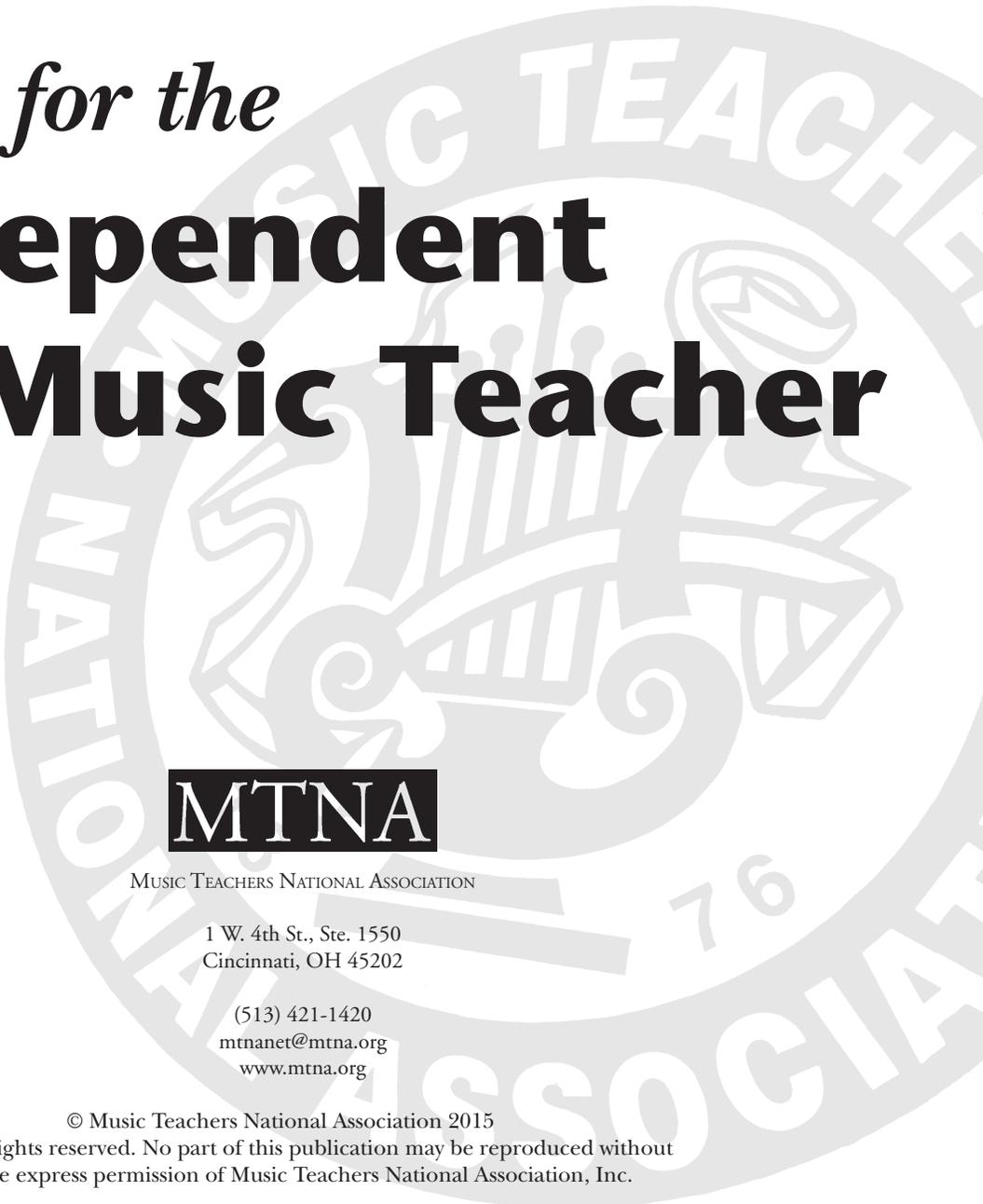




A BRIEF LEGAL GUIDE

for the
**Independent
Music Teacher**



MTNA

MUSIC TEACHERS NATIONAL ASSOCIATION

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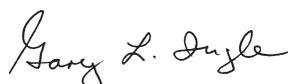
To guide independent music teachers through the legal maze governing the operation of independent music studios, MTNA provides this *Legal Guide*, an outgrowth of the work of the MTNA Independent Music Teachers Forum (IMTF). The IMTF was formed in 1973 to explore the problems, advantages and practices related to independent music teaching. Since its inception, the IMTF has contributed significantly to the professionalism of independent music teachers.

Legal issues have been a pressing concern on the minds of most professional music teachers, especially independent music teachers. In fact, financial stability, and the music teacher's livelihood, can be threatened by lawsuits; thus, a teacher's knowledge about the laws governing independent music teaching is crucial. This booklet will explore zoning regulations, copyright law, child abuse issues, liability concerns, financial considerations and studio policy.

