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## **Reassignments and Reductions in Pay**

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## Reassignments and Reductions in Pay

by Brandon Y. Brim

When is a reassignment considered a demotion? That distinction may be in the eye of the beholder, but there is an important legal distinction that school districts need to consider if the time comes to move an employee from one position to another, change their duties or responsibilities, or reduce their pay.

The Commissioner of Education has explained that a reassignment might be considered a demotion when it interferes with a property right such that due process would be implicated.<sup>1</sup> A property interest could be created by something in a contract or in state law.<sup>2</sup> Generally, when a property interest is implicated, “due process protects no more than the status of being a governmental employee together with the ‘economic fruits’ of the position.”<sup>3</sup> However, when a contract references a specific job assignment, the employee possesses a property right to the particular position along with economic fruits accompanying the position.<sup>4</sup> When evaluating whether a reassignment might be a demotion, the important changes to consider are reductions in pay, responsibilities or skills.<sup>5</sup>

In order to organize the analysis of the cases that govern when these changes can be made, the paper is divided into two sections: *Reassignments* and *Reductions in Pay*.

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<sup>1</sup> Kelleher v. Flawn, 761 F.2d 1079 (5th Cir. 1985); Robertson v. Victoria Indep. Sch. Dist., Docket No. 164-R10-294 (Comm’r. Educ. 1994) (Slip Opinion).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* [citing Jett v. Dallas Indep. Sch. Dist., 798 F.2d 748, 754 (5<sup>th</sup> Cir. 1986), *aff’d in part*, 109 S.Ct. 2702 (1989); Hext v. Vidor ISD, Docket No. 105-R3-1286 (Comm’r Educ.); Vasquez v. Dallas ISD, Docket No. 095-R3-188 (Comm’r. Educ.); Canales v. San Diego ISD, Docket No. 194-R3-885 (Comm’r Educ.)].

<sup>4</sup> Trevino v. West Oso Indep. Sch. Dist., Docket No. 003-R3-989 (Comm’r. Educ. 1991)

<sup>5</sup> Veliz v. Donna Indep. Sch. Dist., Docket No. 011-R3-999 (Comm’r. Educ. 2000).

## **I. Reassignments**

An employee's position and/or duties is potentially a protected property interest both through contractual rights<sup>6</sup> and through statutory rights<sup>7</sup>. The inquiry should always start with what the contract say about the employee's position and duties.<sup>8</sup>

### **I(a) Specific Position Referenced in Contract**

If a specific position or duties are referenced in an employee's Chapter 21 contract then the employee may possess a property interest in that specific position or duties until the district employs the nonrenewal or termination process to end that employment relationship.<sup>9</sup> The standard form contract recommended by TASB includes a clause claiming a right to reassignment, and Texas Education Code gives assignment powers to superintendents<sup>10</sup> and principals<sup>11</sup>. However, if the employee's contract and the district policy lack a provision for reassignment during the contract's term, it reinforce the employee's right to maintain the same position.<sup>12</sup>

In Thomas v. Board of Trustees, the plaintiff had been working as an assistant principal at a middle school for three years when in the summer he signed a new one-year term contract specifying his position as the assistant principal at Austin Middle School.<sup>13</sup> The contract did not make any provision for a reassignment of the plaintiff during the contract's term, and the school

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<sup>6</sup> E.g. Trevino v. West Oso Indep. Sch. Dist., Docket No. 003-R3-989 (Comm'r. Educ. 1991)

<sup>7</sup> E.g. Texas Education Code § 21.206(b).

<sup>8</sup> Young v. Leggett Indep. Sch. Dist., Docket No. 175-R3-898, p\*11 (Comm'r. Edcu. 1999).

<sup>9</sup> See Thomas v. Board of Trustees, 515 F. Supp. 280, 287 (S.D. Texas 1981).

<sup>10</sup> Texas Education Code § 11.201(d)(2).

<sup>11</sup> Texas Education Code § 11.202(b)(5).

<sup>12</sup> *Id.* at 285-86.

<sup>13</sup> *Id.* at 287.

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