

University of Texas at Austin College of Education

School Law Seminar for Teacher Interns

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I. Legal Basis for the Education System in the U. S.

U. S. Constitution, Congressional Legislation, Federal Agency Regulations

Texas Constitution, State Legislation, State Agency Regulations

II. Selected Laws Affecting Schools

- First Amendment Rights to Free Speech and Association in School Contexts
- Disability-Related Issues—IDEA, Section 504, ADA
- Family Educational Rights and Privacy Act (FERPA)
- Title IX and Gender-Related Issues
- Code of Ethics for Educators
- Liability for Personal Injury

III. Minimizing or Avoiding Liability Generally

IV. Where to Learn More and How to Get Involved with the Profession

I. Education in the United States

- A. U. S. Constitution.** The U. S. Constitution is the basis for laws generally. It includes various provisions that have been interpreted by the courts as protecting certain rights that transcend any state laws. One example is the right to be free from unlawful discrimination based on race in the school setting. *Brown v. Board of Education*, decided by the U. S. Supreme Court, outlawed “separate but equal” schools, i.e. schools segregated based on race.
- B. U. S. Congressional Actions (Federal Statutes).** The U. S. Constitution includes no mention of public education. Instead, it grants Congress certain enumerated powers, not including the establishment of an education system. Public education in the U. S. is a function primarily of state and local governments. The duty to create and fund a public school system is found in state laws.

Despite the independence of state and local systems, Congress has developed a tool that enables the federal government to be involved to some degree in such systems through funding that is contingent on implementation of certain regulations that are deemed to be in the country’s interest. Examples of this tool are Title IX and IDEA programs.

Congress also has determined that even without funding, there are some key civil rights issues that apply nation-wide. One example of this concept is Title VII, which prohibits employers from engaging in unlawful discrimination based on certain classifications such as religion, gender, and other classifications.

- C. Federal Regulations.** The Department of Education, the Department of Labor, and other federal agencies issue regulations periodically in a variety of areas, such as student information confidentiality, services to students with disabilities, minimum wage and records requirements applicable to employees, and others.
- D. Texas Legislative Actions (State Statutes).** State statutes such as the Texas Education Code address how school systems are established (by cities or counties, for example) and at what age resident children are entitled to a free education within those boundaries. In Texas, most traditional public school districts are independent, which means they are established by geographic boundaries other than county or municipality. However, many public school districts accept transfer students, i.e., students who wish to enroll there but live in a different district.

Charter schools, also public, have no geographic boundaries but are “open enrollment,” meaning that students may enroll regardless of their residence location.

State laws also deal with school district funding, academic standards, teacher contracts, purchasing and bidding requirements, student discipline, and personal injury liability.

E. State Regulations. Agencies such as the Texas Education Agency and the Department of Health and Human Services establish regulations based on state laws. Often, the legislature will specifically authorize the Commissioner of Education at the Texas Education Agency to enact regulations related to teacher certification, student accountability standards, and other issues.

F. Local School District Policies. Each school district Board of Trustees adopts policies applicable only to their school district. School Boards' powers are broad but of course cannot conflict with state and federal laws and regulations. In this state, the Texas Association of School Boards (TASB) assists school districts in drafting policies that comply with applicable laws. Board policies are maintained on-line from a link on each individual's school district web site.

II. Selected Laws Affecting Public Schools

A. First Amendment Rights to Free Speech and Association in School Contexts

Amendments to the U. S. Constitution include protections related to the

- establishment of religion or prohibiting the free exercise of religion,
- freedom of speech,
- right to due process.

These rights are not absolute, especially in the context of a public school district. However, with consideration of the special circumstances present in a public school, it's clear under Supreme Court precedent that a public school district and its employees are prohibited from favoring one religion over another, violating a student's or employee's right to free speech, or violating a student's right to bodily integrity by exhibiting deliberate indifference to abuse.

