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## **Commissioner Decisions Update**

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## Summaries of Selected Commissioner Decisions

The commissioner issued 55 decisions in 2023, not including decisions related to special education. These opinions cover a range of topics, including term contract nonrenewal, employment termination, and local grievances.

Significant decisions summarized below are categorized by subject matter and arranged alphabetically under each heading. An alphabetical chart of all 55 commissioner decisions follows the summaries. *See page 24.*

### TERM CONTRACT NONRENEWALS

#### **Irregularities related to conduct of appraisals not a basis for overturning nonrenewal.**

Sandra Kelly did not claim that the Winnsboro ISD board of trustees nonrenewed her contract without substantial evidence. Instead, she alleged that the district violated certain provisions of the Texas Education Code related to evaluations, such as Texas Education Code section 21.352(c), generally requiring annual appraisals, and Texas Education Code section 21.203(a), requiring a school board to consider a teacher's most recent evaluations before nonrenewing a term contract, if relevant.

The commissioner determined that failure to conduct an appraisal in violation of Texas Education Code section 21.352(c) is not a basis to declare a nonrenewal invalid. The district had not appraised Kelly in the last two years that she worked as a counselor, which violated Section 21.352(c). The commissioner noted that this violation could be challenged in an appeal of a school board decision under Texas Education Code section 7.057, however it is not a reason to reverse or remand a nonrenewal decision on appeal under Texas Education Code section 21.301. Furthermore, the commissioner cited case law establishing that complaints about appraisal irregularities must be timely raised and "may not be resurrected at the time of the contract renewal process."

As to Kelly's argument under Texas Education Code section 21.203(a), the commissioner noted that Kelly had not shown that her recent evaluations were relevant to any of the nine reasons for which the board terminated her contract. Even if she had shown that the evaluations were relevant, the board's failure to consider them in her nonrenewal process would be a procedural irregularity. According to the commissioner, a procedural irregularity can only form the basis to reverse a nonrenewal if the irregularity likely led to an erroneous decision. The commissioner denied Kelly's appeal. *Kelly v. Winnsboro Indep. Sch. Dist.*, Tex. Comm'r of Educ. No. 031-R1-03-2023 (May 9, 2023).

**Evidence from anonymous reports did not make teacher’s nonrenewal hearing improper.**

In January 2023, the superintendent at Devers ISD received reports that teacher Sandi Lynne Zbranek smelled like alcohol at school. When the superintendent confronted Zbranek about the reports, she stated that she had been drinking wine the night before and it would not happen again. Later that spring, the superintendent and board president heard from concerned parents that Zbranek spoke about students in a sarcastic and demeaning way and often shared inappropriate information with her class. Students interviewed by the superintendent confirmed that Zbranek had made negative remarks about other students.

In April 2023, the superintendent met with Zbranek to review the statements, which were redacted in accordance with the Family Educational Rights and Privacy Act (FERPA). Zbranek responded that she would “like to cooperate; however, I cannot because I have only been given conclusionary accusations which are unsupported by facts.” The superintendent prepared a written summary of the allegations, which Zbranek generally denied. Three teachers also provided written statements alleging that Zbranek made inappropriate comments to students and created tension at work. One teacher signed her name and the other two, who were also parents, were identified by numbers. The superintendent also received an email from a parent of a former student, stating that Zbranek’s negative comments had caused the family to leave the district.

The school board voted to propose Zbranek’s term contract for nonrenewal, based on two reasons from the district’s Policy DFBB(LOCAL): “Failure to meet District standards of professional conduct” and “Failure to maintain an effective working relationship, or maintain good rapport, with parents, the community, or colleagues.” In June 2023, the board held a hearing and voted to nonrenew Zbranek’s contract. Acting *pro se*, Zbranek appealed to the commissioner of education.

Zbranek argued that the board had improperly relied on hearsay rather than “firsthand” evidence. She also argued that she was unable to confront witnesses or defend herself against anonymous complaints and that two board members should have recused themselves from her nonrenewal hearing due to having family members who had complained about her. As her requested relief, Zbranek asked the commissioner to investigate the superintendent and remove him from the district.

The commissioner drew a distinction between nonrenewal hearings conducted by an independent hearing examiner (IHE) and nonrenewal hearings conducted by the school board. In a hearing before an IHE under Texas Education Code chapter 21, subchapter F, the Texas Rules of Evidence apply. Tex. Educ. Code § 21.207(b). A nonrenewal hearing

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