The questions found in this guide are those most frequently asked by our members. As the questions have grown more complex over the years, so have the answers. Therefore, this legal guide was necessary. No book can, by itself, provide sound legal advice, least of all one that is intended only to summarize the often complex and subtle requirements of individual circumstances. Providing legal advice is beyond the scope and purpose of this guide.

Certainly, many readers will have additional legal questions not covered in this guide. You should consult your attorney for the answers. However, you are also encouraged to send your questions to MTNA for possible inclusion in future editions of this guide. A form for submitting questions is at the back of this booklet. MTNA, of course, is unable to respond personally to any question that is submitted.

We hope you find the information in this guide useful as well as informative. Other MTNA publications are available on a variety of topics of interest to music teachers. You may locate information on these publications in current issues of *American Music Teacher* or the *MTNA e-Journal*; or by contacting MTNA national headquarters, 1 W. 4th St., Ste. 1550, Cincinnati, OH 45202; or by browsing MTNA's website at www.mtna.org.



Gary L. Ingle
Executive Director & CEO
Music Teachers National Association, Inc.
August 2015

Disclaimer:

The answers to the questions posed in this publication are based on our understanding and interpretation of the laws governing independent music teaching. However, the situations presented here are very general in nature, and the answers given are intended to provide an overview of the rules and regulations involved. They should not be relied upon as the final authority in your particular situation. Above all, we strongly urge you to consult your own attorney regarding your particular situation and circumstances.

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for the

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Establishing A Business

Q. *Is it necessary to know every detail of owning a business in my state?*

A. No, you are not required to know every detail about owning a business in your state to operate a business. But knowing the important details that apply to opening and operating a music studio will ensure you do not make a critical mistake that could cause unnecessary trouble for you and your business. The more you know, the better prepared you will be. So, gather as much information as possible. If you do an Internet search of your state's Secretary of State's website, you will find that the Secretary of State often offers articles and checklists for starting a business in the state. Your local library may also have books or references specific to the area where you will operate your music studio.

Q. *Will I need a business license or permit?*

A. You may or may not, depending on where you teach. You will need to check with your local zoning board office.

Q. *Do I have to be incorporated or organized as a limited liability company (LLC)?*

A. Setting up a corporation or organizing as an LLC is not necessary. There are advantages and disadvantages to each type of business structure. An attorney and/or an accountant will be in the best position to advise you. Proper incorporation or organizing as an LLC will generally insulate the business owner from personal liability in the event the business fails. It also allows for perpetual continuity of business existence that is not dependent on individuals. Other advantages include easier access to capital and tax benefits for high-bracket tax payers or businesses that retain a high percentage of earnings. However, incorporation or LLC organization may be expensive for a small home-based business. Further, legal formalities must be met, such as the taking of minutes, filing reports and approving amendments to the articles of incorporation or organization. Double taxation, which is taxation of gross profits as well as net profits when distributed to shareholders, may exist for corporations that are in a lower tax bracket. This will depend on how the incorporation was established.

Q. *Will I need an accountant or attorney?*

A. Consulting an accountant or attorney is not required by law, but you may find it less painful than you anticipate. One of these professionals will be able to provide specific answers to your questions. This may be especially helpful when you consider they likely will be familiar with the laws or tax codes particular to your jurisdiction. Another advantage to hiring and paying for an attorney and/or accountant is it will be a tax deduction for you.

Q. *Do I need business checks?*

A. The law does not require the use of business checks. However, if you intend to establish a partnership, limited liability company or a corporation to take advantage of the protection from personal liability that they provide, business checks are a good idea. Payment via a business check can be used as an indication that you were acting on the part of the legal entity you have created. Courts may view a failure to do so as an indication that you were not acting on behalf of the business. It is always a good idea to take precautions whenever possible.

Zoning Issues

Q. *Why do I need to know about the zoning laws?*

A. Knowledge is power. It is always better to know the rules in your jurisdiction so you can avoid zoning code violations from the start. Knowing your rights under the rules may prevent you from starting a business in the wrong location or erecting signs for your studio that are not permissible. Further, if you are aware of your rights under the law, you may save yourself a great deal of time and worry.

Q. *Where should I go for zoning information?*

A. Your local government will be your best source of zoning information. Every jurisdiction is different. Some, especially in larger cities, may have detailed zoning restrictions. Other jurisdictions, especially outside of cities, may have no zoning laws at all. The key to successful compliance with these rules is getting the correct information. A local zoning or planning board should be able to provide answers to any zoning question you may have. The important thing to remember is that you must contact the office in your jurisdiction. If you live in a small township or in the county, make sure to direct your questions to that zoning office. Copies of local ordinances also can be found on the Internet or at local libraries. In addition, you need to check covenants that may be imposed in your particular area, such as those enacted by a neighborhood association or retirement community.

