

The Law on Physical Intervention against Offensive Schoolchildren – A Nordic Perspective

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The article gives an account of the legal framework under Danish law regarding physical interventions against schoolchildren who behave offensively, disruptively, or violently. The law is unclear and incomplete. Thus, teachers lack clear guidelines for adequately handling classroom conflict situations. A regulatory model designed to provide more clarity and uniformity is provided.

Summary

Under Danish law, neither the Public School Act (*folkeskoleloven*) nor the supplementary executive Regulation on the promotion of good order and discipline (*bekendtgørelse om god orden i folkeskolen*) contribute sufficiently to clearly defining the limits of lawful physical intervention against outwardly reactive or disruptive pupils.¹ Across the school sector, the rules are inconsistent and inadequate. The uncertainty about the legal delimitation of various physical interventions against pupils is unsatisfactory for both children and adults and can lead to inappropriate handling of conflict situations. It is fundamentally untenable that the rules on the use of force and other interventions in pupils' personal integrity and right to self-determination do not rest on a solid legal basis but must be derived from a ministerial Regulation and from unwritten "institutional considerations."

The legislature has addressed outdated legal frameworks in contiguous areas and established a clearer and more solid basis for the powers regarding the use of force and other physical interventions in connection with the exercise of adult authority. A few years ago, the introduction of the Act on Adult Responsibility for children and young persons in resi-

1 In accordance with the Public-School Act (*folkeskoleloven*), the elementary part of the public school system in Denmark provides for admission of young children to pre-school grade (*børnehaveklasse, 0. klasse*) followed by mandatory teaching from the 1st up until the 9th grade and a voluntary 10th grade. Under Danish law, nine years of education is mandatory. Enrolment in a local public school is available for all children and young persons but not compulsory, since parents have the right to opt for a private institution or home schooling as the alternative. The Public-School Act have most recently been updated by Consolidation Act (*lovbekendtgørelse, lbk.*) No. 50, 2024.

dential care (*voksenansvarsloven*) removed much of the legal uncertainty.² With adequate adjustments, significant parts of the rules regarding adult responsibility can be advantageously transferred to the school area in general.

Corporal Punishment of Children, Servants and Other Subordinate Individuals

Historically, a recognized right to corporal punishment has given specific individuals the authority to discipline subordinates, such as family members, servants, institutionalized individuals, pupils, and students. Parents had certain, particular rights to discipline their children, which meant that certain forms of physical force, otherwise punishable, were exempt from criminal liability. Such rights have been gradually abolished.³

Under the Danish Code of 1683 (*Danske lov*), there were provisions regarding the husband's and his wife's right to discipline children and servants, while the law abolished the husband's right to discipline his wife, cf. Sec. 6-5-5, 6-5-6, and 6-9-4. These provisions were repealed with the Penal Code of 1866, but it was not intended to abolish the right to corporal punishment completely. The Servants' Act of 1921 (*medhjælperloven*) abolished the right to discipline underage boys and girls working as servants.

In the 1980s, other Nordic countries abolished the last remnants of parents' right to discipline their children. In 1985, Denmark introduced a somewhat unclear provision in the Guardian's Act (*myndighedsloven*), stating that the bearer of parental authority has a duty to "protect the child from physical and psychological violence and other degrading treatment." In 1997, the Danish Parliament finally abolished the last remnants of the right to corporal punishment for parents over their children. Now, the Parental Responsibility Act states that children "must be treated with respect for their person and must not be subjected to corporal punishment or other degrading treatment."

The previous rights to implement corporal punishment have also been gradually abolished in the school sector. Upon the establishment of the public school system in 1814, King Frederik VI issued executive Regulations on good order and discipline for public schools. If warnings did not have the desired effect, teachers were allowed to punish children under 10 with "a small rod," and older children with "a thin strap without knots." Other punishments included warnings, exclusion from participation in amusements, freedoms, playing

2 The Adult Responsibility Act (*voksenansvarsloven*) was introduced by Act No. 619, 2016 on Adult Responsibility for Children and Young Persons in Residential Care, most recently updated by Consolidation Act (*lovbekendtgørelse, lbk.*) No. 1006, 2024.

3 For references, see (Vestergaard 2024a).

activities, and relegation to a lower grade. However, it was emphasized that the teacher should refrain from “any treatment that could have a harmful effect on the children’s bodies or hinder the intended improvement.” Consequently, there was an explicit prohibition against “giving children ear slaps, blows or hits with the hand, pinching them, or using abusive language against them.” Similarly, “putting children in the doghouse or implementing other degrading punishments that could stifle the child’s sense of honour and serve more to harden than improve them” were prohibited. In 1860, the Government announced that a cane could be used instead of a rod. In 1934, the prohibition against slaps was reinforced in a circular issued by the school director for Copenhagen.

In high schools, it was legal for teachers to discipline students corporally, provided that “any corporal punishment that could harm a student’s health” was not implemented. The use of a cane was considered permissible to some extent.

Under the Public-School Act of 1937, the Ministry of Education issued an executive Regulation in 1938 on measures to maintain good order in public schools. Disobedience, impoliteness, lack of diligence, breaches of house rules, or improper behaviour towards other children, could result in detention for up to one hour. Under “special circumstances,” corporal punishment was allowed for “special and serious offenses, primarily against children who act rudely and inconsiderate towards peers.” Corporal punishment was limited to three slaps with a thin cane on the seat over the clothes. The punishment had to be administered “with prudence and seriousness.”

From 1952, corporal punishment was abolished in Copenhagen municipal schools.

In 1953, it was decided to abolish cane punishment in child and youth welfare institutions and to prohibit corporal punishment in the form of slaps on the cheek with a flat hand in reformatory institutions.

In 1967, corporal punishment was generally abolished in the school system. Then the Ministry of Education issued what became known as the “cane circular” (*spanskrørcirkulæret*). An executive Regulation explicitly stated that “corporal punishment must not be used.” By then, the goal was no longer “order and discipline” but “work peace and good order.” Children’s understanding of the rules and their significance should be promoted “through talks and other means.” Only necessary force could be used to prevent “pupils from committing violence against others or damaging or destroying things.”

