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**Can't Touch This—How Statutory Immunity Protection Passed  
in 2003 Shields Educators Who Use Force Against Students****Dr. Melissa Kates and Sharon E. Pickrell**

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In 2003, the Texas legislature adopted House Bill 4, the most sweeping tort reform legislation in Texas to date.<sup>1</sup> The passage of House Bill 4 significantly altered the litigation environment in Texas by limiting the ability of citizens to sue for tort injuries against many groups, including educators.<sup>2</sup> House Bill 4 led to the passage of Texas Education Code §22.0152, providing school professionals additional immunity protections.

Texas Education Code § 22.0512 provides a professional employee immunity from “discipline, termination, or nonrenewal for the employee's use of physical force against a student to the extent justified under Texas Penal Code section 9.62.”<sup>3</sup> Section 22.0512 provides immunity protections to educators who use *reasonable* force against a student. Section 22.0512 broadened the definition of a “professional employee” entitled to statutory immunity protections; superintendents, school board members, substitute teachers, students in an educator preparation program, bus drivers, and individuals who contract with schools to deliver services were all added under the definition. As noted by Chriss (2005), every person in a school district, except for custodians, were given immunity under House Bill 4.<sup>4</sup>

A professional employee—one who is entrusted with the care, supervision, or administration of a child—is immune from disciplinary proceedings if the force used was justified by Texas Penal Code § 9.62.<sup>5</sup> For simplicity of this paper, “professional employees” will be referred to herein collectively as “educators.” Under the doctrine of *in loco parentis*,

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<sup>1</sup> Carlson, E. A. (2005). Tort reform: Redefining the role of the court and the jury. *South Texas Law Review*, 47(2), 245-287.

<sup>2</sup> Forgey, J. R. (2018). Let's shake on it: Settling with a municipality when governmental immunity applies. *Baylor Law Review*, 70, 637-665.

<sup>3</sup> See Tex. Educ. Code § 22.0512.

<sup>4</sup> Chriss, W. J. (2005). House Bill 4 and other new legislation: Homeowners insurance, architects & engineers, and immunity for school & charity workers and volunteer firefighters. *South Texas Law Review*, 46, 1201-1215.

<sup>5</sup> Tex. Educ. Code § 22.0512.

educators have the same rights as parents to impose reasonable rules for children under their care and to enforce obedience to the rules using moderate restraint.<sup>6</sup> While a parent is concerned with the general welfare of a child, an educators' concerns are limited to special purposes. Thus, an educator can use appropriate physical force to control, train, and educate a student.<sup>7</sup>

An educators' reasonable force is governed by Texas Education Code § 22.0512 and Texas Penal Code § 9.62. Texas Penal Code § 9.62 exempts certain conduct that would otherwise be criminal, such as assault. Assault can simply be reckless action, and “[a] teacher who snatches a comic book from a student could theoretically be charged with assault but for Texas Penal Code § 9.62.”<sup>8</sup> Texas Penal Code § 9.62 allows educators to use reasonable force to enforce compliance with a proper command issued for the purpose of controlling, training, or educating the child.

### ***Board Policy Cannot Limit Statutory Immunity***

A school district cannot use board policy, administrative regulations, or directives to negate or undermine the statutory immunity protections under Texas Education Code § 22.0512.<sup>9</sup> A district may not enact a policy or give employees directives that limit a professional employee from using non-deadly physical force that the employee reasonably believes is necessary to further the special purpose of education.<sup>10</sup> However, the district can establish a corporal punishment policy.

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<sup>6</sup> *Williams v. Spring Ind. Sch. Dist.*, 2017 TX Educ. Agency LEXIS 40 (October 9, 2017).

<sup>7</sup> *Id.*

<sup>8</sup> *Harper v. Alvarado Ind. Sch. Dist.*, 2010 TX Educ. Agency LEXIS 26 (May 27, 2010).

<sup>9</sup> *See Stoneham v. Crowley Ind. Sch. Dist.*, 22 TX Educ. Agency 24 (April 4, 2022); *Flores v. Houston Ind. Sch. Dist.*, 2012 TX Educ. Agency LEXIS 26 (April 13, 2012).

<sup>10</sup> *See Lewis v. Houston Ind. Sch. Dist.*, 2012 TX Educ. Agency LEXIS 7 (April 20, 2012); *Papa v. Presidio Ind. School Dist.*, 2006 TX Educ. Agency LEXIS 90 (May 3, 2006); *Peters v. Dallas Ind. Sch. Dist.*, 2012 TX Educ. Agency LEXIS 75 (October 22, 2012).

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