A DESCRIPTIVE STUDY OF PERSONNEL DECISIONS APPEALED TO
THE TEXAS STATE COMMISSIONER OF EDUCATION
AUGUST 1981 - AUGUST 1986

DISSERTATION

Presented to the Graduate Council of the
University of North Texas in Partial
Fulfillment of the Requirements

For the Degree of

DOCTOR OF PHILOSOPHY

By

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Denton, Texas
May 1989

The problem. --The problem in this study was to describe the issues arising in employment decisions appealed to the Texas Commissioner of Education. Decisions made in courts are binding on school officials, and they are published in law reporters found in most libraries. The Commissioner's decisions are also binding on school officials, but they are not published or widely reported. Thus, this important body of information may not reach those who are responsible for its application.

Methods. --The decisions of the Commissioner were examined to determine the issues and the underlying rationale used by the Commissioner in the process of deciding the appeals. A series of data reductions allowed a determination of patterns found in the outcomes of the decisions which favored the employee and those which favored the school districts. The analysis produced a set of data from which implications for decision making could be drawn.
**Findings.** The analysis process resulted in patterns emerging in the outcomes of the Commissioner decisions in which few appeals were granted to the complaining employee. A majority of the appeals were brought by employees under term contracts and almost half of the term contract appeals were nonrenewals. The most prevalent issue in these appeals was whether there was substantial evidence to support the nonrenewal. Some evidence is needed to support a nonrenewal of contract, but not much evidence is required. Few nonrenewal appeals were decided in favor of the employee.

Employees under continuing contracts brought only fifteen of the 131 appeals in this study. The pattern in outcomes of these appeals was one which had about as many appeals granted to the employee as denied. Most continuing-contract employees brought issues of whether there was good cause for their termination or a return to probationary status.
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CHAPTER I

INTRODUCTION

Many areas of education have been affected by the nation's reform movement. To a great extent the focus has been on teachers and the quality of instruction, but administrators have also received attention. The administrator, as the instructional leader of a school or school district, is placed in a position where decisions must be made about personnel matters. Administrators must recommend to the school board whether an employee is to be transferred or demoted, if a contract is to be nonrenewed, or whether employment is to be terminated. When a negative employment decision is made, the administrator is often brought into an adversarial relationship with the employee.

Most employment disputes are settled at the local level. However, if they are not resolved at this level, employees may seek redress in federal or state courts, or pursue administrative remedies. If there is a question involving a federal law, these complaints can go directly to federal courts. If it is a matter of state law, the state courts are the proper route for settlement. For most disputes taken to state court, administrative remedies must first be exhausted. The statutory provisions governing administrative remedies
are found in the Texas Education Code (TEC), Article 11.13 (a), which states:

Persons having any matter of dispute among them arising under the school laws of Texas or any person aggrieved by the school laws of Texas or by actions or decisions of any board of trustees or any board of education may appeal in writing to the commissioner of education, who, after due notice to the parties interested, shall hold a hearing and render a decision without cost to the parties involved, but nothing contained in this section shall deprive any party of any legal remedy.

Recent interpretations of this statute will be reviewed in Chapter II of this study. Judicial decisions which affect education statutes and which affect administrative rules governing employment of Texas school personnel will be reviewed in Chapter II.

Although changes are evolving from recent judicial decisions, administrative remedies are the focus of this study. The documents which have been described and analyzed are the decisions of the Texas Commissioner of Education concerned with employment matters. The documents include a review of facts in the case, the issues in the dispute, the Commissioner's decision in the case, and the rationale for that decision. The decision may be based on a review by the Commissioner of the local school district's hearing transcript, or it may follow a de novo hearing. Many Commissioner decisions involve employment issues such as procedural due process, administrators' evaluation procedures, the instruments used for appraisal, and the accuracy of documentation.
While the education reform movement is in progress, continued emphasis on teacher competency and quality of instruction is expected. The pressure on administrators to make effective personnel decisions is also expected to intensify, and some of these employment decisions may be the subject of controversy. However, when a question arises about these controversial decisions, the question is not about what makes good teachers or good teaching (Rapp, 1983). Rather, the questions are concerned with what is the administrative rule, board policy, or point of law which has been broken. When a decision is made that affects a person's employment or livelihood, school administrators and boards of education must ensure that procedural requirements are followed, that the employment decision does not violate an employee's exercise of some protected right, and that no civil rights statute has been violated. The evidence and the manner in which it is gathered must bear the scrutiny of those who inquire into the legalities of the employment controversy.

While many employment disputes are settled at the local level, others remain unresolved and are appealed. This study describes and analyzes the cases involving employment issues which have been appealed to the Texas Commissioner of Education; thus this study provides valuable information to administrators for educational decision making.
Statement of the Problem

The problem of this study was to describe and analyze the patterns in issues arising from employment decisions which have been appealed to the Texas Commissioner of Education.

Purposes of the Study

The purposes of the study were as follows:

1. To describe the legal issues arising in employment decisions appealed to the Texas Commissioner of Education.
2. To explain the process used by the Texas Commissioner of Education in the resolution of the issue raised by the appeal.
3. To summarize and report findings and precedents which result from the Texas-Commissioner-of-Education decisions.
4. To report appeals of the Texas-Commissioner-of-Education decisions to state courts and relate results, if the courts have resolved the issues.

Research Questions

1. What are the legal issues advanced by employees in their appeals to the Texas Commissioner of Education?
2. How has the Texas Commissioner of Education resolved those issues in the process of deciding the appeals?
3. What patterns are found in the Texas-Commissioner-of-Education decisions in judgments for the employee and judgments for the school district?
Background and Significance of the Study

Several areas were considered in the review of the background literature for this study. First, the types of employment contracts designed for public school personnel were reviewed. Second, the appeal routes for employees to follow when negative employment decisions are made were explained with the main consideration of this study being the appeals to the Texas Commissioner of Education. Third, a review of school employees' appeal routes in other states was also included. Finally, the significance of this study for Texas school administrators was examined.

Types of Employment Contracts

According to Kemerer (1986), Texas offers public school employees two basic types of contracts: term contracts and probationary-continuing contracts. The one of these most often used is the term contract.

Term contracts. --The authorization for term contracts is found in the Texas Education Code, Section 23.28. Regardless of the length of the term, term contracts all have a termination date and must be renewed periodically by the school board. If contracts are not to be renewed, districts must follow the provisions of the Term Contract Nonrenewal Act (TCNA).

On June 17, 1981, Senate Bill 342, known as the Term Contract Nonrenewal Act (TCNA), was signed into law in Texas, and put into effect by Sections 21.201 through 21.211.
of the Texas Education Code. The bill's sponsor, Representative Hamp Atkinson, wanted to accord school employees the right to have reasons given if the school district decided not to renew their employment contract (Ogilvie, 1983). For the first time in the state's history, the school district was required to give a written evaluation of each teacher at annual or more frequent intervals (TEC Section 21.202).

It took the Texas Education Agency nearly two years to promulgate rules for implementing the TCNA. The development of these rules and their influence, as well as changes which have more recently evolved, are reviewed in Chapter II of this study.

Practically all school administrators and about two-thirds of other certified personnel are employed under term contracts. Probationary or continuing contracts account for the remaining contracts for school professional employees (Kemerer, 1986).

Probationary/continuing contracts. --School districts having probationary-continuing contracts employ teachers for the first time under a probationary contract. The term of the probationary contract is not to exceed three years unless the board of trustees is in doubt whether the teacher should be given a continuing contract. In the event that this situation arises, the board may make a probationary contract with the teacher for a fourth year. At the end of the fourth
year of a probationary contract a teacher must either be terminated or offered employment under a continuing contract. Teachers on continuing contracts can be discharged during the year and released at the end of the year for reasons set forth in the code. The code also sets forth provisions for terminating teachers on probationary contracts during or at the end of the year.

**Career Ladder**

House Bill 72 established a career ladder for teachers (TEC Sections 13.301 - 13.323). Teachers who disagree with their career-ladder placement have a right to appeal to the Commissioner of Education (TEC Section 13.319).

**Appeal Routes**

The general route of appeal for school employees is provided by section 11.13 of the Texas Education Code, which provides for appeals to the Texas Commissioner of Education. It has been based on legislative intent to limit the number of school controversies requiring judicial action.

**Commissioner appeals.** --Most Commissioner appeals concerned with employment involve nonrenewal of a teacher's contract at the end of the fixed term. However, appeals can emerge from dismissals before the end of a contract term.

Most Commissioner decisions are based on evidence introduced at the nonrenewal hearing which was held before the local board. The Commissioner's judgment is made according to the rules in the Texas Administrative Code.
The Texas Administrative Code (TAC) lists rules governing dismissal of probationary and continuing contract teachers in TAC Section 157.1 [3 (a) & 3 (b)]. Rules governing term contract teachers are found in TAC Section 157.64. The rule limiting the Commissioner's review to only the local board transcript in term contract nonrenewal disputes is found in TAC Section 157.64(b). Kemerer (1984) emphasized the importance of this rule by noting that no new hearing will be held at the Commissioner level except under exceptional circumstances.

Appeals to state courts. --The Term Contract Nonrenewal Act contains its own internal route of appeal to the Commissioner. Thus, statutory requirements must be followed by appealing all TCNA cases first to the Commissioner and then into the state district court in Travis County.

Probationary-continuing contract teachers who are discharged during the school year have the right to appeal the action to the Commissioner for review by him as stated in TEC Section 13.115, or they can challenge the legality of the board's action in any district court of any county in which the school district lies. Either party to an appeal to the Commissioner shall have the right to appeal from his decision to a district court in Travis County (TEC Section 13.115c).

In some instances an appeal to state courts can bypass the administrative appeal route. Section 11.13 of the Texas Education Code provides the route for appeals to go first to
the Commissioner of Education and is phrased in terms of persons who have disputes "arising under the school laws of Texas" or who are "aggrieved by ... actions or decisions of any board of trustees... may appeal in writing to the commissioner of education." Thus, no appeal to the Commissioner is mandatory when the facts of the case are not in dispute and only a pure question law is at issue.

Persons can bypass an appeal to the Commissioner and go directly to state district court if an injunction is sought to prevent irreparable harm. Such was the case when a group of teachers claimed and proved that they would suffer irreparable harm if a new school policy were allowed to go into effect in violation of their rights [Houston Fed. of Teachers v. Houston I. S. D., 730 S. W. 2d 644, 646 (Tex. 1987)].

Yet another exception to the general rule requiring exhaustion of appeals to the Commissioner is one supported by the court in Bear v. Donna I. S. D. 74 S.W. 2d 179, 180 (Tex. Civ. App., San Antonio, 1934). The court held that "where a school board acts without authority of law and contrary to express statutes, and in such a manner that its act is void, then the courts... may be appealed to directly without first exhausting the remedy of appeal to the (state-level) school authorities."

Federal courts. --If an employment dispute involves a question of deprivation of U. S. Constitutional or federal
statutory rights, the complaining party may with few exceptions go directly to federal court to contest a school board's decision. If administrative remedies are sought when there is a federal question involved, the Commissioner will hear the constitutional claim.

**Procedures for Appeals in Other States**

Statutory requirements for appeals procedures concerning school employee dismissals and nonrenewals are not unique to Texas. The following section sketches appeals procedures in other states.

A study of teacher dismissals found school boards in 38 states having statutory grounds for dismissing teachers for immorality or moral turpitude. The other 12 states have laws that allow for dismissal for just cause, unfitness to teach, or unprofessional conduct; these may be used to dismiss a teacher for immorality (Landauer, et. al., 1983).

An Arkansas case, *Roberts v. Van Buren Public Schools* 773 F.2d 949 (8th Cir. 1985), was based on two teachers' claim that their dismissal was a result of their union activities. The citation of the Arkansas Teacher Fair Dismissal Act in *Roberts* indicates the state's attempt to provide some type of protection of teachers from unfair employment decisions.

The *Policies and Procedures for Teacher Due Process Hearings* (1983), an Oklahoma State Board of Education publication, lists detailed procedures for dismissal and non-reemployment of teachers. Oklahoma has an appeal route
to the state that is similar to Texas appeals procedures. A hearing judge hears the case and issues a decision.

French (1976) cited a Louisiana probationary statute as similar to the Oklahoma statute. The Louisiana law has a three-year probationary term as does Oklahoma, and there is no property interest in continued employment of Louisiana probationary teachers, but they have a right to learn of reasons for their dismissal from the local board.

Oregon has a Fair Dismissal Law that employs a Fair Dismissal Appeals Board after a local school board approves dismissal. A de novo hearing is held at which both the teacher and the board can present facts. Further appeals in Oregon will go to the circuit court (Pitt, 1983).

Hearing officers are appointed by the State Board of Education in Illinois to hear appeals of tenured teachers in that state. If the teacher and the board cannot agree on a location for the hearing, a hearing officer determines the location of the hearing. If the hearing officer chooses the location of the hearing, it must be within the district’s boundaries. The hearing officer’s decision is considered final and administrative remedies are exhausted (Jenkins, 1977).

In the state of Washington requirements for compliance to notice procedures are similar to those in Texas. The Washington statute states in part that unless the procedures for notice for nonrenewal are complied with, the employee is
considered to be reemployed (Little, 1978).

New Hampshire statutes provide procedures for school boards to follow when teachers are dismissed or nonrenewed. Teachers who are aggrieved by the local board decision can request a review by the State Board (Boynton, 1976).

Mississippi adopted the Mississippi Fair Employment Act in 1974. This statute does not provide tenure for school employees, but rather notice of contract nonrenewal. Teachers may receive a hearing before the school board or a hearing officer (Sistrunk, 1982).

This review of appeals processes in other states is by no means comprehensive, for such a review would be a study in its own right. For the most part, there appears to be some route of appeal beyond the local level to seek administrative remedies for employment decisions in some states.

**Significance of This Study**

Texas school administrators need to understand the dimensions of the laws and administrative rules that pertain to employment decisions of school personnel. Although the literature includes several studies concerned with appeals procedures in other states, similar studies are lacking in this area in Texas. The present study will make a contribution to the literature in the area of administrative appeals to the Texas chief school officer.

School employees can take some employment issues to state or federal courts. Decisions made in the courts are
binding on school officials, and are published in official law reporters found in most libraries. The Commissioner decisions are also binding on school officials, but they are not published or widely reported. Thus, this important body of legal information often does not reach those who are responsible for its application.

Definition of Terms

1. **Procedural due process** - Rules of law that have been established for the protection of individual rights. Due process provisions vary with different types of employment statutes and case law. However, in accord with U. S. Constitutional provisions, procedural due process generally involves notice, opportunity for a hearing, and the right to appeal.

2. **Substantive due process** - The right of an employee to be free from arbitrary and capricious decision making.

3. **Liberty interest** - A Fourteenth Amendment right under the U. S. Constitution, to be free from retaliation for the exercise of certain constitutional rights such as freedom of speech, press, and association. Reputation is also considered a liberty right when stigmatization occurs in the context of a negative employment decision such as a nonrenewal or a dismissal.

4. **Property interest** - An employment contract may give one a Fourteenth Amendment property interest in that employment; when property rights under the U. S. Constitution exist,
procedural due process must be provided before they can be taken away.

5. **Nonrenewal** - The failure of a school district to renew an employment contract at the conclusion of the term of the contract.

6. **Termination/dismissal** - Severance of an employment contract by the employer prior to the contract's expiration date.

7. **Transcript** - Refers to the document that has been prepared at the local district level and sent for review to the Texas Commissioner of Education as part of the appeals process. A transcript will also be generated at the state level when a *de novo* hearing is held and the decision made for the appeal.

8. **Transfer** - Reassignment of an employee from one job to another or from one location to another without a loss in pay.

9. **Demotion** - A job reassignment that usually involves a lower-level job with an accompanying loss in salary.

10. **Decision of the Texas Commissioner of Education** - Decision reached by the Texas Commissioner of Education when acting in his quasi-judicial capacity under TEC Section 11.13. These decisions involve disputes over school laws of Texas and decisions of local boards of trustees, and are binding on school officials in this state.

11. **De novo hearing** - A completely new evidentiary hearing. For purposes of this dissertation, it pertains to hearings
held by TEA hearing officers in Austin. See substantial evidence review.

12. **Substantial evidence review** - The review of a hearing transcript submitted by a school district to the Texas Commissioner of Education. The Commissioner, like an appellate judge, reviews the transcript, listens to brief oral argument by opposing counsel, and renders a decision. No new evidentiary hearing is held. See *de novo* hearing. This is the standard routinely used to resolve disputes under the Term Contract Nonrenewal Act.

**Delimitations**

This attempt to understand the basis of employee personnel decisions appealed to the Commissioner was limited in the following ways:

1. Those cases that pertain to personnel decisions which have been appealed to the State Commissioner of Education in Texas were examined. Cases from state and federal courts were cited only as an extended explanation of some issue in question.

2. Documents examined were those generated from August 1981 through August 1986. It was estimated that 200 - 400 cases would be reviewed.

3. An attempt to establish relationships was made through descriptions of proceedings and decisions found in public documents. The researcher did not solicit information or impressions from the individuals involved in the disputes.
Procedures for Collection of Data

Qualitative research design uses an approach which gives a holistic view of what has occurred. The procedures used in this study lend themselves to a descriptive analysis of public documents. There was a collection of decisions from those cases concerned with employment issues which have been appealed to the Texas Commissioner of Education between August 1981 through August 1986.

The Texas Education Agency maintains a file of Commissioner decisions. In most cases the Commissioner reviews a transcript of the local board hearing. The decisions contain the facts of each case and the decision made in each dispute along with the legal bases for the decision. When de novo hearings have been heard, the decision contains facts generated at the hearing, the decision made by the Commissioner, and the reasoning which supports the decision.

The Commissioner's decisions were copied, briefed, and analyzed for issues of concern. Research questions which give structure to this study were utilized to delineate the categories of issues found in the appealed cases. Questions were directed to patterns of issues, legal bases of the question in the appeal, evaluation matters, problems of the local school district, and the decision made by the Commissioner in each case.
To obtain an understanding of the events depicted in the
records, a formulation of categories elicited from the
investigation was established. Data reduction was effected
by abstraction of each decision on a document analysis form
(Appendix A). Each case was briefed to extract the facts and
context of the case, the issues involved, the legal bases of
the appeal, and the outcome of the dispute.

Allen and Jarvis (1983), in their study of analogizing
evaluation practices and case law, structured their
descriptive study with questions that analyzed evaluation
instruments. They did not open their study to other
information. In contrast, this study of appeals in Texas
encompassed any pertinent aspects of the petitions which
could clarify what was happening that caused the case to be
appealed.

The researcher was the primary instrument for data
collection and analysis (Bogdan & Biklen, 1982; Goetz &
LeCompte, 1984). The qualitative researcher must objectively
study subjective data. The data must withstand scrutiny by
others to validate the researcher's objectivity and dispel
any conclusions that he sees only what he wants to see. To
facilitate this validation, a Commissioner's decision was
given to a panel of experts composed of five persons,
including a political scientist, two law students, and two
school law students. The panelists were to discern issues,
legal bases for decisions, and judgments by the Commissioner.
A table was drawn showing percentages of agreement of the panelists' analyses and the researcher's analysis (Appendix B). Such an analysis gives some validity to this assimilation of data (Miles & Huberman, 1986).

There was further reduction of data to transform and simplify the information which appears in the briefs extracted from each decision. Although the most frequent form of display for qualitative data is "narrative text," this study has the narrative accompanied by histograms which display the patterns of issues found in the appeals (Appendix C).

Reduction of data concerning the decision made in each case by the Commissioner is displayed in a simple matrix with the issues forming the rows of the matrix and the decisions for the plaintiff or the school district forming the columns' (Appendix D). Humans are not very powerful processors of large amounts of information; therefore, the reduction of complex information into simplified configurations is a major avenue to valid qualitative analysis (Miles and Huberman, 1986).

An analysis of official documents provides evidence of issues under consideration. A content analysis enabled the researcher to discern legal issues and problems; however, the decisions of the Commissioner may contain data which indicate people's sensations, experiences, and knowledge. They can also connote opinions, values, and feelings; such data
provide evidence for topics and questions not known to the researcher prior to the analysis (Goetz & LeCompte, 1984).
CHAPTER BIBLIOGRAPHY


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Houston Fed. of Teachers v. Houston I. S. D., 730 S. W. 2d 644, 646 (Tex. 1987)


Roberts v. Van Buren Public Schools 773 F 2d 949 (8th Cir. 1985)


CHAPTER II

REVIEW OF THE LITERATURE

The literature of education research was devoid of studies concerned with appeals from the local school board to chief state school officers. There were studies which were involved with negative employment decisions, but these employed court cases as the main source of reference.

A computer search of the literature was conducted at North Texas State University on two occasions. The first search used descriptors of teacher evaluation, teacher dismissal, teacher rights, teacher-administrator relationship, court litigation, legal problems, legal responsibility, contracts, due process, school law, and hearings. The results of the search were an array of published articles and unpublished papers in which administrators or school boards were reviewing or discussing federal laws or court cases that applied to school employees and to themselves as the evaluator or employer.

A second computer search was carried out with descriptors of state department of education, appeals, and state-school district relations. This search gave no applicable studies.

A hand search of the Education Index, using numerous
 descriptors which had been used in the computer search, found court cases as the main source of reference. However, a hand search of ERIC Documents was rewarded with several references to other states and their appeals process from the local board to a state agency. Some of those states had union contracts, some had tenure laws, and some like Texas simply had statutes that attempted to give some protection to school employees in their jobs. Finally, a hand search of publications of some Texas organizations which were not listed in ERIC Documents or Education Index yielded information pertaining to appeals to the Texas Commissioner of Education.

A search of Dissertation Abstracts International found two studies concerned with the Term Contract Nonrenewal Act (TCNA). Ogilvie (1983) and Hooper (1984) have been cited and incorporated into this study. Neither Ogilvie or Hooper was concerned with employment decisions other than those affected by TCNA.

At the present time it appears that a study has not been made of the kinds of negative employment decisions that are appealed to the State Commissioner. This chapter first considers the contracts offered to Texas school employees. This is followed by a discussion of cause for dismissal and nonrenewal of contracts. The routes of appeal for Texas school employees as well as for employees in other states are then discussed. Finally, the significance of this study is reviewed.
Contracts for Texas School Employees

The two basic employment contracts, term contracts and probationary/continuing contracts, are the basis of employment agreements of professional school personnel in Texas. The term contract, regardless of the length of the term, has a definite termination date and must be renewed periodically by the employing school board. The probationary/continuing contract, as authorized in Subchapter C of Chapter 13 of the Texas Education Code, provides for a three-year probationary term contract. After the probationary period is over, the teacher may be given a continuing contract (Kemerer, 1986).

While state statutes determine the type of contract, considerable discretion is left to the parties regarding the form and nature of the agreement. A 1984 decision of the Commissioner indicates that oral contracts are not unenforceable [Allen v. Mullen I. S. D., Dkt. No. 145-R2-883 (October, 1984)]. In Allen, the board unanimously voted to hire the teacher but later began to question his reputation and qualifications. When new members were elected to the board it refused to give the teacher a vote of confidence and asked him to resign. Allen refused to resign and later signed the district's form contract. Allen received a letter signed by the board president which stated that the employment offer was withdrawn.
The Commissioner ruled that oral contracts can be binding regardless of whether they are evidenced in writing or merely stated orally; all contracts spring from an "offer" and "acceptance." In this case, the teacher had demonstrated his willingness to work for the district and was considered as the only candidate for the position. After interviewing the teacher, the trustees voted unanimously to hire him. Although the agreement was to be reduced to writing sometime later, a meeting of the minds had occurred. If no contractual relationship existed at this time, the trustees could just have ignored the matter or withdrawn the offer rather than asking the teacher to resign.

In another case, a noncontractual aide who was dismissed for insubordination was given a hearing by the superintendent. The aide claimed that she was entitled to more due process by virtue of the standard aide-agreement form she had signed. Because of the wording of the form, the Commissioner ruled that it constituted a valid contract which entitled the aide to full due process. The Commissioner decided that the dismissal was for good cause and denied her appeal [Vela v. Corpus Christi ISD, Tex. Comm. of Educ. Dkt. No. 135-R8-783 (April 30, (1984)].

Contract nonrenewal and teacher dismissal are quite complex. A very concise explanation of term contracts and probationary-continuing contracts is offered by Kemerer (1986) in a table which is reproduced on the following page.
The table will be helpful in understanding the discussion to follow.

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<th>Probationary-Continuing Contract</th>
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<td>Legal source</td>
<td>TEC § 23.28 provides for term contracts for administrators and teachers. TEC §§ 21.301–21.311 provide standards and procedures for nonrenewal of term contracts.</td>
<td>TEC §§ 13.101–13.116 allow school districts to formally adopt probationary-continuing contract law, if district has not done so, district has term contracts regardless of terminology used.</td>
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<tr>
<td>Professionals covered</td>
<td>Certified teachers, counselors, and administrators but not paraprofessional employees.</td>
<td>Certified professionals in direct contact with students, e.g., teachers, librarians, and counselors but not administrators.</td>
</tr>
<tr>
<td>Probationary status</td>
<td>TEC § 21.309 allows school districts to offer probationary status for up to 2 years of continuous employment.</td>
<td>TEC § 13.103 provides for probationary status up to 3 years, in certain situations, up to 4 years.</td>
</tr>
<tr>
<td>Probationary contract</td>
<td>None. TEC § 21.309 exempts probationary contracts from coverage of the provisions of §§ 21.301–21.311.</td>
<td>TEC § 13.103 gives probationary teachers whose contracts are not renewed rights to notice, statement of reasons, and hearing before local school board.</td>
</tr>
<tr>
<td>Nonrenewal of contract</td>
<td>TEC §§ 21.303–21.309 provide for notice, right to reasons, hearing before school board, and right to appeal to state commissioner. Commissioner will uphold board unless decision is arbitrary, capricious, or not supported by substantial evidence.</td>
<td>Not applicable, by definition, continuing contracts cannot be nonrenewed (see probationary contract rights above).</td>
</tr>
<tr>
<td>Dismissal during term contract</td>
<td>Not applicable, contract and constitutional law apply.</td>
<td>TEC § 13.109 requires good cause for discharge of probationary or continuing contract teachers during the year. TEC § 13.110 contains similar provisions for continuing contract teachers who are released at end of year. TEC §§ 13.112–13.115 spell out due process requirements that must be followed for both discharge and release.</td>
</tr>
<tr>
<td>Other provisions</td>
<td>TEC § 21.202 requires annual evaluation for all professionals covered by act and requires administration to provide nonrenewal recommendations to school board (except where superintendent's employment is concerned).</td>
<td>TEC § 13.116 provides provisions regarding resignations.</td>
</tr>
</tbody>
</table>

The first of the two basic types of employment contracts that pertain to professional employees is called the term contract. The term contract provides employment for a specific length of time. Texas Education Code (TEC) Section 23.28 gives authorization for term contracts for superintendents, principals, teachers, or other executive officers for a term not to exceed the term specified in that section. The maximum term specified for schools of fewer than 5,000 is not to exceed three years. Those districts with a scholastic population of 5,000 or more in the
preceding school year shall not have the term contract exceed five years. Some districts use different terminology in describing multiple-year contracts, but regardless of terminology, all term contracts have a definite termination date and must be renewed periodically.

The provisions of the Term Contract Nonrenewal Act (TCNA) are set forth in the Texas Education Code Sections 21.201 - 21.211. TEC Section 21.201 identifies employees under TCNA as those required to have a valid teaching certificate. Thus, "teacher" as defined in TCNA means superintendent, principal, supervisor, classroom teacher, counselor, or other full time professional employee. If the school district adopts term contracts arrangements for employment, it may provide by written policy for a probationary period not to exceed the first two years of continuous employment (TEC Section 21.209). If the district provides a probationary period, then the provisions of the TCNA do not apply during that time.

Changes have been made in the TCNA provisions regarding the probationary period since the conclusion of this study in 1986. For a person who has been employed as a teacher in public education for at least five of the eight years prior to initial employment in the district, the probationary period shall not exceed one year.

Other sections of TCNA have requirements which pertain to nonrenewal of term contracts. The law provides that each
teacher be evaluated at annual or more frequent intervals and that this evaluation must be considered by the board of trustees if they decide to nonrenew the teacher's term contract (TEC Section 21.203). TEC Section 21.204 provides that written notice of a proposed nonrenewal be given to the teacher on or before April 1 preceding the end of the employment term fixed in the contract. The notice of proposed nonrenewal must contain a statement of all the reasons for such a proposal.

Another important provision is found in TEC Section 21.205. If a hearing is desired, the teacher must make the request within 10 days after receiving notice of nonrenewal and the board must provide a hearing within 15 days after receiving the request. The teacher may or may not request a hearing. If the teacher fails to request a hearing, the board must notify the employee in writing of a nonrenewal action within 15 days of the expiration of the 10-day period for requesting a hearing. If a hearing is requested, the board must notify the teacher of its action within 15 days following the conclusion of the hearing (TEC Section 21.206).

The TCNA does not prohibit a board of trustees from discharging a teacher for cause during the term of the contract (TEC Section 21.210). The Texas Education Code, including TCNA, does not specify due process rights for dismissal of term contract employees during the term of the contract. One can look at case law to provide the essentials
for due process in dismissal cases. Affecting this important issue is Ferguson v. Thomas, 430 F.2d 852 (5th Cir. 1970). In Ferguson, the court stated that in a dismissal-for-cause action a teacher at a minimum:

1. Be advised of the cause or causes of the termination in sufficient detail to fairly enable him or her to show any error that may exist.
2. Be advised of the names and nature of the testimony of witnesses against her or him.
3. At a reasonable time after such advice, be given a meaningful opportunity to be heard in his or her own defense.
4. Be given an opportunity for a hearing before a tribunal that both possesses some academic expertise and has an apparent impartiality toward the charges.

The provision for TCNA appeals found in TEC Section 21.207 will be discussed in this chapter under the section concerned with appeals.

Although virtually all administrators and about two-thirds of the teachers in Texas are employed on term contracts, some districts have adopted the arrangements set forth in Subchapter C of Chapter 13 of the Texas Education Code. TEC Section 13.101 allows school districts to offer a teacher first a series of probationary contracts, followed by a continuing contract of employment. Subchapter C is discretionary; school districts may choose to adopt it or they may choose to use only term contracts.

Under Subchapter C, a teacher who is a first-time employee is to be employed under a probationary contract for a fixed term not to exceed three years. The statute provides that the board may terminate a teacher holding a probationary
contract at the end of the contract period, if the best
interest of the school district will be served thereby (TEC
Section 13.103). The probationary period may not be extended
beyond the third year unless the district is unsure about
placing the teacher on a continuing contract, in which case a
fourth-year probationary contract can be given. After the
fourth year, however, the district must either give the
teacher a continuing contract or terminate employment (TEC
Section 13.102).

Continuing contracts remain in force until the person
resigns or retires, is released for reduction in force, is
discharged for lawful cause, is dismissed at the end of the
year, or returned to probationary status.

Reasons listed as lawful cause in TEC Section 13.109 for
dismissal of both probationary and continuing contract
teachers during the year are the following:

1. Immorality;
2. conviction of any felony or other crime
   involving moral turpitude;
3. drunkenness;
4. repeated failure to comply with official
directives and established school board policy;
5. physical or mental incapacity preventing
   performance of the contract of employment; and
6. repeated and continuing neglect of duties.

In addition to reasons given in TEC Section 13.109,
continuing contract teachers can be dismissed at the end of
any year for the following additional reasons as stated in
TEC Section 13.110:

1. incompetency in performance of duties;
2. failure to comply with such reasonable requirements as the board of trustees of the employing school district may prescribe for achieving professional improvement and growth;
3. willful failure to pay debts;
4. habitual use of addictive drugs or hallucinogens;
5. excessive use of alcoholic beverages;
6. necessary reduction in personnel by the school district (such reductions shall be made in the reverse order of seniority in the specific teaching fields);
7. for good cause as determined by the local board, good cause being the failure of a teacher to meet the accepted standards of conduct for the profession as generally recognized and applied in similarly situated school districts throughout Texas; or
8. failure by a person required to take an examination under Section 13.047 of this code to perform satisfactorily on at least one examination under that section on or before June 30, 1986.

