



## **Theft, Loss, or Damage to Technology Devices at School**

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### **Personal Devices**

#### **1. Can students bring personal technology devices to school?**

It depends on local policy and rules. Some districts completely prohibit the possession or use of cell phones and other personal electronic devices on campus, while others choose to place restrictions on possession during the school day and at school-related events. For example, some districts choose to permit the devices to be brought on campus, but restrict students from displaying, turning on, or using the devices in class. Still others permit the possession and authorized instructional use of personal technology devices.

Applicable rules should be clearly set out in the student handbook and acceptable use policy (AUP). If a district wishes to discipline students for bringing or using technology devices on campus, the district should detail the prohibition in the student code of conduct. The TASB model student code of conduct provides sample language from which districts may choose, or the district may develop its own language.

Regardless of whether a district prohibits a student from possessing telecommunications devices on school property or while engaging in a school-related activity, the district must allow a student enrolled in a course that requires use of a graphing calculator to use a calculator application on a computing device (including a personal laptop or tablet computer) that provides the same functionality unless the district makes available to the student a graphing calculator at no cost to the student. The district may adopt policies related to student use of a computing device for this purpose. Tex. Educ. Code § 25.904.

#### **2. Can teachers confiscate student-owned devices if students misuse them?**

Yes. Teachers frequently take possession of students' personal devices when devices are misused during instructional time. The teacher may merely hold the device until the end of class, or the teacher may actually confiscate the device and turn it over to a campus administrator.

Texas Education Code section 37.082 permits a school board to adopt a policy prohibiting a student from possessing a telecommunications device while on school property or while attending a school-sponsored or school-related activity on or off school property. The policy may establish disciplinary measures to be imposed for violation of the prohibition and may provide for confiscation of the device.

The district may also opt to charge a fee to return a confiscated telecommunications device or to dispose of the device in certain circumstances. A policy drafted under Texas Education Code section 37.082 may provide for the disposal of a confiscated telecommunications device in a reasonable manner if the student's parent and the company whose name and address appear on the device are given 30 days' notice of the intent to dispose of the device. Section 37.082 was originally enacted to prohibit the presence of a *paging device* at schools. The statute still refers to "paging devices," but the statute's definition of paging devices is broad enough to include cell phones and other mobile devices. The fact that pagers were typically rented from a telecommunications company explains why the statute requires that notice be given to "the company whose name and address or telephone number appear on the device." As a practical matter, the requirement to send notice to the company would not apply if no company address or phone appeared on the device. The district's policy may also authorize the district to charge the owner of the device, or the student's parent, an administrative fee not to exceed \$15 in order to release the device. Tex. Educ. Code § 37.082. The authorization for disposal and charging a fee should be included in Policy FNCE(LOCAL), but the fee amount may be included in the student handbook.

Note that the rule applies to any telecommunications device "that emits an audible signal, vibrates, displays a message, or otherwise summons or delivers a communication to the possessor." Tex. Educ. Code § 37.082(c). A cell phone is a clear example of a telecommunications device. Moreover, most modern technology or electronic equipment contains some form of built-in messaging function or capability that allows the possessor to deliver communications; therefore, most electronic devices will likely fall under this rule, including laptops, tablets, or e-readers. The statute, however, would not authorize the district to dispose of or charge a fee for releasing devices that truly do not have the ability to summon or deliver communications to the possessor.

**3. If a student's personal device is lost or stolen while it is in an educator's care, is the school district financially responsible?**

No, a school district cannot be held financially liable for a student's personal device. Texas, like other states, adheres to the doctrine of governmental, or sovereign, immunity. This means that school districts cannot be successfully sued for the negligence of their employees, except in those limited instances when the state legislature has given its express permission. *See, e.g., Satterfield & Pontikes Constr. v. Irving Indep. Sch. Dist.*, 197 S.W.3d 390 (Tex. 2006) (allowing case to proceed against school district due to enactment of new statute waiving school's immunity to suit involving contracts executed before September 1, 2005). Through the Texas Tort Claims Act, the legislature has granted permission to sue a school district in limited situations where personal injury or property damage arises from the use or operation of a motor vehicle by a school employee. Tex. Civ. Prac. & Rem. Code § 101.051.

