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Commissioner Decisions Update

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Survey of Commissioner of Education Decisions

The commissioner issued 29 decisions in 2016 not including decisions related to special education. These opinions cover a range of topics, including nonrenewals, good cause for termination, detachment and annexation, and employee grievances.

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

TERMINATION

Coach's use of force and consistent use of profanity was good cause for termination.

The Troup ISD school board voted to terminate the term contract of Dennis Alexander, the athletic director and head football coach. The independent hearing examiner (IHE) found that Alexander slapped two students and shoved another student to the ground and frequently used offensive profanities when talking with students and coaches. In the IHE's conclusions of law, adopted by the board, he determined evidence of these actions supported the good cause termination of Alexander's term contract. On appeal, Alexander argued that the commissioner should overturn the district's decision to terminate because the Superintendent's investigation was not impartial. In addition, Alexander argued that substantial evidence did not exist to support the termination. According to Alexander, the real reason the district terminated his contract was the football team's performance.

The commissioner found no direct evidence that the district conspired to terminate Alexander because of the team's losing record. The commissioner stated that substantial evidence supported the IHE's finding that Alexander used force against students and used inappropriate language. Noting that the Texas Education Code does not authorize the commissioner to overturn a board's decision based on a biased investigation, the commissioner stated that an IHE—an unbiased adjudicator—would not be influenced by a biased investigation. The commissioner upheld the termination, holding that each instance of the use of force with students and the consistent use of curse words in front of students and staff were independently sufficient to establish good cause. *Alexander v. Troup Indep. Sch. Dist.*, Tex. Comm'r of Educ. Decision No. 023-R2-02-2016 (May 20, 2016).

Teacher's use of profanity was good cause for termination; Board properly changed hearing examiner's recommendation.

The Bellville ISD board voted to terminate the term contract of teacher Lindsey Larberg for using profanity in the classroom. The IHE included in his findings of facts a determination that Larberg had used the "f-word" in the classroom. However, in her conclusions of law, the IHE

determined that this use of profanity did not constitute good cause for terminating Larberg's contract. The board voted to change the IHE's conclusion of law to find good cause for termination. Larberg claimed that the board erred in changing the IHE's conclusion of law.

On appeal, the commissioner addressed whether the board properly changed the IHE's recommendation. In his decision the commissioner noted that in 2011, amendments to Texas Education Code sections 21.2157(a-1) and 21.259(b)(1) changed the weight given to an IHE's determination of good cause. Under current law, the board can change the IHE's conclusion of good cause if the board's decision is based on substantial evidence and is not arbitrary, capricious, or unlawful. The commissioner stated that Larberg's use of the "f-word" to disparage a student in the classroom "amply supports" the termination of her contract and therefore the board's decision to modify the IHE's recommendation was supported by substantial evidence. In upholding the termination, the commissioner analyzed the differences between findings of fact and conclusions of law and the intent behind the 2011 statutory changes. *Larberg v. Bellville Indep. Sch. Dist.*, Tex. Comm'r of Educ. Decision No. 005-R2-10-2016 (Nov. 29, 2016).

Teacher's use of force was reasonable; Board improperly changed hearing examiner's recommendation.

The Dallas ISD board proposed the termination of third grade science teacher Caroline Lee for numerous policy violations related to Lee's removal of an eight-year-old student from her classroom. Lee appealed the district's decision and requested an IHE to hear her appeal. According to the facts in the IHE's recommendation, the district proposed Lee's termination for "dragging, pulling, and pushing an elementary student outside of the classroom into the hallway." In his findings of facts and conclusions of law, the IHE determined that the reasons the district cited for termination did not constitute good cause and granted Lee's appeal. Upon review of the IHE's findings, a subcommittee of the school board rejected a number of the IHE's findings of fact and conclusions of law and proceeded to terminate Lee. Lee appealed the district's actions to the commissioner.

On appeal, the commissioner addressed the subcommittee's changes to the IHE's findings of facts and conclusions of law. According to the commissioner, a board or its subcommittee cannot change a finding of fact if it is supported by substantial evidence. Tex. Educ. Code § 21.259(c). The Texas Education Code also requires any rejection or change to a finding of fact or conclusion of law be in writing and include a legal basis for the change. Tex. Educ. Code § 21.259(d). The commissioner held that the board subcommittee did not validly change the IHE's finding that good cause did not exist to support termination because that finding was supported by substantial evidence. Additionally, the subcommittee's changes and rejections to the IHE's conclusions of law were invalid because the board failed to provide "real" reasons or "real" legal bases for the changes. The commissioner further opined that even if the subcommittee had properly changed the IHE's findings, Texas Education Code section 22.0512, which provides broad immunity to school district employees who use reasonable force to control students, would have applied to protect Lee from disciplinary action. Therefore, the

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