At the same time, corporal punishment of children and young persons in residential institutions was prohibited. With reference to the Criminal Code and the Administration of Justice Act, it was later added that the general rules on self-defence, necessity, and lawful enforcement apply (*nødværge, nødret og lovlig retshåndhævelse*). The rules on the use of

force and other physical intervention against children and young persons in residential care were clarified in the Adult Responsibility Act of 2016 (*voksenansvarsloven*).

In the school sector, the rules regarding the use of force and other measures to promote good order remains unclear, causing uncertainty about the limits of lawful physical intervention.

The Uncertainty about the Limits of Lawful Physical Intervention against Schoolchildren

The unclear limits of lawful use of force and other physical measures against schoolchildrens' misconduct have regularly attracted political attention due to media coverage of problems about pupils' bullying and harassment of their schoolmates, the occurrence of escalated conflict situations during school hours, difficulties in enforcing peace and quiet in the classroom, and pupils' violence and threats against teachers, too.⁴

Several studies have shown that a lot of teachers are exposed to verbal and physical violence, not least by very young children in early elementary school (*indskolingen*). The seriousness of the situations varies, and can, for example, consist of individuals being torn, scratched, pinched, threatened with violence, or having objects thrown at them.

The occurrence has fuelled the debate on several indictments of teachers charged with committing criminal assault against pupils. Considering this practice, teachers in general have understandably become anxious about the prospect of dismissal and legal prosecution, if pupils claim to have been subjected to unlawful physical treatment.

The law is characterized by uncertainty and disagreement about the limits of justified physical intervention against pupils with disruptive, offensive, or dangerous behaviour. Some teachers involved in such situations avoid any physical contact in order not to risk negative personal consequences. However, when orderly care and lenient educational means do not effectively remedy a serious disorder problem, it may seem unsatisfactory to refrain from some kind of physical intervention adapted to the given situation.

The enforcing of appropriate order and discipline by pupils may necessitate the availability of various types of schemes. However, two partly opposing trends must be considered when calibrating the relevant means. On the one hand, today's schools are characterized by more unrest and a wider lack of respect for adults than in previous times. On the other

4 The term "pupil" and the term "child" will be used in the article to include schoolchildren irrespective of their age, i.e. children from the age of 5 years and young persons up until the age of 16-17 years.

hand, it has become recognized to a greater extent than previously that children have the right to protection of personal human dignity and right to self-determination and must not be subjected to arbitrary or disproportionate interference with such fundamental rights, not even as part of the exercise of adult authority.

Recently, reports of pupils' violence, threats, and sexual harassment against other children at two specific schools filled the media, which again prompted political considerations about counterreactions to such offending behaviour, including the possibility of authorizing transfer to another school or even entire expulsion from the public school system.⁵

As a consequence of the alarming report, the Minister of Children and Education decided to tighten up the executive rules on measures for maintaining order and discipline in public schools. The modified version of the administrative rules came into force on 1 January 2025. Still, so far, no changes have been made to the regulations concerning the authority for teachers to use force or to implement other types of physical intervention.

The Public-School Act as the Legal Basis for Defining Lawful Measures

Requirements that pupils must sometimes sit quietly, participate in activities, and generally behave properly are clearly justified to achieve the school system's basic purpose and principal pedagogical agenda. The justification for the use of force and other interventions into the right to individual self-determination and personal integrity must be assessed with a view to the fundamental principles governing the public schools' operations, as these have been established in the relevant legislation.

The Public-School Act (*folkeskoleloven*) starts with a preamble that reflects a set of broad and ambitious learning objectives and a fundamental set of values. The school is responsible for the pupils' education and upbringing. Consequently, staff members have the right and duty in their daily work to contribute to the fulfilment of the school's objectives and the implementation of the school's official values. The adopted set of values contains guidelines for good behaviour. It indicates how to achieve personal well-being and a good teaching environment for pupils and staff, both mentally and physically.⁶ The guidelines are intended to promote shared values, commitment, and responsibility. In accordance

5 For references, see (Vestergaard 2024a).

6 Pupils have the right to a good and safe teaching environment; see the Act on the Teaching Environment of Pupils and Students, Act No. 316, 2017 (*lov om elevers og studerendes undervisningsmiljø*).

with the set of values, the local school board must establish an anti-harassment strategy (*anti-mobbe strategi*), including a strategy against digital bullying.

The local school board adopts the individual school's rules of order, sets of discipline and values. These provisions must be aligned with the general legislation, and respect the fundamental legal principles of objectivity, proportionality, and leniency.⁷

A crucial prerequisite for the school and its staff to fulfil the mission defined in the legislation is that teaching and social interaction in the school's daily life take can be conducted with a certain degree of peace and quiet. To this end, it may be necessary to intervene in the pupils' self-determination and, under certain circumstances, use to force.

Based on the Public-School Act, the Minister for Children and Education has laid down in an executive ministerial Regulation (*bekendtgørelse*), more detailed rules on measures to "promote good order".⁸ The rules are explained and elaborated in a set of administrative guidelines (*cirkulære*).⁹

Measures against Violations of the School's Rules of Order and Discipline

The school principal is responsible for the administrative and pedagogical management of the school and makes all concrete decisions concerning the school's pupils within the goals, frameworks, and principles set by the municipal council and the local school board.¹⁰

The rules on measures that constitute intervention in self-determination, personal integrity, or personal development opportunities for pupils who disregard the requirements for order and peaceful coexistence are based on the premise that, as a rule, they should not be enforced by physical use of force. The formalized provisions set the upper limits for

7 The Constitution and the ECHR set certain limits on the authority to use physical force. The Convention on the Rights of the Child obliges States to ensure that the best interests of the child are given priority, cf. Art. 3. The Convention on the Rights of Persons with Disabilities stipulates rights for children and young persons with physical or mental disabilities.

