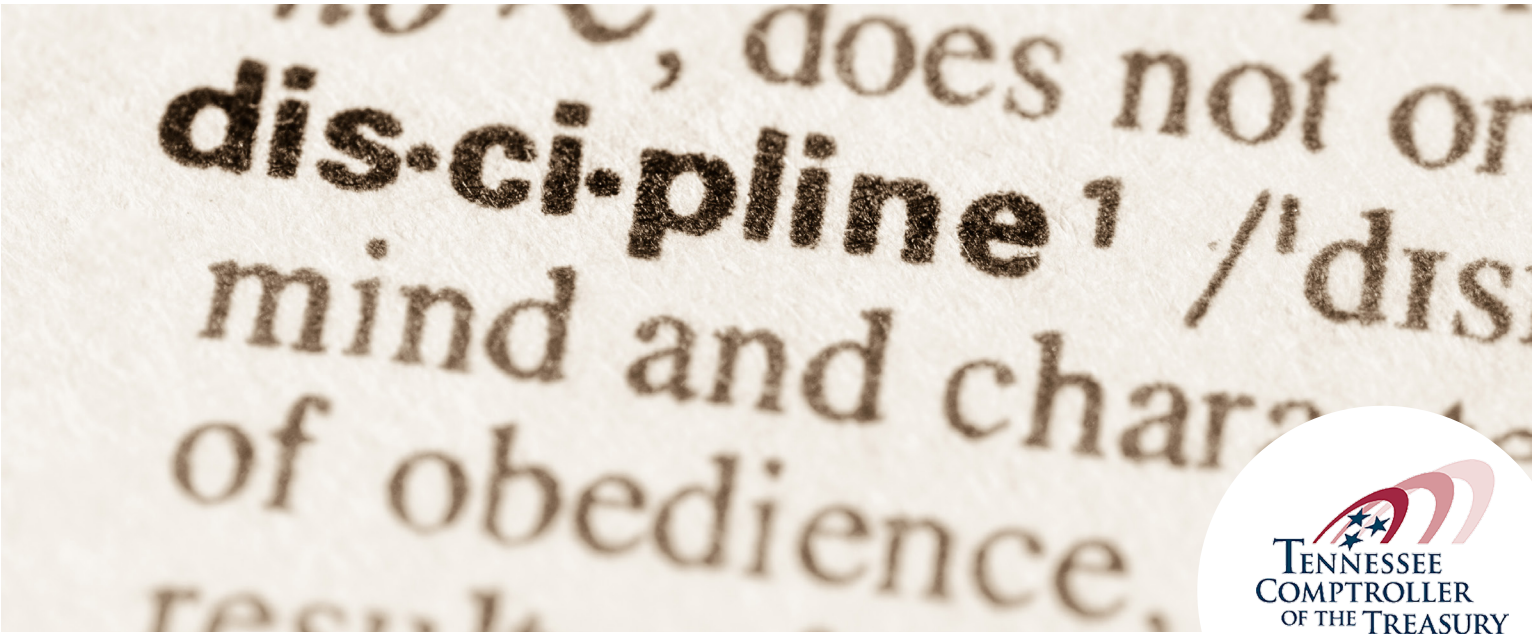
# CORPORAL PUNISHMENT IN TENNESSEE




Lauren Spires/Legislative Research Analyst
Lauren.Spires@cot.tn.gov

TENNESSEE COMPTROLLER OF THE TREASURY
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In July 2017, members of the Tennessee General Assembly requested that the Comptroller's Office of Research and Education Accountability (OREA) research the use of corporal punishment in Tennessee schools, and to determine if corporal punishment is being used disproportionately for students with disabilities.

**Corporal Punishment**
*Paddling, spanking, or other forms of physical punishment imposed on a student.*

**Students with Disabilities**
*Students receiving services under the Individuals with Disabilities Education Act (IDEA) and/or Section 504 of the federal Rehabilitation Act of 1973 (Section 504).*

Tennessee is one of 22 states that allow corporal punishment (in these states, it is either permitted through state law, or state law makes no reference to corporal punishment); 28 states and the District of Columbia have laws explicitly banning the use of corporal punishment.

Adopted in 1979, the School Discipline Act (*TCA* 49-6-4101 et seq.) allows corporal punishment to be used in Tennessee schools and directs local boards of education to adopt policies governing its use within their districts. State law does not address the use of corporal punishment for students with disabilities.

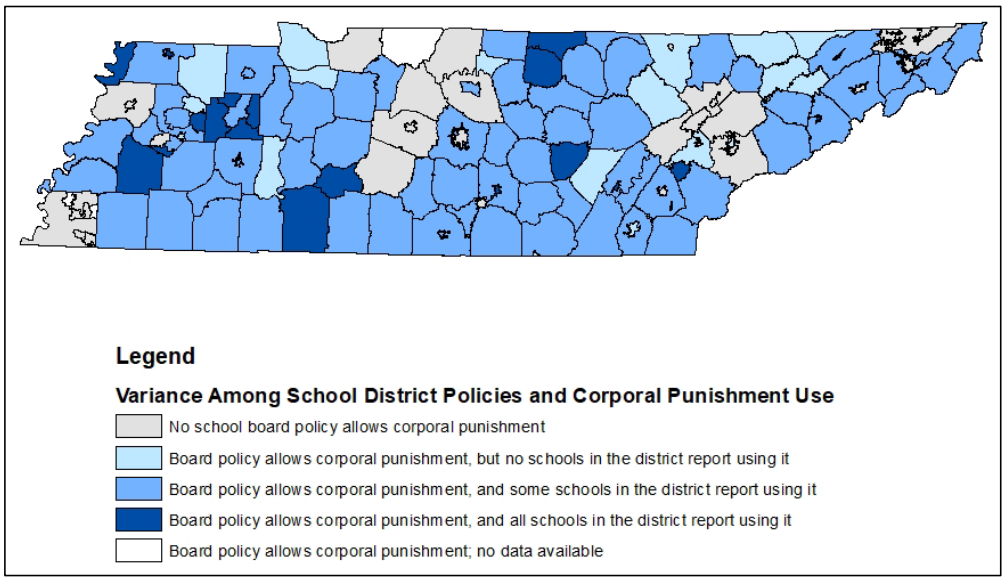
*OREA's full report on corporal punishment explores in greater depth the use of corporal punishment in Tennessee schools, including a detailed analysis of survey responses from principals and directors of schools, and an explanation of the federal disability laws (IDEA and Section 504). Appendices include a list of Tennessee school districts allowing the use of corporal punishment per board policy, a list of schools that reported using corporal punishment in the past three reporting years with available data (2009-10, 2011-12, and 2013-14), and their corresponding rates of use for students with and without disabilities. According to the U.S. Department of Education, data from the next reporting year, 2015-16, should be available in 2018.*