Q. *What happens when a neighbor registers a complaint? To whom does he or she complain?*

A. A neighbor who believes you are in violation of a zoning ordinance registers a complaint with the local zoning board. The zoning board will then investigate the complaint. This could involve direct observation or an interview with the owner of the home or business. You should remember it is rather difficult to prove a violation of a zoning ordinance prohibiting music lessons of any kind. How does an investigator prove the individual at your home playing the trumpet is not just a visitor? This is not meant to encourage violations but simply to provide some legal perspective.

Q. *Will I be investigated only if there is a complaint registered?*

A. Not necessarily; however, in some jurisdictions, unannounced inspections are allowed. Check with your local zoning board to see what is allowed in your area. Usually, investigations will only be conducted after a complaint is registered. This means it may be very important to keep your neighbors happy. One way to accompany this is through communication. Make sure your neighbors feel free to speak with you directly about problems they may have with the operation of your business. There may be a way you can work things out before a potential violation is reported.

Q. *I teach group lessons in my home. Am I in violation of the zoning ordinance if it prohibits more than two people in my home at a time, and my groups are three or more students?*

A. The exact language of the zoning ordinance will determine if you are in violation. For example, does the rule prohibit having more than two “people” in your home or more than two “students” in your home? This obviously can make a big difference. The local zoning board will be able to provide direct answers to such questions as this. If a local zoning ordinance directly prohibits having more than two people in your home, group lessons would certainly place you in violation of that ordinance. If someone files a complaint, then you are at risk of having written orders issued against you if the zoning board can prove the violation.

Q. *I teach young children with their parents. This means the number of people in my home exceeds two, yet I cannot make the parents leave. What should I do?*

A. The first thing to do is make sure you understand the zoning rule. It is very likely the ordinance prohibits having more than two students at a time. If the ordinance prohibits having more than two people in your home, you are in violation. If someone registers a complaint and the board can prove your violation, you may be forced to ask the parents to wait outside. Remember, the board will typically give you 30 days to comply with an order to cease an illegal activity.

Q. *What happens if I violate zoning laws? Will I need a lawyer?*

A. In most jurisdictions, someone will register a complaint if you are in violation of a zoning ordinance, and there are a variety of potential outcomes. For a violation to result in a direct action against you, someone, usually a neighbor, must file a complaint with a local zoning office. This zoning office will then investigate the matter to determine if there has been a violation. In the event of a violation, typically, the zoning board will issue written orders to cease the illegal activity. Most often, although jurisdictions vary, you are given 30 days to cease illegal use. A lawyer is not necessary; however, it is recommended that an attorney be consulted.

Q. *Will I have to shut down my studio?*

A. Closing your studio will depend on what the written order issued by the zoning board directs. If the violation involves the illegal operation of a studio where such a studio is absolutely forbidden, it is likely you will have to shut down your studio. However, if you are able to comply with the local zoning ordinance, for example, by prohibiting on-street parking to your students, compliance with the order will suffice.

Q. *What is an appeal process? Is it costly?*

A. The appeal process allows someone who has been found in violation of a zoning ordinance to have the decision against them overturned. Typically, to file an appeal of a zoning board's decision will cost about \$100. However, it is wise to check with your local zoning office regarding the cost of an appeal before you file. Once you have filed the appeal, you will either be granted a variance, which will allow you to continue, or your appeal will be denied.

Insurance Considerations

Q. *Does the liability insurance included in my homeowners insurance provide coverage if a student sues me because he or she develops a physical problem from practicing?*

A. It depends on your policy. Bodily injury or property damage from the business pursuits of the insured are typically exempt from coverage under most homeowners liability insurance. Some courts have broadly defined the term "business" as it is used in the "business use exclusion" in homeowners policies. However, a full-time independent music teacher will most likely fall into the exclusion. Therefore, a standard homeowner's policy will not cover you if a student develops a physical problem from practicing.

The problem with this claim is that it may be difficult for the student to prove. The student is (hopefully) practicing at home and this could easily have been the cause of the injury. Further, an injury such as this could be caused by any number of activities a student engages in, such as playing

outside with friends. Making an argument that a physical problem was a direct result of music lessons would be a very difficult claim to prove. In any case, the first thing you should probably do is notify your insurance agent. If a claim is made against you and it is covered by your policy, the insurance company will provide legal representation to you as part of your insurance coverage.