8 Cf. the Public-School Act Sec. 52 (1), and the executive ministerial Regulation on the Promotion of Good Order and Discipline in Public Schools (the Regulation), most recently consolidated by Regulation No. 1551, 2024 (*ordensbekendtgørelsen*).

9 Guidelines on the Regulation on the Promotion of Good Order and Discipline in Public Schools (the Guidelines), most recently consolidated in Guidelines No. 10123, 2024 (*ordensvejledningen*).

10 The Public-School Act Sec. 2 (2).

measures to be implemented against pupils who violate the school's rules.¹¹ The stipulated measures thus constitute the strictest authorized reactions that may be employed depending on the circumstances in the specific instance.

If a pupil is considered in need of a break from teaching and from the class after transgressing his own or others' limits, and "transfer to another activity at the school or detention are not suitable actions," the school principal can decide to send the child or young person home for the rest of the school day.¹² Such a decision does not necessarily imply that the pupil has violated rules of order and discipline. The measure can, for example, be implemented if a boy has lost his temper or has become so angry or upset that he will not benefit from the classroom teaching.

If necessary, the following measures may be applied to a pupil who, despite prior guidelines, reprimand, warning, etc., "does not adhere to the school's rules of order, set of values, or other generally accepted norms for good conduct."¹³

- Detention for up to 1 hour.
- Transfer to other activities at the school for some hours or the rest of the school day.
- Immediate exclusion for the rest of the school day.
- Exclusion from teaching for up to 10 school days.
- Transfer to a *parallel class* at the school.
- Transfer to a class at a similar grade level in *another school*.
- Expulsion from the public school system of a pupil enrolled in the 10th grade.

Any decision to implement measures to promote good order must be based on an overall assessment of the specific circumstances in the individual instance. The measure must be proportionate to the pupil's misconduct. It must, among other things, be assessed concerning the severity of the offense, the pupil's age, any previous guiding, reprimands, warnings, and whether the offense was intentional or negligent, etc.¹⁴ In cases where there

11 Cf. the Regulation Sec. 4 (2), and the Guidelines para. 19. The measures may be applied when pupils use the school's facilities, including under after-school programs and teaching activities during free time. The measures may also be applied due to a pupil's behaviour during free time when this behaviour, for example, digital behaviour on social media, has had a direct impact on good order in the school, including by affecting the teaching environment. See the Regulation Sec. 3, and the Guidelines para. 19.

12 Cf. the Regulation Sec. 5 and the Guidelines para. 15-18. The agreement to send the child home for the remainder of the school day is conditional on an agreement with the child's parents. The school is obliged to inform the parents that they are not obliged to comply with the measure.

13 See more details in Sec. 4-6 of the Regulation, and the Guidelines para. 22-44.

14 See the Regulation Sec. 4(1), and the Guidelines para. 12.

is reason to assume that a child's inappropriate behaviour is due to social and emotional difficulties, the school must contact the pedagogical-psychological counselling service to assess the need for specialized lessons and other special educational assistance, or for referral to the social welfare system.¹⁵

If the standards of objectivity and proportionality are observed, less intrusive measures than those listed in the executive ministerial Regulation may be used. A milder measure may, for example, be to seat the pupil at his or her desk, move the child away from a work group, or place the troublemaker "outside the door" for a few minutes or for the rest of the lesson. The school principal may also decide to issue a warning or a reprimand.¹⁶

The executive ministerial Regulation also contains a provision on the retention of private items in cases where a child violates the school's rules of conduct regarding the use of particular items during school hours, e.g., deployment of mobile devices.¹⁷

Use of Physical Force

Since 1967, the various administrative Regulations on good order in public schools have all contained a specific provision on the use of physical force.¹⁸ First, the current version of the provision states that the general rules regarding justifiable self-defence, necessity, etc., apply. Secondly, corporal punishment and degrading treatment are abandoned. Thirdly, proportional physical force is authorized in order to prevent a pupil from violently harming himself or others or damaging things.

The *use of force* is not defined in any more detail in the administrative rules.¹⁹ It can rightly be assumed that the term primarily includes any physical intervention that would generally be punishable as a crime, including violence or other bodily harm, unlawful coercion, or deprivation of liberty.²⁰

15 See the Regulation Sec. 18, and the Guidelines para. 52.

16 Cf. the Regulation Sec. 4(1), and the Guidelines para 14.

17 See in more detail the Regulation Sec. 16, and the Guidelines para. 46-48.

18 The provision is now placed in the Regulation Sec. 17, cf. the Guidelines para. 49-51.

19 Under the Adult Responsibility Act, the provisions on the use of force are more detailed. See below.

20 The implementation of the measures listed in the Regulation might be characterized as use of force in a broader sense. In the present context, however, it is the legality of the use of force in the form of physical intervention that is of primary interest.

According to the ministerial guidelines on promoting good order, the use of force requires that an assault or an act of vandalism actually occurs or that there is an imminent risk that cannot be prevented or halted in any other way. Physical force may only be used to the extent absolutely necessary.²¹

The guidelines further recommend that a teacher involved in the use of force should make a note of the incident and inform the school principal as soon as possible so that the school principal can also notify the child's parents and, in cooperation with them, follow up on the incident, eventually involving the social authorities and/or obtaining educational-psychological advice.²²

In cases where force has been required, the teacher may choose to dismiss the child immediately from class for the remainder of the school day if such a measure is considered necessary for the satisfactory continuation of teaching.²³

Neither the executive Regulation nor the adjacent ministerial guidelines provide specific instructions on how a teacher can or should deal with less severe conflicts, e.g., by restraining the child briefly or, without actual use of force, gently leading the child away from a tense situation.²⁴

The Prohibition of “Corporal Punishment”

The school and its staff are no longer vested with special powers to use physical force to establish or maintain good order and discipline. The earlier ministerial Regulation abolished such measures in 1967. Thus, it is not permitted to slap or hit a pupil with a stick, whip, or cane or pinch a pupil. On the contrary, such a form of exercise of force will be punishable and in gross violation of employment law requirements.²⁵

Thus, a teacher may neither hit a naughty pupil to bring about order and quiet in the class, to get an unruly pupil to mop the bathroom after gym class, nor to get a rowdy pupil to line up at morning assembly. The teacher may also not reprimand a pupil by sending him or her on an exhausting drill walk or by locking a pupil up in a separate room. Furthermore,

21 See the Guidelines para 50.

22 See further the Guidelines para. 51, in connection with para. 12, 31 and 52.

23 See the Regulation Sec. 9(2) and the guidelines para. 24-27.

24 For an account of the current rules under Norwegian and Swedish law on the use of force and other physical intervention, see (Adolpsen & Sivan Holst, 2015).