Most recently, the freedom of speech issue has become more complex with the explosion of technology use. Disciplinary decisions where students or staff engaged in on or off campus technology-related misconduct become difficult. While school districts may regulate behavior connected to the school under Codes of Conduct applicable to students or staff members, behavior unrelated to school is often outside those Codes of Conduct. Federal courts have interpreted the First Amendment free speech rights to apply to use of social networking sites.

Students: When considering discipline of a student for technology-related misconduct, educators are required to show that the misconduct was:

- related to the schools, i.e., it occurred on school property or equipment,
- illegal conduct (Terroristic threat, for example), or
- the cause of a "material or substantial disruption" of school operations.

If these standards cannot be met, a student is not subject to discipline by the school, even if the student insulted or otherwise criticized a staff member.

Employees: If an employee speaks about a matter in the role of private citizen on a matter of public concern (as opposed to personal gripes about the job), the employee is protected from adverse employment action. When considering discipline of an employee for technology-related misconduct, administrators must be able to show that the conduct was:

- related to the schools, such as if it occurred during the school day or school property or on school equipment, or
- illegal conduct, such as a terroristic threat (When appropriate, reports are required to be made to law enforcement, CPS (Child Protective Services), and/or SBEC (State Board for Educator Certification.), or
- related to the person's capacity as an employee, adversely affected the proper performance of job duties, or interfered with school operations.

If these standards cannot be met, an employee is not subject to discipline based on the employee's expression of free speech.

B. Disability Issues

Individuals with Disabilities Education Act (IDEA). Federal legislation requires that public schools in states receiving IDEA federal funds provide a "free appropriate public education" (FAPE) to students with disabilities. For each student, the school district must, with parental and other input, prepare an Individual Education Plan (IEP) designed to insure the student is provided FAPE. Extensive federal and state regulations further define and interpret the legislation. When enacted in the 1970's, IDEA (formerly known as the Education of All Handicapped Children Act), was designed to guarantee to students with disabilities the right to have an education on the same basis as students without disabilities, as appropriate.

Generally, IDEA defines

- How a student may qualify for special services in order to be able to benefit from educational services,
- Age of eligible students ages 3 through 22
- Requirements and details for each student's IEP
- Procedures for conferring with parents and educational professionals through a committee process, such as the Admissions, Review, and Dismissal (ARD) committee (in some states known as the IEP Committee),
- Procedures for working out disagreements with parents about the student's services
- Requirements for students to be mainstreamed or included in classes with their non-disabled peers to the extent possible.

Rehabilitation Act, Section 504. For students who do not qualify for special education services but who have a condition that may require some accommodation, Section 504 requires that students be provided that accommodation to enable them to fully benefit from their education despite the condition.

Students identified as protected by Section 504 often have conditions that are chronic and that can be managed, with some accommodation, such as:

- Asthma and/or severe allergies,
- Diabetes,
- Certain learning disabilities,
- Chronic conditions or physical limitations that require only accommodation of more time to get from class to class or to perform certain tasks.

Americans with Disabilities Act. Employees are entitled to protection from discrimination based on disability and must be provided reasonable accommodation in order to enable them to perform their essential job functions.

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.

C. Family Educational Rights and Privacy Act (FERPA)

Confidentiality of Student Records. FERPA is federal legislation designed to protect a student's records by preventing unauthorized access by third parties. The statute applies to all schools and institutions of higher education receiving federal funds. For minors, it gives parents certain rights to access and consent regarding their child's educational records. These rights transfer to the student or former student when he or she reaches 18 or begins to attend school beyond the high school level.

Records Defined. Personally-identifiable Student Information includes any information directly related to a student and maintained by the educator or institution, i.e., , electronic or paper document, print, handwritten note, computer media, video. In some cases, identifiable information such as names or social security numbers, may be redacted but if the information would allow a reasonable person in the community to ascertain the identity of the student from the information provided.