In August 2017, OREA conducted a comprehensive review of the corporal punishment policies of all school districts in Tennessee. Of the 148[1] total school districts, 109 have a board policy allowing corporal punishment and 39 do not allow its use, either explicitly per board policy or through lack of a board policy. Most school board policies on corporal punishment contain similar language and guidelines, and leave discretion to the principal, assistant principal, or teacher who administers corporal punishment within the school. Among other components, most policies require a witness to be present, and state that corporal punishment is to be administered only after other less stringent measures have failed or when the conduct of the student is of such nature that corporal punishment is the only reasonable form of punishment under the circumstances. One school board's policy addresses the use of corporal punishment specifically for students with disabilities, however, prohibiting its use if the student's misbehavior is a manifestation of his or her disability (i.e., the student's behavior is caused by his or her disability).

Data regarding the use of corporal punishment is not collected by the Tennessee Department of Education but rather by the Office for Civil Rights (OCR) within the U.S. Department of Education. This data is self-reported by schools and districts biennially (i.e., once every two years) and disaggregates corporal punishment use by numerous categories, including students with and without disabilities. There is a multi-year lag between when the data is reported by schools and when OCR releases the data to the public. The most current data available on corporal punishment use is from the 2013-14 school year.

The use of corporal punishment by schools in districts where it is allowed by board policy varies widely. In some districts, every school reports using corporal punishment, while in others, no school reports using it. (See Exhibit 1.)

## Exhibit 1: Tennessee school districts | Variance among board policies and corporal punishment use

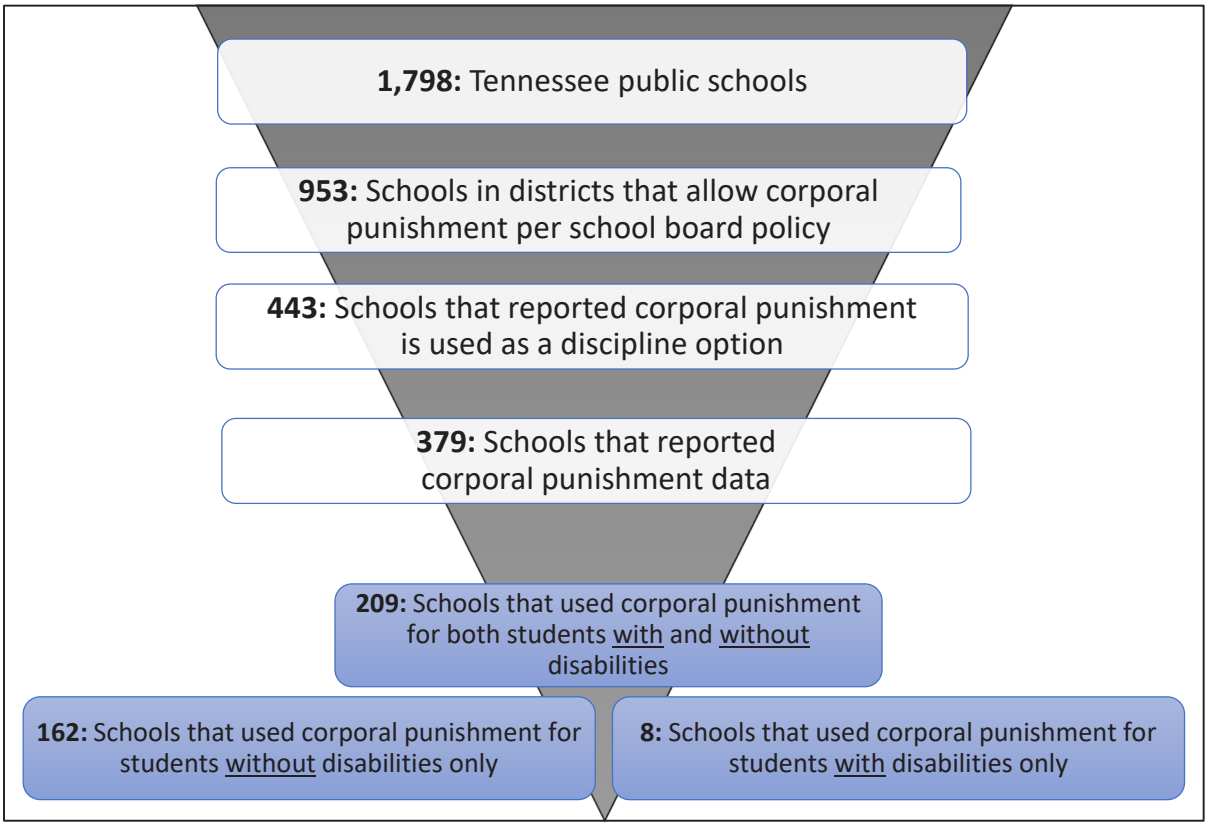



Source: OREA Review of School Board Policies, August 2017; OREA analysis of U.S. Department of Education Office for Civil Rights data, 2013-14 school year. Note: Board policies were reviewed in August 2017; data reflecting corporal punishment use is from the 2013-14 school year.