25 For a review of the case law regarding the delimitation of punishable use of physical force against children in schools and institutions, see (Vestergaard, 2024a, Appendix 2).

a teacher may not hit a child on the head with the knuckles, pull a boy by the ears or by the hair at the temple as punishment for bad behaviour.

Generally, the general prohibition against corporal punishment implies that a teacher may not inflict any physical pain or discomfort on a pupil with the aim of sanctioning bad behaviour, e.g., if a pupil arrives late, shouts too loudly, talks constantly on mobile phone, pulls girls' hair, omits handing in homework on time, or draws graffiti on the wall. Such types of behaviour may only be addressed by the measures listed in the ministerial Regulation, e.g., by short-term detention or temporary exclusion from teaching, but not with corporal punishment. As mentioned, the use of other lesser measures may be permissible. However, no intervention may have the character of corporal punishment, not even if it is so lenient that the Criminal Code does not cover it.

Whether a pupil may be sent for a run around the sports field as a disciplinary measure will depend on the specific circumstances, but the presumption must be against the permissibility of such an action unless there is an apparent connection between the nature of the offence and the measure, e.g., because the child has deliberately skipped class during school's annual sports day, or the like. If such a measure in a specific case meets legitimate pedagogical standards, it must, in any case, satisfy a requirement of proportionality.

Disciplinary measures involving "degrading treatment" are also prohibited. The term refers to measures that, without having the character of corporal punishment, violate the individual's dignity and right to self-determination, e.g., by actions likely to humiliate the hurt party.

Self-Defence and Necessity as Justifications for the Use of Physical Force

As previously mentioned, the ministerial Regulation states that the physical use of force may be justified in instances of self-defence, necessity, etc. In such situations, any citizen is authorized to exercise physical force under the general rules of the law. Thus, the legality of using physical force to maintain order and discipline in the classroom is not derived from the provision in the ministerial Regulation, which refers explicitly to the law in general on such situations.

The Criminal Code, Sections 13-14, regulate instances where punishable acts can nevertheless be justified if they were committed in extreme situations where it would be unreasonable to require refraining from obedience to the law, e.g., because of self-defence, legal necessity, etc. In principle, the act constitutes a criminal offence. Still, the perpetration becomes exempt from punishment because the requirement of compliance with the letter

of the law must yield to the safeguarding of more essential interests. Of course, a teacher is not liable to criminal responsibility if he or she causes physical pain or harm by grabbing a pupil's arm to prevent the child from seriously hurting a classmate.

Still, the physical intervention against a pupil can incur legal and practical consequences for a teacher even if the action is not punishable. Thus, exceeding the limits set out in the ministerial Regulation may have implications under employment law, even if there is no basis for criminal liability in the specific case. And, as mentioned previously, teachers in general have become anxious about the prospect of dismissal and legal prosecution, if pupils claim to have been subjected to unlawful physical treatment, even if such an allegation is not substantiated. Because the law is characterized by uncertainty and disagreement about the limits of justified physical intervention against pupils with disruptive, offensive, or dangerous behaviour, some teachers avoid physical contact to prevent negative personal consequences. But it may seem unsatisfactory to refrain from some proportionate physical intervention, when orderly care and lenient educational means do not effectively remedy a serious disorder problem,

The Legal Basis for Proportional Physical Intervention as an Exercise of Authority

There may well be a relevant legal basis for implementing a physical intervention against schoolchildren, even if proper authority cannot be found in the rules on self-defence, necessity, etc. A complete account of the law on the matter requires application of an administrative law perspective, too.²⁶ This approach is discussed in the following section.

Intervention by public authorities against citizens requires legal authorization. Permission to take action must be explicitly established by law for the implementation of severe measures. The authorization can be derived from provisions in a ministerial Regulation issued within the framework of formal legislation. In connection with the exercise of more lenient measures, explicit legal authorization is not required, as it is recognized that the authority to intervene can be derived from customary law, "the merits of the matter," etc.

Neither the Public-School Act nor the ministerial Regulation contain provisions on physical intervention against school pupils in less severe situations where the exercise of self-defence is irrelevant. Only rules on non-physical measures have been provided, and no detailed instructions have been issued on how a measure should be enforced if it cannot be implemented without resistance. For example, neither the Act nor the administrative Regu-

26 This perspective has previously been adapted by (Adolphsen & Sivan Holst, 2015, pp. 113-148).

lation say anything about the right to physical intervention if a child does not want to hand over a mobile phone, or if a pupil disrupts teaching by incessantly playing audio recordings from an electronic device. In such instances, the ministerial Regulation provides for the exclusion of the pupil from class. But it does not say whether the exclusion can be enforced by physical force if the pupil does not voluntarily leave the site.

The question then is whether a teacher can be authorized to restrain, move, or hold an unruly pupil, even if there is no basis for applying the rules on self-defence, etc., in the specific instance. If this is assumed to be the case, the next question is whether the authorization to implement such interventions or measures is sufficiently secure and transparent.