Good Cause for Dismissal

Thirty-eight states statutorily authorize school boards to dismiss teachers for immorality. Although it is the most wide-spread charge in the statutes, legislatures show a reluctance to define the term or discuss its application to specific conduct. The remaining twelve states have statutory grounds of good cause, unfitness to teach, or unprofessional conduct (Landauer, 1983). Many contracts require that there be"just cause" for discipline without defining the term. Statutes may also refer to lawful cause, good cause, or simply cause; all of the terms are interchangeable (Lyle, 1986; Richards, 1984, Zirkel, 1985).
Delon (1977) cites a typical reasonable cause list from Kansas which includes the following: incompetency, inefficiency, conduct unbecoming a teacher, neglect of duty, immorality, and insubordination. The key word in insubordination charges is willful; it implies an obstinate and perverse determination to follow one's own will. Ohio statutes cite willful and persistent violations of board rules as explanation of insubordination (Fleming, 1984). Cases which have gone against the teacher had circumstances in which a teacher was defiant; the conduct was prolonged and continual, and it continued after a warning was given to stop (Grosse, 1985).

A person is not necessarily cited for a willful act if he is terminated for incompetence. Termination for incompetence is not a disciplinary action as is termination for immorality. The fault in question is more likely to be one of omission (failure to act) rather than commission (choosing to act) (Barton, 1984). Consequently, incompetence and its legal relatives, ineffectiveness and inefficiency, must be proved by the employee's performance. A suggestion made by Lyle (1986) was that when authorities contemplate dismissal, they should avoid imprecise words like usually, sometimes, seldom, etc.; rather, delineate the terms for termination. Ordinarily school-board policies become part of a teacher's contract, and if the board chooses to define "good cause" or other reasons for termination in board policy
or in the teacher's contract, such language will control in the event of termination of a contract.

Evaluation has become an important component in dismissal for incompetence. Barriers to removal of incompetent teachers were seen by Huddle (1985) as legal barriers and technical problems in measuring teacher effectiveness. The key to effective teacher evaluation is how performance is defined, described, observed, and finally evaluated. Evaluations must measure what they purport to measure (validity); and they must measure consistently (reliability) (Patterson, 1983). Evaluations routinely compiled and poorly substantiated can become "Exhibit A" for the teacher in dismissal actions. Rapp (1985) suggests that evaluations which are useful in a legal setting must be fact-oriented. Teachers must not be discharged without documented evidence from qualified evaluators acting in good faith. The Rand group as reported by Zakariya (1985), found one of the most important elements in teacher evaluation was making sure the people who do the evaluation know what they are doing.

Evaluations remain subjective because areas intended for measurement are difficult to quantify. When a person's very livelihood can depend on where the evaluator places the check mark on the form, it is important that fairness be a prime consideration (Pope, 1983). Mahon (1981) stated that fairness cannot hurt, and fairness dictates that a government decision be informed and reasoned. Hooper (1985) considers
fairness to be at the heart of the Term Contract Nonrenewal Act. An attitude and belief must prevail that everyone is acting in good faith. He explains further that employees should not expect a lifetime tenure just because they have been given a contract, nor should employers withdraw employment without sufficient reasons. Losing a legal action becomes a strong possibility if the feeling is that the teacher is not being treated fairly. Teachers need to know the specific criteria and exactly how they failed to meet those standards (McCormick, 1985).

Texas courts recognize that one of a teacher's contractual responsibilities is to teach adequately. This responsibility is considered to be inherent in the employment relationship [Elizalde, 1984 (a)]. A school district may not terminate a teacher's employment for correctable deficiencies without first giving an opportunity to improve. Aldridge (1985) gives two rules which can be applied from cases from other jurisdictions. First, conduct is irremediable only if it is clear that a warning would not have prevented the damage. Second, if there is persistent remediable conduct which accumulates or it is found in combination with other remediable conduct, it may become irremediable. Aldridge boils the rules down to a simpler rule: "Not everything can be fixed; if the conduct is not fixable, you don't have to try to fix it."
There is a reminder by Splitt (1986) that teachers do have constitutional rights even if they are probationary or untenured. Splitt contends that, faced with nonrenewal, "unprotected" employees often seek reinstatement or damages on alleged violation of their constitutional rights. In a Texas case, a teacher was evaluated unfavorably by her principal [Day v. South Park I. S. D., 768 F.2d 696 (5th Cir. 1985)]. Unsatisfied with the evaluation and a subsequent conference with the principal, Day wrote a letter to the principal and later filed a grievance. When the board chose not to renew her contract, Day contended that the board's decision was motivated by the complaint she filed. Although the court upheld the nonrenewal when this case finally made its way to the U. S. Court of Appeals for the Fifth Circuit, it demonstrates that there are safeguards through routes of appeal for school employees who are dissatisfied with employment decisions.

Procedural Safeguards

Before proceeding with the routes of appeals in employment disagreements, it would seem appropriate to review procedural safeguards set out in the U. S. Constitution. The First Amendment is particularly important, for it lists the rights inherent in a democratic society. These rights include the right to be free of government control in the exercise of free speech, publication, religion, and assembly.
The Fourteenth Amendment has been used to protect persons' basic civil rights from state government oppression. Amendment XIV, Section 1, of the U. S. Constitution states in part: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws." Since public school personnel are state related, the terms of the Fourteenth Amendment apply to them.

Of all the rights protected by the Fourteenth Amendment, the rights of expression are of the greatest importance. A most important case concerned with public school employees' rights of expression is one in which a teacher was dismissed from his job for sending a letter critical of the school board to a local newspaper [Pickering v. Board of Education, 391 U. S. 563 (1968)]. The lower courts concluded that the letter, which contained some false statements, was detrimental to the interests of the schools and that those interests should take precedence over the teacher's claim to freedom of expression. However, the Supreme Court ruled that the lower courts were in error. The opinion in Pickering acknowledges that the government has an interest as an employer in regulating speech of employees, but the teacher's rights of expression must be balanced with the legitimate interests of the school board. In considering protected
speech outside of school, much depends on whether the speech is a matter of public concern, the manner in which the speech is given, and whether the employee's relationship with superiors is impaired.

Due process of law is a means of assuring that decisions made by government officials that affect people's fundamental rights are made fairly (Kemerer, 1986). The trustees of a school district have the exclusive power to manage and govern the public free schools of the district [TEC Section 23.25 (b)]. This allows school boards to manage school employees through principals, superintendents, and termination of employment, when necessary, as part of the management function. So, due process is extremely important if a person's essential rights are to be taken away.

Due process is looked at in two ways. Substantive due process is concerned with the fairness of the content (substance) of rules and laws as well as decisions emanating from them, while procedural due process relates to the steps that satisfy the requirements of the Fourteenth Amendment as, notice, hearing, right to an appeal (Kemerer, 1986). If there is no loss of life, liberty, or property, there is no requirement by the state to provide due process under the U. S. Constitution.

The TEC Subchapter C gives tenure to teachers who are employed under probationary/continuing contracts, and all term contract employees are also guaranteed employment during
the term of the contract. Thus, there is a property interest in their employment. Before any teacher is discharged during the school year, or before any probationary teacher is dismissed before the end of a school year before the term fixed in the teacher's contract, or before any teacher holding a continuing contract shall be dismissed or returned to probationary status, the teacher is entitled to all written evaluations and memoranda that pertain to his fitness or conduct (TEC Section 13.111).

Further due process is provided by TEC Section 13.112, which provides for an opportunity for a hearing. Upon written notification of the proposed dismissal action, a teacher can notify the board of trustees in writing within ten days after the receipt of the notice of his desire for a hearing. The board must respond within ten days to the request for the hearing, giving a time and place for the hearing. At the hearing the teacher has a right to counsel and a right to hear evidence upon which the charges are based, to cross-examine all adverse witnesses, and to present evidence in opposition to the charges. The board will take action as it deems lawful and appropriate, and then notify the teacher within fifteen days following the conclusion of the hearing. Thus TEC provides procedural due process for Texas teachers who have a property interest in their employment under the probationary-continuing contract system of Subchapter C.
There is no loss of reputational liberty rights by termination of employment unless the employer makes statements that are damaging to the reputation of the person whose contract is nonrenewed or terminated. In a Texas case [Dennis v. S. & S. Consolidated Rural H.S. District, 577 F. 2d 338 (5th Cir. 1978)] a teacher was nonrenewed. Two board members individually asserted that Dennis had a drinking problem. Dennis made no claim to a property interest in his contract; he simply wanted an opportunity to clear his name. The Fifth Circuit agreed that Dennis' name had been tarnished in conjunction with the contract nonrenewal, but reinstatement was not ordered. Instead, the school district was ordered to give him a new hearing in order to give him opportunity to clear his name.

Appeals at the Local Level

Many appeals may not go beyond the local level, since all school systems offer a means for resolving conflicts at this level. The lowest level of administrative appeal would be the line administrator and other local appeals would be made to the district's board of trustees.

Administrative channels are in existence where, according to Murphy (1981), the line administrator can resolve many minor conflicts and frequently settle major disputes through application of his formal authority. Probably many disputes are settled at this level; if they are
unresolved, the next level of appeal is the local board of trustees.

The local board can attempt to resolve disputes not settled by line administrators. Lodge (1987) reports a local board decision in which a football coach/athletic director was fired after nine hours of testimony from other disgruntled coaches and parents. The superintendent had recommended that the coach be fired, and the board voted 6-1 to dismiss him. After the hearing, the fired employee stated that he would appeal the board's decision to state education officials because his actions were not grounds for dismissal. The employee who is dissatisfied with the results of the local board decision can take the appeal beyond that level.

That discipline or dismissal of a teacher cannot be based merely on a board's displeasure with the teacher's legally-protected conduct is a reminder from Mullaly (1983). Instead, there must be a showing of actual and significant disruption of the employment or a disruption in the classroom.

Since the transcript of the local board hearing is the extent of the Commissioner's review of nonrenewals under the Term Contract Nonrenewal Act, Aldridge [1983 (a)] suggests that the local board hearing be treated like a trial with participants represented by counsel. There should be time for attorneys to meet with those whom they represent and to hear their testimonies. Because the state agency ordinarily
examines only the local record to determine whether substantial evidence existed for board action, the local hearing should assume the same importance as a hearing in Austin before the TEA officers. Sufficient time should be allowed to expand the testimony and prove each reason for nonrenewal.

The local board hearing could raise questions of bias as the employee claimed in [Salinas v. Ben Bolt-Dalito Blanco ISD, Comm. of Ed. Dec. No. 202-R1a-B82 (April 29, 1983)]. The complaint was that the board, acting as both prosecutor and tribunal in the hearing, could not render a fair and impartial decision. Salinas had his contract nonrenewed because he failed to follow an administrative directive. He had not been recommended for nonrenewal by the administration but was nevertheless nonrenewed by the board. The Commissioner upheld the board's decision.

Whitley (1986) saw school-setting charges of biased hearings usually taking one of two forms. Most often alleged is either (1) the decision-maker had pre-judged the case before a hearing on the issues or (2) the decision-maker holds such personal animosity that a fair judgment cannot be made. Proof of actual bias is required; however, a school administrator or board member who realizes his decision will be biased is advised by Whitley to disqualify himself as a decision maker.

Despite possible bias or other disadvantages, Burnhart
(1982) reported that teachers found provisions in the TCNA statutes for appeals helpful, since some local nonrenewal decisions were rescinded by the board when it was pointed out that they did not adhere to the law.

Appeals to the State Education Agency

Texas teachers are given statutory rights to appeal the actions of the local board of trustees to the Texas Commissioner of Education in the Texas Education Code Sections 11.13, 13.115, and 21.207. Except for the continuing-contract law that allows for a board challenge to be taken to district court, teachers generally follow an administrative appeal procedure that is called "exhaustion of administrative remedies." The procedure is intended to allow administrators with educational experience to resolve complaints, thus avoiding flooding state courts. In fact, few cases are pursued beyond the Commissioner of Education into court (Kemerer, 1986).

TEC Section 11.13 allows appeals to the Commissioner by any person who is aggrieved by the school laws of Texas or by actions or decisions of the local board of trustees. Teachers might be aggrieved by board decisions concerned with transfers, career-ladder placement, demotions, or some dispute other than one stemming from a nonrenewal or dismissal.

If a board orders a probationary or continuing contract teacher discharged during the school year under Section
of the Texas Education Code, the teacher has the right to appeal the action to the Commissioner. The appeal must be made in writing and filed with the board of trustees within 15 days after written notice of the board's action has been given to the teacher. A copy of the appeal must also be mailed to the Commissioner within the 15 days. The teacher may also challenge the legality of the board's action by suit brought in the district court of any county in which the school district lies within 30 days after notice of the action taken by the board is given to the teacher [Texas Administrative Code Section 157.13(a)].

If the board of trustees orders the continuing contract status of a teacher returned to probationary contract status, or if the board of trustees orders that the teacher holding a continuing contract be dismissed at the end of the school year, the affected teacher, after filing notice with the board of trustees, may appeal to the Commissioner of Education by mailing a copy of the notice of appeal to the Commissioner within 15 days after written notice of the action taken by the board of trustees has been given to the teacher [TAC Section 157.13(a)].

In addition to statutes in the Texas Education Code, the Texas Education Agency has established rules which apply to hearings and appeals. These rules are found in Chapter 157 of the Texas Administrative Code (TAC). Rules governing hearings and appeals for probationary/continuing contract
teachers are found in TAC Section 157.1[3 (a. - c.)] and rules governing term contract teachers are found in TAC Section 157.64 (a). A copy of Chapter 157 of the Texas Administrative Code is found in Appendix F.

Rules promulgated by TEA which apply to all Term Contract Nonrenewal Act appeals to the Commissioner limit the state level appeals to a review of the record of the local board hearing unless the Commissioner orders additional evidence to supplement the transcript. The supplement is allowed only if a party had good cause for not producing the evidence at the local hearing [Texas Administrative Code (TAC) Section 157.64(a)]. Other rules from this same section of TAC require the school district to file a certified transcript and all other pertinent information in a record of appeal and the district must also make this available to the teacher for inspection. The record can be challenged if the material is erroneous. The teacher's challenge of the nonrenewal in the appeal must have sufficient facts which would support a holding of the board's arbitrary, capricious, or unlawful decision. Either party to the appeal can request the Commissioner to afford opportunity for oral argument concerning the merits of the appeal. There is no waiver of a teacher's right to raise procedural or substantive issues in an appeal simply by participating in the hearing before the local board of trustees. The rules also allow the Commissioner to remand any appeal to the board of trustees.
for further proceedings if the interests of justice so requires.

The Commissioner may not substitute his judgment for that of the board of trustees unless the decision was arbitrary, capricious, unlawful, or not supported by substantial evidence, according to TEC Section 21.207. The Commissioner may substitute his judgment for that of the board in instances which include, but are not limited to, those in subsection (g) of Section 157.64 of TAC. These include failure to give timely written notice or failure to state specific reasons in the notice. A nonrenewal may be overturned if it is not supported by specific reasons, or if there are procedural deficiencies related to the hearing. Failure to provide a certified transcript and failure to provide written evaluations or consider them at the hearing are also reasons for overturning a nonrenewal. Reliance on reasons not stated in board policy unless they are inherent in the employment relationship are also reasons why the Commissioner might rule against a school board. In addition, if the reasons are too newly adopted in the policy for the employee to have an opportunity to change, there is reason not to support the local board decision.

Issues related to the interpretation of the Term Contract Nonrenewal Act have been resolved through the State Board rules discussed above and from cases decided by the Commissioner of Education, with only a few cases reaching the
courts. Elizalde [1984 (b)] found twenty-five cases decided by the Commissioner, and none of them had reached a Texas or Federal appellate court when the article was written. Ogilvie's 1983 study found similar results.

There were thirty-three appeals during the first year of implementation of TCNA. Six of the cases then were dropped or settled, and the remaining cases decided by the Commissioner (Ogilvie, 1984-85).

With the implementation of the career-ladder statutes, nearly 150 appeals involving as many as thirty teachers each, had been filed with the Commissioner in attempts to overturn local school district decisions which deemed teachers ineligible for bonuses (Staff, Kirby rec., 1985).

The Commissioner reiterated that he was following the legal standard for review on career-ladder appeals of arbitrariness and capriciousness or bad faith. He did not see his office as a super-watchdog over school district decisions (Staff, Career lad., 1987). The Commissioner noted that appeals to him are not likely to result in teachers being placed on the career ladder, but rather remands to the district will be made on how to proceed. A hearing on a career-ladder appeal to the Commissioner does not have a mandatory requirement of a local hearing transcript, although it is recommended.

Although a transcript of the local hearing is not required for career-ladder appeals, the amendments to the
rules for TEA hearings reported by Aldridge [1983 (b)] require that TEA resolve all appeals by review of the local transcript to determine whether the board's decision was arbitrary, capricious, unlawful, or not supported by substantial evidence. Previous rules would have required a de novo hearing on issues of unlawfulness, arbitrariness, or capriciousness. The new rules allow additional evidence to supplement the transcript if a party has evidence that is material, relevant, and not unduly repetitious, which for good cause he or she was unable to present at the local hearing.

Statutes provide that the Commissioner will not substitute his judgment for that of the local board of trustees. Case law also influences the interpretation of the Commissioner's role. Kemerer & Hairston, ed., [1985 (b)] noted the Commissioner's observation that under a 1984 ruling by the Texas Court of Appeals, Austin [Spring v. Dillion ISD, 683 S. W. 2d 832(1985)] his jurisdiction is not confined to causes of action involving alleged violations only of legal rights. In accordance with the ruling of the court, the Commissioner has reinterpreted his jurisdiction under Texas Education Code Section 11.13 to include review of disputes over local board decisions where no legal rights may be implicated to determine whether such decisions impair the promotion of efficiency and improvement in public schools.

A statement in Section 11.13, TEC that a person "may"
appeal a local board decision to the Commissioner underlies the Texas Court of Appeals, San Antonio, ruling that exhaustion of administrative remedies does not always necessitate appeal to the Commissioner before going to state court [Kemerer & Hairston, ed., 1985(a)]. The same section, TEC 11.13 also states that a person is not to be deprived of any legal remedy. Only a factual question demands exhaustion of administrative remedies. Where facts are not in dispute or where a school board acts outside of its statutory authority, resort to the courts is proper [Benevides ISD v. Guerra, 681 S. W. 2d 245 (Tex. Ct. Civ. App., San Antonio, 1984)].

The role of the Texas Commissioner of Education continues to evolve as decisions are made in appeals.

In what Schulze (1986) reported as a surprising decision involving the Term Contract Nonrenewal Act (TCNA), the Texas Appeals Court in Austin ruled that the state's Administrative Procedure and Texas Register Act (APTRA) unquestionably does not apply to cases appealed under TCNA [Burke v. Central Education Agency, 701 S. W. 2d 306 (Tex. Ct. App., Austin, 1985)]. APTRA governs the procedures that both state agencies and parties must follow when a contested case is being decided by a state agency.

Aldridge (1986) points out that had the appeals court decision in the Burke case prevailed, there was doubt that the TEA rather than the courts will be the primary law
giver on TCNA interpretations. The decision did not prevail, but the role of the Texas Commissioner continues to evolve as case law brings interpretation to the statutes which designate his responsibilities.

The Burke ruling was reversed on appeal to the Texas Supreme Court. That meant that the Appeals Court had ruled on an issue which had not been raised by either party in the case. Thus, the APTRA rules continue to apply in TCNA cases [Cent. Educ. Agency v. Burke 711 S.W. 2d 7 (Tex. 1986)].

Appeals to State Courts

Teachers serving a probationary or continuing contract may, under Section 13.315, enter an appeal in state court if they are terminated during the year by challenging the legality of the board's action in the district court of the county where the school district lies, or either party can appeal the Commissioner's decision to the state district court in Travis County. Appeals can be taken directly to state court if there is a pure question of law.

The Texas Supreme Court has ruled that it is clearly within the Commissioner's power to determine a teacher's statutory rights when the employment contract is governed by the Term Contract Nonrenewal Act (TCNA) [Grounds v. Tolar I. S. D., 707 S. W. 2d 889 (Tex. 1986)]. Since the TCNA contains its own internal route of appeal to the Commissioner, there is a mandatory and exclusive statutory
requirement for judicial review which must be followed, by appealing all TCNA cases to the Commissioner first and then into state district court in Travis County.

Illustrative of the direction an appeal might take in Texas is a case in which a teacher/coach was demoted and nonrenewed [Grounds v. Tolar 694 S. W. 2d 241 (Tex. App. 2 Dist. 1985)]. Gary Grounds was employed by the Tolar Independent School District (TISD) as a teacher for the 1982-83 school year and was reemployed the next year as a teacher/football coach. The contract stated that an "employee is subject to assignment and reassignment during the contract term." During the 1983-84 school year, TISD adopted a probationary policy for teachers employed less than two years. On February 28, 1984, TISD notified Grounds that his contract would not be renewed for the 1984-85 school year. Grounds' request for a hearing before a local board of education was denied on the basis that he was a probationary employee. Grounds appealed to the State Commissioner of Education, who reversed the decision of the TISD Board of Trustees and ordered that Grounds be reemployed in the "same professional capacity."

Following the Commissioner's decision, TISD offered Grounds a new contract for the 1984-85 school year, which contained teaching duties but not coaching duties or the $3,500.00 coaching supplement. Grounds refused the contract, claiming that he was entitled to a contract of employment in
the "same professional capacity." TISD filed a declaratory judgment action in state district court in Hood County, which rendered a judgment in favor of TISD. The Ft. Worth Court of Appeals affirmed the state court decision, and Grounds appealed to the Texas Supreme Court.

The issue before the Supreme Court was whether TISD was required to follow the procedural prerequisites for review under the Term Contract Nonrenewal Act (TCNA) and the Texas Administrative Procedure and Texas Register Act (APTRA). Grounds argued that the court of appeals erred in holding that a teacher/football coach was in the same capacity as a teacher, and that TISD was not required to comply with the procedural requirements of the TCNA or the APTRA, but could collaterally attack the decision of the Commissioner of Education in any state district court. TISD argued that it need not exhaust all administrative remedies because Grounds' claim involved a pure question of law.

The Supreme Court observed that term contracts are governed by the TCNA, which provides that a term-contract teacher aggrieved by a decision of a local board may appeal to the Commissioner of Education, whose review is limited to determination of whether the local board's action was arbitrary, capricious, unlawful, or not supported by substantial evidence. The Act further provides that either party may appeal the Commissioner's decision to the state district court in Travis County.

The Supreme Court also noted that the TCNA must be read
in conjunction with the APTRA, which provides that a party aggrieved by a final decision of an agency in a contested case may, after exhausting all administrative remedies, challenge the agency's decision by filing a petition in district court in Travis County within 30 days of the agency's decision complained of. The Supreme Court stated that: "When a cause of action is derived from a statute, the statutory provisions are mandatory and exclusive and must be complied with in all respects or the action is not maintainable, for lack of jurisdiction." Thus, the Texas Supreme Court ruled that a party who wishes to appeal the decision of the Commissioner of Education in a contract nonrenewal action must do so in compliance with the TCNA and APTRA. "The decision to appeal is optional," the Supreme Court stated, "but the place of trial is jurisdictional." Therefore, the Supreme Court ruled that TISD did not follow the statutory prerequisites for review, and thus reversed the decision of the Court of Appeals and reinstated the Order of the Texas Commissioner of Education.

Appeals to Federal Courts

Appeals to the federal courts are beyond the scope of this study; however, they are so intertwined with individual rights that they must receive some consideration. Liberty and property rights in employment have been discussed earlier in this chapter under procedural safeguards. Areas involving
federal questions most often encountered in school employment are concerned with First Amendment rights of freedom of expression and association. In addition, federal courts are the proper forum for questions concerned with many issues of discrimination, i.e., race, sex, age, national origin, marital status.

Within the school, public employees have a right to express themselves on matters of public concern, but not on private office matters [Connick v. Myers, 461 U. S. 138, (1983)]. Borman v. Pulaski County Special School District, 723 F.2d 640 (8th Cir. 1983) weighed five factors concerned with school employees' speaking out. These factors were the following:

1. Public interest in the issue
2. Time, place, and manner of speech
3. Context of the speech
4. Effect on the teacher's performance of duties
5. Effect on staff harmony and cohesion.

Teachers' expression rights could involve matters both inside and outside the classroom. Menacker (1981) cites the Supreme Court balancing test for First Amendment rights. If a protected right causes discomfort or annoyance to school authorities but does not obstruct the state's educational function, the court will hold for the individual. Conversely, if the exercise of the civil liberty in question constitutes an obstacle to the normal exercise of educational functions
that school authorities cannot reasonably accommodate, they
will find for the school authorities. In a Texas case, a
teacher used a masculinity scale from Psychology Today in her
classroom. She was relieved of duty effective immediately
and was allowed only to return to her classroom to get her
purse, leaving all other personal belongings behind. In
reviewing the evidence, the judge found that the teacher's
use of the masculinity scale did not cause substantial
disruption to the operation or discipline of the high school.
The judgment found the teacher's First Amendment rights
violated and ordered reinstatement. In addition, back pay
and attorney's fees were awarded [Dean v. Timpson Independent
Sch. Dist., 486 F.Supp. 302 (E.D. Tex.1979)].

In Texas Lone Star (Staff, 1983), a writer suggests that
if they are to prevail in court, school districts would have
to show that the teacher's speech was not a matter of public
concern but merely a private internal communication; or the
district would have to show a dismissal of a teacher would
have occurred regardless of exercise of free speech.

Administrative Appeals in Other States

There are only superficial studies and descriptions in
the literature of administrative appeals. But still, the
literature reveals some interesting patterns of procedures
and practices in some other states.

Arkansas, Louisiana, and Oklahoma all have some kind of
statutory provisions relating to teacher dismissals and employment practices. The statutes in these three states show some similarities and differences to the Texas statutes concerned with employment practices.

French (1976) described Louisiana statutes which require that even probationary teachers be given valid reasons for dismissal; but since nontenured teachers have no property interest in employment, there can be no deprivation of liberty and no constitutional right to a hearing. Regular Louisiana teachers do have tenure and, thus, full rights to due process if a dismissal action is taken.

Arkansas has in place the Arkansas Teacher Fair Dismissal Act, which has some provisions similar to Texas statutes. The Arkansas Teacher Fair Dismissal Act mandates due process for probationary teachers who are terminated during their contract term. Such teachers are entitled to written notice containing a statement of grounds for termination and a statement that a hearing before the board is available upon request. Nonprobationary teachers have no entitlement to a warning upon notice of nonrenewal; but unlike Texas' appeal route to the Commissioner, the Arkansas Teacher Fair Dismissal Act provides for judicial review of board decisions for nonprobationary teachers, that is, those who have been employed in the district for three successive years [Rogers v. Masen, 774 F.2d 328 (8th Cir. 1985)].

The Oklahoma State Board of Education (Oklahoma, 1983)
has provisions for the lowest level of administrative action if teacher performance is inadequate. Standards are set at the state level with statutory grounds for dismissal or nonreemployment. Oklahoma differs from Texas in that teachers are awarded tenure after three years. Oklahoma has a similarity to Texas in its appeal route to the state, but the state superintendent is not named as the hearing officer. Rather, a hearing judge, an individual appointed from the state bar association, hears the case. In Oklahoma, the board and teacher must agree on a judge from a list of twenty-one individuals whose names are submitted to both the teacher and the board.

The hearing actually is conducted before a hearing panel which consists of three members: (1) the judge, (2) a person designated by the accusing school district, and (3) the individual selected by the tenured teacher. The latter two members assist the judge in his consideration of educational issues. The panel decides if the tenured teacher will be reinstated or if the decision of the board will be sustained. The decision of the panel can be appealed to the district court by either the teacher or the board of education. Otherwise the decision of the hearing panel is final.

Nontenured teachers in Oklahoma are also accorded due process hearings. They are granted an entitlement to a hearing before a tribunal. There is no indication in the procedures document that the nontenured teacher would have
access to the state-level hearing panel.

Sistrunk (1982) found that statutory and case law have created a firm basis for school personnel policy in Mississippi. Employees do not have legal tenure, but statutory provisions ensure notice and a hearing for employees terminated or suspended during the contract period.

The superintendent may suspend or terminate employees during the contract period. He has the same powers as a justice of the peace in the hearing.

Nonrenewal statutes in Mississippi entitle employees to a judicial review of board proceedings in the chancery court where the district is located. Rules for review are similar to those in Texas in that the review is limited to a review of the record of the hearing to determine if there is sufficient evidence, or if the board was arbitrary, capricious, or unlawful. Appeals from the chancery court's decision can be taken to the Mississippi Supreme Court.

Orr (1977) produced a resource guide for school boards in Alabama. In the guide, Alabama provisions for appeals start at the building level, proceed up the line to the central office, then to the local board of education if the grievance is not resolved. If the grievance remains unresolved, the employee can then appeal to the State Board of Education, or, if required, go to the appropriate court of legal jurisdiction.

New Hampshire has tenure statutes which give property
rights. The nonrenewal of tenured teachers in New Hampshire
requires a full hearing following statutory time lines. The
State Board of Education does not give a de novo hearing, but
simply reviews the local decision rather than accepting new
evidence. The local decision is overturned only if there has
been an abuse of discretion or errors of procedure (Boyton,
1976).

In Oregon, a Fair Dismissal Law that governs dismissals
of public school teachers has similar provisions to Texas
statutes. Pitt (1983) gives procedures which start with the
superintendent providing notice of intent to dismiss. If the
board approves dismissal, the teacher can appeal to the Fair
Dismissal Appeals Board (FDAB). Either party can appeal the
FDAB decision to the circuit court of appeals where most
court reviews focus only on whether there is substantial
evidence. Such a review is similar to a review by the Texas
Commissioner of Education. Another similarity to Texas
procedures is that Oregon probationary teachers can be
dismissed for any reason that is not constitutionally
impermissible.

Kehoe (1981) compared Oregon's probationary teachers and
permanent teachers. Dismissal of probationary teachers is
fairly easy. Permanent teachers, on the other hand, can be
dismissed only for statutorily stated reasons. They must be
given notice of inadequacies and opportunity to improve
before dismissal proceedings are initiated.
In Jenkins' 1977 explanation of Illinois teacher tenure laws, an elaborate appeals route was included for tenured teachers. If a dismissal is approved, a notice of dismissal is served on the teacher and the State Board of Education. Within ten days after receiving the Notice of Hearing the State Board provides the local board of education with five names of prospective hearing officers. First the teacher and then the board or their representatives strike a name until there is only one name remaining. That person is the hearing officer. Jenkins describes the hearing as a little less formal than a court of law. The decision is final unless reviewed as provided in the school code.

The burden for meeting deadlines for the local hearing in Illinois appears to be the responsibility of the board. The board does not act as tribunal as do the local trustees in Texas. The State Board is notified and involved in all dismissals, not just those which may be appealed from the local board to the state level as is the requirement in Texas.

Seattle has devised a detailed plan within Washington state statutes for nonrenewal and dismissal procedures for school employees. Washington does by statute establish a property interest in a teacher's continuing employment. Except for first-year teachers, procedural requirements must be followed before a teacher's contract can be nonrenewed. The Seattle schools have an elaborate time schedule that must
be followed which includes evaluation procedures and some guidelines for remediation of deficiencies if a negative decision appears likely (Little, 1978). There were no further administrative remedies addressed in the article. However, it cannot be concluded that such procedures are not in place in the state of Washington.

All states in this literature review provided rules for due process. Some of them set conditions for time-lines for the steps taken in the procedures. Some states had tenure laws in place. The hearing at the state level might be conducted by an official designated by the state's chief school officer, or there might be a panel that could review the case. Some states gave probationary teachers reasons for dismissal and others, like Texas, could dismiss probationary teachers for any reason unless it was one which was constitutionally impermissible.

