

ANALYSIS OF TEXAS EDUCATION AGENCY COMMISSIONER OF EDUCATION
DECISIONS REGARDING SUPERINTENDENT, ASSOCIATE SUPERINTENDENT,
SCHOOL ADMINISTRATOR, ATHLETIC DIRECTOR AND CENTRAL
OFFICE ADMINISTRATOR TERM CONTRACT NONRENEWAL

APPEALS FROM 1983 TO 2013

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I conducted a legal analysis of decisions by Texas Commissioners of Education in appeals by Texas school administrators from nonrenewal decisions made by Texas school districts from 1983 to 2013. I analyzed the findings of fact and conclusions of law described in the commissioners' rulings to determine the legal basis of school districts' decisions to nonrenew school administrators' term employment contracts. I also examined the legal rationale for commissioners' rulings and determined which party most commonly prevailed in these administrative proceedings—the respondent school district or the petitioner school administrator. In particular, the study determined factors that contributed to commissioners' decisions to overrule or support school districts' nonrenewal decisions.

A careful review of commissioner decisions, which are accessible on the Texas Education Association website, identified 44 commissioner decisions involving appeals by superintendents, associate superintendents, public school administrators, athletic directors, or central office administrators concerning school districts' term contract nonrenewal decisions from 1983 to 2013. Commissioners' decisions in these cases were surveyed using legal research methods. This study provides recommendations to assist local education agencies to refine current policies and regulations regarding the nonrenewal of administrators' term contracts, and provides insight on Texas Commissioners' rulings on term contract nonrenewal appeals brought by Texas school administrators.

The findings revealed that school boards' lack of understanding of local policies and lack of evidence resulted in commissioners granting 27% of appeals. Additionally, commissioners denied 73% of the appeals because school boards provided at least one reason that met the substantial evidence standard of review, and respondents failed to substantiate allegations or enter evidence in evidentiary hearings.

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CHAPTER I

INTRODUCTION TO RESEARCH

What legal rights do public school employees have in the state of Texas? In particular, what legal rights do school employees have when employment contract disputes arise? The answers to these questions can be found in each school employee's employment contract and in relevant law, including federal and state constitutional provisions and statutes, applicable administrative regulations, and school board policies.

Law binds the relationships between teachers, administrators and staff, and school boards. According to Alexander and Alexander (2009), three sources of law bind the relationship between individual educators and their public school district employers:

1. Constitutional rights and freedoms that public school employees enjoy as citizens;
2. Statutes that govern the conduct of the public schools and their relationship with school employees; and
3. Contractual conditions of employment that may be created and agreed by both the teacher and the employer. (p. 827)

The legal relationships between professional school district employees and their school employers are set forth in Texas Education Code §21.201 (TEC, 2003). As such, employees are protected by constitutional, statutory, and contractual conditions. When disputes arise, employees can invoke their rights as outlined in the statute.

The TEC establishes the conditions pertaining to the issuance of contracts to professional educators. Employees are awarded probationary contracts upon initial employment, and may later be issued term contracts if their school district employers choose to retain them following their probationary periods. School boards may or may not renew contracts; however, they must comply with Texas law when terminating or ending the employment relationship with their teachers, administrators, or other professionals. Under Texas law, a probationary employee is

not entitled to a hearing if his or her contract is nonrenewed unless the case is made that the local education agency (LEA) did not follow state and local policies when rendering its decision.

When a term-contract is nonrenewed, the employee is entitled to a hearing, and may appeal the board's decision to the Texas commissioner of education.

This study analyzed decisions by Texas commissioners of education concerning term contract nonrenewal appeals for school administrators. Scholarly research on these decisions in employee appeal cases is scant. To date, three researchers have analyzed the effects of the Term Contract Nonrenewal Act (TCNA, 1981) in Texas concerning employment decisions (Hooper, 1984; Hughes, 1989, Ogilvie, 1983). Of these studies, Hughes (1989) was the only researcher to analyze the commissioners' appeal decisions involving contractual disputes between school districts and their professional employees.

Hughes (1989) analyzed the personnel decisions appealed to the commissioner from 1981 to 1986. Of 131 appeals studied, which included teachers and school administrators, nearly half involved term contract nonrenewals. Of these cases, it is unknown how many involved school administrators and how commissioners ruled in each case. However, Hughes' analysis provided some important findings concerning the substantial evidence rule. Specifically, Hughes stated,

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 nonrenewable appeals were decided in favor of the employee. (p.76)

While Hughes' study offered some important findings, since 1989, cases have provided new tests to commissioners' decisions at the local, state, and federal levels.

Findings of fact and conclusions of law usually describe the legal methodology, facts, and legal rationale used in commissioners' decisions. Often, decisions will refer to previous decisions, pertinent state statutes, or relevant Texas state or federal court decisions that support a

commissioner's rationale for deciding a particular case. Thus, analyzing each case heard and decided by Texas commissioners may enhance one's understanding of the legal grounds for a decision.

The data gathered and analyzed in this study can provide important insights into the legal rationale that commissioners employ in their findings. This information can assist LEAs in the refinement of current policies and regulations and shed light on interpretations of educational law in academia concerning term contract nonrenewals of superintendents, associate superintendents, school administrators, athletic directors, and central office administrators.

Problem Statement

To date, only one empirical study has reviewed commissioners' decisions regarding employment appeals (Hughes, 1989) using the findings of fact and the conclusions of law from those decisions. Commissioners' decisions set precedents that have significant policy implications for LEAs in terms of employment relationships. The data gathered and analyzed from this study can provide an overview of the legal reasoning behind commissioners' findings. Further, the findings can assist LEAs in refining current policies and regulations and inform administrators who may wish to appeal term contract nonrenewal decisions.

Purpose Statement

The purpose of this study was four-fold:

1. To describe and analyze patterns in contractual appeals heard and decided by Texas commissioners of Education for superintendents, associate superintendents, school administrators, athletic directors, and central office administrators.
2. To report and summarize the findings and precedents of Texas commissioners' decisions.

3. To report findings of cases appealed to the state or federal courts.
4. To catalogue all 44 cases analyzed in this paper.

Research Questions

The researcher analyzed three questions concerning commissioners' decisions on term contract nonrenewal appeals heard from 1983 to 2013. These research questions were as follows:

1. What legal claims did petitioners state for their appeals, and what reasons did school districts give for nonrenewing school administrators term contracts appealed to Texas commissioners of education?
2. What legal grounds did Texas commissioners of education use to make their decisions concerning term contract nonrenewal appeals filed by Texas school administrators?
3. What patterns exist for decisions in which Texas commissioners of education ruled against or for school districts, and in favor or against appealing school administrators?

Significance and Rationale of Study

Only one other study has analyzed school employee employment contract appeal decisions (Hughes, 1989). Thus, further study regarding the legal reasoning of commissioners' decisions was needed. To fill this need, the researcher designed the current study to assist Texas LEAs in the refinement of current policies and regulations and to shed light on current educational law interpretation in academia concerning commissioners' rulings on term contract nonrenewals for Texas school superintendents, associate superintendents, central office administrators, school administrators, athletic directors, and central office administrators.

Decisions rendered by commissioners and state and federal courts are legally binding, and cases are published electronically on the Texas Education Agency (TEA) website (www.tea.state.tx.us). Landmark decisions may or may not be published in secondary sources such as the *Texas Education News* or other publications. Cases heard at the state or federal levels are published in official law reports and journals; however, neither commissioners' decisions nor state and federal cases are published widely or accessible to LEAs.

Assumptions

The TEA web-based search engine yielded 3,034 results that included the term *contract*. Of the 3,034 files, 363 included the term, *term contract nonrenewals*. Over 2,000 additional cases were added to the TEA website; however, were not included in the TEA web-based search engine. As a result, the researcher read and catalogued each case found. In total, 44 cases met the methodology criteria used for this study. The researcher did not find information on how many appeals were settled or dropped prior to reaching the final step of due process. The researcher assumed that all cases concerning term contract nonrenewals were added to the TEA website.

Limitations and Delimitations

This study included 44 cases that were decided by commissioners from 1983 to 2013. The researcher included only cases involving school superintendents, associate superintendents, school administrators, athletic directors, and central office school administrators in the sample population. The researcher did not include several heard cases because the legal transcripts were missing or were only partially included on the TEA web-based data system. The researcher did not find information on how many cases were settled or dropped prior to reaching commissioners' dockets.

Definition of Terms

Brief. Briefs include statements of the case, issues presented, statements of fact, arguments, and prayer (conclusion and nature of relief). As per Texas Administrative Code §157.1058 (19 TAC, 2004), briefs are requirements in hearings reviewed by the commissioner under the substantial evidence standard.

Conclusion of law. Conclusion of law refers to the declaration of a principle of law or a statement that a legal requirement is satisfied.

Contract. Contract refers to a legally binding agreement between a school employee and an LEA. The TEC and LEAs define protected school employees.

De novo hearing. A de novo hearing is a new evidentiary hearing.

Decision of the Texas commissioner of education. Decisions of the Texas commissioner of Education are the processes outlined by the TEC when rendering binding decisions pertaining to school law disputes.

Due process. Due process refers to a protected, formal legal process used to solve disagreements concerning the interpretation of state or local, statutes, regulations, and policies.

Findings of fact. Findings of fact can refer to underlying facts or ultimate findings of fact. Underling facts “are basic products of the fact finder” (*Lawrence Industries, Inc. v. Sharp*, 1994, p. 3). Ultimate facts are the result “of logical reasoning and inference from more specific evidentiary facts” (*Lawrence Industries, Inc. v. Sharp*, 1994, p. 3).

Mismanagement. Mismanagement refers to the administrative deficiencies noted by school boards as reasons for nonrenewal recommendations.

Nonrenewal. Nonrenewal refers a decision by the LEA to nonrenew an employee’s contract.

Petitioner. A petitioner is an individual or party who seeks a legal remedy or redress of a grievance. In this paper, petitioner is synonymous with plaintiff and appellant.

Petition for Review. A Petition for Review refers to a legal document filed by a petitioner requesting a review of the school board's decision.

Property interest. Property interest refers to an employment contract, afforded by the Fourteenth Amendment, concerning property interests or rights. Under the U.S. Constitution, contracts that have property interest hold statutory rights. Texas commissioners hear cases if a teacher claims property rights were violated according to law.

Respondent. A respondent is an individual or party named to a court and contends against an appeal.

Teacher. In this study, teacher refers to any principal, supervisor, classroom teacher, counselor, or other full-time professional employee who is required to hold a certificate.

Term contract nonrenewal. Term contract nonrenewal refers to school administrators' term contracts that were nonrenewed by their school districts.

Transcripts. Transcripts are documents prepared by the LEA and sent to the Texas commissioner of Education as required by the appeals process. De novo hearings also result in new transcripts at the state level.

Statutes. Statutes refer to laws adopted by state legislatures.

Substantial evidence review. Substantial evidence review refers to a process by which a commissioner reviews transcripts, hears brief oral arguments by opposing counsel, and then renders decisions. New evidence found outside of the transcripts timeframe cannot be entered as evidence.

Overview of Methodology

This researcher used a qualitative legal research method, which judges, attorneys, and legal scholars use to answer complex legal questions (Carmen, 2009; Rogers, 2010). With this research method, law reviews, articles, legal treatises, and agency databases are the primary and secondary sources of data. This researcher used purposive sampling to select the cases for this study. According to Bryman (2008), purposive sampling is strategic “and entails an attempt to establish a good correspondence between research questions and sampling” (p. 458).

To find cases for this study, the researcher searched LEXIS/NEXIS, Education Resources Information Center (ERIC), Westlaw, FindLaw, Supreme Court Website, United States Department of Education (DOE), and the TEA website. The TEA catalogues all commissioner decisions on its website as matter of public record, and the public can request hard copies of cases prior to 1985. The TEA website also provides detailed legal transcripts of selected cases. The cases used in this study spanned a period from January 1983 to December 2013.

This researcher used data reduction, which is a process by which data are abstracted and summarized, to identify legal constructs that could be organized systemically into patterns and trends. According to Hughes (1989), data reduction analysis “is a form 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” (p. 77). The researcher analyzed and catalogued each case based on identified data sets.

Organization of Study

This dissertation is organized into five chapters and includes appendices, tables, and references. Chapter II provides a review of the related literature in the following areas: (1)

contractual rights of public school employees, (2) due process rights of public school employees, (3) constitutional rights of public school employees, (4) overview of education law, (5) contracts for Texas school educators, (6) good cause for public school employee dismissal, (7) procedural safeguards, (8) appeals to local courts, (9) appeals to state courts, and (10) and appeals to federal courts.

Chapter III delineates the research methodology of the study. Chapter IV provides a review of term contract appeal hearings under the Texas commissioner of Education and a description of the 44 term contract nonrenewal appeals decided by commissioners from 1983 to 2013. Chapter IV also includes the findings and analysis. Chapter V offers conclusions of the research and recommendations.

Summary

This researcher conducted a legal analysis of decisions by Texas commissioners of Education on school administrators' appeals to school districts' nonrenewal decisions from 1983 to 2013. The researcher analyzed the findings of fact and conclusions of law described in commissioners' rulings to determine the legal basis of school districts' decisions of nonrenewal of school administrators' employment contracts. The researcher also catalogued all cases used in this study. Further, the researcher examined the legal rationale for commissioners' rulings to determine which party most commonly prevailed in these administrative proceedings—the school district or the school administrator. In particular, the researcher attempted to determine factors that contributed to commissioners' decisions to overrule school districts' initial nonrenewal decisions. Texas state and federal court cases concerning commissioners were also examined.

A careful review of commissioners' decisions, which were accessible on the TEA website, identified 44 cases involving an appeal by superintendents, associate superintendents, school administrators, athletic directors, and central office administrators from their term contract renewals from 1983 to 2013. Commissioners' decisions in these cases were surveyed using legal research methods. This study includes recommendations to assist LEAs in refining current policies and regulations regarding the nonrenewal of administrators' term contracts and provides insight into Texas commissioners' rulings on term contract nonrenewal appeals brought by Texas school administrators.

CHAPTER II

LITERATURE REVIEW

The relationship between a school district and professional school employees is bound by contract and relevant law, which is a “combination of constitutional, statutory, administrative, contract, and judicial law” (Kemerer & Sansom, 2009, p. 3). In Texas, state statutes govern the nature of the contractual relationship between school districts and their professional employees. Generally, school districts first grant professional employees a 1-year probationary contract that can be renewed twice for a total probationary period of 3 years. At the end of the probationary period, a school district may elect to enter into a term contract with the employee; this term contract may be renewed indefinitely each time the term expires.

When term contracts are not renewed, employees may challenge a board’s decision by following due process as outlined in the Texas Administrative Code (19 TAC). Under the 19 TAC, the Texas Education Agency (TEA) commissioner makes the final decision on all term contract nonrenewal appeals. A commissioner’s decision may be appealed to the state and federal courts.

In Texas, school board policies must follow a standardized process in accordance with Texas law. Professional school employees are afforded contracts with protected property and due process rights when their term contracts are not renewed. If an employee’s contract is not renewed, he or she may appeal to the commissioner of Education. In rendering a decision, the commissioner will review the substantial evidence rule, which

Means that the commissioner may not substitute his judgment for that of the school board unless the board’s decision was arbitrary, capricious, unlawful, or not supported by the substantial evidence. In conducting the review, the commissioner will simply review the transcript of the hearing before the local board, rather than rehear the evidence at the Texas Education Agency. (Walsh, Kemerer, Maniotis, 2010, p. 167)

A public school leader's job is multifaceted and highly complicated. School administrators are expected to manage complex organizations and produce measurable results. Because of the challenges of meeting federal, state, and local mandates, school administrators "are vulnerable since they have virtually no rights to continued employment as principals" (Nixon, Packard, & Douvanis, 2010, p. 1), unless they work in a state that grants them tenure or some other form of statutory job protection.

This literature review examines the contractual rights, due process, and constitutional rights of public school employees. Additionally, the researcher provides an overview of education law and contracts for Texas school educators, good cause for dismissal, and procedural safeguards. This literature review concludes with a discussion on appeals at the local, state, and federal levels as they are related to commissioners' decision-making processes when rendering term contract appeals decisions.

Contracted Rights of Public School Educators

State regulation and statutory policy govern teacher employment contracts. States set their own rules for certification including qualifications and eligibility for professional employees because public education is primarily a state function. In the 19th century, states could employ teachers with or without contracts. However, the *Fairplay School Township v. O'Neal* (1891) landmark decision provided legal clarity on the importance of teacher contracts. In 1888, an Indiana classroom teacher, O'Neal, entered into a verbal agreement with a school trustee to teach in the Fairplay School Township. The school trustee promised to pay her "good wages"; however, when the academic year began, the teacher did not agree with the offered salary, and she sued the school district. The Supreme Court of Indiana heard the case and ruled as follows:

That the school trustee promised in said oral contract to her “good wages”; that she has been ready and willing to teach, but the trustee refused to permit her to do so. The question presented is whether there was such a contract as bound the school township and made it liable for damages for a breach. Our opinion was that there was no such contract. (*Fairplay School Township v. O’Neal*, 1891, p. 686)

In short, because O’Neal’s agreement with the school board was not in writing, the Indiana Supreme Court did not recognize it as a duly constituted contract. While O’Neal did not win her case, the findings of the court established precedent on contract law: All contracts must be in writing. *Fairplay School Township v. O’Neal* (1891) set a major precedent on teacher contract law. Despite this case, little clarity existed in contract law regarding the relationship between a teacher and the school board for another 50 years, when, in 1941, the New Mexico State Supreme Court decided on *Landers v. Board of Education of the Town of Hot Springs*.

Landers was offered a contract to be the high school principal in Hot Springs, New Mexico in the spring of 1937; her 4-year contract was to begin on September 1, 1937. After 1 year, Landers was dismissed without cause. She sued the school district because she held a signed 4-year contract. The district court determined that she had a valid contract with the school board and awarded her damages.

The school board appealed to the State Supreme Court of New Mexico in 1941. The school district claimed that the contract was invalid because all of the required contract signatures were obtained outside of the regular board meeting. Despite having a signed contract, the court ruled in favor of the district because the contract violated New Mexico law, which requires all school board business and decisions to be conducted in open session during lawfully convened school board meetings. *Landers v. the Board of Education of Town of Hot Springs* (1941) set a precedent in teacher contract law: For binding decisions to be legitimate, board

members must act as a board, not as individuals, including entering into contracts with employees.

Snider v. Kit Carson School District (1968) offers another important court decision regarding school districts terminating teachers who hold valid contracts. Snider was hired to teach on July 23, 1963; the superintendent dismissed her on January 24, 1964. In response to the superintendent's termination letter, Snider claimed she had a valid contract and dismissing her without cause was a breach of that contract. Soon after, the superintendent rescinded his letter. A few weeks later, Snider received a contract termination letter from the Kit Carson School District school board.

In accordance with the due process rights established by Colorado statutes, Snider requested a hearing before the school board, which was granted, but she did not attend. On February 26, 1964, the board voted to fire Snider. Soon thereafter, Snider sued for breach of contract. The district court heard her case and sided with the school district because it had followed due process protocols established by statute, regardless of the fact that the superintendent had initially not followed due process by informing Snider of her dismissal; contract dismissal can only be decided by a school district's school board.

Snider appealed the district court's decision. The Colorado State Supreme Court heard the case and found,

A school board may reconsider its action in dismissing a teacher; and, if the original proceedings were void for failure to give the teacher the requisite notice and hearing, the board may treat them as a nullity, and discharge the teacher after notice and hearing [are] properly held. (*Snider v. Kit Carson School District*, 1968, p. 439)

Snider v. Kit Carson School District firmly established that the power to employ and discharge employees is the exclusive function of the school board and cannot be delegated to any individual district employee. Thus, the school superintendent's error was not sufficient reason to rescind the school board's decision.

Kirk v. Miller (1974) further defined the role of school boards and contract law. In 1974, teachers from the White River School District in Washington State were informed that teachers who had extracurricular duties, such as coaching, tutoring, and club sponsorship, would be issued two contracts: one for teaching and one for the extracurricular activities. The teacher's union sued the school district on the grounds that the two-form contract "impinged upon their rights as teachers under the continuing contract law" (*Kirk v. Miller*, 1974, p. 1).

The teachers claimed that the two-form contracts were identical to the previous single contracts, therefore, violated continuing contract law. The teachers sued, and the district court ruled in favor of the school district. The teachers then appealed to the Washington State Supreme Court, which heard the case in 1974. The Washington State Supreme Court ruled in favor of the school district on the grounds that the two-form contract did not violate continuing contract law because the extracurricular activities were not essential functions of being a classroom teacher. In its decision, the court noted:

[Since] we have held that special assignments are not in any event covered under the continuing contract law, and because of the express disclaimer contained in Revised Code of Washington (R.C.W.) 28A.67.074, we hold that such a supplemental contract

covering these assignments will not be governed by the continuing contract provisions of RCW 28A.67.070. Since there is involved here no question of nonrenewal or wrongful termination of a special assignment, we do not feel it appropriate to entertain any question concerning a termination following the execution of such a supplemental contract. The trial court determination of dismissal is affirmed. (*Kirk v. Miller*, 1974, p. 846)

The *Kirk v. Miller* (1974) decision further defined the role of school boards regarding the issuance of teacher contracts; specifically, the relationships between teachers and school boards are defined by contract and governed by the principles of contract law.

Due Process Rights of Public School Educators

Appeal decisions heard and decided by state and federal courts have defined the due process rights of public school employees as early as 1935 with the passage of the National Labor Relations Act (NLRA). The NLRA defined the origins of labor relations law, which stem from Article 1, § 8 of the United States Constitution and grants Congress the authority to pass laws regulating commerce. Additionally, the First, Fifth, and Fourteenth Amendments are interpreted as applying to some public employees. Federal and state statutory laws are subject to judicial review and interpretation. Federal, state, and local agencies, such as the National Labor Relations Board (NLRB), the United States Department of Labor (DOL), and the National Mediation Board (NMB), administer and regulate these legal interpretations. Further, state and local municipalities pass laws and ordinances that federal rulings do not clearly outline.

Judicial and administrative decisions have further refined the labor relations process in terms of employee rights. These decisions have shaped how employers discipline employees, and the processes used to award employee contracts and contract renewals. For example, public employees enjoy the First Amendment right of free speech and the right of assembly, the Fourteenth Amendment right of due process, and the Fourth Amendment right to be free from unlawful searches and seizures.

Due process, the right to fair proceedings in disciplinary or termination cases, is a particularly important constitutional concept in the public sector workplace. Several factors must be in place for due process to hold. According to Walsh et al. (2010),

The concept of due process of law [is the] means of assuring that decisions made by government officials affecting people's essential rights are made fairly. Before any due process is due, there must be (1) state action and (2) a deprivation of "life, liberty, or property. (p. 134)

In 1972, the United States Supreme Court clarified the due process rights of public school educators in *Board of Regents of State Colleges v. Roth*. In this case, the Supreme Court ruled that teachers have a protectable Fourteenth Amendment property right in employment if state law gives them a claim of entitlement (Walsh et al., 2010). In Texas, any educator who has valid contract is entitled to due process. Thus, it is necessary to determine what constitutes a fair due process.

In the 1970 case, *Ferguson v. Thomas*, the Fifth Circuit Court of Appeals ruled that, when a public school teacher is dismissed for cause, that teacher, at minimum, must be afforded the following:

1. Be advised of the cause or causes of the termination in sufficient detail to fairly enable him or her to show any errors that may exist;
2. Be advised of the names and the 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; and
4. Be given an opportunity for a hearing before the tribunal that both possesses some academic expertise and has an apparent impartiality toward the changes. (Walsh et al., 2010, p. 139)

Ferguson v. Thomas is a landmark case in the Fifth Circuit (which includes Texas) because it established what minimally constituted as due process for public school teachers facing dismissal. In 2003, *Coggin v. Longview Independent School District (ISD)* tested this standard.

In *Coggin v. Longview ISD*, Longview ISD attempted to discharge Coggin on the grounds of alleged improprieties. Upon receiving a termination letter, Coggin requested a hearing as outlined in the 19 TAC and submitted his appeal within the specified timeframe via certified mail to Longview ISD and the Texas commissioner of Education. The certified letter arrived at the school district on time; however, the commissioner did not receive the appeal request until after the statutory deadline to request an appeal had passed. Because the commissioner did not receive the appeal request on time, he denied Coggin's request for a hearing. The school district, relying on the commissioner's decision that Coggin was not entitled to a hearing, terminated him without a due process hearing. Coggin then sued in federal court. In 2003, the Fifth Circuit Court of Appeals, in a divided decision, noted:

[If] the commissioner does not abide the prescribed scheme, Texas gives an aggrieved school employee the right to appeal to a state district court, thereby providing constitutional due process. If the mandated procedure is followed, an employee will also have been afforded constitutional due process when a school board makes its final termination decision. When a school board disregards the statutory scheme, here depriving the employee of his right to appeal, however, it may subject itself to liability, not for the act of another but for its own act. To the point, had the school board given Coggin the statutorily allotted time to appeal the commissioner's decision, there would have been no denial of due process. (*Coggin v. Longview ISD*, 2003, p. 466)

Soon after this case, the Texas Education Code (TEC) was changed to reflect the minimum due process requirements that were spelled out in *Ferguson v. Thomas* (1970) and *Coggin v. Longview ISD* (2003). Due process rights for public school employees had an early influence with the passage of the NLRA (1935). Since 1935, numerous court decisions have shaped the general definition of due process with states holding the authority to define the process within each respective state administrative code.

Constitutional Rights of Public Employees

The federal courts began addressing the constitutional rights of public employees in the 1960s. Public employees challenged adverse employment actions or decisions based on entitlements in the Fifth and Fourteenth Amendments that no person shall be deprived of “life, liberty, or property, without due process of law.” The concept of due process originated in 1215 with publication of the Magna Carta (Clause 39). The Magna Carta is the origin of Anglo American due process and states, “No free man shall be taken, imprisoned, disseized, outlawed, banished, or in any way destroyed, nor will we proceed against or prosecute him, except by the lawful judgment of his peers and by the law of the land” (as cited in Howard, 1974, p. 189). The modern American concept of due process can be traced to the Magna Carta, and this concept has since evolved into four aspects that can be found in the U.S. Constitution.

As the federal courts have articulated, the four aspects of due process include (1) substantive due process, (2) procedural due process, (3) the vagueness test, and (4) the irrationality and presumptions test. The courts have ascertained each aspect of due process in litigation involving adverse employment decisions or actions against teachers (Howard, 1974). According to Alexander and Alexander (2009), the four aspects of American due process can be defined as:

1. Substantive due process is the essence of life, liberty, and property, both explicit and implicit—the nature and substance of the individual’s interest.
2. Procedural due process establishes the mechanics of ascertaining the truth about a particular situation.
3. The vagueness test protects the individual against arbitrary and capricious government actions.
4. The irrationality and presumptions test require that there be logic to the state’s action. (p. 888)

Board of Regents of State Colleges v. Roth (1972) is one of the most significant decisions concerning a public employee’s constitutional right to due process. Roth challenged the decision

of a public university to not renew his teaching contract by bringing suit in federal court. Roth, who worked as a professor on a 1-year term contract, claimed that he was not offered another contract because he had made statements that criticized university administration. As such, the decision to not rehire him violated his First Amendment right to freedom of speech. Roth also claimed that the failure of the university to provide him a hearing violated his Fourteenth Amendment right to due process as required by the U.S. Constitution. On appeal, the U.S. Supreme Court only addressed Roth's due process argument; it did not address his claim that the university had violated his First Amendment rights. In a split decision, the Supreme Court ruled in the favor of the university. In delivering the opinion of the Court, Justice Stewart wrote:

[Thus], the terms of [Roth's] appointment secured absolutely no interest in reemployment for the next year. They supported absolutely no possible claim of entitlement to reemployment. Nor, significantly, was there any state statute or University rule or policy that secured his interest in reemployment or that created any legitimate claim to it. In these circumstances, [Roth] surely had an abstract concern in being rehired, but he did not have a property interest sufficient to require the University authorities to give him a hearing when they declined to renew his contract of employment. (p. 408)

While Roth lost his case, the decision established three features of substantive due process. First, the U.S. Constitution itself does not create liberty and property interest; contracts and state tenure laws do. As Alexander and Alexander (2009) stated, "Continued employment gains substantive due process status only if the state creates some formal condition vesting the employee with an expectancy of reemployment" (p. 888).