Q. *What kind of insurance do I need to protect me from that type of incident?*

A. Your homeowner's policy alone probably will not protect you from liability as a result of your home business, so you should contact your insurance agent about other alternatives. In some cases, a premises rider for a home-based business is all that is necessary. However, if that is not sufficient, it should not be difficult to find a small-business insurance policy. In addition, you may want to investigate an umbrella liability policy. An umbrella policy provides coverage beyond the dollar limits of your regular business insurance policy and cover catastrophic losses. (These policies are generally inexpensive). For more information about the coverage a particular policy should contain, contact your insurance agent and discuss the nature and scope of your music instructor business.

Q. *Who is responsible if one student injures another student during a lesson?*

A. The students would probably have to resolve the issue themselves. The only problem that could potentially be created for you as an independent music teacher is if you failed to separate two students whom you knew were a danger to each other. This could expose you to a negligence claim.

Q. *Who is responsible if a student is hurt entering or leaving my studio, but does not occur on my property?*

A. In general, a student would be classified in the eyes of the law as an "invitee." An invitee is a person who comes upon the land of the owner or possessor in some capacity connected with the business of the owner or possessor. Some jurisdictions distinguish a business invitee from a public invitee, but in either case the owner of the land owes similar duty to the invitee. The owner is obligated to keep those parts of the premises to which the invitee is invited (or may be reasonably anticipated to use) in a condition reasonably safe for his or her use in a manner consistent with the purpose of the invitation. You may also have to warn students and parents about any dangerous conditions they may encounter. Most likely, as an owner of a home studio, you would not be held liable for the dangerous condition of the property of neighbors. However, it may be wise to perform a reasonable inspection of any property you do not directly own but are reasonably sure the invitee or student will use, such as stairwells and apartment steps.

Q. *Who is responsible if the neighbor's dog bites my student?*

A. Most likely, the dog's owner would be responsible for the injury. Obviously, if you are aware that your students must walk past a dangerous dog on the way to your front door, it would be prudent to warn your students beforehand and suggest an alternative route. You should also advise the neighbor to control the dog and, if those warnings are not heeded, to report the dog to local authorities. Use common sense, and you will likely avoid a great number of problems, not the least of which may be losing frustrated or unsatisfied students and parents.

Q. *Will it cost a lot to increase my homeowner's insurance to cover accidents and dog bites?*

A. Several factors will influence the cost of homeowner's insurance. For example, the insurance company you use, the number of students you teach or the location of your studio may all affect the cost of accidental insurance. In any event, call your insurance agent for an estimate. If the price quoted to you seems out of line, call some other companies and inquire about the cost of similar insurance. The more homework you do, the better you will feel about your decision. You should be aware that if your dog has previously bitten someone, it can be very expensive to protect yourself from liability. One of the most expensive elements of a homeowner's policy is protection for a dog that has already bitten someone.

Q. *What is professional liability insurance, and why do I need it?*

A. Professional liability insurance is legal liability coverage for damages due to injury arising from a negligent act, error, omission or malpractice in furnishing or failing to furnish professional services in the practice of your profession. For example, a student claims you promised if she worked hard and practiced every day, she would win an important competition. But it didn't happen, and now she's suffering from depression—and has filed a lawsuit against you. Professional liability insurance is different from the liability coverage you may have on your residence or studio.

Q. *What kind of insurance do I need to protect me against sexual misconduct allegations?*

A. Although no insurance company will insure for any settlement to a victim in this type of case, a sexual misconduct endorsement added to a professional liability policy will cover attorney fees if you are found not guilty.

Tax Considerations

Q. *What are the consequences if I don't report my teaching income?*

A. Failure to report your teaching income is a serious violation of federal, state and local tax laws. The Internal Revenue Code imposes both criminal and civil penalties for a willful failure to report income. State tax laws carry similar penalties. The IRS Code has provisions for both accuracy and fraud-related penalties. The penalties can include the forfeiture of money and time in prison depending on the nature of the violation.

Q. *Do I need to file quarterly taxes?*

A. You may be required to make estimated quarterly income tax payments if you are a self-employed individual or you intend to operate your studio as a partnership, limited liability company or corporation. Further, if you hire employees, you would have an obligation to pay employment taxes on a quarterly basis as well.

Q. *How do I file quarterly taxes?*

A. If you are self-employed or operating as a partner or S corporation shareholder and you expect to owe more than \$1,000 when you file your annual return, you must use Form 1040-ES, Estimated Tax for Individuals to file quarterly taxes online or by mail. Quarterly tax payments are due on April 15th, June 15th, September 15th and January 15th each year. If you are filing as a corporation, you should use Form 1120-W, Estimated Tax for Corporations. Instructions and tax forms are available at www.irs.gov.

Q. *May I take a home office deduction if I teach in my home?*

A. Yes, but only if the part of the house where instructions are given is regularly and exclusively used for music instruction. For example, if you teach piano in your living room, a home office deduction will not be available since the living room is also used for your personal purposes. But if you have a separate room that is used only for music instruction that is regularly provided, then the home office deduction is available.

