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Commissioner Decision Update

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2011 Decisions from the Texas Commissioner of Education

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Survey of Commissioner of Education Decisions

The commissioner issued 62 decisions in 2011, not including decisions related to special education. These opinions cover a range of topics, including fees paid to independent hearing examiners, reductions in force, nonrenewals, reassignments, good cause for termination, and student grievances

Decisions summarized below are categorized by subject matter

Procedural Irregularity

Commissioner reversed termination because hearing examiner fees exceeded \$8,000 cap.

Fort Worth ISD terminated the contract of teacher, Joseph Palazzolo. The case had numerous issues, was hotly contested, and required six days of hearing. The independent hearing examiner worked over 213 hours on the hearing. After the board took action on his recommendation, the hearing examiner requested payment from the district in the amount of \$26,693.31. The Texas Administrative Code sets the hourly rate for an independent hearing examiner at \$125 per hour and the maximum amount per case at \$8,000. 19 Tex. Admin. Code § 157.1101. The commissioner determined that the request for payment above the maximum amount of compensation was a procedural irregularity. A procedural irregularity can result in a reversal of a board's decision only if the irregularity was likely to have led to an erroneous decision. Tex. Educ. Code § 21.303(c). The commissioner found no actual bias on the part of the independent hearing examiner, but determined that the potential to receive payment in excess of \$8,000 could have affected the decision making process of the independent hearing examiner. Because an average man might be tempted to favor the administration in the hopes of convincing the administration to pay him for the uncapped value of his services, the commissioner reasoned, the additional \$18,693 was a temptation that was likely to lead to an erroneous decision. Therefore, the commissioner reversed and remanded the case to be heard by another independent hearing examiner or an attorney of the parties' choosing, or in the alternative, Fort Worth ISD could elect to pay Palazzolo any back pay and employment benefits from the time of termination until the time he would have been reinstated and one year's salary from the date he would have been reinstated.. *Palazzolo v. Fort Worth Indep. Sch. Dist.*, Tex. Comm'r of Educ. Decision No. 038-R2-0311 (June 29, 2011).

Open Meetings Act

Generic agenda item was not sufficiently specific to uphold termination of administrator contract. Carla Spaniel was employed as a middle school principal in Fort Worth ISD. In May

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2010, Spaniel was arrested in Dallas on suspicion of public intoxication and two counts of felony abandonment of a child. An independent hearing examiner found that Spaniel left her 3 and 4 year old children alone in a hotel in Dallas. WFAA-TV reported that Spaniel was arrested after she allegedly got into an altercation with a bouncer at a bar then misrepresented the whereabouts of her children to police. The incident received extensive media coverage and resulted in numerous calls to the district. The superintendent proposed termination of Spaniel's term contract due to reduced effectiveness, violation of the Code of Ethics and Standard Practices for Texas Educators, and failure to timely report her arrest to administration, among other reasons. A TEA hearing examiner recommended termination, and the board voted to terminate. The commissioner reversed, however.

The commissioner concluded that the board's vote to terminate was void because the agenda posting for the proposed termination was not sufficiently specific. The agenda item said, "Recommendation for Proposed Terminations of Instructional Employees (2)" and "Termination of Instructional Employees (2)." The commissioner faulted the district for posting the action regarding Spaniel's contract under a generic title that could apply to a number of employees and did not provide the public with notice that a principal's contract, especially a principal who had been the subject of recent widespread negative media attention, would be considered for termination. The commissioner ordered the district to pay Spaniel back pay from the time of discharge, plus reinstatement or one year's salary in front pay. *Spaniel v. Fort Worth Indep. Sch. Dist.*, Tex. Comm'r of Educ. Decision No. 029-R2-1110 (Dec. 21, 2010).