[1] This figure includes all 141 county, city, and special school districts, four state special schools (Alvin C. York Institute, Tennessee School for the Blind, Tennessee School for the Deaf, and West Tennessee School for the Deaf), the Achievement School District (ASD), the State Board of Education (SBE), and the Tennessee Department of Children's Services (DCS). The four state special schools, ASD, SBE, and DCS are treated as school boards in terms of creating their own policies for the school(s) within their jurisdiction. See Appendix D in the full report for a list of all 148 districts included in the analysis.

When reporting data to OCR, schools are asked if they use corporal punishment to discipline students. For the 2013-14 school year, 433 schools in Tennessee responded in the affirmative. Of those 433 schools, 373 reported data indicating corporal punishment is administered in their school. Analyzing the data submitted by those 373 schools showed that 208 schools administered corporal punishment to students with and without disabilities, 158 schools administered it only for students without disabilities (though no board policy expressly prohibits the use of corporal punishment for students with disabilities), and seven schools administered corporal punishment only to students with disabilities.

## Exhibit 2: Number of schools using corporal punishment, 2013-14 school year



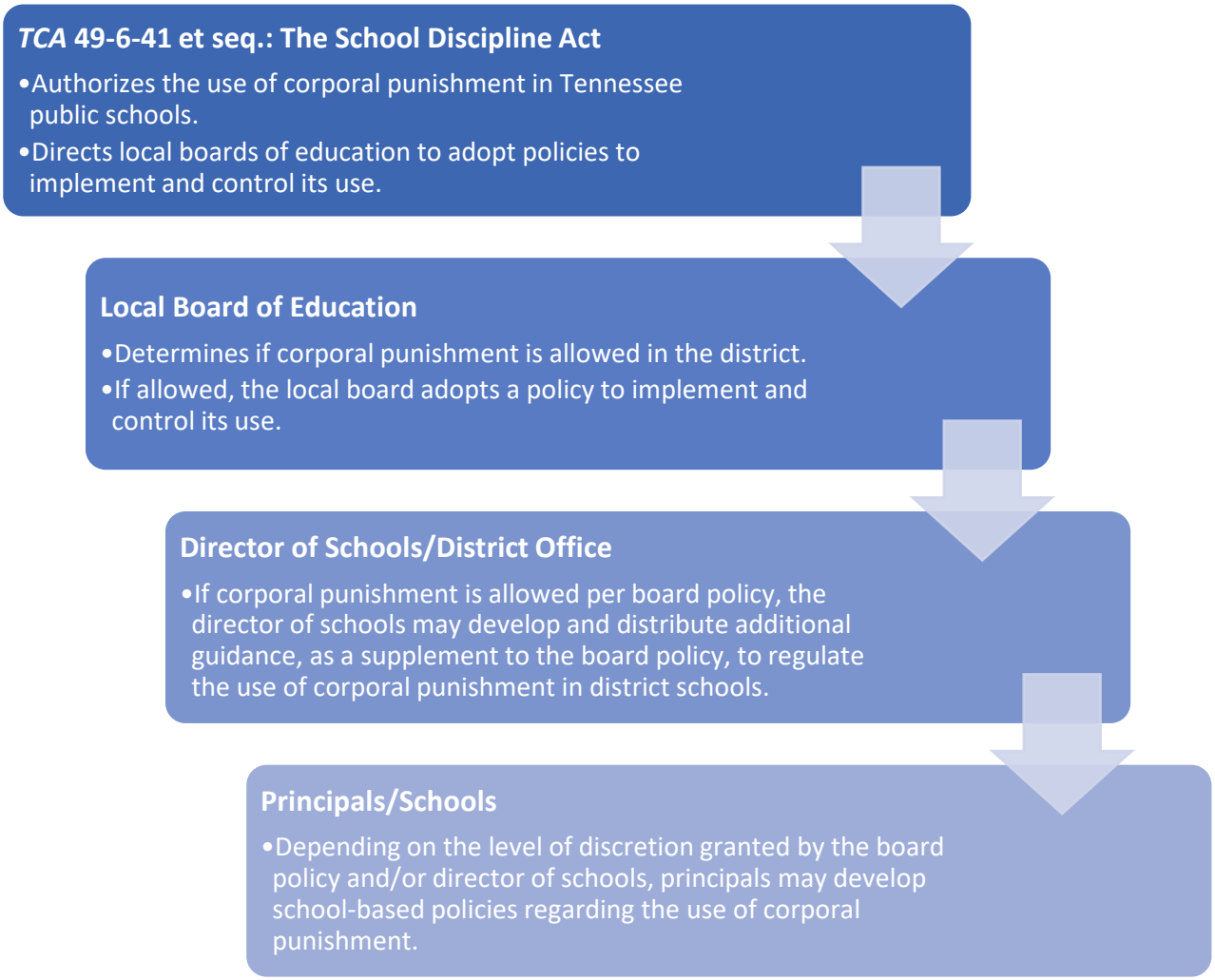

Source: OREA Review of School Board Policies, August 2017; OREA analysis of U.S. Department of Education Office for Civil Rights data, 2013-14 school year.

To better understand the decision-making that takes place between the adopted school board policies and the administration of corporal punishment in schools, OREA interviewed school and district administrators, including special education staff, and distributed online surveys to all school principals and directors of schools (superintendents) in Tennessee.

The survey responses showed that in some districts, the central office may distribute additional guidance, instruction, or regulation on the use of corporal punishment. The type of guidance and instruction varies across districts. In districts that allow and use corporal punishment, most directors give principals full discretion to make decisions regarding the use of corporal punishment for students with and without disabilities. Out of 84 principals, 55 percent said that they follow the same procedures for disciplining students with disabilities as for students without disabilities.