Significance of the Study

A review of the literature revealed studies and documents concerned with school-employee appeals procedures in other states. There were no references to administrative appeals for school employees in the state of Texas. The present study can contribute to the literature in the area of administrative appeals to the state chief school officer in Texas. The literature also contained studies based on the decisions handed down from the courts. There is no question
as to the value of these studies to school administrators and school boards, for decisions of the courts must be incorporated into future decisions concerned with personnel matters. A void remains, however, in the literature of administrative appeals concerned with school employment matters in Texas.

Some employment issues can be taken to state or federal courts by school employees. Decisions made by higher level courts are binding on school officials; however, these decisions are reported and are readily available in many libraries. Although the decisions of the State Commissioner are also binding on school officials, they are not reported nor readily available to school administrators who must adhere to the binding decisions of the Commissioner.

The significance of this study is found in the needs of school administrators and boards of trustees for legal information generated by the decisions of the Texas Commissioner of Education which pertain to employment. An important part of school law is developed at the Commissioner level. The Commissioner decisions are not reported even though they are binding. It is extremely important that school officials have access to this body of information if they are to make informed decisions in employment matters.

Summary

It appears that the literature is lacking in studies concerned with appeals of school employees to state chief
school officers. However, the literature does cite statutes and procedures for appeals in some other states which are similar to those in Texas.

Teachers in Texas have two basic types of contracts: term contracts and probationary or continuing contracts. The most prevalent contract is the term contract which, regardless of the length of the term, has a definite termination date. The Term Contract Nonrenewal Act enacted by the Texas Legislature in 1981 gives statutory requirements which govern nonrenewal and termination of term contracts. The less used continuing contract remains in effect until the person retires or otherwise leaves the school district.

There are some procedural safeguards set forth in the U. S. Constitution which dictate fairness in the dismissal process for teachers. Before any person's fundamental rights are taken away by decisions made by government officials, due process of law must be followed. The trustees of a school district have exclusive power to manage and govern the schools, but if an employee has a property interest, liberty interest, or any statutory entitlement to his employment, due process must be given before those rights are taken away.

The appeal route most often followed in Texas is from the local school board to the Texas State Commissioner of Education and then into a state district court in Travis County. Exceptions to the general appeal route to the
Commissioner are the following:

1. There is only a pure question of law at issue. If only a question of law is involved, it would be pointless to appeal to the Commissioner and the appeal could be taken directly to a state district court. However, one is reminded that all employment disputes arising under the Term Contract Nonrenewal Act must first be appealed to the Commissioner and then into a court in Travis County.

2. An injunction is sought and irreparable harm would otherwise result. Only a court is authorized to issue an injunction.

3. A school board acts without authority. Where a school board acts without authority of law and contrary to express statutes, and in a manner that its acts are void, then exhaustion of administrative remedies is not required.

4. Federal claims can be taken directly to federal courts. Persons are generally not required to take federal claims to state administrative remedies; however, the Texas Commissioner of Education does hear federal claims brought to him on appeal.

It was found that several states have an administrative-appeals procedure for school employees. State education agencies might be involved in the local hearing; some have hearing judges, while others involve a hearing panel selected by both the teacher and the local board.
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CHAPTER III

METHODOLOGY

Quantitative and qualitative research are two types of studies that could be designed and carried out by educational investigators. Each type of research is distinguished from the other in both design and purpose. Qualitative design employs a phenomenological approach that the researcher uses to attempt to understand the meaning of events or particular situations. The purpose in using this approach is to gain a holistic view of what has occurred. Quantitative studies, on the other hand, would attempt to control all extraneous variables in order to observe the effects of the experiment under investigation (Goetz & LeCompte, 1984).

This study uses qualitative methodology to describe and find meaning in events through a systematic document analysis. The material reviewed in the study was analyzed inductively to the extent that there is not a hypothesis to be proved or disproved. Rather, there is a description of the cases which can yield some constructs that are grouped together. From these constructs speculations were made to find important concerns. An inductive approach is generative: for the discovery of constructs and propositions is the concern of the research rather than verification of
an established theory. Some researchers identify this method as grounded theory. Schumacher (1984) suggests that concepts developed in studies are put together to form the basis for hypotheses and theories; thus, grounded theory generates constructs and propositions, and theories are derived from these. Miles and Huberman (1986) advocate that memoranda be kept of thoughts on explanations and ideas found in data. These ideas can be systematized, and a connected set of statements can be used to reflect findings and conclusions of the study.

Subjectivity is another characteristic of qualitative research (Goetz & LeCompte, 1984). While legal aspects of cases to be considered in this study are objective, the descriptive, holistic view of the qualitative reviews may find observations taken from the cases at different points on the subjective-objective continuum. Borg and Gall (1983) adduce that the researcher subjected to differing views of an event may conclude that there is no "objective" reality, only subjective impressions. They conclude, however, that though a person's account may be subjective, there is still an objective reality to be discovered.

Qualitative research is an investigative methodology that is descriptive and approaches a subject with a phenomenological, holistic perspective. The outcomes of this type of research should give understanding and meaning to that which is the subject of the study.
The researcher should expect to make arrangements with the depository for access to public records. This will be explained more fully below.

Procedures for Collection of Data

Borg and Gall (1983) bring attention to two issues which may affect the use of documents by the researcher. Institutional and public records are often available for study, but that does not mean that someone can automatically examine them. The researcher should anticipate making a formal request for permission to study documents relating to his topic. Some documents may be accessible only under certain circumstances. Another issue faced by the researcher concerns the types of materials that can be reproduced. The researcher may be allowed to examine documents but not quote directly from them, or the institution may allow only certain portions of the documents to be copied.

This researcher did make a formal request to have access to the documents necessary for this research. The request was made to a hearing officer at the Texas Education Agency in Austin. The request was granted with the assurance that effort would be made by agency personnel to aid the researcher in the collection of the data. The other issue faced by researchers concerning reproduction of materials was not a problem in data collection for this study.
Photocopying of the decisions was allowed, and this enabled the researcher to reduce the amount of time spent at the repository for notetaking purposes. The transcripts of the appeals might be considered representative of field notes to the qualitative researcher; therefore, a means for information reduction was needed.

Instrumentation

Qualitative researchers are the primary instruments for collecting and analyzing data; therefore, they must be concerned with the effect their own subjectivity may have on the data they produce (Bogdan & Biklen 1982). These authors further explain that what qualitative researchers attempt to do is study objectively subjective phenomena. There is a question of whether the researcher records only what he wants to see, rather than the reality of what is there. The collection of qualitative data is not a quick study. The researcher must laboriously collect and review voluminous amounts of data. In considering the researcher's subjectivity, one should also remember that the researcher's goal is to add to knowledge, not to pass judgment on a particular phenomenon.

Although the researcher's account may be subjective, Borg and Gall (1983) contend that the account may not be biased or prejudiced. A bias is set to perceive events in such a way that certain types of facts are overlooked. The
person who has strong motives for having a particular view accepted might be expected to produce biased information. What might appear to be bias could be simply a difference in perspective. Even if witnesses are honest and truthful, they may still record different accounts of an event. One has only to read accounts of an event, for example a school board meeting, in different newspapers to determine how widely witnesses can vary in their perceptions. However, qualitative researchers must guard the instruments they use and the constructs they create from their own perceptual biases (Goetz & LeCompte, 1984).

Goetz and LeCompte describe qualitative researchers as eclectic in their data-collection techniques. There can be a cross-check of the accuracy of data by gathering data in different ways. Just as a surveyor locates points on a map by triangulating on several sites, so the qualitative researcher pinpoints accuracy by triangulating with several sources of data.

Brown (1984) states that the naturalistic inquirer takes essentially an expansionist stance in that he seeks a holistic view which reveals the complexity of the situation and reveals all layers of the reality of the phenomenon being studied. Although narrative display is the traditional mode for presentation of qualitative research, Miles and Huberman (1986) insist that data must be reduced to give users opportunity to draw conclusions and make applications.
The first step in data reduction in this study was achieved by using a form (Appendix A) to record identifying information for each transcript of an appeal. Other information in this data reduction included a brief statement of facts, the issues in the appeal, the Commissioner's decision, and the rationale for that decision.

Since triangulation was not a possibility for validating the accuracy of the researcher's perceptions, the briefing form (Appendix A) was used by a five-person panel to check the accuracy of the researcher's data. Procedures used with the panel are described in the reliability and validity section which follows.

Reliability and Validity

In qualitative studies researchers are concerned with the accuracy and comprehensiveness of their data. According to Goetz and LeCompte (1984), reliability in qualitative research refers to the extent to which studies can be replicated. They further explain that while it is not always possible to replicate a study exactly, since human behavior does not remain static, the generation, refinement, and validation of the constructs of research may not require exact replication.

Bogdan and Biklen (1982) point out that there is concern with accuracy and comprehensiveness of data, and qualitative researchers tend to view reliability as a fit between
recorded data and what actually occurs in the phenomena under study. Although researchers traditionally have the expectation that there will be consistency in results of observations made by different researchers or the same researcher over time, qualitative researchers do not share exactly the same expectations. Bogdan and Biklen further indicate that the reliability of a study would be questioned only if contradictory or incompatible results are obtained in replication of the study. Goetz and LeCompte (1984) cite the necessity for delineating the physical, social, and interpersonal contexts within which the data are collected. This enhances the replicability of naturalistic studies.

Validity is concerned with the accuracy of research findings. Goetz and LeCompte state that internal validity refers to the extent to which scientific observation and measurement are authentic representation of some reality. External validity, on the other hand, addresses the degree to which such representation can be compared across groups. Wolcott (1973) cites threats to external validity as researcher methods or activities which obstruct or reduce comparability and translatability. Comparability requires that the researcher delineate the characteristics of the phenomena studied so clearly that these phenomena can serve as the basis for other like and unlike phenomena which might be studied. Translatability assumes that comparisons can be conducted confidently if research methods, analytic
categories, and characteristics of phenomena are identified explicitly.

In this study five persons knowledgeable in law, government, and school law analyzed cases to validate the researcher's accuracy in identification of issues, the Commissioner's decision in the case, and his rationale for that decision. A law student from Baylor University and one from Georgetown University Law School were the two panel members knowledgeable in law. Two school administrators who had recently completed at least two courses in school law at the University of North Texas were the two school law students. A teacher of government and politics who also had experience as a paralegal was the fifth member of the panel. The researcher hand-delivered a copy of a decision of the Commissioner and the briefing form (Appendix A) to each member of the panel along with a mailing envelope and adequate postage for returning the validating information to the researcher. All five persons returned an analysis of the decision as requested within a week. Since there were no options for looking at data in different ways, this analysis by the five other persons served as validation that the researcher had made a verifiable assessment of information in the cases pertinent to the study.

Procedures for Analysis of Data

According to Miles and Huberman (1984), data reduction is part of analysis; it refers to the process of selecting,
focusing, simplifying, abstracting, and transforming raw data. As data reduction proceeds, there are further episodes of data reduction accomplished by doing summaries, finding themes, making clusters, or building partitions. Choices are made about which data chunks to code, which patterns summarize a number of chunks, and what the evolving story is.

Data reduction is a form of analysis that sharpens, sorts, focuses, discards, and organizes data in such a way that final conclusions can be drawn and verified. Reduced data can then be displayed in a manner that becomes usable to the practitioner.

The most frequent form of data display used by qualitative researchers is narrative text, a lengthy bulky form, which Miles and Huberman view as a deterrent to the understanding and usefulness of the data. Instead, they suggest that data be displayed in some kind of compressed, ordered form so that the user can draw valid conclusions.

This study has extracted data compiled on a case analysis form (Appendix A). Here the data are reduced so that decisions, issues, and the Commissioner's rationale can be elicited from the decision document.

The researcher's accurateness of assessment is validated through an analysis of data from five other persons knowledgeable in law and government. Data from their findings are further reduced and compiled on a table showing comparisons with the researcher's findings. Percentages of
agreement on issues, decisions, and rationale are compiled using Appendix B as shown below. A comparison of the panel's and the researcher's analysis is displayed by the following:

Figure 1 - percentage of agreement of issues,
Figure 2 - percentage of agreement of decisions (outcomes), and
Figure 3 - percentage of agreement of the rationale for decision.

Table Showing Agreement or Disagreement With Case Analysis of Issues, Decisions, and Rationale for Decisions

<table>
<thead>
<tr>
<th>Figure 1. Agreement of Issues</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Case:</strong> King v. Whiteface Consolidated Ind. School Dist.</td>
</tr>
<tr>
<td><strong>Issues:</strong> Was King's nonrenewal an unconstitutional infringement upon her right to practice her religion?</td>
</tr>
<tr>
<td><strong>Researcher:</strong> Whether the Whiteface Consolidated ISD violated the teacher's constitutionally protected right to freedom of expression of religious beliefs by nonrenewing her contract.</td>
</tr>
<tr>
<td><strong>School law person:</strong> Whether the Whiteface Consolidated ISD violated the teacher's constitutionally protected right to freedom of expression of religious beliefs by nonrenewing her contract.</td>
</tr>
</tbody>
</table>

| **Agreement** |

<table>
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<tbody>
<tr>
<td><strong>Issues:</strong> (1) Were the alleged deficiencies of lack of student progress, poor gradebook, or inadequate rapport which were not a part of local board policy nor TCNA rules good cause for nonrenewal? (2) Was the nonrenewal arbitrary, capricious, or not supported by substantial evidence when cause was a parent's disapproval of the teacher's teaching methods? (3) Was the nonrenewal impartial and based solely on substantial evidence adduced at the local</td>
</tr>
</tbody>
</table>
hearing regarding loss of professional effectiveness in the community?

School Law Person: Was there substantial evidence for nonrenewing Sarah McLean's contract for the next school year?

Case: Moore v. Dallas Ind. School Dist.
Issues:
Researcher: Can the board, without authority in local policy, place an employee on involuntary leave of absence without pay until documentation of a psychological examination is submitted that states the employee is physically and emotionally fit to return to work?

Law person: The issue addressed in the case is whether or not the DISD followed their statutory obligation to the Petitioner by placing her on leave of absence and denying her a hearing. Were Petitioner's rights under the Due Process Clause of the Constitution violated and, more specifically, were her rights under section 13.05(c) of the Texas Education Code upheld?

Case: Salzman v. Southwest Ind. School Dist.
Issues:
Researcher: (1) Did the board base the nonrenewal on substantial evidence that the teacher had failed to follow official directives?
(2) Was the board's enactment of Policy 5.09 and its immediate use a denial of due process of law?
(3) Is a nonrenewal decision before a hearing a violation of the impartiality requirement of the Due Process Clause of the Fourteenth Amendment and Civil Rights Act of 1871?

Government and politics person: (1) Was the board's decision arbitrary, capricious, or not based on substantial evidence?
(2) Was the use of a newly adopted board policy which was used to legitimate nonrenewal of Petitioner's contract impermissible?
(3) Was the board's failure to signify lack of intent to renew Petitioner's contract a violation of her contract under the Term Contract Nonrenewal Act?

Issues:
Researcher: (1) Can a board nonrenew a term contract in the absence of a recommendation for nonrenewal by the administration?
(2) Was the due process impartiality requirement of the Fourteenth Amendment of the U. S. Constitution violated by the board's initial decision to nonrenew the contract prior to conducting a hearing and by acting as both prosecutor and tribunal? 

(3) Was the board's decision arbitrary, capricious, or not supported by substantial evidence? 

Law person: The issues raised by Petitioner concern whether or not the BISD School Board violated the Term Contract Nonrenewal Act (TCNA) since the district administration did not specifically recommend the nonrenewal, the board voted before they issued notice of the nonrenewal possibility, and they could not provide written policy support of their action. Petitioner also asserts that the decision of the board was arbitrary and capricious, and was in violation of the Fourteenth Amendment due process requirement since they served as "prosecutor" and "tribunal."

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**Figure 1 (continued)**

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**Figure 2**

<table>
<thead>
<tr>
<th>Agreement of Decisions</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Case: King v. Whiteface ISD</strong></td>
</tr>
<tr>
<td>Researcher: Appeal denied</td>
</tr>
<tr>
<td>School law person: Upheld the nonrenewal</td>
</tr>
<tr>
<td>Agreement</td>
</tr>
</tbody>
</table>

| **Case: McLean v. Quanah Ind. School Dist.** |
| Researcher: Appeal granted |
| School law person: Appeal granted |
| Agreement |

| **Case: Moore v. Dallas Ind. School Dist.** |
| Researcher: Appeal granted |
| Law person: Appeal granted |
| Agreement |

| **Case: Salzman v. Southwest Ind. School Dist.** |
| Researcher: Appeal denied |
| Government and politics person: Appeal denied |
| Agreement |

| **Case: Salinas v. Ben Bolt-Palito Blanco ISD** |
| Researcher: Appeal denied |
| Law person: Appeal denied |
| Agreement |

**Percentage of Agreement of Issues** 100%
Figure 3
Agreement of Rationale for Decisions

Case: King v. Whiteface Consolidated ISD
Rationale for decision:
Researcher: Nonrenewal was not the result of unlawful religious discrimination. King's refusal to comply with official directives was such that substantial evidence was sufficient for nonrenewal.
School law person: By not responding to directives, the teacher repeatedly defied administrative requests. Her nonrenewal was upheld for failure to comply with official requests.

Rationale for decision:
Researcher: (1) There was not substantial evidence to support nonrenewal. Reasons for nonrenewal must be inherent in the employment relationship, well established, and well publicized by custom, or clearly set forth in written policy.
(2) Nonrenewal must be based solely on evidence produced at the local hearing; otherwise neither party would be under compulsion to present its entire case at the local hearing. This would interfere with good decision making if a board had to speculate on the basis of what evidence might be produced at a later hearing.
School law person: Substantial evidence was not presented at the board meeting to nonrenew Ms. McLean's contract. The school district could not justify its decision to nonrenew under provisions of the local board policy or the Term Contract Nonrenewal Act.

Case: Moore v. Dallas Ind. School Dist.
Rationale for decision:
Researcher: The board had no authority under local policy to remove Moore from service without pay in the manner followed in this case. The board was in violation of Section 13.905(c) of the Texas Education Code by putting Petitioner on involuntary leave of absence without pay and denying her a hearing. Depriving her of her compensation and employment without a hearing violated Petitioner's property rights and due process rights.
Law person: No local policy set out by the DISD and in effect at the time of the events in the case allowed the district to place a teacher on involuntary leave of absence without pay. Board Policy DEC (local) does not apply since it was issued following the events of the case. Reverting to section 13.905(c) of the Texas Education Code,
Figure 3 (continued)

the superintendent cannot place a teacher on temporary leave of absence—only the board of trustees can and then only after a determination is made of the employee's condition. Because determination of condition was insufficient, the district violated Petitioner's right to due process by placing her on involuntary leave of absence without pay.

Case: Salzman v. Southwest Ind. School Dist.
Rationale for decision:
Researcher: (1) The teacher was not entitled to a full evidentiary hearing. Evidentiary hearings on any question concerning whether the school board's decision was arbitrary, capricious, or unlawful will be scheduled only if a Motion for Evidentiary Hearing is filed which alleges facts which even in the face of substantial evidence would support a finding of arbitrariness, capriciousness, or unlawfulness.
(2) The adoption of policy 5.09 at the March meeting and its immediate application to nonrenew the contract did not constitute a denial of due process and was consistent with the intent of TCNA.
(3) The impartiality requirement found no claim of personal animosity.
(4) Ordinarily, if a decision is supported by substantial evidence, it will not be considered arbitrary or capricious.

Government and politics person: (1) Findings of deficiencies and insubordination on the part of Petitioner by the board were supported by evidence and were not to be supplanted by a ruling of the Commissioner. (No. 1 and 4 Researcher)
(2) Adoption of a new policy by the board at its regular meeting did not deviate from the State Term Contract Nonrenewal Act and did not deviate from responsibilities of the employee which are inherent in any employer-employee relationship.
(3) Impartial procedure required by the Due Process Clause of the Fourteenth Amendment and the Civil Rights Act of 1871 occurred with the April 20 hearing.

Case: Salinas v. Ben Bolt-Palito Blanco ISD
Rationale for decision:
Researcher: (1) Regarding the nonrenewal of the board without recommendation from the administration, Section 23.26 of the Texas Education Code gives the board of trustees exclusive power to manage and govern the public
free schools of the district." To construe that the board may not nonrenew any teacher without the administration's blessing would require that TEC Section 21.204 contradict the language of Section 21.203(a) which provides that the board may choose not to renew the employment of any teacher employed under a term contract.

(2) Since the administration did not give a notice of nonrenewal, the board's offer of a hearing indicated that the decision was not final. The board members did not act as prosecutor. In the absence of personal animosity, illegal prejudice, or a personal or financial stake in the outcome, school board members are entitled to the presumption of honesty and integrity.

Law person: It is consistent with TCINA to allow the school board to act as it sees best with regard to the renewal of teachers' contracts with the district, and not solely on the advice or recommendations from the administration. Not to do so would render the TCNA less effective in encouraging responsible decision-making.

Furthermore, since there was no prior proposal for nonrenewal, the board gave notice to Petitioner at the earliest appropriate time and offered a hearing before finalizing its decision. In its letter of notice to Petitioner, the board clearly stated "failure to obey...directives" as one of the reasons for nonrenewal, one supported by testimony before the board and directly by Policy DOAD.

Finally, in reference to Petitioner's due process assertions, it must be noted that the least he must receive is "some kind of notice and some kind of hearing." It is consistent with legislative intent to assume that the school board is fully capable of rendering a fair decision, even though they are acting as "judge and jury." Petitioner did not show that any member of the school board should not have been able to participate in the hearing, and it was further demonstrated that Petitioner "cultivated" a heated exchange with the board president during said hearing. Given the above reasoning and facts, there was no violation of due process.

| Percentage of Agreement of Rationale for Decision | 100% |
The issues in employment cases appealed to the State Commissioner from September 1981 through August 1986 were coded and compiled showing recurring themes or patterns. This reduction in data uses Appendix C to compile issues and cases which contained the identified issue.

Finally, the issues are observed from the perspective of the outcome of the appeal. In most of the appeals the Commissioner decided to either grant the appeal or deny it. However, some cases were dismissed or remanded to the local board, and still others were concerned with certificate suspensions. The outcome of each decision was coded and this information was reduced to a simple matrix using Appendix D. The issues formed the rows of the matrix and the outcomes of the decisions formed the columns. Because the standard of review is different for term contract nonrenewals, terminations, continuing contracts, and probationary contracts, the data were broken into categories for a more meaningful data display.

The transcripts of cases that have been appealed to the Commissioner of Education were analyzed by qualitative procedures. Structure was given to the investigation through an analysis of data that related to the research questions. These questions did not preclude an examination of data found in the cases that enlarged the understanding of how local school boards or school officials deal with personnel matters. There were also clues contained in the data which
could indicate knowledge, opinions, or experiences of school employees. All of the data was considered to be of value in understanding problems inherent in personnel matters in the schools. Although qualitative research may seem strange to educators who view this approach to research as unrelated to the demands of policy makers in educational practice, nevertheless, it is advocated that qualitative research identify problem areas in education and that findings be used to make recommendations for change (Bogden & Biklen, 1982 and Schensul, 1985).

Conclusion

A systematic document analysis employing a qualitative approach to the study allowed a holistic view of all cases involving employment decisions which have been appealed to the Texas State Commissioner of Education between September 1981 and August 1986. The researcher gained access to the repository for the appealed cases in Austin and spent several days identifying those appeals involving an employment dispute. These were photocopied by a Texas Education Agency staff person and mailed to the researcher, thus saving time spent in the archives.

A data-reduction process which is necessary for understanding of the voluminous amount of written material involved in the study included several steps.

1. Each case was read by the researcher, and a data
analysis form was used to record the facts which were briefly extracted from the transcript along with the issues in the appeal, the Commissioner's decision, and the rationale for his decision.

2. A verification of the researcher's accuracy was achieved through the utilization of five persons knowledgeable in law and government who, using the same data-analysis form cited in the number one step above, extracted data from the transcripts. Figures 1, 2, and 3 were drawn to show percentages of agreement between the researcher's data reduction and that of the five other persons.

3. There was an analysis of issues for patterns or themes which seemed to recur in cases appealed to the State Commissioner.

4. Finally, the issues were analyzed to discern those which were part of cases in which the appeals were granted and those issues found in cases in which the appeals were denied.
CHAPTER BIBLIOGRAPHY


King v. Whiteface Consolidated I. S. D., Dkt. No. 128-R1a-584 (September 1984)

McLean v. Quanah I. S. D., Dkt. No. 178-R1a-782 (May, 1984)


Salzman v. Southwest I. S. D., Dkt. No. 186-R1-782 (December 1982)

Schensul, J., Borrello, M., & Garcia, R. Applying ethnography in educational change, Anthropology and Education Quarterly, 1985, 16, 14-23.


CHAPTER IV

ANALYSIS OF DATA AND FINDINGS

The central purpose of this study was to examine the decisions of the Texas Commissioner of Education involving personnel disputes which were decided between August 1981 and August 1986. The issues in each case were identified; each decision was analyzed to determine whether the appeal was granted or denied; and the Commissioner's rationale for the decision was examined. The researcher reduced the data to a usable form by abstracting and coding the information found in the decisions. The resulting clusters of decisions provided insight into three areas: (1) the types of legal issues which are most often involved in the personnel disputes which were appealed; (2) the similarities and differences found in the decisions within a cluster and the similarities and differences found among the clusters; and (3) the resulting implications for personnel decision-making by school boards and administrators.

This chapter contains four primary sections, each subdivided into divisions. These sections are "Coding of the Decisions," "Types of Appeal Decisions," "Outcomes of All Appeals," and "Summary." Additional sub-divisions represent
the coding process used in the investigation, as well as, the identification of issues, the rationale for decisions, and the patterns found in the decision making. In addition, issues and similarities and differences in outcomes among all appeals are sub-divisions resulting from the coding of information in this investigation.

Coding of the Decisions

The voluminous amount of data in a qualitative study must be reduced to manageable proportions if any analysis and utilization of the research is to be done. The decisions of the Commissioner were coded according to outcomes of the appeals; in most cases this was the Petitioner employee and Respondent school district. However, in cases involving the abandonment of contract, the school district was the complaining party.

Coding Outcomes of the Appeals

Appeals brought to the Commissioner by complaining employees had four outcomes resulting from Commissioner decisions. Most appeals had outcomes in which the appeal was either denied or granted. However, some appeals lacked some requirements; these resulted in dismissal of the complaint. In some instances the case was remanded to the local board for further action.
Appeals from complaining school boards regarding a teacher's abandonment of contract had three outcomes from the Commissioner's decisions. In one case the teacher was simply reprimanded, in another the certificate was suspended, and in a third the certificate was revoked.

The codes for judgments made in the decisions of the Commissioner to aid in data reduction are the following:

- **DEN** - appeal denied,
- **DIS** - appeal dismissed,
- **GRA** - appeal granted,
- **REM** - case remanded to the local board,
- **REP** - reprimand for contract abandonment,
- **CSUP** - certificate suspended, and
- **CREV** - certificate revoked

**Coding Issues in the Appeals**

Many of the appeals involved more than one issue; hence some required several codes. For example, an appeal could contain a First Amendment issue, and a due process issue, as well as an issue related to employees' claims that the local board's decision was arbitrary, capricious, or not based on substantial evidence. Some issues involved constitutional rights set forth in the First, Fifth, and Fourteenth Amendments of the U. S. Constitution. Another area included issues involving employee contracts and certification. In addition to nonrenewals and dismissals, demotions and
reassignments were issues in some of the disputes. Grievances and evaluation issues were found in others, while career-ladder issues were implicated in decisions decided in the summer of 1986 when this study ended.

The codes for issues found in the appeals to the Commissioner are the following:

ACSE - arbitrary, capricious, substantial evidence,
NON arbitrary-capricious issue but not a AC[SE] substantial evidence review,
AV - Amendment V,
AXIV - Fourteenth Amendment,
AF - academic freedom,
C - contract,
C/L - career/ladder,
CSC - contract same capacity,
DEMO - demotion,
DP - due process,
E - evaluation,
FA - First Amendment,
GC - good cause,
GR - grievances,
PR - procedural requirement,
PT - probationary teacher,
STC - suspension of teaching certificate,
TC - teaching certificate, and
REA - reassignment.
All decisions of the Commissioner included in this study are listed in Appendix E along with the identified issues in each case. The issues were given the appropriate code in one column, and the Commissioner's decision for or against the petitioner had the appropriate code given under the appeal outcome column. An example of this reduction in data follows:

Appendix E (Sample)

Cases Appealed to the State Commissioner

<table>
<thead>
<tr>
<th>CASE</th>
<th>ISSUES</th>
<th>ISSUES OUTCOME</th>
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<tbody>
<tr>
<td>Aldine Association v. Aldine I.S.D.</td>
<td>Can a teacher's organization appeal grievances for individual members?</td>
<td>DIS</td>
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<tr>
<td>Dkt. No. 075-R4-383 (July 1983)</td>
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<tr>
<td>Allen v. Wullin I.S.D.</td>
<td>Is an oral agreement binding when a board has offered employment and received an acceptance? Must a certificate be on file when the agreement was made? Can a charge of incompetence based on information from another school district constitute a valid cause for dismissal?</td>
<td>GRA</td>
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<td>Dkt. No. 145-R2-883 (October 1984)</td>
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<tr>
<td>Amaro v. New Braunfels I.S.D.</td>
<td>Is the board’s failure to specifically state that a teacher’s contract will not be renewed, constitute failure to act when the teacher has been notified by letter that a contract will not be renewed?</td>
<td>DEN</td>
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<td>Dkt. No. 126-R1-682 (September 1983)</td>
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<tr>
<td>Austin v. Houston I.S.D.</td>
<td>Was Petitioner’s performance evaluation prior to enactment of board policy which stated levels of satisfaction a bases for demotion?</td>
<td>E</td>
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<tr>
<td>Dkt. No. 095-R3-579 (June 1983)</td>
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<td>Belser v. Poth I.S.D.</td>
<td>Is a request for late filing allowed after the date given by law for a Petition of Review?</td>
<td>DEN</td>
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<td>Dkt. No. 143-R1-685 (February 1985)</td>
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Types of Appeal Decisions

The main types of appeal decisions are concerned with term contracts, probationary/continuing contracts, career/ladder, grievances, and certification appeals.

Term Contract Appeals

The majority of the decisions of the Commissioner was concerned with appeals of employees under term contracts. Of the one hundred thirty-one decisions of the Commissioner included in this study, ninety-six were brought by term contract employees.

Nonrenewal issues and rationale for decision. --Fifty of the ninety-six term-contract appeals shown in Figure 4 were nonrenewals.

Figure 4

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<table>
<thead>
<tr>
<th>Issues Found in Term Contract Nonrenewal Appeals</th>
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Total Appeals = 50

(Key: ACSE arbitrary, capricious, substantial evidence, AXIV Amendment Fourteen, DP due process, E evaluation, FA First Amendment, GC good cause, PR procedural requirement)
The most prevalent issue in these appeals was whether there was substantial evidence to support the board's decision or whether the board's decision was arbitrary or capricious. Figure 4 depicts the substantial evidence issue in thirty-six of the fifty nonrenewals. The next most frequently occurring issue was that of good cause which appeared in twenty-four of the fifty appeals. Figure 4 shows more issues than the total number of appeals. Multiple issues in a single case account for this aspect of the data display. In addition, only issues which appeared in appeals five or more times are included in the histogram. Issues appearing a lesser number of times are discussed in the text.

The substantial evidence issue underlies the standard of review for appeals of employees who are accorded the provisions of the Term Contract Nonrenewal Act. If the provisions of the TCNA apply, the Commissioner must use the substantial evidence standard of review. Section 21.207(a) of the Texas Education Code states in part:

The Commissioner may not substitute his judgment for that of the board of trustees unless the decision below was arbitrary, capricious, unlawful, or not supported by substantial evidence.

Figure 4 illustrates that all cases concerned with nonrenewals did not have the substantial evidence question. Nonrenewal cases originating prior to the Term Contract Nonrenewal Act did not demand a substantial evidence review, nor did appeals from noncertified employees follow the
requirements of TCNA. Others had an alleged procedural flaw which the petitioner sought to have remedied by the Commissioner.