**4. If a student’s personal device is lost or stolen while it is in an educator’s care, is the educator financially responsible?**

No, not unless the educator purposefully, not negligently, caused the loss. The educator will not be personally financially responsible unless there is an allegation of purposeful wrongdoing committed by the school district employee. If the employee did steal or harm the device, the student may be able to pursue a personal claim for restitution by the employee.

In most situations, however, the claim will be that the educator negligently failed to protect the device from harm by another person. The Texas Education Code provides that “[a] professional employee of a school district is not personally liable for any act that is incident to or within the scope of the duties of the employee’s position and that involves the exercise of judgment or discretion on the part of the employee,” with the exception of the use of excessive force in the discipline of students or negligence causing bodily injury to the students. Tex. Educ. Code § 22.0511(a). If a theft or loss occurs while an educator is exercising the discretion to withhold or confiscate a student’s device, the educator will have immunity from claims that the educator failed to adequately protect the student’s property.

**5. Even if the school district is not legally liable for theft, loss, or damage to a student’s personal device, could the school district voluntarily cover the cost of the device?**

No, not unless the school board decides the payment is necessary for a valid school district purpose. A school district may pay for loss or damage to personal property only if the school board determines that the expenditure is *necessary* in the conduct of the public schools. In situations where the district is immune from all liability related to the student’s loss, the district’s payment to replace the student’s property will constitute a gift of public funds. An expenditure of school funds to benefit a private person is constitutional only if the school board: 1) determines that the expenditure’s predominant purpose is to accomplish a public purpose, not to benefit a private party, 2) retains sufficient control over the expenditure to ensure that the public purpose is accomplished, and 3) ensures that the school district receives a return benefit. Tex. Att’y Gen. Op. No. GA-0076 (2003). In most cases, school boards will not have an overriding public purpose in replacing lost personal equipment and to do so will set a precedent that may be very costly.

**School-Owned Devices**

**6. Can a district employee be held responsible for the theft, loss, or damage of a school district-issued technology device?**

No, not if the employee was acting in good faith when the device was harmed. Texas Education Code section 31.104(e) prohibits a district from recouping the cost of lost or stolen equipment from a district employee except in limited circumstances. A school

district may not require an employee who acts in good faith to pay for instructional materials or technological equipment that is damaged, stolen, misplaced, or not returned.

A district may enter into a written agreement with an employee whereby the employee assumes financial responsibility for electronic instructional material 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 instructional material or equipment for personal business. The written agreement must be separate from the employee's employment contract. In addition, the agreement must clearly inform the employee of the amount of 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. Tex. Educ. Code § 31.104(e).

The TASB model employment contracts do not include a sample written agreement for this purpose. A district that wishes to enter into such an agreement with one or more of its employees should consult its local counsel.

**7. May a district fine, discipline, or withhold records from a student who damages district technology?**

Yes, a student may be fined, disciplined, referred to juvenile court, or reported to the police for damage or loss of district technology under some circumstances, but the district's ability to withhold student records is limited by federal law.

*Fines*

Texas Education Code section 31.104(d) places responsibility for the condition of instructional material and technological equipment on a student or the student's parent or guardian. If the items are not returned to the district in an *acceptable condition*, the student will lose the right to free instructional materials and technological equipment until the student or the student's parent or guardian pay for the damaged or unreturned items. The district may waive or reduce the fee if the student is from a low-income family. In that case, the district must allow the student to use the instructional material and technological equipment at school during the school day. Tex. Educ. Code § 31.104(d), (h). See also TASB Model Policy CMD (instructional materials care and accounting).

