping the child's mouth shut doubled the EPC response.

Education Practices Commission Case: 91-231 RT.

(One Possible Case of Reasonable Force)

EPC Documentation

EPC Findings. A hearing officer found no clear and convincing evidence that the respondent inappropriately used physical restraint with students.

EPC Action. The panel adopted a Recommended Order to dismiss the Administrative Complaint filed against the Respondent.

Research Summary:

Research Findings. As opposed to the findings of the hearing officer, the investigative summary indicates that the student was exhibiting verbal disruption at (S1) level, and the respondent used either Touch Control (T2) or, more probably, Defense level (T3) force. Insubordination was an ancillary issue because of earlier behavior by the respondent. Respondent had written orders to call security before allowing situations to escalate to the Personal Threat level.

Aggravating Factors. Previous warning.

Mitigating Factors. Claim of T3 response to S3.

Summary of Punishment. None.

Comments. In this case the respondent made the following arguments to the hearing officer. He argued that the student brought a tooth-pick, which the student held in his mouth, dangerously close to the eye of the respondent. He also claimed to be a Crisis Prevention Institute (CPI) graduate and to have used CPI techniques to control the student.