Institutional Considerations as a Legal Basis for Physical Interventions

In current legal doctrine, it is usually assumed that there is a somewhat undefined area of law where, under certain circumstances, it is permissible for the person responsible for a child's behaviour and conduct within a given framework to intervene physically in a way that would otherwise generally be considered unlawful coercion or punishable bodily harm, etc. Not any physical measure taken against a child should necessarily be described as use of force in a legal sense with corresponding legal guarantees for the person concerned. When assessing whether a measure against a child is so intrusive that some form of formal legal basis is required, it may, depending on the circumstances, be relevant to consider the child's age, maturity, and functional ability.²⁷

During school hours, the school as an institution and the individual teacher are responsible for ensuring general good order and proper social conduct. The authority to physically intervene against a child who disrupts teaching, although not by acting violently or damaging property, is derived from consideration regarding "institutional matters," which constitute a very uncertain legal basis.

In the past, when the citizens' legal status was not as intensively regulated as in present days, the authority to use physical force in a certain area of law was not necessarily derived from written law issued or authorized by the legislature. It was perceived as justified in the

27 A teacher or educator on a field trip with a small child may decide that the parties must hold each other's hands, while a similar requirement cannot, by nature, be imposed on adolescents (Adolphsen & Sivan Holst, 2015, p. 29).

light of notions of emergency-like considerations or so-called “institutional considerations.”²⁸ An “institution” should be understood here as an entity that, for example, is responsible for the care, treatment, detention, or education of particular groups or that otherwise provides public services to citizens, including, among others, prisons, hospitals, schools, and educational institutions. Traditionally, it is a commonly accepted legal principle that the management of such an institution, without authority in formal law or regulation, may establish specific or general provisions for the institution ensuring the overall functioning of the institution.

The recognition of such institutional considerations as a sufficient legal basis is a reflection of the idea that when the existence of an institution is established or presupposed by law, there is an implied authorization for the institution’s management to issue general rules and make specific decisions necessary to make the institution function by its purpose, including the introduction and practice of measures that involve restrictions on the individuals’ self-determination.²⁹ However, this does not indicate in detail which physical interventions and actual use of force may be implemented.

In principle, rules derived from institutional consideration and actions taken on this basis must be founded on objective considerations. They must not exceed what is necessary for the fulfilling the purpose of the institution. Furthermore, general principles of administrative law apply, including objectivity, proportionality, and leniency. In addition, the freedoms in the Constitution and the ECHR apply, determining how an institution can regulate its internal affairs. Interventions based on institutional considerations must not constitute a disproportionate restriction on the individual’s freedom, right to participation, co-determination, self-determination, or other fundamental legal rights.

Over time, public law has developed towards a position where the exercise of powers of authority requires a precise and secure legal basis, at least if more intrusive measures are involved. The need for clear and specific legal authority is more significant the more direct and severe the regulation is. In accordance with this point of view, the Ombudsman of the Danish Parliament holds the fundamental position that “interference of a particular

28 On “institutional considerations” as a legal basis for intervention as part of the exercise of authority, see (Andersen, 1954, p. 542); (Christensen & Albæk Jensen, 2020, pp. 215 ff), and (Revsbech, 2016, pp. 208 ff). See also Report on the use of force against children and young persons placed outside the home, Committee Report No. 1551, 2015, sections 2.6 and 5.3 (*Betænkning om magtanvendelse over for børn og unge, der er anbragt uden for hjemmet*, bet. nr. 1551, 2015).

29 The status of “institutional considerations” as a legal source of authority has been analysed by the Ombudsman of the Danish Parliament, too (Fenger, 2021, pp. 243-249). The Ombudsman’s article contains an account of the practice of the Office of the Ombudsman and a response to criticism from two professors of public law (Halleskov & Højgaard Mørup, 2021, pp. 231-242).

intensity should be regulated by formal law for reasons of, among other things, legal certainty.” In cases where the legislative power has not clearly stated whether the institutional situation can constitute a legal basis for a particular type of decision, there is, in general, a presumption against rules or decisions made on the basis of institutional considerations if similar matters in other areas of law have expressly been regulated by formal legislation.

In a specific case, the Ombudsman stated, “The use of physical force is such a severe intervention that it must have a manifest legal basis.” Thus, the Ombudsman rejected the idea that the use of force in the specific situation was based on general legal principles and rules of interpretation, including notions regarding the merits of the case.

Thus, it can be observed that, according to current legal doctrine, the authority to implement physical interventions must be based on formal and clear manifestations by the legislature. In the author’s opinion, this fundamental point of view should now also be applied in the school sector.

Rules on the Use of Force, etc., under the Act on Adult Responsibility

In 2016, the use of force and other types of physical intervention against children and young persons placed in residential care was meticulously regulated by the introduction of a particular Act on adult responsibility for children and young persons placed in residential care, the Adult Responsibility Act (*voksenansvarsloven*).³⁰ The Act is supplemented by an executive ministerial Regulation and a set of detailed guidelines clarifying the rules.³¹ In addition, the Ministry of Social Welfare website provides links to materials on recommended methods to avoid the use of force, including informative video clips, exemplary cases, examples of procedural rules, reporting forms, and other information that can support the application of the rules in practice.

The fundamental purpose of the Adult Responsibility Act is to protect children in residential care against mistreatment and to prevent unnecessary or excessive use of force and

30 The Adult Responsibility Act (*voksenansvarsloven*) was introduced by Act No. 619, 2016 on Adult Responsibility for Children and Young Persons in Residential Care, most recently updated by Consolidation Act (*lovbekendtgørelse, lbk.*) No. 1006, 2024. The Act was based on a committee report (*betænkning nr. 1551, 2015*). The committee was established after the Parliament’s Ombudsman criticized that the legislative framework was vague and unclear.

31 See the executive ministerial Regulation on Adult Responsibility for Children and Young Persons in Residential Care, most recently consolidated by Regulation No. 263, 2024 (*voksenansvarsbekendtgørelsen*), and the Guidelines on Adult Responsibility No. 10229, 2019 (*voksenansvarsvejledningen*).

other interference with an individual's right to self-determination. The Act sets out the framework for institutions and foster families to "use force and make other interventions in accordance with the right of self-determination of children and young persons in residential settings as part of providing daily care." The rules are intended to ensure the legal protection of those in care.³² The Act describes the situations in which force may exceptionally be used or less intrusive physical measures may be taken.