Reprimand of board member was not *ultra vires*. After the remainder of the Marshall ISD board voted to sanction her, board member Mrs. Charles Wilson filed a complaint with the commissioner. Wilson asserted that the board violated the Texas Open Meetings Act because the agenda was not sufficiently specific. She also asserted that the board's actions were *ultra vires*. The commissioner concluded that Wilson failed to exhaust her administrative remedies because she did not file a grievance. The commissioner held that a grievance is required even to challenge a decision of the board so that a local record can be developed. The commissioner further concluded that, even if he had jurisdiction, the board's action in reprimanding another board member was not *ultra vires*. *Wilson v. Marshall Indep. Sch. Dist.*, Tex. Comm'r of Educ. Decision No. 047-R10-0309 (Apr. 14, 2011).

Grievances

Teacher's grievance appeal was dismissed for failure to adhere to timelines during summer months. Tracie Wright was employed as a high school teacher for Raymondville ISD for the 2008-09 school year. At some point, she requested a stipend for her duties as "Ready Writing and Literary Criticism coach." On June 18, 2009, the district informed her that her request had been denied. She filed a grievance on July 16, 2009. The district dismissed the grievance as untimely because the district's DGBA(LOCAL) policy required that grievances be filed within 15 days.

On appeal to the commissioner, Wright argued that she was not required to comply with the

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district's grievance timelines during the summer when she was not working. The commissioner rejected this argument, noting that during the summer Wright received health insurance benefits and a paycheck, albeit for work performed during the school year. Moreover, Wright was under contract for the 2009-10 school year: "Because the contractual status of the employee must be adhered to by the district in its dealings with Petitioner during the summer months when the employee is not on duty as a teacher, so likewise must Petitioner adhere to district policies as an employee during this same time period." The commissioner dismissed the appeal for failure to exhaust administrative remedies. *Wright v. Raymondville Indep. Sch. Dist.*, Tex. Comm'r of Educ. Decision No 020-R10-1209 (Apr. 14, 2011).

Commissioner upheld district's decision to withhold final paycheck to compensate for overpayment of teacher. Dallas ISD employed Elizabeth Albright as a teacher under a term contract. During the 2006-2007 school year, DISD overpaid Albright by nearly \$500 each month from November 2006 through July 2007. DISD discovered the overpayments in July of 2007 and informed Albright that, since she had been fully compensated under contract, she would not receive a paycheck for August of 2007. During this time, Albright suffered unrelated economic setbacks. Albright filed a grievance with the district, claiming that the district wrongly withheld her final paycheck. DISD denied this grievance and Albright appealed to the commissioner.

In his analysis, the commissioner noted that a party who overpays based on a mistake of fact may recover this overpayment as long as the party receiving the excess funds has not "changed positions or assumed liabilities they would not have otherwise assumed." *Pickett v. Republic National Bank of Dallas*, 619 S.W.2d 399, 400 (Tex. 1981). In the present situation, the record did not reflect that Albright changed positions or assumed liabilities because of the district's overpayments. The record did reflect that Albright was in a poor economic situation, but her economic distress was not related to the overpayment. As such, the commissioner upheld the district's decision, holding that Albright was not entitled to the August paycheck for the 2006-2007 school year. *Albright v. Dallas Indep. Sch. Dist.*, Tex. Comm'r of Educ. Decision No. 063-R10-0608 (July 26, 2011).

District properly denied employee's request for assault leave after employee failed to provide sufficient medical records. Cynthia Garcia, a teacher for United ISD, requested assault leave for an injury she claimed was caused by physical contact by a student. In October 2008, Garcia injured her back when a male student ran into her back after struggling with a female student over a hall pass. Nearly one year later, in September 2009, Garcia requested assault leave from the district. United ISD denied the request because Garcia waited almost a year after the incident to request the leave, Garcia refused to give the district medical records supporting her claims, and, at the time of her request, she had a 0% impairment rating from the Texas Department of Insurance's Division of Workers' Compensation (TDI).

Garcia appealed the board's decision to the commissioner. The commissioner first addressed whether the actions of the student met the elements of criminal assault, a requirement for assault leave eligibility under Texas Education Code section 22.003(c). Noting that the student undisputedly injured Garcia during the incident, the commissioner held that the student

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