In most appeals involving questions of substantial evidence the appeals are denied. A typical case is Major v. East Central I. S. D., Dkt. No. 024-R1-1184 (July 1985). The petitioner in this appeal had her contract nonrenewed by the district because of deficiencies pointed out in observation reports, evaluations, and other memoranda or communication. The principal listed eight areas where he felt improvement was needed and also listed suggestions on how to improve. The principal saw little change.

At her hearing, Major did not refute the charges brought against her nor give reasonable explanations of why her behaviors were subjected to criticism. Rather, she argued that the board should have retained an independent attorney rather than rely on the board's attorney who acted both as advisor to the board and prosecutor.

The principal's critical comments and evaluation were not conclusively demonstrated to be without substance. Therefore, the Commissioner refused to substitute his judgment for that of the school board's judgment by determining whether the school board reached the proper conclusion on the basis of conflicting evidence. The Commissioner noted, "Substantial evidence need not be much evidence, and although "substantial" means more than a
scintilla, or some evidence, it is less than is required to sustain a jury verdict being attacked as against the great weight and preponderance of the evidence." Substantial evidence sounds as if there must be weighty evidence, when in reality, little evidence is required. However, some evidence is required.

In a case in which a board had not even a "scintilla," the appeal was granted. In this case, the teacher was recommended for contract renewal by the administration. Evaluations made by the principal had rated the teacher excellent and satisfactory in all areas [Nance v. Graford I. S. D., Dkt. No. 119-R1-583 (July 1983)]. In Nance's case the district's only witness, the principal who prepared the employee's very positive evaluation, did not recommend the nonrenewal. A board must have some valid reason, supported by substantial evidence, for rejecting the administration's recommendation.

The aforementioned cases pertaining to substantial evidence issues are also illustrative of the role of evaluations in the nonrenewal process. Both Nance and Major had evaluations presented as evidence in the hearings. In Major's case the negative evaluations did constitute substantial evidence which supported the board's decision.

Some appeals had due process issues along with the substantial evidence issues. If due process was not afforded at the local hearing, then that issue is cured by a hearing
before the Commissioner [Patrick v. Mineola I. S. D., Dkt. No. 111-R1a-382 (July 1983)]. Patrick claimed that he received insufficient notice of charges against him, some of which referred to incidents which occurred prior to issuance of his contract which was being nonrenewed. The Commissioner indicates in his decision that even though a school district commits an error during the nonrenewal process, the teacher does not have automatic entitlement to reemployment. Rather, it merely authorizes the Commissioner to substitute his judgment for that of the local board.

Patrick filed suit in federal court after the nonrenewal was upheld. The court determined that the man prevailed in the suit because he was successful on the issues involving his due process rights. Although Patrick was the prevailing party, he achieved only partial success. The school district was ordered to pay one-half of the total of the $35,000 in attorney's fees Patrick had incurred [Patrick v. Mineola I. S. D., Dkt No. TY-82-376-CA (Tex. 1984)].

It was held in a case previously discussed in this study, Salinas v. Ben Bolt-Palito Blanco I. S. D., Dkt. No. 202-R1a-882 (April 1983) that a local board of trustees is not bound by its administration's recommendation to renew a teacher's employment. Although the administration did not recommend nonrenewal, the board voted not to renew Salinas' contract before a hearing was held. The nonrenewal was upheld by the Commissioner and his appeal was denied.
Salinas took his appeal to the district court in Travis county, where the Agency's decision was affirmed. On appeal, the Court of Appeals held that the employee's argument that the board could not decide to nonrenew his contract without the superintendent's recommendation was without merit. However, the Court of Appeals agreed with the employee that he was entitled to notice and a hearing before the board decided to nonrenew his contract. The court stated:

"Fundamental fairness dictates that a person must be given an opportunity to be heard on the merits of the dispute at a meaningful time and in a meaningful manner." The case was remanded to the lower court.

In some appeals which were denied by the Commissioner, there was evidence that employees made poor preparation for their defense. In an appeal from a middle-school principal [Hegar v. Frisco I. S. D., Dkt. No. 120-R1a-584 (February 1985)], the principal represented herself at the local hearing. Allegedly she was told by the superintendent that there would be a school attorney there, but he would only be there to see that everything was done legally. In her appeal Hegar stated that she assumed that the school attorney would be interested in seeing that she got a fair hearing also. She asserted that her nonrenewal was arbitrary, capricious, and unlawful because she was treated differently than the male high-school principal. The appeal was denied.

Hegar had been directed by the superintendent to turn in
a written school improvement plan, develop a student handbook, and publish a monthly newsletter for parents. She was told that her announcements were too long, her awards program was poorly organized, and her communication in all areas was inadequate. She was evaluated as deficient in these administrative functions.

Hegar contended in her appeal that the male high-school principal was allowed to complete his student handbook in the summer and was paid for his work, that he made announcements during the day, and that he conducted his awards program in the same manner as Hegar. He was not required to publish a parent newsletter, and Hegar followed the same communication requirements as the high school principal.

Hegar did not bring the aforementioned facts to the attention of the board of trustees at the time of her hearing. The hearing officer noted that the information Hegar wanted to add to the transcript could have made a difference in the board of trustees' decision had it been presented at the nonrenewal hearing. Her failure to present such evidence apparently stemmed from her decision not to obtain assistance from legal counsel. Under such circumstances it would be inappropriate to supplement the record and then hold that the board made a wrong decision because it had failed to consider evidence it was not asked to consider.

The failure of the employee to prepare a defense and
present it adequately at the local hearing is seen again in
Leftwich v. Harlington I. S. D., Dkt. No. 172-R1b-782
(December 1983). There was ample evidence that a principal's
unfavorable recommendations and evaluations were in
retaliation for the filing of grievances. However, at the
nonrenewal hearing the teacher did not testify and called no
witnesses in her own behalf. The appeal was denied since the
board cannot be held responsible for information which is not
known to them.

Term contract teachers bringing appeals alleging
violation of constitutionally protected speech or religious
freedom did not prevail in decisions of the Commissioner.
Nor did those alleging racial discrimination.

The Commissioner gave his reasoning concerning
nonrenewals in Salzman v. Southwest I. S. D., Dkt. No. 186-
R1-782 (December 1982). The Commissioner stated: "Reasons
for nonrenewal must be inherent in the employment
relationship, well established and well published by custom,
or clearly set forth in board policy." Salzman's appeal was
denied as there was clearly evidence that she failed to
comply with official directives by failure to turn in lesson
plans. In addition, this teacher used language such as,"kiss my ass," "bitch," and "son-of-a-bitch" in front of the
children. Salzman was appealing on the premise that the
school board had enacted a nonrenewal policy and immediately
applied it in her case. She did not counter the deficiencies
cited with reasonable explanations of her behaviors.

The Commissioner has no authority to substitute his judgment for the board's on the grounds that the board reached the improper decision because of conflicting evidence. However, the board of trustees' findings must be supported by substantial evidence and cannot be arbitrary, capricious, and made without regard to the facts. Moreover, when an appeal is governed by the substantial evidence rule, the order being reviewed is presumed to be legal and valid. In addition, the burden is on the appealing party to show that the order is not reasonably supported by the evidence.

In order to prevail in an appeal governed by a substantial evidence review, the petitioner cannot merely refute the accusations with denials which produce conflicting evidence. There must be a reasonable explanation which controverts the evidence supporting the action of the board.

A case-in-point is Black v. Hampshire Fannette Dkt. No. 171-R1a-782 (January 1984). Black's nonrenewal was for deficiencies set out in her evaluation. At the hearing the principal presented numerous alleged deficiencies, each of which was refuted by Black's reasonable explanation. Among the allegations in the principal's testimony was one concerned with Black's failure to turn in choir objectives for the next school year and that Petitioner was discouraging students from taking choir. Petitioner's response to the principal was that it would be better to wait and see what
her students' background would be and how many students she would have before completing choir objectives. It was her understanding that they would talk about it at a later date. Petitioner also testified that she never attempted to discourage students from taking choir, but that during the last week of school she did not attempt to recruit any more choir students.

The principal testified that in a conference Petitioner disagreed with her teaching assignment for the next year. He cited poor handling of a student's discipline, the teacher's lateness to a parent conference, not being on hall duty at the assigned time, walking in a classroom with a lighted cigarette, a lack of change in facial expression while teaching, as well as other deficiencies. Petitioner countered that she asked about her teaching assignment for the next year and left afterwards. She countered each complaint with a reasonable explanation of why she responded in each situation.

The principal testified of a classroom observation in which deficiencies were noted, but he did not return for other observations which would verify that deficiencies had been remedied.

The principal offered no testimony to controvert statements in Petitioner's testimony, nor did he deny that when she asked him what he specifically wanted in objectives, that his response was, "Whatever." The Commissioner asserted
that a teacher cannot be found to be deficient for failing to respond in a specific manner to unspecific directives.

And so it went; each allegation in Black's case was refuted with a reasonable explanation of the alleged deficiency. The Commissioner viewed the dispute as beginning with a difference of professional opinion rather than a dereliction of duties, and ending with Petitioner complying with her superior's directives.

Since Black was entitled to the provisions of the Term Contract Nonrenewal Act, her nonrenewal required at least some evidence to comply with the substantial evidence provision. Here there was none. Her appeal was granted. It was also found in the granted appeals cluster, that some boards did not understand their own policies or did not follow them. This point is illustrated in a granted nonrenewal appeal [McLean v. Quanah I. S. D., Dkt. No. 178-R1a-782 (April 1984)].

Complaints leading to nonrenewal of McLean's contract evidently originated with parents who did not agree with the teacher's method of grading and record keeping. The reasons for McLean's nonrenewal were the following: lack of positive student progress in physical science and biology because of failures at the end of the first and second six weeks, lack of adequate grade book records, rapport between student and teacher not conducive to good teaching or learning, lack of rapport with parents in the community, and loss of
professional effectiveness. None of the alleged deficiencies were part of board policy nor were they part of TCNA rules. There was not substantial evidence; therefore, the teacher's appeal was granted.

In reviewing the decision of the local board of trustees, the Commissioner is in the same position as a court of law reviewing the decision of an administrative agency. The Commissioner, therefore, has no authority to substitute his judgment for the school board's judgment to determine whether the school board reached the proper conclusion on the basis of conflicting evidence. On the other hand, the board is not empowered to exercise unbridled discretion. Its findings must be supported by substantial evidence; i.e., they may not be arbitrary, capricious, and made without regard for the facts. A board decision based on substantial evidence cannot be disturbed by the Commissioner. In addition, if a decision is supported by substantial evidence, it will not be considered arbitrary or capricious.

Poor decision-making practices were exhibited in a nonrenewal appeal brought by a band director whose organization was led to an award winning level. But, because some parents were dissatisfied with the choice of majorettes and other inconsequential complaints, the board nonrenewed his contract. The Commissioner described the prosecution as a litany of hearsay, pettiness, triviality and unfounded accusations and precisely the type of proceeding that the
TCNA intended to prevent [Butler v. Liberty-Eulau I. S. D., Dkt. No. 103-R1a-183 (November 1984)].

The Commissioner's response to questions of impartiality was that it would be naive to think that a board of trustees which has taken the first step in the nonrenewal process will come to the teacher's hearing without any predispositions [Salinas v. Ben Bolt-Palito Blanco I. S. D., Dkt. No. 202-R1a-882 (April 1983)]. The U. S. Supreme Court has held in similar contexts that, in the absence of a claim of personal animosity, illegal prejudice, or a personal or financial stake in the outcome that would amount to a conflict of interest, school board members are entitled to a presumption of honesty and integrity [Hortonville ISD No. 1 v. Hortonville Ed., 426 U.S. 482, (1976)].

The rationale in contentions that a board of trustees acted as both prosecutor and tribunal was that TCNA provided for a nonrenewal hearing which "shall be conducted in accordance with rules promulgated by the district." The board is given considerable latitude for hearings, so long as the teacher is provided a fair and meaningful opportunity to persuade the board to renew his contract. The preferred method for conducting the hearing is for the board to set aside all predispositions and receive evidence from an attorney or administrator "prosecutor" and from the teacher or his representative, before retiring to consider whether the "prosecutor" has proven his case.
The substantial evidence issue in nonrenewals requires little or some evidence. On the other hand, good cause, the main issue in terminations during the term of a contract, has much heavier requirements.

**Good cause issues in terminations.** --The Texas Education Code Section 21.210 allows a board of trustees to discharge a teacher for cause during the term of the contract. The issue of good cause was found twenty times in twenty-three termination cases as shown in Figure 5. Only two other issues, procedural requirement and due process, appeared in termination appeals with a frequency of at least five.

![Figure 5](image-url)

Issues Found in Term Contract Termination Appeals

<table>
<thead>
<tr>
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<th>5</th>
<th>10</th>
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<tr>
<td>Total</td>
<td>23</td>
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In termination appeals which were denied, there was evidence of misconduct which either damaged the school district or harmed students. In *Clewis v. Tyler I. S. D.*, Dkt. No. 049-R2-1181 (April 1983), a teacher violated board policy concerned with administering corporal punishment. Clewis punished a second grade child by striking him with a belt. The policy allowed corporal punishment only as a last resort and was to be administered by the principal or
assistant principal in the presence of a witness. Belts, rods, and certain paddles were forbidden in administering the punishment. The teacher's action endangered a child and it was determined that there was good cause for termination of his employment.

Only six of the total twenty-three termination appeals were granted. In these appeals the Commissioner did not find that the board had good cause for termination of the teacher's contract. A case representing a board's flimsy pretexts for termination and failure to follow board policy is Odom v. Sabine I. S. D. Dkt. No. 168-R2-682 (March 1983). Odom had been in the district for 19 years where she served as elementary principal. Without any forewarning the board convened and voted to terminate her contract. Prior to the board's action, Petitioner had been given the highest possible rating on her performance evaluation.

The charges against the principal embodied a conflict between the principal and a kindergarten teacher who had gone directly to board members with a problem rather than following the normal chain of command. The teacher had been counseled and reprimanded by the principal because she had been taking worksheets from other teachers' boxes and giving them to her class and been remaining overly long on the playground, disallowing other classes their normal use of the play area.

Another complaint against the principal was that her
grandson was placed in the gifted and talented program. Yet, there was incontroverted evidence that Petitioner's grandson met qualification criteria for the program. In addition, a parent held Petitioner responsible for her conflict with her son's teacher. Another cause cited by the board was concerned with a retired teacher (male) who came by before school for coffee. There were other trivial instances as well as events involving a hostile classified employee whose complaint was eventually resolved by the superintendent and had no bearing on Petitioner's case.

The Commissioner found that the evidence failed to support the board's termination of employment. To the contrary, he stated that the evidence concerning Petitioner's alleged misconduct reflects that she performed prudently and professionally in every instance.

The Commissioner indicated reservations in a case in which a teacher was terminated [Whalen v. Rocksprings I.S.D., Dkt. No. 065-R1b-284 (July 1985)]. Whalen was a seventh-grade life-science teacher in a small rural community. A sex-education unit was part of the curriculum, but the principal told her that before she taught the sex-education unit, he would meet with her and the Home Economics teacher and revamp the unit because some changes needed to be made.

On two separate days Walen became involved in a question and answer session with a class in which she responded to a question about AIDS and its transmission with a full
explanation of anal intercourse. She also answered a student's question about what a "rubber" was by giving a definition and sketching a large condom on the board and advised the child that the prophylactic device could be found behind the gymnasium or the rodeo grounds. She instructed a male student to go home, lock himself in the bathroom and masturbate if he wanted to know when sperm was produced. Whalen gave further information about how a person could give pleasure to herself without a member of the opposite sex.

The principal was told by members of the community that they did not want language and instruction like that given by the teacher in her class to be continued in the schools.

Whalen was suspended with pay pending a hearing by the board of trustees. When the hearing was held, the teacher was terminated.

The Commissioner's main reservation stemmed from the fact that there was no attempt to work out the teacher's problems with community critics regarding her poor judgment in holding the class discussion. The Commissioner stated: "Evidence of poor judgment should not support action of termination." Nevertheless, the local board decision was confirmed, and the appeal was denied as there was evidence to support the termination.

If there is enough evidence in the record to constitute cause for termination, the local school decision must stand, even if the evidence is in conflict and even if the
Commissioner disagrees with the results.

For the most part, appeals of employees whose term contracts were terminated represented serious matters which could harm the district or children. The appeals were denied by the Commissioner. Appeals of terminations which were granted were based on unfounded accusations or, because a board did not understand their own policies and/or failed to follow them.

Constitutional rights issues. --In appeals having complaints regarding expression rights, academic freedom, freedom to practice one's religion, liberty and property rights, due process, and equal protection rights, the rationale for decisions is found in the U. S. Constitution.

Employees appealed to the Commissioner with allegations that their freedom of expression rights or right to freely practice their religion were violated. All but one of the term contract appeals with First Amendment issues were denied. This appeal was one involving noncertified cafeteria workers who had their term contracts nonrenewed because they continued to publicly discuss problems in the operation of the cafeteria after the superintendent attempted to silence them [Neal & Quintero v. Rogers I. S. D., Dkt. No. 139-R7-679 (January 1983).

Public employees' speech is protected if it is a matter of public interest and does not impede the employee's proper performance of duties. The burden of proof is on the
petitioner to establish a prima facie case as set forth in Mount Healthy City School District Board of Education v. Doyle, 429 U. S. 274 (1977). Assuming that the employee establishes facts that a board's actions have been taken in retaliation for the employee's exercising a liberty right, the burden shifts to the school district to substantiate the adverse action. The school board must have sufficient reasons unrelated to the exercise of the protected right to support its action.

Speech which is disruptive of the employee's performance or which interferes with the operation of the school and does not involve public interest is not constitutionally protected. The constitutionally protected speech must also be shown to be a motivating factor in the termination of employment. Speech was not protected if it created animosity among co-workers, it adversely affected the student teacher relationship, or it interfered with performance of duties.

Protected speech in the classroom is actually academic freedom. Only two cases of the total one hundred thirty-one appeals in this study had academic freedom issues cited, both of which were denied. In the previously discussed Whalen v. Rocksprings I. S. D., Dkt. No. 055-R1b-284, the teacher claimed academic freedom to discuss the sex-education topics in her life-science classes. In order to prevail on her claim, the teacher had to show that her classroom discussion was "reasonably relevant" to the subject matter she was
employed to teach, and that the statements were not
proscribed by a lawful regulation. The teacher's comments
were too inappropriate to be reasonably related to the
subject matter she was to teach nor did they serve an
educational purpose authorized in her school.

Only one case involved an issue concerning with freedom
of religion [King v. Whiteface Consolidated I. S. D., Dkt.
No. 128-R1a-584 (September 1984)]. King was a Jehovah's
Witness and did not celebrate Halloween. The principal gave
her a directive to allow the children to have a Halloween
party or to allow another teacher to conduct the party. King
refused to allow her class to participate in a Halloween
party and was recommended for nonrenewal for failure to
respond to an administrative directive. The Commissioner
denied King's appeal and commented that, although Petitioner
had a right to practice her religious beliefs free from
school district interference this did not mean that she could
prohibit her students from engaging in activities that she
found morally offensive. To do so would allow Petitioner to
violate her students' constitutional right to practice their
religious beliefs freely.

In issues relating to liberty and property rights, only
one pertained to a name-clearing issue and this was a
noncertified employee. It was determined that a name-
clearing hearing is not required in connection with
termination of an employee when the employee does not contest
the factual basis of the charges against him or her [Jonas v. Comal I. S. D., Dkt. No. 043-R8-1283 (September 1984)]. Jonas had been given a memorandum by the superintendent which stated that no high-school student was to be allowed to enter Jonas' mobile home. The facts were undisputed that Jonas did allow a student to enter the trailer, purchased alcohol for a student, and allowed a student to drive a school bus.

A radio station picked up the story and Jonas requested a name-clearing hearing regarding his termination. This was refused and Jonas later filed a slander suit against a student's family, claiming they were responsible for his termination because they accused him of making sexual advances to their son. Even if the information broadcast on the radio station was attributable to the school district, the district is not required to conduct a liberty interest hearing unless it disseminates information in connection with the employee's termination which is not only defamatory, but false.

In a case involving illegal deprivation of property, a teacher was put on involuntary leave of absence without pay, thus deprived of her livelihood [Moore v. Dallas I. S. D., Dkt. No. 092-R2-483 (November 1983)]. Moore refused to submit to a mandatory psychological evaluation which had been demanded by the school administration because Ms. Moore "heard voices," smiled inappropriately, and pointed at circles she had drawn on the floor where she thought someone
was listening in on her class. The Commissioner granted Moore's appeal. He determined that the board had no authority to place the teacher on involuntary leave without pay until she submitted to a psychological examination. The Commissioner stated: "Allegations regarding an individual's mental or emotional condition are serious and should not be made lightly. The administrators in this instance made a determination, without a thorough psychological examination or opportunity for hearing." He further stated that such action constituted a violation of the teacher's rights under the Due Process Clause of the U.S. Constitution, which provides that no person may be deprived of property without due process of law.

In another case involving deprivation of property, a teacher had her salary reduced to repay the district money which had been mistakenly overpaid on prior checks. The Commissioner granted this appeal. The basis was that, when someone mistakenly pays money to someone else, he may recover the money even if the payor was negligent and the payee innocent, unless it would be inequitable to require the return of the money when the payee has changed his position as a result of the payor's mistake [Lee v. Alief I. S. D., Dkt. No. 046-R3-1283 (January 1985)].

In the Commissioner's rationale for resolving complaints of deprivation of due process, he observed that procedural due process rules are meant to protect persons not from the
deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property.

In a termination case, a superintendent had carried a weapon on campus, falsified an expense allowance, and condemned his opponents as devil's advocates in a letter to the newspaper. The man alleged that his expression rights and due process rights had been violated. The Commissioner stated that any denial of due process by the local board is cured by the full due process hearing by the Commissioner [Easley v. Goodrich I, S.D., Dkt. No. 182-R2-78 (January 1984)]. Such rulings were possible in the past, but now employees are entitled to notice and a hearing prior to being dismissed [Cleveland Board of Education v. Loudermill, 105 S.Ct. 1487 (1985)].

Procedural requirement issues. -- Term-contract-employee appeals which did not meet procedural requirements were either dismissed or denied by the Commissioner.

An appeal to the Commissioner must be filed within thirty days after the employment decision is made. The Commissioner has stated that the deadline for filing meets the competing needs of the parties. The Petitioners need time to carry out appeal procedures, and respondents need to know that if no action is taken, the matter is closed. If the delay is beyond the control of the litigant, that is the appropriate test. Mere forgetfulness, neglect, other pressing work, and office error are not good cause. Nor is
an attorney's heavy work load good cause for late filing. The thirty-day rule is not rigidly applied if the appealing party has "good cause" for the delay rather than a lack of diligence.

**Probationary period issues.** --Term contract teachers serving a probationary period advanced one basic issue: whether they were serving a probationary period. Other issues in these appeals involving due process or protected speech rights were few in number and uniformly unsuccessful. The Commissioner granted appeals of teachers serving probationary periods if it was decided that the teacher was entitled to the benefits of the Term Contract Nonrenewal Act.

The status of all first- and second-year teachers in a particular district as probationary or nonprobationary during the first year of TCNA was contingent on whether the board of trustees had adopted a probationary policy pursuant to Section 21.209 on or before April 1, 1982. Only three appeals of probationary teachers were granted; this was because the district did not have probationary policies in place when the first employment contract was signed. If the district did not have a probationary policy in place when a teacher signed the first contract of employment, that teacher was vested with the rights to the benefits of the TCNA on that date [*Grounds v. Tolar I. S., D.,* Dkt. No. 110-R1a-484 (May 1984)]. Grounds was not provided a hearing before his nonrenewal; therefore, the decision to nonrenew his employment was invalid.
If a teacher is a probationary teacher, reemployment can be refused for any reason or no reason at all. A change in TEC Section 21.208 enacted after the time period covered by this study provides an exception to the two-year probationary period by allowing the probationary period not to exceed one year for a person who has been employed as a teacher in public education for at least five of the eight years prior to initial employment in the district.

The Commissioner did review a probationary-teacher appeal [Murray v. Windham Schools and Texas Department of Corrections, Dkt. No. 007-R1-984 (July 1985)]. The board had a two-year probationary policy in place, and teachers serving a probationary term were not entitled to the provisions of TCNA. However, because TEC Section 11.13a, states that persons having any grievance by school laws of Texas or acting boards of education can appeal to the Commissioner, the teacher serving a probationary term can appeal. In Murray's case, the Commissioner ruled that the teacher was a probationary teacher; therefore, the school district's failure to advise of reasons for nonrenewal was not unlawful.

In one appeal, a teacher contended that his nonrenewal should be invalid because the proper evaluation form had not been used [Davis v. Ingleside I.S.D., Dkt. No. 176-R1-785 (May 1985)]. The Commissioner cited that no particular evaluation form is required for purposes of nonrenewal pursuant to the Term Contract Nonrenewal Act. Section 21.202
of the Act requires the board of trustees to "provide written policy for the periodic written evaluation of each teacher in its employ at annual or more frequent intervals." A five-category form that complies with Section 13.304 of the Career Ladder Act is clearly sufficient to satisfy the requirements of both acts; however, such a form is not required by TCNA.

The Commissioner's rationale in most term contract appeals was whether there was substantial evidence to support a nonrenewal or if there was good cause for termination of the term contract. Substantial evidence sounds like much evidence. In reality it means more than a scintilla, which is some but not much evidence. Terminations separated employees from their property before the end of the term contract and required more than merely substantial evidence.

Patterns of decision making.--Figure 6, on the following page, illustrates the patterns found in outcomes of term-contract appeals. Of the one hundred thirty-one appeals included in this study, ninety-six were appeals from term-contract employees. Fifty of these were nonrenewals of non-probationary term contracts. The nonrenewal cluster of appeals was by far the largest group of appeals having a common issue in the entire study. Sixteen teachers serving probationary terms brought appeals with the only real issue being whether they were probationary teachers. Twenty-three employees appealed terminations of their term contracts, and seven appealed a change in status in their employment.
### Figure 6
Outcomes of Term-Contract Appeals Brought by Professional Employees

<table>
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<tr>
<th>Outcomes</th>
<th>Nonrenewals (nonprobationary)</th>
<th>Nonrenewals (probationary)</th>
<th>Terminations</th>
<th>Change in Status</th>
<th>Total Appeals</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>50 Appeals</td>
<td>16 Appeals</td>
<td>23 Appeals</td>
<td>7 Appeals</td>
<td>96 Appeals</td>
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<tr>
<td>DEN</td>
<td><img src="image" alt="DEN Nonprobationary" /></td>
<td><img src="image" alt="DEN Probationary" /></td>
<td><img src="image" alt="DEN Terminations" /></td>
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<tr>
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<td><img src="image" alt="GRA Probationary" /></td>
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<td><img src="image" alt="GRA Change in Status" /></td>
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<tr>
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<td><img src="image" alt="REM Probationary" /></td>
<td><img src="image" alt="REM Terminations" /></td>
<td><img src="image" alt="REM Change in Status" /></td>
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</table>
Forty of the fifty nonrenewal appeals were denied and only nine were granted. The other nonrenewal appeal was remanded to the school district. Eighty percent of these appeals were denied. Only three employees serving a probationary term had their appeals granted and these three were determined to be nonprobationary employees. The other thirteen appeals in this cluster were either denied or dismissed.

Of the twenty-three employees appealing their terminations, six had their appeals granted. Fourteen of the termination appeals were denied and three were dismissed. Only one term contract employee was successful in an appeal of a change in status. Five of the change-in-status appeals were denied and the other one was dismissed.

A pattern found in term-contract appeals was that the majority of the decisions supported the school district. Only nineteen of the ninety-six term-contract appeals brought to the Commissioner were granted to the petitioner employee.

Only one appeal claiming deprivation of constitutional rights was granted to a term contract employee. All others were denied. The appeal was brought by noncertified cafeteria workers whom a superintendent had warned to stop their public discussion of school cafeteria problems. When the employees continued to air the cafeteria problems their term contract was nonrenewed [Neal & Quintero v. Rogers I. S. D., Dkt. No. 139-R7-679 (January 1982)].
Probationary/Continuing Contract Appeals

Although Term Contract appeals make up the bulk of the appeals included in this study, probationary/continuing contract employees brought fifteen appeals to the Commissioner during the five-year time span covered by the study.

Issues and rationale in probationary/continuing contract appeals. The basic issues found in the continuing contract appeals was whether there existed good cause for termination, return to probationary status, or some other change in status. The data display disclosing the issues in continuing contract appeals is shown in Figure 7. Only the good cause issue appeared five or more times in the continuing contract appeals. The four First Amendment issues found in these appeals are included in the graph.

Figure 7

<table>
<thead>
<tr>
<th>Issues Found in Continuing Contract Appeals</th>
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<tbody>
<tr>
<td>Good cause and First Amendment expression issues were the only issues having a frequency of more than two in the continuing contract appeals. Interestingly enough, one of the continuing contract cases containing a First Amendment expression issue is the only claim of denial of expression</td>
</tr>
</tbody>
</table>
rights granted in an appeal by a certified employee \([\text{Shivers v. Liberty I. S. D.}, \text{Dkt. No. 163-R3-682 (January 1985)}]\). Shivers was returned to probationary status because she disagreed with the principal's assertive discipline plan. The plan encompassed in-school suspension which isolated the suspended elementary student and did not include instruction. Shivers spoke out concerning her opposition to the program. The Commissioner ruled that such public statements are protected speech. In his rationale he stated, "In the instant case, Petitioner's remarks about the discipline program clearly involve a matter of public interest. A discipline program which affects children in a public school cannot be regarded as being a private matter." He emphasized in addition, Petitioner's speech was not disruptive to her performance as a teacher nor did it interfere with the operation of the school.

Shivers was also charged with failure to meet accepted standards of conduct for the profession because she responded rudely to her supervisor by calling him the "most stupid, ignorant man" she had worked for. The Commissioner stressed that Petitioner's conduct could not be condoned. An administrator cannot be required to tolerate verbal abuse from a subordinate. However, the Commissioner was reluctant to consider one such instance "good cause" for demotion since it appeared that all other reasons given for the decision were minor in nature, were unsupported by evidence, or were constitutionally impermissible.
The issue of a return of a continuing contract teacher to probationary status requires the same evidence as that employed in cases involving the release of a teacher at the end of a school year.

An illustrative case, granted by the Commissioner, involved a veteran teacher with twenty-five years of service who was returned to probationary status from a continuing contract [Tyler v. Galveston I. S. D., Dkt. No. 132-R1b-783 (November 1984)].

Tyler had been at the same elementary school for 15 years, taught fifth grade and was designated a "team leader" for her grade level. In the summer of 1981 a new principal came to the elementary school and at the same time the school district instituted a new more attentive approach to the evaluation process. The new principal reassigned Petitioner from teaching fifth grade to teaching a third-grade class of students who were all two grade levels below average.

Another change required by the district and implemented by the principal was to have all teachers prepare detailed lesson plans.

The principal made observations of Petitioner which cited numerous deficiencies in lesson planning and following the teacher's guide.

The principal informed Petitioner in November that deficiencies had been observed in her techniques of
instruction, preparation and planning, and classroom control. Substantial improvement was needed or a change in contract status would be recommended.

The principal gave Petitioner a performance improvement plan and after several conferences, a new schedule was implemented. Also a district consultant evaluated Petitioner and noted that there was improved classroom organization, but offered other criticisms. The consultant's testimony that the teacher's guide was to be used as an outline and supplemented with other material differed from what the principal had required. Another consultant observed Petitioner in February and observed an effort was being made to use the teacher's guide and an effort was also being made to follow the steps in the guide. Nevertheless, when the time came for employment recommendations, the principal recommended a return to probationary contract due to deficiencies in the same three areas specified in November.

