

**PRESENTED AT**

36<sup>th</sup> Annual School Law Conference

Live Webcast

February 22, 24, 26, 2021

## **Commissioner Decisions Update**

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## Summary of Selected Commissioner Decisions

The commissioner issued 30 decisions in 2020, not including decisions related to special education. These opinions cover a range of topics, including nonrenewal, termination, reassignment, and local grievances.

Significant decisions summarized below are categorized by subject matter and arranged alphabetically under each heading. An alphabetical chart of all commissioner decisions follows the summaries. *See page 7.*

### NONRENEWAL

#### **Nonrenewed teacher waived appeal after failing to attend board hearing on proposed nonrenewal.**

The United ISD board voted to nonrenew the term contract of teacher, Anayanci Acosta, based on the recommendation of the district's attorney, whom the district designated to hear the proposed nonrenewal in accordance with Texas Education Code section 21.207(b-1). Acosta did not attend the board meeting wherein the board considered the attorney's recommendation and voted to nonrenew the contract. Acosta appealed the nonrenewal to the commissioner but failed to file her brief in accordance with timelines. The district asserted that the commissioner lacked jurisdiction over Acosta's case because she did not attend the nonrenewal hearing and failed to file a brief. Noting that there was no legal precedent regarding a teacher's failure to attend a hearing under Section 21.207(b-1), the commissioner held that failure to attend a board hearing was a failure to exhaust administrative remedies and dismissed the case for a lack for jurisdiction. *Acosta v. United Indep. Sch. Dist.*, Tex. Comm'r of Educ. Decision No. 047-R2-07-2020 (Aug. 28, 2020).

#### **Nonrenewed teacher did not have right to remediation.**

The Copperas Cove ISD board voted to nonrenew the term contract of teacher, Phuong Lan Carter, for a number for reasons, including insubordination and failure to comply with policies and directives. On appeal, Carter argued that the evidence did not support her nonrenewal, the district improperly relied on evidence from prior years to support her nonrenewal, and the district nonrenewed her in retaliation for special education complaints she filed with the Texas Education Agency (TEA). The commissioner acknowledged that reprimands from prior years could be used only in limited circumstances but noted that the district properly relied on prior years' reprimands to illustrate that Carter was on notice that her conduct was not appropriate. Noting that a teacher is not entitled to a chance for remediation in a nonrenewal case, the commissioner held that substantial evidence supported the district's reasons for nonrenewal.

With respect to Carter’s retaliation claim, the commissioner found that the district nonrenewed Carter’s contract for her performance issues, not for making a report to TEA. *Carter v. Copperas Cove Indep. Sch. Dist.*, Tex. Comm’r of Educ. Decision No. 043-R1-07-2020 (Aug. 24, 2020).

**Attorneys from same law firm properly represented board and served as administrative official in nonrenewal hearing.**

The Arlington ISD board voted to propose the nonrenewal of homebound teacher, Mary Hernandez, for numerous reasons related to incompetency, performance issues, and falsification of records. Hernandez requested a hearing to contest the proposed nonrenewal, which the district provided with the help of a law firm. During the nonrenewal hearing, the board utilized two attorneys from the same firm. One attorney assisted the board in conducting the hearing and another attorney consulted with the superintendent to present the case in support of the nonrenewal. At the time of the hearing, Hernandez complained that using attorneys from the same firm was unfair because both attorneys were involved in prior proceedings relating to her employment before the district pursued nonrenewal. On appeal to the commissioner, Hernandez raised the same objections. Analyzing the district’s practice of using two attorneys from the same law firm during the hearing, the commissioner clarified that the attorney conducting the hearing served as a *hearing officer*, distinct from the role of *hearing examiner* under Texas Education Code section 21.207(b). The commissioner found that the involvement of two attorneys from the same law firm did not create an unfair hearing for Hernandez and upheld the district’s decision to nonrenew. The commissioner dismissed additional claims of evidentiary errors because substantial evidence existed to support nonrenewal and there was no indication that the admission of evidence led to an erroneous decision to nonrenew. *Hernandez v. Arlington Indep. Sch. Dist.*, Tex. Comm’r of Educ. Decision No. 024-R1-12-2019 (Jan. 27, 2020).

## **REASSIGNMENT**

**Athletic director on multi-year certified administrator contract reassigned to teacher position mid-year.**

Caddo Mills ISD employed Steven Sumrow as an athletic director for fifteen years on a certified administrator contract, although he lacked administrator certification. In the 2018-2019 school year, during the first year of a two-year contract, the district reassigned Sumrow to the position of teacher at the Disciplinary Alternative Education Center. The district also decreased Sumrow’s salary for the 2019-2020 school year by \$35,595. Sumrow argued that the reassignment violated Texas Education Code section 21.206(b), which requires a district to employ a teacher whose contract is about to expire in the same professional capacity the following year if the teacher does not receive notice of proposed nonrenewal. The district

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First appeared as part of the conference materials for the  
36<sup>th</sup> Annual School Law Conference session

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