The Adult Responsibility Act is based on the premise that children in institutional settings have the same rights as other children, including the right to professional care and protection. In the explanatory notes to the bill, it was emphasized that providing care means, that "you help the child or young person in difficult situations where the child or young person is not able to foresee the consequences of their own actions."³³ There may, therefore, be a need for an adult to intervene in a specific situation and take action to take responsibility for the child or young person so that they do not cause harm to themselves, to others, or to property. The preparatory work for the Act included the following general comments.

"Taking care of a child may thus mean that it may be necessary to grab the child and hold it or to lead it into another room. Such actions interfere with the child or young person's right to self-determination and are categorized as the use of force. Using force is a balancing act between providing the child or young person with the necessary care and protection and respecting the child or young person's personal integrity and right to self-determination. It is crucial that the use of force does not replace care and pedagogical support and is only used when necessary. It is a condition that all other pedagogical options have been exhausted and that there are no other means to help the child or young person. Intervention with a child or young person's self-determination must always be proportional. It is also crucial that the consequences of the use of force on the relationship and trust between the child or young person and the foster family or institutional staff are always considered. Therefore, any use of force against a child or young person must give rise to reflection among the pedagogical staff at the placement site."

The 2016 legislative reform clarified that, as part providing daily care for children and young persons in residential settings, necessary interventions in the right to self-determination is permitted to "ensure the interests of the child or young person, including ensuring that physical and psychological needs are met and that the child or young person builds up skills to engage in social relationships, thrive and receive learning". The assess-

32 Cf. the Adult Responsibility Act Sec. 1.

33 See also the proposal for the Adult Responsibility Act, Bill L 162 of 30 March 2016, General comments, para. 1.

ment of how the care of a child is best provided must be based on a specific weighing of the child's fundamental rights and considering the child's age, maturity, and functional ability. Furthermore, the principle of proportionality must be observed. An effort must be made to ensure the child's best interests. Using force and other interference with the right to self-determination may only occur exceptionally and never replace care and social educational efforts.

The Adult Responsibility Act and the related administrative regulations include express provisions on so-called "physical guiding" (*fysisk guidning*), on so-called "preventive assistance" (*afværehjælp*), and on "use of physical force" (*fysisk magtanvendelse*).³⁴ The rules differ concerning the various forms of placement, e.g., residential institutions, foster families, etc. The Act and the related regulations also contain provisions on the registration and reporting of preventive assistance and the use of physical force.³⁵ Reports must be sent to the Social Welfare Inspectorate (*Socialtilsynet*) and the local municipality. However, using physical guiding does not have to be registered and reported.

Physical guiding (*fysisk guidning*) involves physical contact that the child or young person does not resist. The authority to carry out physical guiding is granted to the residential institutions' staff and specialized foster families. The preparatory work for the Adult Responsibility Act explains the content of the concept of physical guiding and the conditions for implementing the measure.³⁶ Such an action is not considered covered by the rules on using force, including mandatory registration and reporting regulations.

Physical guiding may, for example, consist of the adult placing a hand on the child's shoulder and leading the child to another location without physical resistance. It may also include briefly and leniently restraining the child or young person. The upper time limit for what is considered "briefly" depends on an individual's assessment of the specific circumstances.

As part of physical guiding, the child or young person may be removed from a location where a group of people are gathered, e.g., a classroom or a living room. According to the legislative documents, "removal" means the child or young person is led away from a risk situation before it escalates. The measure can, for example, be implemented by leniently

34 For more information, see the Adult Responsibility Act Sec. 6 (physical guiding), Sec. 7 (general principles on the use of force and other interventions into the right to self-determination), Sec. 8 (preventive assistance) and Sec. 9 (physical use of force), and the Guidelines on Adult Responsibility No. 10229, 2019, para. 11-14.

35 See Adult Responsibility Act Sec. 21, the Regulation on Adult Responsibility No. 263, 2024, Sec. 22-23, and Guidelines on Adult Responsibility No. 10229, 2019, Chap. 28.

36 See also the proposal for the Adult Responsibility Act, Bill L 162 of 30 March 2016, comments on Sec. 6, and the Guidelines on Adult Responsibility No. 10229, 2019, Chap. 11.

placing an arm around the child's shoulder and encouraging the child to move away from the situation.

The condition for implementing physical guiding is that the measure is considered necessary for carrying out the institution' or foster family's responsibility to provide daily care or for the safety and well-being of others when the child harasses or bullies other clients, staff members, the foster family, or others at the placement site.

The rules on physical guiding (*fysisk guidning*) only apply as long as the child follows voluntarily and does not physically resist, for example, being taken to another place. If the child physically opposes what the adult wants the child to do, the physical contact must cease immediately, as the measure applied would otherwise be covered by the rules regarding the use of physical force, which is only authorized if stricter conditions are met, see further below.

The measure of *preventive assistance* (*afværgehjælp*) involves a child or young person being "briefly" restrained or dismissed from a situation when it is necessary to prevent the destruction or damage of their own or others' property of a "considerable value". The authority to implement preventive assistance is granted to staff at residential institutions and specialized foster families.³⁷ The preparatory work for the Adult Responsibility Act explains the concept of preventive assistance and the conditions for implementing the intervention.³⁸

The expression "considerable value" covers both objects of high economic or emotional value and the repeated destruction of objects of a lesser value.

Preventive assistance may be relevant when a child in a fit of rage is about to destroy a television set in the living room at the placement site. It may also apply when a child throws and breaks the placement site's dishes. The provision also covers repeated destruction of items of lesser value, such as inexpensive drinking glasses. Preventive assistance can prevent property damage even before the first glass is smashed. The crucial point is that there is an imminent risk that a child or young person will repeatedly destroy or damage things.

The preparatory work explains that "dismissal" means removing a child from a specific situation so that the unwanted behaviour is interrupted. Whether the child is misbehaving in a manner that warrants dismissal to avoid further damage depends on a specific assessment of the actual situation.