A return to probationary status does not seem to be as significant as an outright release. However, a teacher who is returned to probationary status can be released at the end of the probationary period with no right to appeal the decision to the Commissioner of Education. If a lesser standard of review were employed in reduction of status cases, a teacher who is returned to probation could be terminated without ever receiving the same consideration as a teacher whose employment was terminated outright.
Three appeals from terminations of continuing contract teachers were denied. Two of these cases had such significant deterioration of classroom control that it was obvious that the educational process was almost nonexistent.

In *Welty v. San Diego I. S. D.*, Dkt. No. 194-R2-882 (March 1983) for example, the teacher had escalating problems with class management and discipline. Students would not stay in the classroom and the principal on numerous occasions observed Petitioner and his students arguing and yelling at each other. On more than one occasion the principal had to go to the classroom and instruct students to open the door when they had locked the teacher out of the classroom.

The five cases having teachers returned to probationary status and the six cases of teachers who were terminated had "good cause" issues in the appeals. In addition, one case with another change in status also contained a good cause issue. Thus, twelve of the fourteen continuing contract cases had the main issue of good cause. Of the two cases not having the good cause issue, one was a probationary teacher and the other was a coach who appealed a change in status of his coaching duties. Both of these appeals were denied.

The probationary teacher was appealing her contractual status as a fourth-year probationary teacher [*Delp v. Corpus Christi I. S. D.*, Dkt. No. 139-R3-783 (January 1984)]. Delp was a resource teacher whose college training and experience pertained primarily to secondary education. She was assigned
to an elementary school and experienced difficulty in fulfilling her duties.

The issue in Delp's case was whether a hearing is required before a teacher is placed on a fourth-year probationary contract. The relevant Texas Education Code sections are sections 13.102 - .104. Section 13.102 addresses probationary contracts and states that the probationary period is not to extend beyond the end of the third consecutive year, "unless the board of trustees determines and recites that it is in doubt whether the particular teacher should be given a continuing contract."

The statute further states that a probationary contract can be made with a teacher for a fourth year, at the end of which the teacher will either be terminated or given a continuing contract. Section 13.104 provides for the right to a hearing when a probationary contract teacher is notified of a board's intention to terminate. There is no requirement that a teacher receive a hearing before being placed on a fourth year of probation.

Failure to follow board policy or administrative directives resulted in one teacher's reassignment. Dooley v. Ft. Worth I. S. D., Dkt. No. 106-R3-384 (January 1985) illustrates a district's regard for a continuing contract teacher who violated board policy when he used excessive force on a student athlete. Dooley, a coach of some seventeen years, tackled an eighth-grade student by running
two-thirds to full speed and colliding with him because the student failed to run past the coach as he had been instructed. The coach was terminated from his coaching position and temporarily moved to the transportation department with an assurance that a teaching position would be available for the next year. The Commissioner denied Dooley's appeal of his change in status. The Commissioner reminded that the offering of a continuing contract is discretionary and a district can offer such contracts to its teachers only in the position of classroom teacher. Dooley's contract did not have express language to give a property right as a coach.

Dooley, a black man, contended that he was the victim of racial discrimination and filed complaints with the Equal Employment Opportunity Commission. He had applied seven times for head coaching positions, and each time another person was selected. The decision coming out of the Fifth Circuit Court of Appeals was short and to the point [Dooley v. Ft. Worth I.S.D., 755 F.2d 881 (5th Cir. 1985)]. In order to prevail in his lawsuit, the man had to establish that the Ft. Worth school district had intentionally discriminated against him. He had not proved his case since the preponderance of the evidence showed that he was reassigned because of his insubordination, his uncooperative attitude, and his general failure to contribute to the program. His reassignment was therefore for legitimate non-racial reasons.
Outside the limitations of this study, the researcher found further action in Dooley’s case. The Ft. Worth School Board did not renew Dooley’s contract and he again appealed to the Commissioner [Dooley v. Ft. Worth I. S. D., Dkt. No. 180-R2-785 (January 1987)]. The appeal was denied by the Commissioner, who found that the district had given the man assistance for the purpose of improving his performance. The teacher failed to show that the district erred in regard to a charge of incompetency.

School districts can discharge continuing contract teachers for lawful cause, TEC Section 13.109, and inefficiency or incompetency in performance of duties, TEC Section 13.110. However, a school district makes a commitment to the teacher that the employment relationship will not be lightly severed. This does not mean that a teacher is immune from discharge once having attained continuing contract status. It does mean that before a district may dismiss a teacher, the teacher must be given a reasonable opportunity to correct deficiencies which can be overcome. In Tyler v. Galveston I. S. D., Dkt. No. 132-R1b-783 (November 1984), the hearing officer suggested that the best method for a continuing contract district to rid itself of a teacher who is simply incapable of doing a competent job is to note that teacher's deficiencies during his or her probationary period and nonrenew the teacher before he or she obtains continuing contract status.
Patterns found in probationary/continuing contract appeals.--The distribution of outcomes of probationary/continuing contract appeals is found in Figure 8 on this page.

Figure 8

Returned to Probationary Status From a Continuing Contract

\[
\begin{array}{ccc}
& 10 & 20 \\
DEN & & \\
GRA & & 5 Appeals \\
\end{array}
\]

Terminations of Continuing Contracts

\[
\begin{array}{ccc}
& 10 & 20 \\
DEN & & \\
GRA & & 6 Appeals \\
\end{array}
\]

A return to probationary status from a continuing contract accounts for five of the probationary/continuing contract appeals, and six appeals were from terminations of continuing contracts. The other three consisted of a probationary teacher appealing a fourth year of probationary status and two continuing contract teachers appealing their loss of extra duties. The Commissioner denied these three appeals.

It is noted that the Commissioner granted almost as many of the continuing contract appeals as he denied. Approximately one fifth of the term contract appeals were granted, whereas, almost half of the continuing contract appeals were granted.
The data show that if a continuing contract teacher can reasonably be expected to remedy deficiencies, the appeal was likely to be granted. However, in cases with repeated incidences and failure to remedy deficiencies, the appeals were denied.

Grievance Appeals

Grievances are those matters of dissatisfaction presented by an employee to his or her employer.

Issues and rationale in grievance appeals. --In two appeals employees brought issues concerned with alleged retaliation for grievances. Both were denied by the Commissioner. Two teachers were denied opportunity to grieve their evaluations at the local level and appealed to the Commissioner. One of these concerned the teacher's grievance of procedures used in evaluation and was remanded by the Commissioner to the local board for resolution. The other case concerned with grievance of evaluation was denied. A professional association appealed to the Commissioner with aggrieved individual employees' claims. This appeal was denied.

The Commissioner can review appeals concerned with grievances. He did rule, however, that an association cannot pursue grievances of individual members because the association's rights were not being denied [Aldine Teachers' Association v. Aldine I. S. D., Dkt. No. 076-R4-383 (July 1983)]. The Aldine association was complaining of the
district's infringement on personal rights of individual members. Included in the complaints were the school district's practice of requiring teachers to do office work and/or substitute during their planning period, the school district's practice of withholding or threatening to withhold all or part of a teacher's salary for failure to comply with all requirement's of the district's check list at the end of the school year, or for loss of books or equipment, and the district's practice of requiring or coercing teachers to join organizations and participate in functions not directly related to public education. The Commissioner denied the association's appeal. In his rationale, no support was provided for a contention that an association may go beyond the local grievance process and prosecute a cause of action in its own name when it is one of the association's members, not the association itself, which is aggrieved.

Evaluations can be grieved. In a case concerned with ability to grieve an evaluation, the Commissioner remanded the case to the local board. The board had a policy which did not allow employees to grieve the content of their evaluations; however, exclusion of evaluation procedures was not in the policy, so it was stated that petitions for review which are not specifically denied are admitted [North v. Socorro I. S. D., Dkt. No. 045-R8-1284 (October 1985)].

Patterns in grievance appeals.---The patterns found in the data show that the Commissioner hears anyone who is aggrieved
by the school laws of Texas. The cases alleging retaliation for pursuing the grievance process at the local level were denied. In *Leftwich v. Harlington I. S. D.*, Dkt. No. 172-R1b-782 (December 1983), a principal admitted in his testimony that his critical comments in Petitioner's evaluation resulted directly from her initial complaints and her ensuing grievance and his behaviors were unconstitutionally retaliatory. However, the nonrenewal was based on poor management skills which impaired services rendered by the library and willful insubordination in refusing to comply with a supervisory request. For example, Petitioner maintained a change fund in excess of $10.00 which violated library policies. At her hearing, Petitioner rested without testifying or calling witnesses on her behalf. There was no testimony offered relating to retaliation for exercise of constitutionally protected freedoms.

The evidence established conclusively that the principal's evaluation resulted from his pique over Petitioner's complaints, but the unconstitutionally motivated conduct could not be imputed to those ultimately responsible for the nonrenewal. Petitioner's board of trustees were not even cognizant of Petitioner's grievances before the local hearing was convened. Patterns in the decisions of the Commissioner indicate that a board cannot be held responsible for behavior of an individual administrator and he allows a local board decision for nonrenewal to stand if it is based
on substantial evidence. Petitioner failed to discharge the burden of proof to establish a prima facie case.

Career-Ladder Appeals

Career-ladder appeals were being decided during the summer of 1985 when this study ended.

Issues and rationale in career-ladder appeals.--One issue brought to the Commissioner was whether career-ladder issues were to be heard by the local board of trustees [Koehlor, et al. v. Bryan I. S. D., Dkt. No. 039-R3-1184 (November 1985)]. Petitioners in this case attempted to grieve actions of the Bryan I. S. D. Career Ladder Committee and were denied the opportunity to do so. The Commissioner remanded the appeal to the local board because the Texas Administrative Code in Chapter 19, Section 149.71 (j) (2), requires the local board of trustees to hold a hearing before a career-ladder decision can be appealed to the Commissioner.

Other career-ladder appeals were concerned with teachers' selection and placement on the ladder. Five cases had been decided by the end of this study, two of which were denied because they were not filed on time. Only one of the remaining three was granted by the Commissioner.

It was found in a career-ladder case denied by the Commissioner that the use of a committee of peers does not give grounds for contention of flawed selection. The administration was not bound by names submitted. There was also a complaint of the weight given to subjective testimony,
to which the response was that subjectivity is at the heart of the selection process [Deason, et al. v. Pine Tree I.S.D., Dkt. No. 216-R9-885 (July 1986)]. In another case which was denied, it was found that the district could have used different methods to eliminate differences between appraisers; however, the record did not disclose one method as more accurate than another [Wilson v. LaMarque I. S. D., Dkt. No. 144-R9-1285 (July 1986)].

Elimination of teachers from consideration of placement on the career ladder was arbitrary and capricious, the Commissioner decided, when the teachers had not been informed of deficient documentation and a deadline had not been set by the district for submitting documentation [Womble & Galloway v. Santa Rosa I. S. D., Dkt. No. 208-R9-985 (June 1986)]. Another career-ladder appeal was remanded to the district when a question of whether career-ladder decisions are appealable. This question is resolved in the Texas Administrative Code Section 149.71 (j) (2), which reads as follows: "Before a career-ladder decision may be appealed to the Commissioner of Education, a hearing concerning the decision must be held by the local board of trustees," [Koehlor et al. v. Bryan I. S. D., Dkt. No. 039-R3-1184 (November 1985)].

Patterns in career-ladder appeals. --The local board of trustees must hear the career-ladder grievance before the decision can be appealed to the Commissioner. The pattern
emerging from these early appeals of career-ladder cases was that teachers must be informed of necessary documentation and deadlines before they are eliminated from selection for career-ladder placement. The Commissioner supported districts' methodology of selection in all but one appeal.

Certification Appeals

There were appeals concerned with certification in the decisions of the Commissioner.

Issues and rationale for certification appeals. --The issues found in appeals concerned with certification included a question of whether a superintendent held proper certification for his position. Employees who were not required to hold a teaching certificate raised questions regarding their entitlement to the benefits of TCNA. Other certification issues were concerned with whether employees had good cause for abandonment of their contract.

The Commissioner denied appeals from a superintendent who did not have proper certification for that position and from a business manager whose position did not require a certificate [Cole v. Wilmer-Hutchins I. S. D., Dkt. No. 104(2)-R2-480 (November 1982)], [Hightower v. Mt. Pleasant I. S. D., Dkt. No. 155-R1-785 (January 1986)]. The position of Director of Fiscal Affairs does not fall within the protection of the Texas Term Contract Nonrenewal Act.

The Commissioner found in an appeal concerned with certification that a teacher cannot be terminated simply
because it appears that he cannot complete the certification requirements and remediate deficiencies to meet required deadlines [Jones v. Freer I. S. D., Dkt. No. 133-R2-584 (February 1985)]. Jones held an emergency teaching certificate and had a plan on file for remediation of deficiencies. The district used probationary/continuing employment contracts. The Commissioner's rationale for granting the appeal was that the evidence indicated that the board was completely unaware that the matter under consideration involved termination of Petitioner's employment as opposed to a nonrenewal. The Commissioner stated, "... the only logical explanation ... could best be described as the total disregard of Petitioner's procedural protections and the abrogation of Petitioner's vested employment rights without the slightest regard to due process."

Certificate suspension was denied in a case in which a coach was reprimanded. The Commissioner found suspension unwarranted. The coach had found a better position and the resignation took place early in the summer so the district was not harmed. The interest of the individual must be balanced against those interests of public education [Lamesa I. S. D. v. Bridges, Dkt. No. 199-TTC-882 (March 1984)].

An appeal for certificate suspension was granted with the rationale that the fact that a contractual obligation was more burdensome than expected does not constitute good cause for abandonment of contract [Cleveland I. S. D. v. Edwards, Dkt. No. 082-TTC-385 (May 1986)]. Cleveland found his
students lacking in willingness to learn and he did not like other conditions in his teaching assignment.

In an appeal in which there was a violation of the code of Ethics and Standard Practices for Texas Educators by a coach, the Commissioner's decision was to revoke the teacher's certificate [Houston I. S. D., v. Cole, Dkt. No. 099-PPC-485 (May 1985)]. The coach had sexual relationships with the girls she was coaching.

Patterns in certification appeals. -- A pattern established for teachers holding emergency certification was for those employees to be accorded the procedural protections afforded by their employment contract. It was also established that employees holding positions not requiring certification are not afforded the provisions of the Term Contract Nonrenewal Act.

In certificate suspension appeals the Commissioner considered each case individually. He attempted to balance the needs of the individual against those of public education. If the school district was not harmed then a suspension of certificate was not warranted.

Other Appeals

There were appeals found in small numbers which did not fit into the categories previously reported in this chapter.

Contract appeals. -- The main issue in contract appeals was whether a contract existed. The creation of an
employment relationship between a teacher and an independent school district can only be accomplished by the board of trustees exercising its authority vested by statute.

In a contract dispute, the Commissioner found that a binding contract was made by a board when a unanimous vote was given to hire a teacher and the offer was accepted; thus, an oral contract was made [Allen v. Mullin I. S. D., Dkt. No. 145-R2-083 (October 1984)]. In another case involving a contract disagreement, it was found that a notice of assignment form which was signed by an aide and a district representative constituted a valid written contract [Vela v. Corpus Christi I. S. D., Dkt. No. 135-R8-783 (April 1984)].

A pattern found in disputes of whether a contract existed was that, regardless of whether a standard contract form was used, a contract exists if it was entered into by the board of trustees or their designee.

Demotion and reassignment appeals. --An issue arising in demotion appeals was whether an employee would have her employment relationship completely severed when it was found that her holding a position violated the nepotism laws. Another issue was what constituted being employed in the same capacity.

Findings of the Commissioner indicate that assignment or promotion of individuals within a district is discretionary with the board or its designate; absent a clear abuse of discretion, this should not be disturbed. Principals who are
demoted are clearly exempt from the provisions of the Term Contract Nonrenewal Act (TEC Section 21.201-211) because the statutes apply only to positions as teachers.

In a demotion appeal, the Petitioner was not allowed to finish her contract as principal when her husband was elected to the school board because this would violate the nepotism laws. The Commissioner denied the appeal. However, the Commissioner ruled that the petitioner principal was not to have employment severed completely, but was to be given the first opening of a position comparable to her former position of director of supervisors [Garza v. San Beneto Consolidated I. S. D., Dkt. No. 100-R2-485 (March 1983)].

Teachers and coaches can be reassigned as per standard contract language and not be teaching and coaching the same subjects as in previous years.

In a 1985 case, it was established by the Commissioner that if a school district can offer to reinstate a teacher in a teaching position without any loss in pay, it is considered to meet the requirement of employing "in the same capacity." This does not mean the exact same position [Barich v. San Felipe Del Rio I. S. D., Dkt. No. 117-R1a-484 (May 1985)].

The cases in this section are few in number, but they are included in the reported outcomes of all appeals. The data from these appeals are a part of data displays Figure 9, Figure 10, and Figure 11.
Outcomes in All Appeals

The outcomes of the Commissioner's judgments in all of the appeals included in this study along with all issues found in the appeals are reported in this section. A matrix showing the relationship of issues to outcomes is included in the report of the data.

Outcomes in the Commissioner's Judgments

The data identifying judgments handed down in the decisions of the Commissioner were coded and compiled. The results are given in Figure 9 on this page.

Figure 9

Outcomes of Appeals to the Commissioner

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<th>Decisions</th>
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Total Appeals = 131

This data display reveals that the majority of the appeals were denied. Eighty-four of the appeals were denied; twenty-six appeals were granted. Thirteen cases were
dismissed for a variety of reasons, and three appeals were remanded to the local board for further action. Six appeals from school boards seeking suspension of the teacher's certificate for abandonment of contract resulted in a denial, two reprimands, two certificate suspensions, and one revocation of certificate.

All Issues in the Decisions

Most of the issues in the decisions were related to term contract nonrenewals or term contract terminations. Some issues related to continuing contract teachers being returned to probationary status or being terminated. Several issues found in small numbers in the data did not relate to TCNA appeals or probationary/continuing contract appeals. Of these small clusters of issues, five of the appeals had issues relating to grievances, four with certification, and six with suspension of teaching certificates. Career-ladder issues were just beginning to be decided in the summer of 1986 when this study ended. These are depicted in Figure 10 on the following page along with all other issues previously discussed and displayed in histograms in this chapter. In addition, Figure 10 shows seventeen cases with issues related to procedural requirements for the filing and hearing of appeals.

Eight appeals had questions raised about contracts or what constituted a contract. One such issue was found in Allen v. Mullin I. S. D., Dkt. No. 145-R2-883 (October 1984).
In this appeal a board offered a teacher-coach a position which he accepted and then, when questions arose about his qualifications, the board did not want to honor the offer. The Commissioner ruled that when a board makes an offer of employment and it is accepted, this constitutes an oral contract which can later be put in writing.

In four appeals, employees argued that their contracts insured that they would be given the same job capacity. An example of appeals seeking the same job capacity was Barich v. San Felipe Del Rio Consolidated I. S. D., Dkt. No. 117-R1a-484 (May 1983), in which an R. O. T. C. instructor wanted to be returned to a teaching position in the R.O.T.C. program but not as a junior-high-school social studies teacher. The Commissioner found in the Barich case that being returned to the same job capacity does not necessarily mean to the exact same position.

Three cases had issues related to demotion, and two appeals had issues pertaining to reassignments. Seventeen appeals had issues concerned with contract rights of probationary teachers. All of these issue clusters are found in the data display in Figure 10, along with the previously mentioned small clusters of issues found in the appeals data.

The issues which appeared in larger numbers have been previously displayed and discussed. The issue appearing the greatest number of times was found in nonrenewals of term contracts.
Figure 10
Issues in the Decisions of the Commissioner

<table>
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<tr>
<th>Issues</th>
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<td>REA</td>
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</tbody>
</table>

Issues found in 131 appeals

Key: ACSE arbitrary, capricious, substantial evidence, AV Amendment Five, AXIV Amendment Fourteen, AF academic freedom, C contract, C/L career/ladder, CSC contract same capacity, DEMO demotion, DP due process, E evaluation, FA First Amendment, GC good cause, GR grievance, PR procedural requirement, PT probationary teacher, STC suspension of teaching certificate, TC teaching certificate, REA reassignment
For better understanding of the data, consideration must be given to the relationship between the issues and the outcomes of the decisions of the Commissioner.

**Similarities and Differences in Issues Related to Outcomes of the Commissioner Decisions**

Eighteen clusters of issues were identified, and seven categories of decisions were determined. To enhance understanding of the relationship between the issues and the outcomes of the decisions, a matrix of issues and outcomes was devised (Figure 11).

In all but six appeals, the employee was the plaintiff; however, in the cases involving abandonment of contract, the school district appealed to the Commissioner to have the employee's certificate suspended. Thus, a denial in such cases would be in favor of the employee, as identified on the matrix in Figure 11. One other case in this group involved a teacher's misconduct which caused the Commissioner to revoke her certificate.

**The plaintiff school district.** --The districts' requests for suspension of certificates had different outcomes. The case in which the Commissioner denied the district's appeal for suspension involved a school nurse. The nurse did not have a teaching certificate because one was not required for a noninstructional position [Edgewood I. S. D. v. Marroquin, Dkt. No. 015-TTC-1083 (September 1984)]. In the other appeals for certificate suspension different outcomes were prescribed.
by the Commissioner. In one judgment favoring an employee who abandoned his contract, the Commissioner merely reprimanded the teacher, as the abandonment was in the summer and the teacher was readily replaced with no resulting harm to the district [*Lamesa I. S. D. v. Bridges*, Dkt. No. 119-TTC-882 (March 1984)]. Of the three appeals concerning certificate suspension which favored the school district, one involved a short certificate suspension of a teacher who found himself in a situation not to his liking and resigned [*Cleveland I. S. D. v. Edwards*, Dkt. No. 082-TTC -385 (May 1986)]. Respondent resigned because he felt his philosophical stance on education conflicted with that of the school district. Specifically, the teacher testified that he was very frustrated with the students' disrespect for discipline and for learning, with the lack of parental involvement in the district, and with other teachers' resignation to the situation. A replacement was found for the teacher within a week. The Commissioner did rule that the teacher had abandoned his contract without good cause, but rather than suspend his certificate for another full year, a shorter suspension was given so the man could seek employment for the following school year.

In *Duncanville I. S. D. v. Witherspoon*, Dkt. No. 050-TTC-1284 (July 1985), the employee resigned to take care of a personal business investment. The Commissioner suspended his certificate. Another case involved a teacher who had
violated the educators' code of ethics to the extent that the certificate was revoked. The teacher-coach who had the certificate revoked was found from evidence in testimony to have involved herself in a homosexual relationship with a student. A three-member committee of the Teacher's Professional Practices Commission recommended that the teacher's certificate be revoked. The Commissioner did revoke the certificate [Houston v. Cole Dkt. No. 099-PPC-485 (May 1986)].

**Plaintiff employee appeals.** --The Commissioner ruled in favor of both the plaintiff employee and the respondent school district in some of the cases involving most of the issues. However, Figure 11 does show that among the issues clusters, four did not have an appeal granted to the employee. Liberty and property issues, academic freedom issues, demotion, and reassignment issues were found in cases in which the decision favored only the school district.

The issue found in the greatest numbers of decisions was in cases claiming arbitrary, capricious actions or accusations which were unsupported by substantial evidence. Thirty-six of these were appeals of nonrenewals of term contract employees. The remaining fourteen appeals in the ACSE cluster were brought by employees whose appeals may have been categorized in the probationary teacher cluster or some other cluster. For example, one appeal involving the arbitrary-capricious issue was put forth in a career-ladder appeal.
Only twelve of the total fifty appeals were granted and nine of these twelve were term contract nonrenewals.

**Figure 11**

**Issues and Outcomes of Commissioner Decisions**

<table>
<thead>
<tr>
<th>Issues</th>
<th>Judgment of the Commissioner</th>
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<td></td>
<td>CRA  CSUP  REP  REM  GRA  DIS  DEN</td>
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<td>ACSE  -  Arbitrary, capricious,</td>
<td>1  12  37</td>
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<tr>
<td>E    -  substantial evidence</td>
<td>1  3  10</td>
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<td>GC    -  Good cause</td>
<td>14  1  27</td>
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<td>AXIV  -  Fourteenth Amendment</td>
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<td>AF    -  Academic Freedom</td>
<td>2</td>
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<td>FA    -  First Amendment</td>
<td>2  17</td>
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<td>DP    -  Due process</td>
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<td>C     -  Contract</td>
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<tr>
<td>PR    -  Procedural requirement</td>
<td>1  7  16</td>
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<td>PT    -  Probationary teacher</td>
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<td>1  1  3</td>
</tr>
<tr>
<td>C/L   -  Career ladder</td>
<td>1  1  4</td>
</tr>
<tr>
<td>STC   -  Suspension of teaching certificate</td>
<td>1  2  2  1</td>
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</table>
Fourteen appeals in which there was good cause for dismissal were granted. This number represents one-half of all appeals having the good cause issue, by far the highest proportion of granted appeals in any of the clusters.

Constitutional claims were found in numerous appeals and few were decided in favor of the employee. First Amendment issues and due process issues were found over twenty times and only five of over forty cases were decided in favor of the employee.

Among the issues, procedural requirements and appeals from teachers serving a probationary period under TCNA received the most dismissals. Procedural requirements for appeals included time constraints for such things as requesting a hearing from the board or filing the appeal to the Commissioner. The Commissioner could not rule in an appeal if it was not timely filed, unless there was good cause for late filing. In every case of late filing, the Commissioner ruled for the school district.

Teachers serving a probationary period under TCNA had four appeals dismissed. If the complaining teacher was on a probationary contract, rules governing appeals did not apply. In one case involving a question of good cause, the employee did not appear at the appointed place and time; thus, the appeal was dismissed. Another appeal with a question of grievances was without merit and was dismissed. In most of the appeals a decision was either granted or denied.
Three cases were remanded to the local board. A career-ladder issue was remanded to the local board to be heard because there was a question of whether a career-ladder case was appealable. One appeal was remanded to the local board when a teacher had been refused the right to grieve the procedure used in her evaluation, and a third appeal was remanded because the local board did not provide a transcript of the local hearing for the Commissioner to give a substantial evidence review.

Some appeals had multiple issues involved in the case. This is apparent in the remanded cases since there were only three remanded appeals and four issues show remanded appeals.

Contract questions were found to be issues in some appeals. Eight of the nine appeals having some contract issue not found in some other issue cluster were decided in favor of the school district. In addition, there were questions in four appeals regarding an employee's right to a contract for employment in the same capacity as provided by a previous contract. Only one appeal with this issue was decided in favor of the plaintiff employee.

Data compiled and presented in the matrix of issues and outcomes of the decisions of the Commissioner indicate that between the decisions for the employee and the school district there exists a ratio of approximately one decision favoring the employee to four favoring the school district. Some conclusions might be drawn as to why such a relationship
exists by considering the underlying rationale used by the Commissioner in deciding the appeals and by observance of patterns found in the decisions.

The researcher found few of the decisions of the Commissioner appealed to the courts. However, in some cases there was further action which may have impact on personnel decision making.

At a time when the State Board of Education acted as a review agent in the administrative appeals process, Warnie Hill appealed to the State Board and had a favorable review of the accusations regarding his collection and disbursement of student funds [Hill v. Dallas I.S.D., Dkt. No. 052-R2-1282 (July 1983)]. While the policy for disbursement of student funds was not followed, there was confusion among the witnesses as to the actual procedures for receiving and paying bills. Since funds were not misappropriated or misused, it was not reasonable to find Hill's conduct to constitute willing and knowing violation of policies. The state board remanded the appeal back to the Commissioner and Hill's appeal was granted [Hill v. Dallas I.S.D., Dkt. No. 052-R2-1282 (January 1984)].

In a case discussed in Chapter I, Grounds v. Tolar I.S.D., Dkt. No. C-4652, (Austin 1986), the state court ruled that a party who appeals the decision of the Commissioner of Education in a contract nonrenewal must do so in compliance with TCNA and APTRA. Since the Tolar board had not
complied with the statutes and rules for TCNA appeals, the court ordered the board to reemploy Grounds "in the same capacity."

A case which went to the Texas Supreme Court was one giving the reason for nonrenewal as "a community feeling of incompetence" which was not listed as a reason for nonrenewal in the district's nonrenewal policy. Since there was no legally valid reason for her proposed nonrenewal, the court ruled in favor of the teacher [Seifert, et al. v. Lingleville I. S. D., Dkt. No. C-3962 (Austin 1985)].

A case which had gone through the administrative appeals process finally went to the Texas Supreme Court after a holding by the Court of Appeals in Austin had determined that APTRA and TCNA were inconsistent. The Supreme Court found the man's motion for a rehearing to be insufficiently specific to obtain a judicial review of his contention of error. The judgment was awarded to the local and state school officials [Burke v. Central Education Agency et al., Dkt. No. 14-478 (Austin 1987)]. The action in this case followed the conclusion of this study.

A teacher whose contract nonrenewal case originated prior to the enactment of TCNA had her appeal denied by the Commissioner. The teacher had been given unsatisfactory ratings by her principal in six of twenty-four areas. She filed a grievance about the evaluation and was informed that her dissatisfaction with her evaluation was not grievable
under board policy. The teacher was later informed that her contract would not be renewed. The case ended up in court on the sole issue of whether or not the teacher's constitutional rights were violated by the school district [Day v. South Park I. S. D., 768 F.2d 696 (5th Cir. 1985)]. Ms. Day, the teacher, contended that the decision to nonrenew her contract was in retaliation against her for filing the grievance.

The court held that the school district had not violated the teacher's constitutional rights to freedom of speech or to petition for redress of grievances. This was true even if the district's decision to nonrenew the woman's contract was made in retaliation for her complaints and grievances about her personal evaluation.

Further action in a case included in this study was a second appeal to the Commissioner [Ruiz v. Robstown I.S.D., Dkt. No. 126-R1-685 (September 1987)]. Ruiz had been reassigned from director of personnel to assistant principal. In the nonrenewal action, the board relied on deficiencies in the position of director of personnel from two years past. There were no complaints concerning his performance as principal. The Commissioner concluded that Ruiz's contract should be reinstated.

The opinion given in one case suggests that the language used by the legislature is permissive: "any person aggrieved may appeal in writing to the Commissioner of Education" [Benavides Independent School District v. Guerra, 681 S. W. 2d 248 (Tex. App. 4 Dist. 1984)]. The opinion cited that the
school district ignored the crucial qualification contained in Section 11.13(a): "...but nothing contained in this section shall deprive any party of any legal remedy." Guerra was afforded the right to appeal to the Commissioner but, having exhausted those remedies set out in the board policy manual, he was entitled to choose to bring suit in court.

A decision from the Court of Appeals, *Ayotte et al. v. Central Education Agency*, Dkt. No. 3-86-003-CV (Austin, March 1987), indicated that Section 61.231(b)(1) of the Texas Education Agency's rules provides, in part, that "in grievances or controversies involving administrative action or problems of school districts, aggrieved parties should be afforded a full hearing before the board of trustees of the district, provided the request is in writing and timely filed... as prescribed in Section 157.43." The Agency contended that a teacher is not aggrieved in a case of contract termination unless the teacher claims violation of a statutory, constitutional, or common law right and asserts a violation of that right in a written request for a hearing. The court did not have appellants show facts of grievances but contended that Section 61.231(b)(1) of the rules entitled the teacher to a hearing to develop facts that show a person aggrieved under the section. Needless to say, the Agency repealed Section 61.231 and adopted new rules to clarify that the State Board of Education's intent is not to establish an
independent right to a hearing through the rules, and the request for a hearing must identify the claimed violation.

Summary

A series of data reductions resulted in compilations of data from the decisions of the Commissioner of Education which focused on the outcomes of the appeals and the issues in the cases. In addition, there was identification of the underlying rationales for the decisions in both the appeals with results favoring the school districts and those with outcomes favoring the employee. Procedures for data collection and analysis made possible the identification of issues and outcomes in the decisions of the Commissioner from which patterns in the decisions were distinguished.

