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Commissioner Decisions Update

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Summary of Selected Commissioner Decisions

The commissioner issued 39 decisions in 2021, not including decisions related to special education. These opinions cover a range of topics, including nonrenewal, termination, and local grievances.

Significant decisions summarized below are categorized by subject matter and arranged alphabetically under each heading. An alphabetical chart of all 39 commissioner decisions follows the summaries. *See page 9.*

TERMINATION

Commissioner upholds good cause termination based on teacher's failure to report to work in person.

Dallas ISD terminated the term contract of Luke Nuttall because he did not show up to teach students in person as directed. Nuttall argued that he did not report for work because he had a disability protected under the Americans with Disabilities Act (ADA), that the termination was retaliation in response to a filed grievance, and that he was entitled to protections as a whistleblower. On appeal, the commissioner noted that, while the commissioner lacked direct jurisdiction over the ADA, the evidence did not support Nuttall's claim that he had a covered disability that prevented him from performing his job. Because Nuttall did not show he had a disability under the ADA, he was not entitled to the accommodation of working from home. Noting that performing work where the employer specifies is a fundamental part of employment, the commissioner found that good cause existed to terminate Nuttall's contract for failing to report to work in person. Finding that the record did not support his retaliation and whistleblower claims, the commissioner denied Nuttall's appeal. *Nuttall v. Dallas Indep. Sch. Dist.*, Tex. Comm'r of Educ. Decision No. 038-R2-06-2021 (July 15, 2021).

NONRENEWAL

Nonrenewed teacher who did not request a hearing or appear before the board failed to exhaust administrative remedies.

The Clear Creek ISD school board voted to propose the nonrenewal of Megan Evans' term contract for reasons listed in the district's Policy DFBB(LOCAL). The notice of proposed nonrenewal informed Evans how to request a hearing but Evans did not make a request. After the board voted to nonrenew Evans' contract at a subsequent meeting, Evans filed a petition for review with TEA. In response, the district asserted a lack of jurisdiction based on Evans' failure to request a hearing and failure to attend the board

meeting at which the board voted on the nonrenewal. Evans filed a motion with the commissioner arguing that she was procedurally prohibited from filing a brief but did not make any substantive arguments to support that claim. The commissioner dismissed Evans' appeal for failing to exhaust administrative remedies and waiver of appellate issues. *Evans v. Clear Creek Indep. Sch. Dist.*, Tex. Comm'r of Educ. Decision No. 030-R1-03-2021 (Apr. 27, 2021).

Teacher's failure to attend nonrenewal hearing constituted a failure to exhaust administrative remedies.

Lesley Johnson appealed the Dublin ISD board's decision to nonrenew her contract, alleging that the board failed to properly post the nonrenewal as required by the Texas Open Meetings Act (OMA). Johnson did not request a hearing after receiving the notice of proposed nonrenewal, nor did she raise the issue of improper notice under the OMA prior to appealing to the commissioner. On appeal the commissioner noted that jurisdiction under Texas Education Code section 21.301 is limited to considering issues and evidence raised at the local level. Because Johnson did not request a hearing on the nonrenewal or participate in the meeting at which the board voted, she failed to preserve error for the commissioner to review on appeal. Additionally, Johnson did not exhaust her administrative remedies when she did not attend the board meeting at which the board voted to nonrenew her contract. The commissioner dismissed Johnson's claim for lack of jurisdiction and, alternatively, denied the claim, stating that Johnson did not have due process rights concerning the nonrenewal. *Johnson v. Dublin Indep. Sch. Dist.*, Tex. Comm'r of Educ. Decision No. 043-R2-06-2021 (Aug. 3, 2021).

LOCAL GRIEVANCES

Commissioner lacked jurisdiction over superintendent's complaints arising from the board rescinding a severance agreement.

Dr. Elijah Granger served as superintendent of Lancaster ISD when the board voted to extend his contract for five years. Days later, an election was held, causing a change on the board. Before the newly-elected board members took office, the board voted to award Granger a voluntary severance agreement (VSA) of over \$2 million and a position of superintendent emeritus for a period of three months. In a subsequent meeting, after the board president no longer served on the board, the newly-seated board suspended Granger with pay, voted to rescind the VSA, and proposed termination. In his complaint to the commissioner, Granger argued that the board violated the school laws of the state when it failed to pay him under the VSA, suspended him with pay, voted to rescind the VSA, and proposed to terminate his contract. The district responded that the commissioner lacked jurisdiction over Granger's complaint. The commissioner dismissed

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