Second, procedural due process is not necessary in adverse employee decisions if a state does not grant property or liberty rights. Third, if a public employee holds liberty or property rights, procedural due process is required. Procedural due process may also be required at the end of a contract period if "the nonrenewal is based on reasons that affect substantive rights

emanating from due process or other basic rights or freedoms” (Alexander & Alexander, 2009, p. 888).

In *Pickering v. Township Board of Education* (1968), Pickering, a high school teacher, wrote a letter that was published in a local newspaper criticizing the board’s allocation of funds. The Township Board of Education dismissed Pickering. At a hearing, the Court noted the following in response to the letter:

The Board charged that numerous statements in the letter were false, and that the publication of the statements unjustifiably impugned the Board and school administration. The Board found all the statements false as charged, and concluded that publication of the letter was “detrimental to the efficient operation and administration of the schools of the district” and that “the interests of the school require[d] [appellant’s dismissal]” under the applicable statute. (*Pickering v. Township Board of Education*, 1968, p. 2)

Pickering was dismissed and later filed suit based on the claim that the First and Fourteenth Amendments protected his letter. The U.S. Supreme Court heard the case and rendered a decision in 1968. Justice Marshall delivered the opinion of the Court:

[In] sum, we hold that, in a case such as this, absent proof of false statements knowingly or recklessly made by him, a teacher’s exercise of his right to speak on issues of public importance may not furnish the basis for his dismissal from public employment. Since no such showing has been made in this case regarding appellant’s letter, his dismissal for writing it cannot be upheld and the judgment of the Illinois Supreme Court must, accordingly, be reversed and the case remanded for further proceedings not inconsistent with this opinion. (*Pickering v. Township Board of Education*, 1968, p. 5)

While *Pickering v. Township Board of Education* (1968) was a landmark decision because the U.S. Supreme Court recognized the free speech rights of public employees for the first time, *Garcetti v. Ceballos* (2006) diminished these rights considerably. In this case, the Supreme Court found that public employees had no First Amendment rights when speaking in their official capacities as employees. In 1989, Ceballos worked as a deputy district attorney for the Los Angeles County District Attorney’s Office. After investigating the veracity of an

affidavit for a case, Ceballos wrote a memorandum to his superiors recommending that the case be dismissed. His superiors did not adopt his recommendation, and they tried the case. Soon thereafter, Ceballos was reassigned to a different position, denied a promotion, and transferred to another courthouse. Ceballos filed suit, claiming that his superiors retaliated against him for writing his memorandum and, as such, violated his First and Fourteenth Amendments rights.

In 2006, the U.S. Supreme Court heard the case and rendered a decision based on a 5-4 vote. The Court held, “When public employees make statements pursuant to their official duties, they are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline” (*Garcetti v. Ceballos*, 2006, p. 421).

Justice Kennedy delivered the following opinion of the Court:

[Exposing] governmental inefficiency and misconduct is a matter of considerable significance, and various measures have been adopted to protect employees and provide checks on supervisors who would order unlawful or otherwise inappropriate actions. These include federal and state whistle-blower protection laws and labor codes and, for government attorneys, rules of conduct and constitutional obligations apart from the First Amendment. However, the Court’s precedents do not support the existence of a constitutional cause of action behind every statement a public employee makes in the course of doing his or her job. (*Garcetti v. Ceballos*, 2006, p. 425)

The *Garcetti v. Ceballos* (2006) decision severely limited the free speech rights of public employees. Thus, public employees essentially have no First Amendment rights when they speak in their official capacities as public employees, even if they are speaking on matters of public concern. Although these employees may enjoy some legal protection for their speech under state whistleblowing statutes or other statutory provisions, they may not look to the First Amendment for shelter if they are disciplined or terminated based on speech they engaged in as part of their employment responsibilities.

In another landmark case, *Cleveland Board of Education v. Loudermill* (1985), the Supreme Court found that public employees who hold property interest in their jobs are entitled

to at least an informal pretermination hearing, even if they are given substantial due process rights at posttermination hearings. This case consolidated two Sixth Circuit cases involving classified civil servants under Ohio law who were terminated without pretermination hearings.

In the first case, the Cleveland Board of Education dismissed Loudermill, a security guard, for failing to disclose a prior felony conviction on his job application. The second case involved Donnelly, a school bus driver for the Parma Board of Education, who was dismissed for failing an eye exam. Both men claimed, as classified civil servant employees in the state of Ohio, that they had property interests as stated in the Ohio statutes of due process, which included the right to a pretermination hearing. Despite their claims, they were both dismissed without pretermination hearings, and both sued their respective school districts.

The *Cleveland Board of Education v. Loudermill* decision was rendered in 1985. Justice White wrote:

[We] conclude that all the process that is due is provided by a pre-termination opportunity to respond, coupled with post-termination administrative procedures as provided by the Ohio statute. Because respondents allege in their complaints that they had no chance to respond, the District Court erred in dismissing for failure to state a claim. The judgment of the Court of Appeals is affirmed, and the case is remanded for further proceedings consistent with this opinion. (p. 548)

The *Cleveland Board of Education v. Loudermill* (1985) decision solidified the understanding that employers must afford public employees who hold property interest in their employment the opportunity of pretermination hearings prior to termination and this right cannot be preempted by state laws.

In *Shaul v. Cherry Valley Springfield Central School District* (2004), the Second Circuit Court of Appeals found that teachers have the right to be free from unreasonable search and seizure at school. In 1999, Shaul, a high school math teacher was arrested for allegedly stalking a female student. After a disciplinary hearing, Shaul was suspended with pay and, subsequently,

reassigned to an administrative position within the school district. In 2000, a hearing officer found Shaul guilty of the alleged misconduct and suspended him without pay for the remainder of the school year. Shaul resumed his teaching duties in the school district the following year.

During the time of the suspension, on a specific date, Shaul was instructed to meet the superintendent at his school, return district property, and remove his personal belongings from the school. While Shaul failed to show up on the specified date, he did show up at the school on another date, but failed to remove all of his personal property. A day later, several principals and custodians collected his items, including items locked file cabinet. Several items found in the locked cabinet included material connected to the disciplinary case. According to court record, “At Shaul's disciplinary hearing, the school district attempted to introduce the photo album along with a car phone, personal correspondence, a notebook, and various photographs. The hearing officer refused to enter these items into evidence” (*Shaul v. Cherry Valley Springfield Central School District*, 2004, p. 181).

Shaul's personal effects and materials were returned to him. However, he filed suit, claiming a violation of his Fourth Amendment right to be free from unreasonable searches and seizures. Shaul contended that the actions of the school district in searching his classroom and confiscating the items constituted an illegal search and seizure under the Fourth Amendment. He also sued the administrators and custodians involved in collecting his effects.

In 2004, the Second Circuit Court of Appeals rendered the following decision in the Shaul case:

[Where], as in this case, an initial seizure of property was reasonable, defendants' failure to return the items does not, by itself, state a separate Fourth Amendment claim of unreasonable seizure. To the extent the Constitution affords Shaul any right with respect to a government agency's retention of lawfully seized property, it would appear to be procedural due process. But Shaul does not pursue such a claim and, indeed, could not because he has failed to adduce any evidence that the government's inability to return his

property was due to anything other than negligent maintenance. It is well established that mere negligence is insufficient as a matter of law to state a due process violation. Accordingly, we agree with the district court that summary judgment was properly entered in favor of defendants on Shaul's claim of a second unreasonable seizure. (*Shaul v. Cherry Valley Springfield Central School District*, 2004, p. 187)

Shaul v. Cherry Valley Springfield Central School District (2004) established a significant precedent, not because Shaul lost his case, but because a federal appellate court discussed Fourth Amendment rights afforded to teachers for the first time. Roberts (ND) asserted,

The federal court acknowledged that at least some public employees have constitutionally-protected privacy interests over their work areas as outlined in *O'Connor v. Ortega* (1987). Based on the particular facts before it, the court dismissed Shaul's claims; but that dismissal should not be read as a blanket judicial approval of all workplace searches by school officials or other public employers. (p. 15)

School district officials have clarity on when and how to conduct search and seizure of public school employee property.

Numerous decisions by the federal courts have shaped the constitutional rights of public employees. Since 1960, federal court decisions have addressed, in part, the relationship and balance between adverse employment decisions and actions, and between public employee rights and freedom. *Shaul v. Cherry Valley Springfield Central School District* (2004), *Cleveland Board of Education v. Loudermill* (1985), *Garcetti v. Ceballos* (2006), *Pickering v. Township Board of Education* (1968), and *The Board of Regents State Colleges v. Roth* (1972) are significant cases that refined the rights and freedoms of public employees in today's workplace.

Overview of Education Law and Texas

There are four sources of law in the United States. The first is constitutional law, which is derived from the language of the federal Constitution and the constitutions of the 50 states. The second is statutory law, which is determined by federal or state legislative bodies. A third

source is administrative law, which can be determined by federal administrative regulations, policies from school boards, and state commissioners or state boards of education. A final source is judicial law. State and federal court decisions determine judicial law. These laws stem from litigation due to conflicts over the interpretation and application of various constitutions, statutes, and administrative laws. The courts serve as the final authority regarding all legal disputes.

The Tenth Amendment of the U.S. Constitution specifies that all powers not delegated to the federal government are reserved to the states. Therefore, the power of education is a function of the state. The Texas Legislature is responsible for the operation and structure of the Texas public school system, and the Texas State Board of Education (SBOE) and the TEA are responsible for establishing education policies and rules. The TEC, Chapter 21, sets forth the rules and conditions for term contracts. Further, local school boards are responsible for promulgating local policies and regulations in compliance with applicable state and federal law. According to Walsh et al. (2010),

All powers and duties not specifically designated by statute to the agency or to the Texas State Board of Education are reserved for the trustees, and the agency may not substitute its judgment for the lawful exercise of those powers and duties by the trustees. (pp. 14-15)

Contracts for Texas School Administrators

Texas Education Code § 21.002(b) (1995) establishes teacher employment contracts. In Texas, teachers are identified as classroom teachers, principals, superintendents, librarians, nurses, counselors, or other full-time professional employees who are required to hold a certificate. Positions under this statute must hold a probationary, continuing, or term contract. A term contract is “any contract of employment for a fixed term” (TEC, 1995, p. 61).

School districts do not have to issue contracts to all public employees; however, they are required to identify positions that may be considered contracted positions. Under TEC § 21.002(b) (1995), school boards must “establish a policy designating specific positions of employment, or categories of positions based on considerations such as length of service, to which continuing contracts or term contracts apply” (p. 1). In short, school districts are required to identify positions that are entitled to property rights that would also entitle them to due process before their employment rights could be adversely affected. School boards must adopt employment policies that describe the reasons for not renewing a teacher’s contract (TEC. § 21.203 (b) (2002). Additionally, boards must develop separate policies for superintendents. All teachers and administrators must be hired under probationary contracts, per TEC § 21.202 (2003). However, a school district may place a newly hired teacher or principal under a term contract if,

The person has experience as a public school principal or classroom teacher, respectively, regardless of whether the person is being employed by the school district for the first time or whether a probationary contract would otherwise be required under § 21.102 (2002) (p. 54)

If a school district decides to hire a teacher or principal on a probationary contract, the term of that contract shall be for 1 year. Probationary contracts may be renewed at the discretion of a school district for up to 3 years unless the employee has worked as a public school principal or teacher for at least 5 of the 8 years prior to being hired. Additionally, a school district may not extend a probationary period beyond 3 consecutive years unless the “board of trustees determines that it is doubtful whether the teacher should be given a continuing or term contract”. A fourth year may be given; however, the “district shall: (1) terminate the teacher; or (2) employ the teacher under a continuing contract or a term contract as provided by Subchapters D or E, according to district policy” (TEC § 21.202, 2003, p. 44) by the end of the fourth probationary

year. Teachers or principals must be given a term contract if they have worked 3 consecutive years under a probationary contract.

Chapter 21 of the TEC delineates between a term and a continuing contract. Section 21.204 (2003), states that all term contracts must be in writing and may include specific provisions outlined by the school district and approved by the board. Additionally, the board must provide employees with a copy of its employment policies. Finally, the teacher or principal “does not have property interest beyond its term. A term contract may not exceed five school years” (TEC. 2003, p. 63).

In contrast, TEC § 21.151, outlines the conditions required to award continuing contracts. Continuing contracts must be in writing, and the terms of employment must be outlined as they are required for term contracts. However, the school board must notify the teacher of a continuing contract status, and the teacher or principal must accept the continuing contract within 30 days. If the teacher or principal does not accept the continuing contract offer within 30 days, the contract is considered void (TEC, § 21.153, 1995). Teachers or principals employed under continuing contracts are

Entitled to continue in the teacher’s position or a position within the school district for future years without the necessity for annual nomination or reappointment until the person: (1) resigns; (2) retires under the Teacher Retirement System of Texas; (3) is released from employment by the school district at the end of the year because of necessary reduction of personnel as provided by TEC § 21.157; (4) is discharged for good cause as defined by TEC § 21.156 and in accordance with the procedures provided by this chapter; (5) is discharged for a reason stated in the teacher’s contract that existed on or before September 1, 1995, and in accordance with the procedures prescribed in this chapter; or (6) is returned to probationary status as authorized by § 21.106. (TEC § 21.154, 1995, p. 57)

Teachers and principals who hold continuing or term contracts may, at the discretion of the school board, be given probationary contracts. According to TEC § 21.106 (2003), teachers may give written consent to be placed on a probationary contract status in lieu of discharge,

termination, or nonrenewal. If the teacher or principal agrees to the probationary contract, he or she must “serve a new probationary contract period as provided by § 21.102 (2012) as if employed by the district for the first time” (p. 55).

The TEC further defines the rules for administrative personnel under continuing contracts. Texas Education Code § 21.155 (1995) outlines the rules for principals or other administrators who are granted teaching positions. A school district may place an administrator on a continuing contract as a teacher once that administrator completes his or her service in that role.

Notice of Term Contract Nonrenewal or Termination

The notice for contract nonrenewal or termination depends on the type of contract a teacher or school administrator holds; specific rules are in place for superintendents. Employees whose contracts are not renewed must receive written notice from the board within 10 days before the last day of instruction. However, superintendents must be notified 30 days before the term contract ends. Table 1 lists the nine reasons why contracts can be suspended, terminated, and nonrenewed. The conditions for such adverse employment action depend on the type of contract an employee holds and the reason the board gives for its decision.

Table 1

TEC Legal Causes for Contract Suspension, Nonrenewal, or Termination

Reasons for contract termination or nonrenewal	District Action	Contract Type	TEC
Failure to obtain certification	Employees must have proper certification during the time of contract.	Continuing, Term or probationary	§ 20.0031
Conviction of sexual offense with person under the age of 18	Penal code convictions that require the defendant to register as a sexual offender and if the victim was under the age of 18.	Continuing, Term or probationary	§ 21.058
Conviction or adjudication for a felony case	A school district must suspend the person without pay, provide a written notification of contract termination, and terminate the person as soon as practicable. A district’s decision is not subject to appeal.	Continuing, Term or probationary	§ 21.058
School Board Judgment	A board’s decision to terminate a must be “in the best interests of the district” (p. 44).	Probationary	§ 21.103
Conviction of Certain Offenses	A board may suspend or revoke a certificate or permit of a felony or misdemeanor offense relating to the duties or responsibilities of the job.	Probationary, Continuing or Term Contract	§ 21.060
Reduction of Force	The reduction in force must be necessary.	Continuing, Term	§ 21.157 § 21.211
Failure to Meet Acceptable Standard of Conduct	Employee must fail to meet acceptable standard of conduct determined by a school board.	Continuing Contract	§ 21.156
Good Cause	Good Cause is determined by the school board and written in local policies	Term Contract	§ 21.211 (1)
Financial Exigency	Employees must be considered for other open positions prior to dismissal.	Term contract and probationary contract	§ 21.251 (b)(3)

Chapter 21 of the TEC describes the attributes necessary for educators to be dismissed or terminated. Any employee who holds a probationary, continuing or term contract must have proper certification after the contract is awarded. A teacher or administrator who fails to obtain, extend or renew certification shall have his contract voided. Employees must have proper certification during the contract period. School districts may terminate, suspend with or without pay, or retain the employee for the remainder of the year as an at-will employee. After an employee's certification expires, he or she has up to 10 days to renew, extend, or validate certification from the Texas SBOE. As stated in statute, "A school district's decision...is not subject to appeal...and the notice and hearing requirements...do not apply to the decision" (TEC, §21.0031, 2011, p. 2).

Felony convictions for certain offenses are a second reason a contract can be terminated. Texas Education Code § 21.058 (2011) applies to penal code convictions that require the defendant to register as a sexual offender if the victim was under the age of 18. If an employee is guilty of such an offense, the school district has 5 days to revoke the his or her teaching certificate, remove the individual from the place of work, suspend without pay, provide written notice that the contract is voided, and terminate the employee as soon as practicable. A third reason to terminate any contract can be due to an employee conviction or adjudication for a felony offense. A school district may suspend without pay or provide the employee written notice that his or her contract is voided, and then terminate that employee as soon as practicable. Unlike TEC, § 21.058, which involves a sexual crime, an individual may reapply for a certification according to board policies. For all three termination situations, action taken by a board is not subject to appeal and notice of hearing requirements do not apply.

Employees who have probationary contracts are subject to TEC § 21.103 (2011), and their contracts can be terminated at the end of the contract period. As stated in the code, a school board “may terminate the employment of a teacher employed under a probationary contract at the end of the contract if in the board’s judgment the best interests of the district will be served by terminating the employment”(TEC § 21.103, p. 52). The notice to terminate the employment relationship must be made in writing before the last 10 days of instruction. Again, the decisions of the board are final and may not be appealed.

A fifth way an employee can be dismissed is if he or she is convicted of certain offenses considered related to the roles and responsibilities as a professional educator. Convictions of certain misdemeanors and felonies may result in the board suspending or revoking an employee’s certificates or permits. According to TEC § 21.060 (2007), the following offenses qualify under this board review:

- 1) An offense involving moral turpitude;
- 2) An offense involving a form of sexual or physical abuse of a minor or student or other illegal conduct in which the victim is a minor or student;
- 3) A felony offense involving the possession, transfer, sale, or distribution of or conspiracy to possess, transfer, sell, or distribute a controlled substance, as defined by chapter 481, health and safety code, or by 21 U.S.C. § 801 et seq.;
- 4) An offense involving the illegal transfer, appropriation, or use of school district funds or other district property; or
- 5) An offense involving an attempt by fraudulent or unauthorized means to obtain or alter a professional certificate or license issued under this subchapter. (p. 48)

A reduction in force is a sixth way an employment relationship can end with a school district. Employee evaluations or appraisals must be used in this process. Texas Education Code § 21.157 (1995) applies to continuing contracts and states, “Reductions [may] be made primarily based on appraisals administered under § 21.352 in the specific teaching fields and other criteria as determined by the board” (p. 58).

A school board can discharge any contract, including continuing contract employees at any time for good cause, which constitutes the seventh reason an employment relationship can end. Good cause is defined as “the failure to meet accepted standards of conduct for the profession as generally recognized and applied in similarly situated school districts in this state” (TEC § 21.156, p. 50). School boards may elect to suspend a teacher under this section without pay for a set amount of time that may not exceed the current school year.

Texas Education Code § 21.211 (1995) defines the eighth reason an employment relationship can end. Specifically, a school board may terminate or suspend a term contract for good cause. School boards have the option to suspend, without pay for a set time, prior to termination. To do so, school boards must establish reasons for good cause in their policies.

The financial health of a district determines the ninth reason to terminate or nonrenew an employee contract. Texas Education Code Chapter 44 (2014) describes the fiscal guidelines for school finance and fiscal management. School boards shall follow these guidelines as they pertain to staffing and reduction in force. Once a board meets the requirements, it may terminate a probationary, continuing, or term contract at any time during the contract period. An employee whose contract is terminated because of financial exigencies may not request a hearing to challenge the decision assuming that all board policies and guidelines were followed when making that decision.

Texas Education Code Chapter 21 (2013) provides the legal rule concerning contract termination, renewal, and nonrenewal for school employees. These rules apply to all employees with a minor exception for school superintendents. School boards are required to adopt policies for the employment relationship between school superintendents. Texas Education Code § 21.212 (2011) states, “The board of trustees shall adopt policies that establish reasons for

nonrenewal. This section does not prohibit a board of trustees from discharging a superintendent for good cause during the term of a contract” (p. 68). Furthermore, superintendents under this section must be given reasonable notice no later than the 30th day before the contract ends.

Appendix A provides an example of a school board policy concerning a superintendent.

Regardless of the position held, reasons for nonrenewal must be in the best interests of the school district (*Bagby v. Marlin ISD*, 1987).

Procedural Safeguards

In 1981, the Texas Legislature passed the Term Contract Nonrenewal Act (TCNA). Prior to the TCNA, no statutes existed concerning contract renewals and a school board could nonrenew a teacher’s contract without any notice as long it did not violate that employee’s constitutional rights (*Hix v. Tuloso-Midway ISD*, 1972). The TCNA was created to afford school employees legal protection in the employment relationship in the areas of due process, evaluation, notice of nonrenewal, hearings, decisions, and appeals (*Grounds v. Tolar*, 1986; *Peaster v. Glodfelty*, 2001). The TCNA sunsetted; however, its provisions can be found in the 19 TAC and in the TEC. Processes for handling complaints within local school districts are written in board policies and state statutes. When school district employees, parents, students, or taxpayers have complaints regarding school board policies and regulations, they must refer to and follow the procedures laid out in these statutes. School boards hear formal complaints. If no resolution is found, the grieving party can appeal to the Texas commissioner of Education or sue in state or federal court.

Per the TEC, employees who wish to challenge board decisions regarding employment contract nonrenewal must follow the processes outlined by state law. In Texas, employees must bring their complaints to the local school board. If the school employee is not satisfied with the

board's decision, he or she can appeal to the commissioner who makes the final decision. An employee who is dissatisfied with the commissioner's decision may again appeal the decision in state or federal court.

Appeals at the Local Level

Texas Education Code, Chapter 21, sets forth the relationship between the State of Texas and its public school teachers and establishes the procedures whereby public school educators receive due process concerning their employment. School boards have three options regarding term contracts: renewal, nonrenewal, or termination. Term contract terminations occur during the employee's contract timeline and follow particular education law processes. In contrast, term contract nonrenewals occur when a board elects not to continue an employment relationship after the contract timeline expires. After the contract expires, the individual is no longer employed and has no due process rights unless he or she feels the contract was nonrenewed illegally.

According to the TCNA (1981), school districts are required to create board policies that list the reasons why a teacher's contract might be nonrenewed, provide notice of nonrenewal to the teacher within a statutorily determined timeline prior to the end of the school year, and offer the right to appeal. While the TCNA is no longer in effect, many of its provisions continue to exist in TEC Chapter 21 and the 19 TAC. At the time of this study, the following process was in place:

1. Notice of contract renewal or nonrenewal must be made in writing no later than the 10th day before the last day of instruction.
2. A teacher has 15 days to request a hearing in writing. At the hearing, the teacher may have representation and hear evidence that supports the reason for nonrenewal.
3. A teacher may cross-examine adverse witnesses.

4. A teacher may present evidence.

The board is required to make a decision after the local hearing. If the teacher does not like the decision, he or she can take the following actions:

1. Appeal the decision and request a hearing before a hearing examiner. The examiner officer only offers recommendations to the board. The board may or may not consider the recommendations when making its decision. If the teacher does not like the decision, he or she may make an appeal to the Texas commissioner of education.
2. If the teacher does not like the commissioner's decision, he or she can ask for a rehearing by the commissioner. If the rehearing decision is not to the teacher's satisfaction, a judicial appeal may be made at a local district court.

Under TEC Chapter 21, teachers are afforded due process with steps to ensure that the decision to nonrenew a contract is fair. Additionally, a teacher is entitled to hear the evidence concerning a decision of the district to nonrenew, and the board is required to make a decision based on evidence provided from both sides. If the employee does not like the board's decision, he or she has up to 15 days to file a written request to the commissioner for an independent hearing conducted by a state-approved hearing officer who has met the minimum requirements established under TEC, § 21.252 (2012) or an administrative judge. The hearing officer's process is much like that of a traditional trial court process. The hearing officer may

Issue subpoenas at the request of either party and administer oaths, rules of motions, admissibility of evidence, maintain decorum by closing the hearing or taking other appropriate action, schedule and recess proceedings, and make any other orders as provided by the commission. (TEC § 21.255, 1995)

During the hearing, the teacher has the same rights to be heard with or without a hearing officer. Several conditions must exist if a hearing officer is used. First, the Texas rules of evidence apply. Second, a certified court reporter records the hearing. Third, the hearing is

conducted like a trial without a jury, and the examiner's findings of fact and conclusions of law are based only on permissible evidence. Fourth, teacher evaluations are admissible. Finally, the school district has the burden of proof by a preponderance of evidence standard.

The hearing examiner has up to 60 days to provide a written recommendation that includes a finding of fact and proposal of relief, if deemed necessary, to the school board. At the following board meeting, the school board must discuss the hearing examiner's recommendations and allow each side to make an oral presentation. The board may agree, reject, or modify a finding of fact only if it is not supported by substantial evidence. Any changes must be in writing and include legal basis and reasons for the changes. The board has 10 days to render a decision in writing. The final decision must be presented orally at a board meeting and recorded by a certified shorthand reporter.

A contract nonrenewal decision may be appealed to the TEA commissioner under TEC § 21.208 (1995) after the board considers the hearing officer's recommendations. As per TEC § 21.301 (2012), the teacher has 20 days to file an appeal to the commissioner. The school district has up to 20 days to respond to the petition and provide the commissioner with documentation. The commissioner reviews the records before the hearing examiner and the oral argument before the board. This is the only evidence that the commissioner considers.

If a party alleges that procedural irregularities exist and were not recorded in the public record, the commissioner must hold an evidentiary hearing to determine whether the board's decision was, in fact, based on inaccurate information or evidence that was not included in the record. The party alleging the procedural irregularity must identify the defect and determine the influence it had on the board's decision (TEC, §21.302, 1995). The commissioner's findings are deemed final and cannot be appealed.

The commissioner conducts the hearing under the same rules that govern the hearing officer phase. However, the commissioner can only make his or her determination in accordance with TEC §21.303 (2012) which stipulates, “The commissioner may not substitute the commissioner’s judgment for that of the board of trustees unless the decision was arbitrary, capricious, or unlawful or is not supported by substantial evidence” (p. 65).

The commissioner has up to 30 days to render a decision, which be in writing and include findings of fact and conclusions of law. If the decision reverses the action of the board, the commissioner may order that the school district reinstate the teacher, pay the teacher’s back pay and benefits, or both. While Texas law gives commissioners the power to render binding decisions, the appeal process does not end there. Either party may appeal the commissioner’s decision. Texas Education Code § 21.3041(2012) allows either party to request a rehearing within 20 days of the commissioner’s decision. The commissioner has up to 45 days to grant a rehearing request. If the commissioner does not render a decision about the hearing request within 45 days, the petitioner’s request is denied.

Commissioners’ decisions may be appealed first to the district courts, and unfavorable decisions at the district court level can be appealed to the state appellate courts. Either party has up to 30 days after the commissioner’s decision is issued to file an appeal in a Texas district court. Unlike the commissioner’s requirement of finding evidence that the decisions were arbitrary, capricious, unlawful, or not supported by substantial evidence, the state courts work under the substantial evidence rule and the conclusions of law rule. The state courts may only review the evidence on the evidentiary record and any evidence acquired by the commissioner. No additional evidence may be used, even if new evidence is discovered. Finally, a court may reverse a commissioner’s decision for one of two reasons. First, TEC § 21.307 (f) (2012) states,

“The Court may not reverse the decision of the commissioner unless the decision was not supported by substantial evidence or unless the commissioner’s conclusion of law are erroneous”

(p. 82). Second, TEC § 21.307(g) (2012) states,

The Court may not reverse a decision of the commissioner based on procedural irregularity or error by a hearing examiner, a board of trustees or board subcommittee, or the commissioner unless the court determines that the irregularity or error was likely to have led to an erroneous decision by the commissioner. (p. 82)

Appeals to the Texas State Courts

Either party may appeal a commissioner’s decision to the state courts. The state courts can only reverse a decision if it was not supported by substantial evidence or if the findings of law were erroneous. The state courts cannot “reverse a decision that was based on procedural irregularity, error by the hearing examiner, the board of trustees or the commissioner unless the error was likely to have led to an erroneous decision by the commissioner” (TEC § 21.307, 2003). Appeals can only be considered “if there is a pure question of law” (Hughes, 1989, p. 49). additionally, trial or appellate courts are not bound by agency rulings (*Bormaster v. Lake Travis ISD*, 1984). If a petitioner does not favor the decision rendered by the district court, he or she may appeal to the Texas State Court of Appeals and then to the Texas Supreme Court. From 1983 to 2013, Texas State Courts had tried 23 cases concerning commissioner appeals in which the petitioners claimed that some or parts of the Texas TCNA were violated. Table 2 lists all cases heard to date. Of the 23 cases, three involved school administrators who challenged the Texas commissioners’ decisions.