Of the one hundred thirty-one appeals included in this study, fifty had issues of arbitrary, capricious decision making and/or substantial evidence issues. The majority of these fifty, thirty-six appeals, was brought by employees whose contracts had been nonrenewed and who were appealing under the statutes and rules of the Term Contract Nonrenewal Act. It was found in the Commissioner's rationale for decision that substantial evidence sounds as if much evidence is required, but in reality very little evidence is needed to support a board's decision to nonrenew a teacher's contract. Only twelve of the fifty arbitrary, capricious substantial
evidence issues were decided in favor of the employee. Nine of the twelve granted cases were appeals of employees appealing nonrenewals under TCMA.

The second largest cluster of issues in term contract appeals was good cause. Good cause was the most significant issue in term contract termination appeals. Of the twenty-three termination appeals, good cause issues appeared twenty times. In term-contract-termination cases it was found that six of the twenty-three appeals had decisions which favored the employee, a higher proportion than the granted appeals in term-contract nonrenewals.

Nonrenewals, terminations, and other employment status appeals had evaluation issues. Evaluation issues were cited in fourteen appeals, ten of which were denied. Evaluations can withstand a substantial evidence review to support a nonrenewal of a teacher's contract.

Constitutional issues were brought by employees to the Commissioner, but few were successful. Only two appeals of twenty-one brought by employees claiming violation of First Amendment rights were successful. In twenty-one appeals claiming violation of due process rights, employees saw little more success than with First Amendment claims, for only three due process appeals were granted.

In every instance in which an employee failed to follow procedural requirements for timely filing of appeals, the Commissioner either denied or dismissed the appeal. All decisions in these cases favored the school district.
Teachers serving a probationary term brought sixteen appeals to the Commissioner. Teachers serving a probationary term are not given the provisions of the TCNA. In the three appeals in this cluster which were granted, it was determined that the teachers were not probationary teachers and were entitled to provisions of the Term Contract Nonrenewal Act.

In continuing contract appeals, good cause was again the most significant issue. In six continuing contract termination appeals, three were granted and three were denied. About the same proportion was noted in continuing contract appeals of a return to probationary status, three of five were denied and two were granted.

The issue of a return of a continuing contract teacher to probationary status requires the same evidence as that employed in cases involving the release of the teacher at the end of a school year. Almost half of the continuing contract appeals were granted, a much higher percentage than those from employees bringing term contract appeals.

Three appeals having grievance issues were denied by the Commissioner. One was remanded back to the local board to be heard.

Career-ladder issues can be appealed. At the time this study ended only seven career ladder cases had been decided. Only one of these was granted in favor of the employee.

In certificate suspension appeals from school districts,
the Commissioner attempted to balance the needs of individuals with those of public education. Two of the six appeals in this cluster had reprimands; others had a more severe penalty.

Of the one hundred thirty-one appeals included in this study, eighty-four were denied and thirteen dismissed. Only twenty-six appeals were granted to the employee.

A description of the similarities and differences found in issues and outcomes of the decisions is given in the analysis of data. The analysis of data made possible a discernment of patterns in the decisions of the Commissioner which favored the employee and those which favored the school district.
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CHAPTER V

SUMMARY AND DISCUSSION

This study focused on the decisions of the Commissioner of Education which were concerned with employment disputes between August 1981 through August 1986. The purpose was to determine the issues found in each case and relate the issues to the outcomes of each decision. In Chapter II, the concept of administrative resolution of employment disputes was examined with a perspective of what has been included in the Texas Education Code. In addition, the review of the literature included administrative resolution of employment disputes in some other states. The review provided evidence that Texas maintains a unique system for resolving employee complaints through exhaustion of administrative remedies before resorting to the courts.

The primary method of data collection was an examination of the archives of the decisions of the Commissioner of Education. The issues were coded and divided into appropriate categories. The process described in Chapter III resulted in findings of similarities and differences between groups of decisions, as well as identification of rationales underlying the decisions within the groups. Patterns were discerned in
the decisions through a search for similarities and
differences found in the groups having outcomes favoring the
employee and those favoring the school district. Data
resulting from the process described were reported in Chapter
IV of this study.

Research questions included in the study are the
following:

1. What are the legal issues advanced by employees in
their appeals to the Texas Commissioner of Education?

2. How has the Commissioner resolved these issues in
the process of deciding the appeals?

3. What patterns are found in Commissioner decisions in
judgments for the employee and judgments for the school
district?

An explanation of findings are presented in the
following discussion.

Discussion

The decisions of the Commissioner were separated into
categories for this discussion as follows:

term-contract appeals,
probationary/continuing contract appeals,
grievance appeals,
career-ladder appeals,
certification appeals, and
other appeals.
Term Contract Appeals

Much of the discussion will be concerned with term contract nonrenewals and terminations since ninety-six of the one hundred thirty-one appeals reviewed in this study are those advanced by term contract employees. In the ninety-six term contract appeals, the Commissioner granted only nineteen of these to the complaining employee.

The standard of review for term contract nonrenewals was whether the board’s decision was supported by substantial evidence. Fifty of the term contract appeals were nonrenewals and the substantial evidence issue appeared in thirty-six of these. Only nine of the nonrenewal appeals were decided in favor of the employee.

Less than one-third of the substantial evidence issues were resolved in favor of the employee. Substantial evidence sounds as if there must be a great deal of evidence, when in reality, very little evidence is required. It would seem that in nonrenewals little evidence or some evidence will support the local board’s action. Hence, most nonrenewal appeals had decisions which favored the school districts.

Very often there were evaluation issues existing along with the arbitrary, capricious, or substantial evidence issues in the decisions. Evaluations were cited as documentation for nonrenewals. A Commissioner decision indicated that an unfavorable evaluation by itself can constitute sufficient evidence to withstand a substantial evidence review.
The Commissioner cannot set aside a local board decision if it is based on substantial evidence. In nonrenewal decisions the Commissioner is bound by following:

1. Statutory law found in the Texas Education Code Sections 21.201 - 21.211,

2. Administrative rules found in the Texas Administrative Code Chapter 157 Section 157.64, and

3. Decisions made by the courts.

It appeared in some appeals that employees had their cases presented poorly at the local hearing. Although patterns of poor representations by employees at the local hearing emerged in some appeals which were denied, most of those appeals denied showed well documented reasons for nonrenewals. In many cases there were repeated failures of employees in their effectiveness and school officials had attempted to help the employee to improve.

In one nonrenewal appeal, a teacher effectively defended her behaviors with reasonable explanations which led the hearing officer to conclude that a difference of professional opinion existed; there was no insubordination or failure to comply with administrative directives. The teacher prepared her defense at the local hearing with benefit of counsel. Although the teacher had her contract nonrenewed, on appeal, her defense at the local hearing was what allowed her to prevail. In addition, the principal who had documented the
evidence supporting the nonrenewal did not refute the teacher's explanations at the hearing.

An appeal with less fortunate results for the teacher was a nonrenewal of a middle-school principal. The principal contended in her appeal to the Commissioner that she was treated differently than the male high-school principal. She did not bring facts concerning her treatment to the attention of the board of trustees at the time of her hearing. The hearing officer noted that the information that the principal wanted to add to the transcript could have made a difference in the board of trustees' decision had it been presented at the nonrenewal hearing. Her failure to present such evidence apparently stemmed from her decision not to obtain assistance of legal counsel. Under such circumstances it would be inappropriate to supplement the record and then hold that the board made a wrong decision because it had failed to consider evidence it was not asked to consider.

The patterns found in term contract appeals which were granted indicate that boards engaged in poor decision-making practices. For example, in one such case, a board did not follow its own policies. In another, a band director had his contract nonrenewed because of numerous complaints from parents. Before the teacher came to the district, the band had been relatively unsuccessful in competitions. By contrast, under this teacher's leadership the band received a first-division rating in University Interscholastic League
competition accompanied by numerous awards in other competitions. Individual band members received recognition with thirty-two band members named to all-district, fourteen named to all-regional, and one named to all-state band.

The hearing officer in the band director's case, after a lengthy discussion, concluded that the district's prosecution of his nonrenewal might be summarized as a litany of hearsay, pettiness, triviality, and unfounded accusations and precisely the type of proceeding that the Term Contract Nonrenewal Act (TCNA) was intended to prevent.

In his appeal the band director also alleged that his nonrenewal was racially motivated, but because he had to prevail on the issues relating to TCNA, it was unnecessary to address questions relating to racial discrimination.

After the decision to grant the appeal, the board of trustees excepted on the basis that the hearing officer was predisposed in favor of the band director and had carefully selected passages from the local record which would support the desired result. The hearing officer pointed out that the board offered no basis for such a conclusion except that the hearing officer failed to propose a decision in the board's favor.

It was apparent in some nonrenewals that boards made unfounded accusations or failed to understand and apply their own policies. However, it was unusual in the appeals reviewed in this study to find a school board engaging in
poor decision-making practices and then mount accusations that the hearing officer was prejudiced toward the appealing teacher.

Term contract employees can be discharged before the end of their contract term for cause. In twenty-three terminations of term contracts, twenty had good cause issues. In nonrenewals the evidence does not have to be compelling; however, in termination cases there is a much heavier evidence requirement. Because the employee has a property right to employment during the term of his contract, there must be clear and convincing reasons for termination.

In appeals of terminations of term contracts, the Commissioner denied those appeals in which there was evidence of misconduct which either damaged the school district or harmed students. The Commissioner denied an appeal of a teacher who violated board policy by striking a second-grade child with a belt. He also denied an appeal of a teacher who gave explicit sexual information to a class in a small rural community even though he had reservations about the local board's decision. In the latter case, there was evidence of potential harm and the board did not have to risk a recurrence of the teacher's poor judgment.

Because of the gravity of the reasons in termination cases, most of the appeals in such cases were denied. Only six of the total twenty-three termination appeals were granted.
In the granted appeals cluster, the Commissioner found the board did not have good cause for termination. One such case representing a board's flimsy pretext for termination concerned an elementary school principal. The Commissioner not only found that the evidence failed to support the board's termination of employment, but to the contrary, he stated that the evidence concerning the alleged misconduct reflected that the principal performed prudently and professionally in every instance.

A pattern of denial emerged in the Commissioner's decisions in appeals by teachers serving a probationary term. Sixteen teachers appealed the nonrenewal of their contracts even though they were serving a probationary term. In three of these appeals it was determined that the teacher was entitled to the provisions of TCNA. Therefore, these three appeals were granted; all others in this cluster were either denied or dismissed. The right to a hearing and reasons for nonrenewal of contract was not given to probationary teachers by statute. However, probationary teachers continue a pattern of appeals to the Commissioner under the provision of TEC Section 11.13 a. Under this statute persons having any grievance with the school laws of Texas or actions of any board of trustees may appeal to the Commissioner. Decisions of the local board have not been reversed by the Commissioner when they pertain to the severance of the employment relationship with a probationary teacher.
The Commissioner's rationale in every appeal involving a teacher serving a probationary term was based on evidence supporting whether or not the teacher was a probationary teacher or a nonprobationary teacher. After enactment of the Term Contract Nonrenewal Act, in those districts offering employees term contracts, the status of all first- and second-year teachers as probationary or nonprobationary was contingent on whether the board of trustees had adopted a probationary policy pursuant to section TEC 21.209 on or before April 1, 1982. In cases having questions of probationary status in which appeals were granted, there was not an enactment of local policy which supported a determination of probationary or nonprobationary employees.

Even though a district has a probationary policy in place, a probationary teacher can appeal to the Commissioner under provisions of TEC Section 11.13a. Anything is appealable to the Commissioner.

In all cases appealed to the Commissioner which were not filed on time, the appeals were denied or dismissed. There seemed to be little comprehension on the part of employees who failed to file an appeal in a timely manner that their needs had to be balanced against the competing needs of the school district, and they waived their right to an appeal by delaying implementation of the process.

The Commissioner's rationale for decisions involving procedural requirements for filing appeals is supported by
the Texas Administrative Code Section 157.43, which provides a review by the Commissioner if the complaint is filed within 30 days. The deadline for filing meets the needs of both the petitioners and respondents. Petitioners need time to prepare an appeal and respondent school boards need to know that if no action is taken, the matter is closed. If the delay is beyond the litigant's control, that is the appropriate test. Forgetfulness, neglect, other pressing work, or office error are not good cause for late filing. School boards which see no action taken by the complaining employee need to be able to hire employees for vacancies and carry out the school business without the burden of untimely appeals being thrust upon them.

Issues related to rights set forth in the U. S. Constitution were found in term contract appeals. These appeals encompassed First Amendment religion and expression rights, due process rights, liberty and property rights, and equal protection rights. Since two cases involved expression rights in the classroom, they were identified as academic-freedom issues. Only one case had claims of infringement on rights to practice religious beliefs, a case in which a teacher refused to carry out Halloween activities which she considered pagan and un-Christian.

A pattern found in appeals having constitutional issues was that employees could not bear the burden of proof of their allegations regarding denial of their constitutional
rights. By far the most prevalent outcry of employees regarding denial of constitutional rights concerned allegations of deprivation of expression rights or allegations that they had not received due process of law. Public employees have a right to speak out on matters of public concern; the speech must not interfere with the performance of their duties, and the protected speech must be the motivating factor of the employment decision.

Of the term-contract cases having First Amendment issues, only one was granted. This one was brought by noncertified cafeteria workers speaking out regarding their concerns about the operation of the school cafeteria. The employees' comments to members of the community were of genuine public concern and were therefore protected. Failure to renew contracts was related to the protected speech.

Other term-contract appeals having First Amendment issues were denied. The petitioner had to show that the right in question was protected.

Protected speech issues in the classroom are considered academic freedom issues. The academic freedom question in an appeal to the Commissioner in one case was merely a teacher who refused to follow an administrative directive regarding showing a film unrelated to subject matter. A second academic freedom claim was one in which a teacher was terminated because she held an inappropriate sex education discussion in her seventh-grade science class.
The science teacher's claims of academic freedom were not supported. She failed to show that the statements in the classroom were reasonably relevant to the subject matter she was employed to teach. Neither did the statements serve an educational purpose authorized in her school.

At the time some decisions of the Commissioner were made, it was possible to correct deprivations of due process by giving notice and hearing after the board's action. The Commissioner indicated that even though a board makes an error during the nonrenewal process, the teacher did not have an automatic entitlement to reemployment. However, in one such case taken on to the courts, the school district was liable for half of the court costs of a man who claimed he had not received adequate due process. Another court case with claims of deprivation of due process was remanded to the trial court with the admonition that a person has a right to be heard on the merits of a dispute at a meaningful time and in a meaningful manner.

Other constitutional issues decided by the Commissioner included employees' claims of deprivation of liberty or property interests and claims that they were not afforded equal protection or impartiality. The Commissioner found little indication that Texas school employees were not afforded their constitutional rights. However, one granted appeal was a unique case in which a single parent had been overpaid due to the district's error. She was being forced
to repay the overpayments in amounts that deprived her of adequate livelihood. In this case the Commissioner ruled that although the district by law could recover the money, it would be inequitable to do so because the payee had changed her position because of the payor's mistake. Another granted appeal involved a teacher deprived of her property (salary) without benefit of a hearing. She was removed from service without pay and given an administrative directive to have a psychological evaluation.

Suspension without pay is permissible as long as an adequate hearing is given after suspension. A case in which the teacher was suspended without pay involved corporal punishment of a second-grade child which bordered on physical abuse by a male teacher and was in direct opposition to the district policy. In cases in which the welfare of children is a part of the issue, the Commissioner has upheld the local board decision.

Employees have tested the impartiality requirement by raising issues concerned with the board acting as both prosecutor and tribunal. The impartiality requirement of the Fourteenth Amendment is not violated by a board although there may be some predisposition in the matter. Even so, in the absence of a claim of personal animosity, illegal prejudice, or a personal financial stake in the outcome that would amount to a conflict of interest, school board members are entitled to a presumption of honesty and integrity. In
addition, claims of discrimination and unequal treatment must be supported by facts. The burden of proof is on the complaining employee. It is not required that an employer hire or retain a person who cannot adequately perform his duties simply because he belongs to a minority group.

The majority of all appeals included in this study were brought by term-contract employees. However, probationary/continuing contract teachers also brought appeals to the Commissioner.

Probationary/continuing Contract Appeals

Only fifteen appeals were brought to the Commissioner by probationary/continuing contract teachers during the five-year time period covered by this study.

The most prevalent issue in continuing contract appeals was good cause as set forth in the Texas Education Code Sections 13.109-110. The good cause questions were whether there was good cause for termination, a return to probationary status, or some other change in status. The only other issue occurring with a frequency of more than two was alleged denial of First Amendment expression rights.

Only one appeal was brought by a probationary teacher. In this case, the teacher was appealing her placement on a fourth-year probationary contract without a hearing. The appeal was denied because nothing in the statutes provides for a hearing for probationary teachers before being placed on a fourth year of probation.
Appeals from continuing contract teachers were decided by the Commissioner on the bases of Texas Education Code Sections 13.101 - 13.116. There were no appeals brought by continuing contract teachers who were released at the end of the school year. However, continuing contract teachers who were returned to probationary status did appeal. An appeal of a return to probationary status has the same standard of review as one in which a teacher is released at the end of a school year.

On the face of it, a return to probationary status does not seem as significant as an outright release. What is significant is the fact that the probationary teacher can be released at the end of the probationary period with no right to appeal the decision to the Commissioner. A teacher returned to probation could be released without the same consideration as the teacher whose employment is terminated outright.

The Commissioner has stated that the continuing contract teacher has an expectation of continued employment, for the district has had three years to assess the teacher's value to the district and has made a commitment to the teacher by encouraging that teacher to stay with the district by offering the continuing contract. The primary commitment to the teacher is that the district will not lightly sever the employment relationship. It will not terminate the
employment relationship at any time, even at the end of the school year, except for one of the reasons set forth in TEC Section 13.109 - 110.

This does not mean that a teacher having continuing contract status is immune from discharge. It does mean, however, that before a school district may dismiss a teacher, who has been a valued employee, it must make a bona fide effort to assist the teacher in correcting any deficiencies which the teacher could reasonably be expected to overcome.

A pattern found in the continuing contract appeals was that the district must move slowly in severing the employment relationship of a continuing contract teacher. Almost half of the appeals of continuing contract teachers were granted. This was the pattern for both appeals of terminations and appeals of a return of a continuing contract teacher to probationary status.

The difference in the standard of review underlies the higher proportion of continuing contract appeals granted as compared to granted term contract appeals. Term contracts require a substantial evidence review which sounds as if much evidence is required when actually, substantial evidence means some evidence (more than a scintilla). On the other hand, a continuing contract teacher will not have the employment relationship severed lightly. The district has made a commitment to the teacher by giving a continuing
contract. It was suggested that the best way for a continuing contract district to rid itself of a teacher who is incapable of performing competently is to note that teacher's deficiencies during the probationary period and nonrenew the teacher before continuing contract status is obtained.

**Grievance Appeals**

Teachers appealed to the Commissioner when local boards refused to hear their complaints. The right to grieve conditions of work is a statutory right and teachers' rights to seek administrative remedies are found in Texas Education Code, Article 11.13(a), which allows any person aggrieved by the school laws of Texas or actions or decisions of any board of trustees to appeal to the Commissioner of Education. Teachers' complaints can be appealed.

In two cases in which teachers complained of retaliation for pursuing grievances, the appeals were denied. However, in one of these cases the teacher did not testify in her own behalf nor call other witnesses to do so. When the case was poorly presented to the board, it could only make its decision on the facts which it was given. The Commissioner could not then go back to the board and say they were in error, even though the evidence presented to the hearing officer clearly indicated that negative evaluations and comments were in retaliation for pursuing grievances. The board was not given these facts so could not be held accountable.


Career-Ladder Appeals

Only six career-ladder cases were decided during the time span of this study.

One career-ladder case established that such issues were appealable to the Commissioner, and the case was remanded to the local district for a hearing. Texas Administrative Code Section 149.71 (j) (2) requires a hearing at the local level before the appeal goes to the Commissioner.

Other career-ladder appeals had complaints regarding selection criteria, subjectivity of administrators' documentation, and other questions pertaining to placement on level two of the ladder. The Commissioner's response to the complaints of subjectivity was that subjectivity is at the heart of the selection process. One appeal was granted because employees were not given deadlines for submission of documentation for career-ladder placement. The pattern found in these few decisions was that most of the appeals were denied. Only one of the six was granted.

Certification Appeals

Some appeals were concerned with certification and certificate suspension. In certificate suspension appeals the plaintiff was the school district.

The Commissioner decided certificate suspensions by considering the needs of public education against the needs of the individual. If it appeared that public education
would not be harmed, the Commissioner merely reprimanded the teacher who abandoned his position for a better one. In another case a teacher found himself in a situation not to his liking, and the Commissioner gave a short suspension so as not to prevent the teacher from seeking employment for the next school year.

The pattern found in the Commissioner's decisions concerned with certificate suspensions was one of individual consideration. He attempted to protect the school districts, but he also did not disregard the individual's needs. Only one case had a teacher reprimanded; others were given a more severe penalty.

It was determined that positions such as school nurse or business manager which do not require certification were not subject to laws pertaining to certified positions.

Another case established that teachers holding temporary certification are afforded full benefits of their contracts.

Other Appeals

There were a few appeals which did not fit into categories previously discussed. Some questions in these appeals related to what constituted a contract. Others were concerned with demotions and reassignments.

It was found that the creation of an employment relationship between a teacher and an independent school district can only be accomplished by the board of trustees exercising its authority vested by statute.
The Commissioner's rationale in deciding what constitutes a contract related to the board's authority. In one appeal he found that an oral agreement was binding when employment was offered by the board and accepted by the employee. Another decision found a notice of assignment form constituted a contract when it was signed by the employee and the district's representative.

The board or its designated agent must make the contract of employment. In an oral agreement, if the board offers employment and it is accepted, there is a binding contract which can later be put in writing. On the other hand, if a teacher claims assignment to extra duties even though an administrator spoke to her about the extra-duty assignment, there could not be an employment contract without the board's authority.

The patterns in contract questions found in the Commissioner's decisions indicate that only the board of trustees or their designee can make a valid contract between a teacher and an independent school district. A standard contract allows reassignment, and a contract employing in the same capacity means in a position with no loss in pay.

A contract is in effect once an offer is made by the board and accepted, whether by standard written contract, an oral agreement, or a notice of assignment form which meets the guidelines for a contract. Standard contracts state
employment terms as "subject to assignment." Coaches or teachers may or may not be teaching or coaching the same subject as in a previous year.

The Commissioner clarified reemployment "in the same capacity" as meaning a teaching position without any loss in pay. This did not mean the exact same position. The Commissioner also defined a teacher/coach as a teacher for the purposes of TCNA; and contracts of these professionals may not be nonrenewed in either or both capacities in the absence of substantial evidence to support a nonrenewal in one of the two capacities.

In cases in which employees questioned reassignments, demotions, or promotions, it was clearly established that assignment or promotion in a district is discretionary with the board or its designee; absent a clear abuse of discretion, assignments should not be disturbed.

The preceding discussion encompassed findings of three research questions in this study. Discussion of findings included the following:

1. The legal issues arising in employment decisions appealed to the Texas Commissioner of Education.

2. The process used by the Texas Commissioner of Education in the resolution of the issue raised in the appeal.

3. The precedents resulting from the Texas-Commissioner-of-Education decisions.
Implications

Given the sets of issues included in the study, implications could be considered for school boards, administrators, and school employees. These implications were drawn from the decisions of the Commissioner and court cases arising from some of the appeals after the employee had exhausted administrative remedies. Lessons to be learned by school boards from the results drawn from this study are presented in the following section.

**Implications for School Boards**

Information drawn from appeals to the Commissioner of Education pertaining to personnel decisions which have implications for school boards are the following:

1. Reasons for severance of the employment relationship should be well defined and clearly stated in board policy. The board must understand those policies and follow them [McLean v. Quanah I. S. D., Dkt. No. 178-R1a-782 (April 1984)].

2. Nonrenewals of term contract employees must sustain a substantial evidence review, which means more than a scintilla or some evidence. Substantial evidence is less than what is required to sustain a jury verdict. The decision to not renew a term contract must be based on facts which provide some evidence to support a substantial evidence review [Butler v. Liberty-Eylau I. S. D., Dkt. No. 103-R1a-583 (November 1984)].
3. A board of trustees of each school district may choose not to renew the employment contract of any teacher employed under a term contract even though there is no recommendation from the administration for the nonrenewal [Salinas v. Ben Bolt-Palito Blanco I.S.D., Dkt. No. 202-R1a-882 (April 1983)].

4. Employment decisions based on evaluations can sustain a substantial evidence review. The evaluation document itself is notice to a teacher of deficient areas; and these deficient areas if unremediated can be cause for nonrenewal [Major v. East Central I. S. D., Dkt. No. 024-R1-1184 (July 1985)].

5. Severance of the employment relationship between an independent school district and a continuing contract teacher must not be undertaken lightly and not severed even at the end of a school year except for reasons contained in TEC Sections 13.109 - 110 [Shivers v. Liberty I. S. D., Dkt. No. 163-R3-682 (January 1985)].

6. The return of a continuing contract teacher to probationary status requires the same standard of review as a severance of employment at the end of the school year [Tyler v. Galveston I. S. D., Dkt. No. 132-R1b-783 (November 1984)].

7. A board has no obligation to offer a hearing when placing a probationary teacher on a fourth year of probation [Delp v. Corpus Christi I. S. D., Dkt. No. 139-R3-783 (January 1984)].
8. The creation of an employment relationship between a teacher and an independent school district can be accomplished only by the board of trustees exercising its authority vested by statute. Employment offered by the board and accepted by the employee makes a valid contract even if it is an oral agreement or some document other than a standard contract form [Allen v. Mullin I. S. D., Dkt. No. 145-R2-883 (October 1984)].

9. Employees who appeal to the Commissioner and allege violation of rights set forth in the U. S. Constitution must be able to sustain the burden of proof that their rights were violated. If the employee establishes this fact, the burden of proof shifts to the school district to show that there were other reasons not related to the exercise of the right to substantiate the adverse action [Neal & Quintero v. Rogers I. S. D., Dkt No. 139-R7-679 (January 1983)].

10. School boards are liable if they do not offer nonprobationary employees procedural due process prior to action on nonrenewal recommendations [Patrick v. Mineola I. S. D., Dkt. No. 111-R1a-782 (December 1982)].


12. When a teacher's actions create a harmful situation for a child, a board can terminate the teacher's employment rather than risk a recurrence of the behavior [Clewis v. Tyler I. S. D., Dkt. No. 049-R2-1181 (April 1983)].
Implications for Administrators

Implications for administrative decision-making drawn from employment decisions appealed to the Commissioner are the following:

1. Administrators may present the case or act as the key witness in hearings held by the local board.

2. There is a need for well-documented reasons based on facts to support a nonrenewal of a nonprobationary term-contract employee's contract [Salzman v. Southwest I.S.D., Dkt. No. 186-R1-783 (December 1982)].

3. Nonrenewals are based on facts which will support a substantial evidence review. Substantial evidence is not much evidence but there must be some evidence [Freeman v. Winona I. S. D., Dkt. No. 160-R1-785 (July 1986)].

4. Deficiencies pointed out in observations, reports, and evaluations constitute evidence for negative employment decisions [Salzman v. Southwest I. S. D., Dkt. No. 186-R1-782 (December 1982)].

5. An evaluation form used to support a nonrenewal under TCNA does not have to be the same form required for career-ladder placement [Davis v. Ingleside I. S. D., Dkt. No. 176-R1-785 (May 1985)].

6. An administrator should be prepared to refute the explanations given by the employee at the local hearing in order to prevail in a nonrenewal [Black v. Hampshire-Fannette I. S. D., Dkt. No. 171-R1a-782 (January 1984)].
7. Continuing contract teachers are considered to be valued employees and before the employment relationship is severed, they must be given opportunity to improve deficient areas which they could reasonably be expected to improve [Tyler v. Galveston I. S. D., Dkt. No. 132-R1b-783 (November 1984)].

8. The return of a continuing contract teacher to probationary status requires the same review as severance of the employment at the end of the school year [Tyler v. Galveston I. S. D., Dkt. No. 132-R1b-783 (November 1984)].

9. Terminations of contracts have a more weighty evidence requirement than do nonrenewals. Terminations require good cause which usually are actions of an employee which could result in harm to students or the school district [Clewis v. Tyler I. S. D., Dkt. No. 049-R2-1181 (April 1983)].

10. Employees' speech is afforded Constitutional protection if they are speaking out on a matter of public concern and the speech is not disruptive to the performance of their duties [Neal & Quintero v. Rogers I. S. D., Dkt. No. 139-R7-679 (January 1983)].

Implications for Employees

Implications for employees which can be drawn from the decisions of the Commissioner are the following:

1. The local hearing should be treated as a formal legal proceeding; therefore, counsel should be retained [Hegar v. Frisco I. S. D., Dkt. No. 120-R1a-584 (February 1985)].
2. Appeals to the Commissioner must be timely filed to meet the competing needs of the employee and the board of trustees [Rand v. Columbia Brazoria I. S. D., Dkt. No. 139-R3-685 (August 1986)].

3. The Commissioner cannot set aside a local board decision on a nonrenewal if it is based on substantial evidence [Leftwich v. Harlington I. S. D., Dkt. No. 172-R1b-782 (December 1983)].

4. Lack of reasonable control in the classroom contributes to inefficiency and incompetency which are often cited as cause for nonrenewals and dismissals [Nance v. Grafford I. S. D., Dkt. No. 119-R1-683 (July 1983)].

5. Evaluations can withstand a substantial evidence review [Major v. East Central I. S. D., Dkt. No. 024-R1-1184 (July 1985)].

6. The initial burden of proof is on the employee if there are questions of violations of constitutional rights [Neal & Quintero v. Rogers I. S. D., Dkt. No. 139-R7-679 (January 1983)]. Then the burden of proof shifts to the school district to show other reasons unrelated to the exercise of the right [Mt. Healthy City School District v. Doyle, 429 U. S. 273 (1977)].

7. Evidence which is not presented at the local board hearing cannot be admitted in a later appeal to the Commissioner [Leftwich v. Harlington I. S. D., Dkt. No. 172-R1b-782 (December 1982)].
8. Information concerning retaliation for filing of grievances could make a difference in a board's decision if it is presented at the local hearing [Leftwich v. Harlington I. S. D., Dkt. No. 172-R1b-782 (December 1983)].

9. Employees' appeals to the Commissioner are less often granted than dismissed or denied.

Suggestions for Further Research

The limited number of research studies concerned with administrative appeals indicates a need for further research in this area. Suggestions for further studies in the appeals of employment decisions to state education officials are the following:

1. Research encompassing complaints of Texas school employees which have been taken to the state and federal courts could yield information valuable to school employees, administrators, and boards of trustees.

2. A study of employment complaints appealed to the Texas State Commissioner of Education from August 1986 to the present would continue information which could enhance school administrators' and school boards' decision making in matters of nonrenewals and terminations of employee contracts.

3. A study of career-ladder appeals could yield important information in this area. These appeals were only beginning to be decided at the time this study was concluded.
Conclusion

Although the decisions of the State Commissioner of Education are binding on school officials and school boards, they are not reported as are those decisions handed down by the courts. This study identified issues which have appeared in the appeals and tabulated the appeals granted and those dismissed or denied. It was found that of the one hundred thirty-one appeals included in this study, ninety-six were by employees under term contracts. Only nineteen appeals in term-contract cases were granted. Fifty of the term contract appeals were nonrenewals and only nine of these were granted. Nonrenewals are subject to a substantial evidence review, which means some evidence. Hence, the Commissioner granted few of the term-contract-nonrenewal appeals.

Sixteen employees serving a probationary term appealed to the Commissioner. These employees are not entitled to the provisions of the Term Contract Nonrenewal Act. Three appeals were granted to employees in this category, but only because it was determined that they were not probationary employees and were entitled to provisions of TCNA.

There had to be clear and convincing evidence in terminations of contracts because of the employee's property right in his contract. Six of twenty-three term contract termination appeals were granted, a larger percent than that found in granted nonrenewal appeals.

