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## **Off-duty Educator (Mis)Conduct**

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From the fall of 2008 until December 2011, Christina Cracraft was a well-regarded music teacher at Gonzalez Community School in the Santa Fe Public Schools system. She was a competent teacher, evidenced by her teaching evaluations, who rarely received complaints. Christina, also known as “Taffy Shalamar,” is a transgendered individual who performed burlesque-style drag performances after-hours. Some of these performances were recorded and posted online. When some parents spotted the videos online, they complained to the school administration and requested to have their children removed from Christina’s class.<sup>1</sup>

In mid-December 2011, Christina was placed on administrative leave and informed of the District’s need to “investigate off-and-on duty conduct on [her] part that has drawn parent complaints and continues to disrupt the educational process...”. Christina was asked to resign in February 2012 by the District’s superintendent. Rather than return to the classroom, Christina accepted an undisclosed settlement and resigned.<sup>2</sup>

Stephen Murmer, a popular art teacher at Monacan High School in the Chesterfield County School system in Virginia, was suspended for his work as a “butt-print painter.” Stephen creates his floral and abstract art by plastering his bottom and genitals with paint and then pressing them against canvas. His works reportedly sell for hundreds of dollars. Murmer went to great lengths to keep his hobby private—he painted under the pseudonym “Stan Murmur” and went as far as appearing in disguise when he promoted his work.

Murmer was fired in January 2007. In October 2007, the ACLU filed suit on Murmer’s behalf alleging violations of Murmer’s constitutional rights.<sup>3</sup> In March 2008, Murmer and Chesterfield County School Board reached an agreement in which Murmer received \$65,000, or about two years’ salary.

Stacey Synder, a Pennsylvania college senior, was dismissed from her student teaching position because of unprofessional postings on her MySpace site. Included on the site were posts that criticized her supervisor and a photograph of her wearing a pirate hat and drinking from a plastic cup with the caption “drunken pirate.” Because she was dismissed from the student teaching program, Synder graduated with an English degree rather than an Education degree which prevented her from applying for a Pennsylvania teaching certificate. Stacey sued, but a federal court found no First Amendment violation.

Closer to home, Tamara Hoover was a high school art teacher in Austin, Texas in 2006 when topless photographs of her surfaced online. The photographs were taken by Hoover’s partner, a professional photographer, and posted on the partner’s photography website. The photographs were brought to the attention of the school district’s administration by another educator. While

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<sup>1</sup> Robert Nott, *Music Teacher Pushes for Policy After Drag-Show clip Cost Her Job*, THE NEW MEXICAN, March 26, 2012.

<sup>2</sup> *Id.*

<sup>3</sup> [http://www.acluva.org/docket/pleadings/murmer\\_complaint.pdf](http://www.acluva.org/docket/pleadings/murmer_complaint.pdf)

the district did not accuse Hoover of engaging in pornography, it did accuse her of failing to maintain the District's standards of professional conduct and engaging in an activity that "because of the publicity given it, or knowledge among the students, faculty and community, impairs or diminishes the employee's effectiveness in the district."<sup>4</sup>

Hoover argued that any publicity to the matter was created by the District when it sent notices out to her students about the matter. The District contended that hundreds of students knew about the site prior to the notification to parents.

Ultimately, Hoover resigned in exchange for a modest settlement.

The common thread in these situations is that the educators were dismissed for conduct that occurred off-duty that was wholly unrelated to their jobs as teachers. None of the dismissals were performance-based or alleged misconduct in the workplace. In fact, Murmer, Cracraft, and Hoover were purportedly good teachers. So, can an educator engage in legal, off-duty conduct without jeopardizing her career? Good question.

Courts have consistently held teachers to a higher standard of conduct than most employees because of the nature of the work they perform.

Within the public school system, teachers play a critical part in developing students' attitude toward the role of citizens in our society...Further, a teacher serves as a role model for his [her] students exerting a subtle but important influence over their perception and values.<sup>5</sup>

The different types of off-duty conduct that could subject an educator to adverse employment action or certification sanctions are limitless. Lawyers for both school districts and employees are quite familiar with these situations. It could be an employee posting an off-color comment or photo on a social media site which is discovered by a colleague, parent or student, or criminal activity which is reported by the local media.

This paper will focus on off-duty conduct of educators which is unrelated (at least directly) to the educator's employment, and the legal issues that surround such off-duty educator misconduct.

### **Off-duty misconduct and the at-will employee**

While the focus of this paper is educators who hold a Chapter 21 contract, discharge of at-will employees is worth mentioning briefly. In Texas, the at-will employment doctrine governs most employment arrangements. Simply put, an at-will employment arrangement is one in which either party may end the relationship at any time for any legal reason.<sup>6</sup> Thus, one might believe that an at-will employee may be legally terminated for any conduct which the employer believes constitutes misconduct. While generally true, there are two caveats:

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<sup>4</sup> The Austin Chronicle, June 23, 2006.

<sup>5</sup> *Ambach v. Norwick*, 441 U.S. 68, 78-79 (1978).

<sup>6</sup> EDUCATOR'S GUIDE TO TEXAS SCHOOL LAW, Walsh, Kennemer & Manoitis (7<sup>th</sup> ed), p. 141.

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