Table 2

Texas Court Cases Concerning the Texas TCNA

Year	Case	District Court	Court of Appeals	Supreme Court	Decision
1983	<i>Barich v. San Felipe Del Rio ISD et al.</i>		X		Barich prevailed. Employees may challenge the adequacy of notice during local hearing and before the commissioner.
1984	<i>Bormaster v. Lake Travis ISD</i>		X		Lake Travis ISD prevailed. The court held that Bormaster was a probationary employee and not afforded rights under the TCNA.
1985	<i>Grounds v. Tolar ISD</i>		X		Tolar ISD prevailed. Teachers may be assigned to other teaching duties at the discretion of the district.
1985	<i>Seifert v. Tx. Central Ed. Agency</i>			X	Siefert prevailed. Written notice must state all reasons for proposed action.
1986	<i>Grounds v. Tolar ISD</i>			X	Grounds prevailed. The TCNA is not subject to Administrative Proceedings and the Texas Regis. Act.
1987	<i>Burke V. Central Education Agency et al.</i>		X		Burke prevailed. Burke was entitled to a new evidentiary hearing under APTRA.
1986	<i>Central Education Agency and Plano ISD v. Burke</i>			X	Remanded. "Rehearing" rights in APTRA do not apply to the TCNA.
1989	<i>Hightower, et al. v. State Commissioner of Education et al.</i>		X		State commissioner prevailed. Tested definition of "teacher" per TCNA.
1992	<i>Grounds v. Tolar ISD</i>		X		Tolar ISD prevailed. The TCNA does not create constitutional protected property interest.
1993	<i>Grounds v. Tolar ISD</i>			X	Grounds prevailed. The TCNA creates property rights in the term contract renewal process; reasons for nonrenewal must be stated.
1993	<i>Dodd v. Meno</i>	X			Commissioner and Meno ISD prevailed. Dodd was not a "teacher" as defined by statute.
1993	<i>English v. Central Education Agency</i>		X		English prevailed. Board's vote to accept the superintendent's nonrenewal recommendation without a hearing violated TCNA.

(table continues)

Table 2 (continued).

Year	Case	District Court	Court of Appeals	Supreme Court	Decision
1994	<i>Grounds v. Tolar</i>		X		Grounds prevailed. Court found due process violations but Grounds failed to prove injury. He was awarded \$1.00.
1994	<i>Dodd v. Meno</i>			X	Upheld 1993 District Court decision. Nurse's license is not the same as a teaching certificate.
1994	<i>Wilmer-Hutchins ISD v. Brown and Commissioner of Education and Central Education Agency</i>		X		Brown and Commissioner of Education prevailed. Commissioner did not exceed authority by requiring to consider teacher's evaluation before accepting superintendent's recommendation.
1994	<i>Washington v. Fort Bend ISD</i>		X		Fort Bend ISD prevailed. Suit for termination was dismissed based on pleadings and no evidence heard in district court.
1995	<i>Temple ISD v. English</i>			X	Temple ISD prevailed. Voting to accept a superintendent's recommendation before a hearing does not constitute predetermination.
1996	<i>Gilder v. Meno, Central Ed Agency, and Aquilla ISD</i>		X		Central Ed. Agency and Aquilla ISD prevailed. Substantial evidence de novo review not a right.
1996	<i>Stratton v. Austin ISD</i>		X		Austin ISD prevailed. 1-year term contract does not create property interest subject to due process.
2001	<i>Peaster ISD v. Glodfelty and Dobbs</i>		X		Godfelty and Dobbs prevailed. Commissioner's decision reversed. Nonrenewal must be based on substantiated allegations.
2004	<i>Houston v. Nelson and West Oro ISD</i>		X		Nelson and West Oro ISD prevailed. Teachers must have permit to have ISD protections.
2005	<i>Brown v. Amarillo ISD and the Commissioner of Education</i>		X		Amarillo and Commissioner of Education prevailed. Teachers must exhaust administrative remedies through TCNA before appealing through the courts.
2013	<i>Sharyland ISD v. Molina</i>	X			Molina prevailed. Teacher not required to exhaust administrative remedies under the TCNA or discrimination and retaliation claim.

Bormaster v. Lake Travis ISD (1984) was the first case to challenge elements of the TCNA. Bormaster served as a principal for Lake Travis ISD. His superintendent informed him that his probationary contract would not be renewed. Bormaster sought temporary injunction from the Texas District Court and then the Texas Court of Appeals on the grounds that the board's notice of nonrenewal was defective and violated his due process rights. He claimed that if he sought and obtained a hearing before the board, he would waive any complaint against the board's action to nonrenew, as per commissioner rules. Bormaster sought to have the commissioner of Education hear his case. On March 19, 1984, the Texas Court of Appeals found for the district and denied the temporary injunction. The court found,

The Term Contract Nonrenewal Act is not applicable to probationary employees. Accordingly, Bormaster has probably not shown that he is entitled to complain of any alleged defective notice. With the foregoing rules of appellate review in mind, this Court has concluded that Bormaster's pleading and evidence failed to present a case of probable right and probable injury and, accordingly, has concluded that the district court did not abuse its discretion in denying the application for temporary injunction. (*Bormaster v. Lake Travis ISD*, 1984, p. 2)

The second case that tested the TCNA was decided in 1994. In 1991, Washington served as an assistant principal under a 2-year term contract. Shortly after receiving the term contract, she chaperoned a field trip in which students were involved in a shoplifting and hazing incident. Washington submitted an incident report, which her supervisor deemed unacceptable, directed her to revise the report, and placed her on paid suspension. Washington revised the report and was then placed on a growth plan. Soon thereafter, Washington gave notice to appeal her suspension. She was also directed to agree with the growth plan, but did not comply because she was not allowed to see the plan. Upon refusing to sign the growth plan, she was suspended with pay, and the administration recommended dismissal for repeated insubordination. The board then terminated Washington.

In August 1991, in contesting her termination, Washington filed suit in district court, rather than appealing to the commissioner of education. Fort Bend ISD responded to the suit by filing a plea for jurisdiction based on Washington's failure to exhaust administrative remedies and appeal to a court of proper jurisdiction. The Texas District Court "granted the plea to jurisdiction, dismissed with prejudice, and refused to consider summary judgment" (*Washington v. Fort Bend ISD*, 1994).

Washington then filed in the Court of Appeals of Texas, which ruled on March 1995. In the appeal, she claimed the following points of error:

(1) Washington need not exhaust her administrative remedies prior to seeking redress from the district court; (2) the court erred in granting the plea to the jurisdiction without first allowing the plaintiff the opportunity to amend her pleadings; and (3) the court erred in granting the plea to the jurisdiction. Washington's fourth point of error complains of the trial court's failure to file findings of fact and conclusions of law. (*Washington v. Fort Bend ISD*, 892 SW2d, 1994, p. 5)

The Court of Appeals found that Washington did not need to exhaust her administrative remedies because her case met two of the six exceptions prior to resorting to the courts: Actions resulting from unauthorized school board conduct and actions involving a federal claim. In terms of granting the plea jurisdiction, Washington was exempt because she asserted a federal claim. In terms of granting jurisdiction, the court found that the hearing did not need to be held in Travis County, as per statute, because her petition contained a federal constitutional claim. Finally, Washington was not allowed the opportunity in the trial court to amend her pleading prior to dismissal, as she was not allowed to see or rebut her growth plan. In sum, the court found,

In the absence of special exceptions, since due process violations were alleged and the assertion of a federal claim is an exemption to the exhaustion requirement, it was error to grant the plea to the jurisdiction and to dismiss with prejudice. This cause is reversed and remanded. (*Washington v. Fort Bend ISD*, 1994, p. 5)

Temple ISD v. English (1995) was the third case heard by the Texas courts concerning the TCNA. English, who served as a school principal, was notified by the district that his contract would not be renewed. The district voted on March 10, 1986 to accept the superintendent's recommendation to nonrenew but did not follow the requirements under the TCNA. The school board met 3 weeks later (March 31st), affirmed the previous action, and added the procedural rights and safeguards outlined in the TCNA. A hearing was conducted in August 1986, and the board voted not to renew English's contract.

English appealed to the commissioner of education who affirmed the board's decision. He then attempted to appeal the commissioner's decision but failed to file his appeal within the statutory 20-day requirement. He claimed that he was not given 20 days because he had received the actual notice 6 days after the decision was rendered. English then filed suit in district court, which sided with the school district. English appealed to the Texas Court of Appeals (*English v. Central Education Agency, Meno, and Temple ISD*, 1993).

In 1993, the Texas Court of Appeals heard English's case. He asserted that Temple ISD did not provide him adequate notice and a hearing before initially deciding to not renew his contract (*English v. Central Education Agency, Meno, and Temple ISD*, 1993). The school district alleged that the district court had no jurisdiction under the Administrative Procedure and Texas Register Act (APTRA). The Texas Court of Appeals found that Texas courts did have jurisdiction because the commissioner did not give English 20 days to file his appeal. The date the employee receives official notification from a commissioner is the date that the 20-day deadline begins. The Court of Appeals also agreed with English's point of error that the school board decided to nonrenew his contract by prior to a hearing. The court reversed the district court's decision and remanded the district court to rehear the case. The Court of Appeals stated,

We hold that when the District decided not to renew English's contract for employment as principal, it did so without notice and without the opportunity for a hearing. English was thus denied the procedural protection afforded by the Act. We sustain English's point of error. (*English v. Central Education Agency, Meno, and Temple ISD*, 1993, p. 5)

In response to the Court of Appeals' findings, Temple ISD filed a suit that was heard by the Texas Supreme Court in 1995: *Temple ISD v. English* (1995); the fourth and final case heard by the court. Temple ISD contended that the court did not have jurisdiction because English did not meet the 20-day requirement to file an appeal as outlined in the APTRA. The second claim Temple ISD made was that English was afforded due process and procedural safeguards when the board took action to nonrenew his contract, despite having to send him two notices.

The Texas Supreme Court found that Temple ISD's claim to jurisdiction was not supported because English received his notice 6 days after the commissioner had made his decision. According to the APTRA, "A motion for rehearing must be filed by a party within 20 days after the date the party or his attorney of record is notified of the final decision" (*Temple ISD v. English*, 1995). In short, English was not given a full 20 days because he received his notice 6 days after the decision was made.

Temple ISD's second claim was that English was afforded due process and procedural safeguards when the board decided to nonrenew his contract. The court found that, in the first meeting, the school board voted to approve the superintendent's recommendation to nonrenew English's contract. In the second board meeting, the board voted to accept the superintendent's recommendation to nonrenew English's contract. The Court of Appeals found that the board's first action did not constitute predetermination. Despite finding no merit in the jurisdiction argument, the Texas Supreme Court rendered judgment for Temple ISD. The Texas Supreme Court stated:

The vote to accept, rather than approve, the superintendent's recommendation of nonrenewal indicates that the Board was taking a different course of action as to the nonrenewal. The vote to accept the recommendation was followed by timely notice of the recommendation of nonrenewal and a prompt hearing on the matter, as required by the Term Contract Nonrenewal Act. Rather than a predetermination, the vote to accept in this instance amounted to nothing more than a procedural device by which to initiate the nonrenewal process in accordance with the Term Contract Nonrenewal Act. We accordingly hold that under the facts of this case the Board did not as a matter of law predetermine the outcome of the nonrenewal process. (*Temple ISD v. English*, 1995, p. 3)

Appeals to the Federal Courts

The United State Federal Courts have tried eight cases citing the TCNA in Texas (see Table 3). Five were tried and ended in the U.S. District Court. Three were tried in the U.S. Court of Appeals, and no case made the U.S. Supreme Court dockets. Three of these eight cases involved school administrators.

The United States Court heard its first Texas case in 1985 (*Cogdill v. Comal ISD*, 1985). Cogdill served as a high school principal, and her term contract was not renewed. She sued on the federal claim of deprivation of her right to due process under the Fourteenth Amendment. Comal ISD submitted a motion to dismiss on the grounds that Cogdill did not have property or liberty interest, which affords constitutional due process prior to termination.

Prior to the nonrenewal, Cogdill worked under a 1-year term contract. Her attorney argued that certain conditions must be met before a contract is nonrenewed. At the time of the decision to nonrenew, the TEC required the board to consider teacher evaluations prior to deciding to renew term contracts, and to give timely notice of a proposed nonrenewal that included the reasons for the proposed action. Cogdill claimed that she was not afforded the opportunity to defend herself or correct any deficiencies in her performance. As a result, her defense claimed that she was stigmatized, and her good name, reputation, honor, and integrity were damaged.

Table 3

United States Court Decisions Concerning Texas's TCNA

Date	Case	District Court	Court of Appeals	Supreme Court	Decision
1985	<i>Cogdill v. Comal ISD</i>	X			Comal ISD prevailed. Due process clause does not equate to continue entitlement of employment beyond the term of the contract.
1987	<i>Montez v. South San Antonio ISD</i>		X		South San Antonio ISD prevailed. Must hold teaching certificate to be protected under the TCNA.
1989	<i>English v. Hairston, Temple ISD</i>		X		Hairston and Temple ISD prevailed. Property interest does not apply in employment beyond the contract term for Texas teachers employed under term contracts.
1990	<i>Murray v. Mount Pleasant ISD</i>	X			Mount Murray ISD prevailed. The TCNA does not create property interest in term contracts.
1994	<i>George v. Bourgeois</i>	X			Bourgeois prevailed. The TCNA gives property interest in renewal process, but not in TCNA itself.
1996	<i>Hill v. Silsbee ISD</i>	X			Silsbee ISD prevailed. Property interest does not apply for coaching duties; superintendent's comments are protected under qualified immunity.
2005	<i>Hernandez v. Duncanville School District et al.</i>	X			Duncanville ISD prevailed. Hernandez failed to exhaust administrative remedies through the TCNA.
2011	<i>Harris v. Martinsville ISD</i>		X		Martinsville ISD prevailed. Teachers must be employed full-time to receive TCNA protections.

The U.S. District Court found that a claim of entitlement of employment must be provided by state law. The Court cited *Board of Regents of State Colleges v. Roth*, which found that, for an employee to meet the condition of procedural due process, he or she must have a legitimate claim of entitlement to a job. While the TCNA provides property rights for continuing contracts, it does not provide these rights for term contracts. The court stated,

That provision is a clear indication that the Term Contract Renewal Act was not intended to create a property interest in continued employment. Secondly, a distinction should be made between a state law which creates a legitimate claim of entitlement to employment, (such as the continuing contract provision), on the one hand, and a state statute which merely establishes a termination, or in this case, a nonrenewal procedure, on the other hand. Entitlement to continuation of employment is not created by the due process clause. (*Cogdill v. Comal ISD*, 1985, p. 2)

Cogdill's second claim was that she was not afforded the opportunity in the hearing to clear her name. As a result, her liberty rights were infringed. To make a liberty interest claim of stigmatization under Fourteenth Amendment safeguards, one must demonstrate the following: (1) one was stigmatized in or as a result of the discharge process, (2) the charges were made public, and (3) one was denied a meaningful hearing to clear his or her name (*Cogdill v. Comal ISD*, 1985, p. 3). The court did not find evidence of defamatory statements made by Comal ISD. Evidence must be found to make a liberty interest claim, and the court found, "The plaintiff's complaint fails to state a claim that her liberty interest has been impinged. Without either a property or liberty interest to trigger due process requirements, the plaintiff has no federal claim" (*Cogdill v. Comal ISD*, 1985, p. 3). The court dismissed Cogdill's case without prejudice.

The U.S. Court of Appeals, 5th Circuit heard *English v. Hairston, Temple ISD* in 1989. English was employed as a principal under a 2-year term contract that expired on

July 31, 1986. When his contract was not renewed, English sued, “alleging a deprivation of property without due process” (*English v. Hairston, Temple ISD*, 1989, p. 1). The U.S. District Court held that English did not have property interest in the renewal request. English contended that he held property interest beyond his term contract and the requirement of the TCNA for school districts to adopt policies and reasons for nonrenewal created property interest in the employment relationship.

In sum, the U.S. Court of Appeals ruled in favor of Hairston. The court found that English did not have property rights to his employment. The TCNA provided for procedural safeguards to employees, and by virtue, “do not create a property interest” (*English v. Hairston, Temple ISD*, 1989). Additionally, school district policies that define reasons for nonrenewal did not create property interest because,

Under appellant’s argument the Act, which in essence requires only that nonrenewal decisions be informed and consistent, is transformed to require renewal except on a showing of reason for nonrenewal. To construe the statute in this manner would do away with the distinction long maintained in Texas law between a teacher’s contract for a term and one that is continuing, a distinction the Act is careful to preserve and which is needed in order for the Act to have meaning. To read the Act as appellant suggests would equate term contracts with continuing contracts. That this is not intended is made clear by § 21.203(a) of the Act which specifically provides that the board may “choose not to renew the employment of any teacher employed under a term contract”. (*English v. Hairston, Temple ISD*, 1989, p. 2)

On July 13, 1990, the U.S. District Court decided *Murray v. Mount Pleasant ISD*. Murray was employed as a superintendent and held a series of 1-year contracts; however, his contract was not renewed in 1989. At the time of his nonrenewal, Murray was 53, and his replacement was 36 years old. Murray sued for the following reasons: violation of due process rights because he held a property right to his employment, breach of

contract when the board voted to demote him during the term of his contract, and age discrimination as he believed he was discharged because of his age.

The U.S. District Court found for the defendants. First, Murray's claim to property interest was moot. The court cited two previous court cases in its analysis: *English v. Hairston* (1989) and *Cogdill v. Comal ISD* (1985). The TCNA did not create property interest in the employment relationship. Second, when Mount Pleasant ISD board voted to demote Murray during his term contract, it did not follow legal standards. As a result, Murray was not demoted because he was paid and served as superintendent through the remainder of his contract. The court dismissed English's claim due to lack of jurisdiction. They wrote, "Plaintiff's second cause of action is a state law contract claim over which Plaintiff wishes the Court to exercise pendent jurisdiction. Dismissal of the federal question claims requires the dismissal of the pendent claim for lack of jurisdiction" (*Murray v. Mount Pleasant ISD*, 1990, p. 5).

Third, the court found that Murray failed to meet the prima facie conditions outlined in the Age Discrimination in Employment Act. The court found,

It is clear from Plaintiff's deposition testimony that Murray is more concerned about his allegations of breach of contract than about his age discrimination charge. He does not hold that the person who was given a term contract as superintendent after him was not qualified. Plaintiff states only that he was 53 at the time of his contract nonrenewal, whereas his replacement was 36 years of age and had less years of experience as a superintendent. Murray states that his allegation stems from "a feeling" that he had (*Murray v. Mount Pleasant ISD*, 1990, p. 4).

In sum, English failed to provide evidence to his claim.

In 1994, the U.S. District Court decided the fourth case, *George v. Bourgeois*. George worked as a middle school principal under a 2-year term contract. She was reassigned as the administrator of the Education Center and the director of federal

programs under a 1-year contract. George claimed that she was reassigned, or forced out, as a principal because she criticized her superintendent, Dr. Bourgeois, and reprimanded a school board member's daughter. George also claimed that West Orange Cove ISD, violated her due process rights by failing to renew her term contract for 2 years, which violated her liberty interest and failed to afford her substantive due process. The retaliation and violation of due process rights caused mental anguish and, as a result, entitled her to exemplary damages.

The court found for the defendants. First, George failed to provide evidence of retaliation when the board changed her contract terms and position. The court wrote, "This means George must show the defendants actually relied on her criticisms of Dr. Bourgeois in renewing her contract for only one year and later transferring her to the Education Center. The plaintiff's evidence, however, is simply nonexistent" (*George v. Bourgeois*, 1994, p. 12). Second, George's liberty interest claim under the Fourteenth Amendment was also unsubstantiated. The court found,

There is no evidence that either Dr. Bourgeois or West Orange Cove made any false accusations or defamatory statements about George, let alone any that damaged her standing in the community. In addition, George has failed to prove she is precluded from other employment opportunities as a result of the defendant's actions. (*George v. Bourgeois*, 1994, p. 8)

Third, the court found that George's property interest and procedural due process claims were without merit. While the court found that George had property interest in term contract renewals (*Grounds v. Tolar*, 1985), her property rights were not violated because she was given a contract. Additionally, the court found no evidence that her procedural rights were violated because the TCNA only created property interest in the renewal process. Third, the court found that George's claim to a violation of substantive

due process was also lacking evidence. Because the board awarded a 1-year contract, it did not deprive English of property interest. The court found,

First, as the court held above, George was not "deprived" of her property interest. Therefore, her claim is not actionable under the Fourteenth Amendment. In addition, there is no evidence the defendants did not exercise professional judgment. In fact the defendants' evidence tends to establish that they did, and the plaintiff has not refuted it. Accordingly, this claim fails, and the defendants are entitled to judgment as a matter of law. (*George v. Bourgeois*, 1994, p. 12)

Fourth, George was unable to meet the conditions of mental anguish because her constitutional rights were not violated, and she did not provide evidence demonstrating that mental anguish occurred. Finally, George alleged that the superintendent and board's actions were egregious, and she was entitled to exemplary damages. The court did not find any evidence of such actions. In sum, the court granted summary judgment to the district for all of George's claims.

Conclusion

Individual states set the requirements and conditions necessary to become a public school teacher because public education is primarily a function of the state. The state also statutorily prescribes the teacher employment relationship with a school district using employment contracts. The teacher and district must agree to the terms and conditions of these contracts. According to Alexander and Alexander (2009), the following two factors influence the teacher employment relationship greatly: "State and federal prohibitions that prevent government from arbitrarily and unilaterally denying a teacher a basic and fundamental constitutional right or interest" (p. 14).

School districts are legal entities "with the power to sue and to be sued; purchase, receive, hold, and sell real property; make contracts and be contracted with; and do all other things necessary to accomplish the purposes for which (they were) created"

(Alexander & Alexander, 2009, p. 788). When litigation arises because of disputed interpretations or applications of contract terms, the court relies on some form of law or policy to render a decision.

Twenty-three state court cases and eight federal cases presented in this paper have tested elements of the TCNA with little success, and no success in cases concerning school administrators. The courts have used common law precedents, state statutory and regulatory prescriptions, constitutional provisions, or a combination of these to render decisions. Because of the multifaceted nexus of case law interpretations and the rights afforded to public school employees by the U.S. Constitution, and state law, commissioners' decisions are and will be subject to legal review and challenge.

CHAPTER III

OVERVIEW OF RESEARCH METHODOLOGY

Research Design

This researcher used a qualitative legal research method, which judges, attorneys, and legal scholars use to answer complex legal questions (Carmen, 2009; Rogers, 2010). To find cases for this study, the researcher searched LEXIS/NEXIS, Education Resources Information Center (ERIC), Westlaw, FindLaw, Supreme Court Website, United States Department of Education (DOE), and the TEA website. The TEA website provided detailed legal transcripts of the cases used in this study, and these cases are filed as matter of public record.

Sample Population

This researcher used purposive sampling to select the cases for this study. According to Bryman (2008), purposive sampling is strategic “and entails an attempt to establish a good correspondence between research questions and sampling” (p. 458). Specifically, the research selected cases catalogued on the TEA website, which include all commissioner decisions rendered since 1970.

The cases used in this study spanned the period from January 1983 to December 2013. The researcher selected this time span because the first appeal to commissioners was decided in 1983. The end date, December 2013, marked the end of a 30-year period of appeals. To find appropriate cases for review, the researcher searched the TEA website for the term *contract nonrenewal*. This search yielded 363 related cases. The TEA website does not have a research function to sort cases by category, such as

elementary school principal. As the result, this research read and catalogued all 363 cases. Table 4 illustrates the breakdown of the cases used in this study.

Table 4

TEA Nonrenewal Commissioner Decisions by Job Classification 1983-2013

Category	Cases Heard	Notes
Classroom teachers	291	Librarians, counselors, coaches, nurses
Administrators	49	All cases involving non classroom teachers
Licensing	13	Involving business or schools requiring TEA licensing
Other	8	Change in contract days for district employees, land disputes, territory disputes, and Commissioner and TEA language disputes
Unknown	2	Incomplete information for these cases on the TEA website
Total Cases Heard	363	

Forty-nine of the 363 cases included administrators as defined by the TEA. The researcher read all case files to determine the exact position of each administrator. Two cases were not scanned properly; therefore, were not included in this study. Five of the 49 administrator cases did not meet the sample criteria for this study. Of the 44 cases that Texas commissioners heard, 23 involved school administrators at all levels and 21 involved central office and athletic director positions. Table 5 details administrator cases by classification.

Table 5

TEA Commissioner Nonrenewal Decisions by Administrative Position Held: 1983-2013

Administrative Position Held	Number of Cases Heard
Superintendents & Associate Superintendents	8
Principals & Vice Principals	26
Central Office Administrators*	5
Athletic Directors	5
Total cases heard	44

* All were non-campus administrators

Procedures

The study population included 44 cases of school superintendents, associate superintendents, principals, vice principals, athletic directors, and central office administrators who had term contracts nonrenewed by their boards and who appealed to the Texas commissioner of education between January 1983 to December 2013.

The researcher used purposive sampling to identify cases within the population that met specific criteria. The criteria for selection included the following:

1. Petitioners who worked as school administrators at the time their term contracts were nonrenewed.
2. Petitioners who appealed their cases to TEA commissioners.
3. Petitioners whose cases were heard and decided from 1983 to 2013.

The rationale for selecting the first criteria was to isolate the job classification to school administrators. Specific knowledge, skills, and abilities found in school administrators' job descriptions are similar across the state of Texas and are outlined in Texas Education Code (TEC) Chapter 21. The rationale for selecting the second criteria

was to identify cases that followed the steps outlined in TEC, § 21.209: Appeal. All petitioners claimed that the boards' decisions were arbitrary, capricious, unlawful, not supported by substantial evidence, or violated some protected right.

The rationale for selecting the third criteria was due to the passage of new laws concerning teacher contracts. In August 1981, the Texas Legislator passed the Texas Term Contract Nonrenewal Act (TCNA), which provided term contract rights for teachers including due process. All cases heard by commissioners followed the processes outlined in the TCNA of 1981. As a result, all case findings examined in this paper are consistent with changes outlined in the TCNA and subsequent modifications in the TEC.

Data Analysis

For the data analysis, this researcher used data reduction, which is a process by which data are abstracted and summarized, to identify legal constructs that could be organized systemically into patterns and trends. Each case was analyzed and catalogued based on identified data sets. According to Hughes (1989), data reduction analysis “is a form 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” (p.77). The researcher compiled the data gathered from analyzing each case transcript in the form of tables and graphs to illustrate the patterns and trends found through data reduction techniques. These data can be represented comprehensively to practitioners and policy makers.

CHAPTER IV

APPEALS PROCESS BEFORE THE TEXAS COMMISSIONER OF EDUCATION, CATALOGUE OF CASES, FINDINGS, AND ANALYSIS

Chapter IV is organized in three sections. The first section concerns the procedures for contract nonrenewal hearings under the Texas Administrative Code (19 TAC) and Texas Education Code (TEC) that have evolved over the span of 30 years. For example, in early cases, such as *Patrick v. Mineola Independent School District (ISD)* (1983), the commissioner was required to use the substantial evidence standard in TEC § 21.303 (a) (2012). By 2014, TEC § 21.303 (a) no longer existed. The substantial evidence standard requirement for contract nonrenewals is now found in 19 TAC, Chapter 157, and was last amended in 2012.

The second section provides a catalogue of cases decided by Texas commissioners of education. Each case is explicated to identify the legal claims by petitioners and administrative law judges' or hearing officers' processes to determine the legal basis for each claim, and commissioners' decisions in each case. Cases are divided into four groups: superintendents and associate superintendents, principals and vice principals, athletic directors, and central office staff. The third section concerns the findings and analysis. The coding and outcomes of the decisions in all appeals are also presented.