Q. *Is it difficult to calculate a home office deduction?*

A. Not anymore. The IRS has a new Simplified Home Office Deduction Option, which took effect for the 2014 tax year. It provides for a standard deduction of \$5.00 per square foot of that portion of the home that is used for business purposes up to a maximum of 300 square feet. Look on www.irs.gov under “home office deduction” for information on what expenses may be deducted.

Q. *Is it risky to claim a home office deduction on my tax returns?*

A. A claim for a home office deduction is one of the factors that will increase your risk of a tax audit by the IRS. But, assuming you are entitled to the deduction and the rest of your income is properly reported, the increased risk of a tax audit should not prevent you from claiming the deduction. This is especially true if you are using the IRS’s Simplified Home Office Deduction Option.

Q. *Can I deduct the fee for a lesson I donate to charity?*

A. No. The Internal Revenue Code does not allow, as a deduction, any charitable contribution of services. The Code does allow for the deduction of any incidental expenses, such as travel expenses or the cost of meals, experienced as a result of a charitable contribution. This means that you can deduct for the expenses that you incur on the way to the lesson, but you cannot deduct the lesson fee itself. Further, if you were to buy a special music book necessary for performing the charitable service, this expense would be deductible as well.

Q. *Can I deduct my mileage if I teach in my students’ homes?*

A. Yes. The Internal Revenue Code allows for an itemized deduction of certain expenses for individuals and corporations. All travel expenses paid or incurred carrying on any trade or business during the taxable year are allowed as a deduction (including any money spent for meals or lodging that are not extravagant). The mileage allowance for car expenses can be found on the IRS website, www.irs.gov. Just remember to keep your receipts and detailed records so you can document the expenses incurred.

Studio Policy

Q. *What is a studio policy?*

A. A studio policy sets out your rules regarding the operation of your music studio. The primary purpose of the studio policy is to serve as an information guide to your students and their parents on all matters regarding lessons, payments, recitals, practice, vacation and the like.

Q. *Is a studio policy a legal document?*

A. It can be. If your studio has the parents or guardian sign a music instruction contract (which it should), the contract should incorporate the studio policy as part of that contract. For example, the music instruction contract that you enter into with parents or guardian would contain a provision reciting “that the terms, conditions, requirements and restrictions set forth in the attached Studio Policy, as amended from time-to-time, are incorporated herein and are a part of this music instruction contract.” The studio policy would then be attached to the copy of the music instruction contract given to the parents or guardian.

Q. *Must I have a studio policy?*

A. No, there is no legal requirement to have a studio policy. However, a well-structured studio policy will save you and your students a great deal of confusion by laying out the obligations of the parties. Further, it establishes a level of professionalism with your clients from the very first day, which may be important to you down the road.

Q. *Does a studio policy provide protection if I am sued?*

A. It certainly can. If it has been incorporated as part of the contract between the studio and the parents or guardian, it may provide some liability protection. However, it should not be relied on as a complete shield from any actions against you and your business. It may be a good idea to ask a lawyer to review the document. A lawyer may be able to help you avoid future litigation by adding or revising a few sections.

Q. *Can I hold parents or guardians responsible for lesson fees if I do not have a studio policy?*

A. Certainly. The obligation to pay for the lesson is part of the contract or agreement between you and the parents or guardian of the student. Assuming the student is younger than 18, he or she would not have the legal capacity to enter into a binding contract. Therefore, when you agree to provide lessons, you must make sure that the agreement or contract is with the parent or guardian who obligates themselves to pay for the lesson fees.

The agreement to pay the fees may be oral or written. Obviously, if you are compelled to sue the parent or guardian in order to get paid, it is better to have a written agreement since that would demonstrate what the fees are and the legal obligation of the parent or guardian to pay the fees. Oral contracts are enforceable, but present proof issues.

It is not necessary to have a studio policy in order to have an enforceable contract. However, a studio policy can be a valuable tool in addressing issues and circumstances that could impact fees. For example, studio policy can address things such as missed lessons, vacations, obligations to pay for sheet music and the like, which can impact fees. That is why it is advisable to incorporate the studio policy as part of the written agreement between the music studio and the parents or guardian.

Q. *May I copyright my own studio policy guide?*

A. Yes, you may copyright your own studio policy guide, but it may not be worth your time. Damages for a copyright infringement can be difficult to prove unless you can show someone is selling your creation for a profit without your consent. A work is automatically copyrighted the moment that it comes into existence in some cognizable form. By placing a notice such as name of author and date of copyright on the studio policy, you may make it easier to prove damages. However, the reality of the situation is that it may not be worth the cost of retaining an attorney. If you wish to further protect yourself, you may register your copyright. This involves completing a two-page form and sending it with a registration and copies of the studio policy to the United States Copyright Office. If your copyright is registered, you may be entitled to statutory damages; however, proof of injury or damage from a copyright infringement is still difficult to prove.

