

TEXAS SCHOOL FOR THE DEAF

EMPLOYEE RIGHTS AND PRIVILEGES: IMMUNITY

**DGC
(LOCAL)**

IMMUNITY

Nothing contained in this policy shall preempt the School's common law, constitutional and statutory immunities.

Nothing under Education Code 22.051 or in this policy limits or abridges any immunity or protection afforded to an individual under state or federal law.

Education Code 22.051(b) and (c)

DEFINITION

A professional employee is defined as a: Member of the Board of Trustees, Superintendent, , General Counsel, Principal, Teacher, including, substitutes, Supervisor, Social Worker, School Counselor, Nurse , Teacher's aide, Student in Education Preparation Program in Field Experience or Internship, School bus driver certified by Department of Public Safety, Other Employee of the School whose job requires certification and the exercise of discretion

A non-professional employee includes all other employees of the School and who are: responsible for maintaining discipline and safety as a part of their job; or called to maintain discipline or ensure safety in an emergency.

An employee of the School includes all School employees (contract, classified and substitute)

Education Code 22.051; 20 U.S.C. Section 7943, 7946(a)

**IMMUNITY FROM
INDIVIDUAL
LIABILITY**

A professional employee is not personally liable for any act within the scope of the duties of their position with the School that involves the exercise of judgment or discretion unless the act involves the discipline of a student where the employee uses excessive force or is negligent and their action results in bodily injury to a student.

Education Code 22.0511(a)

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**MOTOR VEHICLE
EXCEPTION**

Immunity under Education Code 22.0511 does not apply to the operation, use or maintenance of any motor vehicle.

Education Code 22.0511(b)

**IMMUNITY UNDER
THE COVERDELL
ACT**

Except as provided under 20 U.S.C. Section 7946(b) "Limitation on liability for teachers" no professional or non-professional employee of the School shall be liable for harm caused by an act or omission of the employee on behalf of the School if:

The employee was acting within the scope of their TSD employment or responsibilities to the School;

The employee's actions were in accordance with federal, state, or local law (including rules and regulations) to control, discipline, expel or suspend a student or maintain order or control of a classroom or school;

If appropriate or required, the employee 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;

The harm was not caused by the employee's willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the student or individual.

The harm was not the result of the employee's operating a motor vehicle for which the state requires the possession of an operator's license or maintenance of insurance.

20 U.S.C. Section 7943, 7946(a)

**IMMUNITY RELATED
TO THE REPORT OF
DRUG OFFENSES**

An employee of the School is not liable in civil damages for reporting to a School administrator or governmental authority a student whom the employee suspects of using, passing, or selling (on school property) any of the following substances:

Marijuana or a controlled substance, as defined by the Texas Controlled Substances Act, a dangerous drug,

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as defined by the Texas Dangerous Drug Act, an abusable glue or aerosol paint, as defined by Health and Safety Code Chapter 485, a volatile chemical, if the substance is used or sold for the purpose of inhaling its fumes or vapors, or an alcoholic beverage, as defined by Section 1.04, Alcoholic Beverage Code. Education Code 37.016

IMMUNITY RELATED TO THE REPORT TO LOCAL LAW ENFORCEMENT

A person who under state law is required to report to law enforcement activities outlined in Education Code 37.015 is not liable in civil damages when making a good faith report.

Education Code 37.015

IMMUNITY RELATED TO THE REPORT OF CHILD ABUSE AND MALTREATMENT

An employee of the School who reports sexual abuse and other maltreatment of children in accordance with Education Code 38.0041 [see policy FFG] is not liable in civil damages when making a good faith report.

Education Code 38.0041 [See policy DG regarding protection from disciplinary proceedings]; Education Code 22.0511

IMMUNITY RELATED TO THE ADMINISTRATION OF MEDICATION

The School does not waive its and its employees' immunity from civil liability for damages or injuries resulting from the administration of medication to a student in accordance with Education Code 22.052, [See policy FFAC] or from any other action for which the School has common law, constitutional or statutory immunity.

Education Code 22.052(a), (b)

IMMUNITY RELATED TO THE PROVISION OF MENTAL HEALTH FIRST AID

An employee of the School who has completed a mental health first aid training program offered by a local mental health authority shall not be held personally liable for civil damages for assisting an individual experiencing a mental health crisis if the assistance is offered in good faith and the act is not willfully or wantonly negligent.

Health and Safety Code 1001.206

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**IMMUNITY RELATED
TO SHELTERING OR
HOUSING
INDIVIDUALS DUE TO
EVACUATION OR
DISASTER**

An employee of the School is not civilly liable for performing an activity related to sheltering or housing individuals in connection with the evacuation of an area stricken with or threatened by a disaster when that activity is in the discharge of their duty.

Government Code 418.006, 431.085

**NO WAIVER OF
IMMUNITY**

The School may not, through policy, contract or administrative directive:

Require an employee to waive their immunity from liability under Education Code 22.0511; or

Require an employee who has acted in good faith to pay for or replace property belonging to a student or other individual that the employee had possession of because of an act incident to or within the scope of employment. [See policy DG]

Education Code 22.0511(d)

Issued: 02-16-18

Adopted: 02-16-18

Amended: