University of Texas at Austin
School Law for Teacher Interns

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Education System in the U. S. & Texas

Selected Federal Laws
- Educating Children With Disabilities (IDEA) & Section 504
- Title IX & Recent Developments Regarding Harassment Issues
- First Amendment Rights to Free Speech & Social Media
- Family Educational Rights & Privacy Act (FERPA)

Personal Injury Liability Issues for Educators

How Does a Teacher Protect Himself/Herself?

How Educators Can Protect Themselves

Where to Learn More and How to Get Involved

Frequently Asked Questions
The Education “System”

The U.S. Constitution says nothing about public education. The Constitution gives Congress certain enumerated powers, which do not include establishment of an educational system.

U.S. public education is a function primarily of state and local government. The duty to create and fund a public school system is found in state laws.

Despite the independent state systems, Congress has developed the tool that enables it to assert control at the federal level: make funding available, contingent on implementation and enforcement of extensive and detailed regulations.

For publicly-funded school districts, the first major piece of legislation used as such a tool was the Education of All Handicapped Children Act (EAHCA) in the 1970s, now known as the Individuals with Disabilities Education Act (IDEA).

Laws Regarding Individuals with Disabilities

I. Individuals with Disabilities Education Act (IDEA)

U.S. federal legislation requires that public school districts in states receiving federal funds under the IDEA provide a “free appropriate public education” (FAPE) to students with disabilities. Each student must be provided an Individual Education Plan that is designed to insure that the student receives FAPE. IDEA defines

- how a student can qualify for special services
- age of eligible students as ages 3 through 22
- requirements for an individual program for each student
- procedures for working out disagreements with parents about the student’s program
- requirements for student “mainstreaming” to the extent possible

When enacted in the 1970s, IDEA (formerly known as the “Education of All Handicapped Children Act”) was designed to ensure that students with disabilities were not “warehoused,” excluded from school, or otherwise denied the right to an education on the same basis as students who were not disabled.

II. Rehabilitation Act, Section 504—Not Just for Students

For students who do not qualify for special education but who have a disability, Section 504 states that students must be provided “reasonable accommodation” for their disabilities in order to be able to benefit from their education.
Students who may not qualify for IDEA but who may require accommodation under Section 504 are those with conditions that do not interfere with their ability to get an appropriate public education. Examples of conditions that often do not trigger special education eligibility but may qualify a student for Section 504 protection:

- asthma
- diabetes
- severe allergies
- certain learning disabilities
- chronic conditions
- other physical limitations that require only accommodation of more time to get from class to class or perform certain tasks.

Parents also have the right to reasonable accommodation if they have disabilities that would interfere with their ability to participate in their child’s education. For example, parent meetings and events that parents may attend must be held in places to which an individual with disabilities has reasonable access.

**Title IX and Recent Developments Regarding Harassment**

I. **Title IX Basics**

Since Title IX (in the U. S. Code at 42 U.S.C. Section 2000d) was enacted by Congress in the early 1970’s, gender-based discrimination in educational programs has been prohibited.

Title IX

- protects both males and females
- applies to any public educational program or activity, including higher education
- applies to school/student athletic leagues, such as University Interscholastic League
- is enforced by the U. S. Department of Education, Office of Civil Rights (OCR)
- applies when a school receives federal funds from any source
- includes sexual harassment of students, based on *Franklin v. Gwinnett County Schools*, 503 U.S. 60 (1992)
- includes student-to-student harassment based on gender
- according to OCR guidelines issued in October 2012, includes gender stereotypes
II. School Employees’ Liability for Harassment Based on a Protected Class

A. Gender Discrimination under Federal Law

The most common complaints and cases under federal employment law are those related to discrimination based on gender/sex, and more specifically those based on sexual harassment. The greatest risk of liability to a school employer or supervisor is in this area.