Hearings before the Commissioner of Education

The cases presented in this paper were decided from 1983 to 2013. In the span of 30 years, the 19 TAC has evolved regarding hearings and appeals specific to the commissioner of education. As of 2014, 19 TAC, Chapter 157, Hearings and Appeals,

Subchapter BB Specific Appeals to the commissioner, outlines the appeals process for aggrieved term contract nonrenewal parties. In Texas, the Texas Rules of Civil Procedure and the Texas Rules of Civil Evidence and Civil Procedure are followed (last modified in 2012). Additionally, 19 Chapter 157, Hearings and Appeals, Subchapter AA, General Provisions for Hearings Before the commissioner of education, is used in Texas. All term contract nonrenewal appeals fall under 19 TAC § 157.1072 (1988), which the Texas Legislature amended on May 28, 2012.

Under current statutory authority, the commissioner may appoint or designate an administrative judge to act on his or her behalf and prepare a draft proposal for decision that includes a brief background; findings of fact; discussion; conclusions of law; and a recommendation to grant, remand, dismiss, or deny the appeal. A commissioner may also appoint a certified hearing examiner in lieu of an administrative law judge. A petitioner must file the necessary documents, including petitions for review, within 20 calendar days from the date of official notice of the term contract nonrenewal decision. If a petitioner does not file within 20 days, the appeal is dismissed. Petitions for review must include the following:

- 1) A description of the challenged ruling;
- 2) The date of the challenged ruling;
- 3) A precise description of the action the teacher wants the commissioner to take on the teacher's behalf;
- 4) A statement of the jurisdiction and the legal basis of the claim;
- 5) The name, mailing address, telephone number of the teacher's party representative during business hours, and facsimile number, if any; and
- 6) The name, mailing address, and business telephone number of the school district's representative and facsimile number, if any (19 TAC, §157.1072, 1998, p. 3)

A school district has 20 days to respond to a Petition for Review; however, is not required to respond (TEC § 21.301, 2001) but must file the local record within 20 days.

If a district does not file the local record within this time, all allegations that require resolution will be deemed against a district. The local record must contain the following:

- (1) The transcripts of proceedings at the local level;
- (2) All admitted evidence;
- (3) All offers of proof;
- (4) All written pleadings, motions, and intermediate rulings;
- (5) A description of all matters officially noticed;
- (6) If applicable, the recommendation of the independent hearing examiner;
- (7) The transcript of the oral argument before the board of trustees or the board subcommittee;
- (8) The decision of the board of trustees or the board subcommittee; and
- (9) If applicable, the board of trustees' or the board subcommittee's written reasons for changing the recommendation of the independent hearing examiner. (19 TAC, § 157.1072, 1988, pp. 3-4)

No new information may be added after 20 days. If a school district responds to a Petition for Review, the aggrieved party has up to 7 days to file objections. An administrative law judge may conduct a hearing to consider new evidence if the record is challenged. Additionally, the school district's record must be made available to the aggrieved party.

All hearings under TEC § 156.1072 are decided by the substantial evidence standard of review of the record created by an independent hearing officer or the board of trustees. However, an administrative law judge may take additional evidence of procedural irregularities that was not evident or reflected in the local record if a hearing officer conducted the hearing. Cases in which an independent hearing officer was not used and no findings of facts were issued by the board, the commissioner will decide whether enough evidence exists to support the reasons for the proposed nonrenewal. Under such circumstances, the commissioner reviews the record of the hearing if it was held before a certified hearing examiner; he or she will not consider any additional

evidence (TEC § 21.301(g), 2001). A briefing (19 TAC § 157.1058, 2004) may be required if the school board does not use a certified hearing officer. The purpose of a briefing is to allow each party to present its case and acquaint the commissioner with the salient issues. The petitioner's brief must include the following:

- (1) Statement of the case. The brief must state concisely the nature of the case, the course of proceedings, and the school district's disposition of the case. Record references should support the statement and it should seldom exceed one-half pages, and should not discuss the facts.
- (2) Issues presented. The brief must state concisely all issues or points presented for review. The statement of an issue or point will be treated as covering every subsidiary question that is included fairly. However, an issue that is not so identified is waived.
- (3) Statement of facts. The brief must state the facts pertinent to the issues or points presented concisely and without argument. The commissioner will accept as true the facts stated unless another party contradicts them. The statement must be supported by record references.
- (4) Argument. The brief must contain a clear and concise argument for the contentions made with appropriate citations to authorities and to the record.
- (5) Prayer. The brief must contain a short conclusion that clearly states the nature of the relief sought. (19 TAC § 157.1058, 2004, p. 13)

A respondent must follow the same requirements as the petitioner; however, parts 1 through 3 are not required, but may be included. Substantial compliance is met under the lens of two defects: formal or substantive. If an administrative judge finds formal defects, he or she may require a brief to be amended, redrawn, or supplemented. If a party fails to comply with the rule, the brief may be dismissed without resubmission. A substantive defect is found when a brief has not been presented accurately or properly. The administrative law judge may require additional briefings, postpone the hearing, or order necessary information.

The commissioner may allow new evidence if procedural irregularities are alleged during the local hearing that is not in the local record and that may influence a decision. However, this allowance may only be considered if the board's decision was arbitrary,

capricious, and unlawful or was not supported by substantial evidence. Board decisions cannot be reversed:

On a procedural irregularity or error by a hearing examiner, the board of trustees, or a board subcommittee unless the commissioner determines that the irregularity or error was likely to have led to an erroneous decision by the board or board subcommittee. (TEC § 21.303 (c), 2012, p. 82)

The commissioner is required to use the substantial evidence standard of review when hearing term contract nonrenewal appeals. Early cases, such as *Shelton v. Aquilla ISD* (1983), set this standard. Specifically, this case cited *General Telephone Company v. Public Utility Commission* (1982) in that substantial “means more than a mere scintilla, or some evidence, it is less than is required to sustain a verdict being attacked as against the great weight and preponderance of the evidence” (p. 10). *Johnson v. Kenedy ISD* (2008) also set forth the substantial evidence standard of review, and summarized *City of Alvin v. Public Utility Commission of Texas* (1993). This case determined that the substantial evidence test is met when:

- (1) The findings, inferences, conclusions, and decisions of an agency are presumed to be supported by substantial evidence, and the burden is on the party contesting the order to prove otherwise;
- (2) in applying the test, the reviewing court is prohibited from substituting its judgment for that of the agency as to the weight of the evidence of questions committed to agency discretion;
- (3) substantial evidence is more than a scintilla, but the evidence in the record may preponderate against the decision of the agency and nonetheless amount to substantial evidence;
- (4) the true test is not whether the agency reached the correct conclusion, but whether some reasonable basis exists in the record for the action taken by the agency; and
- (5) the agency's action will be sustained if the evidence is such that reasonable minds could have reached the conclusion that the agency must have reached in order to justify its action. (*City of Alvin v. Public Utility Commission of Texas*, 1993, p. 2)

A commissioner’s decision must be rendered within 30 days after a Petition for Review is submitted. If the commissioner fails to make a decision in 30 days, the

district's decision stands. Motions under Chapter 157 are allowed; however, motions for summary judgment are not. A commissioner can deny, remand, or grant an appeal. On granted appeals, the commissioner may order a school district to reinstate with or without pay and benefits from the date of discharge. A commissioner may also order a school district to pay the petitioner 1 year's salary or what he or she would have been entitled to from the date of reinstatement.

The following sections provide a catalogue of 44 cases decided by the commissioner. Each case is explicated by job category held by the petitioner and legal claims and rationales are reviewed and summarized. Finally, the outcome of each decision is determined.

Cases Pertaining to Superintendents and Associate Superintendents

The eight cases analyzed in this section concern petitioners who served as associate or assistant superintendents at the time they filed appeals. The researcher provides a summary of each case, including the legal claims made by the petitioners and the rationales used by commissioners to make their decisions.

Westmoreland v. Floresville ISD (1987)

Westmoreland served as the superintendent with Floresville ISD. On March 25 and 26, 1986, an evidentiary hearing was held and the board voted to nonrenew Westmoreland's contract. On April 8, 1986, Westmoreland received notification, dated April 7, 1986, of the board's decision. According to the Term Contract Nonrenewal Act (TCNA), appeals must be filed within 30 days. On May 14, 1986, the commissioner received a notice of appeal. Westmoreland's appeal was postmarked May 9, 1986, 1 day after the filing deadline.

On January 19, 1987, the school district submitted a motion to dismiss for untimely filing. The commissioner granted the school district's motion because Westmoreland did not file his appeal within the 30-day timeline. The hearing officer cited,

His Notice of Appeal should have been filed by May 8, 1986. Petitioner's Notice of Appeal was filed with the commissioner on May 14, 1986. Although Section 157.11(b) of the Agency's Rules regarding Hearings Before the commissioner and the State Board of Education provides that any documents (properly addressed and postage prepaid) filed by the United States mail, 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 documents and the documents were actually received within 72 hours after the deadline for filing". (*Westmoreland v. Floresville ISD*, 1987, p. 3)

Petitioner's notice of appeal was postmarked May 9, 1986, one day beyond the 30 day filing period (*Westmoreland v. Floresville ISD*, 1987).

Ellis v. Center ISD (1988)

Ellis was employed as the superintendent of Center ISD for 2 years before he received notice that his term contract would not be renewed. The board decided not to renew Ellis' contract because of management deficiencies that were noted in three different evaluations. Ellis appealed to the commissioner on the following grounds:

1. The Board was prejudiced and biased in its decision.
2. The Board refused to summon Petitioner's witnesses for the local hearing, hampering Petitioner's defense.
3. The Board failed to provide Petitioner with specific notice of the alleged reasons for nonrenewal. (*Ellis v. Center ISD*, 1988)
4. The Board's decision is not supported by substantial evidence.
5. The Board's decision was arbitrary and capricious. (*Ellis v. Center ISD*, 1988, pp. 3-4)

Ellis claimed that the board was prejudice and biased in its decision to nonrenew; however, this claim was not made at the local hearing. As a result, the hearing officer found that, because this claim was not made, it had "not been preserved as a ground of

error to be reviewed by the state commissioner of education” (*Ellis v. Center ISD*, 1998, p. 4).

Ellis’ second claim, that the board refused to summon witnesses for the local hearing, thus hampering the defense, was also found to be without merit. Ellis did not provide witnesses nor was any testimony found in the public record to support his claim. The hearing officer found, “No prejudice is shown and Petitioner fails to allege sufficient facts upon which relief can be granted” (*Ellis v. Center ISD*, 1988, p. 5).

Ellis’ third claim, that the board failed to provide him with specific notice of the alleged reasons for nonrenewal, was also found to be without merit. The board followed all requirements outlined by statute. The hearing officer stated,

The third challenge is frivolous in light of the lengthy and detailed notice provided by Respondent to Petitioner on February 15, 1985. (Pet.’s Ex. 2). Respondent listed various categories for nonrenewal and further proceeded to itemize specific examples under each category. Respondent provided ample specific notice to Petitioner of the reasons for his nonrenewal. (*Ellis v. Center ISD*, 1988, p. 5)

The commissioner also did not support Ellis’ fourth and fifth claims that the board’s decision was not supported by substantial evidence and was arbitrary. Ellis had three different evaluations that noted deficiencies, and evidence existed that he failed to fulfill his duties and responsibilities as the superintendent. No evidence existed of insubordination without just cause. The hearing officer found, “The decision-making process which led to the nonrenewal of Petitioner’s contract was consistent with law. Respondent’s action, thus, is held to be properly supported by substantial evidence and is neither arbitrary nor capricious” (*Ellis v. Center ISD*, 1988). The commissioner’s final decision was to deny and dismiss Ellis’ appeal.

Tolson v. Detroit ISD (1989)

Tolson was employed as Detroit ISD's superintendent from July 1980 to June 1988. In November 1987, Tolson resigned as superintendent, but the board took no action. In January 1988, the board voted to nonrenew Tolson's contract and sent him notice. A second notice was sent that stated the board was considering nonrenewal of his term contract. A hearing was held, and the board later voted to nonrenew his contract. Tolson appealed to the commissioner on the grounds that the board predetermined the outcome of the evidentiary hearing and the due process rights afforded by the TCNA. The board cited reasons for the nonrenewal of Tolson's contract. However, it did not comport to the statutes under the TCNA for superintendents. In 1988, 19 TEC § 21.204, page 2, read as follows:

(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 specified, the board of trustees shall thereby elect to employ such employee in the same professional capacity for the succeeding school year. (Tex. Civ. Stat. Ann., 1988)

The board's March 12, 1988 letter stated that the decision to nonrenew Tolson's contract have been made. The commissioner found,

In the present case, both the board minutes and the first notice sent to Petitioner clearly show that a decision, not a proposal to be considered, had been made. This error cannot be corrected simply by sending Petitioner another notice. This new notice does not change the fact of the decision previously made by the Board as reflected in its minutes. (*Tolson v. Detroit ISD*, 1988, p. 4)

Because the board's action did not serve to notify Tolson of his proposed nonrenewal, pursuant to TCNA, his contract was automatically renewed. The board contended that Tolson was not entitled to the protections of the TCNA for two reasons. First, he was employed under a series of contracts set for specific times, and they did not constitute a term contract. Second, Tolson resigned and the board accepted his resignation. To the board's first claim, the hearing officer stated,

This argument is negated by Respondent's own policy on nonrenewal of a superintendent which sets forth the procedures for nonrenewal in language similar to the provisions of the TCNA, requiring a notice of proposed nonrenewal to be sent before Board action to nonrenew takes place. (*Tolson v. Detroit ISD*, 1988, p. 5)

The hearing officer also denied the board's second claim because it did not formally act on the Tolson's resignation; minutes of such action did not exist. The commissioner stated that the board's actions violated the provisions under the TCNA. As such, the commissioner ordered that Tolson be reinstated in the same professional capacity for the 1998-1999 school year.

Allen v. Lumberton ISD (1990)

Allen served as a superintendent on a 2-year term contract. On March 8 and March 15, 1986, the board held a hearing to consider Allen's contract for the following year. Allen requested a hearing to challenge his nonrenewal as per the TCNA. On March 17, 1986, after serving 6 years as the superintendent, Allen received written notice that his contract would not be renewed at the end of the term. On March 19, 1986, Allen received written confirmation that he was being released from duty immediately. On April 14, 1986, Allen received written notice that the board had voted (March 19, 1986) to dismiss him effective immediately, and ordered him to vacate his office by April 18,

1986. The board did not list cause for dismissal. Allen appealed to the Texas commissioner of education and challenged his nonrenewal and termination on the grounds that he was denied due process. He also claimed retaliation.

Allen was terminated 4 days after receiving his nonrenewal notice. He contended that the second letter, the termination notice, contradicted the nonrenewal notice. As a result, he was denied due process in the termination. Although Allen was officially terminated, he received salary and benefits until his contract expired.

Allen appealed his case to the commissioner of education who decided the case in 1990. The commissioner found that the school district correctly followed due process for nonrenewal, even though it voted to terminate him 4 days later. In terms of the board's termination action, the hearing officer noted,

To properly challenge the act of termination, (the) Petitioner had the recourse of requesting a hearing before the Board requiring it to establish good cause for his termination by a preponderance of evidence. Although (the) Petitioner has directly challenged his ouster at this time before the state commissioner of education and presented disturbing evidence that might yield deficiencies within the termination action, the local record reflects that (the) Petitioner did not avail himself of the process at the local level to challenge the termination, which was separate and apart from the nonrenewal cycle of events and subject to a different standard. (*Allen v. Lumberton ISD*, 1990, p. 6)

In sum, because Allen did not contest his termination, and the board took proper actions in the nonrenewal process, the commissioner denied his appeal.

Williams v. Wilmer-Hutchins ISD (1991)

Williams was employed as the associate superintendent from June 30, 1985 to June 30, 1987. On February 9, 1987, Williams received notice that his contract would not be renewed for the following year. The reason stated was a reduction in force caused by a decrease in state funding. An evidentiary hearing was held and, on March 30, 1987,

the board voted to nonrenew his contract. Williams appealed to the commissioner on the grounds that the board failed to follow the reduction in force statutes by not considering written performance evaluations before making its decisions, failed to consider Williams for other positions he may be qualified for, and failed to follow other procedural issues. The commissioner only ruled on two of three issues “due to the severity of the two procedural omissions set forth above, it is unnecessary to reach these questions” (*Williams v. Wilmer-Hutchins ISD*, 1991, p. 4).

When school districts consider reducing staff due to loss of enrollment, loss of funding, or changes in program, they refer to local policy and the TEC. When making nonrenewal decisions because of reductions in force, they must follow statutory procedures. First, a district must provide evidence that one of the conditions existed to make reduction in force employment decisions. In Williams’ case, the school district stated at the hearing, “Its actions were simply a ‘reorganization’ or ‘change in program and not a reduction in force’” (*Williams v. Wilmer-Hutchins ISD*, 1991, p. 3). Second, the board must consider written performance evaluations before making reduction in force decisions (TEC § 21.202, 2003). In this case, the board failed to consider this step in its decision-making process. Third, reduction in force eliminates positions, not staff; however, if no position is available that the employee is qualified for, that employee can be dismissed (*Wasserman v. Nederland ISD*, 1984). The board provided no evidence to show that it had considered Williams for other positions for which he was qualified.

The commissioner found that the board violated the TCNA when it failed to consider Williams’ performance evaluations and other positions within the district for which he was qualified. The commissioner also found the board’s use of reduction of

force and its failure to nonrenew Williams' contract without consideration of other positions that he was qualified for as arbitrary and capricious. Williams' appeal was granted, and the commissioner ordered that he was entitled to employment in the same professional capacity for the following school year.

Martinez v. Donna ISD (2005, 2006)

Martinez had a 4-year term contract to serve as the superintendent for Donna ISD. After an evidentiary hearing, the board voted to nonrenew his contract for the 2005-2006 school year. However, the board did not provide findings of fact or conclusions of law. Martinez appealed to the commissioner. Per statute, the board was directed to submit a brief in a timely manner. The board mailed the brief on the due date, and the Texas Education Agency (TEA) received it 6 days after the due date. The mailbox rule did not apply to Chapter 21, Subchapter G in this case (19 TAC § 157.1072(k), 1988). The board made a motion to enlarge time under a Texas Rule of Civil Procedure 5 process. As a result, the brief was struck for untimely filing.

The effects of striking down a briefing are outlined in 19 TAC (§ 157.1058, 2004). This rule provides that a failure to identify an issue results in the waiver of that issue (19 TAC § 157.1058(a) (2), 2004). The rule further provides that facts stated by one party are accepted as true unless the other party contradicts those facts (19 § 157.1058(a) (3), 2004). The hearing officer stated, "Because Respondent's brief has been struck, Respondent has waived all legal issues and has accepted all facts as stated by Petitioner" (*Martinez v. Donna ISD*, 2005, p. 5). Despite having a brief struck, a board may seek nonrenewal or termination (*Cantillo ISD v. Kennedy*, 1984), which the board opted for in this case.

The board argued that its position was clear in record; however, the Texas Education Briefing rules do not allow for information taken outside the record. The board conducted the evidentiary hearing without a hearing examiner. They heard the evidence and voted to nonrenew Martinez's contract without providing a reason; the board did not adopt findings of fact and conclusions of law. Additionally, the board's response to Petition for Review failed to provide facts that supported its position. The commissioner stated,

The Response to the Petition for Review simply denies all the statements and allegations made in the five page Petition for Review and prays that the commissioner find substantial evidence to support the board's decision. The Response to the Petition for Review does not identify any legal or factual errors in the Petition for Review, nor does it point out what facts support the board's decision. (*Martinez v. Donna ISD*, 2005, p. 6)

The commissioner granted Martinez's appeal and ordered that the district reinstate him with back pay and benefits or pay 1-year salary from the date he would have been reinstated.

Cleaver v. Kendleton ISD (2005)

Cleaver was employed as principal and then as an interim superintendent during the 2005 school year. In 2005, the board voted to nonrenew Cleaver's contract. Cleaver made four claims in her appeal to the commissioner of education. First, she was not given proper notice concerning her principal contract nonrenewal. Second, the board predetermined the outcome of the hearing, the hearing procedures were improper, and her principal evaluation had been satisfactory and not considered. Third, the board did not give her timely notice of the decision to nonrenew her contract. Fourth, the board did not have substantial evidence to support the decision to nonrenew.

Cleaver maintained that she held two contracts, principal and interim superintendent, and that the board only nonrenewed her principal contract. Cleaver held a probationary contract of principal for the 2001-2002 school year. Because the board took no action to award a term contract since 2001, the commissioner held that Cleaver had a term contract. In 2005, the board voted to extend Cleaver an interim superintendent contract, but failed to give her a written contract. The commissioner held that Cleaver had a unified term contract for the positions of principal and interim superintendent.

Cleaver claimed that the decision to nonrenew her contract applied only to the interim superintendent position because, as the board stated in the nonrenewal hearing, “First item of business is A-21-Conduct hearing regarding proposed nonrenewal of superintendent contract.” (*Cleaver v. Kendleton ISD*, 2005, p. 6). However, the commissioner determined that Cleaver held a unified contract and stated, “A unified contract may be nonrenewed in its entirety for a violation concerning any capacity covered in the contract” (*Cleaver v. Kendleton ISD*, 2005, p. 6).

Cleaver also claimed that the board predetermined the outcome of the nonrenewal hearing because a chief witness was a cousin of a board member. Cleaver offered no other evidence. The administrative law judge found that Cleaver “cited to neither precedent nor law that prohibits a board member from hearing testimony from a cousin. The record does not support a finding of predetermination” (*Cleaver v. Kendleton ISD*, 2005, p. 7).

On April 12, 2005, Cleaver earned a satisfactory rating on her evaluation as interim superintendent; she was never evaluated as a principal. Additionally, the board

did not consider her evaluation in its decision. Appraisal ratings can be used as evidence for or against proposed nonrenewals; however, as the administrative law judge stated, “The fact an employee received a rating of acceptable does not prohibit a board from proposing nonrenewal” (*Cleaver v. Kendleton ISD*, 2005, p. 7).

Cleaver also claimed that the board illegally combined the procedures for board nonrenewal hearings and procedures for a certified hearing officer. The board hired an attorney who provided proposed findings of fact and conclusions of law as a written closing statement. The commissioner found that the board’s process did not act as a hearing officer and stated that the board “is to be commended for helping ensure that the hearing was properly conducted by retaining an attorney to advise the board” (*Cleaver v. Kendleton ISD*, 2005, p. 7).

Cleaver also claimed a procedural irregularity in that she did not receive timely notice of the decision to nonrenew her contract. This issue was not raised in the local record and, per TEC, Subchapter G, the commissioner “shall consider the appeal based solely on the basis of the local record and may not consider any additional evidence” (TEC, 2013, p. 77). Thus, the commissioner did not have jurisdiction on this claim. The administrative law judge stated,

The issue of when Petitioner received written notice of decision was not raised in the local record nor does the local record provide any evidence as to this issue. Further, the only exception to TEC section 21.301(c) is TEC section 21.302, which only allows the taking of evidence concerning procedural irregularities that occurred at the evidentiary hearing. Neither party suggests that Petitioner was given written notice of the board’s decision during the board hearing. Jurisdiction over a potential violation of TEC section 21.208(b) (2) would be found under TEC § 7.057, not under TEC § 21.301” (*Cleaver v. Kendleton ISD*, 2005, p. 8).

Cleaver’s final claim was that substantial evidence did not support the board’s findings of fact. The board included a total of 19 findings of fact, and four were not

supported by substantial evidence. Despite this lack of support, the commissioner's final order was to deny Cleaver's appeal. The commissioner's conclusions of law stated,

There is not substantial evidence to support Respondent's Findings of Fact Nos. 6, 7, 9, and 18. All of the Respondent's other Findings of Fact are supported by substantial evidence" and "All of the Respondent's Conclusion of Law, (are) supported by substantial evidence are not arbitrary and capricious except for subsections 7 and 12, and Conclusions of Law No.3. (*Cleaver v. Kendleton ISD*, 2005, p. 12)

Cantu v. One Stop Multi-Service Charter School (2006)

Cantu worked as the superintendent of One Stop Multi-Service Charter School, an open enrollment charter school. His contract was nonrenewed, and he appealed the decision in 2006. Texas charter schools are required by statute to hire superintendents under a professional contract. However, at the time of the appeal, Cantu's contract did not apply to TEC Chapter 21. Cantu appealed on the grounds that he was entitled to due process for term contract as an employee of a charter school under TEC, § 21.209 (1995). Additionally, because the board is required by statute to provide superintendents with professional contracts, his employment was inferred to be governed by all subchapters of TEC Chapter 21. The administrative law judge found that TEC did not apply to charter schools employees in the areas of contract nonrenewals and appeals to the commissioner. He stated,

Section 12.104 lists the Education Code provisions that apply to charter schools. Chapter 21, Subchapters E and G, dealing with educator contracts, are not on the list. Therefore, charter schools are not required to comply with Chapter 21, Subchapters E and G. Consequently, any appeal rights arising under these subchapters of Chapter 21 are not available to employees of charter schools and the commissioner lacks jurisdiction over their nonrenewal matters. (*Cantu v. One Stop Multi-service Charter School*, 2006, p. 2)

The judge also dismissed Cantu's second claim that inferred protections existed under his professional contract. The administrative law judge found, "Neither the

school's settlement agreement with the Texas Education Agency nor the employment contract with Petitioner provides that the nonrenewal procedures of Chapter 21 apply" (*Cantu v. One Stop Multi-service Charter School*, 2006, p. 2). The commissioner dismissed the case on the grounds that it lacked jurisdiction.

Cases Pertaining to Principals and Vice Principals

The researcher analyzed 26 cases concerning petitioners who served as school principals or assistant principals during the time they filed appeals. This section includes a summary of each case including the petitioners' legal claims. The researcher also provides a discussion on the commissioners' rationales for their decisions.

Patrick v. Mineola ISD (1983)

Patrick was employed as a junior high school principal, and he held a term contract from July 1, 1980 to June 30, 1982 for Mineola ISD. On February 23, 1982, the board notified him of its intention to consider contract nonrenewal for the following year. The notice included seven reasons for this decision. The board held a hearing on March 10, 1982; at the conclusion, the board voted to nonrenew his contract. Patrick appealed the board's decision to the commissioner on the grounds that it was arbitrary, capricious, unlawful, and not supported by substantial evidence.

Patrick's first claim was that the board only gave him 9 days' notice to prepare for the hearing, and it did not state what evidence it would use; as a result, he was not ready to defend himself. Additionally, some information the board used was from previous contracts; Patrick protested the use of this information during the hearing. However, in his appeal and his exceptions to the hearing officer's proposal for decision, Patrick did

not state specifically how he was harmed by not having more time to prepare for his defense. To that end, the hearing officer stated,

Merely making the general assertion that he “could have had an opportunity to defend himself” had he received better notice or that “[i]t was not reasonable for Petitioner to anticipate this kind of testimony which was certainly damaging to him” presents the commissioner with no compelling reason to conclude that Petitioner's reinstatement would be in the best interests of public education. (*Patrick v. Mineola ISD*, 1983)

During the hearing, the board used information to build its substantial evidence base from events that occurred during Patrick’s previous term contracts. He claimed that this action proved that the board acted arbitrarily in its decision to nonrenew his contract. The information Patrick objected to concerned several incidents in which he caused physical harm to adults and threatened to kill them. One incidents resulted in a criminal indictment. The board used that information to show a pattern of aggressive and violent behavior. Considering the circumstance in this case, the administrative law judge stated,

Likewise, as in the appeal at bar, where the employer seeks to establish a pattern of continuing undesirable conduct on the part of the employee, it may be necessary as a matter of course to delve into previous contract here. Petitioner is accused of participating in a continuing pattern of conduct involving physical violence and threats of physical violence. In the context of this appeal, it is not impermissible for the Respondent to consider evidence of events occurring in past contract years for the purpose of establishing such a continuing pattern of behavior. (*Patrick v. Mineola ISD*, 1983, p. 11)

Patrick’s final claim was that the board’s decision was not based on substantial evidence. The local record provided many examples to support the board’s position that Patrick’s behavior was inconsistent with the district’s expectations of a professional employee. In his conclusions of law, the commissioner stated, “The decision of the Mineola Independent School District’s Board of Trustees to nonrenew Petitioner’s contract was not without substantial evidence, nor was it arbitrary, capricious, or

unlawful” (*Patrick v. Mineola ISD*, 1983, p. 12). The commissioner ordered the denial of Patrick’s appeal.