Sixteen probationary/continuing contract employee
appeals are included in this study. It was found in continuing contract appeals that the district must move very slowly in dissolving the employment relationship. There had to be good cause for the board's action. In addition, it was found that the return of a continuing contract teacher to probationary status required the same review as a release of the teacher at the end of a school year. Eleven of the continuing contract appeals were terminations or they had a return to probationary status issues. Five of the eleven appeals were granted, almost fifty percent. Only one appeal was brought by a probationary teacher who appealed her placement on a fourth year of probation without a hearing. A hearing in such a case is not required.

It was concluded that school employees can grieve the conditions of their work. The Commissioner will review appeals pertaining to grievances.

Career-ladder issues were just beginning to be decided when this study ended. Only one of the six career-ladder appeals in this study was granted.

In certificate suspension appeals, the Commissioner attempted to balance the needs of the individual with the needs of public education. Only one teacher received a reprimand for abandonment of contract; others received a more severe penalty.

Of those appeals which were denied, few were taken to the state court which was the next level of appeal.
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Shivers v. Liberty I. S. D., Dkt No. 163-R3-682 (January 1984)

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APPENDIX A

BRIEF
APPENDIX A

BRIEF

Identification of the case:

Citation: 

Date decided:

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Background and facts:

Issues:

Decision of the Commissioner:

Rationale for decision:
APPENDIX B

TABLE SHOWING AGREEMENT OR DISAGREEMENT WITH CASE ANALYSIS 
of ISSUES, DECISIONS, AND RATIONALE FOR DECISIONS

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| Agreement of Decisions, |
| or |
| Agreement of Rationale |

| Case: |

| Issues:, Decisions, or Rationale |

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| School law person:, |
| Law person:, |
| or |
| Government & politics person: |

| Agreement |
| or |
| Disagreement |

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THE ISSUES AND OUTCOMES IN CASES APPEALED TO THE COMMISSIONER
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**APPENDIX C**

**ISSUES IN APPEALS TO THE COMMISSIONER**

**TOTAL APPEALS =**
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OUTCOMES OF APPEALS TO THE COMMISSIONER

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TOTAL APPEALS =
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ISSUES AND DECISIONS OF THE COMMISSIONER
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ISSUES AND OUTCOMES OF COMMISSIONER DECISIONS

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CASES APPEALED TO THE STATE COMMISSIONER
### APPENDIX E

### CASES APPEALED TO THE STATE COMMISSIONER

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<td>Is the nonrenewal valid if petitioner was not notified of any reason that is in the policy adopted by the board concerning reasons for nonrenewal?</td>
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**Deason (continued)**

needed to be placed on level 2, by allotting 40 points based on the principal's testimony without allowing candidates to respond, in allotting 90 points to principal's testimony for teachers whose previous evaluations were lost, in not considering challenges to evaluations that were not brought by the teacher at the time the evaluations were presented and were not brought to the career ladder committee before the decision was made, in electing to make level 2 selections on a campus by campus basis, or in determining what constituted "educational accomplishments?"

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### ISSUES

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| | Was there evidence that Petitioner's termination was racially motivated or that the termination was in violation of the constitutional guarantee of equal protection under the law? | | AXIV
| | Was Petitioner provided with procedural due process? | | DP
| | Was the termination arbitrary, capricious, or unlawful? | | NON

| | Did plaintiff's contract allow reassignment of duties? | | REA

| | Since the money was available for staffing, was the TCNA provisions violated by the nonrenewal of the supervisor? | | ACSE

Milford v. Winnisboro I. S. D., Dkt. No. 031-R1a-1183 (September 1984) | Can a district's nonrenewal be appealed by employees if a probationary contract was in effect and the filing time for the complaint was six months late? | DIS | PT
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<td>Minola I. S.</td>
<td>Was the nonrenewal based on substantial evidence?</td>
<td>DP</td>
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<tr>
<td>D., Dkt. No. 111-R1a-382 (July 1983)</td>
<td>Did the board act unlawfully by placing Petitioner on probation?</td>
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<td></td>
<td>Were the reasons for the proposed nonrenewal so vague and non-specific as to render the nonrenewal arbitrary, capricious, or unlawful?</td>
<td>ACSE</td>
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<tr>
<td>Phariss v.</td>
<td>Is a teacher with probationary status entitled to protection of the Term Contract Nonrenewal Act?</td>
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<td>Does a contract exist if the school board fails to notify a teacher in writing by April 2 that it is considering nonrenewal of the contract?</td>
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<tr>
<td>D., Dkt. No. 183-R1b-1083 (October 1984)</td>
<td>Is misappropriation of funds good cause for termination?</td>
<td>DEN</td>
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<tr>
<td>Coolidge I. S.</td>
<td>Is an attorney's failure to understand the dates and deadlines for filing &quot;good cause&quot; for extending the filing date?</td>
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<td>D., Dkt. No. 139-R3-885 (August 1986)</td>
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<td>Richter v. Northside I. S. D., Okt. N. 215-R3-885 (June 1986)</td>
<td>If a teacher is returned from a continuing contract to probationary status, must the school district counsel about perceived deficiencies and place the teacher on an improvement program which would include specific recommendations for improvement, specific activities to accomplish improvement, and specific time lines to have improvement observed?</td>
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<td>GC</td>
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<td>Roberts v. Dimmit I. S. D., Okt. No. 184-R1a-782 (March 1983)</td>
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<td></td>
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<tr>
<td>Ruiz v. Southwest I. S. D., Okt. No. 133-R1b-983 (May 1984)</td>
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<td>ACSE</td>
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<tr>
<td>Ruiz v. Robstown I. S. D., Okt. No. 752-R3-883 (March 1984)</td>
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<td>DIS</td>
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<tr>
<td>Salinas v. Ben Bolt Palito</td>
<td>Can a board nonrenew a term contract in the absence of a recommendation for nonrenewal by the administration? Was the nonrenewal arbitrary, capricious, or not based on substantial evidence?</td>
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<tr>
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<td>DP</td>
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<td>Is a full evidentiary hearing allowed at the commissioner level?</td>
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<td>AXIV</td>
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<td>Was the board's enactment of Policy 5-09 (renewal and nonrenewal of contracts) and its immediate use a denial of due process of law?</td>
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<td>Was a nonrenewal decision before a hearing a violation of the impartiality requirement of the Due Process Clause of the Fourteenth Amendment and Civil Rights Act of 1871?</td>
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<td>Was the nonrenewal decision arbitrary, capricious, unlawful, or not based on substantial evidence?</td>
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<td>Is a case in default if the appealing party fails to appear at the appointed time and place?</td>
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<td>Can a board give a fair hearing if a case is discussed outside the board meeting and a private investigation carried out?</td>
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<td>Is an evaluator's statements regarding effective recruitment of players, utilization of practice time, etc. substantial evidence for nonrenewal?</td>
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<td>ACSE</td>
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<td>Can a board give a fair hearing if a case is discussed outside the board meeting and a private investigation carried out?</td>
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<td>Seifert v. Lingleville I. S. D., Dkt. No. 174-R1a-782 (January 1983)</td>
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<td>ACSE</td>
<td>E</td>
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<tr>
<td>Sellers v. Evant I. S., Dkt. No. 163[2]-r1-680 (January 1983)</td>
<td>Was Petitioner's rights violated by the board's refusal to give reasons for the nonrenewal and refusing to have a hearing? Was Petitioner's exercise of free speech a motivating factor in the board's decision to nonrenew her contract? Were Petitioner's liberty rights violated by the principal's threat to prevent future employment?</td>
<td>DP</td>
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<tr>
<td>Shelton v. Aquilla I. S. D., Dkt. No. T33-R1-482 (June 1983)</td>
<td>Can a teacher on &quot;sick leave&quot; prevent termination under TEC Section 13.905a which prohibits termination of employees while they are on temporary leave of absence? Can a board nonrenew a teacher's contract without a recommendation to that effect from the administration?</td>
<td>PT</td>
<td>DEN</td>
</tr>
<tr>
<td>Shivers v. Liberty I. S. D., Dkt. No. T63-R3-582 (January 1985)</td>
<td>Is a teacher's comments regarding a school's discipline plan considered failure to meet accepted standards of conduct for the profession? Are comments on discipline protected speech? Is one incidence of rudeness considered responding to supervision with insubordination and disrespect?</td>
<td>GRA</td>
<td>FA</td>
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<td>Smith v. Progreso I. S. D., Dkt. No. 086-R1a-284 (July 1985)</td>
<td>Can a teacher be dismissed for failure to adhere to board policy? ACSE</td>
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<tr>
<td>Stevens v. Westaco I. S. D., Dkt. No. 180-R2-782 (February 1986)</td>
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<td></td>
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<tr>
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<td>Was the district's phasing out of the migrant program in which Plaintiff was teaching substantial evidence for nonrenewal of her contract? GRA</td>
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<td>Tyler v. Galveston I.S.D., Okt. No. 132-R1b-783 (November 1984)</td>
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<td>GC DEN</td>
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<td>Vela v. Corpus Christi I.S.D., Okt. No. 735-R8-783 (April 1984)</td>
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<td>C GC AV DP</td>
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<td>Villa v. Marathon I.S.D., Okt. No. 104-R1b-583 (April 1984)</td>
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<td>AF GC AC(SE)</td>
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<td>Wan v. Pearsall I. S. D., Dkt. No. 162-R1b-682 (July 1983)</td>
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</tr>
<tr>
<td>Watson v. Leon I. S. D., Dkt. No. 158-R1a-582 (May 1983)</td>
<td>Had the board failed to establish policies for nonrenewal as required by section 21.203(b) of TEC?</td>
<td>Were the reasons for dismissal a pretext for discrimination based on sex or a reprisal for First Amendment activities of the husband who ran unsuccessfully for the school board?</td>
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<td>Whalen v. Rocksprings I. S. D., Dkt. No. 085-R1b-284 (July 1985)</td>
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<td>Was termination without legal justification, unlawful, and improper?</td>
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Note: The table entries include abbreviations for different outcomes or issues, but the specific meanings of these abbreviations are not provided in the text.
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<td>REM</td>
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<td>Remanded to the local board for a transcript of the hearing.</td>
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<td>Okt. No. 185-R1a-782</td>
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<td>(October 1982)</td>
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<td>Wilson v.</td>
<td>Was the school district's process for selecting teachers for placement on the career ladder fundamentally flawed because the scores of all teachers on a campus were used to determine the mean score rather than only scores from those who have the experience and education to qualify for placement?</td>
<td>DEN</td>
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<td>LaMarcus I.</td>
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<td>S. D., Okt. No. 144-R9-1285 (July 1986)</td>
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<td>Was the elimination of teachers from consideration for career ladder placement arbitrary and/or capricious if there is evidence of the following: (1) if documentation is not given with the career ladder application; (2) if teachers were not informed that documentation was not supplied; (3) if the district was not clear on the time limit for completing documentation?</td>
<td>GRA</td>
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<td>Womble &amp; Galloway v.</td>
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APPENDIX F

CHAPTER 157  HEARINGS AND APPEALS

TEXAS ADMINISTRATIVE CODE
CHAPTER 157

HEARINGS AND APPEALS

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SUBCHAPTER A. HEARINGS AND APPEALS GENERALLY

Authority: The provisions of this Chapter 157 issued under Acts 1975, 64th Leg., p. 136, ch. 61, effective January 1, 1976, as amended (Texas Civil Statutes article 6252-13a), unless otherwise noted.

Source: The provisions of this Chapter 157 adopted April 1976 to be effective May 5, 1976, 1 TexReg 1046; amended July 1983, to be effective August 4, 1983, 8 TexReg 2760, unless otherwise noted.

§157.1 Nature of Hearings and Appeals.

Statutory Citations

(1) General Authority.

Texas Education Code §11.25(a)(b):

"(a) The state commissioner of education shall be the executive officer through whom the State Board of Education shall carry out its policies and enforce its rules and regulations.

"(b) The State Board of Education shall have power to review the commissioner's application of the board's rules and regulations."

Texas Education Code §11.13(a)-(c):

"(a) Persons having any matter of dispute among them arising under the school laws of Texas or any person aggrieved by the school laws of Texas or by actions or decisions of any board of trustees or board of education may appeal in writing to the commissioner of education, who, after due notice to the parties interested, shall hold a hearing and render a decision without cost to the parties involved, but nothing contained in this section shall deprive any party of any legal remedy.

"(b) Appeals by or on behalf of a student against a local school district shall be reviewed by the commissioner of education under a substantial evidence standard of review.

"(c) Any person, county, or school district aggrieved by any action of the Central Education Agency or decision of the commissioner of education may appeal to a district court in Travis County, Texas. Appeals shall be made by serving the commissioner of education with citation issued and served in the manner provided by law for civil
suit. The petition shall state the action or decision from which the appeal is taken. Upon trial the court shall determine all issues of law and fact."

See also the Administrative Procedure and Texas Register Act, Article 6252-13a, V.T.C.S.

(2) Teacher certificates.

Texas Education Code §13.046(b)-(e):

"(b) Before any certificate shall be suspended or cancelled the holder shall be notified and shall have an opportunity to be heard. Any person whose certificate is suspended or cancelled by the state commissioner of education may appeal to a district court in Travis County.

"(c) The state commissioner of education has the authority, upon the presentation of satisfactory evidence, to reinstate any teacher's certificate suspended or cancelled under the provisions of this section. On a refusal of the commissioner so to reinstate a certificate, the applicant may appeal to a district court in Travis County.

"(d) The state commissioner of education may suspend a teacher's certificate under the terms of this section for a period not to exceed one year.

"(e) The state commissioner of education shall have the right to reprimand a teacher, rather than to suspend or cancel that teacher's certificate, in those cases the commissioner deems appropriate. A reprimand shall not be appealable.

(3) Probationary and continuing teacher contracts.

Texas Education Code §13.115(a)-(d):

"(a) If the board of trustees shall order the teacher discharged during the school year under §13.109 of this code, the teacher shall have the right to appeal such action to the commissioner of education, for review by him, provided notice of such appeal is filed with the board of trustees and a copy thereof mailed to the commissioner within 15 days after written notice of the action taken by the board of trustees shall be given to the teacher; or, the teacher may challenge the legality of such action by suit brought in the district court of any county in which such school district lies within 30 days after such notice of the action taken by the board of trustees has been given to the teacher.
"(b) If the board of trustees shall order the continuing contract status of any teacher holding such a contract abrogated at the end of any school year and such teacher returned to probationary contract status, or if the board of trustees shall order that any teacher holding a continuing contract be dismissed at the end of the school year, or that any teacher holding a probationary contract shall be dismissed at the end of a school year before the end of the employment period covered by such probationary contract, the teacher affected by such order, after filing notice of appeal with the board of trustees, may appeal to the commissioner of education by mailing a copy of the notice of appeal to the commissioner within 15 days after written notice of the action taken by the board of trustees has been given to the teacher.

"(c) Either party to an appeal to the commissioner shall have the right to appeal from his decision to a district court in Travis County."

(4) Other.

Proprietary schools. Texas Education Code, Chapter 32, Subchapter E.

Term contract non-renewal. See §157.64 of these rules.

Rule

(a) Persons having any matter of dispute among them arising under the school laws of Texas or any person aggrieved by the school laws of Texas or by actions or decisions of any board of trustees or board of education may appeal in writing to the commissioner of education who, after due notice to the parties interested, shall hold a hearing and render a decision without cost to the parties involved save and except where provided for in this chapter, but nothing contained in this chapter shall deprive any party of any legal remedy.

(b) This chapter shall govern the proceedings in all contested cases before the commissioner, including, but not limited to, the following:

(1) Appeals from actions or decisions by a district board of trustees or board of education.

(2) Appeals from actions or decisions by a county superintendent.

(3) Proceedings concerning recommendations made to the commissioner by the Teachers' Professional Practices Commission.

(4) Any other proceedings concerning the suspension, revocation or cancellation of a certificate or permit which would entitle a person to hold a position as an educator.
(5) Appeals brought pursuant to the Texas Proprietary School Act.

(6) Proceedings involving enforcement actions against a school district or other entity by any division of the State Department of Education where the opportunity for a full evidentiary hearing must be afforded.

(c) The decisions of the commissioner of education shall be subject to review by or appeal to the State Board of Education except where the commissioner's decision is made final by law or made directly appealable to court.

Source: The provisions of this §157.1 amended July 1984 to be effective August 14, 1984, 9 TexReg 4179; amended May 1985 to be effective June 3, 1985, 10 TexReg 1621.

§157.2 Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

Agency - The Central Education Agency.

Board - The State Board of Education.

Commissioner - The State Commissioner of Education.

Contested case - A proceeding in which the legal rights, duties or privileges of a party are to be determined by the commissioner and/or the board after an opportunity for adjudicative hearing.

Hearing (or adjudicative hearing) - An opportunity for the parties to present all evidence which is relevant and material to any issue which must be resolved in order to properly dispose of the case and to present argument concerning the merits of their respective positions. When an appeal under these rules is permitted to be resolved by a review of the record of appeal, the term "hearing" (or "adjudicative hearing") shall mean an opportunity for the parties to present argument concerning the merits of their respective positions.

Hearing officer - Any person or persons designated or appointed by the commissioner to conduct hearings or prepare or assist in preparing proposals for decision on matters within the agency's jurisdiction.

Intervenor - Any party who has been permitted to intervene as provided for in this chapter.
Party - A person who has appeared in a contested case or who has filed timely notice of interest to appear, and who has not been dismissed or excluded by the commissioner. Public or private organizations shall designate a party representative for the purpose of any proceeding.

Person - Any individual, partnership, corporation, association, governmental subdivision, department or division of the State of Texas, or public or private organization of any character.

Petitioner - A party seeking review or action or both from the commissioner or the board.

Pleading - Any document filed by a party pertaining to a hearing or appeal.

Proceeding - Any appearance, properly noticed, before the commissioner at which all parties are present and have an opportunity to participate affecting the disposition of an appeal filed with the commissioner.

Respondent - Any party named as such by petitioner.

§157.3 Object and Scope of this Chapter.

(a) The purpose of this chapter is to provide for a simple and efficient system of procedure before the agency in order to ensure uniform standards of practice and a fair and expeditious determination of causes. The provisions of this chapter shall be liberally construed with a view towards the purpose for which they were adopted.

(b) The provisions of this chapter shall govern the procedure for the institution, conduct and determination of all contested cases before the agency. They shall not be construed so as to enlarge, diminish, or modify or alter the jurisdiction, powers or authority of the agency or the substantive rights of any person.

§157.4 Classification of Parties.

Parties to proceedings before the agency are petitioners, respondents and intervenors. Regardless of errors as to designations in their pleadings, the parties shall be accorded their true status in the proceeding.

§157.5 Parties in Interest.

Any party in interest may appear in any contested case before the agency. Ordinarily, parties in interest will be the petitioner and the respondent. The agency may be a party in interest in any contested
case. Any person may be permitted to intervene in support of or opposition to all or part of the relief sought in any contested case. Permission to intervene may be granted by the commissioner upon the filing at least 10 days in advance of the hearing date of a petition in intervention showing the intervenor's interest and the basis for its position in the case. Intervention by any party shall be subject to a motion to strike upon the showing that the intervening party has no justiciable or administratively cognizable interest in the case.

§157.6 **Appearances.**

Any party allowed to appear may be represented by an attorney-at-law authorized to practice law before the Supreme Court of the State of Texas. Any person may appear on his or her own behalf, or, if a minor, by his or her next friend. A corporation, partnership, association, or governmental agency may appear and be represented by any bona fide officer, partner or fulltime employee thereof. The commissioner may require persons appearing in a representative capacity to provide such evidence of their authority as the commissioner may deem necessary.

§157.7 **Conduct and Decorum.**

All parties, witnesses, attorneys or other representatives shall comport themselves in all proceedings with proper dignity, courtesy and respect for the agency, the commissioner, the hearing officer, the board, and all other parties. Counsel shall remain seated at the tables designated for the parties at all times, except when standing to address the presiding officer, when introducing documentary evidence, or when permitted to do otherwise by the officer presiding over the proceedings. Disorderly conduct will not be tolerated. Attorneys and other representatives of any party shall observe and practice the standards of ethical behavior prescribed for attorneys at law by the State Bar of Texas. The commissioner may refuse to allow any person to appear in any proceeding before the agency who fails to observe the agency's rules.

Source: The provisions of this §157.7 amended July 1984 to be effective August 14, 1984, 9 TexReg 4179.

§157.8 **Communication With Parties in a Contested Case by Agency Personnel.**

The members of the State Board of Education, the commissioner and members or employees of the agency assigned to render a decision or to make findings of fact and conclusions of law in a contested case shall not communicate, directly or indirectly, in connection with any issue of fact or law with any party or any party's representative, unless all parties are given notice and an opportunity to participate; nor shall such employees of the agency communicate, directly or indirectly, in
connection with any issue or fact or law with the commissioner, other 
hearing officers or state board members except as authorized by the 
Administrative Procedure and Texas Register Act. In the disposition of 
ex parte matters that are required by law this section does not apply.

§157.9 Classification of Pleadings.

Pleadings filed with the agency in contested cases shall include, 
but not be limited to, petitions, answers, replies, exceptions, motions 
and notices of hearing. Regardless of any error in the designation of a 
pleading, it shall be accorded its true status in the proceeding in 
which it is filed.

§157.10 Form and Content of Pleadings.

All pleadings and briefs filed with the agency shall be legibly 
handwritten, typewritten, or printed upon paper 8-1/2 inches wide and 11 

inches long with an inside margin at least one inch wide and an outside 
margin at least 1/2 inch wide. Exhibits annexed thereto shall be the 
same size. Reproductions are acceptable, provided that all copies are 
clear and permanently legible.

§157.11 Filing of Documents.

(a) All petitions, motions, replies, answers, notices and other 
pleadings related to any case pending or to be instituted before 
the agency shall be filed with the hearing officer designated to 
preserve in the case or with the commissioner if no hearing officer 
has been designated. These documents shall be deemed filed only 
when actually received by the designated hearing officer or the 
commissioner (accompanied by the appropriate fee or deposit, if 
any, required by statute or agency rules) except as provided in 
subsection (b) of this section.

(b) Documents may be filed by mail if sent by United States mail, cer-
tified or registered, postage prepaid, properly addressed. Any 
documents so filed will be deemed to have been timely filed if a 
postmark or other evidence satisfactorily demonstrates that the 
documents were mailed prior to the deadline for filing the docu-
ments and the documents were actually received within 72 hours 
after the deadline for filing. Except as to the time for filing of 
a motion for rehearing relating to a decision by the board of edu-
cation, the commissioner or the board shall have the right to waive 
the compliance with filing deadlines in instances where a good 
faith attempt to meet a deadline has been made by a party.

§157.12 Copies of Documents Sent to Other Parties.

(a) Service of pleadings. All pleadings must be served on all other 
parties by either personal delivery or certified mail. If a party 
has an attorney who has been identified in the papers of the case
the attorney shall be the person who shall be served instead of the party. If the commissioner determines that a party willfully failed to send a copy to any other party, the commissioner may disallow the filing of the document; in any event, whether the failure was willful or not, the commissioner may order a continuance.

(b) Certificate of service. If the party who files a pleading certifies that a copy has been served on the other parties, that certification, in and of itself, is sufficient evidence of such act if not contested by any other party. The following form of certificate shall be sufficient in this connection:

I hereby certify that I have this ______ day of ______, served copies of the foregoing pleading upon all other parties of record to this proceeding, by (here state the manner of service).

Signature

§157.13 Motions.

Any motion relating to a pending case, unless made at a proceeding of record, shall be in writing and shall set forth the relief sought and the specific reasons and grounds supporting the motion. Unless the provisions of this chapter specify a time for filing, all motions or other matters to be filed must be filed at a time sufficiently far in advance of the hearing date or the date action is requested to be taken to give the commissioner, hearing officer or board time to consider the motion and act thereon.


Any pleading may adopt and incorporate, by specific reference thereto, any part of any document or entry in those official files and records of the agency which are public record.

§157.15 Amendments.

A party offering an amendment to any pleading within 14 days of the date set for a hearing on the merits must first obtain written permission from the commissioner. The commissioner may, on the commissioner's own initiative or on the motion of any party to the case, postpone or continue any proceeding if an amendment is allowed which materially alters the position of the amending party.
§157.16 Prehearing Conference.

(a) In any case, the commissioner, on the commissioner’s own motion or the motion of a party, may direct the parties, their attorneys or other representatives to appear at a specific time and place for a conference prior to a hearing on the merits for the purposes of formulating issues and considering:

1. the simplification of issues;
2. admissions of certain assertions of fact or stipulations;
3. the procedure at the hearing on the merits, including the order in which evidence is to be presented;
4. any limitation, where possible, of the number of witnesses; and
5. such other matters as may aid in the simplification of the proceedings or the disposition of the matters in controversy, including settlement of the issues in dispute.

(b) Action taken at the conference shall be recorded in an appropriate manner by the commissioner, unless the parties enter into a written agreement, approved by the commissioner, that the conference shall not be recorded.

§157.17 Location and Nature of Hearing.

All proceedings conducted in any case shall be open to the public. All proceedings shall be held in Austin, Texas unless for good and sufficient cause the commissioner has designated another place for a proceeding in the interest of the public.

§157.18 Transcripts.

The proceedings in a case shall be transcribed at agency expense if the case is not disposed of prior to the issuance of a proposal for decision, or, if no proposal is issued, prior to a decision of the commissioner.

§157.19 Motions for Postponement.

(a) Any proceedings may be postponed on the commissioner’s own motion or on a written motion for postponement filed by a party not less than 10 days prior to the designated hearing date which shows good cause for the postponement. The commissioner need not hold a hearing on a motion for postponement, but shall promptly notify all parties of any postponement. Copies of motions for postponement must be sent to all parties of record.
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(b) In the event that all parties and the commissioner agree to a postponement, no written motion shall be required.

(c) In the event of exceptional circumstances requiring a postponement within 10 days prior to the designated hearing date, an oral motion for postponement may be granted after the commissioner has discussed the matter with both parties.

(d) If a proceeding cannot be held on the date for which it was set because of a previously scheduled proceeding still in progress, no formal order for postponement shall be necessary. In such event, the parties and agency shall cooperate in holding the delayed proceeding on the earliest possible date.

§157.20 Agreements Between the Parties.

The commissioner may require any stipulation or agreement between the parties to be in writing.

§157.21 Computing Time; Extensions.

(a) In computing any period of time governing hearing procedures which is prescribed or allowed by this chapter, the period shall begin on the day immediately following the act or event in controversy and conclude on the last day of such computed period, unless it be a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the first day following which is not a Saturday, Sunday or legal holiday.

(b) Unless otherwise provided by statute, the period for filing any pleading may be extended by the commissioner, upon written motion duly filed with the commissioner prior to the expiration of the applicable period of time for the filing of the same, showing there is good cause for such extension of time and that the need for the extension is not caused by the neglect, indifference or lack of diligence of the movant. A copy of such motion shall be served upon all other parties of record at the same time. Any party may file a written pleading contesting a motion to extend. This pleading must be served on all parties of record at the time it is filed.

(c) In all cases, the commissioner may shorten or extend the time specified for filing any documents if the interests of justice so require.

Source: The provisions of this §157.21 amended May 1985 to be effective June 3, 1985, 10 TexReg 1621.
S157.22 Dismissal Without Hearing.

The commissioner of education may dismiss a case without a hearing for the following reasons: failure to prosecute, unnecessary duplication of proceedings, res judicata, withdrawal, mootness, untimely filing, lack of jurisdiction, failure of a party requesting relief from the commissioner to set forth facts in its pleadings which would support a decision in that party's favor, and failure to state a cause of action upon which relief may be granted.

Source: The provisions of this §157.22 adopted May 1985 to be effective June 3, 1985, 10 TexReg 1621.
SUBCHAPTER B. HEARINGS OF APPEALS TO THE COMMISSIONER

§157.41 Procedure.

The rules as set forth under Subchapter A of this chapter (relating to Hearings and Appeals Generally) shall apply to all proceedings before the commissioner except where made inapplicable by a conflicting provision of this chapter.

Source: The provisions of this §157.41 amended May 1985 to be effective June 3, 1985, 10 TexReg 1621.

§157.42 Presiding Officer.

The commissioner may designate and appoint a hearing officer to act on his behalf in conducting any hearing or proceeding within the jurisdiction of the agency or authorized by these rules, and to prepare or assist in preparing proposals for decision on such hearings or proceedings. The designated hearing officer shall have the authority to administer oaths, to examine witnesses, to rule on motions, and to rule upon the admissibility of evidence and amendments to pleadings. The hearing officer shall have the authority to recess any proceeding from day to day. If the presiding hearing officer is removed, dies, becomes disabled or withdraws from a case any time before the hearing officer’s duties are completed, the commissioner may designate another presiding hearing officer to perform any function which remains to be done without the necessity of repeating any previous proceedings in the case.

§157.43 Notice of Appeal.

(a) Where a case involves an appeal from an action or decision by any of the entities listed in §157.1(b) of this title (relating to Nature of Hearings and Appeals), within 30 days after the decision, ruling or failure to act complained of is communicated to the party making the appeal, notice of appeal shall be sent to the commissioner and to the entity rendering the decision or ruling or failing to act. In all cases (including appeals brought pursuant to the Term Contract Nonrenewal Act), when a decision is announced in the presence of the petitioner or the petitioner’s counsel at a hearing of record, the announced decision shall constitute communication to the petitioner.

(b) This section is inapplicable to proceedings concerning the suspension or cancellation of a certificate or permit or to any other proceeding to which the Central Education Agency is a party.

Source: The provisions of this §157.43 amended July 1984 to be effective August 14, 1984, 9 TexReg 4479.


§157.44 Petition for Review.

(a) The aggrieved party shall file with the commissioner a petition for review within 60 days after the decision, order or ruling complained of is communicated to the party making the appeal. The petition for review shall identify the ruling, action or failure to act complained of; state what action the petitioner wants the commissioner of education to take on the petitioner’s behalf; and state why the petitioner is entitled to have such action taken. It shall not be sufficient for the petitioner to allege generally that the petitioner’s rights have been violated pursuant to a particular state or federal statute, constitutional provision, or local school board policy. The petitioner must clearly set forth the facts of which the petitioner is aware or which the petitioner believes to be true, which would lead to a reasonable conclusion that the petitioner’s rights might have been violated in such a way that entitles the petitioner to relief from the commissioner. Nothing in this section shall be construed to require the petitioner to plead all evidence which the petitioner ultimately intends to present to the commissioner on the merits.

(b) The commissioner may refuse to docket any case in which the petition for review fails to comply with this section. In order to afford an opportunity for review of this decision, the commissioner shall, on the request of the petitioner, docket the case and render a decision on the matter.

(c) The commissioner may deny the petitioner the opportunity to present evidence concerning any issue not raised by the petition for review.

(d) A petition for review and a notice of appeal may be incorporated in the same document.

§157.45 Answers.

The respondent shall file an answer within 20 days after receiving notice from the commissioner that the case has been docketed. The answer shall specifically address every allegation in the petition for review and shall set forth all affirmative defenses. A general denial will not comply with this section. Any allegation not specifically denied will be deemed admitted. The commissioner may deny the respondent the opportunity to present evidence concerning any fact in the petitioner’s pleading which is not specifically denied or any affirmative defense which is not raised by the answer.

§157.46 Request for a More Definite and Detailed Statement.

The commissioner may, on the timely motion of any party, require a more definite and detailed statement of matters contained in any pleading.
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§157.47 **Orders of the Hearing Officer.**

Any order of the hearing officer may be communicated to the parties by letter signed by the hearing officer.

§157.48 **Notice and Hearing Date.**

The commissioner shall give notice of the date and time of any proceeding to the parties at least 10 days before the hearing is to take place.

§157.49 **Briefs.**

Upon timely request, all parties shall be afforded the opportunity to file briefs. They shall conform, as near as may be, to the requirements in this chapter for forms of pleadings. The points involved shall be concisely stated. The evidence in support of each point shall be cited specifically by exhibit number or by page and line number in the transcript of the proceedings or both. The argument and authority shall be organized and directed to each point in a concise and logical manner. Briefs shall contain a table of contents and an index of authorities.