In most of the districts where corporal punishment is allowed by board policy but not used by any schools, the director of schools has instructed the principals within the district not to use it to discipline students.

## Exhibit 3: How decisions regarding the use of corporal punishment are made in Tennessee schools

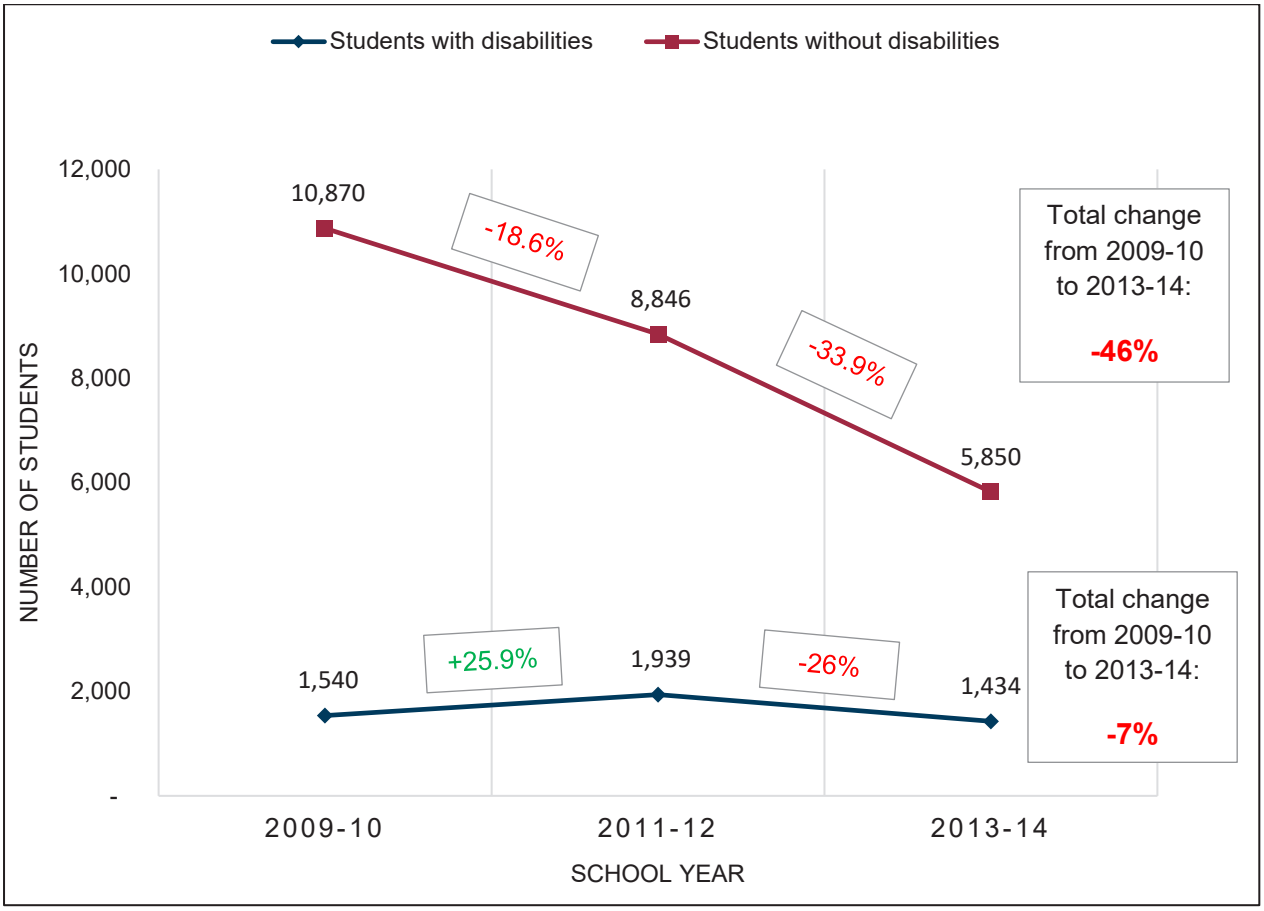



Source: OREA.

## *Data trends*

Reviewing corporal punishment use in Tennessee schools over the past three reporting years shows that the number of students with disabilities receiving corporal punishment declined from 2009-10 to 2013-14, but not by as much as the number of students without disabilities who received corporal punishment. About 7 percent fewer students with disabilities received corporal punishment in 2013-14 than in 2009-10, while the number of students without disabilities receiving corporal punishment declined by about 46 percent across the same time frame. (See Exhibit 4.)

