



Legal Concerns for Band Directors

**CLINICIAN:
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SPONSOR: TEXAS BANDMASTERS ASSOCIATION

Texas Bandmasters Association 2011 Convention/Clinic



**JULY 24-27, 2011
HENRY B. GONZALEZ CONVENTION CENTER
SAN ANTONIO, TEXAS**

LEGAL LIABILITY ISSUES
Holly Boyd Wardell

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Legal Issues Related to Student Activities

- Rights Associated with School Activities
- Education Records
- Rights under TEC
- Parent Grievances
- Student Injuries
- Immunity and Liability
- Relationships with Students
- Student Trips
- Cases

- Search & Seizure
- Hazing
- No Pass, No Play
- Commissioner's Rules for Practice
- Copyright & Trademark Issues
- Booster Clubs
- Students with Disabilities
- Religion: team prayer, religious music
- Drug Testing Policies


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What people worry about...

- Liability for supervision
- Kids getting physically hurt
- Trips/travel
- Parents suing because kid didn't make first chair or questioning your decisions

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Student Injuries
 Liable or Immune?

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Torts = personal injury claims

- Negligence
- Negligent failure to supervise
- Negligent failure to train
- Intentional infliction of emotional distress
- Defamation

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School Districts

- Sovereign Immunity
- Governmental Immunity

Waiver of immunity for negligent use or operation of a motor vehicle

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Professional Immunity

- Professional Employee
- Acting In Course and Scope of Employment
- Act Involved Use of Discretion or Judgment

“Professional Employee”

- Superintendent
- Principal
- Teacher
- Substitute Teacher
- Supervisor
- Social Worker
- Counselor
- Nurse

- Teacher’s Aide
- Student Teacher
- Bus Driver
- School Board Trustee

- Any other employee whose employment requires certification and the exercise of discretion


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Tex. Educ. Code § 22.0511

A professional employee of a school district is not personally liable for any act that is incident to or within the scope of the duties of the employee's position of employment and...

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...that involves the exercise of judgment or discretion on the part of the employee...

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Tex. Educ. Code § 22.0511

...except in circumstances in which a professional employee uses excessive force in the discipline of students or negligence resulting in bodily injury to students.


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Barr v. Bernhard (Tex. 1978)

- Saturday, 1976
- Kerrville, Texas
- Mark Bernhard
- Voc-Ag



Barr v. Bernhard

- Weighing and worming calf
- Struck support pole in school Ag building
- Roof collapse
- Severely injured Mark



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Parents sued District and individuals for negligence

- Failing to properly inspect the facility
- Failing to maintain or supervise the facility; and
- Allowing the facility to be used while in a condition of disrepair

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Texas Supreme Court

We hold...that a professional school employee is not personally liable ... except in circumstances where disciplining a student, the employee uses excessive force or his negligence resulting in bodily injury to the student.

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Amarillo Court of Appeals, 1996

- The court's holding in Barr has been "widely criticized" but that's what they meant.
- The Legislature has declined to modify the statute to overrule the Tex. Supreme Court.

Downing v. Brown, 925 S.W.2d 316 (Tex. Ct. App. —Amarillo, 1996), reversed on other grounds.

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Professional employees are protected from personal injury claims like:

- Playground Accidents
- Sports Injuries
- Student Fights
- Classroom Accidents
- Natural Death

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Stout v. Grand Prairie ISD, (Tex.App.--Dallas, 1987)

- Student injured during cheerleader practice
- Sued teacher who supervised practice
- Challenged constitutionality of professional immunity provision in Tex. Educ. Code
- Teacher and district won = were immune from suit.

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Stout (cont'd)

COURT:

While this immunity works a hardship upon injured students, it is necessary to effect a rational and compelling legislative purpose that rests upon the importance of a free public education to this state.

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Williams v. Chatman

- End of Year Swimming Party
- Texas Tech Univ.
- Student fatality
- In course and scope of employment?
- Professional judgment/discretion?

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Foster v. Estrada

- Student fell from a wall in the school gym while retrieving a tennis ball
- Parents claimed coach and principal were negligent in supervising students
- Coach and principal filed affidavits – “we were using our professional judgment”
- Court: That’s not enough.

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Discretionary v. Ministerial Duties

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This section does not apply to the operation, use, or maintenance of any motor vehicle.

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Professional Immunity

- Exceptions
 - Excessive force/negligence in discipline
 - Negligent use of motor vehicle

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- Exhaustion Requirement
- Attorney's Fees
- Damages limited to \$100,000

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Can we require students to perform extra physical activities as punishment?

Yes, but be careful!

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Moore v. Willis ISD (5th Cir. 2000)

- 100 squat-thrusts as punishment
- Diagnosed with a degenerative disease of skeletal muscles and renal failure.
- Parents/student sued claiming personal injury and violation of substantive due process
- Teacher's claims remanded (excessive discipline)



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STUDENT TRAVEL AND TRIPS



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What are the dangers of transporting students in my personal automobile?