Diversity And Disability Issues

Q. *As a small business, is my music studio subject to the Americans With Disabilities Act (ADA) and laws against discrimination?*

A. Yes. There is no small business exemption when it comes to complying with civil rights and the ADA's protection of the public. As a business providing services to the public, your music studio must make those services available to all regardless of their race, creed, ethnic origin, sex, age or disability.

Q. *Do I have to accept a student who has a physical or mental disability?*

A. It really depends on the type of disability the student has and whether you as a teacher would have to fundamentally alter the way you teach in order to accept that student. Each case will depend upon its own unique circumstances.

You may not have a blanket policy that you will not accept students with disabilities. You also may not have eligibility criteria that screen out or tend to screen out individuals with disabilities. However, the ADA does permit you to exclude individuals who pose a direct threat to the health and safety of others if that threat cannot be mitigated by appropriate modifications or the provision of auxiliary aids. You do not have to make modifications that would fundamentally alter the nature of the services provided.

For example, a student who is completely deaf would require specialized teaching methods, which you may not be able to provide, even with auxiliary aids and services. On the other hand, if a student is confined to a wheelchair, no modifications to your teaching methods may be necessary or required. All determinations will have to be made on a case-by-case basis.

Q. *If I do accept a student with a physical disability, does my studio have to be accessible?*

A. Barrier removal and alterations need only be accomplished when it is "readily achievable" to do so. This means it is easily accomplishable and able to be carried out without much difficulty or expense. Installing a simple ramp would be easily accomplished. Other alterations may not be readily achievable. In making the determination of what is readily achievable, the cost of the barrier removal and the resources of business are also weighed.

Q. *I am not fluent in any language other than English. If a person who cannot speak English wants lessons, may I refuse, or is that unlawful discrimination?*

A. Yes. In that circumstance you may refuse to provide lessons. Assuming that the inability to speak each other's language would preclude you from being able to effectively teach music, you could refuse to provide lessons.

Q. *Our recitals have always been held on Sunday because that is the best time for most families. If I have a student who cannot play on Sunday due to religious reasons, must I alter the recital schedule?*

A. No. As a public accommodation, you would not be required to alter your schedule under those circumstances. However, you may want to schedule a special recital date for those students who cannot play on a Sunday.

Copyright Issues

Q. *May I copy sheet music if it does not have a copyright symbol on it?*

A. In most cases, no. While a copyright notice (either in the form of the symbol © or the word copyright) was once a requirement of copyright protection, it was made optional in 1989. Therefore, copyright protection attaches to a work even though it does not have a copyright notice on it. Of course, it is important to place copyright notices on musical works to put people on notice that a copyright is claimed. However, the absence of the copyright notice does not indicate that the work has not been copyrighted or that it is in public domain.

Q. *If I purchase a songbook, I own it. Why am I not allowed to copy pages of the book I own and distribute it?*

A. One of the most important rights conveyed by a copyright is the exclusive right to reproduce the musical work. When you purchase a songbook, you do not purchase the right to make copies of that songbook. That property right remains with the copyright holder. If you copy from the book without the permission of the copyright holder, you infringe the copyright.

Q. *May I copy the work if I list the composer's name and copyright symbol on the copy?*

A. For the most part, the answer is no. As seen below, there are certain exceptions in which you are allowed to make copies as long as you indicate that the work is copyrighted by someone else. However, in most cases, simply listing the author's name and indicating that the work is under copyright protection does not allow you to make copies of the work. You need the permission of the copyright owner.

Q. *What if I distribute the copies for free and do not charge for them? Is that still a violation?*

A. Yes. This is one of the most common misconceptions about copyright law. If you make copies and give them away for free, you are still infringing the copyright because you are making copies without the permission of the copyright holder. The fact that you gave the copies away versus making a profit on them may reduce damages that the copyright holder collects against you in an infringement suit. Nevertheless, the simple act of copying the work without permission constitutes infringement and entitles the copyright holder to damages.

Q. *If I am a teacher and am using the music questions from a book for instructional purposes, isn't that use exempt from the copyright laws under the doctrine of "Fair Use"?*

A. The doctrine of Fair Use was created by Congress as an exemption to the U.S. Copyright Laws. The exemption permits limited copying without the permission of the author to allow such things as commentary, criticism, news reporting, research and education. Therefore, for the music educator, there is a limited right of copying without permission of the copyright holder for educational purposes.

The Fair Use exemption for education is very limited. It does not allow unlimited copying of copyrighted work for music teachers. Rather, there are very restricted copying rights given to educators under the Fair Use doctrine.

