

Legal Concerns for Band Directors

CLINICIAN: Holly Wardell

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Texas Bandmasters Association 2012 Convention/Clinic



JULY 20 – 23, 2012 HENRY B. GONZALEZ CONVENTION CENTER SAN ANTONIO, TEXAS



Legal Issues Facing Band Directors

Presented by: Holly Boyd Wardell July 20, 2012

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Holly Boyd Wardell



Holly is a Shareholder in our Austin office. Holly graduated Cum Laude from Texas Wesleyan University in 1992 and earned her Juris Doctorate from The University of Texas School of Law in 1996.

Holly has an impressive litigation background in whistleblower cases and civil rights cases including gender, race, and national origin, and disability discrimination claims. Her work on position statements, motions, and briefs has resulted in numerous victories for school districts at every level conceivable. Additionally, she regularly attends ARD and

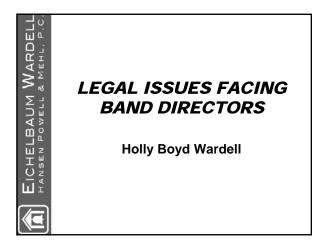
Section 504 Committee meetings and represents clients at due process hearings.

Holly's outgoing personality, enthusiasm, and thoroughness combine to make her a popular lecturer. She is a frequent guest speaker for school districts, regional education service centers, special education shared service arrangements, state organizations, and universities on a variety of topics related to school law, including special education, Section 504, education records, sexual harassment, student discipline, and search and seizure. Holly has published numerous articles for state and firm publications on special education and other issues.

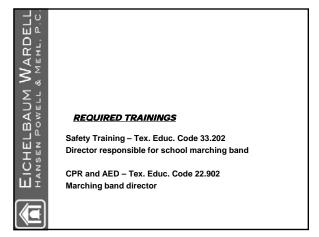
Holly is licensed to practice law in all Texas state courts; the United States District Courts for the Western, Northern and Southern Districts of Texas; the United States Court of Appeals for the Fifth Circuit; and the United States Supreme Court.

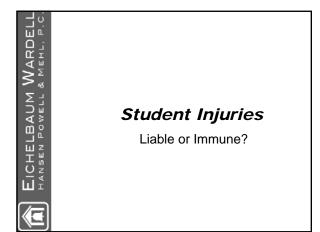
She is a member of the National School Boards Association Council of School Attorneys, School Law, Administrative, and Labor and Employment Law Sections of the Texas Bar, Texas Council of School Attorneys, and the Texas Association of Defense Counsel. Holly has also served on the State Bar's Disabilities Issues Committee and the Texas Education Agency's State Supervision Committee & Complaints Management System.

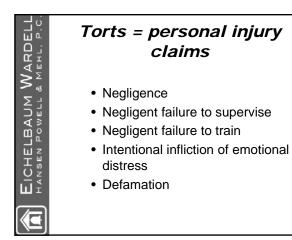
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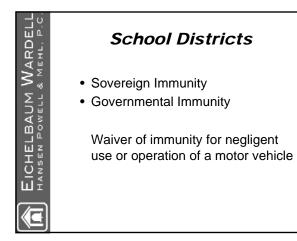














Professional Immunity

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

WARDELL & MEHL, P.C "Professional Employee" • Superintendent • Teacher's Aide Principal Student Teacher EICHELBAUM • Teacher Bus Driver Substitute Teacher • School Board Trustee Supervisor Social Worker Any other employee Counselor • Nurse discretion

- whose employment requires certification and the exercise of

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...

NARDELL Mehl, P.C.

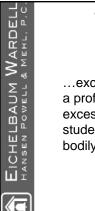
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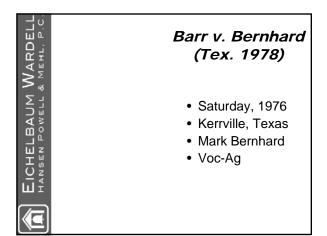
Tex. Educ. Code § 22.0511

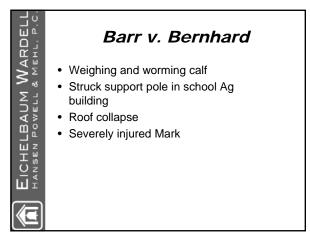
...that involves the exercise of judgment or discretion on the part of the employee...

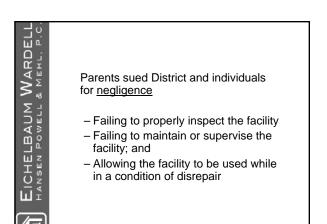


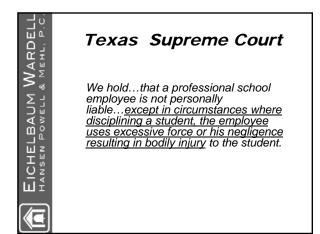
Tex. Educ. Code § 22.0511

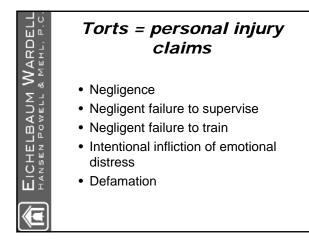
...except in circumstances in which a professional employee uses excessive force in the discipline of students or negligence resulting in bodily injury to students.











CHELBAUM WARDELL Professional employees are protected from personal injury claims like:

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

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EICHELBAUM WARDELL 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. ٠

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.



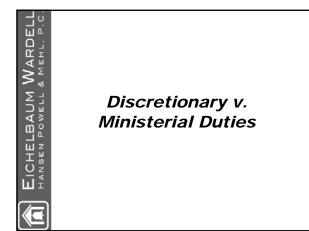
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Williams v. Chatman

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

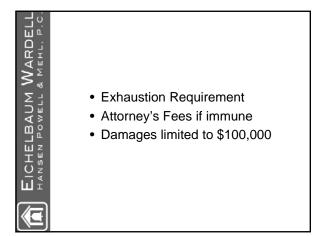
Foster v. Estrada

- 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.

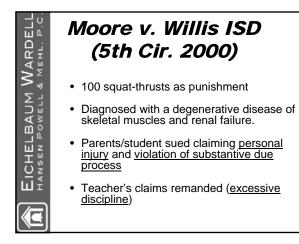


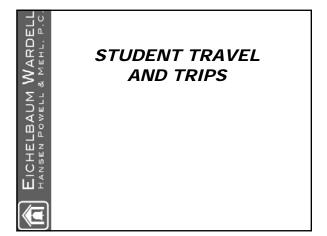
Tex. Educ. Code § 22.0511 This section does not apply to the operation, use, or maintenance of any motor vehicle.

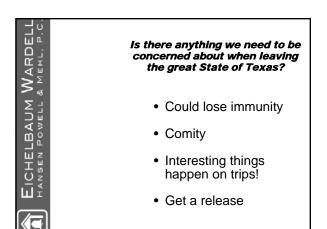
Professional Immunity Exceptions Excessive force/negligence in discipline Negligent use of motor vehicle

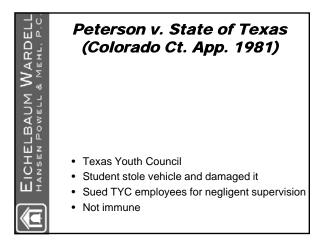


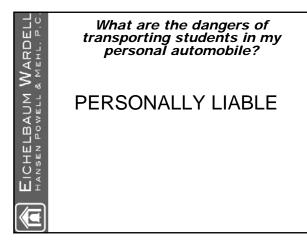


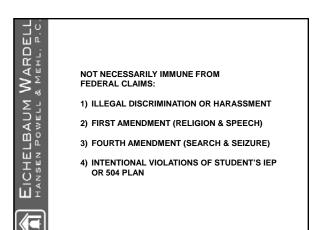




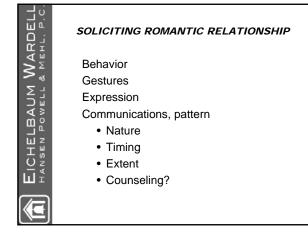








EICHELBAUM WARDELL HANSEN POWELL & MEHL, P.C. *RELATIONSHIPS WITH STUDENTS*



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

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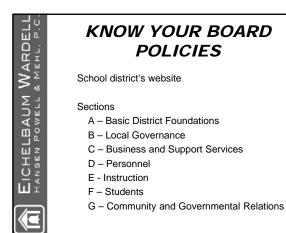
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• Engaging in conversation about sexual problems, preferences, etc.

SOLICITING ROMANTIC RELATIONSHIP

- Inappropriate hugging, kissing, or excessive • touching
- Suggesting that a romantic relationship is desires after graduation ٠
- Any other acts tending to show want an ardent relationship with student
 - Including providing drugs or alcohol



KNOW YOUR BOARD **POLICIES**

STANDARDS OF CONDUCT - DH

HARASSMENT - FFH

BULLYING - FFI

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ELEC. COMMUNICATIONS - DH; CQ & CQA

KNOW YOUR BOARD **POLICIES**

MONEY & DISTRICT RESOURCES - CFD; CAA

FIRST AMENDMENT - FNA, FNAA, FNAB

FOURTH AMENDMENT - STUDENT SEARCHES - FNF



FERPA

- Parents have a right to access any record related to their children.
- This includes emails.

