

Reasonable Use of Force

When Force is Necessary: What School District Employees Should Know

Texas Education Code Sec. 21.0512 mandates that school district personnel have legal protections when reasonable force is used when necessary to maintain discipline in the classroom and ensure that students are properly educated and safe. The Commissioner of Education has compared the rights of teachers to use reasonable force to maintain discipline to the rights of parents to use reasonable force to discipline their children (with the exception of corporal punishment). TEC Sec. 21.0512 is a remedial statute that should be broadly and liberally applied in favor of the employee. *Roberto Flores v. Houston ISD*, Docket No. 089-R10-0807 (Comm'r Educ. 2012).

There are many common examples of when teachers use force to maintain discipline.

- Breaking up a fight
- Preventing a student from entering the room (standing in the doorway, holding a student back from entering)
- Assault by a student requiring proportionate self-defense
- Removing headphones from the head of a student
- Restraining a student who is trying to exit the building
- Restraining a student for some other legitimate purpose (ex harm to self or others)

TEC Sec. 22.0512:

Immunity From Disciplinary Proceedings for Professional Employees

(a) A professional employee of a school district may not be subject to disciplinary proceedings for the employee's use of physical force against a student to the extent justified under Section 9.62 (Educator-student), Penal Code.

(b) In this section, "disciplinary proceeding" means: **(1)** an action brought by the school district employing a professional employee of a school district to discharge or suspend the employee or terminate or not renew the employee's term contract; or **(2)** an action brought by the State Board for Educator Certification to enforce the educator's code of ethics adopted under Section 21.041 (Rules; Fees)(b)(8). **(c) This section does not prohibit a school district from: (1) enforcing a policy relating to corporal punishment; or (2) notwithstanding Subsection (a), bringing a disciplinary proceeding against a professional employee of the district who violates the district policy relating to corporal punishment.**

Since the statute mentions **Sec. 9.62 of the Texas Penal Code**, it is important to know the text of that law as well:

Reasonable Use of Force

The use of force, but not deadly force, against a person is justified:

- (1) if the actor is entrusted with the care, supervision, or administration of the person for a special purpose; and
- (2) when and to the degree the actor reasonably believes the force is necessary to further the special purpose or to maintain discipline in a group.

There are several key concepts that would likely come into play in any case involving the reasonable use of force to maintain discipline:

- 1) **What is reasonable force?** The burden falls upon the District to show that the use of force was unreasonable. *Daniel Villarreal v. Edinburg ISD*, Docket No. 063-R2-08-2016 (Comm'r Educ. 2016). "Professional employees are entitled to immunity, as long as the action taken, seen from the perspective of the employee, is objectively reasonable and does not constitute corporal punishment in violation of policy." *Paul Zarsky v. Southside ISD*, Docket No. 037-R1-07-2019 (Comm'r Educ. 2019). In order to determine if the use of force is reasonable, the following are examined: (a) The age, sex and condition of the child; (b) The nature of his offense or conduct and his motives; (c) The influence of his example upon other students; (d) Whether the force was reasonably necessary to compel obedience to a proper command; and (e) Whether the force was disproportionate to the offense, is unnecessarily degrading, or is likely to cause serious injury. *Samuel Papa v. Presidio ISD*, Docket No. 016-R2-0306 (Comm'r Educ. May 2006).
- 2) **District Cannot Restrict Immunity:** "A district cannot adopt a policy or give directives that further limit a professional employee's use of force beyond what is permitted under Texas Education Code Sec. 22.0512." *Roberto Flores v. Houston ISD*, Docket No. 089-R10-0807 (Comm'r Educ. 2012).
- 3) **In loco parentis:** A professional educator stands in loco parentis (in the place of a parent) to her students and thus has the same authority, protections, and immunities as a parent in the reasonable use of force to maintain discipline and further an educational purpose. *Paul Zarsky v. Southside ISD*, Docket No. 037-R1-07-2019 (Comm'r Educ. 2019).

Remember! The use of force against a student should NEVER be used unless necessary. It cannot be disproportionate, or as punishment. If a member is facing discipline for the use of force against a student, they should contact the Help Center as these cases are complex. Aside from the possibility of workplace discipline, an accusation of the use of unreasonable force could lead to sanctions against an educator's certificate and criminal charges. TSTA might have resources available to assist in reprimands, grievances, termination/non-renewal, TEA investigations, and some criminal cases related to the use of force.