*Acceptable condition* is defined in the Texas Administrative Code. Technological equipment is considered to be in acceptable condition if: 1) the equipment is returned with the software and hardware in their original condition unless the district authorized changes, and 2) the physical condition of the equipment is fully usable as it was originally intended to be used. 19 Tex. Admin. Code § 66.1310(c). Electronic instructional materials are considered to be in acceptable condition if: 1) all components or applications that are a part of the electronic instructional materials are returned; 2) the electronic instructional materials perform as they did when they were new; 3) the electronic instructional materials do not contain computer code, such as a bug, virus, worm, or similar malicious

software, that has been designed to self-replicate, damage, change, or otherwise hinder the performance of any computer's memory, file system, or software; and 4) the electronic instructional materials have not been installed with plug-ins, snap-ins, or add-ins without the prior approval of the school district. 19 Tex. Admin. Code § 66.1310(b).

If the materials are not returned in an acceptable condition and the required payment is not made, then the district may withhold the student's records but may not prevent the student from graduating, attending graduation, or receiving a diploma. Tex. Educ. Code § 31.104(d). Though the records may be withheld, a parent or eligible student maintains the right to access, inspect, and review the student's educational records as guaranteed by the Family Educational Rights and Privacy Act. 20 U.S.C. § 1232g. Parents are also permitted to inspect and review education records collected, maintained, or used for purposes of identifying, evaluating, placing, or educating students with disabilities. 34 C.F.R. § 300.613(a). See TASB Policies FL(LEGAL) and GBA(LEGAL).

### *Student Discipline*

If a student steals, damages, or causes a loss of district technology, the student may also be disciplined under the student code of conduct. The damage may constitute the offense of criminal mischief, for example, if the student intentionally or knowingly damages or destroys a district technology device. The punishment for criminal mischief ranges from a misdemeanor to a first degree felony depending on the amount of damage caused, with a damage threshold for a felony being \$2,500. Tex. Penal Code § 28.03(a), (b). Damage caused by fire with intent to destroy or damage may constitute the offense of arson, which is a felony offense. Tex. Penal Code § 28.02. A student who intentionally or knowingly makes markings, including inscriptions, slogans, drawings, or paintings, on tangible property without the effective consent of the owner commits an offense of graffiti, which can range from misdemeanor to a first degree (state jail) felony if pecuniary loss caused is \$2,500 or more. If the graffiti markings are made on a school, causing pecuniary loss to real property or to tangible personal property of \$750 or more, it is elevated to a state jail felony. Tex. Penal Code § 28.08.

A district may determine if it will place in a disciplinary alternative education program (DAEP) or expel students who have committed criminal mischief, arson, or graffiti, if the conduct is punishable as a felony, or expel students who have engaged in documented conduct that constitutes the offense of criminal mischief (at any level) while placed in a DAEP despite documented behavioral interventions. Tex. Educ. Code § 37.007(c), (f).

Additionally, the student code of conduct may include a general conduct violation providing for discipline for damage to school property. For instance, the TASB model student code of conduct prohibits attempting to alter, destroy, or disable district technology resources, such as computers and related equipment, district data, the data of others, or other networks connected to the district's system, including off school property if the conduct causes a substantial disruption to the educational environment.

### *Juvenile Court Referral or Prosecution*

School-based police officers are restricted from issuing students Class C misdemeanor citations. Depending on factors including the age of the student and the location and nature of the criminal activity, school officials (rather than police officers) may be able to seek prosecution or other court involvement for certain Class C misdemeanors by submitting directly to the court a complaint, which requires a sworn statement by an individual with personal knowledge of the facts underlying the offense, statements from witnesses or victims, if any, and additional information required by the court. Tex. Educ. Code §§ 37.145-.146; Tex. Code Crim. Pro. Art. 45.058; Tex. Fam. Code § 52.031. A school district that commissions peace officers may also have adopted a system of graduated sanctions that is required prior to a complaint being filed with the court. Tex. Educ. Code § 37.144. A district considering referring a student to juvenile court or for criminal prosecution should always consult its school attorney.

Juvenile, municipal or justice courts receiving a complaint may consider granting a juvenile defendant who is a child (at least 10 and younger than 17) options like performing community service or obtaining tutoring under Texas Code of Criminal Procedure article 45.0492, in lieu of paying a fine and court costs. Additionally, a court may waive the fee or cost imposed on a defendant if a court determines that the defendant is a child at the time the offense was committed, and discharging the fine or cost through payment, community service, or tutoring would impose an undue hardship on the defendant. *See, e.g.,* Tex. Code of Crim. Proc. Arts. 42.15, 43.091, 45.041, .0491 (detailing the option of modified fees for juvenile offenders).