Cogdill v. Comal ISD (1984)

Cogdill was employed by Comal ISD as a principal from March 30, 1981 to June 30, 1981. The contract did not state whether it was a probationary or term contract. In August 1981, the board passed a policy stating that all teachers were employed as probationary teachers for 2 years under the contract terms, and the terms of the TCNA would not apply. In February 1982, the board revised its policy to conform to the TCNA and reemployed Cogdill on a 2-year probationary contract for the 1982-1983 school year. On March 16, 1983, the board notified Cogdill that her contract would not be renewed for the following year. As a probationary employee, she was not afforded procedural due process as outline in the TCNA. Cogdill appealed to the commissioner on the grounds that she did not hold a probationary contract and was denied due process.

Cogdill contended that the district erred in awarding her a probationary contract because the board minutes showed that her name was not listed as an administrator to receive such contract, and her first two contracts did not specify the type of contract she held. The district contended that the new policy, combined with the language in the newest contract, specified that all employees held probationary contracts, and that Cogdill had worked less than 2 years; therefore, pursuant to the policy, she was a probationary employee.

The commissioner granted Cogdill’s appeal. Because the school district entered into a contract with Cogdill, she was entitled to the benefits of the TCNA, and the new

policy only applied to employees hired after it was in place. Texas Education Code

§21.209 reads,

The board of trustees of any school district may provide by written policy for a probationary period not to exceed the first 2-years of continuous employment in the district, in which case the provisions of this subchapter shall not apply during such probationary period. (*Cogdill v. Comal ISD*, 1984, p. 4)

The commissioner reasoned that Cogdill was not a probationary employee. As such, she was entitled to, but was denied, procedural due process afforded by the TCNA. Because the board did not give her reasons for the proposed nonrenewal and the opportunity for an evidentiary hearing, the commissioner granted her appeal.

Martin v. Troup ISD (1984)

Martin served as a principal for Troup ISD and held a term contract. On February 15, 1983, the board notified Martin that the superintendent recommended the nonrenewal of his contract for the following year. The notice stated the reason for the proposed nonrenewal was deficiencies identified in evaluations and supplemental memoranda. On February 21, 1983, an evidentiary hearing was held before the board on March 7, 1983. Prior to the hearing, Martin requested that he be provided with the evaluation reports, memoranda, and names of witnesses that may be used in the hearing. The board did not honor his request, and voted on nonrenew his contract. Martin appealed to the commissioner on the grounds that the board did not provide him with the documentation he had requested prior to the hearing, and the board did not consider the evidence he provided at the local hearing, which resulted in lack of substantial evidence.

On March 24, Martin submitted a letter to the commissioner requesting an appeal. An administrative assistant received the letter and replied, “This will acknowledge receipt of the above appeal to the commissioner of Education from action taken by the

Respondent School District Board of Trustees. For Respondent's information, a copy of the appeal is enclosed" (*Martin v. Troup ISD*, 1984, p. 5). Martin submitted the required forms after the 60-day statutory requirement.

Martin claimed that the board's decision was not supported by substantial evidence. The commissioner found the first claim, that he was denied due process because he was not given the documentation that would be used against him, meritless. The local record included no evidence that Martin requested the documentation that was used against him nor the names of the witnesses. Furthermore, he did not express his disadvantage of not having the requested documents. In his amended notice of appeal, Martin did not claim that he was not provided with the documentation he requested prior to the hearing. Per the TCNA, school boards are not required to inform the petitioner of the evidence that will be used against him or her at nonrenewal hearings.

Martin's second claim stipulated that his notice of appeal and Petition for Review should stand because an employee from the agency told him that his letter served as record of his appeal, despite not completing the proper paperwork within 60 days required by statute. The commissioner found that the letter from the agency's administrative assistant was not binding because an attorney had not signed it. Furthermore, the commissioner found that the evidence from the testimony was sufficient to support a substantial evidence claim from the district. The commissioner found that the board's decision was not arbitrary, capricious, or unlawful. Martin's appeal was denied. The commissioner noted,

From the testimony at the local hearing, the Board of Trustees, as fact finder, could have reasonably concluded (1) that Petitioner was not keeping the superintendent adequately informed; (2) that he was not developing an adequate relationship with his staff; and (3) that he was not developing an adequate

relationship with his students. The evidence is not compelling, but it is more than a scintilla; it does constitute substantial evidence. (*Martin v. Troup ISD*, 1984, p. 6)

Palmer v. Burkeville ISD (1984)

During the 1982-1983 school year, Palmer served as an elementary school principal for Burkeville ISD. On March 4, 1983, he received a notice of proposed nonrenewal from the board, per the superintendent's recommendation. The only reason listed for the proposed nonrenewal was reduction of force due to financial matters. After the hearing, the board voted to nonrenew his contract and eliminated the elementary school position. The high school principal was assigned to supervise the elementary school. Palmer appealed to the commissioner on the grounds that district policy did not meet statutory requirements to make nonrenewal decisions based on a reduction of force, and the decision was not based on substantial evidence.

Palmer's first claim concerned the district policy of issuing contract nonrenewals. Specifically, board policy was inconsistent with TEC § 21.203 (b) (2002) in that the "The employment policies must include reasons for not renewing a teacher's contract at the end of a school year" (p. 61). At the time of the decision, a reduction of force was not listed as a potential reason to nonrenew a contract. The hearing officer found that the policy was valid because the reduction of force was necessary. As such, he wrote,

Under these circumstances, the school district's decision concerning which employee to renew and which to nonrenew should not be disturbed as long as (1) the district had a rational basis for its decision and (2) the decision was not made for the wrong reason—e.g., because of the nonrenewed teacher's sex, race, age, religion, national origin, participation in a constitutionally protected activity, etc. Petitioner has not alleged that the decision to nonrenew his contract and to retain the high school principal was in any way suspect. (*Palmer v. Burkeville ISD*, 1984, p. 4)

Palmer also claimed that the board had not provided sufficient evidence to eliminate his position. The board policy indicated that nonrenewals could be made as a result in changes in programs or reductions of force. This reason was enough to provide substantial evidence; Palmer's appeal was denied. The hearing officer added,

As noted previously, a reduction in the number of personnel units does not have to be necessary in order to make a "nonrenewal" (as opposed to the "termination" of a continuing contract) valid pursuant to that reduction, as long as the reduction is effected in good faith and is not shown to be for the purpose of denying the nonrenewed employee any rights, such as those afforded by the U.S. Constitution or the TCNA. (*Palmer v. Burkeville ISD*, 1984, p. 5)

Hegar v. Frisco ISD (1985)

Hegar was employed as a middle school principal with Frisco ISD; she held a term contract that ended on June 30, 1984. On February 14, 1984, the board notified her that they were considering her for nonrenewal based on deficiencies noted in her evaluation and failure to follow administrative directives. A hearing was held on March 1, 1984, and the board voted to nonrenew her contract. Hegar then appealed to the commissioner on the grounds that the board's decision was arbitrary, capricious, and not supported by substantial evidence.

Hegar submitted a supplemental pleading before the commissioner to include evidence not heard or considered by the board during the hearing. During the appeal hearing before the board, the record showed that the board president stated, "We've heard a lot of conflicting statements tonight. We, as a board, have to decide which statements are most correct on which side" (*Hegar v. Frisco ISD*, 1985, p. 4). Hegar argued that this remark was evidence that the board did not have substantial evidence. Citing *Ruiz v. Southwest ISD* (1984), the commissioner reasoned, under the substantial evidence standard, "If there is enough evidence in the record to constitute substantial evidence, the

local school board's decision must stand even if the evidence is in conflict and even if the commissioner disagrees with the result" (*Hegar v. Frisco ISD*, 1985, p. 5). The commissioner also noted that the substantial evidence standard, based on *Shelton v. Aquilla ISD* (1983), that the board provided in the local record constituted as substantial.

During Hegar's local hearing, she alleged disparate treatment because she was not treated the same as the high school principal. This claim was presented in her supplemental pleading; however, no record of her statement was found in the local record. Because no record of this claim existed, the commissioner denied Hegar's appeal and stated,

In the absence of any indication from the transcripts or Petitioner's pleadings that the Board was aware of the alleged disparate treatment, it cannot be concluded that the Board acted arbitrary, capricious or unlawful manner, even if we concluded that the Superintendent did so in making the nonrenewal (*Hegar v. Frisco ISD*, 1985, p. 5).

Smelley v. Higgins ISD (1986)

Smelley held a term contract as a principal in Higgins ISD during the 1985-1986 school year. On February 13, 1986, the board notified Smelley of the proposed nonrenewal, and provided four reasons for the action. On February 24, 1986, a local hearing was held, and the board voted to nonrenew his contract. Smelley appealed on the grounds that the board did not have substantial evidence in deciding to nonrenew his contract. The commissioner appointed a hearing officer to provide a proposal for decision in this case. The superintendent listed the following reasons why he made his recommendation to nonrenew Smelley's contract:

- I. Incompetence and inefficiency in performance of required or assigned duties:
 - (1) Lack of communication skills (Written)
 - a. Memos.
 - b. Written analysis of teachers' evaluations

- c. Grammatical errors and spelling errors are common in correspondence.
- d. Non-professional correspondence (Cursive).
- (2) Inability to comprehend purpose of Teacher Evaluation Instrument and to evaluate teachers thoroughly based on use of present evaluation instrument.
- II. Failure to maintain effective working relationship and good rapport with colleagues.
 - (1) Lack of composure—outburst against individual teachers have deteriorated effective leadership. Teachers have lost respect for Smelley as instructional leader.
 - (2) Preferential treatment—There is bias in dealing with own children as opposed to other members of student body as evidenced by arranging test schedules to benefit own children. It has become a laughing matter within system because of obviousness. (*Smelley v. Higgins ISD*, 1986, pp. 1-2)

During the hearing, the superintendent was the only witness. The first reason the superintendent gave regarded Smelley's lack of communication skills. A few examples were offered that demonstrated spelling and grammatical errors, which were not enough to substantiate such a claim. The superintendent had also evaluated Smelley in January of that year and gave him marks no lower than satisfactory. The hearing officer stated,

Texas teachers are expected to be able to write clearly and spell properly; however, a few examples of grammatical and spelling errors will not support nonrenewal when the teacher has not been given notice that his errors are unacceptable. Problems of this nature require that the teacher be given an opportunity to correct the problem and the teacher can be nonrenewed only if he fails to make the correction. (*Smelley v. Higgins ISD*, 1986, p. 4)

The hearing officer also found the claims against Smelley's use of handwritten notes, rather than typed, without merit.

The superintendent's second reason pertained to Smelley's lack of understanding the teacher evaluation process. According to the local record, Smelley was accused of giving his teachers high marks on their evaluations. This assertion was made because the superintendent had a consultant look at all the evaluations Smelley had completed on his teachers. The consultant concluded that the marks were too high; however, the

consultant did not testify or provide any written documentation of this claim. The hearing officer stated, “A single erroneous comment on one evaluation, even when combined with high marks, is also not substantial evidence” (*Smelley v. Higgins ISD*, 1986, p. 5).

The superintendent also stated that Smelley failed to maintain an effective working relationship with colleagues and staff. Additionally, because of several outbursts and low staff morale, his capacity as an instructional leader had diminished. However, the superintendent provided no evidence to support this claim at the hearing. The superintendent admitted that he has no documentation nor had he ever spoken with Smelley about this concern. The hearing officer wrote, “There was simply no evidence to show that Petitioner lacked composure or had lost respect of the teachers” (*Smelley v. Higgins ISD*, 1986, p. 5).

The third reason for nonrenewal listed concerned Smelley’s alleged preferential treatment. The superintendent claimed that testing schedules were made to benefit Smelley’s own children. During the hearing, Smelley stated his reasons for creating the schedule the way he did. The superintendent provided the schedules as evidence; however, did not discuss how they proved preferential treatment. The hearing officer’s proposal for decision stated, “The alleged preferential treatment is, however, not at all obvious from the record and is, therefore, not supported by substantial evidence. Furthermore, Petitioner gave a reasonable explanation for the schedules and his explanation was not rebutted” (*Smelley v. Higgins ISD*, 1986, p. 5). The commissioner granted Smelley’s appeal. The board failed to provide substantial evidence for its

decision to nonrenew his contract. The commissioner also ordered that the school district offer Smelley a contract for the 1986-1987 school year in the same professional capacity.

Moore v. Dilley ISD (1987)

Moore was employed under a term contract as principal during the 1984-1985 school year for Dilley ISD. On February 22, 1985, the board notified Moore of its proposal to nonrenew his contract per the superintendent's recommendation with three reasons for the decision. On March 5, 1985, Moore requested a hearing before the board. On March 25, 1985, the board attended a workshop on conducting a hearing because no member had previous training. The hearing was held on April 1, 1985 and continued on April 15, 1985 and April 19, 1985. Following statutory requirements, the board voted to nonrenew Moore's contract. Moore appealed to the commissioner on the grounds that the board's decision was arbitrary, capricious, and not supported by substantial evidence.

Prior to the hearing with the commissioner, the school district reported the alleged theft of exhibits and tape recordings from the last day of the hearing. The commissioner appointed and met with a hearing officer on October 10, 1985 to determine how to recreate the April 19, 1985 hearing. On June 18, 1987, a state-appointed hearing officer conducted a hearing.

Moore made three claims to the commissioner. First, he claimed that the board's training, which included a mock hearing, biased the board against him, and the board received various documents about his appeal prior to the hearing. Regarding this claim, the commissioner stated,

A board of trustees is entitled to instruction regarding the procedural steps of a nonrenewal hearing, and such a meeting does not compromise Petitioner's right to a fair hearing. Further, a board may receive information through prefilling of documents prior to the hearing. The record shows that both sides submitted

materials, of which the other side had notice, to the board. (*Moore v. Dilley ISD*, 1987, p. 11)

In his second claim, Moore asserted that the length of the final hearing violated his due process rights because the board was too tired to process all of the information when it made a decision. The commissioner found this claim to be without merit because there were a total of four hearings. As result, the board had plenty of time to process the information to render a fair decision.

Moore's final claim was that board did not provide substantial evidence prior to making its decision for nonrenewal. The record included many statements of facts to support each reason listed for nonrenewal. One reason listed in the record as evidence was the incident in which Moore bit a first-grade student as punishment for biting other students. This incident occurred a year after another teacher had bit a student as a disciplinary measure, and the board instructed Moore to inform his staff that biting students as a form of punish was not allowed. Moore did not address his staff regarding the directive and admitted to it during the hearing. To this claim, the hearing officer stated, "Even assuming that biting a student after receiving a directive not to do so does not constitute grounds for termination, such a direct violation of a board directive is sufficient reason for nonrenewal" (*Moore v. Dilley ISD*, 1987, p. 13). In sum, the commissioner denied Moore's appeal in its entirety.

Lamb v. Whitehouse ISD (1989)

Lamb served as a principal for 11 years for Whitehouse ISD and held a term contract. On February 9, 1988, the board notified Lamb that his superintendent had recommended his contract be nonrenewed for the 1988-1989 school year. The notice included five reasons for the nonrenewal. Lamb challenged the board's decision by

appealing to the commissioner on the grounds that the decision was arbitrary, capricious, and not supported by substantial evidence.

Lamb challenged two of the five reasons the board listed for the nonrenewal. First, Lamb claimed that his lack of budget oversight occurred only once. However, the board provided evidence of the described budget incident and his evaluations, which demonstrated his lack of budget acumen. As a result, the commissioner found that substantial evidence existed to support the board's finding, and Lamb had "notice of this deficiency and failed to remediate" (*Lamb v. Whitehouse ISD*, 1989, p. 5).

His second claim was that a single incident of student misconduct did not equate to his inability to maintain student discipline. The commissioner found this claim to be without merit. In the described incident, Lamb allowed students to fight to work out their issues. To this end, the hearing officer wrote, "The safety of individual students must be of paramount importance at all time. Permitting an assault to occur on school grounds to resolve a discipline problem is tantamount to condoning a crime" (*Lamb v. Whitehouse ISD*, 1989, p. 5). In sum, the commissioner found that the board had provided substantial evidence in its decision to nonrenew and that the decision was not arbitrary, capricious, or unlawful. Lamb's appeal was denied.

Collins v. Kountze ISD (1989)

In 1987, Collins began a 2-year contract as principal. At the beginning of the 1988 academic year, the school in which he served as principal was consolidated with another school. Collins was then reassigned as a central office administrative assistant. On February 13, 1989, Collins received notice of his proposed contract nonrenewal due to a reduction of force caused by a revenue shortfall. Collins claimed that the school

district did not follow its own local policy in determining which positions were to be eliminated.

The Kountze ISD local policy defined administrators as an employment area. Collins was not the only administrator in his district and, per policy, the district was required to evaluate all administrators for reduction in force. The local record did not provide evidence that the superintendent had considered all administrators based on performance, seniority, certification, and professional background. As such, the commissioner found that the district had not provided substantial evidence to dismiss Collins. The hearing officer stated, “The record does not yield substantial evidence to support Respondent’s position that it properly nonrenewed Petitioner according to its local policy. Respondent has failed to rebut this particular claim of deficiency” (*Collins v. Kountze ISD*, 1989, p. 4).

The commissioner granted Collins’ appeal on the grounds that substantial evidence did not exist to support the district’s decision to nonrenew based on financial exigency. Additionally, Collins’ nonrenewal was not properly conducted. The commissioner instructed the board to reinstate Collins in the same professional capacity for the 1989-1990 school year.

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Collins won his 1989 appeal to the commissioner, and the board was required to reinstate him in the same capacity as an administrator. The district ordered Collins to return to work by March 5, 1990; however, he failed to report to his assignment because he was under contract as a college teacher in Kansas. On March 28, 1990, the district notified Collins of the proposed nonrenewal; he did not receive the notice letter until

April 4, 1990. On April 23, 1990, the board voted to nonrenew Collins' contract for the 1990-1991 school year. Collins appealed to the commissioner claiming that the board improperly nonrenewed his contract because he received the notice of the proposed nonrenewal after April 1, which was past the TCNA deadline. Although employed as a college instructor, Collins wished to return to the district and accept a contract to work during 1990-1991 school year.

In the previous appeal, the district was required to offer Collins a contract in the same professional capacity he previously held, which they did. Collins failed to report to work by directive from the superintendent. Collins claimed that he was entitled to a new contract because of the commissioner's directive from the previous appeal and, as such, he was protected under the terms of the TCNA. The district claimed that Collins was not protected under the TCNA because he failed to report to his assignment. The commissioner denied Collins' appeal. In his findings, the commissioner wrote,

Part of Petitioner's prima facie case under the TCNA is to establish that he was an administrator employed under a term contract. Although the commissioner of Education... declared that Petitioner was entitled to a 1989-1990 term contract with Kountze ISD, his decision was not self-executing. It obligated Kountze ISD to offer such a contract which it did. Petitioner was free to accept this offer of employment, but he was also free to reject it. Petitioner's counter-offer of a contract for the 1990-1991 school year was not accepted by Respondent. Accordingly, there was no term contract in effect at the time Respondent attempted to "nonrenew" Petitioner's employment. Under these circumstances, the TCNA simply does not apply. (*Collins v. Kountze ISD*, 1991, p. 6)

Del Barrio v. Scurry-Rosser (1990)

Del Barrio was employed during the 1982-1983 academic year as a principal with a 1-year term contract. On March 21, 1983, the board adopted a policy concerning probationary employees. On March 28, 1983, Del Barrio received notice of his proposed contract nonrenewal. On April 17, 1984, he appealed before the board; it later voted to

nonrenew his contract. Del Barrio appealed to the commissioner on the grounds that he was not a probationary employee because he previously held a term contract, and he was denied the procedural safeguards contained in the TCNA.

To support Del Barrio's claim, his defense posited that the recent Texas Supreme Court decision, *Central Education Agency v. George West ISD* (1998), was relevant in his case. The referenced case found the district erroneously assumed McCullough was a probationary employee under a new policy and failed to provide her the procedural safeguards afforded by the TCNA. The result of the *Central Education Agency v. George West ISD* finding was relevant in Barrios' defense and should have been considered a matter of case law. The commissioner found that Del Barrio's case differed from the McCullough decision because his second contract was the subject of the appeal, and he was only in his second year with the district; thus, as per policy, he was a second-year probationary employee. In McCullough, the contract was modified, and as a result, denied the teacher TCNA protections. No change in Del Barrio's contract was evident. The commissioner denied Del Barrios' appeal and stated,

Because Policy 402.9 provides for a two-year probationary period and Petitioner had been employed with the district only one year at the time the policy began to apply to him, he was a probationary employee during his second year with the district and not protected by the TCNA. (*Del Barrio v. Scurry-Rosser ISD*, 1990, p. 2)

English v. Temple ISD (1990)

English was employed as a school principal with a 2-year term contract during the 1984-1985 and 1985-1986 school years. On March 10, 1986, the board voted to accept the superintendent's recommendation to nonrenew English's contract. However, the board did not consider his performance evaluation prior to accepting the

recommendation. On March 31, 1986, the board read English's evaluation, and voted to propose nonrenewal and issued notice. English appealed to the commissioner on the grounds that the board predetermined the outcome of the nonrenewal process; it did not consider his last evaluation in its decision during the first meeting; the board's decision was not supported by substantial evidence; and the decision was arbitrary and capricious.

The commissioner denied English's first claim that the board predetermined the nonrenewal process. The board followed all procedural safeguards outlined in TEC § 21.204(2003). The hearing officer found,

It is not a violation of the TCNA for a board of trustees to accept a recommendation to nonrenew. The acceptance of a recommendation does not decide the issue of whether an employee's contract should be nonrenewed. The March 10, 1986 vote did not violate the Act and did not constitute a decision by the board of trustees to nonrenew Petitioner's term contract of employment. (*English v. Temple ISD*, 1990, p. 6)

English's second claim was that the board had not considered his evaluation during the first meeting, thus rendering moot the second meeting at which his evaluation was considered. The commissioner found that the board was required, per TEC § 21.204(a), to consider evaluations prior to issuing a proposal for nonrenewal, which it did. He wrote, "Given that Respondent complied with the requirements of TEC § 21.204(a) prior to April 1 and prior to the issuance of the final notice of proposed nonrenewal, Respondent's actions are in conformance with the TCNA" (*English v. Temple ISD*, 1990, p. 6).

English's third claim, the decision was not supported by substantial evidence, was also held meritless. The record noted 17 deficiencies; as such, the commissioner found that the board had provided substantial evidence to support its decision. Finally, English claimed that the board's decision was arbitrary and capricious because he was not

allowed time to improve his performance, and the board did not follow its own policies when handling parent complaints. English did not present this claim to the board during the evidentiary hearing; therefore, the commissioner could not consider it in his decision. In sum, English's appeal was denied.

Garcia v. Alpine ISD (1990)

Garcia served as a principal with Alpine ISD during the 1998-1999 school year. On March 1, 1989, the superintendent recommended that Garcia's contract not be renewed for the 1999-2000 school year. On March 3, 1989, the board provided a written notification of the proposed nonrenewal. The reasons listed were as follows:

Deficiencies pointed out as part of the appraisal or evaluation process or any other communications.

1. Failure to fulfill duties or responsibilities.
2. Insubordination or failure to comply with official directives.
3. Neglect of duties.
4. Failure to meet the District's standards of professional conduct.
5. Failure to maintain an effective working relationship, or maintain good rapport, with parents, the community, or colleagues. (sic) (*Garcia v. Alpine ISD*, 1990, p. 2)

On March 12, 1989, Garcia submitted a written request for a hearing to the board president as per district policy. The board president did not receive the request until March 20, 1989 because of spring break; he scheduled the hearing for March 31, 1989. On March 28, Garcia requested a continuance, which was denied on March 29, 1989. On March 31, 1989, the board held the hearing and voted to nonrenew his contract. Garcia claimed that the board improperly denied his motion for continuance, failed to hold a hearing within 15 days of his request, and the decision to nonrenew was arbitrary and capricious, and substantial evidence did not exist to support the decision.

The commissioner did not support Garcia's first claim that the board improperly denied his continuance. Garcia requested continuance 3 days before the hearing and at the hearing. The board denied the request. The hearing officer stated, after having reviewed the record, "There is no demonstration of abuse of discretion by the board on this question" (*Garcia v. Alpine ISD*, 1989, p. 10).

The commissioner also did not support Garcia's second claim that the board failed to hold a hearing within 15 days of his request. Garcia submitted his request for an appeal on March 13, 1989 to the superintendent, but the board president did not receive the request until March 20, 1989. Because the hearing was held within 15 days from the time the board president received the notice, the commissioner found no violation of the TCNA.

Garcia's third claim, that the board's decision was arbitrary and capricious, was also found to be without merit. The commissioner stated that the board followed all tenets of the TCNA and found no violations. Garcia's final claim was that the board did not provide substantial evidence to support its decision. The commissioner found that the board successfully provided substantial evidence in the case. Based on record, the commissioner denied Garcia's appeal.

McKee v. Malakoff ISD (1990)

McKee served as a junior high principal in Malakoff ISD. On March 29, 1989, McKee received notice from the board that his contract would not be renewed for the 1989-1990 school year. The notice of proposed nonrenewal included five reasons. Following statutory requirements, McKee's contract was nonrenewed. He appealed to the commissioner on the grounds that the board's decision was not based on substantial

evidence and was arbitrary, capricious, and unlawful. The local record noted a series of deficiencies that supported the board's decision to nonrenew McKee's contract. The commissioner denied McKee's appeal. In his conclusions of law, the commissioner stated,

Respondent's decision to nonrenew Petitioner's term contract of employment pursuant to Tex. Educ. Code § 21.204 for deficiencies pointed out as part of the appraisal or evaluation process or any other communications, failure to fulfill duties or responsibilities, and incompetency or inefficiency in the performance of required or assigned duties due to his failure to properly maintain facilities and to correct maintenance problems was reasonably supported by substantial evidence and was neither arbitrary, capricious, nor unlawful. (*McKee v. Malakoff ISD*, 1990, p. 6)

Moore v. Mt. Pleasant ISD (1991)

Moore served as a vice principal for Mt. Pleasant ISD and held a term contract that ended on June 30, 1989. On March 28, 1989, Moore received notice from his superintendent that he would recommend nonrenewal; the three reasons given were listed in the local policy. On May 4, 1989, a hearing was held before the board concerning the recommended nonrenewal. The board voted to nonrenew his contract for the 1989-1990 school year. Moore appealed to the commissioner claiming that the board's decision was not based on substantial evidence and was arbitrary, capricious, and unlawful.

Moore made three specific claims. First, he claimed the board did not provide enough evidence during the hearing. However, the local record included facts that sufficiently demonstrated support for the reasons listed in the proposed nonrenewal notice. Additionally, when making term contract nonrenewal decisions, the board, per TCNA, is not required to have good cause (TEC § 21.202, 2003).

Moore's second claim was that the board acted capriciously, arbitrarily, and unlawful when it refused to give weight to his claim that he left work early to tend to a

sick child and that incident should not be considered as evidence against him. The board cited leaving early as an example of Moore's failure to fulfill his duties. Regardless of the reasons for leaving, the commissioner noted, "The Petitioner did not attempt to obtain permission to leave the campus prior to the scheduled end of the day" (*Moore v. Mt. Pleasant ISD*, 1991, p. 4). Moore also claimed that the board acted capriciously, arbitrarily, and unlawfully when it failed to consider his evaluation during its decision to nonrenew his contract. The board did consider his evaluation, which enumerated all of the deficiencies that the superintendent noted. To this claim, the hearing officer stated, the "TCNA does not speak to the weight a board must give an evaluation, merely that the evaluation be considered" (*Moore v. Mt. Pleasant ISD*, 1995, p. 4). In sum, the commissioner denied Moore's appeal.

Vasquez v. Eagle Pass ISD (1992)

Vasquez worked as a school principal for Eagle Pass ISD. On March 27, 1990, he received notice of his proposed nonrenewal including the reasons for the nonrenewal. On April 2, 1990, Vasquez requested a hearing, which was held in agreement by both parties on July 30, 1990. After the hearing, the board voted to nonrenew his contract. Vasquez appealed the decision to the commissioner on the grounds that the board's decision was retaliatory and, therefore, arbitrary, capricious, and unlawful. A hearing officer provided the commissioner with the proposal for decision.

