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## **Commissioner Decisions Update**

**Mark Tilley**

Mark Tilley  
Texas Association of School Boards  
Austin, TX

[legal@tasb.org](mailto:legal@tasb.org)

800.580.5345

# Commissioner Decisions Update

Mark Tilley, TASB Legal Services

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## Survey of Commissioner of Education Decisions

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The commissioner issued 47 decisions in 2017, not including decisions related to special education. These opinions cover a range of topics, including nonrenewals, good cause for termination, detachment and annexation, and local grievances.

Significant decisions summarized below are categorized by subject matter and arranged alphabetically under each heading.

### TERMINATION

#### **Commissioner upholds good cause termination of principal after distribution of nude photographs to students.**

Cristina Esparza served as principal at Barrientes Middle School in Edinburg CISD. Esparza took a picture of herself in the nude and emailed it to her husband. Someone disseminated the photo to her students by hacking into her computer. The district proposed good cause termination because of the event, asserting that the dissemination of such a photo reduced her effectiveness in the community. An independent hearing examiner (IHE) heard the appeal of her termination and opined that Esparza should not be held accountable for the actions of a third party who shared the photograph and that her effectiveness had not been impaired. The board of trustees of ECISD voted to change the IHE's recommendation and determined that Esparza's use of electronic media interfered with her ability to perform her job duties effectively. Esparza appealed the board's decision to the commissioner, arguing that a third party's actions cannot constitute good cause to terminate an employment contract and that the board improperly changed the IHE's finding.

The commissioner held that the actions of a third party, such as hacking and distributing a photograph, could create good cause to terminate an employment contract if they impacted the employee's ability to perform an essential function of the job. The commissioner then analyzed whether the school board properly changed the IHE's determination regarding whether dissemination of the photograph undermined Esparza's effectiveness enough to constitute good cause for termination. The commissioner reviewed the 2011 legislative changes to Texas Education Code sections 21.257(a-1) and 21.259(b)(1), which authorize a school board to change an IHE's determination of good cause as a conclusion of law. Based on the legislative intent, the commissioner opined that the statute authorized the board of trustees to change an IHE's factual determination

regarding good cause even when the determination is supported by factual evidence. The commissioner further opined that the board properly changed both the ultimate determination of good cause and interpretative facts closely tied to that determination related to whether the publicity surrounding the photograph diminished Esparza's ability to perform her job. In upholding the termination, the commissioner rejected Esparza's arguments that the testimony about future effectiveness was not competent and that marital privilege prohibited a school board from taking action based on a nude selfie sent to a spouse. *Esparza v. Edinburg Cons. Indep. Sch. Dist.*, Tex. Comm'r of Educ. Decision No. 017-R2-01-2017 (Mar. 17, 2017).

**Commissioner upheld good cause termination of teacher who refused to submit to a drug test.**

Dallas ISD terminated high school assistant principal Ronderrick Johnson after he refused to submit to an alcohol/drug test. The evidence indicated that on the date the drug test was requested, Johnson arrived late and reported to his principal that he was having trouble with his vision. Other staff reported that Johnson had slurred speech, glassy eyes, and acted disoriented. The school nurse examined Johnson and found that his blood pressure was elevated. After consulting with her supervisor, the principal determined that she had reasonable suspicion to require an alcohol/drug test. Johnson ultimately refused the test even after the principal and her supervisor explained that he would be terminated in accordance with district policy. Johnson appealed his termination, citing to the fact that he was an exemplary assistant principal and arguing that the district did not have reasonable suspicion sufficient to warrant an alcohol/drug test. The district argued that Johnson's refusal to submit to an alcohol/drug test violated district policy DHE(LOCAL) and such a violation constituted good cause for termination. An IHE heard Johnson's appeal and concluded that the district proved its case by a preponderance of the evidence.

On appeal to the commissioner, Johnson argued that the principal lacked reasonable suspicion to require him to submit to the alcohol/drug test and therefore the test was an unconstitutional and unreasonable search. The commissioner referenced the district's policy DHE(LOCAL), which provided that an employee who refused to submit to alcohol/drug testing shall be recommended for termination. The commissioner held that the policy requirement, as applied in this case, was not an unreasonable search or an invasion of privacy and held that Johnson's refusal to submit to the search constituted good cause for termination. In denying Johnson's appeal, the commissioner noted that he did not address Johnson's related retaliation and discrimination claims because Johnson failed to brief these claims with enough detail to establish jurisdiction. *Johnson v. Dallas Indep. Sch. Dist.*, Tex. Comm'r of Educ. Decision No. 029-R2-06-2017 (Aug. 10, 2017).

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