PERSONALLY LIABLE



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Is there anything we need to be concerned about when leaving the great **State of Texas**?

- Could lose immunity
- Comity
- Interesting things happen on trips!
- Get a release



Peterson v. State of Texas (Colorado Ct. App. 1981)



- Texas Youth Council
- Student stole vehicle and damaged it
- Sued TYC employees for negligent supervision
- Not immune

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What should you worry about?

- Harassment & bullying claims
- First Amendment
- Fourth Amendment

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Harassment & Bullying Claims

- Harassment & bullying claims
- First Amendment
- Fourth Amendment

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Harassment

- Staff to student
- Student to student – illegal harassment
- Student to student – bullying

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SOLICITING ROMANTIC RELATIONSHIP

- Behavior
- Gestures
- Expression
- Communications, pattern

Nature
Timing
Extent
Counseling?

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SOLICITING ROMANTIC RELATIONSHIP

- Comments about body
- Sexually demeaning comments to student
- Student's potential sexual performance
- Requesting details of a student's sexual history
- Requesting date
- Engaging in conversation about sexual problems, preferences, etc.

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SOLICITING ROMANTIC RELATIONSHIP

- Inappropriate hugging, kissing, or excessive touching
- Suggesting that a romantic relationship is desired after graduation
- Any other acts tending to show want an ardent relationship with student
 - Including providing drugs or alcohol

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Harassment Claims

Actual knowledge/notice
Deliberate Indifference

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Bullying

- FFI (LOCAL)
- Follow requirements for reporting and responding to bullying

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FIRST AMENDMENT

Freedom of religion
Freedom of speech

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FIRST AMENDMENT

Music

- Do not have to eliminate all religious music.
- Well-rounded program.
- Don't discriminate based on religious view point.

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FNA (LEGAL)

CLASS ASSIGNMENTS

Students may express their beliefs about religion in homework, artwork, and other written and oral assignments free from discrimination based on the religious content of their submissions. Homework and classroom assignments must be judged by ordinary academic standards of substance and relevance and against other legitimate pedagogical concerns identified by the District. Students may not be penalized or rewarded on account of the religious content of their work. *Education Code 25.153*

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Speech

Student expression that is protected by the First Amendment may not be prohibited absent a showing that the expression will materially and substantially interfere with the operation of the school or the rights of others.

Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503 (1969)
[See also FNCl]

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Speech

The inculcation of fundamental values necessary to the maintenance of a democratic society is part of the work of the school. The First Amendment does not prevent school officials from determining that particular student expression is vulgar and lewd, and therefore contrary to the school's basic educational mission. Bethel Sch. Dist. No. 403 v. Fraser, 478 U.S. 675 (1986)

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FOURTH AMENDMENT

Students shall be free from unreasonable searches and seizures by school officials. School officials may search a student's outer clothing, pockets, or property by establishing reasonable cause or securing the student's voluntary consent. Coercion, either expressed or implied, such as threatening to contact parents or police, invalidates apparent consent. U.S. Const., Amend. 4; New Jersey v. T.L.O., 469 U.S. 325, 105 S.Ct. 733 (1985); Jones v. Lathrop, 400 U.S. 438 (1970); Sch. Dist. v. Brown, 357 U.S. 43 (1958)

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FOURTH AMENDMENT

A search is reasonable if it meets both of the following criteria:

1. The action is justified at the inception; i.e., the school official has reasonable grounds for suspecting that the search will uncover evidence of a rule violation or a criminal violation.
2. The scope of the search is reasonably related to the circumstances that justified the search in the first place; i.e., the measures adopted are reasonably related to the objectives of the search and are not excessively intrusive in light of the age and sex of the student and the nature of the infraction.

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SEARCHES OF TELECOMMUNICATIONS / ELECTRONIC DEVICES

FOURTH AMENDMENT

SEARCHES OF TELECOMMUNICATIONS / ELECTRONIC DEVICES

A person is prohibited from obtaining, altering, or preventing authorized access to a wire or electronic communication while it is in electronic storage by:


1. Intentionally accessing without authorization a facility through which an electronic communication service is provided; or
2. Intentionally exceeding an authorization to access that facility.

1. The location of the property interest comparable to the stoppage of the vehicle.
2. The location of the station involved by the stoppage.
3. The search and seizure of the premises where the property interest is located.

PROHIBITION ON ACCESS TO ELECTRONIC COMMUNICATIONS STORED IN THE CLOUD
SECTION 17.0001. PROHIBITION ON ACCESS TO ELECTRONIC COMMUNICATIONS STORED IN THE CLOUD
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THE TEXAS BAR
STANDARD OF PROFESSIONAL CONDUCT
ARTICLE 101, SECTION 101.001
SECTION 101.001. DUTY TO THE PUBLIC
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