Vasquez's only claim rested on his assertion that the superintendent's recommendation to nonrenew was in retaliation for an incident that occurred several years prior. He also claimed that some board members who voted against him colluded with the superintendent. The superintendent was investigated (reasons not listed), and

Vasquez provided a statement to a district employee in which he reported that a district maintenance worker was at the personal residence of the superintendent during school hours. During the hearing, Vasquez did not provide evidence to support his claim. The hearing officer cited *Mt. Healthy City School District v. Doyle* (1977) and *North v. Socorro* (1990):

Socorro (1990):

It is the Petitioner's burden to come forward with evidence showing that the statement made to a member of Respondent's administration several years before, i.e., that a maintenance worker was at the residence of the superintendent during school hours, was a substantial or motivating factor in Respondent's decision not to renew Petitioner's contract for the 1990-91 school year. (*Vasquez v. Eagle Pass ISD*, 1992, p. 3)

As a result, the burden of proof was not provided, and the claim was found without merit. According to the commissioner's conclusion of law, the board had provided enough documentation to meet the standards for substantial evidence successfully. Vasquez was unable to provide his burden of proof that the board's action was motivated by retaliation. The commissioner wrote, "Petitioner failed to carry his burden of persuasion that retaliation was a substantial or motivating factor in the decision of Respondent's board of trustees to nonrenew his employment contract for the 1990-91 school year" (*Vasquez v. Eagle Pass ISD*, 1992, p. 5). The commissioner denied Vasquez's appeal.

Schimschat v. Groesbeck ISD (1995)

Schimschat held a term contract from 1983 to 1993 and served as an assistant principal for Groesbeck ISD. On April 30, 1993, the board voted to nonrenew his term contract. Schimschat appealed to the commissioner on the claim of procedural irregularities that would render the board's decision to be without substantial evidence and capricious, arbitrary, and unlawful.

Schimschat's appeal was based on five legal claims. First, he was not evaluated as required by board policy and 19 TAC § 149.46 (1993). Second, the board's decision was not based on substantial evidence. Third, the superintendent fabricated the reasons for nonrenewal. Fourth, the reasons listed in the notice to nonrenew were constitutionally vague. Fifth, the board's counsel instructed the board that it could nonrenew a contract for any one of the reasons the superintendent provided in his recommendation.

The administrative law judge found no merit for Schimschat's first claim. Challenges to the evaluation process must be challenged or grieved at the time that evaluations are completed. Because Schimschat did not bring this claim up in a timely manner nor did he present this issue during his hearing, it could not be used in his case. Additionally, the TCNA only requires boards to adopt an evaluation instrument, ensure evaluations are conducted annually, and consider evaluations prior to nonrenewal decisions. The judge noted, "The TCNA does not provide for invalidating a nonrenewal due to process deficiencies" (*Schimschat v. Groesbeck ISD*, 1995, p. 4).

The second claim Schimschat presented concerned his belief that the board did not have substantial evidence to support its decision. The administrative law judge found this claim to also be without merit. He stated, "While the evidence was conflicting, a reasonable trier of fact could have made the findings which Respondent's board made" (*Schimschat v. Groesbeck ISD*, 1995, p. 4).

Although the school district had a legal nonrenewal policy, Schimschat claimed that the reasons for nonrenewal were constitutionally vague and, therefore, could not be used against him. According to 19 TAC § 157.1071 (g) (3) (2004), at the time of the appeal, a petitioner is required to make present all and any procedural defects during the

hearing; if he objects, the defects are waived. Because Schimschat did not make the constitutional claim at the hearing, the judge found that he waived his right and, therefore, could not consider his claim to have merit.

Schimschat's final claim was that the board's council improperly advised the board that it could nonrenew a term contract for any of the reasons presented for nonrenewal. This claim was also found to be without merit. The judge cited *Garcia v. Alpine* (1990): "A district need only one of the reasons for proposed nonrenewal to prevail before the commissioner as long as each reason for nonrenewal is legally sufficient" (*Schimschat v. Groesbeck ISD*, 1995, p. 5). The commissioner denied Schimschat's appeal.

Andrews v. Houston ISD (1997)

Andrews was employed as a vice principal in Houston ISD on a term contract. In 1995, she worked as a high school vice principal and was reassigned to a middle school for the 1996-1997 school year. She did not sign a contract and only worked 5 days. On October 1 and November 14, 1986, Andrew's principal directed her to provide medical verification for her absences per district policy. Andrews returned and worked 4 days and did not return after the Thanksgiving holiday. On December 20, 1996, Andrews was once again directed to provide medical verification for her absences. The notification stated that her conduct constituted a neglect of duty and failure to follow a directive. The notice also indicated that failing to follow directives would result in termination.

Andrews did not return to work, and on March 13, 1997, she was notified that the principal would recommend nonrenewal or termination. Soon thereafter, the board notified Andrews that it was considering nonrenewing her contract based on her failure to

carry out assigned duties, failure to follow directives, and good cause. Andrews requested a hearing before a certified hearing examiner. The school district filed a motion for summary judgment, which was granted. Andrews then appealed to the commissioner.

Andrews claimed that the motion for summary judgment was granted improperly because of procedural errors; therefore, the board decision was in error. In fact, she claimed that there were four errors. The first, her assignment as a middle school principal resulted in her not being employed in the same professional capacity. Second, the board did not allow her the opportunity to remediate her deficiencies. Third, she was not constructively discharged because she claimed her working conditions were intolerable. Fourth, Andrews asserted that the hearing examiner failed to consider an alternative disposition concerning her position.

The administrative law judge found no evidence to support her claims. The claim that she was not employed in the same professional capacity was struck because she was still employed and still earned the same pay. In terms of remediation, Andrews asserted that performance-based terminations must include opportunity for remediation. The board duly notified Andrews that she needed to comply with directives. In this regard, the commissioner stated, Andrews, “having been given notice, had the opportunity to remediate, that is, to provide the verification to come to work. Again, the unrefuted summary judgment evidence proves she failed to do so” (*Andrews v. Houston ISD*, 1997, p. 3).

Andrews also asserted that she was not discharged constructively. The commissioner also struck this claim because Andrews’ affidavit failed to establish facts

to support intolerable working conditions: “Constructive discharge does not excuse Petitioner’s failure to comply with board policy” (*Andrews v. Houston ISD*, 1997, p. 2).

The commissioner found Andrews’ final claim, that the hearing officer did not offer an alternate disposition, meritless. The commissioner stated,

A hearing examiner is not required to even make a recommendation regarding a theory that has been rejected and is not necessary to the disposition of a case; nor is hearing officer required to make a recommendation regarding the appropriate action for the board to take. (*Andrews v. Houston ISD*, 1997)

The commissioner ordered that Andrew’s appeal be denied.

Ellis v. Warren ISD (1998)

Ellis was a teacher for 16 years and served as a principal under a term contract during the 1997-1998 school year. The board thought that Ellis was a probationary employee and voted to nonrenew his contract without a hearing. Realizing this error, on March 24, 1998, the board voted once again to nonrenew Ellis’ contract per the superintendent’s recommendation. Ellis appealed to the commissioner on the grounds that the board predetermined nonrenewal.

According to local record, the board implemented the superintendent’s plans to cut positions to save money. The board voted to nonrenew Ellis’ contract prior to a hearing. Additionally, the board asserted that the findings of fact and conclusions of law that the hearing officer gathered supported its claim.

The minutes showed that the board predetermined the outcome of Ellis’ contract. This action was in violation of the TCNA and deemed the nonrenewal action moot (*Salinas v. Central Education Agency*, 1986; *Temple ISD v. English*, 1995; *Wilmer-Hutchins ISD v. Brown*, 1994). The second claim was that the hearing officer’s findings of fact and conclusions of law were relevant in determining board decisions. The role of

a hearing officer is to gather facts and present them to the board. A board can change these facts if they are not supported by substantial evidence (TEC § 21.259(c), 2011). In this case, the board attempted to make changes to the hearing officer's recommendation, but later recanted because there was no time to provide written justification.

The commissioner found errors in the hearing officer's findings of fact and conclusions of law. As an example of incorrect findings of fact, he stated the following:

In the present case, there are a number of problems with the findings of facts and conclusions of law. For example, many of what are labeled findings of fact are not proper findings of fact but only restatements of testimony. In fact, a number of the so-called findings of fact begin with the formula "x" testified under oath that "y" happened. The Supreme Court of Texas has repeatedly held that a recital of evidence is not a finding of fact. (*Ellis v. Warren*, 1998, p. 4)

The commissioner found the board's decision to nonrenew Ellis' contract was arbitrary, capricious, and unlawful. As such, he granted the appeal, and ordered Ellis be reinstated and receive back pay and benefits from the date of the appeal.

Weaver v. Santa Maria ISD (1999)

Weaver served as a principal during the 1998-1999 school year and held a term contract with Santa Maria ISD. On April 1, 1999, in a closed meeting, the board voted to nonrenew her contract for the following year. On June 21, 1999, the board voted to amend the April 1, 1999 board minutes to read, "Recommend approval of proposed renewal/nonrenewal for Campus Principal" (*Weaver v. Santa Maria ISD*, 1999, p. 1), and then voted to nonrenew her contract. The reason that the superintendent listed concerned Weaver's mismanagement of the Parent-Teacher Organization (PTO) budget. Weaver appealed to the commissioner on the three grounds. First, the board failed to give her due notice when it met to consider the superintendent's recommendation to nonrenew her contract. Second, the board did not vote to accept the notice of nonrenewal; instead, it

voted to nonrenew her contract without the opportunity for a hearing prior to the decision. Third, the board did not provide substantial evidence to support its decision. An administrative judge provided the commissioner with the proposal for decision.

The April 1, 1999 board minutes indicated that it voted to nonrenew Weaver's contract. The board reported a typographical error in the meeting notice. While Weaver did not contest the content of the agenda, that the board would discuss her contract in a closed session, she claimed that it voted in closed session, thus violated the Open Meetings Act. The administrative law judge noted the record and stated, "[T]he agenda does not alert the public to the fact that action could be taken to propose the nonrenewal of Petitioner's contract. Respondent's vote on April 5, 1999 is void" (*Weaver v. Santa Maria ISD*, 1999, p. 4). Additionally, the judge noted that amended minutes from the June 21, 1999 board meeting could not replace the original action the board took on April 5, 1999. As a result, the board's decision to nonrenew was predetermined.

Three reasons listed for nonrenewing Weaver's contract stemmed from allegations that she mismanaged PTO funds, which supported the superintendent's assertion that Weaver violated district policy concerning student activity funds because principals are in charge of PTO funds. In her appeal, Weaver noted that the PTO funds were not from student activities. Therefore, she could not have violated district policy because the funds belonged to the PTO. The board's policy did not specify whether PTO activities fell under student activities. The judge found the PTO to be a separate entity, and stated, "There is not substantial evidence that the petitioner violated any of the three noticed reasons for proposed nonrenewal" (*Weaver v. Santa Maria ISD*, 1999, p. 6). In his conclusions of law, the commissioner cited TEC § 21.206-21.208 (1995) and stated,

A board may not vote to nonrenew a teacher's contract prior to giving a teacher notice and an opportunity for hearing...Because all of the reasons for proposed nonrenewal alleged a failure to follow directives and policies concerning student activity funds as to PTO funds, and such funds are not student activity funds, Respondent's decision is not supported by substantial evidence. (*Weaver v. Santa Maria ISD*, 1999, p. 7)

The commissioner granted the appeal and ordered the school district reinstate Weaver with any back pay and benefits from the time of nonrenewal to the time of reinstatement.

Lewis v. Austin ISD (2000)

Lewis held a 3-year contract as a high school principal with Austin ISD. On March 3, 2000, Lewis' supervisor, an area superintendent, recommended that her contract be nonrenewed because of lack of progress on her improvement plan. On March 27, 2000, the board notified Lewis of the proposed nonrenewal action, and listed the following reasons:

- (1) Inefficiency or incompetency in performance of duties;
- (2) Failure to comply with such requirements as the board may prescribe for achieving professional education, improvement and growth; and
- (3) For other good cause as determined by the board and based upon recommendation of the superintendent, good cause including, but not limited to, the failure of a professional to meet the accepted standards of conduct for the professional employee as generally recognized and applied to the Austin ISD. (*Lewis v. Austin ISD*, 2000, p. 1)

A hearing was held in which each side was allotted 90 minutes to present evidence and cross-examine witnesses. The board voted to nonrenew her contract, which prompted Lewis to appeal the decision to the commissioner. In her appeal, Lewis stated that the board's decision was not supported by substantial evidence and was capricious, arbitrary, and unlawful. She posited her appeal on four grounds. First, she claimed that the board failed to consider her most recent evaluation in its decision. Second, the board's notice to nonrenew was untimely, as it did not follow its own policy when

notifying employees for nonrenewals. Third, the board denied her due process because the 90-minute time allotment did not allow her enough time to present her case and it denied her the right to solicit witnesses. Fourth, Lewis claimed that the presiding hearing officer denied her a fair and impartial hearing.

Lewis' first claim was that the board failed to consider her most recent evaluation prior to rendering a decision, which was brought up at the local hearing. Lewis was not evaluated in 1997-1998 or 1998-1999. While an irregularity concerning performance evaluations, the commissioner found Lewis' claim was without merit and stated that the district,

Did not nonrenew Petitioner for having poor annual evaluations. Petitioner was nonrenewed for exhibiting various performance deficiencies. Substantial evidence in the record reflects that Petitioner was advised of her performance problems for three years and that she failed to sufficiently improve despite being given many opportunities to remediate her deficiencies. (*Lewis v. Austin ISD*, 2000, p. 3)

Lewis' second claim was that the board made an error by not following its own nonrenewal policy, which stated that employees must be informed by the end of February of each year if they are in jeopardy of having their contracts nonrenewed. Lewis was not notified until March 27, 2000. Despite having missed the deadline, Lewis' was aware of the deficiencies noted in the record because she had been placed on a growth plan for 2-years prior to the nonrenewal decisions. The commissioner noted, "Nevertheless, the failure to inform Petitioner of her possible nonrenewal does not warrant reversal of the board's decision. Petitioner cannot legitimately dispute that she was not informed of her performance problems, given the amount of corrective feedback she received" (*Lewis v. Austin ISD*, 2000, p. 4).

Lewis' third claim was also found to be without merit. School boards are allowed to set the guidelines for local hearings, including time limits, as long as those guidelines were stated in local policy. Lewis was also allowed to solicit witnesses, but was precluded from having all of her witnesses testify because of the 90-minute timeframe. During the hearing, Lewis did not provide proof to this claim, and the administrative law judge, on review of the local record, stated, "Petitioner has not demonstrated that Respondent interfered with her ability to secure witnesses for the hearing" (*Lewis v. Austin ISD*, 2000, p. 5)

Lewis' fourth claim, that the presiding hearing officer denied her a fair and impartial hearing, was also held to be without merit. The hearing officer dismissed one of Lewis' witnesses because he determined her testimony to be hearsay. Lewis claimed that the testimony was relevant to her defense. To this claim, the commissioner found that the decision to "exclude hearsay testimony was not arbitrary, capricious or unlawful" (*Lewis v. Austin ISD*, 2000, p. 5). The commissioner denied Lewis' appeal. *Jackson v. Rosebud-Lott ISD (2003)*

Jackson was assigned as a school principal for Rosebud-Lott ISD. While the docket does not list dates, Jackson's term contract was not renewed for the 2003-2004 school year. Jackson appealed to the commissioner on the grounds that the board failed to show cause for its nonrenewal decision and claimed that the decision was arbitrary and capricious. The board listed five reasons for nonrenewing Jackson's contract, one of which included physical abuse of a child. Of the reasons listed, Jackson objected to the board's use of his recent performance evaluation because he was not afforded time to

grieve it, and the investigation of child abuse yielded a Grand Jury decision of no-bill; he was not charged.

Jackson used corporal punishment on a student whose father was a pastor. The child and parents alleged child abuse and media coverage ensued. While the Grand Jury no-billed Jackson, a report from the Child Protective and Regulatory Service Department found reason to believe the charges of abuse. Jackson contended that, because the Grand Jury did not charge him, he could not be accused of child abuse. To this claim, the commissioner cited the substantial evidence standard under *City of Alvin v. Public Utility Commission of Texas* (1993) in which the judgment was set aside in accordance with a settlement agreement that determined abuse did occur (*Jackson v. Rosebud-Lott ISD*, 2003).

Jackson's second claim was that he was not afforded due process because he was not given enough time to contest his most recent performance evaluation. The board changed its evaluation timeline for all administrators to end of the calendar year. Because the evaluation was conducted early and the results were used as evidence for the nonrenewal decision, he did not have time to grieve his evaluation. Per TEC § 21.203(a) (2003), boards are required to consider recent evaluations before deciding to nonrenew a contract. The administrative law judge found, "That is no statutory right to an evaluation made so early that it can be fully grieved and appealed prior to a board considering the evaluation as a reason for proposed nonrenewal" (*Jackson v. Rosebud-Lott ISD*, 2003, p. 8). The commissioner denied Jackson's appeal.

Gaston v. Bryan ISD (2005)

Gaston served as an assistant principal and held a term contract with Bryan ISD. On March 8, 2005, Gaston was served a proposal of nonrenewal for the 2005-2006 school year. The board's reason for nonrenewal was based on Gaston's performance, which included "repeated violation of directives, failure to comply with policies and failure to maintain an effective working relationship with colleagues" (*Gaston v. Bryan ISD*, 2005, p. 5). Gaston claimed that the board lacked substantial evidence when it decided to nonrenew her contract, and she appealed to the commissioner.

The commissioner noted that neither party filed a brief. The 19 TAC § 157.1058 (2004), outlines the statutory requirements for both parties. Briefs include statements of the case, issues presented, statements of fact, argument, and prayer (conclusions and nature of relief). If a party fails to file a brief, the facts stated by one party are accepted as true unless the opposing party contradicts those facts. According to the commissioner,

Briefs are critical to the adjudicative process in Chapter 21 employment cases and even more critical in nonrenewal hearings held by local boards of trustees because the commissioner does not have the benefit of reviewing a decision containing the findings of fact and conclusion of law. Briefs provide a synthesis of the local record and the factual and legal issues to be resolved by the commissioner and ensure that all relevant information and arguments are available to be considered. (*Gaston v. Bryan ISD*, 2005, p. 4)

Because the commissioner did not receive a brief, he had to make his decision based on the local record and Gaston's Petition for Review. Using the records at hand, the commissioner found that the board provided substantial evidence, and he denied Gaston's appeal.

Leo v. Brooks County ISD (2005)

Leo held a term contract as a junior high school principal during the 2004-2005 school year for Brooks County ISD. Following statutory requirements, the board voted to nonrenew Leo's contract for the 2005-2006 school year. Leo appealed to the commissioner on the grounds that the board did not provide substantial evidence to support any one of its reasons to nonrenew her contract. The board made its decision to nonrenew based on the following five pre-established reasons per local policy:

1. Deficiencies pointed out in observation reports, supplemental memoranda, or other communications.
2. Failure to perform duties or responsibilities.
3. Insubordination or failure to comply with official directives.
4. Failure to comply with board policies or administrative regulations.
5. Failure to meet the District's standard of professional conduct. (*Leo v. Brooks County ISD*, 2005, p. 4)

Leo claimed that the board did not find substantial evidence for any of these reasons. First, the charge of insubordination and failure to comply with board policies or administrative regulations came from Leo addressing the school board with concerns during the open comment section of board meetings. The district claimed that Leo violated board policy by speaking out as an employee of the district. However, the policy was not on record. When Leo spoke at the meetings, neither the superintendent nor the board objected. As a result, no evidence for insubordination or violation of policies was found.

Second, Leo was charged with failing to meet the district standard of professional conduct when she contacted board members about the concerns at her school. The pre-established reasons for nonrenewal in local board policy did not prohibit an employee from bringing issues to individual board members or to the board as a whole.

Additionally, the board did not discuss this claim at the local hearing. Therefore, the administrative law judge found, “Respondent’s nonrenewal of Petitioner’s contract cannot be based on the fact that Petitioner brought concerns to individual board members and to the board as a whole” (*Leo v. Brooks County ISD*, 2005, p. 5).

Another reason given by the board for its nonrenewal decision was failure to perform duties or responsibilities. This charge stemmed from the fact that Leo missed required administrative meetings. Per district expectations, principals are to send assistant principals in their place when they cannot attend for legitimate reasons. Based on the record, the administrative law judge found that the district did not “prove that Petitioner failed to attend specific staff meetings without legitimate excuses” (*Leo v. Brooks County ISD*, 2005, p. 6).

The board also cited deficiencies found in observation reports, supplemental memoranda, or other communications. The board used an evaluation from Leo’s previous contract, which, Leo argued, was not permissible. Boards may only consider evaluations from previous contracts under special circumstances if they are relevant to the current case (*Anderson v. Jacksonville ISD*, 1997). The board admitted the evaluation to show that Leo was aware of district policies, but indicated that the evaluation was not used in its decision to nonrenew.

In sum, the board’s decision to nonrenew Leo’s contract was found to be without substantial evidence. The commissioner granted Leo’s appeal and ordered,

Respondent shall reinstate Petitioner and pay her any back pay or benefits from the time of her discharge. In the alternative, Respondent may choose not to reinstate Petitioner and pay her one year’s salary from the date she would have been reinstated. The date Petitioner would have been reinstated is the date Petitioner is tendered payment in full. (*Leo v. Brooks County ISD*, 2005, p. 9)

Johnson v. Kenedy ISD (2008)

Johnson served as a middle school principal for Kenedy ISD and a held term contract. On March 28, 2008, Johnson received notice of a proposed contract nonrenewal. The board listed nine reasons in the notice, and later voted to nonrenew his contract. Johnson appealed to the commissioner on the grounds the board violated TEC § 21.201(a) (2003) by not considering his most recent evaluation before it nonrenewed his contract. He also claimed that he had immunity under Texas law for administering privileged force and the incident cited in the local record could not be used as a reason for the nonrenewal decision. Further, he claimed that the district could not use one incident as the factual basis for multiple reasons to nonrenew a contract.

Johnson's first claim was that the board did not consider his recent evaluation prior to making the decision to nonrenew his contract, which constituted a procedural irregularity. During the hearing, Johnson did not bring up this claim. The commissioner could only consider the record when deciding on the appeal.

Johnson's second claim involved an incident in which he placed a student in a chokehold and stomped on his feet because the student playfully tapped his stomach and chin with this tennis racket on the tennis court. He later spoke to the student's mother and apologized for his actions. Johnson claimed immunity under TEC § 22.0512 (2003) for the physical force he used on the student. Under this statute, an employee cannot be disciplined for the use of physical force against a student that is justified under Texas Penal Code § 9.62 (1994). Under privileged immunity, Johnson contended that the incident could not be used against him. The commissioner found Johnson's claim to be

without merit. During the hearing, Johnson did not rebut the mother's testimony. To this end, the commissioner stated,

The mother's testimony constitutes substantial evidence that Petitioner did not reasonably believe that the degree of force used was necessary. Petitioner is not entitled to the immunity established by the TEC, § 21.0512 and he engaged in behavior that presented a danger of physical harm to a student. (*Johnson v. Kenedy ISD*, 2008, p. 5)

Johnson's final claim was that one incident could not be used as factual basis for multiple reasons for nonrenewal. The commissioner found that Johnson did not cite authority on this claim, and the record demonstrated that he failed to follow board policy when he led school prayers over the intercom for a week; a reason that was not connected to the discipline incident. In his conclusion statement, the commissioner stated, "Only one reason for nonrenewal need[ed] to be proven to support the decision" (*Johnson v. Kenedy ISD*, 2008, p. 4). In sum, the commissioner denied Johnson's appeal in its entirety.

Murillo v. Laredo ISD (2008)

Murillo held a term contract for the 2006-2007 school year as a middle school principal for Laredo ISD. On April 17, 2007, Murillo signed a 12-month contract as an administrator for the 2007-2008 school year. The contract did not list the position or duties. On June 21, 2007, Murillo was assigned as the human resources coordinator for the district. This change was made before her contract as principal had ended. Murillo filed a Level 1 grievance claiming the district violated her term contract by changing her professional capacity in violation of TEC, § 21.206 (1995), and she was demoted.

Murillo's first claim was that the district, by reassigning her to a different position for the following year while still under contract, violated TEC § 21.206 (1995), which states the following:

- (a) Not later than the 45th day before the last day of instruction in a school year, the board of trustees shall notify in writing each teacher whose contract is about to expire whether the board proposes to renew or not renew the contract.
- (b) The board's failure to give the notice required by Subsection (a) within the time specified constitutes an election to employ the teacher in the same professional capacity for the following school year. (p. 2)

According to Murillo's interpretation, the district was required to offer her the position for the 2007-2008 as principal because it failed to notify her of the proposed nonrenewal. The commissioner reasoned that Murillo held both positions during the school year because she was reassigned to the position as human resources coordinator in the same year. Under this logic, the district did not violate the aforementioned statute.

Murillo's second claim was that her reassignment was in violation of her contract. Demotions are allowed under state law unless a contractual claim exists. The administrative law judge reasoned that he did not have jurisdiction over this claim and dismissed it. He stated, "Because Petitioner has failed to identify a potential violation of her written employment contract that causes or would cause monetary harm in connection with her demotion claim, the commissioner lacks jurisdiction over Petitioner's demotion claim" (*Murillo v. Laredo ISD*, 2008, p. 5). The commissioner dismissed and denied Murillo's appeal.

Cases Concerning Athletic Directors

The researcher analyzed five cases concerning petitioners who served as athletic directors during the time they filed their appeals. A summary is provided for each case and includes petitioners' legal claims and commissioners' rationales for their decisions.

Salinas v. Ben Bolt-Palito Blanco ISD (1983)

Salinas was employed as an athletic director and teacher with Ben Bolt-Palito Blanco ISD. On March 10, 1982, the district's administration recommended that Salinas' contract be renewed for the 1982-1983 school year. On March 10, 1982, the board rejected the recommendation and voted to nonrenew his contract. In a letter dated March 12, 1982, the board notified Salinas of the decision to nonrenew and listed the reasons for its decision, which were also included in district policy. A hearing was held on March 30, 1982, and the board voted once again to nonrenew his contract. Salinas appealed to the commissioner on the grounds that the board erred when it did not accept the administration's recommendation to renew his contract. In addition, the board inappropriately voted to nonrenew his contract prior to notifying him of the proposed nonrenewal. Finally, the board failed to notify him of the reasons for his nonrenewal when it made the decision. Salinas claimed that the board's action was arbitrary and capricious.

At the time of Salinas' case, the TCNA stated that only school boards have the authority to nonrenew a contract. The commissioner reasoned that it was the legislature's intent that "a board of trustees may nonrenew the contract of any teacher, regardless of the administration's recommendation, but may only do so after considering the administration's input and giving the teacher notice and an opportunity for a hearing" (*Salinas v. Ben Bolt-Palito Blanco ISD*, 1983, p. 7). The commissioner found this claim as being without merit.

The commissioner also found the second claim that the board failed to give proper notice of nonrenewal prior to a vote to be without merit. Because the board held a

hearing and then voted a second time, the commissioner reasoned that it did not predetermine the outcome of the nonrenewal. Further, the commissioner did not support the third claim that the board failed to list reasons for the nonrenewal decision. Because the board notified Salinas of his nonrenewal and listed the reasons for its decision, the commissioner reasoned that he did have the reasons listed and participated in a hearing in which he had the opportunity to challenge those reasons, as required by TCNA. As such, no due process irregularities existed.

Salinas also claimed that the decision to nonrenew his contract was arbitrary and capricious because substantial evidence did not exist in the record. One reason listed for nonrenewal was the charge that Salinas failed to follow an administrative directive by the superintendent, Lopez. During the hearing, Salinas claimed that he did not receive a directive, but he provided no witnesses to attest to this claim. The commissioner stated, “It is the Board’s discretion to believe Lopez’s testimony. Therefore, the board’s decision to nonrenew Petitioner was not without substantial evidence, and, as a result, was not arbitrary and capricious” (*Salinas v. Ben Bolt-Palito Blanco ISD*, 1983, p. 9). The commissioner denied Salinas appeal.