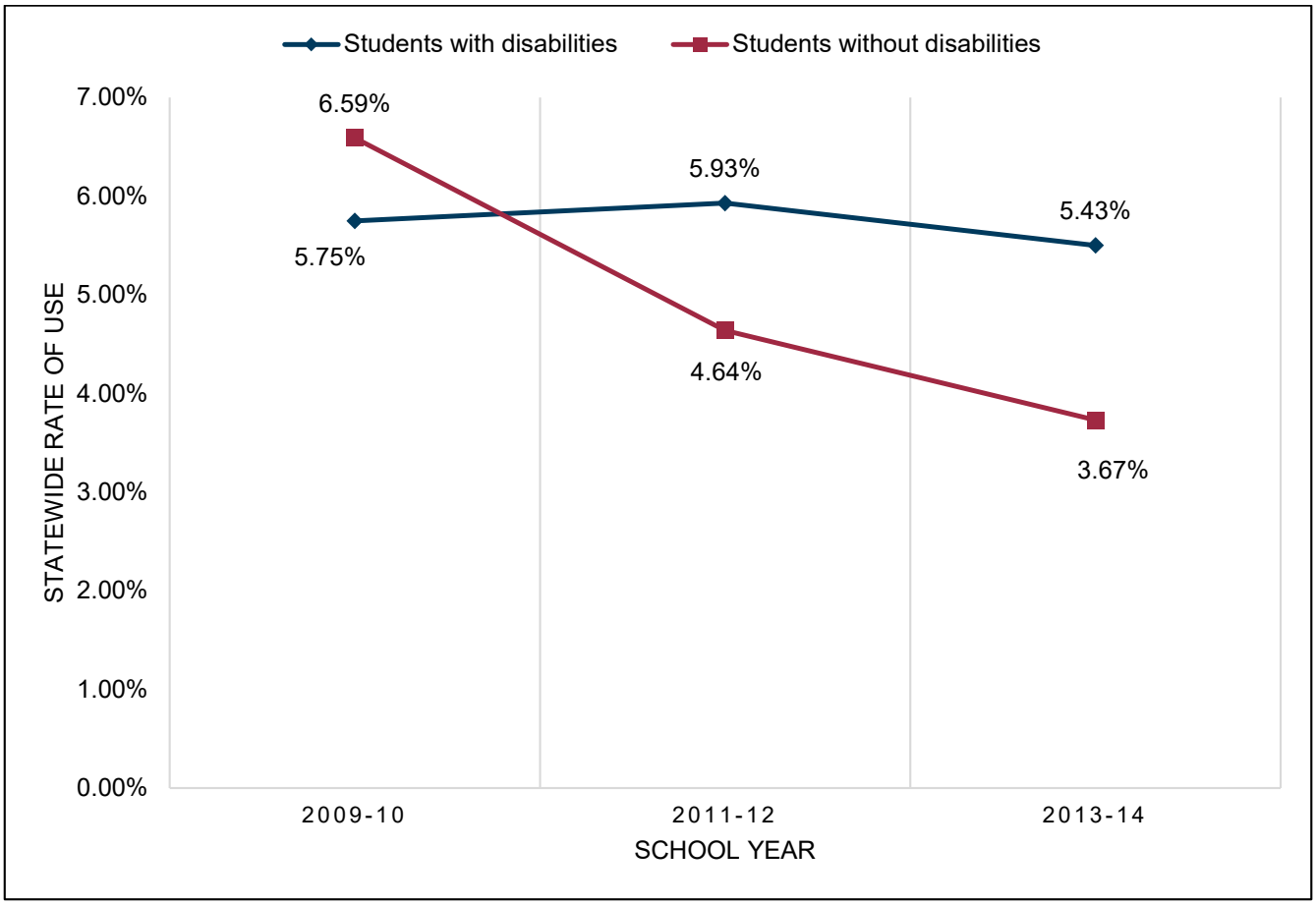
### Exhibit 4: Number of students with and without disabilities receiving corporal punishment, 2009-10, 2011-12, and 2013-14 school years




Source: OREA analysis of U.S. Department of Education Office for Civil Rights data from 2009-10, 2011-12, and 2013-14 school years.

In 2009-10, the statewide rate of corporal punishment use for students with disabilities was lower than the statewide rate for students without disabilities. In the following two reporting years, the opposite was true: students with disabilities received corporal punishment at a higher rate than their peers, by nearly 2 percentage points in 2013-14. The rate of corporal punishment use for students with disabilities remained relatively unchanged over the three reporting years. In contrast, the rate of corporal punishment use for students without disabilities was the highest in 2009-10, then declined in the next two reporting years, dropping nearly 3 percentage points from 2009-10 through 2013-14. (See Exhibit 5.)

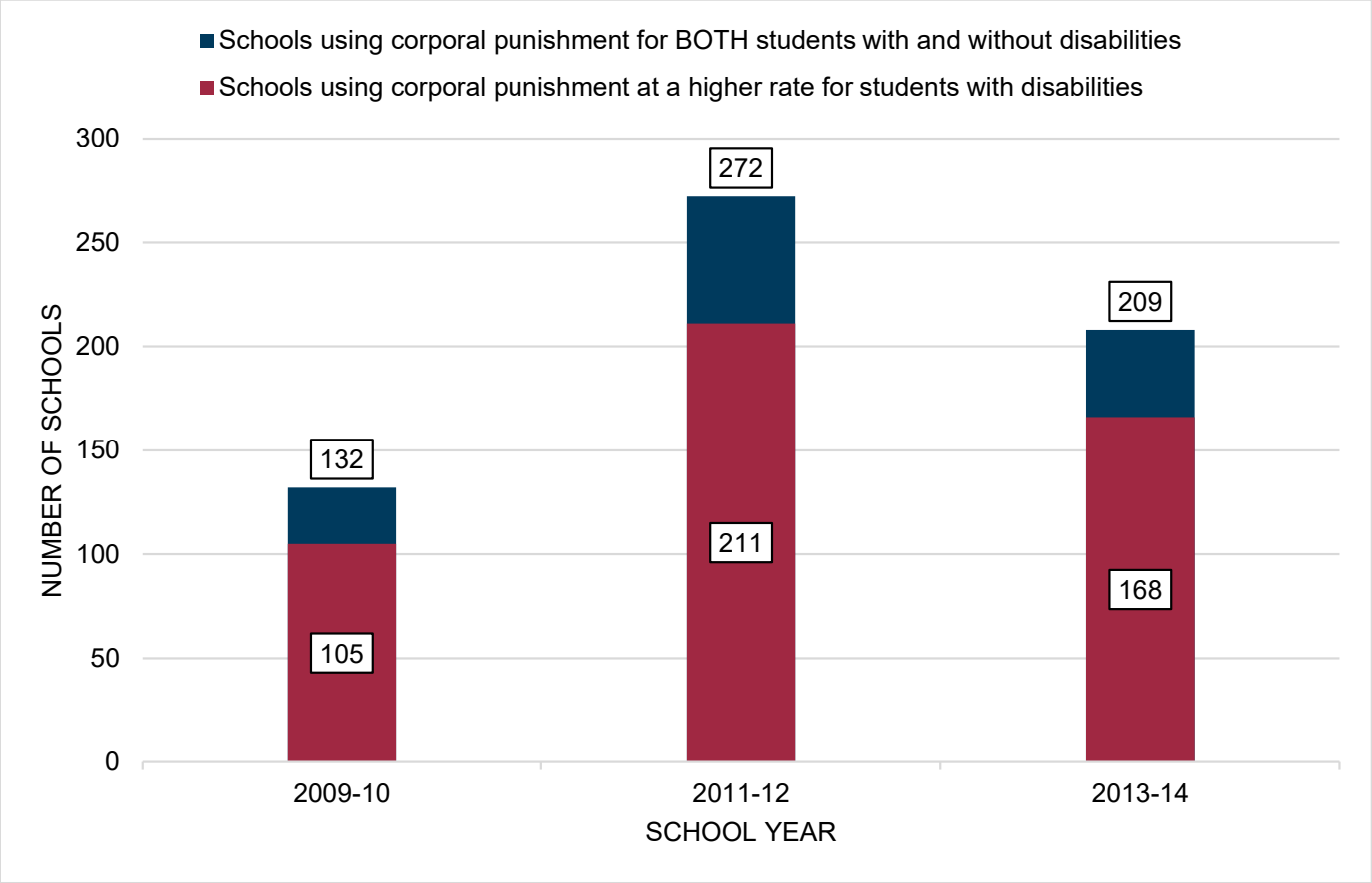
## Exhibit 5: Statewide rates of corporal punishment use for students with and without disabilities, 2009-10, 2011-12, and 2013-14 school years