Consent Required for Release. Release or access to personally-identifiable student information requires written consent of the parent if the student is a minor or the student is in a higher education institution. Only one parent's consent is required, even in the case of divorced parents. One parent does not have authority to prevent the other from getting access to their child's information.

School Employees' Responsibilities Regarding FERPA. Confidentiality of individual student information in formal and information settings, even in conversations, is absolutely required, with a few specific exceptions.

Access and Exceptions to the Confidentiality Requirements

- The student and his or her parents or other person standing in a “parental relationship.” (Once a student is in an institution of higher education, the student, not the parent, has the right of access);
- School officials, including teachers, with “legitimate education interests;”
- Certain juvenile justice officials, such as probation officers;
- Appropriate persons who in an emergency must have such information to protect the health or safety of the student or other person;
- Publicly-available information, such as directories or yearbooks, is available publicly;
- Certain accrediting organizations for accreditation purposes;
- Subpoena or court order.

Determining Who Has Consent Rights. Students under 18 and parents have specific rights regarding consent to release, access to information, and correction of existing records. Once the student reaches 18, he or she has the right to consent to release, but the parents still have access rights if the student is a dependent and is not enrolled in a higher education institution.

D. Title IX Gender-Related Issues and “Deliberate Indifference”

Title IX was originally passed by Congress as a way to prohibit gender discrimination and increase women’s participation in sports and other educational programs where they were underrepresented. However, along with the “liberty interest” concerns under the U. S. Constitution, it has taken on a much greater significance.

The prohibition against gender discrimination now can be a basis for lawsuits against colleges, schools, and educators accused of engaging in sexual misconduct or failing to adequately protect victims of sexual impropriety. This includes student-to-student sexual harassment or sexual misconduct.

Personal Liability. An educator may be held personally liable for failing to protect such victims where it can be proven that educators or school officials had some knowledge (“knew or should have known”) of abusive acts and failed to take action to stop it. For a teacher, making a report to Child Protective Services and his or her principal when the teacher has a reasonable suspicion of improper acts against a student, is absolutely required in order to not only protect the possible victim but also to prevent personal liability.

“Deliberate Indifference.” If a victim can show he or she reached out to an educator who did nothing about the information, “deliberate indifference” liability for the educator and school officials may be triggered.

One example of this standard is from a 1994 federal case in this jurisdiction, *Doe v. Taylor ISD*. This landmark case was filed originally by a former student who was a victim of sexual misconduct by a teacher/coach. The teacher/coach was convicted under criminal laws, imprisoned, and stripped of his educator certification. A civil lawsuit also was filed against not only the teacher/coach, but also against all his supervisors, all the way up to the school board members. Ultimately, after years of a court battle, the only person who was personally liable, other than the teacher/coach himself, was the principal, who was deemed to be “deliberately indifferent.” He had failed to address the teacher/coach’s misconduct when inappropriate conduct was reported to him. Had he addressed the misconduct when he first became aware of the problem, the student may not have been victimized by the teacher. On the other hand, teachers and other colleagues who reported suspected misconduct to proper authorities and administrators who took action promptly were not held liable.

General Standards. Title IX

- Protects both males and females
- Applies to any public educational program or activity
- Applies to athletic leagues, such as University Interscholastic League
- Is enforced by the U. S. Department of Education Office of Civil Rights (OCR)
- Applies to any school receiving federal funds from any source and to any program
- Applies to situations indicating gender stereotypes
- Includes sexual harassment of students by adults or by other students, which is gender-based

E. Code of Ethics for Educators

Educators and the institutions authorized to prepare educators for certification are subject to state regulations established by the Texas Education Agency State Board for Educator Certification.

Besides establishing certification standards for individuals seeking teacher, administrator, and other educator certifications, the regulations also establish standards for persons “worthy to instruct or to supervise the youth of this state.” The Educator Code of Ethics provides guidance in this area and is typically part of a local school district’s policies. (*See Appendix, page 10*).