Wasserman v. Nederland ISD (1984)

Wasserman was employed as an athletic coordinator/business manager from 1976 to 1982. In 1982, Wasserman was reassigned to a newly created position, athletic coordinator and business manager. On March 30, 1982, he was notified that his position would not be renewed for the following year; however, the board rejected the nonrenewal. Wasserman was again notified that his contract would not be renewed because of a projected loss of revenue. A hearing was held on April 30 and May 29,

1984, and the board voted to nonrenew the contract. Wasserman appealed to the commissioner on the grounds that the board failed to provide substantial evidence to support its decision to nonrenew his contract.

The school district's basis for nonrenewal was due to a reduction of force caused by a projected loss in revenue. According to the TCNA, a reduction of force alone is not a valid reason for nonrenewal if other positions are available in the district that the employee is qualified to assume unless a compelling reason is supported by substantial evidence in the local hearing. The local record did not show that the district considered Wasserman for other positions within the district. The hearing officer stated that the district,

Introduced no evidence at the local hearing to support a finding that the Board that Petitioner's nonrenewal was required because of the elimination of his position and the lack of any vacancies for which he was qualified. The decision of the Board of Trustees therefore is not supported by substantial evidence. (*Wasserman v. Nederland ISD*, 1984, p. 7)

The commissioner granted Wasserman's appeal and remanded the school district to consider whether he was qualified to fill other open vacancies and offer him a 1-year contract and his entitled salary.

Bagby v. Marlin ISD (1987)

Bagby held a term contract as an athletic director and head football coach for Marlin ISD during the 1985-1986 school year. In January 1986, Bagby received notice of his proposed nonrenewal with five performance-related reasons listed. On February 3, 1986, the board conducted Bagby's hearing and voted to nonrenew his contract. Bagby appealed to the commissioner, and declared that the nonrenewal decision was not supported by substantial evidence.

The board established a policy that listed the reasons why an employee may be nonrenewed. In the notice of proposed nonrenewal, Bagby listed the reasons why the board considered nonrenewal. According to the hearing officer, the board also supported these reasons at the local hearing. He stated,

At least four of the reasons given for the nonrenewal of Petitioner's contract were valid reasons within the scope of adopted policy DOAD (LOCAL). Clearly, substantial evidence was adduced at the local hearing in support of the first reason given for nonrenewal: "difficulty in maintaining a good working relationship with other members of the coaching staff". (*Bagby v. Marlin ISD*, 1987, p. 5)

The commissioner found that the board used valid reasons and provided substantial evidence in its decision to nonrenew, and he denied Bagby's appeal.

Lawson v. New Caney ISD (1991)

Lawson was hired as an athletic director and head football coach in January 1984. During the 1987-1988 school year, the board approved making the athletic director a full-time position. In April 1987, Lawson signed a 3-year term contract as athletic director. On February 27, 1990, the board accepted the superintendent's recommendation that the position of athletic director be eliminated. The superintendent offered three reasons for this recommendation, (a) district reclassification reduced duties; (b) coaches, rather than an athletic director, could make better coaching decisions; and (c) budget savings.

On March 28, 1990, Lawson was given notice of the proposed contract nonrenewal and was offered a teaching position within the district in lieu of a hearing. The notice stated that Lawson's position was being eliminated, as per district policy, due to declining enrollment. A hearing was held on June 19, 1990, and the board voted to nonrenew. Lawson appealed to the commissioner on the claims he was entitled due

process under the TCNA and that the district had not adopted criteria for determining reduction of force for administrators.

Lawson's first claim stated that he was entitled to the protections of the TCNA. According to case law, to qualify as a protected class member under the TCNA, an employee's position must require a valid certificate (*Hightower v. State Commissioner of Education*, 1989). In the local record, Lawson stated that his position did not require a certificate and he did not teach any classes. As such, the commissioner found that Lawson was not protected by the TCNA. The commissioner also found the second claim that the board failed to adopt criteria for reduction in force for administrators to be meritless. The district adopted policies that specifically exempted school administrators. Additionally, Lawson had not "provided any legal authority in support of the theory that the district's exemption of such administrative personnel is invalid" (*Lawson v. New Caney ISD*, 1990, p. 4). The commissioner denied Lawson's appeal.

Roberts v. San Benito ISD (1996)

Roberts was first employed as an athletic director and football coach by the San Benito ISD. On October 15, 1996, the board terminated Roberts' contract. A hearing was conducted, and the hearing officer provided his recommendations. The board chose to modify the hearing officer's recommendation, which a board can do this if it determines that the findings of fact, after reviewing the record, are not supported by substantial evidence (TEC § 21.259 (c), 1995). However, such changes must be made in writing (*Roberts v. San Benito ISD*, 1996). The district failed to state in writing a valid reason or legal basis for terminating his contract. Roberts appealed to the commissioner

on the grounds of procedural irregularities, and his appeal was granted on December 23, 1996. The district was ordered to reinstate him in the same professional capacity.

On January 10, 1997, Roberts returned to work as a head football coach only. He then appealed to the commissioner a second time on the grounds that he was not employed in the same professional capacity as ordered in his previous appeal. The outcome of the second appeal was not decided until August 1999. In February 1997, Roberts was placed on a growth plan in which he successfully met. On April 15, 1997, Roberts was offered and signed a contract as an administrator. On February 11, 1998, the board provided Roberts with a notice of proposed nonrenewal for the following year. A hearing was conducted on April 7, 1998, and Roberts received notice of the action by letter on April 15, 1998. The board cited eight performance deficiencies. Roberts appealed to the commissioner of education for a third time claiming that the hearing officer was biased, and the board made its decision to nonrenew without substantial evidence.

Roberts' first claim, that the hearing officer was biased, stemmed from the fact that the officer worked for the same law firm that represented the school district in another grievance he had filed. Roberts provided no evidence to support this claim. The administrative law judge wrote,

Petitioner failed to show any harm; the presiding officer served to conduct the hearing for the board and was not the decision-maker. There was no showing of bias on the part of the presiding officer or how his service as presiding officer violated Petitioner's right to due process. (*Roberts v. San Benito ISD*, 1998, p. 4)

Roberts' second claim asserted that the board did not provide substantial evidence when making its decision to nonrenew. The administrative law judge found that "Evidence is persuasive that violations of school policies as set out in Respondent's

notice of proposed nonrenewal dated February 11, 1998, did occur, particularly, instances as listed of deficiencies pointed out in Petitioner's evaluation" (*Roberts v. San Benito ISD*, 1998, p. 7). The commissioner denied Roberts' appeal.

Robert's second appeal to the commissioner was decided on August 1999, a year after the third appeal was decided. No reason for the delay was listed in the record. In his second appeal, Roberts argued that he was entitled to be reinstated as athletic director, as per the commissioner's first appeal directive. In the second appeal, the commissioner found this claim to be meritless and cited the commission's decision from the third appeal who wrote, "Petitioner's claim to be reinstated to the position of athletic director is moot because the commissioner has upheld the nonrenewal of Petitioner's contract" (*Roberts v. San Benito ISD*, 1999, p. 3).

Cases Pertaining to Central Office Administrators

The researcher analyzed five case concerning petitioners who served as central office administrators during the time they filed their appeals. A summary is provided for each case, and includes petitioners' legal claims and commissioners' rationales for their decisions.

Ruiz v. Robstown ISD (1987)

Ruiz served as Robstown ISD's director of personnel and held a 2-year contract that ended on July 30, 1985. On December 12, 1983, the superintendent informed Ruiz that he would be reassigned as vice principal. He appealed the decision on the grounds that the district improperly demoted him. In March 1984, the commissioner denied Ruiz's appeal because he failed to file in a timely manner (*Ruiz v. Robstown ISD*, 1984). Commencing in June 1983, Ruiz worked as a vice principal and earned his salary under

contract as a director of personnel. On March 19, 1985, Ruiz was notified that the superintendent recommended the nonrenewal of his director of personnel contract for the following year; the notification included five reasons for the nonrenewal.

On March 19, 1985, the board voted to appoint Ruiz as vice principal with a 1-year contract. On March 27, 1985, Ruiz requested a hearing. On April 19, 1985, the board held a hearing and a motion was made to nonrenew the contract. The vote was split three to three. The board voted to adjourn and continue the hearing on May 21, 1985. At this meeting, the board, with all members present, voted to nonrenew his contract by a vote of 4-2. Ruiz then appealed to the commissioner for procedural irregularities and the denial of substantive due process.

Ruiz claimed that the board voted to renew his contract during the April 19, 1985 meeting because a motion was made to renew his contract as the director of personnel. However, on May 2, 1985, the board continued the hearing and voted 4-2 to nonrenew. At the hearing, Ruiz did not object to this procedure as matter of record, and the commissioner found that the “board’s subsequent action to nonrenew Petitioner’s contract was valid” (*Ruiz v. Robstown ISD*, 1987, p. 6).

Ruiz also claimed that the May 21, 1985 vote to nonrenew violated his due process rights under the Fourteenth Amendment, the Civil Rights Act of 1971, and the Texas Constitution. However, Ruiz failed to bring these charges during the hearing. Because he was afforded a hearing as outlined by state and federal law, but he failed to attend the last hearing, the commissioner found no due process irregularities, and he rejected Ruiz’s claim.

In his next claim for procedural irregularities, Ruiz declared that the board's decision to nonrenew was untimely. The commissioner, relying on the record, found that this claim held no merit because Ruiz did not object to the matter during the hearing. Ruiz's final claim concerned substantive due process errors in the board's decision. The board's notice included deficiencies for nonrenewal when Ruiz served as the director of personnel, a position he held for nearly 2 years prior to his appointment as a vice principal. The commissioner found that Ruiz's claim held merit because,

Petitioner's contract was in fact extended for one year, Respondent is foreclosed from asserting that Petitioner's current contract should now be nonrenewed based upon Petitioner's past performance as personnel director. If Respondent desired to nonrenew Petitioner's contract, it should have acted at the end of the original contract term and it should not have extended the contract as Director of Personnel. (*Ruiz v. Robstown ISD*, 1987, p. 7)

In sum, the commissioner found that Ruiz's substantive claim had merit and granted his appeal. However, the commissioner stipulated that Ruiz's contract should be reinstated, but kept as the vice principal.

Parr v. Waco ISD (1991)

Parr held a 3-year term contract as an administrator for Waco ISD. On March 24, 1989, Parr was notified of her superintendent's recommendation that her contract would not be renewed because of a reduction of force caused by a change in the program as part of the district's reorganization plan that was announced in January 1987. The new plan would be fully implemented by July 1, 1988. According to the district, at the time of the notice to nonrenew, it had several positions for which Parr was not qualified. The board voted to nonrenew her contract and an evidentiary hearing was held. Parr appealed to the commissioner on grounds that the district was required to consider her for an open

position in which she was qualified and the decision, based on a reduction of force, was not supported by substantial evidence.

Parr's claimed that the district had not considered her for one of the open positions on the date the hearing was held, as per previous case law (*Strauch v. Aquilla ISD*, 1983). A position of vocational coordinator was open; the district reasoned that Parr was not qualified for it based on her training. However, the local record did not include the qualifications for the vocational coordinator position. As such, the hearing officer found that the district had the burden of proof that she was not qualified. He stated,

Given that the record does not contain any evidence of the posted qualifications of the open position and the rationale for the selection committee's decision not to recommend Petitioner, Respondent has failed to meet its burden to prove that Petitioner was not qualified for the position. (*Parr v. Waco ISD*, 1991, p. 4)

The hearing office found Parr's second claim, that the board's decision to nonrenew was based on a reduction of force, to be meritless. According to the *Strauch* decision, a reduction of force position is not valid if "there is another position the teacher is qualified, unless the district has a valid reason, supported by substantial evidence, for not reassigning the teacher to the position" (*Strauch v. Aquilla ISD*, 1983, p. 3). The commissioner held that the board's "decision to nonrenew Petitioner on the basis of reduction of force was not supported by substantial evidence" (*Parr v. Waco ISD*, 1991, p. 4). Parr's appeal was granted, and she was entitled to be employed in the same professional capacity for the succeeding school year.

Hext v. Vidor ISD (1992)

Hext was employed as an alternative school director and held a 2-year term contract for the 1989-1990 and 1990-1991 school years. On February 20, 1991, the board notified Hext that her contract would not be renewed because of a reduction of

force, as recommended by the superintendent. The board scheduled a hearing for March 14, 1991. On February 27, 1991, the superintendent again notified Hext concerning the proposed notice to nonrenew her contract. On March 8, 1991, Hext received a revised second notice from the board of her proposed nonrenewal. On March 12, 1991, Hext requested that the hearing be held in open session. On March 14, 1991, the board's attorney informed Hext's attorney that an evidentiary hearing would be held in open session, but the deliberations would be held in closed session. After the hearing, the board voted to nonrenew Hext's contract.

Upon advice from council, the board called for a special meeting to rescind Hext's nonrenewal and set a hearing to reconsider nonrenewing Hext's contract. The meeting was held on March 20, 1991, and the board voted to rescind the nonrenewal and set a hearing date for March 26, 1991 to reconsider the decision. The hearing was held in open session, including the board's deliberations and actions. Hext was given the opportunity to present evidence. On March 27, 1991, Hext was notified officially, via hand delivery, of the board's action to nonrenew her contract.

Hext appealed on three grounds. First, the board did not follow the procedural requirements of the TCNA by failing to propose the nonrenewal through formal motion and vote and provide her written notice of the proposed nonrenew prior to the statutory deadline of April 1, 1991. Second, the board failed to comply with statutory deadlines (TEC §§ 21.205 (a), 21.205 (b), 1995) in that a hearing was not held within 15 days after receiving written notice requesting a hearing, and she was not notified of the results of the hearing within 15 days. Third, the board failed to provide substantial evidence to support its claim of reduction of force.

Hext's first claim was based on the board's failure to follow the procedural requirements outlined in the TCNA. The commissioner noted that this claim was not included in the local record, despite Hext's attorney raising objections to the proceeding. To this matter, the hearing officer stated,

It is hereby held that because Petitioner failed to raise these issues at the local level, she has waived any complaint concerning the absence of a board vote to propose her nonrenewal or the absence of a board vote to authorize the giving of written notice of the proposed nonrenewal to Petitioner. (*Hext v. Vidor ISD*, 1992, p. 9)

Hext's second claim stemmed from her assertion that she was not given 15 days' notice for her hearing and written notification of the decision. The board held its first hearing in violation of the Texas Open Meeting Act when it conducted the deliberations in closed session. The board rescinded its first decision and then voted to nonrenew once again; however, the second hearing was held within 15 days, thus, met the time requirements. The commissioner also found Hext's third claim, that the board's reduction in force was not supported by substantial evidence, to be without merit. The commissioner did not provide a rationale for this finding in his discussion; however, in the conclusions of law, he noted, "Decision to nonrenew Petitioner's employment contract for the 1991-92 school year, based on a reduction in force, was supported by substantial evidence and was not arbitrary, capricious, or unlawful" (*Hext v. Vidor ISD*, 1991, p. 11). The commissioner denied Hext's appeal in its entirety.

Williams v. Galveston ISD (2004)

Williams served as the executive director of curriculum and instruction for Galveston ISD and held a term contract for the 2003-2004 school year. On April 11, 2004, Williams was notified of her proposed contract nonrenewal, which included eight

performance-related deficiencies. On April 28, 2004, the board held an evidentiary hearing and voted to nonrenew her contract. The board did not develop findings of fact or conclusions of law. Williams appealed to the commissioner on three claims. First, the decision was arbitrary, capricious, and not supported by substantial evidence. Second, the decision did not meet the pre-established conditions for nonrenewal. Third, the board's decision was motivated by her involvement with the National Association for the Advancement of Colored People (NAACP).

The board provided eight reasons for its decision to nonrenew. The TCNA only requires that a local policy list pre-established reasons for nonrenewal. Good cause is not required under the TCNA. The commissioner cited *Montgomery v. Davis* (2000), and held, "Substantial evidence is not a high standard. Evidence that is more than a scintilla is sufficient to show substantial evidence" (p. 3). The reasons provided by the board were considered substantial evidence.

Williams' second claim was that the board did not tie its vote to the pre-established conditions set forth in its nonrenewal policy. Texas Education Code does not require school boards to make findings of fact or conclusions of law when they act as hearing officers (TEC § 21.208, 1995). If a board elects to use a certified hearing examiner, per TEC § 21.259 (1995), statement of facts and conclusions of law are required. The commissioner found this claim to be without merit.

Williams' third claim stemmed from her involvement with the local NAACP and a lawsuit she filed against the school district. Williams did not bring this claim up at the local hearing nor did the board list her activity with the organization as a reason for the decision to nonrenew her contract. The commissioner found the claim to be without

merit and stated, “Applying the substantial evidence to record, it is concluded that Respondent’s board of trustees nonrenewed Petitioner’s contract for the pre-ISD established reasons, not for her associational activities” (*Williams v. Galveston ISD*, 2004, p. 6). Williams appeal was denied.

Sanchez v. Donna ISD (2007)

During the 2004-2005 school year, Sanchez held a term contract for Donna ISD as a central office administrator. In 2004, the district offered him an 11-month term contract as an administrator for the 2005-2006 school year; he was assigned as vice principal and his compensation was reduced. He did not sign his contract, but worked as the vice principal during the 2005-2006 school year. Sanchez appealed to the commissioner on four grounds. First, the board violated TEC § 21.206 (1995) by not providing him notice and by nonrenewing his contract. Second, the board did not reemploy him in the same professional capacity when he was reassigned to vice principal. Third, the board was estopped from hiring him for 11 months only and reducing his pay. Fourth, the board demoted him because he filed a grievance. An administrative law judge issued the proposal for decision.

Sanchez claimed that the board’s action of changing his contract from 12 to 11 months resulted in a contract nonrenewal. The administrative law judge, referring to the tenets of the TCNA, stated, “The TCNA does not mean that contractual terms may not change; it means that a teacher must be offered employment in the same professional capacity unless the district properly nonrenews or terminates the teacher’s contract” (*Sanchez v. Donna ISD*, 2007, p. 3).

Sanchez's second claim was that the board's action amounted to a demotion because of the change in job title and lower compensation. However, the board did not reduce Sanchez's salary; his new contract stated "administrator." Citing the State Board for Administrator Certification requirements, administrators are defined as superintendents, principals, and assistant principals. As such, the administrative law judge found, the district "employed Petitioner in the same professional capacity for the 2005-2006 school year" (*Sanchez v. Donna ISD*, 2007, p. 4).

Third, the board was estopped from hiring him for 11 months only and reducing his pay. Under TEC § 21.210(a) (1995), a teacher may be resigned from his or her position 45 days before the first day of instruction; if a teacher receives notice of a pay reduction after 45 days before the first day of instruction, the district is estopped from lowering the pay. Sanchez was notified of a change of pay before the 45-day requirement; as a result, estoppel did not apply against Sanchez. This claim was found to be without merit.

Sanchez's fourth claim was that the board demoted him because he filed a grievance. Sanchez did not provide any evidence to this claim and the claim was dismissed. However, the administrative law judge noted that, while there existed no written contract between Sanchez and the school district, an oral contract was in place. Sanchez's appeal was denied.

Findings and Analysis

This researcher examined 44 cases, each of which were appealed to Texas commissioners of education and invoked some or all protections from the TCNA. The researcher identified the legal issues in each case in terms of claims made by

administrators concerning how Texas Commissioners of education made their decisions. The personnel disputes studied in this paper spanned 30 years, from 1983 to 2013.

Commissioners' Findings in All Cases

In all cases presented in this paper, commissioners granted 27% (12 appeals) and denied 73% (32 appeals). Table 6 highlights all of the cases in terms of appeals granted or denied. Commissioners' findings of fact and conclusions of law stated the legal reasoning used to determine the outcome of each appeal. The legal reasoning and basis for each decision can be found in these two sections of the appeal. The commissioner renders a decision after considering the record, findings of fact, conclusions of law, and matters officially noted.

The researcher identified three categories in which all decisions can be placed. The first category identified fell under the met substantial evidence standard of review. All of these cases challenged only the respondents evidence entered in the record. This was found in 11 cases. The second category identified consisted of cases that challenged only procedural irregularities or defects claimed by the petitioners. This was found in 14 cases. Finally, the third category, consists of cases in which petitioners challenged both procedural defects or irregularities and lack of substantial evidence in their appeals; this was evident in 19 cases. These numbers are highlighted in Figure 1.

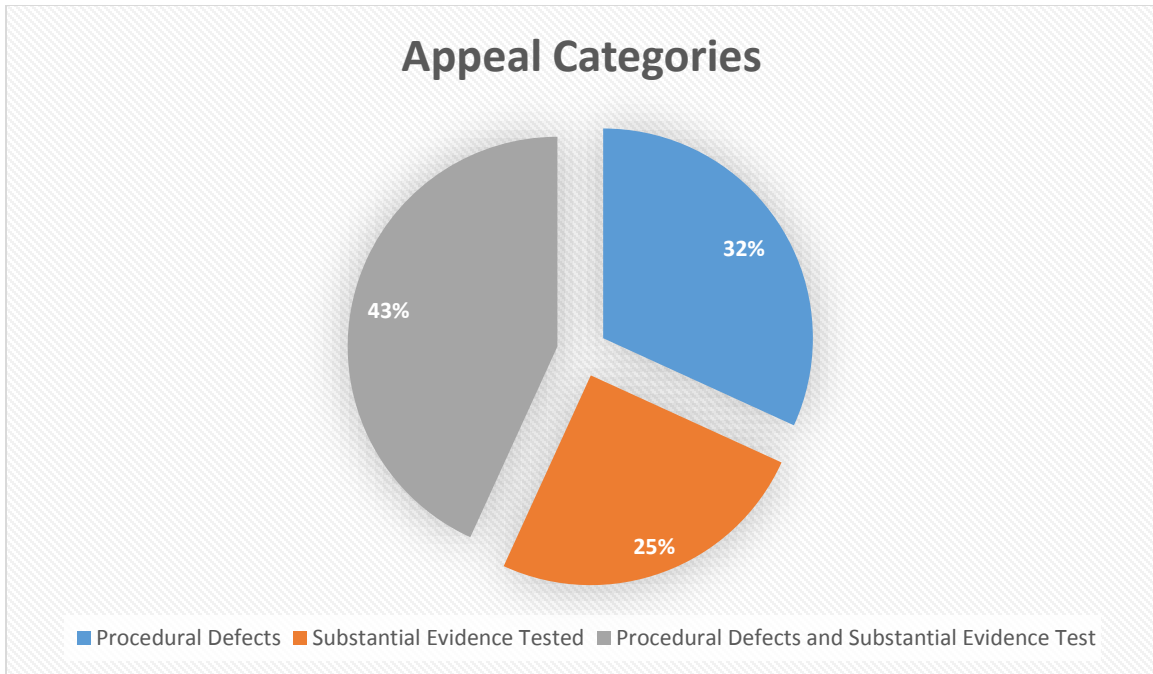


Figure 1. Appeal Categories.

As illustrated in Figure 2, the commissioner used nine reasons to deny, grant, dismiss, or remand an appeal. Most petitioners alleged multiple reasons for their appeals. Respondents in 20 cases met the substantial evidence standard of review. In 18 cases, the findings concerned the lack or absence of evidence provided by either party to support one or more claim. In these cases, neither party provided adequate evidence or they provided no evidence to support their positions. In 15 cases, the findings concerned the fact that neither party made a claim at the local hearing. In eight cases, the commissioners found the lack of substantial evidence to support all claims. In four cases, the commissioners found that the school boards had violated one or more element of the TCNA. Untimely filing and no Chapter 21 protections were determined as causes in four cases, and, in one case, the commissioner found that the school board predetermined an outcome of nonrenewal.

Table 6

Outcome of Commissioners' Appeals by Case and Year

Appeals Granted	Year	Appeals Denied	Year
<i>Cogdill v. Comal ISD</i>	1984	<i>Salinas v. Ben Bolt ISD</i>	1983
<i>Wasserman v. Nederland ISD</i>	1984	<i>Patrick v. Mineola ISD</i>	1983
<i>Smelley v. Higgins ISD</i>	1986	<i>Martin v. Troup ISD</i>	1984
<i>Ruiz v. Robstown ISD</i>	1987	<i>Palmer v. Burkeville ISD</i>	1984
<i>Collins v. Kountze ISD</i>	1989	<i>Hegar v. Frisco ISD</i>	1985
<i>Tolson v. Detroit ISD</i>	1989	<i>Bagby v. Marlin ISD</i>	1987
<i>Parr v. Waco ISD</i>	1991	<i>Moore v. Dilley ISD</i>	1987
<i>Williams v. Wilmer-Hutchins ISD</i>	1991	<i>Westmoreland v. Floresville ISD</i>	1987
<i>Ellis v. Warren ISD</i>	1998	<i>Ellis v. Center ISD</i>	1988
<i>Weaver v. Santa Maria ISD</i>	2000	<i>Lamb v. Whitehouse ISD</i>	1989
<i>Leo v. Brooks County ISD</i>	2005	<i>Allen v. Lumbertown ISD</i>	1990
<i>Martinez v. Donna ISD</i>	2006	<i>Del Barrio v. Scurry-Rosser ISD</i>	1990
		<i>English v. Temple ISD</i>	1990
		<i>Garcia v. Alpine ISD</i>	1990
		<i>Mc Kee v. Malakoff ISD</i>	1990
		<i>Collins v. Kountze ISD</i>	1991
		<i>Lawson v. New Caney ISD</i>	1991
		<i>Moore v. Mt. Pleasant ISD</i>	1991
		<i>Hext v. Vidor ISD</i>	1992
		<i>Vasquez v. Eagle Pass ISD</i>	1992
		<i>Schimschat v. Groesbeck ISD</i>	1995
		<i>Roberts v. San Benito ISD</i>	1996
		<i>Andrews v. Houston ISD</i>	1997
		<i>Lewis v. Austin ISD</i>	2000
		<i>Jackson v. Rosebud ISD</i>	2003
		<i>Williams v. Galveston ISD</i>	2004
		<i>Cleaver v. Kendleton ISD</i>	2005
		<i>Gaston v. Bryan ISD</i>	2005
		<i>Cantu v. One Stop Multi-Service Charter School</i>	2006
		<i>Sanchez v. Donna ISD</i>	2007
		<i>Johnson v. Kenedy ISD</i>	2008
		<i>Murillo v. Laredo ISD</i>	2008

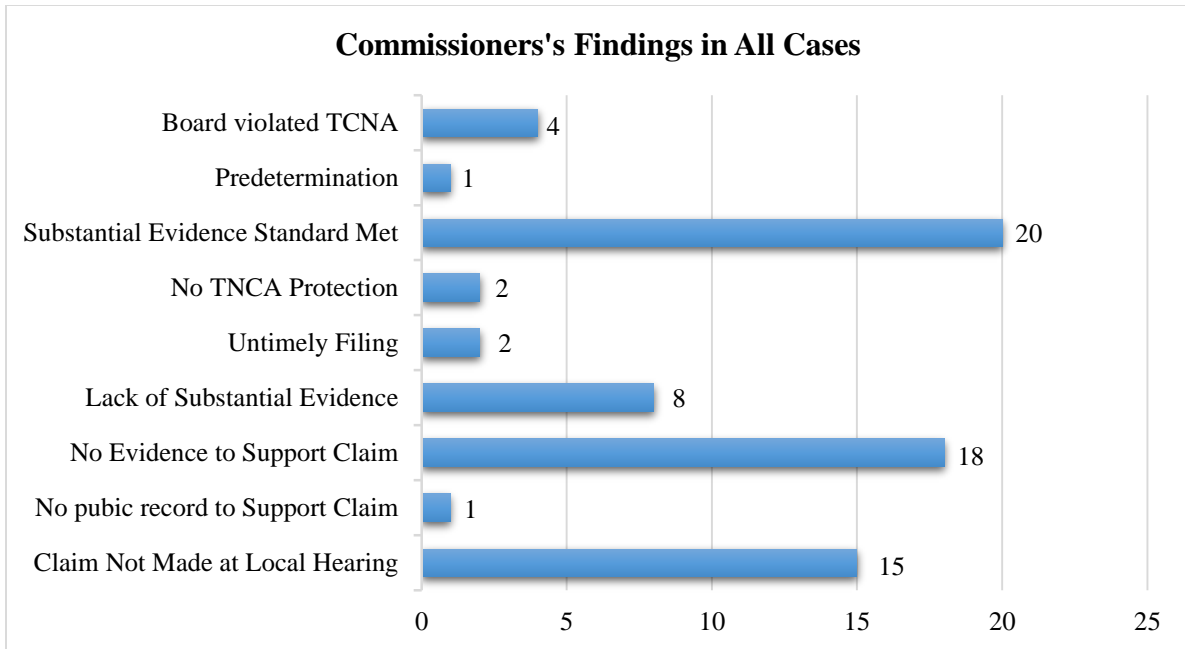


Figure 2. Commissioner’s findings in all cases.