§157.50 **Evidence.**

(a) In all contested cases, the rules of evidence shall apply, pursuant to Texas Civil Statutes article 6252-13a, §14.

(b) Except where a substantial evidence review is authorized by statute, the burden shall be on the party requesting relief from the commissioner to prove its case by a preponderance of the evidence.

Source: The provisions of this §157.50 amended May 1985 to be effective June 3, 1985, 10 TexReg 1621.

§157.51 **Documentary Evidence; Official Notice; Exhibits.**

(a) In connection with any case, official notice may be taken of all facts judicially cognizable. In addition, notice may be taken of generally recognized facts within the area of the agency's specialized knowledge. All parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material officially noted, including any staff memoranda or data and they must be afforded an opportunity to contest the material so noted. The special skills or knowledge of the agency and its staff may be utilized in evaluating the evidence.
(b) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. On request, all parties shall be given the opportunity to compare the original and the copy. When numerous documents are offered, the commissioner may limit those admitted to a number which are typical and representative, and may at the commissioner's discretion require the abstracting of the relevant data from the documents and the presentation of the abstracts in the form of an exhibit. The commissioner shall require that all parties of record or their representatives be given the right to examine the document from which such abstracts were made.

(c) Documentary exhibits, whenever possible, shall be of a size which may be filed in an 8½ x 11 inch file folder.

(d) Each party shall tender an original of each exhibit to the reporter for identification, and shall furnish one copy of each exhibit to the commissioner and one copy to each other party of record.

(e) In the event an exhibit has been identified, objected to and excluded, the commissioner shall determine whether or not the party offering the exhibit withdraws the offer, and if so, permit the return of the exhibit to that party. If the excluded exhibit is not withdrawn, it shall be given an exhibit number for identification, shall be endorsed by the commissioner with the commissioner's ruling, and shall be included in the record for the purpose only of preserving the exception.

(f) Unless specifically directed by the commissioner, no exhibit will be permitted to be filed in any case after the conclusion of a hearing on the merits. Copies of any late-filed exhibit shall be served on all parties of record and all parties shall be afforded an opportunity to respond thereto.

§157.52 Witnesses; Discovery; Depositions; Interrogatories.

(a) All witnesses at a hearing shall testify under oath.

(b) A party may conduct cross-examination.

(c) The commissioner may limit the number of witnesses whose testimony is merely cumulative.

(d) Following a written request by a party, the commissioner may issue a commission authorizing the taking of a deposition of a witness. Depositions may be taken by non-stenographic means. Such commission shall be issued only after a showing of good cause and deposit of sums sufficient to ensure payment of expenses incident to the deposition. The use of any deposition in any case shall be governed by the Administrative Procedure and Texas Register Act.
(e) Following a written request and the submission of proposed interrogatories by a party, the commissioner may allow a party to serve written interrogatories on any other party of record. The commissioner may limit the scope and number of interrogatories. In no event shall interrogatories require more than 30 separate answers. The interrogatories shall be answered separately and under oath. The party to whom the interrogatories are addressed shall file the answers to the interrogatories with the commissioner within 30 days following the receipt of the commissioner's order allowing the interrogatories, unless the commissioner shortens or extends the time.

(f) At any time after the respondent has made appearance in a contested case, a party may cause to be delivered to any other party a written request for the admission by such party of the genuineness of any relevant documents described in and exhibited with the request or of the truth of any relevant matters of fact set forth by the request. The rules for said request shall be those described in Texas Rules of Civil Procedure, Rule 169.

(g) If any party refuses to obey an order for discovery made under this subchapter, the commissioner may make such orders in regard to the refusal as are just, including, among others, the following:

1. an order that the character or description of the thing (or the contents of the paper) in controversy or any other designated facts shall be taken as established for the purposes of the action;

2. an order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing in evidence designated documents or things or items of testimony; or

3. an order striking out pleadings or parts thereof, staying further proceedings until the order is obeyed, dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party.

Source: The provisions of this §157.52 amended May 1985 to be effective June 3, 1985, 10 TexReg 1621.

§157.53 Summary Judgment.

Any party may, at any time after the adverse party has appeared or answered, move for a summary judgment in the moving party's favor. The motion for summary judgment shall state the specific grounds therefor and shall comply in all respects with the rules then in effect governing summary judgments in the state courts of law of the State of Texas. The
commissioner may set the motion for oral argument or request briefs from the parties concerning the merits of the motion or both; or the commissioner may dismiss the motion if it fails to comply with the requirements of this section or if, on its face, it is not meritorious. A decision by the commissioner to dismiss a motion for summary judgment shall not be reviewable.

§157.54 Subpoenas.

(a) Following a written request by a party or on the commissioner's own motion a subpoena for the attendance of a witness from any place in the State of Texas at a proceeding in a pending case may be issued by the commissioner.

(b) Motions for subpoenas to compel the production of books, papers, accounts or documents shall be addressed to the commissioner, shall be verified, and shall specify as nearly as possible the books, papers, accounts or documents desired and the material and relevant facts to be proved by them. If the matter sought is relevant, material and necessary and will not result in harassment, imposition, or undue inconvenience or expense to the witnesses who are required to produce the same, the commissioner may issue a subpoena compelling production of books, papers, accounts or documents as deemed necessary.

(c) Subpoenas shall be issued only after a showing of good cause and deposit of sums sufficient to ensure payment of expenses incident to the subpoenas. The party requesting a subpoena shall deposit with the docket clerk, Division of Hearings and Appeals, a check made payable to the individual subpoenaed in the amount established by the Administrative Procedure and Texas Register Act as the witness's compensation. Information concerning the proper amount to be submitted may be obtained prior to the request for a subpoena from the docket clerk, who shall compute the amount due on the basis of the official state mileage guide. Such compensation shall be provided to any person who is not a party or a party designate.

§157.55 Order of Procedure.

(a) The petitioner shall present its case, the respondent or respondents shall next present its or their case and the petitioner shall then present its case in rebuttal. In those cases where there is more than one petitioner, the petitioner whose pleading was deemed officially filed first shall present its case. The petitioners next in line shall then proceed followed by the respondent or respondents. Petitioners shall present their case in rebuttal in the same order as their original presentations.

(b) Notwithstanding the provisions of subsection (a) of this section, the commissioner may, in the interests of expediting or simplifying the proceedings, require any party to present its evidence
concerning a particular issue at any time and in any order, provided that no party shall be denied the opportunity to present all evidence that is relevant and material to any issue which must be resolved in order to properly dispose of the case.

(c) The parties may be allowed, in the discretion of the commissioner, to make opening or closing statements or both with the petitioner or petitioners going first.

(d) In any case where a party is represented by more than one attorney, the commissioner shall require such party to designate a lead counsel who shall conduct the case for that party. The commissioner may allow substitution of the lead counsel.

§157.56 Offer of Proof.

When testimony on direct examination is excluded by ruling of the commissioner, the party offering such evidence shall be permitted to make an offer of proof by eliciting from the witness said testimony to be placed in a bill of exception and such offer of proof shall be sufficient to preserve the point for review. Alleged error in sustaining an objection to questions asked on cross-examination may be preserved without making an offer of proof.

§157.57 Formal Exceptions.

Formal exceptions to rulings of the commissioner during a hearing shall be unnecessary. It shall be sufficient that the party, at the time any ruling is made or sought, made known to the commissioner the action which the party desired, or the party's objection to the action of the commissioner and the grounds therefor.

§157.58 Corrections to the Transcript.

Suggested corrections to the transcript of the record must be offered within 10 days after the transcript is filed unless the commissioner permits suggested corrections to be offered thereafter. Suggested corrections shall be served in writing upon each party of record, the official reporter, and the commissioner. If suggested corrections are not objected to, the commissioner may direct the corrections to be made and the manner of making them. In case the parties disagree on suggested corrections, they may be heard by the commissioner, who shall then determine the manner in which the record shall be changed, if at all.

§157.59 Proposal for Decision.

If in a contested case the commissioner has not heard the case or read the record, the decision, if adverse to a party other than the agency, may not be made until a proposal for decision is served on the parties, and an opportunity is afforded to each party adversely affected
to file exceptions and present briefs to the commissioner. The proposal for decision must be timely rendered and contain a statement of the reasons for the proposed decision and of each finding of fact and conclusion of law necessary to the proposed decision, prepared by the person who conducted the hearing or by any hearing officer who has read the record. The parties by written stipulation may waive compliance with this section.

§157.60 Filing of Exceptions and Replies in Response to a Proposal for Decision.

(a) Any exceptions by a party of record to the proposal for decision must be filed within 20 days after receipt of the proposal. Any replies to those exceptions must be filed within 15 days after the date on which the exceptions are filed. A request for extension of time within which to file exceptions or replies shall be filed with the commissioner, and a copy thereof shall be served on all other parties of record by the party making such request.

(b) Exceptions and replies to a proposal for decision shall conform as nearly as possible to the requirements in this chapter concerning form of pleadings. The specific exceptions shall be concisely stated. The evidence relied upon shall be pointed out with particularity by citation to specific exhibits or to specific pages and line numbers in the transcript of the proceedings before the commissioner and such evidence shall be grouped under the exceptions to which the evidence relates.

(c) In the absence of good cause, no issue may be raised for the first time in a party's exceptions to the proposal for decision.

Source: The provisions of this §157.60 amended May 1985 to be effective June 3, 1985, 10 TexReg 1621.

§157.61 Decision.

(a) A decision in a contested case must be timely rendered in writing or stated in the record.

(b) Parties shall be notified either personally or by mail of any decision or order. A copy of the decision or order shall be delivered or mailed to all parties of record.

(c) All decisions of the commissioner shall be indexed according to the legal issues involved within 30 days of their rendition.

§157.62 Motions for Rehearing.

(a) Prior to the entry of the commissioner's order, if the commissioner
concludes that substantial errors of procedure or the exclusion of evidence have so affected the record as to render it impractical to determine the case justly and fairly upon the record, the commissioner may order a rehearing.

(b) Unless extension or reduction be granted under subsection (c) of this section, the times prescribed in this subsection shall control. If a party wishes to file a motion for rehearing, it must be filed with the commissioner within 15 days after the date of rendition of a final decision or order. Replies to a motion for rehearing, if any, must be filed with the commissioner within 25 days after the date of rendition of the final decision or order. A motion for a rehearing is a prerequisite to any appeal.

(c) If no action is taken by the commissioner within 45 days after the date of rendition of the final decision or order, the motion for rehearing is overruled by operation of law. The commissioner may, by written order, extend the period of time for filing the motion for rehearing and replies and the commissioner taking action, except that an extension may not extend the period for the commissioner's action on the motion for rehearing beyond 90 days after the date of rendition of the commissioner's final decision or order. If, after an extension, the commissioner has not acted on a motion for rehearing within 90 days after the date of rendition of the final decision or order, the motion for rehearing shall be overruled by operation of law.

(d) In the absence of good cause, no issue may be raised in a motion for rehearing which was not raised in the moving party's exceptions to the proposal for decision, unless the disposition of that issue in the commissioner's decision differs from that in the proposal for decision.

(e) The parties may, by agreement, with the approval of the commissioner modify any of the time periods provided in this section.

Source: The provisions of this §157.62 amended May 1985 to be effective June 3, 1985, 10 TexReg 1621.

§157.63 Final Order.

(a) All orders of the commissioner shall take effect upon becoming final. An order becomes final for the purposes of this section:

(1) Where an appeal to the State Board of Education is not authorized:

(A) when the time for filing a motion for rehearing before the commissioner has lapsed with no such motion having been filed;
(B) when a motion for rehearing has been filed and overruled by the commissioner; or

(C) on any other date specified by the commissioner.

(2) Where an appeal to the State Board of Education is authorized:

(A) when the time for filing the appeal has lapsed with no appeal having been filed; or

(B) if an appeal is taken, when the decision of the commissioner is affirmed; and

(i) the time for filing a motion for rehearing has lapsed with no such motion having been filed; or

(ii) a motion for rehearing has been filed and overruled by the State Board of Education.

(b) Nothing in this section shall be construed to alter the effective date of any administrative order which by law may be made effective prior to the ultimate disposition of a case, including, but not limited to, orders revoking proprietary school certificates.

Source: The provisions of this §157.63 amended May 1985 to be effective June 3, 1985, 10 TexReg 1621.

§157.64 Appeals Brought Pursuant to the Term Contract Nonrenewal Act.

Statutory Citation

Texas Education Code §§21.201-21.211:

"21.201 Definitions.

"As used in this subchapter, the following terms shall have the meaning ascribed to them in this section:

(1) "Teacher" means a superintendent, principal, supervisor, classroom teacher, counselor, or other full-time professional employee, except paraprofessional personnel, who is required to hold a valid certificate or teaching permit.

(2) "Board" and "board of trustees" means the governing board of a public school district.

(3) "School district" means any public school district in the state.
(4) "Term contract" means any contract of employment for a fixed term between the school district and a teacher."


"The board of trustees of each school district shall provide by written policy for the periodic written evaluation of each teacher in its employ at annual or more frequent intervals. Such evaluation shall be considered by the board of trustees prior to any decision by the board not to renew the term contract of any teacher."

"§21.203 Nonrenewal of Term Contracts.

"(a) The board of trustees of each school district may choose not to renew the employment of any teacher employed under a term contract effective at the end of the contract period.

"(b) The board of trustees of each school district shall establish policies consistent with this subchapter which shall establish reasons for nonrenewal.

"(c) The board of trustees of each school district shall establish policies and procedures for receiving recommendations from its school administration for the nonrenewal of teacher term contracts, excepting only the general superintendent of schools."

"§21.204 Notice.

"(a) In the event the board of trustees receives a recommendation for nonrenewal, the board, after consideration of the written evaluations required by Section 21.202 of this subchapter and the reasons for the recommendation, shall, in its sole discretion, either reject the recommendation or shall give the teacher written notice of the proposed nonrenewal on or before April 1 preceding the end of the employment term fixed in the contract.

"(b) In the event of failure to give such notice of proposed nonrenewal within the time herein specified, the board of trustees shall thereby elect to employ such employee in the same professional capacity for the succeeding school year.

"(c) The notice of proposed nonrenewal required in this section shall contain a statement of all the reasons for such proposed action."

"§21.205 Hearing.

"(a) If the teacher desires a hearing after receiving notice of the proposed nonrenewal, the teacher shall notify the board of trustees in writing within 10 days after receiving the notice of nonrenewal. The board shall provide for a hearing to be held within 15 days
after receiving written notice from the teacher requesting a hearing. Such hearing shall be closed unless an open hearing is requested by the employee.

"(b) The hearing shall be conducted in accordance with rules promulgated by the district."

"§21.206 Decision of Board.

"(a) If the teacher fails to request a hearing, the board shall take such action as it deems lawful and appropriate and shall notify the employee in writing of that action within 15 days of the expiration of the 10-day period for requesting a hearing.

"(b) If the teacher requests a hearing, the board shall take such action as it deems lawful and appropriate and shall notify the teacher in writing of that action within 15 days following the conclusion of the hearing."

"§21.207 Appeal.

"(a) If the teacher is aggrieved by the decision of the board of trustees, he may appeal to the State Commissioner of Education pursuant to §11.13 of this code. The commissioner may not substitute his judgment for that of the board of trustees, unless the decision below was arbitrary, capricious, unlawful, or not supported by substantial evidence.

"(b) Either party may appeal the commissioner's decision to a district court in Travis County."

"§21.208 Superintendents.

"If a majority of the board of trustees of any school district shall determine that the term contract of the general superintendent of schools should be considered for nonrenewal, the provisions of this subchapter shall apply, except that there need not be a recommendation from the designated school administration."

"§21.209 Probation.

"The board of trustees of any school district may provide by written policy for a probationary period not to exceed the first two years of continuous employment in the district, in which case the provisions of this subchapter shall not apply during such probationary period."

"§21.210 Discharge for Cause.

"Nothing in this subchapter shall prohibit a board of trustees from discharging a teacher for cause during the term of the contract."

"(b) The hearing shall be conducted in accordance with rules promulgated by the district."

"§21.206 Decision of Board.

"(a) If the teacher fails to request a hearing, the board shall take such action as it deems lawful and appropriate and shall notify the employee in writing of that action within 15 days of the expiration of the 10-day period for requesting a hearing.

"(b) If the teacher requests a hearing, the board shall take such action as it deems lawful and appropriate and shall notify the teacher in writing of that action within 15 days following the conclusion of the hearing."

"§21.207 Appeal.

"(a) If the teacher is aggrieved by the decision of the board of trustees, he may appeal to the State Commissioner of Education pursuant to §11.13 of this code. The commissioner may not substitute his judgment for that of the board of trustees, unless the decision below was arbitrary, capricious, unlawful, or not supported by substantial evidence.

"(b) Either party may appeal the commissioner's decision to a district court in Travis County."

"§21.208 Superintendents.

"If a majority of the board of trustees of any school district shall determine that the term contract of the general superintendent of schools should be considered for nonrenewal, the provisions of this subchapter shall apply, except that there need not be a recommendation from the designated school administration."

"§21.209 Probation.

"The board of trustees of any school district may provide by written policy for a probationary period not to exceed the first two years of continuous employment in the district, in which case the provisions of this subchapter shall not apply during such probationary period."

"§21.210 Discharge for Cause.

"Nothing in this subchapter shall prohibit a board of trustees from discharging a teacher for cause during the term of the contract."
"21.211 Exemptions."

"This subchapter does not apply to teachers who are employed under the provisions of the probationary or continuing contract law as set out in Subchapter C of Chapter 13 of this code."

Rule

(a) This section shall apply in all appeals brought pursuant to the Term Contract Nonrenewal Act (Texas Education Code §21.201, et seq.). To the extent that this section conflicts with any other sections governing proceedings before the commissioner, the requirements in this section shall prevail.

(b) All allegations by the teacher that the decision of the board of trustees was arbitrary, capricious, unlawful or not supported by substantial evidence shall be resolved by a review of the record of appeal; however, on the motion of either party, the commissioner of education may order that additional evidence be taken to supplement the transcript if it appears that such party has evidence to offer which is material, relevant, and not unduly repetitious, which that party, for good cause, was unable to adduce at the local hearing.

(c) In all nonrenewal cases, the school district must file a record of appeal which must include a certified transcription of the hearing before the board of trustees, the policies on evaluation, nonrenewal, and administrative recommendations concerning nonrenewal, the notice of the consideration of nonrenewal, the request for a local hearing, and all documents and exhibits filed in the local proceeding. The school district shall provide the teacher with written notice when the record of appeal is prepared and shall make the record available to the teacher for inspection. The school district shall provide the teacher with copies of all items in the record other than the transcript. A copy of the transcript shall be provided to the teacher upon request for a reasonable charge.

(d) The record of appeal filed by the school district shall be considered to be complete and accurate and shall be admitted into evidence before the commissioner for all purposes, unless the petitioner files objections to the record, within 30 days of the date of filing of the record, which set forth specifically those items which are relevant and material and which have been erroneously omitted from the record or those portions of the record which are relevant and material but which have been inaccurately transcribed. The commissioner shall conduct a proceeding for the purpose of receiving evidence relevant to any such challenge to the record if it appears that the matter in dispute is material to the outcome of the appeal.
(e) Allegations by the teacher that the decision of the board of trustees was arbitrary, capricious or unlawful must allege sufficient facts which would support a holding that the board of trustees' decision was arbitrary, capricious, or unlawful even if it should also be held that the decision was supported by substantial evidence. If such allegations are not made, no cause of action will be stated with regard to these claims.

(f) Upon either party's request, the commissioner shall afford both parties the opportunity to present oral argument concerning the merits of the appeal.

(g) The commissioner of education may substitute his judgment for that of the board of trustees when the board of trustees' decision was arbitrary, capricious, unlawful, or not supported by substantial evidence including, but not limited to, the following circumstances:

(1) Where written notice that the teacher's nonrenewal was under consideration was not given to the petitioner on or before April 1. Notice sent by certified mail, addressed to the last known address of the teacher, postmarked by the United States Postal Service on or before March 25, will be considered timely.

(2) Where the required written notice to the teacher failed to state the reasons for the action under consideration.

(3) Where the required written notice failed to state the reasons in a manner sufficient to allow the teacher the opportunity to adequately prepare a response at the local hearing to the allegations in the notice, and the teacher, at the time the teacher requested a hearing, set forth clearly in writing any deficiencies in the notice, and any such deficiencies were not promptly corrected prior to the date of the hearing.

(4) Where the evidence adduced at the local hearing does not support the specific reasons of which the teacher was given written notice.

(5) Where the teacher requested a hearing in writing within 10 days after receiving the required notice, and such a hearing was not held within 15 days after the request was received, except as provided in this subsection. The teacher may waive his or her right to be heard within 15 days by written agreement. If the school district, within five days of receiving the request for hearing, schedules the hearing for a date outside of the 15 day period, the teacher will be deemed to have consented to that date unless the teacher files an objection to that date within three days after receiving written notice of the date proposed by the district.
(6) Where the school district fails to provide the commissioner with a certified transcript of the local proceedings.

(7) Where the decision of the local board was not supported by substantial evidence which would have been admissible in an evidentiary hearing before the agency.

(8) Where no written evaluation of the teacher was prepared by the administration, or where the board of trustees failed to consider the administration's evaluation of the teacher prior to its decision not to renew the teacher's term contract. The board of trustees is not bound by the administrator's evaluation, but the evaluation must be considered.

(9) Where the reason for nonrenewal was not set forth in writing in the school district's policies, unless the reason is one which is inherent in the employment relationship or otherwise clearly established as a basis for nonrenewal.

(10) Where the nonrenewal is based on a reason contained in a policy which was adopted so recently prior to its use as a reason for nonrenewal that the teacher did not have a fair opportunity to conform his or her conduct accordingly.

(11) Where the board of trustees prevented the teacher from introducing at the local hearing evidence which was material, relevant, and not unduly repetitious.

(h) Except as to those matters specifically agreed to, a teacher does not waive any right to raise any procedural defect or substantive issue on appeal simply by participating in the hearing before the board of trustees.

(i) The commissioner may remand any appeal to the local board of trustees for further proceedings if the interests of justice so require.

§157.65 Hearings Concerning Complaints Made to the Teachers' Professional Practices Commission of Texas.

(a) This section shall apply to hearings concerning complaints made to the Teachers' Professional Practices Commission of Texas (TPPC). To the extent that this section of the rules adopted by the TPPC conflict with any other sections governing proceedings before the commissioner of education, the requirements of this section and the rules of the TPPC shall be followed.

(b) When a complaint is received by the TPPC, the director for the TPPC will consult with the attorney assigned to the TPPC to discuss the jurisdictional determination. If the attorney is of the opinion that the facts alleged, even if true, would not constitute
a violation of the code of ethics, the attorney shall advise the director of that opinion in writing. In addition, the commissioner or his hearing officer may, at any time, advise the TPPC of their opinions concerning the issue of jurisdiction.

(c) Upon being notified by the TPPC that it has accepted jurisdiction of a complaint, the commissioner shall appoint a hearing officer to preside over the proceeding and an attorney to advise the TPPC at the hearing.

(d) The rules of evidence shall be liberally construed at any hearing conducted pursuant to this section, and all evidence shall be admitted unless:

1. it is clearly irrelevant, immaterial or unduly repetitious;

2. its evidentiary value is clearly outweighed by its tendency to prejudice the fact finder against a particular party or witness; or

3. it is otherwise clearly inadmissible for any purpose.

(e) Parties who are not represented by counsel shall not be placed at a disadvantage by the fact that they are unfamiliar with courtroom procedure. Whenever such a party is prevented from presenting relevant evidence by objections unrelated to the admissibility of such evidence, the attorney assigned by the commissioner to assist the TPPC may explain to that party the proper method of presenting such evidence.

(f) After the parties have concluded their examination of any witness, the TPPC and the hearing officer may ask such questions as are necessary and proper to enable them to understand fully the witness's testimony.

(g) After both parties have presented their evidence and argument, the hearing officer may discuss any aspect of the case freely with the TPPC during its deliberations.

(h) The commissioner may receive a recommendation from the TPPC that any of the following actions be taken in regard to the complaint in part or in its entirety:

1. that the complaint be dismissed;

2. that the respondent be issued a warning to be made a part of the respondent's file kept by the Division of Teacher Certification;

3. that the respondent be issued a reprimand to be made a part of the respondent's file kept by the Division of Teacher Certification;
that the respondent be issued a reprimand to be made a part of the respondent's file kept by the Division of Teacher Certification, with notification of the reprimand to be provided to all superintendents of all school districts in the State of Texas and to certification officers in each state or territory of the United States by the Division of Teacher Certification;

(5) that the respondent's certificate be suspended for a period not to exceed one year; or

(6) that the respondent's certificate be revoked.

(i) After receiving the TPPC's recommendation, the commissioner shall give the parties an opportunity to respond to the recommendation in the manner set forth in §157.60 of this title (relating to Filing of Exceptions and Replies in Response to a Proposal for Decision).

(1) No additional evidence may be presented following the TPPC's recommendation in the absence of good cause, other than lack of diligence, as determined by the commissioner.

(2) If the commissioner determines that it is necessary to take additional evidence, the TPPC and the parties shall be given notice of the hearing date. Those members of the TPPC who participated in the initial hearing may participate to the same extent in the hearing to receive additional evidence, and, after hearing the additional evidence, shall be given an opportunity to file an amended recommendation to the commissioner.

(j) If the recommendation of the TPPC is that the complaint be dismissed or that the respondent be issued a warning or reprimand to be kept on file by the Division of Teacher Certification, the commissioner may adopt that recommendation with no further proceedings if it is supported by substantial evidence in the hearing transcript. Prior to taking any action other than that recommended by the TPPC, the commissioner shall instruct the hearing officer to prepare a proposal for decision and proceed pursuant to subsection (k) of this section.

(k) If the recommendation of the TPPC is that the respondent's certificate be suspended or revoked, or that the respondent be publicly reprimanded, the hearing officer shall enter a proposal for decision in accordance with §157.59 of this title (relating to Proposals for Decision). The hearing officer may adopt the TPPC's recommendation in whole or in part in the proposal. The parties shall be given an opportunity to respond to the proposal pursuant to §157.60 of this title (relating to Filing of Exceptions and Replies in Response to a Proposal for Decision). After receiving the TPPC's recommendation, the hearing officer's proposal for
(e) Upon receipt of the respondent's answer, the commissioner shall schedule a hearing at which all parties shall have the opportunity to present evidence and argument concerning the merits of the complaint.

(f) The burden of proof at any such hearing will be on the petitioner or petitioner/intervenor to prove its allegations by a preponderance of the evidence.

Source: The provisions of this §157.66 adopted July 1984 to be effective August 14, 1984, 9 TexReg 4179.


Statutory Citation

Texas Education Code, Chapter 32, Subchapter E.

"§32.41 Hearing.

Should the applicant be dissatisfied with the denial of a certificate of approval by the Administrator, the applicant shall have the right to appeal the decision of the Administrator and request a hearing with the Administrator within fifteen (15) days after receipt of notice. Upon receipt of the request for a hearing, the Administrator shall set a time and place for said hearing and then send notice to the school of said time and place. Said hearing shall be held within thirty (30) days from the receipt of the request for a hearing. At said hearing, an applicant may appear in person or by counsel and present evidence to the Administrator in support of the granting of the permit specified herein. All interested persons may also appear and present oral and documentary evidence to the Administrator, concerning the issuance of a certificate of approval to the applicant school. Within ten (10) days after the hearing, the Administrator shall send notice to the school either affirming or revoking the denial of the certificate of approval."

"§32.42 Appeal.

"(a) The administrator's decision may be appealed to a District Court in Travis County.

"(b) [Repealed by House Bill 72, 68th Legislature.]

"(c) Unless stayed by the Court upon a showing of good cause, the administrator's decision may not be superseded during the appeal.

"(d) Upon the filing of the lawsuit, citation shall be served upon the administrator. Whereupon, the administrator shall cause to be made a complete record of all proceedings had before the administrator,
decision, and the parties' exceptions and replies, the commissioner shall take whatever action the commissioner deems appropriate.

(1) In any case in which the hearing officer's recommendation is different from that of the TPPC, the commissioner shall schedule a conference concerning the matter with the hearing officer and a representative of the TPPC prior to issuing a decision. The TPPC shall be given ten days notice of the conference.

Source: The provisions of this §157.65 adopted July 1984 to be effective August 14, 1984, 9 TexReg 4179; amended November 1985 to be effective January 15, 1986, 10 TexReg 4805.

§157.66 Proceedings Concerning the Suspension or Cancellation of a Certificate or Permit Other Than Proceedings Brought to the Commissioner By the Teachers' Professional Practices Commission.

(a) This section shall apply to all proceedings concerning the suspension or cancellation of any certificate or permit issued by the commissioner of education other than those proceedings concerning recommendations brought to the commissioner by the Teachers' Professional Practices Commission. To the extent that this section conflicts with any other section governing proceedings before the commissioner, the provisions of this section shall prevail.

(b) A complaint may be filed at any time by a school district or the Division of Teacher Certification of the State Department of Education, as petitioner, requesting the commissioner to suspend or revoke a certificate or permit issued by the agency. Any such complaint must clearly set forth the facts which would justify the taking of such action. This complaint shall constitute and its contents be subject to the rules governing petitions for review.

(c) The respondent shall file an answer which complies with §157.45 of this title (relating to Answers). If respondent fails to submit a timely answer, the commissioner may consider the allegations in the complaint to be true and may take whatever action the commissioner deems appropriate.

(d) The Division of Teacher Certification of the State Department of Education may intervene in any action brought pursuant to this section in behalf of either the petitioner or the respondent. If a division intervenes on behalf of the petitioner, the petitioner may be dismissed at the request of any party if it appears that no substantial interest will be served by petitioner's continued participation in the proceedings. Such intervention shall be effected by the filing of a petition in intervention, the contents of which shall be subject to the rules governing petitions for review.
and shall certify a copy of the proceedings to the Court. Trial before the Court shall be upon the basis of the record made before the administrator, and the Court shall make its decision based upon the record. The administrator's decision shall be affirmed by the Court if the Court finds substantial evidence in the record to justify the decision, unless the Court finds the order to be:

1. arbitrary and capricious, or
2. in violation of the Constitution or laws of the State of Texas, or
3. in violation of rules and regulations promulgated by the State Board of Education pursuant to the provisions of the Act.

"(e) The decision of the trial court shall be subject to appeal in like manner as any other civil lawsuit under the Texas Rules of Civil Procedure.

"(f) Appeals concerning revocation of certificates of approval shall be prosecuted in the same manner and under the same provisions as herein provided for appeals from denial of such certificates."
licensee may request a hearing before the administrator:

(A) denial of a certificate of approval;

(B) revocation of a certificate of approval;

(C) conditions imposed upon the continued approval represented by the certificate;

(D) refusal to grant an exemption pursuant to the Texas Education Code, §32.12; or

(E) any other act by the administrator which in the interest of fairness ought to entitle the applicant, licensee or other person to a hearing.

(c) Time requirements.

(1) Request for hearing. Should a party be dissatisfied with any of the actions of the administrator as described in subsection (b) of this section, the party may, by certified mail or personal service, request a hearing with the administrator within 15 days after receipt of notice of said action.

(2) Notice of hearing. Upon receipt of the request for a hearing, the administrator shall set a time and place for the hearing and shall send notice to the party of said time and place. The hearing shall be held within 30 days from the receipt of the request for a hearing.

(3) Notice of decision. Within 10 days after the hearing, the administrator shall send a notice of decision to the party bringing the appeal.

(d) Other provisions.

(1) Petitions for review, as described in §157.44 of this title (relating to Petition for Review), and answers, as described in §157.45 of this title (relating to Answers), are not required in cases brought under this section.

(2) Sections §157.59 of this title (relating to Proposal for Decision) and §157.60 of this title (relating to Filing of Exceptions and Replies in Response to a Proposal for Decision) are not applicable to cases brought under this section.

Source: The provisions of this §157.67 adopted April 1985 to be effective May 9, 1985, 10 TexReg 1326.
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