Note: The rate of use only includes schools that reported corporal punishment data for any student. To calculate the rate of use for students with disabilities: the total number of students with disabilities enrolled in schools using corporal punishment was divided by the total number of students with disabilities receiving corporal punishment. To calculate the rate of use for students without disabilities: the total number of students without disabilities enrolled in schools using corporal punishment was divided by the total number of students without disabilities receiving corporal punishment.

In all three reporting years, about 80 percent of the schools that reported using corporal punishment for students with and without disabilities used it at a higher rate for students with disabilities. (See Exhibit 6.) The remaining schools (about 20 percent) did not use corporal punishment at a higher rate for students with disabilities.

**Exhibit 6: Number of schools using corporal punishment at a higher rate for students with disabilities, 2009-10, 2011-12, and 2013-14 school years**




Source: OREA analysis of U.S. Department of Education Office for Civil Rights data from 2009-10, 2011-12, and 2013-14 school years.
Note: The figures include only schools that reported data of corporal punishment use for BOTH students with and without disabilities. The figures do not include schools that reported data only for students with or without disabilities.

## *Potential data reporting errors*

The data on corporal punishment is self-reported, and OREA's research identified some reporting errors. After reviewing their school's 2013-14 data in an interview, administrators at one school indicated they had reported the number of instances, not the number of students receiving corporal punishment. Other schools may have misreported corporal punishment data in this manner. If the data was misreported in this way, and schools administer corporal punishment to individual students more than once in a school year, the data would overrepresent the number of students who received corporal punishment. If misreported for all students, those with and without disabilities, it is less likely this error would greatly affect the rates of corporal punishment use for one group and not the other.

Additionally, when reporting data to OCR for the 2009-10 school year, one school listed a greater number of students receiving corporal punishment than were enrolled in that category, resulting in a rate of use over 100 percent.

## *Data is not collected by disability category*

When reporting corporal punishment data, schools identify students with disabilities only as receiving services under the Individuals with Disabilities Education Act (IDEA) and/or Section 504 of the federal Rehabilitation Act of 1973 (Section 504); no further details are provided regarding the student's type of disability. The lack of specificity prevents OREA from determining which types of students with disabilities receive corporal punishment.

## *Variance among disability categories: IDEA and Section 504*

Within IDEA, there are 13 federally recognized disability categories, and Tennessee recognizes two additional categories for which an Individualized Education Program (IEP) is required: Functional Delay and Intellectually Gifted.[2] Within these 15 disability categories, there is a great deal of variance among students' mental, emotional, and physical abilities, with categories ranging from Traumatic Brain Injury to a Specific Learning Disability, such as in math or reading.

There is also variation among diagnoses for which students can be served under Section 504, which focuses on ensuring student access and participation, as distinguished from IDEA, which focuses on academic support and services. As part of OREA's survey on corporal punishment, principals were asked to list the most common reasons or diagnoses for which students are served under Section 504 in their school. Of the 305 principals who responded to this question, almost three-quarters listed attention deficit disorder or attention deficit/hyperactivity disorder (ADD/ADHD) in their top three reasons for which students are on a Section 504 plan in their school. Over half of principals (62 percent) listed general medical or health issues, 19 percent listed allergies (food or other), 13 percent listed diabetes, and 10 percent said anxiety.