There are a few generalizations regarding the Fair Use exemption that music instructors should be aware of. First, whenever copying under the Fair Use exemption, it is important that the copyright notice always appear on the copies. The copies should also be attributed to the author. Copying should never be done for a work that is deemed to be "consumable." For example, workbooks, standardized tests and answer sheets, and exercise manuals would all be considered to be consumable and not eligible for copying under the Fair Use doctrine.

Q. *May I copy selected pages of sheet music out of several books and assemble my own collection for the private use of my students?*

A. No. Each work from a collection or compilation of musical works is protected by copyright. Therefore, you cannot copy any performable unit and place it in your own collection. This is true regardless of the fact that you are not distributing the collection, but only using it privately for your students.

Q. *I have taken excerpts from musical compositions and made copies for my students. Is this permissible?*

A. As noted above, you may not copy performable units even for educational use. You may, however, copy excerpts of works for educational purposes. Under guidelines approved by music educational associations, including MTNA, it is suggested that an excerpt not constitute more than 10 percent of the whole work. When copying the excerpt, you should make one copy per pupil.

Q. *I have made copies of several excerpts from musical compositions for educational purposes. Each is less than 10 percent of the entire work. May I sell these copies to my students?*

A. Yes. You may charge the students, but only to recoup your out-of-pocket copying charges. You may not charge the students beyond the cost you paid to copy the materials.

Q. *I have two students who are playing a duet. May I make a copy of the sheet music for the second student?*

A. No. If two students are to perform a duet of copyrighted music, each would have to purchase sheet music. The same is true for an accompanist. It would be a copyright violation to copy sheet music for one of the students.

Q. *May I make copies of sheet music for page turning purposes?*

A. Yes. If you are copying only a single page for a difficult page turn, you may do so without permission.

Q. *My student forgot his sheet music for a recital. May I make a copy of it?*

A. In this case, the Fair Use doctrine would permit an emergency copy to be made for the purpose of a recital. The copy could be used during the recital as long as it is later replaced by a purchased copy. The same would be true if you were giving a lesson and the student forgot an instruction book for the lesson. You could make an emergency copy of the lesson book for use during the lesson. The copy should later be destroyed and replaced by the purchased lesson book.

Q. *If I purchase songbooks or sheet music, may I re-sell it to my students? If so, may I sell it for more than I purchased it?*

A. Yes. Music teachers may purchase sheet music and instruction books on a wholesale basis and sell them to students at a profit on a retail basis. Please note that depending upon what state you are in, the sales to the students may be subject to state sales tax.

Q. *What are the penalties for violating the copyright law?*

A. If a music educator was found to be making illegal copies of copyrighted works, they could face fines of \$750 to \$30,000 (statutory damages) and if the court finds willfulness, up to \$150,000 per copyright infringement. If willful infringement for commercial advantage and private financial gain is proven, fines can increase up to \$250,000 and/or five years imprisonment or both.

Q. *Do I need a music license from ASCAP or BMI to hold a piano recital for my students?*

A. One of the rights held by a copyright owner of a musical work is the exclusive right to perform the work in public. If music is performed in a public place, or if music is transmitted to the public via radio, television, music on hold or the Internet, it may only be done by the permission of the copyright holder. The permission is typically obtained by purchasing a music license from the three primary music licensing organizations of ASCAP, BMI and SESAC.

Please note that a music license from ASCAP, BMI and SESAC is only required for public performance of music. Music performed in a private residence, during an educational lesson in a private studio, or is part of a private recital involving a selected group of students and their families does not constitute a public performance. Therefore, a music performance license is not needed for a private recital.

Q. *Is a music license needed for music recitals in schools?*

A. No. If no admission fees are charged or if all proceeds from the admission fees go to charitable or educational purposes, then musical performances by students or teachers, including performances by student bands and orchestras, may take place without a license or permission.

Q. *May I record a student's performance for the purpose of evaluation and instruction?*

A. Yes. It has been recognized that a music instructor may make a single copy of a recording of performances by students for the purpose of evaluation or rehearsal. The copy may be retained by the teacher. However, no more than a single copy may be made and retained. If multiple copies of the performance are made, the permission of the copyright holder of the music being played would be required.

Q. *May parents videotape their children's piano recital without a license?*

A. Yes. As long as the videotaping is done for private purposes only and is not distributed outside of the immediate family, it is permissible. If a parent were to make copies of the videotape and attempt to sell or distribute them beyond the immediate family, there would be a copyright violation.

