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Local Board Hearings: WTFNG?

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Remember why we do all of this. In Texas, employees, students, and members of the public have a protected right to file a grievance. Specifically, Article 1, § 27 of the Texas Constitution provides: “The Citizens shall have the right, in a peaceable manner, to assemble together for their common good; and apply to those invested with the powers of government for redress of grievances or other purposes, by petition, address or remonstrance.” Additionally, § 11.1513 of the Texas Education Code requires school employment policies to give each school employee the chance to present grievances to the school board.

A school district’s obligation is to “stop, look, and listen” when considering the grievance. *Professional Ass’n of Coll. Educators v. El Paso County Community Dist.*, 678 S.W.2d 94 (Tex. App.—El Paso 1984). In order to air their grievances, public employees should be given access to those persons in a position of authority. *Corpus Christi ISD v. Padilla*, 709 S.W.2d 700 (Tex. App.—Corpus Christi 1986).

I. EMPLOYEE GRIEVANCES

- ***Walker v. North East ISD (No. 035-R10-1111) (2013)***

The standard for determining whether documents should be allowed in at a Level II or III hearing that were not presented at the Level I hearing is whether the documents at issue are “material, relevant, or not unduly repetitious” and that “the party, for good cause, was unable to adduce at the local hearing.”

The employee also had good cause to not present the medical records at the Level I hearing because these records reflected her doctor’s opinion about a surveillance video—that showed her performing some simple activities—that was presented at the Level I hearing. Because the employee was not aware of the video until the Level I hearing, she had good cause for the delay in presenting the medical records and the Commissioner remanded the case to the District with instructions to reopen the record to allow the presentation of the medical records.

The employee also objected to the attorney and superintendent attending the closed session deliberation of the grievance. The Commissioner stated that an attorney may be in closed session to provide legal advice, but may not act as an advocate for either party to a grievance. There was no evidence to suggest the attorney attempted to sway the Board’s decision in closed session. The employee also took issue with the fact that both the attorney for the Board and the attorney representing the administration were

from the same law firm. The Commissioner opined that having two attorneys from the same firm individually represent the administration and the school board does not by itself establish that a violation has occurred.

With respect to the presence of the Superintendent in closed session, the Commissioner stated that while the Board may bring individuals into closed session who are necessary to discuss the matter at hand, the Superintendent's presence is not necessary in order for the Board to discuss a grievance. However, the mere presence of the Superintendent did not void the deliberations and subsequent action taken by the Board.

Note: There were other medical records that the employee tried to offer at the Level II and III hearings that were not offered at the Level I hearing. These other medical records were "material, relevant, and not unduly repetitious," but the employee did not have good cause not to present these other documents at the Level I hearing, and so the Commissioner concluded that they could not be allowed into the reopened record.

- ***Madigan v. Victoria ISD*, Docket No. 072-R10-06-2014 (Comm'r Educ. 2015)**

A former kindergarten teacher—who is currently in prison for running over her ex-husband's girlfriend and throwing a brick through her window—filed a grievance against the District, possibly for nonrenewing her contract or terminating her after it learned that she was facing criminal charges. However, the Board experienced technical difficulties during the teacher's hearing and no recording of the meeting was made.

Holding: The lack of a transcript or recording of the Board hearing on her grievance made it impossible for the Commissioner to determine how to rule. The Board had good cause for failing to make a recording because its good faith effort to record the meeting was foiled by technical problems, but without knowing what happened below, the Commissioner remanded the case to the Board to reopen the record and conduct a second hearing that was recorded. To address both the Board's and the teacher's concerns about the completeness of the documentary evidence in the record, the Commissioner allowed the Board to consider any new, relevant evidence during the second hearing, even if the evidence was not raised at the prior Level III grievance hearing.

Additionally, the Board argued that the teacher had waived any complaint about the lack of a transcript because she did not file an objection to the record within 30 days. However, the Commissioner concluded that since the transcript did not exist, the 30-day limit for filing an objection did not apply since there was nothing for the teacher to object.

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