

CHILD PROTECTION POLICY
DepEd Order No. 40 Series of 2012

I. Basis of the Policy

- A. Article XV, Section 3 (2), 1987 Constitution
- B. Article XIV, Section 3 (2), 1987 Constitution
- C. UN Convention on the Rights of the Child

II. Specific Areas of Concern

- A. Peer Abuse – refers to willful aggressive behavior that is directed towards a particular victim, who may be outnumbered, younger, weak, with disability, less confident, or otherwise vulnerable
- B. Child Abuse – refers to the maltreatment, whether habitual or not, of the child which includes any of the following:
 - (1) Psychological and physical abuse, neglect, cruelty, sexual abuse and emotional maltreatment;
 - (2) Any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being;
 - (3) Unreasonable deprivation of his basic needs for survival, such as food and shelter; or
 - (4) Failure to immediately give medical treatment to an injured child resulting in serious impairment of his growth and development or in his permanent incapacity or death. [Section 3 (b), RA No. 7610]
- C. Discrimination Against Children – refers to an act of exclusion, distinction, restriction, or preference which is based on any ground such as age, ethnicity, sex, sexual orientation and gender identity, language, religion, political and other opinion, national or social origin, property, birth, being infected or affected by AIDS, being pregnant, being a child in conflict with the law, being a child with a disability or other status or condition, and which has the purpose and effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms

- D. Child Exploitation – refers to the use of children for someone else’s advantage, gratification or profit, often resulting in an unjust, harmful or cruel treatment of the child; these activities disrupt the child’s normal physical or mental health, education, moral or social emotional development; it covers situations of manipulation, misuse, abuse, victimization, oppression or ill-treatment
- E. Violence Against Children – refers to a single act or series of acts committed by school administrators, academic or non-academic personnel, against a child, which result in, or is likely to result in physical, sexual, psychological harm or suffering, or other abuses or threats of such acts, battery, assault, coercion, harassment, or arbitrary deprivation of liberty
- F. Corporal Punishment – refers to a kind of punishment or penalty imposed for an alleged or actual offense, which is carried out or inflicted for the purpose of discipline, training or control, by a teacher, school administrator, an adult, or any other child who has been given or has assumed authority or responsibility for punishment and discipline
- G. Similar Acts

III. Implementation

- A. Establishment of Child Protection Committees
- B. Adoption of Preventive and Remedial Measures

LEGAL CONTEXT OF THE CHILD PROTECTION POLICY

- I. Nature of Administrative Issuances
- II. Presidential Decree No. 603 – Child and Youth Welfare Code

TITLE III, Chapter II – The Home and the School

Article 76. *Role of the Home.* - The home shall fully support the school in the implementation of the total school program - curricular and co-curricular - toward the proper physical, social, intellectual and moral development of the child.

Article 77. *Parent-Teacher Associations.* - Every elementary and secondary school shall organize a parent-teacher association for the purpose of providing a forum for the discussion of problems and their solutions, relating to the total school program, and for insuring the full cooperation of parents in the efficient implementation of such program. All parents who have children enrolled in a school are encouraged to be active members of its PTA, and to comply with whatever obligations and responsibilities such membership entails.

Parent-Teacher Association all over the country shall aid the municipal and other local authorities and school officials in the enforcement of juvenile delinquency control measures, and in the implementation of programs and activities to promote child welfare.

TITLE IV – Child and Youth Welfare and the Church

Article 79. *Rights of the Church.* - The State shall respect the rights of the Church in matters affecting the religious and moral upbringing of the child.

Article 80. *Establishment of Schools.* - All churches and religious orders, congregations or groups may, conformably to law, establish schools for the purpose of educating children in accordance with the tenets of their religion.

Article 81. *Religious Instruction.* - The religious education of children in all public and private schools is a legitimate concern of the Church to which the students belong. All churches may offer religious instruction in public and private elementary and secondary schools, subject to the requirements of the Constitution and existing laws.

Article 82. *Assistance to Churches.* - Insofar as may be allowed by the Constitution, the government shall extend to all churches, without discrimination or preference, every opportunity to exercise their influence and disseminate their teachings.

Article 83. *Parents.* - Parents shall admonish their children to heed the teachings of their Church and to perform their religious duties. Whenever possible, parents shall accompany their children to the regular devotion of their Church and other religious ceremonies.

III. Republic Act No. 7610 – Special Protection of Children Against Abuse, Exploitation and Discrimination Act

Section 3. *Definition of Terms.* –

(b) "Child abuse" refers to the maltreatment, whether habitual or not, of the child which includes any of the following:

- (1) Psychological and physical abuse, neglect, cruelty, sexual abuse and emotional maltreatment;
- (2) Any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being;
- (3) Unreasonable deprivation of his basic needs for survival, such as food and shelter; or
- (4) Failure to immediately give medical treatment to an injured child resulting in serious impairment of his growth and development or in his permanent incapacity or death.

Section 10. *Other Acts of Neglect, Abuse, Cruelty or Exploitation and Other Conditions Prejudicial to the Child's Development.* –

(a) Any person who shall commit any other acts of child abuse, cruelty or exploitation or to be responsible for other conditions prejudicial to the child's development including those covered by Article 59 of Presidential Decree No. 603, as amended, but not covered by the Revised Penal Code, as amended, shall suffer the penalty of prision mayor in its minimum period.

IV. Supreme Court Decisions

A. George Bongalon v. People of the Philippines
G.R. No. 169533, March 20, 2013

Not every instance of the laying of hands on a child constitutes the crime of child abuse under Section 10 (a) of Republic Act No. 7610.¹ Only when the laying of hands is shown beyond reasonable doubt to be intended by the accused to debase, degrade or demean the intrinsic worth and dignity of the child as a human being should it be punished as child abuse. Otherwise, it is punished under the Revised Penal Code.

- B. Marcela Bagajo v. Hon. Geronimo Marave
G.R. No. L-33345, November 20, 1978 [EN BANC]

In this respect, it is Our considered opinion, and so We Hold that as a matter of law, petitioner did not incur any criminal liability for her act of whipping her pupil, Wilma, with the bamboo-stick-pointer, in the circumstances proven in the record. Independently of any civil or administrative responsibility for such act she might be found to have incurred by the proper authorities, We are persuaded that she did not do what she had done with criminal intent. That she meant to punish Wilma and somehow make her feel such punishment may be true, but We are convinced that the means she actually used was moderate and that she was not motivated by ill-will, hatred or any malevolent intent. The nature of the injuries actually suffered by Wilma, a few linear bruises (at most 4 inches long and $\frac{1}{4}$ cm. wide) and the fact that petitioner whipped her only behind the legs and thigh, show, to Our mind, that indeed she intended merely to discipline her. And it cannot be said, that Wilma did not deserve to be discipline. In other words, it was farthest from the thought of petitioner to commit any criminal offense. *Actus non facit reum, nisi mens sit rea.*