

EMPLOYEE RIGHTS AND PRIVILEGES

DG
(LEGAL)

EMPLOYEE FREE
SPEECH

District employees do not shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.

However, neither an employee nor anyone else has an absolute constitutional right to use all parts of a school building or its immediate environs for unlimited expressive purposes. When a public employee makes statements pursuant to his or her official duties, the employee is not speaking as a citizen for First Amendment purposes, and the Constitution does not insulate the communications from employer discipline.

Garcetti v. Ceballos, 547 U.S. 410 (2006); *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969) [See also GKD]

WHISTLEBLOWER
PROTECTION

The Board or its agents shall not suspend or terminate the employment of, or take other adverse personnel action against, an employee who in good faith reports a violation of law by the District or another public employee to an appropriate law enforcement authority.

A "report" is made to an "appropriate law enforcement authority" if the authority is a part of a state or local governmental entity or the federal government that the employee in good faith believes is authorized to:

1. Regulate under or enforce the law alleged to be violated in the report; or
2. Investigate or prosecute a violation of criminal law.

Gov't Code 554.002

A supervisor who suspends or terminates the employment of or takes an adverse personnel action against an employee for reporting a violation of law shall be subject to civil penalties. *Gov't Code 554.008*

DEFINITIONS

"Employee" means an employee or appointed officer who is paid to perform services for the District. It does not include independent contractors. *Gov't Code 554.001(4)*

"Law" means a state or federal statute, an ordinance of a local governmental entity, or a rule adopted under a statute or ordinance. *Gov't Code 554.001(1)*

A "good faith" belief that a violation of the law occurred means that:

1. The employee believed that the conduct reported was a violation of law; and
2. The employee's belief was reasonable in light of the employee's training and experience.

Wichita County v. Hart, 917 S.W.2d 779 (Tex. 1996)

A "good faith" belief that a law enforcement authority is an appropriate one means:

1. The employee believed the governmental entity was authorized to:
 - a. Regulate under or enforce the law alleged to be violated in the report, or
 - b. Investigate or prosecute a violation of criminal law; and
2. The employee's belief was reasonable in light of the employee's training and experience.

Tex. Dep't of Transp. v. Needham, 82 S.W.3d 314 (Tex. 2002)

WHISTLEBLOWER
COMPLAINTS

An employee who alleges a violation of whistleblower protection may sue the District for injunctive relief, actual damages, court costs, and attorney's fees, as well as other relief specified in Government Code 554.003. *Gov't Code 554.003*

INITIATE
GRIEVANCE

Before suing, an employee must initiate action under the District's grievance policy or other applicable policies concerning suspension or termination of employment or adverse personnel action.

The employee must invoke the District's grievance procedure not later than the 90th day after the date on which the alleged suspension, termination, or other adverse employment action occurred or was discovered by the employee through reasonable diligence.

LEGAL ACTION

If the Board does not render a final decision before the 61st day after grievance procedures are initiated, the employee may elect to:

1. Exhaust the District's grievance procedures, in which case the employee must sue not later than the 30th day after the date those procedures are exhausted to obtain relief under Government Code Chapter 554; or
2. Terminate District grievance procedures and sue within the time lines established by Government Code 554.005 and 554.006.

Gov't Code 554.005, 554.006 [See DGBA regarding grievance procedures]

BURDEN OF PROOF

If the employee brings a lawsuit, the employee has the burden of proof unless the suspension, termination, or adverse personnel action occurred within 90 days after the employee reported a violation of law, in which case the suspension, termination, or adverse

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personnel action is presumed, subject to rebuttal, to be because the employee made the report.

AFFIRMATIVE
DEFENSE

It is an affirmative defense to a whistleblower suit that the District would have taken the action against the employee that forms the basis of the suit based solely on information, observation, or evidence that is not related to the fact that the employee made a report protected under the whistleblower law.

Gov't Code 554.004

NOTICE OF RIGHTS

The Board shall inform its employees of their rights regarding whistleblower protection by posting a sign in a prominent location in the workplace. The design and content of the sign shall be as prescribed by the attorney general. *Gov't Code 554.009*

PROTECTION FOR
REPORTING CHILD
ABUSE

The Board or its agents may not suspend or terminate the employment of, or otherwise discriminate against, a professional employee who in good faith:

1. Reports child abuse or neglect to:
 - a. The person's supervisor,
 - b. An administrator of the facility where the person is employed,
 - c. A state regulatory agency, or
 - d. A law enforcement agency; or
2. Initiates or cooperates with an investigation or proceeding by a governmental entity relating to an allegation of child abuse or neglect.

A person whose employment is suspended or terminated or who is otherwise discriminated against in violation of the foregoing may sue for injunctive relief, damages, or both. A District employee who has a cause of action under WHISTLEBLOWER PROTECTION may not bring an action under PROTECTION FOR REPORTING CHILD ABUSE.

Family Code 261.110

ATTENDANCE
COMMITTEE
MEMBERSHIP

A member of an attendance committee is not personally liable for any act or omission arising out of duties as a member of an attendance committee. *Education Code 25.092(c)*

REPORT OF DRUG
OFFENSES

A teacher, administrator, or other District employee is not liable in civil damages for reporting to a school administrator or governmental authority, in the exercise of professional judgment within the scope of the teacher's, administrator's, or employee's duties, a

student whom the teacher suspects of using, passing, or selling, on school property any of the following substances:

1. Marijuana or a controlled substance, as defined by the Texas Controlled Substances Act.
2. A dangerous drug, as defined by the Texas Dangerous Drug Act.
3. An abusable glue or aerosol paint, as defined by Health and Safety Code Chapter 485, or a volatile chemical, if the substance is used or sold for the purpose of inhaling its fumes or vapors.
4. An alcoholic beverage, as defined by Section 1.04, Alcoholic Beverage Code.

