



Legal Concerns for Band Directors

CLINICIAN:

Holly Wardell

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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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LEGAL ISSUES FACING BAND DIRECTORS

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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REQUIRED TRAININGS

Safety Training – Tex. Educ. Code 33.202
Director responsible for school marching band


CPR and AED – Tex. Educ. Code 22.902
Marching band director

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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**


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"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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Tex. Educ. Code
§ 22.0511


...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


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

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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Torts = personal injury claims

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


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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.

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.

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.

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*Discretionary v.
Ministerial Duties*

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*Tex. Educ. Code
§ 22.0511*

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 if immune
- 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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*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

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


PERSONALLY LIABLE



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NOT NECESSARILY IMMUNE FROM FEDERAL CLAIMS:

- 1) ILLEGAL DISCRIMINATION OR HARASSMENT
- 2) FIRST AMENDMENT (RELIGION & SPEECH)
- 3) FOURTH AMENDMENT (SEARCH & SEIZURE)
- 4) INTENTIONAL VIOLATIONS OF STUDENT'S IEP OR 504 PLAN




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RELATIONSHIPS WITH STUDENTS



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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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**KNOW YOUR BOARD
POLICIES**

School district's website

Sections

- A – Basic District Foundations
- B – Local Governance
- C – Business and Support Services
- D – Personnel
- E - Instruction
- F – Students
- G – Community and Governmental Relations



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**KNOW YOUR BOARD
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STANDARDS OF CONDUCT – DH

HARASSMENT - FFH

BULLYING - FFI

ELEC. COMMUNICATIONS – DH; CQ & CQA




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**KNOW YOUR BOARD
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MONEY & DISTRICT RESOURCES – CFD; CAA

FIRST AMENDMENT – FNA, FNAA, FNAB

FOURTH AMENDMENT – STUDENT SEARCHES - FNF



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FERPA

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


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Parent complaints

- FNG (LOCAL)
- Be fair
- Seek prior approval from administration before changing long-standing procedures
- Be involved in any complaints
- Remember trustees are local politicians

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