



**Texas Bandmasters Association  
Convention/Clinic July 26-28, 2018**

**Legal Concerns for the Music  
Educator**

**CLINICIAN:  
Dr. Carol Simpson**

**HENRY B. GONZALEZ CONVENTION CENTER  
SAN ANTONIO, TEXAS**



# Legal Concerns for the Music Educator

Presented by: Dr. Carol Simpson  
July 26, 2018

**EICHELBAUM WARDELL**  
HANSEN POWELL & MEHL, P.C.

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## LEGAL CONCERNS FOR THE MUSIC EDUCATOR

Dr. Carol Simpson, JD  
www.edlaw.com

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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
- 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
- Student injuries
- Trips/travel
- Parents suing because child did not make first chair or questioning your decisions



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## What people SHOULD worry about

- Copyright infringement
- Student harassment and hazing
- Corporal punishment
- Searches
- RELATIONSHIPS WITH STUDENTS




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### MUSIC LICENSING

Many different types of licenses apply to copyrighted music. Some licenses are not required for schools under an educational fair use exemption, but other types of licenses are required. Note that for many uses you will need multiple licenses. For example, to record music in a video and show the program on television you would need mechanical, synchronization, broadcast and possibly grand rights. Here is a brief synopsis of the most common types of music licenses.

**ARRANGEMENT** - for creation of a new version of a composition other than a simple change of key. Includes: new instrumentation, simplified chords, shortening a lengthy composition, changing lyrics, changing musical style (from jazz to hip-hop, for example).

**BROADCAST** - for use of a recorded performance on radio, television, satellite, or cable. Typically even short excerpts must have a broadcast license.

**FESTIVAL USE (ABJUDICATION)** - for use of photostats of out-of-print sheet music for judges in musical competition.

**GRAND** - for staging a musical play, ballet, or opera or performing any song in a dramatic manner. These rights are available directly from the publisher of the sheet music or the producer of the show.

**MASTERS** - for use in existing recording. These rights are usually available directly from the recording company.

**MECHANICAL** - for an audio recording of a composition on tape, CD, or digital download format, whether or not the recording is sold. You need this license to sell or give recordings of student concerts to students, parents, and friends. Mechanical rights are mandatory - a music publisher cannot prevent you from recording a cover of its song once the publisher has recorded and released the song. Royalty rates are set by law.

Mechanical rights are tracked through the Harry Fox Agency ([www.harryfox.com](http://www.harryfox.com)) and are available for small runs. You can try to negotiate a reduced rate through individual copyright owners, but the reduced rates must still be submitted to Harry Fox. See

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## Top 5 Copyright Tips for Music

1. Check your music licenses.
2. Virtually everything you do with a play or musical must be licensed.
3. Photocopying sheet music requires a photocopy license or permission (with few exceptions).
4. If you record school concerts, you need mechanical rights.
5. Music, arrangements, or marching plans belong to your employer.




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**Student Injuries**

Liable or Immune?



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**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



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## Barr v. Bernhard

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



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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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**Professional employees are protected from personal injury claims like:**

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



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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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**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 v. Grand Prairie ISD

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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## 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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- 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



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## **PARENT COMPLAINTS**

FNG (LOCAL)  
3 LEVELS  
FINAL W BOARD OR NOT?

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## What should you worry about?

- Harassment Allegations
- Relationships with Students
- Use of Districts Funds and Resources
- First Amendment
- Fourth Amendment
- Students with Disabilities



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## Harassment Policies

FFH – Students

DIA – Employees

DH – Standards of Conduct

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## RELATIONSHIPS WITH STUDENTS

In-class treatment  
Communication  
Out of class communication

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PARSONS ID: 02117  
EMPLOYEE STANDARDS OF CONDUCT (LOCAL)

Each District employee shall perform his or her duties in accordance with state and federal law, District policy, and ethical standards. [See DHEX057E]

Each District employee shall recognize and respect the rights of students, parents, other employees, and members of the Community and shall work cooperatively with others to serve the best interests of the District.

**USE WITH STUDENTS**

In accordance with administrative regulations, a certified or licensed employee, or any other employee, may use electronic media to communicate with currently enrolled students about matters within the scope of the employee's professional responsibilities.