III. School Employees’ Liability for Unlawful Harassment of Students

A. Liability for “Deliberate Indifference”

This term has been described as a degree of fault that is more than merely negligence but it is not necessary for the plaintiff/complainant to show that the action or failure to act was intended to harm the student.

It is only when school officials have some knowledge or notice (“knew or should have known”) of abusive acts that they face liability.

1. Once a person with power to prevent further abuse has received information leading to a conclusion that abuse has taken place, deliberate indifference may be evidenced by affirmative acts that condone or authorize the abuse.

2. A custom or practice of condoning or authorizing by ignoring a pattern of abusive activity constitutes deliberate indifference.

B. Applying the Concept of “Deliberate Indifference”

A school official acts with “deliberate indifference” toward the constitutional rights of students when an effort is made to suppress, minimize, or discourage complaints of sexual abuse by teachers.

C. Important Lessons from Doe v. Taylor (5th Cir. Court of Appeals, 1994)

This landmark case illustrates a situation in which a student was deemed to have been harmed by not only the perpetrator who committed a crime against her but also by a school official who did not take action to stop the perpetrator or report the suspicions.

For personal liability, the court considered: Did the perpetrator’s supervisor have knowledge of “inappropriate sexual behavior”? Did the information available lead plainly to the conclusion that physical sexual abuse of a student had taken place?
IV. Student-to-Student Harassment Based on Protected Classification

A. The Legal Standards—“Title IX”

In 1999 the U.S. Supreme Court made it clear in *Davis v. Monroe* that elementary students can be guilty of sexually harassing their peers, and schools need to be prepared to deal with allegations of sexual harassment.

The student in *Davis* alleged that a fifth-grade boy taunted her with sexually suggestive comments and physically touched her over a five-month span of time and that the teachers and the principal failed to take disciplinary action against the boy. The Court held for the first time that a student who is harassed by other students may sue his or her school for monetary damages under Title IX.

B. Basic Principles of Creating Liability to School Employees Based on Student-to-Student Harassment

1. The conduct is serious;

2. There is actual knowledge of the harassment;

3. The harassment takes place in a context subject to the school district’s control;

4. The school district acts with deliberate indifference.

School officials have a duty to take immediate steps to investigate or otherwise deal effectively and equitably with what has occurred. As soon as a school official has notice of a harassment problem, the school must respond promptly because, from that moment on, it has actual knowledge and may be held accountable for any further harassment.

V. “Bullying” Developments

In recent years, there has been a sharp focus on the issue of bullying, its effects on students, and the manner in which schools respond. Many states, including Texas, have adopted legislation defining bullying and requiring specific procedures for addressing such allegations. This is not a federal issue unless the misconduct that is being called “bullying” is based on the victim’s gender, race, religion, disability, or other protected classification.

Many claims of bullying do not meet the legal definition but should nevertheless be addressed as misconduct.
Under new Texas legislation that became effective in the 2012-2013 school year, “bullying” means

“engaging in written or verbal expression, expression through electronic means, or physical conduct that occurs on school property, at a school sponsored or school-related activity, or in a vehicle operated by the district that

(1) has the effect or will have the effect of physically harming a student, damaging a student’s property, or placing a student in reasonable fear of harm to the student’s person or of damage or the student’s property, or

(2) is sufficiently severe, persistent, or pervasive enough that the action or threat creates an intimidating, threatening, or abusive educational environment for a student. “

Further, the described conduct is considered bullying if that conduct “exploits an imbalance of power between the student perpetrator and the student victim through written or verbal expression or physical conduct and interferes with a student’s education or substantially disrupts the operation of a school.”

The law requires the school employees to report misconduct that may constitute bullying and take reasonable steps to eliminate it.

**Free Speech and Social Media**

**I. General Guidance**

The explosion of technology use among students and employees has affected disciplinary decisions where students and/or staff may have engaged in on- or off-campus technology-related misconduct, some of which may fall outside of district policy, the Student Code of Conduct, or the Employee Handbook.

