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Commissioner Decisions Update

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Survey of Commissioner of Education Decisions

The commissioner issued 62 decisions in 2014 not including decisions related to special education. These opinions cover a range of topics, including nonrenewals, good cause for termination, and employee grievances.

Significant decisions summarized below are categorized by subject matter and arranged alphabetically under each heading.

TERMINATION

Sufficiency of Meeting Notice

Notice of meeting at which board voted to propose termination of principal was sufficient under OMA.

The La Pryor ISD board voted to propose the termination of David Rivera, a principal employed under a probationary contract. The notice of the meeting read “[c]onsider information and possible contract implications regarding Principal D. Rivera . . .” and “[d]iscuss and take possible action relevant to items covered during closed session.” Rivera complained that the wording on the notice was insufficient because the notice did not “specifically identify the action being taken against an employee who, as principal, is unquestionably of public concern.” The commissioner held that the posting was sufficient under the Texas Open Meetings Act (OMA), stating that, for matters of public interest, a notice is sufficient if it states the individual’s position, name, and the fact that employment action is being considered. The notice need not include terms like “disciplinary action” or “termination.” Rivera also argued that the board could not terminate him because the independent hearing examiner (IHE) delivered her recommendation after the statutory timeline. The commissioner dismissed this claim, holding that this procedural error on the part of the IHE did not lead to an erroneous decision and was not cause to nullify the board’s termination of Rivera’s contract. *Rivera v. La Pryor Indep. Sch. Dist.*, Tex. Comm’r of Educ. Decision No. 032-R2-01-2014 (Feb. 12, 2014).

Hearing Process

Timeline to appeal termination begins when board orally announces its decision.

Dallas ISD terminated the probationary contract of teacher-coach Roderick Johnson during the school year for good cause. The IHE heard Johnson’s complaint and concluded that he lacked jurisdiction over the claim because Johnson did not present evidence of a contract between him and the district. At subsequent board meeting, the board voted to change the IHE’s findings of fact and conclusions of law to indicate that the record contained a Chapter 21 contract and that good

cause existed to terminate the contract. Without stating the reasons or legal basis for the changes it made, the board also voted to deny the IHE's decision and to terminate Johnson's contract. A week after the board meeting, the district administrative staff sent Johnson a written document memorializing the changes to the IHE's recommendations and citations to the evidence supporting the changes. Twenty days after receiving the board's decision in writing, Johnson filed a petition for review with the commissioner arguing that the board's changes to the IHE's recommendations violated Texas Education Code section 21.259. The board argued that the commissioner lacked jurisdiction because Johnson did not file his petition for review within 20 days of the date the board announced its decision orally. The commissioner noted that the board violated Texas Education Code section 21.259 by not explicitly stating the reasons and legal basis for each of its changes to the IHE's findings of fact and conclusions of law within 10 days of its meeting. However, Johnson failed to timely appeal the board's decision because the twenty-day timeline to appeal started running the date the board orally announced its decision. Tex. Educ. Code § 21.301. Because the appeal was not timely the commissioner lacked jurisdiction over Johnson's claim that the district violated Texas Education Code section 21.259. The commissioner dismissed Johnson's claim for want of jurisdiction. *Johnson v. Dallas Indep. Sch. Dist.*, Tex. Comm'r of Educ. Decision No. 011-R2-10-2014 (December 3, 2014).

Termination based on legally invalid IHE recommendation was vacated and remanded back to the board for further proceedings.

Dallas ISD employed Prentice Williams as a Junior ROTC instructor under a term contract. The board voted to propose termination of Williams' contract in November 2013, and Williams requested a hearing before an IHE. In her initial recommendation to the board, issued in February 2014, the IHE found that there was not good cause to terminate William's contract and recommended that the board not terminate him. The board received the IHE's recommendation on February 25, 2014, and set the hearing for the March 6, 2014, board meeting. On March 5, 2014, the IHE emailed Williams' attorney to inform him that she changed her mind about the existence of good cause and then issued a corrected recommendation indicating that good cause existed to terminate William's contract. The board met on March 6, 2014, and adopted the IHE's corrected recommendation. Williams appealed the board's decision to terminate his contract, arguing that the IHE did not have jurisdiction to issue a subsequent and opposite recommendation because she lost jurisdiction after issuing her first recommendation on February 24, 2014. The district responded that the subsequent recommendation simply corrected errors in the initial recommendation and that school boards are allowed to correct legal errors in IHE recommendations. In addition, the district argued that, by adopting the corrected recommendation within 20 days of the issuance of the initial recommendation, its actions were within the deadlines set forth in the Texas Education Code.

The commissioner addressed whether an IHE had authority to change the recommendation or to issue further recommendations after delivering the initial recommendation to the board president. The commissioner held that an IHE loses jurisdiction over a case after the board president receives a copy of the recommendation. The commissioner rejected the district's assertion that the district was entitled to make changes to the recommendation to correct mistakes under Texas Education Code section 21.259, noting that the board did not make any changes to the recommendations but

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