Child Abuse

Q. *If I suspect a student is a child abuse victim, am I obligated to report it to authorities?*

A. It depends on what state you are operating your studio in. In the 17 states of Delaware, Florida, Idaho, Indiana, Kentucky, Maryland, Mississippi, Nebraska, New Hampshire, New Mexico, North Carolina, Oklahoma, Rhode Island, Tennessee, Texas, Utah and Wyoming, all adults suspecting child abuse are legally obligated to report their suspicions to government authorities. There is no reporting required in the other 33 states.

Q. *Can I anonymously report suspected child abuse or neglect?*

A. Yes. Child abuse centers will almost universally accept anonymous reports.

Q. *Could I be sued if I suspect a student is being abused, report it to the authorities and the accusation is unfounded?*

A. In most cases, you are protected. State law generally provides immunity to those who make a good faith report of suspected child abuse, even though it may ultimately be shown to have been inaccurate. That being said, jurisdictions may have different laws in this area. Before you make a claim you feel may be suspect, you should seek advice about the rules in your jurisdiction from an attorney or a local child abuse hot line. You can also find a very good source online at www.childwelfare.gov. One thing to remember is that interpreting what a child is telling you can be difficult. One child might say he or she was beaten by his or her parents simply because the child was spanked. Another child could say exactly the same thing but be bruised all over. Whenever you deal with situations like this, you must use common sense to avoid an unwanted situation.

Q. *Could pulling a student's hands off the keyboard be considered abuse, and could I be investigated?*

A. Generally, agencies receiving child abuse allegations will not investigate without the presence of physical injury. If all you did was remove a child's hands from the keyboard, a child agency is very unlikely to investigate, much less turn you over to the authorities. The best policy is to use your common sense. If you remember to use common sense, then it will be unlikely you will be falsely accused.

Q. *Should preschool music teachers hug young students or let them sit on their lap?*

A. Generally, if there is no other adult present to witness the act, it is best to avoid touching to reduce your risk of false accusations by young students.

Q. *How can I avoid being falsely accused of inappropriate "touching" or making an offensive comment?*

A. The best defense to a situation like this is to have another adult present at your lessons. This is the best way to ensure you are not the target of false accusations. You may also choose to include in your studio policy a statement explaining the type(s) of touching that may be necessary during the normal

course of teaching. You also may wish to demonstrate the types of touching to parents/guardians. Students, especially children, can say just about anything. If it is not possible to have another adult in the room, it may be wise to try to teach more than one student at a time or videotape or audiotape record the lesson. If you use common sense, you will likely avoid such accusations in the first place, so don't worry if none of these options is available to you.

Professional Ethics

Q. *Can I be held responsible if I recommend a teacher and the teacher behaves inappropriately toward a child or the parents are not satisfied with the child's progress?*

A. If you know of a teacher's prior misconduct, you may be negligent if you recommend the teacher. It also depends on the relationship you have with the student and whether you have a legal obligation to inform the student.

Q. *A music dealer has offered to give me 10 percent of each sale from referrals I make to the store. Is there anything wrong with such an arrangement?*

A. The key here is whether you are disclosing the arrangement to your students. Such an arrangement is problematic, both from a legal standpoint and an ethical standpoint, mostly because often it is done without the student's knowledge. Several states, including Arkansas, California, Colorado, Kentucky, Montana, West Virginia, Wisconsin and Wyoming, have "Unfair Trade Practices" statutes that prohibit secret payments or allowance of rebates, refunds, commissions or unearned discounts. These states tend to view such practices as harmful to competition. Penalties for violating these statutes in some states may be fines of up to \$25,000 or one year in jail. Although all states do not have the same unfair trade statute with the same criminal violations, most states regulate trade practice to some degree.

Another problem with not disclosing such a commission is a violation of the trust your student has placed in you as a teacher. Students regard music teachers as experts and trust their opinion regarding the quality of music instruments. If a teacher refers a student to a particular dealer without disclosing the financial arrangement with the dealer, the teacher may be violating a fiduciary relationship with the student engaging in fraudulent concealment. Finally, the teacher has an ethical duty to the student to disclose any financial benefits received when the student purchases an instrument from a particular dealer.

If you fully disclose the arrangement, it should be legally and ethically acceptable. However, teachers should exercise caution when entering into such arrangements. Teachers should consider how an arrangement looks to the student and potential students, even when fully disclosed. Is it worth it for a teacher to accept a payment when there may be harm to the teacher's reputation?

If you have specific concerns about the legality of this practice in your state, consult an attorney.

Q. *What are the ramifications if I lie about my professional credentials?*

A. If you lie about your credentials, you may be guilty of fraud in a criminal sense. You may also be liable for fraud if a parent or student relied on your representation of your qualifications when selecting you as an instructor.

Q. *Are there any ethical issues with soliciting students from other studios?*

A. MTNA's Code of Ethics has no restrictions against student solicitations. Each music studio or teacher has to develop their own policy with regard to solicitation practices.