37 Cf. the Adult Responsibility Act Sec. 8.

38 Cf. the proposal for the Adult Responsibility Act, Bill L 162 of 30 March 2016, comments on Sec. 8, and the Guidelines on Adult Responsibility No. 10229, 2019, Chap. 12-13.

The upper time limit for what is considered “brief” depends on an individual assessment of the specific circumstances, including the child’s or young person’s age, maturity, and functional ability.

In cases where preventive assistance is used, the episode must be registered and reported to the municipality and the Social Welfare Inspectorate (*Socialtilsynet*).

If the child, exhibits considerable physical resistance during a brief restraint, the individual may only be restrained and taken to another room if the rules regarding the use of physical force are only authorized if stricter conditions are met; see further below.

The use of *physical force* involves restraining or forcibly removing a child to another room. The use of physical force is only permitted in a situation where the child is thereby prevented from harming himself or herself, or others.

The authority to implement physical force is granted to staff at residential institutions but not to foster families. The preparatory work for the Adult Responsibility Act explains the content of the concept of physical force and the conditions for such intervention.³⁹ Restraining means a child is firmly physically controlled, e.g., holding the child by putting your arms around it.

The condition for using physical force is that the child exhibits behaviour that poses a risk to the child, other children, staff, or others at the site. This measure may, for example, be warranted if a child persistently harasses another child and thereby provokes a conflict that could lead to a physical fight. In such a case, it may be necessary for the staff to use physical force to separate the parties.

Restraining a child must never include hitting, kicking, or other types of excessive violence. According to the preparatory work, a child can be taken to another location, such as the child’s own room. Restraint and removal can be implemented for a minor child by carrying the child to another site. For older children or young persons, restraint and removal can, for example, be done by holding them firmly by the hand and taking them to another location.

Any use of physical force must always be registered and reported.

39 See, for example, Bill L 162 of 30 March 2016, comments on Sec. 8, and the Guidelines on Adult Responsibility No. 10229, 2019, Chap. 12 and 14.

For semi-closed residential institutions and secure units, there are special provisions regarding violations of standard house rules issued by the government.⁴⁰ The staff can enforce such rules by implementing “appropriate reactions” of an educational or pedagogical character. The authorization even covers instances that do not pose an imminent danger to somebody. According to the administrative guidelines such measures can, for example, be relevant in case of a violation of the rules on good behaviour in common areas, understood as “behaviour that does not disturb the community or the safety and security of the children and young persons, and behaviour involving unacceptable language, violent, offensive or noisy behaviour.”⁴¹

In addition, authority has recently been introduced to use physical force in the mentioned residential institutions/units to confiscate illegal substances or alcohol and temporarily confiscate mobile phones or other electronic communication and gaming equipment.⁴²

The Overlapping Rules in the Public-School Act and the Adult Responsibility Act

The rules in the Adult Responsibility Act on physical guiding, preventive assistance, and the use of physical force also apply to internal schools at residential institutions.⁴³ Thus, teachers’ authority to implement physical interventions against unruly pupils corresponds to that which applies to staff members in general. This regulation prevents various segments of the staff from having to navigate two different sets of rules, either the Public-School Act or the Adult Responsibility Act.

However, the rules of the Adult Responsibility Act *do not* apply to children who live at home with their parents or are placed in a foster family and who are temporarily in respite care at a children’s institution where pupils attend an internal school. The rules in the ministerial Regulation on good order in Public Schools, including the rules on implementing physical measures, apply in full to these two groups of pupils.

40 The extension was adopted by Act No. 1720, 2018, see more specifically the Adult Responsibility Act Sec. 4 (2-5), and Sec. 9 (5).

41 See executive ministerial Regulation No. 1006, 2024 Sec. 2 (1)(7), and the Guidelines on Adult Responsibility No. 10229, 2024 Chap. 8, especially para. 71.

42 The extension was adopted by Act 680, 2024, see in more detail the Adult Responsibility Act Sec. 9 (3-4), Sec. 15 b (temporary seizure of electronic devices), and Sec. 16 (search and seizure), and the Guidelines on Adult Responsibility No. 10229, 2024, Chap. 8, especially para. 72.

43 Cf. the Adult Responsibility Act Sec. 2 (4), as introduced by Act No. 1544, 2016. See in more detail, the Guidelines on Adult Responsibility No. 10229, 2019 para. 27.

Some residential institutions only accommodate children in full-time care, while others only offer temporary respite care. However, some institutions serve both types of clients. In addition, there are institutions that have children in full-time care, children in respite care, and, furthermore, operate internal schools attended by children placed on site, children placed in another institution, children who live at home with their parents, and children placed in a foster family.

Thus, which set of rules applies in a particular situation depends on whether the child lives at the parental home or is placed in care at an institution or with a foster family. If a child is in respite care with a foster family, it also depends on the type of foster family, because only some foster families are recognized as specialized caretakers. Consequently, correct application of the rules requires that a staff member has specific knowledge of where each child lives or is placed, thorough understanding of the different sets of rules, and the ability to apply the relevant rules adequately.

The Ministry of Social Welfare has acknowledged to the Parliament's Ombudsman that it places great stress on the staff that different rules apply regarding physical intervention to children placed temporarily in respite care at an institution and children who attend internal schools.⁴⁴ The Ombudsman has stated that the current legal situation makes it difficult for staff, including temporary employees, to comply with the relevant rules. This problem is especially manifest when decisions must be made swiftly due to an imminent danger. In continuation of inspection visits to various residential institutions, it is the experience of the Ombudsman that there is a lack of sufficient knowledge of the rules under the Adult Responsibility Act at several sites. This is also the situation concerning institutions operating internal schools where children who are not residents attend classes at the internal school.

The rules in the Adult Responsibility Act also do not apply to schools operated under the system of day treatment facilities (*dagbehandlingstilbud*, now called *behandlings- og specialbehandlingstilbud*). Here, the ministerial Regulations on promoting good order in public schools apply in full to children in residential care and other children attending classes at the facility.⁴⁵

Uniform rules across the entire school sector would create greater clarity concerning the authority granted to the teaching staff at institutions operating internal schools, including pupils who attend the internal school but have not been placed in residential care.