Education Code 37.016

REPORT TO LOCAL
LAW ENFORCEMENT

A principal or person designated by the principal is not liable in civil damages for making a good faith report to law enforcement, as required by law, of an activity specified at Education Code 37.015. *Education Code 37.015* [See GRA]

ADMINISTRATION OF
MEDICATION

The District, the Board, and its employees shall be immune from civil liability for damages or injuries resulting from the administration of medication to a student in accordance with Education Code 22.052. *Education Code 22.052(a), (b)* [See FFAC]

PROTECTION OF
NURSES

The District may not suspend, terminate, or otherwise discipline or discriminate against a nurse who refuses to engage in an act or omission relating to patient care that:

1. Would constitute grounds for reporting the nurse to the Board of Nurse Examiners under Occupations Code Chapter 301, Subchapter I;
2. Constitutes a minor incident, as defined at Occupations Code 301.419; or
3. Would violate Occupations Code Chapter 301 or a rule of the Board of Nurse Examiners, if the nurse notifies the District at the time of the refusal that this is the reason for refusing to engage in the act or omission.

Occupations Code 301.352(a)

IMMUNITY FROM
INDIVIDUAL LIABILITY

The statutory immunity detailed below is in addition to and does not preempt the common law doctrine of official and governmental immunity. *Education Code 22.051(b)*

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'PROFESSIONAL
EMPLOYEES'

A professional employee of the 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 that involves the exercise of judgment or discretion, except in circumstances where, in disciplining a student, the employee uses excessive force or his or her negligence results in bodily injury to the student.

"Professional employee of the District" includes a superintendent; principal; teacher, including a substitute teacher or a teacher employed by a company that contracts with the District to provide the teacher's services to the District; a supervisor; social worker; counselor; nurse; teacher's aide; a student in an education preparation program participating in a field experience or internship; a DPS-certified school bus driver, and any other person whose employment requires certification and the exercise of discretion.

MOTOR VEHICLE
EXCEPTION

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

Education Code 22.0511(a)–(b), 22.051; Hopkins v. Spring Indep. Sch. Dist., 736 S.W.2d 617 (Tex. 1987); Barr v. Bernhard, 562 S.W.2d 844 (Tex. 1978)

'INDIVIDUALS'

In addition to the immunity described above [at PROFESSIONAL EMPLOYEES], and under other provisions of state law, an individual is entitled to any immunity and any other protections afforded under the Paul D. Coverdell Teacher Protection Act of 2001 (Coverdell Act). [See TEACHERS, below] Nothing in Education Code 22.0511(c) shall be construed to limit or abridge any immunity or protection afforded an individual under state law. *Education Code 22.0511(c)*

NO WAIVER

The District may not, by policy, contract, or administrative directive:

1. Require an employee to waive the employee's immunity from liability under Education Code 22.0511; or
2. Require an employee who acts in good faith to pay for or replace property belonging to a student or other person that the employee possessed because of an act incident to or within the scope of employment. [See TEXTBOOKS AND TECHNOLOGICAL EQUIPMENT, below]

Education Code 22.0511(d)

'TEACHERS'
(COVERDELL ACT)

Except as provided in 20 U.S.C. Section 6736(b), no "teacher" in a school shall be liable for harm caused by an act or omission of the teacher on behalf of the school if:

1. The teacher was acting within the scope of the teacher's employment or responsibilities to a school or governmental entity;
2. 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;
3. 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;
4. The harm was not caused by 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; and
5. The harm was not caused by the teacher's operating a motor vehicle, vessel, aircraft, or other vehicle for which the state requires the operator or the owner of the vehicle, craft, or vessel to:
 - a. Possess an operator's license; or
 - b. Maintain insurance.

"Teacher" means:

1. A teacher, instructor, principal, or administrator;
2. Another educational professional who works in a school;
3. An individual member of a school board (as distinct from the Board); or
4. A professional or nonprofessional employee who works in a school, and:
 - a. In the employee's job, maintains discipline or ensures safety; or
 - b. In an emergency, is called on to maintain discipline or ensure safety.

20 U.S.C. Sections 6733, 6736(a)

TEXTBOOKS AND
TECHNOLOGICAL
EQUIPMENT

The Board may not require an employee who acts in good faith to pay for a textbook, electronic textbook, or technological equipment

that is damaged, stolen, misplaced, or not returned. An employee may not waive this provision by contract or any other means.

EXCEPTION

The District may enter into a written agreement with an employee whereby the employee assumes financial responsibility for electronic textbook or technological equipment usage off school property or outside of a school-sponsored event in consideration for the ability of the employee to use the electronic textbook or technological equipment for personal business.

The written agreement shall be separate from the employee's contract of employment, if applicable, and shall clearly inform the employee of the amount of the financial responsibility and advise the employee to consider obtaining appropriate insurance. An employee may not be required to enter into such an agreement as a condition of employment.

Education Code 31.104(e)

IMMUNITY FOR
SHELTER WORKERS

An officer or employee of the District is not civilly liable for an act performed in the discharge of duty if the person is performing an activity related to sheltering or housing individuals in connection with the evacuation of an area stricken or threatened by disaster.
Gov't Code 418.006, 431.085