The vast majority of educators in the state exhibit exemplary conduct and dedication to their students and the profession. However, if an educator engages in certain misconduct, disciplinary action by the state agency may include various sanctions, up to revocation of certification. All certification sanctions require the educator first to be provided due process, i.e., specific notice of the charges and an opportunity to give his or side of the story in a hearing. The most serious sanctions generally are assessed in

cases involving improper conduct with a student, particularly conduct of a sexual nature.

F. Liability for Personal Injury

Federal Law. As part of the original No Child Left Behind Act passed in 2001, Congress enacted a provision known as the Coverdell Teacher Protection Act. 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 federal law protects teachers from personal liability when the teacher is acting within the scope of employment, so there is no liability. Key elements of the Act:

- Applies to “teachers,” which is broadly defined to include classroom teachers, principals, administrators, and other educational professionals.
- 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.”
- 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.”
- Does not protect the teacher 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.”
- Does not apply to motor vehicle accidents.

Overall, the Act provides immunity or liability protection for teachers acting in conformity with federal and state law, as well as local policies. In the case of gross negligence and flagrant indifference to the rights of another, the teacher may incur personal liability for harm brought to the other person, such as a student.

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. Texas law provides broad “sovereign immunity” from liability for certified educators when someone is injured while in the educators’ supervision, except in cases of excessive force in discipline or in cases of use, maintenance, or operation of a motor vehicle.

Of course, intentional wrongdoing may be addressed in other venues, such as in a termination proceeding before the school board, a hearing for revocation of state certification, or a criminal court proceeding.

The rationale the state legislature has used in preserving this immunity is that public funds should not be spent for individuals when the incident is accidental or not clearly attributable to an employee's wrongdoing.

III. How Educators Can Protect Themselves From Liability

- Follow district policies and school rules.
- Anticipated problems should be reported as soon as possible to supervisors/administrators. Remember that an educator is required by law to report to Child Protective Services (CPS) any "suspected" child abuse or neglect, without exception.
- Contemporaneous "memory jogging" notes should be kept regarding significant incidents to include dates and times.
- If summaries and formal statements are written, that should occur promptly after the incident or situation arises, and should include name and date written, including the year.
- If necessary, a professional organization or union representative should be contacted for guidance and legal advice.

IV. How to Learn More and Become More Involved in the Profession

Numerous agencies and organizations are available to answer questions or provide additional information about school-related issues:

- Texas Education Agency, tea.tx.gov
- U. S. Department of Education, ed.gov
- U. S. Department of Labor, dol.gov
- Local school district policies available from links on district web sites

Professional organizations offer assistance and in some cases insurance to educators who choose to become members.

- American Federation of Teachers, aft.org
- Association of Texas Professional Educators, atpe.org
- Texas Classroom Teachers Association, tcta.org
- Texas State Teachers Association, tsta.org

APPENDIX: TEXAS EDUCATORS' CODE OF ETHICS

Note: Texas school districts include the Code of Ethics in Policy DH (Exhibit)

Texas Administrative Code Title 19, Section 247.1 and Section 247.2 (excerpts)

The Texas educator shall comply with standard practices and ethical conduct toward students*, professional colleagues, school officials, parents, and members of the community and shall safeguard academic freedom. The Texas educator, in maintaining the dignity of the profession, shall respect and obey the law, demonstrate personal integrity, exemplify honesty, and good moral character. The Texas educator, in exemplifying ethical relations with colleagues, shall extend just and equitable treatment to all members of the profession. The Texas educator, in accepting a position of public trust, shall measure success by the progress of each student toward realization of his or her potential as an effective citizen. The Texas educator, in fulfilling responsibilities in the community, shall cooperate with parents and others to improve the public schools of the community. This chapter shall apply to educators and candidates for certification.