**Type of Behavior.** The type of behavior covered by the guidelines below includes activity on social networking sites such as Facebook and MySpace, cyber-bullying, online gang recruitment, text messaging, and “sexting” (sending by text message sexually explicit photographs or other imagery). Even if a determination is made that the school lacks authority to discipline the wrongdoer because it is unrelated to school, it may still be necessary to conference with the student, parent, or employee; make a report to law enforcement or another state agency and/or advise parents, students, or staff to do likewise; monitor on-campus conduct.

**Caution.** Technology-related conduct, especially off campus, sometimes raises constitutional free speech issues.
II. Students

When considering disciplining a student for technology-related misconduct, consider:

- **Did the misconduct occur during the school day on school property?**
  - **IF YES**, then the district may discipline the student under the Student Code of Conduct and district policy.

- **Were district technology resources used in the misconduct?**
  - **IF YES**, then the district may discipline the student under the Student Code of Conduct and district policy.

- **Was the conduct illegal?**
  - **IF YES**, then the district can (1) discipline the student as permitted by the Student Code of Conduct and district policy, **and (2)** report to law enforcement where appropriate.

- **Has the student’s off-campus technology misconduct caused a “material or substantial disruption” of school operations?**
  - **IF YES**, then the student may be disciplined.
  - **BUT**, remember:
    1. The disruption must be actual; and
    2. The school itself cannot be the cause of the disruption through its response to the student misconduct.

III. Employees

When considering disciplining an employee for technology-related misconduct, the following questions should be considered:

- **Did the misconduct occur during the school day on school property?**
  - **IF YES**, then the district may discipline the employee under district policy.

- **Were district technology resources used in the misconduct?**
  - **IF YES**, then the district may discipline the employee under district policy.

- **Was the conduct illegal?**
  - **IF YES**, then the district may be able to discipline the employee under district policy.
  - Reports may be made to law enforcement, CPS, and SBEC where appropriate.

- **Did the employee’s speech or conduct take place in his or her capacity as an employee?**
  - **IF YES**, the district may discipline an employee for speech or conduct related to the employee’s official responsibilities, or that took place while the employee was acting in his or her role as a public school employee.
**BUT**, an employee’s personal speech or conduct unrelated to his or her position with the district may not generally be disciplined unless the conduct was illegal, interfered with the school’s operations, or adversely impacted the performance of job duties.

- If the employee’s conduct occurred while the employee was acting as a private citizen speaking on a matter of public concern, consider:
  - **Have the employee’s actions or speech adversely impacted proper performance of his or her school-related duties or interfered with the operation of the schools?**
  - **IF YES, do the district’s interests outweigh the employee’s constitutional rights?** If so, the employee may be disciplined.
  - As with students, it is important to be certain that it is not the district’s action or reaction that creates the interference with school operations
  - **IF NO**, then the employee may not be disciplined.
  - As a general rule, employees have the right, in their capacity as public citizens, to comment on their own time on matters of public concern, such as school bonds, elections, community events, public rallies, etc.

**Family Educational Rights and Privacy Act (FERPA)**

FERPA, or the Buckley Amendment, is a federal law designed to protect the privacy of student records by preventing unauthorized access by third parties. FERPA applies to all schools receiving federal funds from the U.S. Department of Education. The law gives parents certain rights related to their child’s educational records. These rights transfer to the student or former student when he reaches the age of 18 or begins to attend school beyond the high school level.

**I. Personally-Identifiable Student Information**

**A. Educational Record**

An education record is one that is directly related to a student and maintained by an educational agency or institution or by a party acting for an agency or institution. The record could be in the form of handwriting, print, computer media, video or audio tape, film, or microfilm.

**B. Not Just the Name**

One consideration even if the name is redacted: whether a person residing in the school district community would be able to ascertain the identity of the student from the information provided.
II. School Employees’ Responsibilities

A. Virtually Absolute Confidentiality

Confidentiality in formal and informal settings (conversations, for example) is absolutely required.