## *Tennessee-specific disability categories*

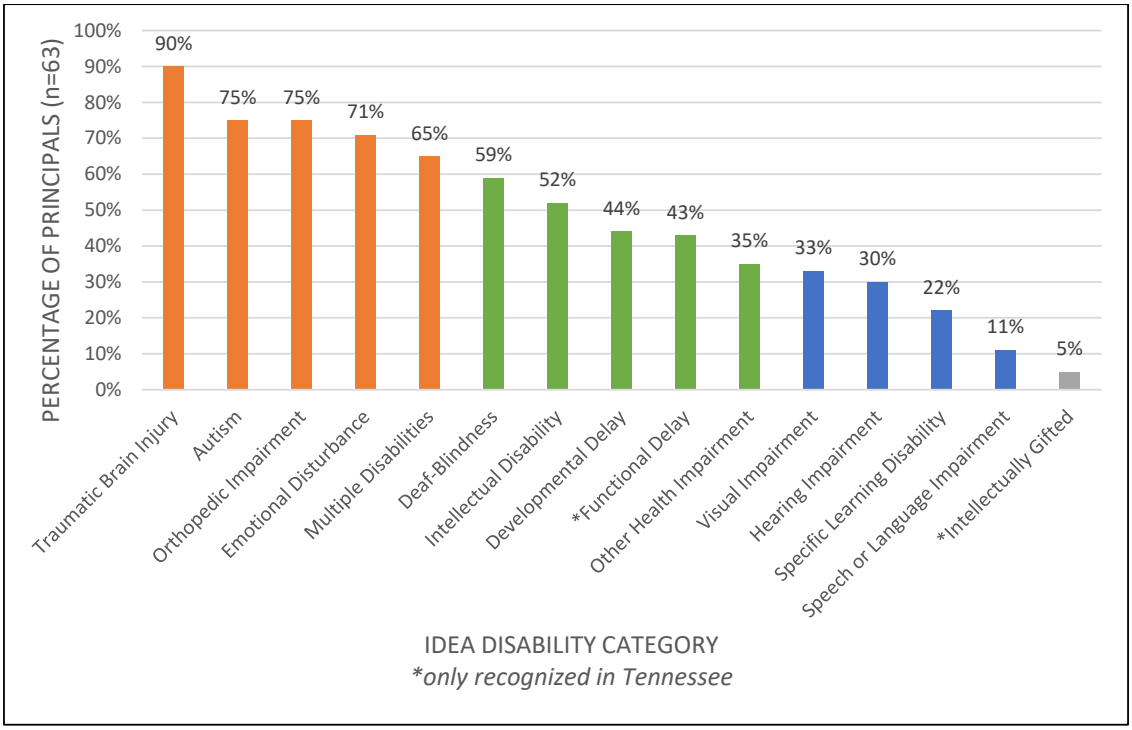
The two disability categories (Functional Delay and Intellectually Gifted) that are recognized in Tennessee but not by the federal IDEA law have a combined five-year average enrollment of about 21,600 students. Any student identified solely under one of these two disability categories in Tennessee would not be counted as a student with disabilities when schools report to OCR, as long as schools abide by OCR's instruction to report using the federally-recognized disability categories. (It is unclear if schools follow this instruction.) This potential exclusion of students should be considered when reviewing Tennessee's corporal punishment statistics.

## *Corporal punishment by IDEA disability category*

As part of OREA's survey on corporal punishment, principals of schools that use corporal punishment were asked which, if any, of the IDEA disability categories would render a student ineligible to receive corporal punishment in their school. Of the 63 principals who responded to this question, most said that they would not paddle a student with a Traumatic Brain Injury, Autism, an Orthopedic Impairment, or an Emotional Disturbance. (See Exhibit 7.)

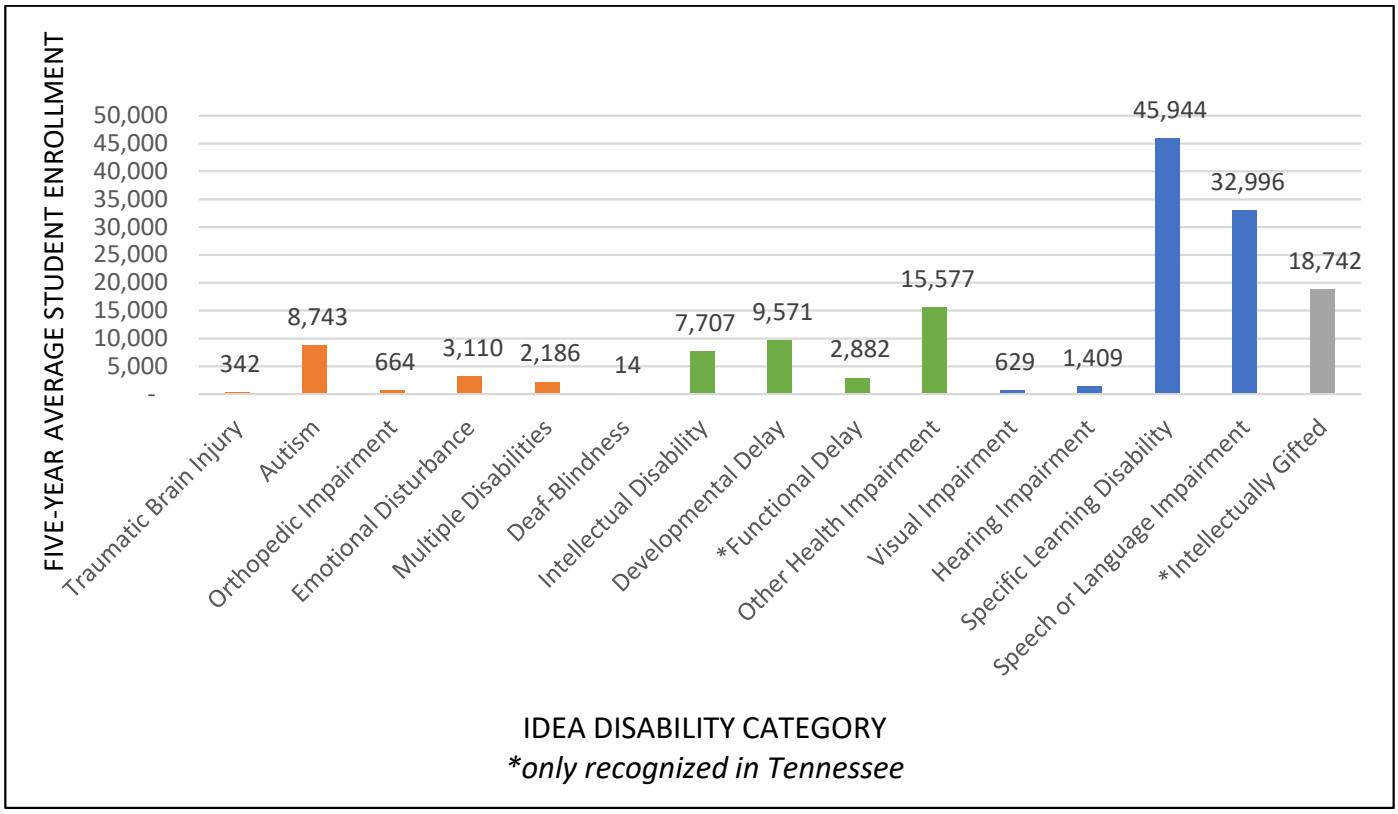
[2] Students recognized as 'Intellectually Gifted' in Tennessee are considered to have special education needs. See Appendix C in the full report for a detailed explanation.