Each employee shall comply with the District's requirements for records retention and destruction to the extent those requirements apply to electronic media. [See CPC]

**PERSONAL USE**  
An employee shall be held to the same professional standards in his or her public use of electronic media as for any other public conduct. If an employee's use of electronic media violates state or federal law or District policy, or interferes with the employee's ability to effectively perform his or her job duties, the employee is subject to disciplinary action, up to and including termination of employment.

**SAFETY REQUIREMENTS**  
Each employee shall adhere to District safety rules and regulations and shall report unsafe conditions or practices to the appropriate supervisor.

**MANAGEMENT OR ABUSE**  
An employee shall not engage in prohibited harassment, including sexual harassment, or

DATE ISSUED: 3/24/2012 1 of 3  
LOCAL: X

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**USE WITH STUDENTS**  
Electronic media also includes all forms of telecommunication such as e-mails, cell phones, and text-based applications. In accordance with administrative regulations, a certified or licensed employee, or any other employee, may use electronic media to communicate with currently enrolled students about matters within the scope of the employee's professional responsibilities.

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## Hazing is Criminal

- Engage in
- Solicit, encourage
- Recklessly permit
- Have firsthand knowledge and fails to report
- Consent is not a defense




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*-First Amendment Claims-*  
*-Fourth Amendment Claims-*

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**GRAND** – for staging a musical play, ballet, or opera or performing any song in a dramatic manner. These rights are available directly from the publisher of the sheet music or the producer of the show.

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**PERFORMANCE** – for a public performance of a musical work. For schools, many exceptions apply to public performance. If used in direct teaching, apply the 5-part AV fair use guidelines. If used for a public performance by students, some exemptions apply. Entertainment and reward performances require performance licenses. Performance rights for sheet music are available from one of the music rights

organizations: ASCAP, BMI, SESAC. Performance rights for music recorded by others are available from the record company.

**PHOTOCOPY** – for making photocopies of out-of-print music. Not for copies for festival adjudication. These rights are available directly from the music publisher.

**REPRINT (LYRICS OR MUSIC)** – for use of music or lyrics in a book, magazine, or printed publication. Some uses may be covered under the print exemptions for schools. These rights are available directly from the music publisher.

**SUB-OUT** – for selling a new arrangement of an existing composition. Most likely covered under the arrangement license agreement, as well.

**SYNCHRONIZATION (SYNCH)** – for including a performance of a musical composition in film or video, such as background music in a film, or a recording of a band performing copyright protected music in a music video. Synch rights may be negotiated directly with the publisher of the underlying sheet music, or you can check the Harry Fox eSynch catalog to see if the song is in their database.

**WEB POSTING / DIGITAL DOWNLOADS** – for posting print and recorded material on the Internet. Digital downloads are licensed through Harry Fox Agency. Web posting of print material is negotiated directly with the publisher of the underlying sheet music.

## Works Cited

Alfred Publishing, Co., *Licensing*.  
<https://licensing.alfred.com/ClientHome.aspx>, 2013.

ASCAP, *Common Music Licensing Terms*,  
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Harry Fox Agency, *Mechanical Licensing*,  
[https://www.harryfox.com/license\\_music/what\\_is\\_mechanical\\_license.html](https://www.harryfox.com/license_music/what_is_mechanical_license.html), 2015.

Simpson, Carol, *Copyright for Schools* (5th ed.), Linworth Publishing, 2010.

## Licenses Required for Common Uses

USE	LICENSE(S) NEEDED	SOURCE OF LICENSE(S)
Podcasting/blogs	Mechanical	Music publisher (sheet music) directly or through Harry Fox Agency
	Performance	ASCAP, BMI, SESAC
	Master Use	Record Company (directly)*
Website background music	Mechanical /Synch	Music publisher (sheet music) directly
	Performance	ASCAP, BMI, SESAC
	Master Use / Synch / Performance	Record Company (directly)*
Web video	Mechanical / Synch	Music publisher (sheet music) directly
	Performance	ASCAP, BMI, SESAC
	Master Use / Synch / Performance	Record Company (directly)*
Web streaming (on demand)	Mechanical	Music publisher (sheet music) directly or through Harry Fox Agency
	Performance	ASCAP, BMI, SESAC
	Master Use / Performance	Record Company (directly)*

\* Only applies if using music recorded by others.