- (1) Professional Ethical Conduct, Practices, and Performance
 - (A) Standard 1.1. The educator shall not intentionally, knowingly, or recklessly engage in deceptive practices regarding official policies of the school district, educational institution, educator preparation program, the Texas Education Agency, or the State Board for Educator Certification (SBEC) and its certification process.
 - (B) Standard 1.2. The educator shall not intentionally, knowingly, or recklessly misappropriate, divert, or use monies, personnel, property, or equipment committed to his or her charge for personal gain or advantage.
 - (C) Standard 1.3. The educator shall not submit fraudulent requests for reimbursement, expenses, or pay.
 - (D) Standard 1.4. The educator shall not use institutional or professional privileges for personal or partisan advantage.
 - (E) Standard 1.5. The educator shall neither accept nor offer gratuities, gifts, or favors that impair professional judgment or that are used to obtain special advantage. This standard shall not restrict the acceptance of gifts or tokens offered and accepted openly from students, parents of students, or other persons or organizations in recognition or appreciation of service.
 - (F) Standard 1.6. The educator shall not falsify records, or direct or coerce others to do so.
 - (G) Standard 1.7. The educator shall comply with state regulations, written local school board policies, and other state and federal laws.
 - (H) Standard 1.8. The educator shall apply for, accept, offer, or assign a position or a responsibility on the basis of professional qualifications.

- (I) Standard 1.9. The educator shall not make threats of violence against school district employees, school board members, students, or parents of students.
 - (J) Standard 1.10. The educator shall be of good moral character and be worthy to instruct or supervise the youth of this state.
 - (K) Standard 1.11. The educator shall not intentional, knowingly, or recklessly misrepresent his or her employment history, criminal history, and/or disciplinary record when applying for subsequent employment.
 - (L) Standard 1.12. The educator shall refrain from the illegal use, abuse, or distribution of controlled substances, prescription drugs and toxic inhalants.
 - (M) Standard 1.13. The educator shall not be under the influence of alcohol or consume alcoholic beverages on school property or during school activities when students are present.
- (2) Ethical Conduct Toward Professional Colleagues
- (A) Standard 2.1. The educator shall not reveal confidential health or personnel information concerning colleagues unless disclosure serves lawful professional purposes or is required by law.
 - (B) Standard 2.2. The educator shall not harm others by knowingly making false statements about a colleague or the school system.
 - (C) Standard 2.3. The educator shall adhere to written local school board policies and state and federal laws regarding the hiring, evaluation, and dismissal of personnel.
 - (D) Standard 2.4. The educator shall not interfere with a colleague's exercise of political, professional, or citizenship rights and responsibilities.
 - (E) Standard 2.5. The educator shall not discriminate against or coerce a colleague on the basis of race, color, religion, national origin, age, gender, disability, family status, or sexual orientation.
 - (F) Standard 2.6. The educator shall not use coercive means or promise of special treatment in order to influence professional decisions or colleagues.
 - (G) Standard 2.7. The educator shall not retaliate against any individual who has filed a complaint with the SBEC or who provides information for a disciplinary investigation or proceeding under this chapter.
 - (H) Standard 2.8. The educator shall not intentionally or knowingly subject a colleague to sexual harassment.
- (3) Ethical Conduct Toward Students
- (A) Standard 3.1. The educator shall not reveal confidential information concerning students unless disclosure serves lawful professional purposes or is required by law.

(B) Standard 3.2. The educator shall not intentionally, knowingly, or recklessly treat a student or minor in a manner that adversely affects or endangers the learning, physical health, mental health, or safety of the student or minor.

(C) Standard 3.3. The educator shall not intentionally, knowingly, or recklessly misrepresent facts regarding a student.

(D) Standard 3.4. The educator shall not exclude a student from participation in a program, deny benefits to a student, or grant an advantage to a student on the basis of race, color, gender, disability, national origin, religion, family status, or sexual orientation.

(E) Standard 3.5. The educator shall not intentionally, knowingly, or recklessly engage in physical mistreatment, neglect, or abuse of a student or minor.

(F) Standard 3.6. The educator shall not solicit or engage in sexual conduct or a romantic relationship with a student or minor.

(G) Standard 3.7. The educator shall not furnish alcohol or illegal/unauthorized drugs to any person under 21 years of age unless the educator is a parent or guardian of that child or knowingly allow any person under 21 years of age unless the educator is a parent or guardian of that child to consume alcohol or illegal/unauthorized drugs in the presence of the educator.

(H) Standard 3.8. The educator shall maintain appropriate professional educator-student relationships and boundaries based on a reasonably prudent educator standard.

(I) Standard 3.9. The educator shall refrain from inappropriate communication with a student or minor, including, but not limited to, electronic communication such as cell phone, text messaging, email, instant messaging, blogging, or other social network communication. Factors that may be considered in assessing whether the communication is inappropriate include, but are not limited to:

- a. The nature, purpose, timing, and amount of the communication;
- b. The subject matter of the communication;
- c. Whether the communication was made openly or the educator attempted to conceal the communication;
- d. Whether the communication could be reasonably interpreted as soliciting sexual contact or a romantic relationship;
- e. Whether the communication was sexually explicit; and
- f. Whether the communication involved discussion(s) of the physical or sexual attractiveness or the sexual history, activities, preferences, or fantasies of either the educator or the student.

Texas Administrative Code Title 19, Section 249.3 (51)

Solicitation of a romantic relationship—Deliberate or repeated acts that can be reasonably interpreted as the solicitation by an educator of a relationship with a student that is romantic in nature. A romantic relationship is often characterized by a strong emotional or sexual attachment and/or by patterns of exclusivity but does not include appropriate educator-student relationships that arise out of legitimate contexts such as familial connections or longtime acquaintance. The following acts, considered in context, may constitute prima facie evidence of the solicitation by an educator of a romantic relationship with a student:

- (A) Behavior, gestures, expressions, or communications with a student that is unrelated to the educator’s job duties and evidence a romantic intent or interest in the student, including statements of love, affection, or attraction. Factors that may be considered in determining the romantic intent of such communications or behavior, include, without limitation:
 - a. The nature of the communications;
 - b. The timing of the communications
 - c. The extent of the communications
 - d. whether the communications were made openly or secretly;
 - e. The extent that the educator attempts to conceal the communications;
 - f. If the educator claims to be counseling a student, the State Board for Educator Certification may consider whether the educator’s job duties included counseling, whether the educator reported the subject of the counseling to the student’s guardians or to the appropriate school personnel, or, in the case of alleged abuse or neglect, whether the educator reported the abuse or neglect to the appropriate authorities; and
 - g. Any other evidence tending to show the context of the communications between educator and student.
- (B) Making inappropriate comments about a student’s body, creating or transmitting sexually suggestive photographs or images, or encouraging the student to transmit sexually suggestive photographs or images;
- (C) Making sexually demeaning comments to a student;
- (D) Making comments about a student’s potential sexual performance;
- (E) Requesting details of a student’s sexual history;
- (F) Requesting a date, sexual contact, or any activity intended for the sexual gratification of the educator;

- (G) Engaging in conversations regarding the sexual problems, preferences, or fantasies of either party;
- (H) Inappropriate hugging, kissing, or excessive touching;
- (I) Providing the student with drugs or alcohol;
- (J) Violating written directives from school administrators regarding the educator's behavior toward a student;
- (K) Suggestions that a romantic relationship is desired after the student graduates, including post-graduation plans for dating or marriage; and
- (L) Any other acts tending to show that the educator solicited a romantic relationship with a student.

**A "student" under the Code of Ethics includes any person enrolled in a primary or secondary school of any kind, regardless of whether the person is a minor or over age 18.*