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Commissioner Decisions and Legal Update

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Commissioner of Education Decisions

The commissioner issued 41 decisions in 2015, not including decisions related to special education. These opinions cover a range of topics, including nonrenewals, terminations, and employee grievances. Significant decisions summarized below are categorized by subject matter and arranged alphabetically under each heading. A table of all 41 decisions follows on page 22.

TERMINATION

Employee's failure to attend board meeting to consider IHE's findings of facts and conclusions of law deprived Commissioner of jurisdiction over appeal of termination.

Terrence Gore, a teacher at Cedar Hill ISD, missed a significant amount of work after suffering an injury that required surgery and recuperation. Gore did not sign a contract with the district for the subsequent school year. At a termination hearing before an independent hearing examiner (IHE), Gore moved to dismiss on the grounds that he was no longer employed by the district. The district asserted that Gore failed to timely request an IHE. The IHE issued findings of facts and conclusions of law asserting that Gore's request for an IHE was timely, but that the IHE did not have jurisdiction over the case because no employment relationship existed between the district and Gore. The IHE did not issue any findings of facts or legal conclusions supporting a finding of good cause for termination. The board subsequently adopted the IHE's findings and legal conclusions that no Chapter 21 contract existed between Gore and the district. The board also voted to terminate Gore for good cause. On appeal, the commissioner opined that the district's vote to terminate for good cause after adopting the IHE's findings was unlawful, arbitrary, and capricious because the findings stated that the IHE had no jurisdiction over the case. However, because Gore did not object to the board's action to terminate at the board meeting, he failed to preserve the error. As such, the commissioner did not have jurisdiction over Gore's claim that the district unlawfully terminated his contract for cause. The commissioner dismissed Gore's claim for lack of jurisdiction. *Gore v. Cedar Hill Indep. Sch. Dist.*, Tex. Comm'r of Educ. Decision No. 020-R2-01-2015 (Feb. 25, 2015).

Commissioner lacked jurisdiction over employee's appeal after board voted to rescind notice of proposed termination and dismiss termination proceedings.

Manor ISD proposed the termination of assistant superintendent, Robert Peters, in November 2014. Peters requested a hearing on the proposed termination, which was held by an IHE. The IHE determined that good cause did not exist to terminate Peters' contract. In May, the board considered the IHE decision and voted to rescind the proposed termination and dismiss the termination proceeding. Peters appealed the board's decision to withdraw the termination notice and dismiss the termination proceedings. The district responded that the commissioner lacked jurisdiction over Peters' complaint.

The commissioner considered whether he has jurisdiction over a case under Texas Education Code section 21.301 when a school board withdraws a notice of proposed termination and dismisses the termination proceeding after the IHE issues a recommendation. The commissioner noted that the appeal of a term contract termination can only be brought to the commissioner after a school board announces a decision under Section 21.259. Because the board's action was not a motion to adopt, recommend, or change the IHE recommendation under Section 21.259, the commissioner lacked jurisdiction over the appeal under Section 21.301. The commissioner also noted that he only has jurisdiction under Section 21.301 if the school board terminates, nonrenews, or suspends without pay a teacher's contract. Because the district did not announce a decision under Section 21.259 and did not take an adverse contract action against Peters, the commissioner dismissed the claim for lack of jurisdiction. *Peters v. Manor Indep. Sch. Dist.*, Tex. Comm'r of Educ. Decision No. 034-R2-04-2015 (May 26, 2015).

NONRENEWAL

Police officer's testimony of a student's allegation of inappropriate touching was admissible and supported nonrenewal of teacher contract.

Edgewood ISD nonrenewed the contract of teacher Ebenezer Manuagwu based on allegations that he inappropriately touched and communicated with a student. Based on district policy, any reason constituting good cause for termination is sufficient reason for nonrenewal. Manuagwu argued on appeal that substantial evidence did not exist to support the nonrenewal of his contract because the evidence of the improper conduct should have been excluded as inadmissible hearsay. Additionally, Manuagwu claimed that the district improperly relied on allegations from a prior school year. Finally, he claimed that two attorneys from the same law firm representing the board and the administration respectively created a procedural irregularity.

Manuagwu argued substantial evidence did not exist to support the nonrenewal of his term contract because the video of a police interview of the student making the allegations and information in the police report relied upon by the board constituted inadmissible hearsay. The commissioner noted that the interview and report were not the only evidence in the record supporting the nonrenewal. Specifically, Manuagwu's brief contained excerpts from the police officer's statement describing the student's allegations. This evidence was unobjected to hearsay that, when viewed in conjunction with the local record, provided evidence that Manuagwu inappropriately touched a student more than once. The commissioner also opined that the video evidence was not inadmissible hearsay because the evidence met the liberal hearsay exception in Texas Government Code section 2001.081 as the student was not available to be called as a witness and the information presented in the video would be relied upon by a reasonably prudent person. The commissioner also held that Texas Education Code section 21.207(c) did not establish a right for Manuagwu to cross-examine the student because the student was not a witness at the nonrenewal hearing. With respect to Manuagwu's argument that the district improperly considered allegations from the prior year, the commissioner held that the board did not consider such allegations in this case. Finally, the commissioner stated that two counsel employed by the same law firm representing the board and administration did not constitute a due process violation, noting that there are no due process rights after the expiration of a teaching contract. Ultimately, the

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