44 See the Ombudsman's Report (*Folketingets Ombudsmands beretning*, FOB 2021-13).

45 Cf. the Public-School Act Sec. 52 (a).

Recommendation to transpose the Rules of the Adult Responsibility Act to the Area of Public Schools in General

The rules in the Public-School Act and the adjacent provisions in the executive ministerial Regulation on good order and discipline do not cover all situations where there is a need to intervene to establish and maintain peace. The provisions say nothing about situations where, abstaining from the actual use of force, it may be appropriate to have physical contact between the adult and the pupil by so-called physical guiding (*fysisk guidning*), meaning the kind of lenient intervention to which the pupil does not physically resist. There is also no clear distinction between the means authorized to prevent property damage and in situations where an individual is at risk, and there are no provisions on the right to enforce violations of house rules by physical intervention.

According to contemporary legal doctrine, it is fundamentally untenable that the rules in this area do not rest on a secure legal basis but must be derived from an adjacent ministerial Regulation supplemented by unwritten “institutional considerations.” The legislature has dealt with such legal matters in other areas, and an explicit legal basis has been provided, including a well-developed framework on the powers to use force and other physical interventions in connection with the exercise of authority.

With adequate adjustments, significant parts of the legislation on adult responsibility for children in residential care can be advantageously transferred to the entire school sector. Within the realm of private schools, there are the same good reasons as within the public school sector for clarifying the powers of the institutions and individual teachers and making it mandatory to register and report the actual use of force.⁴⁶ The same applies to boarding schools and private vocational schools. It seems pointless and inappropriate for different settings where adults are responsible for education, upbringing, and treatment of children and young persons to have different rules for handling similar situations.⁴⁷

The registration and reporting practice that has already been established in some municipalities offers compulsory rules to this effect through formal legislation, as has previously been done with regard to the practice in residential institutions for children and young persons. Such schemes can support professional awareness of best practices.

In accordance with contemporary legal doctrine, it is the responsibility of the legislature to clarify the rules regarding the use of force and other physical intervention against individu-

46 See (Christiansen & Adolphsen, 2021).

47 For a more detailed presentation of the legal status and a commented proposal for new legislation, see (Vestergaard, 2024 a).

als. For pupils and staff in the school sector, such legislation would enhance legal certainty significantly. More precise standards ought to be established on the right to use different types of means to promote good order so that interventions only occur in compliance with the fundamental principles of objectivity, proportionality, and leniency.⁴⁸

It is not the purpose of the proposal submitted here to widen the powers on the use of force against children and young persons in the school system. The aim of this article is to advocate for more legal certainty. A more explicit and precise set of rules could even further an informed professional debate, transparent management, and adequate supervision.

48 Recently, the Norwegian Government has introduced a Bill to the effect that physical intervention should explicitly also be authorized if a pupil who psychologically harasses another individual (*krenkjer ein person fysisk eller psykisk*) or seriously disturbs the teaching of other pupils (*vesentleg forstyrrar opplæringa til andre elevar*). See Proposisjon av 28 Februar 2025 til Stortinget (forslag til lovvedtak) Prop. 51 L (2024-2025) Endringer i opplæringslova og privatskolelova (utvidelse av adgangen til fysisk inngripen). Cf. Det Kongelige Kunnskapsdepartements høringsnotat av 21 Juni 2024, Forslag til regler om bruk av fysisk inngripen for å avverge at en elev utsetter noen for psykiske krenkelser eller vesentlig forstyrrer undervisningen for andre elever.

Bibliography

Betænkning om magtanvendelse over for børn og unge, der er anbragt uden for hjemmet [Committee Report on the Use of Force against Children and Young Persons in Residential Settings], bet. nr. 1551, 2015.

Det Nationale Forskningscenter for Arbejdsmiljø (2021). *Chikane, trusler og vold mod undervisere i den danske folkeskole* [Harassment, threats, and violence against teachers in the Danish Public School].

Folketingets Ombudsmands beretning [Annual Report of the Parliament's Ombudsman], FOB 2021-9, FOB 2021, 13, FOB 2016-41.

Adolphsen, Caroline & Nicolaj Sivan Holst (2015). "Magtanvendelse i danske skoler og dagtilbud" [The use of force in Danish schools and daycare settings], *Nordisk socialrettslig tidsskrift*, pp. 113-148.

Andersen, Poul (1954). *Dansk Statsforfatningsret* [Danish Constitutional Law], Gyldendal.

Christensen, Jens Peter & Jørgen Albæk Jensen (2020). *Dansk Statsret* [Danish Constitutional Law, 3. ed.], Juristforbundets Forlag.

Christiansen, Pia & Caroline Adolphsen (2021). "Magtanvendelse i friskoler og private grundskoler i Danmark" [The use of force in private schools in Denmark], *Juristen*, pp. 149-158.

Fenger, Niels (2021). "Anstaltsforholdet som hjemmelsgrundlag" [Institutional considerations as a legal source of authority], *Ugeskrift for Retsvæsen B*, pp. 243-249.

Halleskov, Louise & Søren Højgaard Mørup (2021). "Nyere ombudsmandspraksis om anstaltsforhold som hjemmel" [Recent case law from the Parliament's Ombudsman on institutional considerations as a legal source of authority], *Ugeskrift for Retsvæsen B*, pp. 231-244.

Revsbech, Karsten (2016). *Forvaltningsret – Almindelige emner* [Public Administrative Law, 6. ed.], Juristforbundets Forlag.

Vestergaard, Jørn (2024a). *Fysisk indgriben og andre foranstaltninger til fremme af god orden i grundskolen – veje til en bedre retstilstand* [Physical intervention and other measures to promote good order in public schools – roadmap for improvement of the law.], Faculty of Law, University of Copenhagen (72 pages), <http://jura.ku.dk>.

Vestergaard, Jørn (2024b). "Magtanvendelse over for skoleelever" [The use of force against school pupils], *Ugeskrift for Retsvæsen B*, pp. 172-182.