B. Access and Exceptions to the Confidentiality Requirements

1. The student and/or parent(s) or person standing in “parental relationship,”

2. School officials, including teachers, with “legitimate educational interests,”

3. Officials of other schools in which the student seeks to enroll,

4. Certain juvenile justice officials,

5. Appropriate persons who in an emergency must have such information to protect the health or safety of the student or other person,

6. Publicly-available information (Directory),

7. Certain accrediting organizations for accreditation purposes,

8. Subpoena or court order,


C. Determining Who Has the Rights

Students under 18 years old and parents have specific rights related to consent to release, access to information, and correction of existing records. Once the student reaches 18, he or she has the rights to consent to release, although the parents still have rights of access if the student is still a dependent and is not enrolled in an institution of higher education.

Educators and Personal Liability

I. Liability Protection under NCLBA

NCLBA includes a provision known as the Paul D. Coverdell Teacher Protection Act of 2001, 20 U.S. Code Section 6731. It is designed to “provide teachers, principals, and other school professionals the tools they need to undertake reasonable actions to maintain order, discipline, and an appropriate educational environment.”
The Act protects teachers from personal liability in certain situations. Several key elements of this Act are worth noting.

1. It applies to “teachers” but that term is broadly defined. It includes principals, administrators, other educational professionals, and individual school board members. It also covers professional and non-professional employees who work in the school and either maintain discipline or ensure safety or are called on in an emergency to do so.

2. It applies only when the teacher is acting within the scope of employment.

3. It applies only if the “actions of the teacher were carried out in conformity with Federal, State, and local laws (including rules and regulations) in furtherance of efforts to control, discipline, expel, or suspend a student or maintain order or control in the classroom or school.”

4. It applies only “if appropriate or required, the teacher was properly licensed, certified, or authorized by the appropriate authorities for the activities or practice involved in the State in which the harm occurred, where the activities were or practice was undertaken within the scope of the teacher’s responsibilities.”

5. It will not apply if the teacher engaged in “willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed by the teacher.”

6. It does not apply to motor vehicle accidents.


II. Student Injuries at School under State Law

Whether a school employee can be held legally liable to a student or other person for acting or failing to act depends on state law. “Tort” laws in each state provide the specific types of personal liability against school employees when a student is hurt while in the employee’s care. Most states, including Texas, have a “Tort Claims Act,” or similar legislation that sets out liability and limits to that liability.

Texas is one of the few states with “sovereign immunity” provisions that provide legal protection from personal liability to certain governmental employees, such as educators.
The idea is that public funds are not appropriately spent for individuals when the incident is often accidental and not really attributable to an employee’s intentional wrongdoing. Intentional wrongdoing is addressed other venues, such as the criminal courts.

Exceptions to immunity and creation of liability under state law for educators: excessive force or negligence in discipline and negligence in the use, maintenance, or operation of a motor vehicles that causes damage or injury.

**How Can Educators Protect Themselves?**

- Follow the rules
- Promptly report anticipated problems to supervisors/administrators
- Keep contemporaneous “memory jogging” notes regarding incidents, to include dates and times
- If you write summaries or formal statements, do so promptly after the incident or situation arises, and always include your name and date written
- If necessary, contact professional organization or union representative

**How to Learn More and Get More Involved**

Numerous organizations and agencies are available to answer questions or get additional information: Texas Education Agency, U. S. Department of Education, Office of Civil Rights, Texas Association of School Boards, local school district policies available from links on the individual school district’s web site.

Professional organizations offer assistance and in some cases insurance to its members: Texas State Teachers Association, American Federation of Teachers, Texas Classroom Teachers Association, Association of Texas Professional Educators, Texas Association of School Administrators, Texas Association of Secondary School Principals, Texas Elementary School Principals Association.