## Exhibit 7: Survey of principals | Percentage indicating disability categories that render a student with disabilities ineligible for corporal punishment




Source: OREA Survey, Nov. 2017.

## Exhibit 8: IDEA disability category enrollment in Tennessee public school | Five-year average student enrollment for 2012-13 through 2016-17 school years




Source: Tennessee Department of Education, 2012-13, 2013-14, 2014-15, 2015-16, and 2016-17 school years. Note: The figures represent the average enrollment in each disability category over the past five years (2012-13 through 2016-17) for all Tennessee public schools.

While this information is based on survey responses from 63 principals, it helps to explain which types of students with disabilities may be more or less likely to receive corporal punishment. Comparing this information to the number of students enrolled in each disability category in Tennessee shows that the three disability categories that are the most likely to receive corporal punishment are also the three disability categories with the highest enrollment: Specific Learning Disability, Speech or Language Impairment, and Intellectually Gifted. (See Exhibit 8.)

### *Explaining disproportionality*

It is not possible to conclusively determine why students with disabilities receive corporal punishment at higher rates than their peers. This is due in part to the lack of good data on corporal punishment use.

None of the studies OREA reviewed addressed why students with disabilities receive corporal punishment at a higher rate than their peers without disabilities. A 2013 study published in the *Journal of Emotional and Behavioral Disorders* examined the predictors of using other types of discipline (e.g., suspension, expulsion, etc.) for students with disabilities. The study found that students with emotional and behavioral disorders, ADHD, and specific learning disabilities were more likely to be subject to exclusionary discipline. In contrast, the study found that students with disabilities who were classified as having "positive social skills" were less likely to receive exclusionary discipline. (Students with "positive social skills" in the study were those with a high social adjustment score, which was based on teacher ratings of student behavior, including how well the student got along with peers and how well the student avoided situations that might result in trouble.). It is not known if findings related to exclusionary discipline would be applicable to the use of corporal punishment. Identifying the factors that produce disproportionality in the use of corporal punishment for students with disabilities would require further research.

## Policy considerations:

**The General Assembly may wish to require the Tennessee Department of Education to collect corporal punishment data by disability category.** More specific corporal punishment data for students with disabilities would help policymakers pinpoint which types of students with disabilities (e.g., those identified with a Speech or Language Impairment, Intellectual Disability, Autism) receive corporal punishment and at what rate compared to their peers. This data could include the two Tennessee-specific disability categories (Intellectually Gifted and Functional Delay) that are potentially not reflected as students with disabilities in the federal data. Corporal punishment data for students receiving services under Section 504 could also be gathered.

**The General Assembly may wish to require that school board policies specifically address the use of corporal punishment for students with disabilities.** Of the 109 school board policies that allow corporal punishment, 108 do not specifically address corporal punishment for students with disabilities. There is wide variation in how schools and districts approach corporal punishment for students with disabilities across Tennessee, and these variations provide a number of policy options for potential inclusion in school board policies, such as:

- **Prohibition of corporal punishment for some or all students with disabilities:** OREA found that some Tennessee principals who use corporal punishment exempt students with certain disabilities, such as those with a Traumatic Brain Injury, Autism, an Orthopedic Impairment, or an Emotional

Disturbance. Students in other disability categories, such as Speech or Language Impairments or Specific Learning Disabilities, were more likely to be subject to corporal punishment. Four directors of schools indicated their districts do not use corporal punishment for students with disabilities. Of 107 principals, nine stated they do not use corporal punishment for students with disabilities, and 11 principals said it is rare for them to do so.

- **Restrict the use of corporal punishment for students with disabilities by requiring one or more of the following:**

  Parental consent – Though not specific to students with disabilities, eight board policies require that parents be contacted prior to the administration of corporal punishment, while 31 board policies specify that parents may opt-out of corporal punishment for their child. Fifty-eight principals who responded to OREA's 2017 survey indicated that a parent is called each time before corporal punishment is administered. Mandatory parental consent could be required for students with disabilities.

  Manifestation of disability assessment – One board policy prohibits the use of corporal punishment for students with disabilities if the misbehavior is a manifestation of his or her disability (i.e., the student's behavior is caused by his or her disability). One director said they tell principals to consider the manifestation of disability before using corporal punishment for a student with disabilities, and four principals said that they follow this practice.

  Inclusion in the Individualized Education Program (IEP) or Section 504 plan – In 2017, Oklahoma passed a law prohibiting the use of corporal punishment for students with the most significant cognitive disabilities, unless addressed annually in their IEP. Based on OREA's survey data, three principals said that they will only use corporal punishment for a student with disabilities if written in the IEP.

**Schools and districts should review and improve their data reporting methods.** To prevent errors in the reporting of corporal punishment data identified by OREA, schools and districts should review their reporting procedures and ensure corporal punishment data is reported correctly.

## Contact Information

**Justin P. Wilson**
Comptroller of the Treasury

**Jason E. Mumpower**
Chief of Staff

**Comptroller of the Treasury**
State Capitol
Nashville, Tennessee 37243
615.741.2501
**www.comptroller.tn.gov**

For more information, please visit the
Comptroller's Office of Research & Education Accountability at:
www.comptroller.tn.gov/orea