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Dear Members of the Union County Board of Education:

I am writing on behalf of the Coalition to Abolish Corporal Punishment in Union County Schools to request that the Union County Board of Education ("the Board") abolish its existing policy with respect to corporal punishment. The Board's current policy on corporal punishment as set forth in Section 4 of the *Code of Student Conduct* fails to comply with either North Carolina law or the due process requirements of the United States Constitution.

Section 115C-391 of the North Carolina General Statutes governs corporal punishment and sets forth the requirements that must be met by a local board of education if it elects to adopt a policy permitting corporal punishment. Any policy with respect to corporal punishment must include "at a minimum" four specific conditions (G.S. 115C-391 (a)). The second of these conditions requires that "The Student body shall be informed beforehand what general types of misconduct could result in corporal punishment" (G.S. 115C-391 (a) (2)). The manner in which these "general types of misconduct" are to be communicated is equally clear: "Each local board shall publish all the policies mandated by this subsection and make them available to each student and his parent or guardian at the beginning of each school year." (G.S. 115C-301 (a)) The Board's current policy and previous practice with respect to corporal punishment clearly fails to meet this statutory requirement.

The *Code of Student Conduct – Elementary Schools* ("the Elementary School Code") established by the Board identifies 21 "prohibited behaviors" and specifies in detail the form of punishment that may be imposed as a result of violation of each "prohibited behavior". For 14 of these "prohibited behaviors", the Elementary School Code specifies different punishments for first, second, or third offenses. The Elementary School Code does not state that corporal punishment is a potential punishment for any of its 21 "prohibited behaviors". Similarly, the *Code of Student Conduct – Middle & High Schools* ("the Upper School Code") identifies 23 "prohibited behaviors" and specifies in detail the form of punishment that may be imposed as a result of violation of each "prohibited behavior". For nine of these "prohibited behaviors", the Upper School Code specifies different punishments for first, second, or third offenses. As in the case of the Elementary School Code, the Upper School Code does not state that corporal punishment is a potential punishment for any of its 23 "prohibited behaviors".

Section 4 of the *Code of Student Conduct*, applicable to elementary, middle and high schools, is entitled "Corporal Punishment" but does not identify any offenses or "prohibited behaviors" that might result in the infliction of corporal punishment. Section 4 does, however, address such issues as who may administer corporal punishment, the location in which it may be administered, who shall serve as a witness, the factors to be taken into consideration in administering it, and the requirement to maintain an appropriate record. These features of the Code of Student Conduct appear to be an attempt to comply with the minimum conditions established by Section 115C-391 (a) – all except the requirement that students be notified "beforehand what general types of misconduct could result in corporal punishment". It should also be noted that nowhere in the Code of Student Conduct, including both the Elementary School Code and the Upper School Code, is there a statement to the effect that "each 'prohibited behavior' may be punished by corporal punishment". Thus, although the Board's corporal punishment policy has resulted in the administration of corporal punishment in the Union County school system, the Board's policy fails to comply with the statutory requirements set forth in Section 115C-391 (a).

The Board's corporal punishment policy also fails to comply with the requirements of due process as imposed upon the states by the Fourteenth Amendment to the United States Constitution. In a long series of cases (see *Papachristou v. City of Jacksonville*, 405 U. S. 156, and the cases cited therein), the United States Supreme Court has set forth the constitutional requirement that all persons "are entitled to be informed as to what the State commands or forbids" (*Lanzetta v. New Jersey*, 306 U.S. 451, 453) and that the Fourteenth Amendment makes this requirement applicable to the states. By failing to specify the actions that might lead to the administration of corporal punishment, the Board's policy fails to meet the constitutional requirement that every person must "be informed as to what the State commands or forbids". Although it is common knowledge that the requirements of the United States Constitution govern state law, the North Carolina General Assembly in Section 115C-391 (a) explicitly reminded local boards of education that their policies with respect to corporal punishment must be "not inconsistent with the provisions of the Constitutions of the United States and North Carolina". The Board, by its failure to specify the actions for which corporal punishment may be administered, has ignored the legislature's command.

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The failure to specify those “prohibited behaviors” that might lead to corporal punishment permits the infliction of punishment in an arbitrary manner. As noted in an article in *The Enquirer-Journal*, corporal punishment was administered in only nine of Union County’s 34 schools during the 2003-2004 school year (John Tompkins, “One School Paddles Half of All Disciplines Students, *The Enquirer-Journal*, February 13, 2005). It is inconceivable that the behavior that led to the infliction of corporal punishment at nine schools did not occur during that year at any of the other 25 schools in the Union County school system. Equally significant, punishment is being administered for behavior that is not mentioned as a subject for punishment in either the Elementary School Code or the Upper School Code. According to data obtained from the Union County Public Schools and published by *The Enquirer-Journal*, students were punished 20 times for being tardy; yet, “being tardy” is not listed by either the Elementary School Code or the Upper School Code as a “prohibited behavior” or as an action that might result in corporal punishment. (“Being tardy” is not included under the catch-all category of “classroom disruption”, which is listed as a separate category in the data reported in *The Enquirer-Journal*.) As indicated by Superintendent of Schools Ed Davis in an e-mail message dated January 24, 2005, “Misconduct that could lead to corporal punishment will vary dependent upon the student and their [sic] disciplinary record”; in the absence of a specification of those actions that can result in corporal punishment, the approach enunciated by Superintendent Davis confirms that the Board’s policy is inherently arbitrary.

Intentionally striking a child with a wooden board in most circumstances constitutes the offense of assault and battery. The difference between “corporal punishment” and “assault and battery” is the existence of a valid policy authorizing corporal punishment. In the absence of such a valid policy, striking a student constitutes assault and battery, an offense that exposes its perpetrator to criminal and civil liability. So long as the Board’s illegal corporal punishment policy remains in place, the children of Union County will be exposed to the possibility of being subjected to assault and battery.

The Board and the Superintendent have stated that a moratorium has been imposed on the administration of corporal punishment. However, this “moratorium” represents not a change in policy, but merely a voluntary suspension of corporal punishment for an indefinite duration with no safeguards to prevent its re-imposition. The decision by a Union County principal to revoke the voluntary suspension and to administer corporal punishment constitutes one decision, not two. Union County students have no more protection under the “voluntary suspension” of corporal punishment than they did before the suspension was implemented.

While we believe that the courts of North Carolina would enjoin the administration of corporal punishment pursuant to the Board’s current corporal punishment policy, it should not be necessary to seek an additional forum in which to address our concerns. The Board can resolve this issue by the simple act of voting to terminate its present policy.

Although the overwhelming body of evidence suggests that it is harmful to beat children as a means of building their character and encouraging proper behavior, my immediate purpose is not to debate the wisdom of the Board’s policy regarding corporal punishment, but rather to ask that the Board take action to bring the Union County school system into compliance with North Carolina law by abolishing the current, unlawful policy regarding corporal punishment.

Sincerely,

[Signed]

J. Robert Sheppard, Jr.

Cc:

Mr. Koy Dawkins, Esq.

Central Office Administration

Candidates for Union County Board of Education

Principals of Union County Schools