School-based police officers are not restricted from issuing Class A or Class B misdemeanors or higher citations or referring higher-level criminal activity for prosecution.

### **8. May a student or parent be legally liable for district property damage caused by his or her child?**

Yes. A parent or other person who has the duty of control and reasonable discipline of a child is liable for any property damage proximately caused by the negligent conduct of the child, if the conduct is reasonably attributable to the negligent failure of the parent or other person to exercise that duty, or by the willful and malicious conduct of a child who is at least ten years of age but under 18 years of age. Tex. Fam. Code § 41.001. *See* TASB Policy FNCFB(LEGAL) (care of school property).

Courts are authorized to order restitution to be made by the child and parents. Tex. Fam. Code §§ 54.041(b), .048. For example, a court may order restitution for damage caused by graffiti either as payment or, if the defendant is unable to pay, as community service. Tex. Fam. Code § 54.0481, .0461, 61.002(a)(3). *See also, In re D.K.*, 247 S.W.3d 802 (Tex. App.—Dallas 2008, no pet.) (upheld restitution order in the amount of \$9,336.10 against three children and their father for damage caused by the children to a store that included broken lights, ceiling panels, and interior windows, holes in the

walls, cabinets, doors, and a television set); *In re D.M.*, 191 S.W.3d 381 (Tex. App.—Austin 2006, pet. denied) (upheld \$25,000 in restitution against parents for damages caused by their child who set fire to a couch at his school and caused over \$100,000 in damage to the school, noting the parents placed most of the responsibility for the fire on the school district, rather than on juvenile, had shielded juvenile from taking responsibility for his misbehavior, and failed to provide any evidence of efforts to discourage juvenile from experimenting with fire).

Inability to pay, however, may be an affirmative defense to restitution. Tex. Fam. Code § 61.056. In some instances, the debt of a parent may also be discharged through bankruptcy proceedings if the debt did not stem from “willful and malicious injury” caused by the parent debtor. *See, e.g., In Re Garner*, 2015 WL 3825979, slip copy (Bankr. N.D. Tex. June 18, 2015) (discharging in a Chapter 7 bankruptcy proceeding a parent’s debt owed to a neighbor as a result of child’s damage to a neighbor’s car window).

In light of the statutory decriminalization of less serious crimes, broadened non-criminal options aimed to educate and rehabilitate misbehaving students, the high cost of legal expenses, and the low likelihood that restitution or contractual agreement will be fully paid or recoverable, it would be rare for school districts to expend public funds to pursue litigation against students and parents. A district considering taking legal action to seek restitution or other payment should always consult its school attorney.

**9. If lost or stolen district technology contained sensitive, personal, or confidential information of individuals, what must the district do?**

A breach of the district’s security system can occur any time there has been an unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of sensitive personal information. If a school district discovers or receives notification of a breach of a system security, the Texas Business and Commerce Code, chapter 521, requires the district to notify anyone whose sensitive personal information was, or is reasonably suspected to have been, accessed. A district that follows its own notification procedures included as part of an information security policy that complies with the timing requirements in state law will be considered to have complied with the statutory requirements. Tex. Bus. & Com. Code § 521.053(g). See TASB Policy CQ.

Districts should require and train all users of district technology, or even personal electronic devices on which confidential district records could be accessed, to report lost equipment and any potential or suspected security breach to the district immediately. In case of an actual cyberattack incident, immediately contact law enforcement and work with your school attorney and technology director. For more information on breach notification requirements and addressing cybersecurity issues, please visit [TASB Legal Services’ eSource](#).

This document is continually updated, and references to online resources are hyperlinked, at [tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Business/documents/theft-loss-damage-to-technology-devices-at-school.pdf](https://tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Business/documents/theft-loss-damage-to-technology-devices-at-school.pdf). For more information on this and other school law topics, visit TASB School Law eSource at [schoollawesource.tasb.org](https://schoollawesource.tasb.org).

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