Before hearing an appeal, a commissioner must determine whether the petitioner’s claim falls under the jurisdiction of the TEC; if so, the commissioner applies the substantial evidence standard of review, which is required under Texas Government Code § 2001.174 (1993), a condition that was added in 1993. Prior to 1993, the substantial evidence standard of review used in the cases from 1983 to 1993 came from the Administrative Procedure and Texas Register Act (APTRA) of 1975. The Texas Legislature repealed this act in 1993. The substantial evidence standard of review has evolved since 1983.

Since 1993, the requirement has been that each appeal must be resolved through the substantial evidence standards test. An early case for the substantial evidence test cited in this paper was *Gerst v. Cain* (1965). The *General Telephone Company v. Public Utility Commission of Texas* (1982) became the gold standard, and it is cited in many Texas commissioner decisions. As stated in *General Telephone Company v. Public Utility Commission of Texas* (1982), “Substantial evidence need not be much evidence,

although ‘substantial’ means more than a mere scintilla, or some evidence, it is less than is required to sustain a verdict being attacked as against the great weight and preponderance of evidence”(p. 10).

In *Martin v. Troup* (1984), the commissioner cited *Gerst v. Nixon* (1966), which stated that if a board’s decision were supported by substantial evidence, the decision would not be considered as arbitrary or capricious. *Shelton v. Aquilla* (1983) was the first case that used the substantial evidence test for the TCNA, and commissioners cited this case until *City of Alvin v. Public Utility Commission of Texas* (1993) was decided. This decision defined the substantial evidence test for Texas commissioners, thus establishing the gold standard for this standard of review that is used to date.

Commissioners found the substantial evidence test was met in 20 of the appealed cases. In *Marin v. Troup* (1984), the commissioner found that the reasons listed for nonrenewal did not have to be compelling. Reasons are also not time bound; evidence from one event or incident could constitute substantial evidence, as seen in *Lamb v. Whitehouse* (1989) and *Johnson v. Kenedy* (2008). Additionally, the board’s reasons for nonrenewal may be proven erroneous, but only one substantially supported reason is needed to support a nonrenewal decision, as found in *Schimschat v. Groesbeck* (1995). The substantial evidence standard was tested, through its reiterations, and was successfully met in 20 of the 44 cases examined. In seven cases, the substantial evidence test was not met, and the petitioners prevailed. The remaining cases did not fully test the substantial evidence standard of review because the claims were based on procedural irregularities.

Commissioners' second most cited reason was the lack of evidence to support claims or causes for nonrenewal. In *Weaver v. Santa Maria* (1999), the board failed to connect the reasons for nonrenewal to the petitioner's job description. In *Vasquez v. Eagle Pass* (1992), the facts did not support the petitioner's allegation of retaliation. Cases have demonstrated that some evidence must support all claims before the commissioner can consider their merits.

The third most cited reason concerned claims not made at the local hearing. Per statute, the commissioner can only review the local record unless compelling evidence exists, which must be entered in the Petition for Review. In 15 cases, either the petitioners or respondents failed to submit evidence in the local record properly. In *Ruiz v. Robstown* (1987), the board voted to nonrenew based on performance for a position that the petitioner did not hold; they failed to list the reasons for the correct contract nonrenewal. In *Martinez v. Donna* (2005), the school board failed to adopt the findings of fact and conclusions of law into the local record. Petitioners may seek to add new evidence if they file a Petition for Review when they appeal to the commissioner.

The fourth most cited reason concerned boards' inability to provide evidence to meet the substantial evidence standard of review. Although only one reason is needed to support a nonrenewal; eight of the 12 cases failed to provide sufficient evidence. In *Leo v. Brooks County* (2005), the board attempted to use data from a previous contract as reason for the nonrenewal, which the commissioner did not allow.

In four cases, the commissioner found that boards had violated one or more element of the TCNA. In *Parr v. Waco* (1991) and *Williams v. Hutchins* (1991), the

boards failed to follow their own reductions in force policy by failing to consider the administrator in question for other open positions that he or she was qualified to hold.

Untimely filing, no Chapter 21 protections, and predetermination were the least cited reasons that commissioners considered in their decisions to grant or deny appeals. Deadlines established by statute must be strictly adhered to, and failing to meet any deadline renders grievances moot. Charter school employees not listed under the Chapter 21 definition of a teacher are not protected by the TCNA. The board predetermined a nonrenewal before a hearing in only one case, *Tolson v. Detroit* (1989).

Commissioner Reasons for Granting Appeals

Of the 44 cases presented in this paper, 27% (12 cases) of the appeals were granted and 73% (32) were denied. Figure 3 highlights the commissioners' reasons for granting appeals.

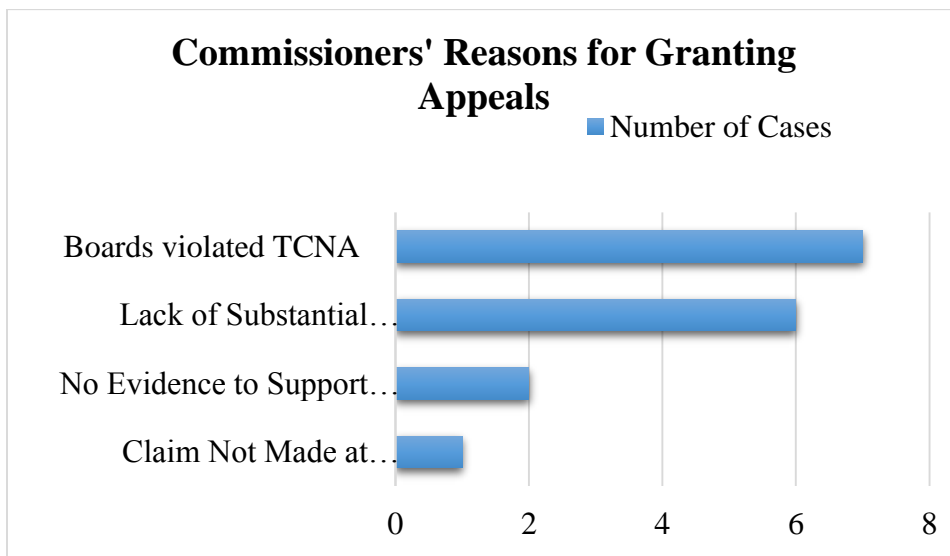


Figure 3. Commissioners' reasons for granting appeals.

Seven cases that were granted were the result of school boards violating one or more tenets of the TCNA. Of these seven cases, four involved not following reduction in force procedures as outlined in statute or in local board policies. In *Wasserman v.*

Nederland (1984), *Parr v. Waco* (1991), *Williams v. Wilmer-Hutchins* (1994), and *Collins v. Kountze* (1989), the boards failed to follow policy because they had not formally considered the petitioners for other positions in their respective districts. In one case, *Tolson v. Detroit* (1989), the board predetermined the outcome of a nonrenewal without giving the petitioner a hearing. The evidence was found in the board's minutes.

Commissioners granted six petitioners' cases because the boards failed to provide enough evidence to meet the substantial evidence standard of review test. For example, in *Weaver v. Santa Monica* (1999), the board attempted to include evidence from a previous contract period. Commissioners granted two cases because the boards failed to provide any evidence whatsoever. In *Martinez v. Donna* (2005), the board failed to develop statements of facts and conclusions of law in the local record, and it failed to provide a response to Petition for Review in a timely manner. In *Cogdill v. Comal ISD* (1984), the board provided no evidence because it incorrectly assumed that the petitioner held a probationary contract. Finally, one case was granted because the board failed to make a claim during an evidentiary hearing.

Commissioners' Reasons for Denying Appeals

The commissioners' findings of facts and conclusions of law provided the legal rationale for all decisions. Figure 4 highlights the legal bases that commissioners used to make their decisions to deny appeals. In most cases, commissioners listed more than one reason for their decisions. Commissioners provided the following eight reasons for denying appeals:

- Claim not made at local hearing
- No public record to support claim

- No evidence to support claim
- Did not request hearing
- Untimely filing
- No Chapter 21 protections
- Substantial evidence standard met

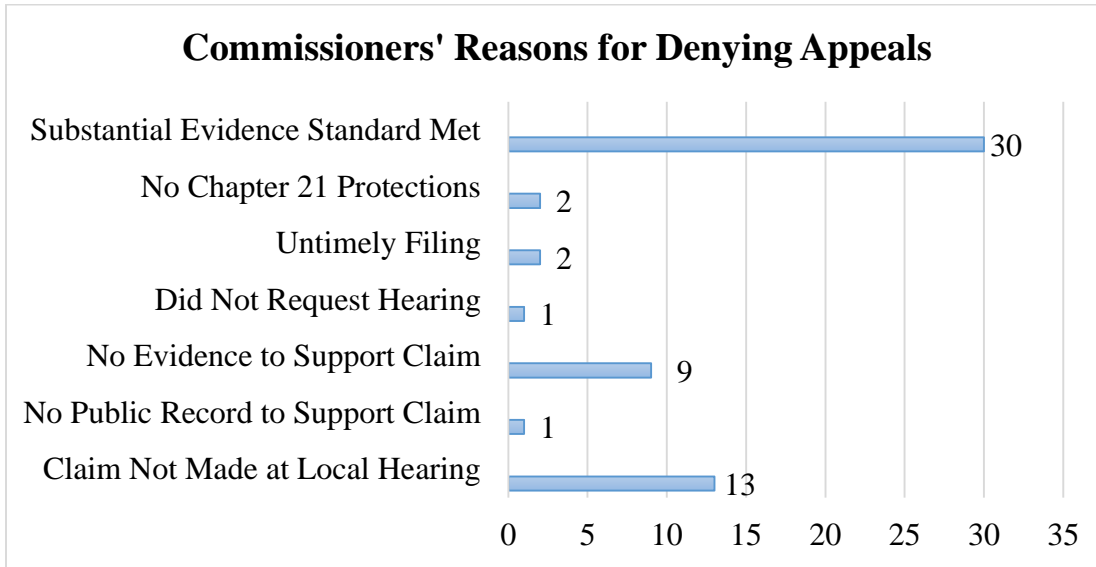


Figure 4. Commissioners’ reasons for denying appeals.

Commissioners’ most cited reason (30 cases) was that respondents met the substantial evidence standard of review. The second most cited reason (13 cases) concerned the fact that petitioners did not make their claims during evidentiary hearings, as required by statute. In nine cases, commissioners found that the petitioners failed to provide evidence to support their claims. Other reasons included untimely filing, no public record to support a claim, and no Chapter 21 protections; cumulatively, these reasons were found in five cases.

Overall, school districts prevailed because they met the substantial evidence standard of review test. As stated previously, not every reason for a nonrenewal stated by a board needs to meet the substantial evidence test; only one reason needs to meet the

standard to be considered substantial evidence. Additionally, all evidence or claims must be made during the evidentiary hearing.

Petitioners' Reasons for Appeals

For an appeal to occur, an aggrieved administrator must claim that a school board's decision was either one or all of the following: arbitrary, capricious, unlawful, or not supported by substantial evidence. No limit exists on how many claims a party can make. In all 44 cases examined, petitioners made the following legal claims:

- Arbitrary, capricious, unlawful, and without substantial evidence
- Constitutional violations
- Contract claim
- Demotion
- Due process
- Evaluation
- Procedural requirements

Figure 5 illustrates the type and frequency of reasons stated for appeals before commissioner of education.

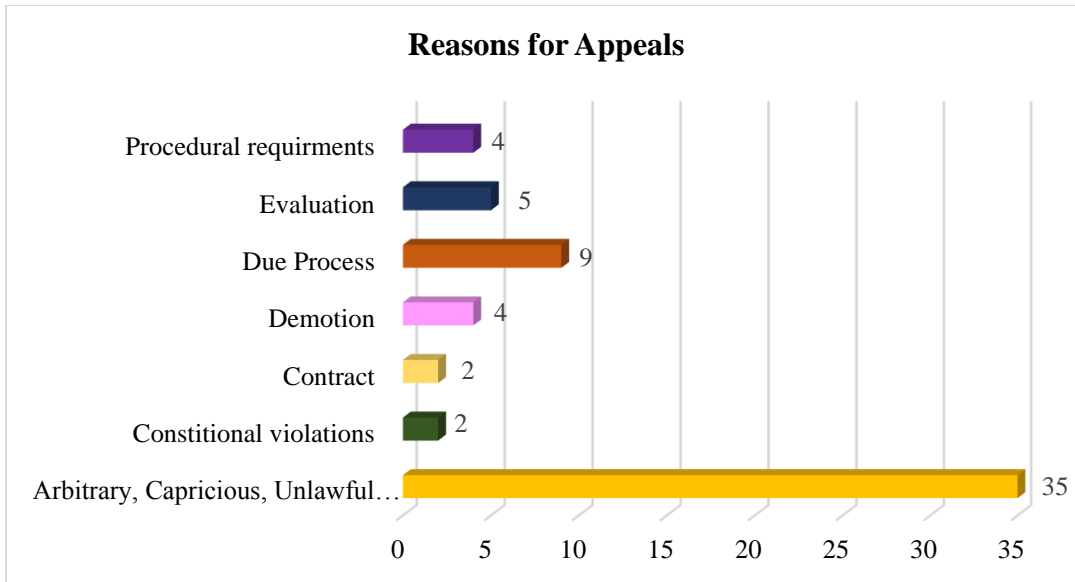


Figure 5. Reasons for filing appeals stated by all school administrators.

Thirty-five cases studied cited arbitrary, capricious, unlawful, and lacking substantial evidence as reason for the appeals. Despite what is written statutorily as legally valid, the aggrieved party may specifically identify the issues as part of the complaint even if the complaint is not under the jurisdiction of the commissioner or is considered frivolous by the commissioners (*Ellis v Center ISD*, 1988). Furthermore, any reason, if found to be under the jurisdiction of the commissioner, is considered in the appeal. The second most stated reason (9 cases) was a belief that due process was not followed as required by law. The third most cited reason was the use of evaluations. In early cases, statute was clear in terms of how school boards use evaluations formally to make their decisions (*Ellis v. Center ISD*, 1988). Other cited reasons included procedural irregularities, demotions, contract, and constitutional claims. Constitutional claims were dismissed for lack of jurisdiction.

Legal Claims Stated by All School Administrators

After petitioners state the reason(s) for filing appeals, they are required to provide evidence for each legal claim. Allegations, such as arbitrary, capricious, unlawful, and

lacking substantial evidence must be supported by evidence; it is incumbent on the petitioners to carry the burden of proof. Figure 6 illustrates the type and frequency of claims that school administrators made. An exhaustive review of the 44 cases revealed the following legal issues that petitioners made in their appeals:

- Use of evaluations
- Prejudice
- Retaliation
- Not allowed to present witnesses
- Predetermination
- Denied TCNA protections
- Untimely filing
- No evidence to support decision
- Civil Rights violation
- Constitutional rights violations

In all cases reviewed, the petitioners made more than one legal claim in their appeals. The commissioners considered each legal claim. Eighteen legal claims made by school administrators involved the belief that the school boards denied petitioners one or more protection afforded to them in the TCNA. Various examples were given to support these claims. The second most cited issue (9 cases) was the belief that the local record did not provide enough evidence or no evidence to warrant a decision to nonrenew a term contract.

The third most common claim (7 cases) made concerned the improper use of administrator evaluations. The fourth most common reason (6 cases), stemmed from a

belief that boards had predetermined the nonrenewal decision prior to the hearings. The fifth most cited reason (4 cases) by administrators who appealed their nonrenewals was the belief that board members were prejudiced.

Untimely filing and retaliation were the fifth most common issues that petitioners cited. The commissioner dismissed constitutional claims for lack of jurisdiction; however, three petitioners had listed other legal issues that commissioners did consider. Finally, one case made the claim that the board’s hearing policy did not allow her enough time to present all witnesses in her defense.

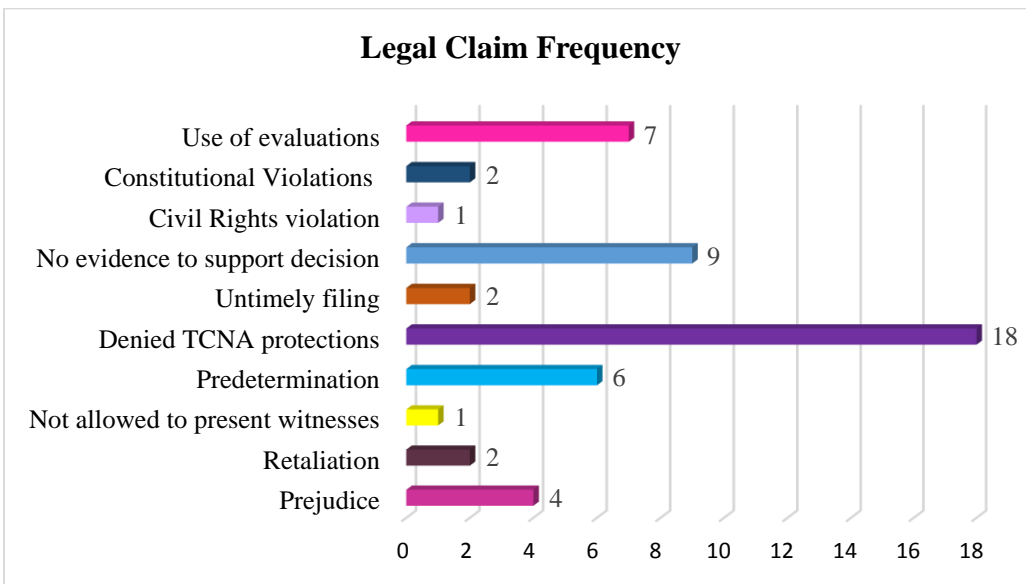


Figure 6. Legal claims made by all school administrators.

Reasons Boards Gave for Nonrenewals

Per statute, school boards are required to list the reasons for contract nonrenewals. Even though, according to *Patrick v. Mineola ISD* (1983), petitioners carry the burden of proof for an appeal, respondents are required to prove by a preponderance of evidence that one or more of the reasons are valid (*De la Paz v. Harlingen ISD*, 2013). If the commissioner determines that the facts are supported by a preponderance of evidence,

they are admitted as findings of fact. Thus, the reasons for nonrenewal must be supported by facts, which are commonly listed in the public records. Figure 7 illustrates the reasons and frequency of causes given by school boards to nonrenew term contracts for school administrators.

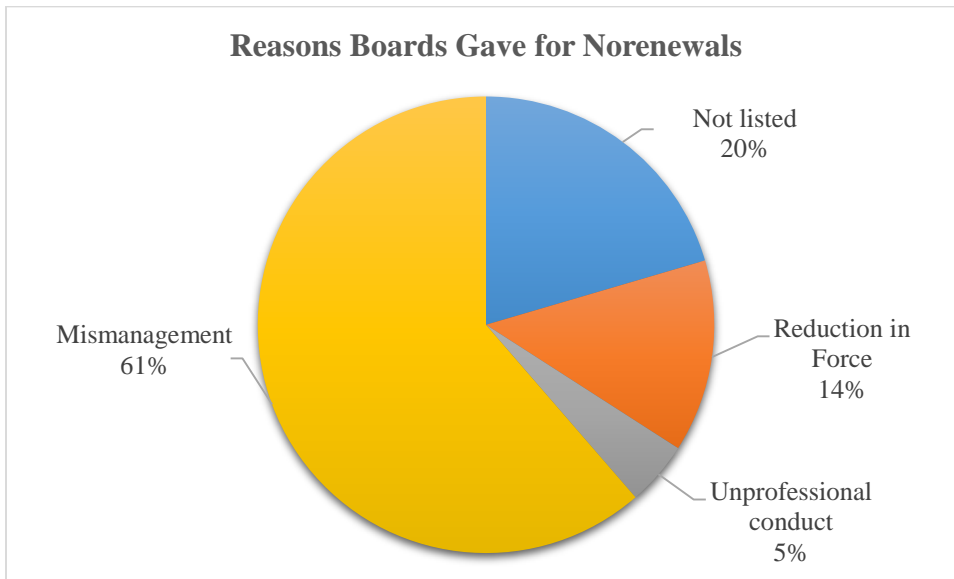


Figure 7. Reasons boards gave for nonrenewals in all cases.

Sixty-one percent of the reasons cited by school boards concerned administrative mismanagement. Twenty percent of the reasons for nonrenewal were not listed in the commissioners' dockets. This finding applied to nine cases. Although inferences can be made from reading the dockets in these nine cases, all possible reasons were not included in this study. Fourteen percent (6 cases) of the reasons concerned reduction of force. Five percent (2 cases) of the reasons cited stated unprofessional conduct.

Timeline and Frequency of Cases Decided by Commissioners

The Texas legislature passed the TCNA on May 25, 1981, and the act was later subsumed and amended into the TEC Chapter 21 and other government codes. Chapter 21 is subject to change at every biennial Texas Legislative session. For example, in

1995, the use of certified hearing officers was added, and changes to Chapter 21 have occurred in every legislative session since the TCNA was subsumed.

Figure 8 illustrates the timeline and frequency of cases decided by commissioners from 1983 to 2013. The first cases in this study that included administrators were heard in 1983, *Salinas v. Ben-Bolt* (1983) and *Patrick v. Mineola* (1983). The last appeals heard were in 2008, *Johnson v. Kenedy* (2008) and *Murillo v. Laredo* (2008). No appeals for school administrators have been decided since 2008.

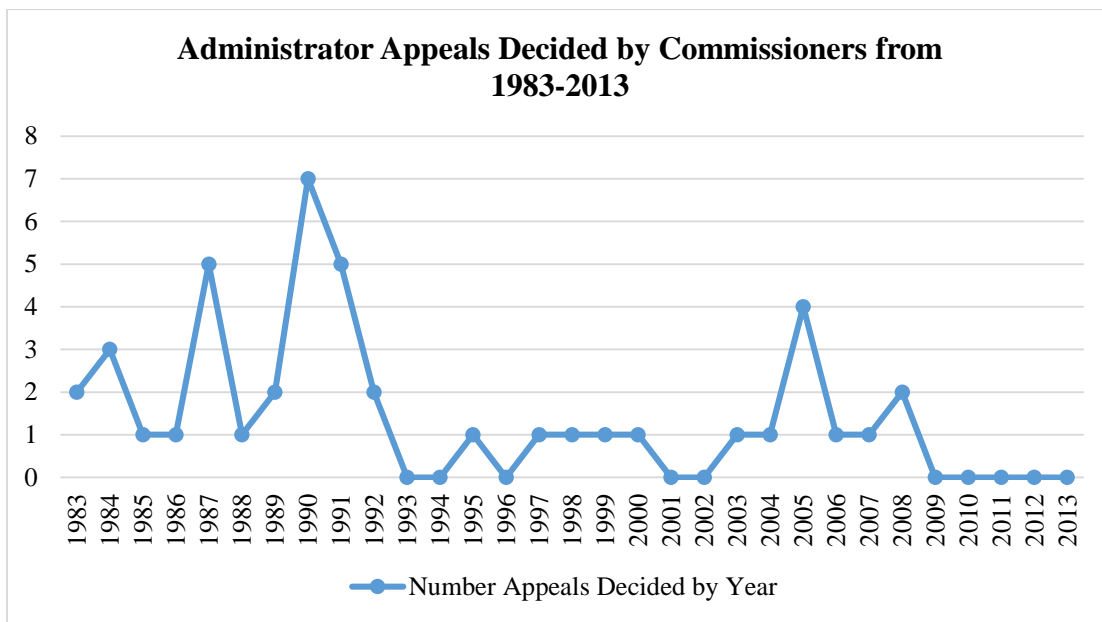


Figure 8. Timeline and frequency of cases decided by commissioners from 1983-2013.

From 1983 to 1993, administrator appeals averaged 2.5 per year. From 1984 to 2013, the average administrator appeals per year was .7. Changes to contract law occurred in 1993 with the repeal of the APTRA of 1975, which was subsumed in the TEC. Additionally, *City of Alvin v. Public Utility Commission of Texas* (1993) established the substantial evidence standard for review, which Texas commissioners then cited as standard in the appeals reviewed in this study. The last major education law change concerning TEC occurred in 1995. These changes were sweeping as three new

Subchapters were added to the TEC: Subchapter E, Term Contracts; Subchapter F, Hearings before Hearing Examiners; and Subchapter G, Appeals to the commissioner of education.

CHAPTER V

CONCLUSIONS AND RECOMMENDATIONS

The legal relationship between Texas professional school district employees and their employers is set forth in Texas Education Code (TEC), Texas Administrative Codes (19 TAC), and federal laws. Whenever disputes in term contract nonrenewals arise, employees can invoke the rights outlined by law. Additionally, commissioners apply statutory rules and case law from other decisions, as well as from state and federal rulings.

The 67th Texas Legislative Session passed the Term Contract Nonrenewal Act (TCNA) in 1981. Prior to the TCNA, teachers serving under term contracts had no property interest in the renewal process, and such contracts could be nonrenewed for any reason or for no reason at all (*Seifert v. Texas Central Agency Education Agency*, 1985). The passage of TCNA created a property interest in the nonrenewal process and, thus, in due process. Since the passage of the TCNA, petitioners have challenged school boards and commissioners' decisions in the state and federal courts with little success. In fact, all challenges in the federal and state courts for school administrators have been unsuccessful, and school administrators at all levels have tested nearly all elements of the TCNA. However, commissioners, state, and federal decisions provide clarity to the employee and employer relationship.

Since the passage of the TCNA, school administrators have challenged their respective school boards' decisions to nonrenew their contracts. The most cited reason for their complaints was arbitrary, capricious, unlawful, and without substantial evidence. Specific claims that supported petitioner's reasons for filing most commonly included

denial of TCNA rights or the boards' lack of evidence to support their decisions to nonrenew. Per TEC § 21.203(b) (2002), boards are required to identify the reasons why they elected to nonrenew contracts. In this study, the most cited reasons found were administrator mismanagement, followed by reduction in force.

This researcher found nine common rationales for why commissioners made specific decisions. The most cited reason was that the boards provided enough evidence to meet the substantial evidence standard of review even if some of the evidence was contradictory. Hughes (1989) found that not much evidence is needed to support a board's decision under the substantial evidence standard. The cases analyzed in the current study showed that only one reason, as stated in board policy, was needed to support a board's decision to nonrenew a term contract, even if some reasons were not supported by substantial evidence or were erroneous (*Schimschat v. Groesbeck*, 1995). Additionally, as prescribed by statute, commissioners cannot consider evidence after the evidentiary hearing, no matter how relevant or compelling, unless a petitioner files a Petition for Review and convinces a commissioner to consider new evidence.

In all cases presented in this paper, commissioners granted 27% (12 appeals). In these cases, commissioners determined that the boards violated one or more of the TCNA protections. A common thread found in all 12 cases concerned school boards' lack of understanding of local policy and providing evidence that would hold up to the substantial evidence standard of review.

Commissioners denied 73% (32) of appeals. In 23 cases examined, the school boards successfully met the substantial evidence standard of review. The remaining 9 cases were granted because the petitioners failed prove the procedural irregularities

existed. A common thread found in all denied cases involved the application of the substantial evidence standard of review. Some evidence must support all claims. Here, evidence does not have to be compelling and must be entered into the local record. For school districts, the evidence presented must pass the preponderance of evidence test.

From 1983 to 1993, appeals concerning school administrators averaged 2.5 per year. From 1994 to 2013, this average decreased to .7 per year, which may be attributed to several factors. First, *City of Alvin v. Public Utility Commission* (1993) decision was cited as case law for the definition of the substantial evidence standard of review, which became the gold standard for all cases heard thereafter. Second, in 1995, the Texas Legislature made sweeping changes by adding three subchapters to TEC Chapter 21. Each subchapter provided new rules concerning term contracts and the relationship between school and their employers. Third, commissioners' decisions prior to 1995 addressed and answered questions of law that set precedent.

Findings for the Research Questions

This section discusses the findings for the research questions concerning commissioners' decisions on term contract nonrenewal appeals from 1983-2013.

Research Question 1

Research Question 1 stated: What legal claims did petitioners state for their appeals, and what reasons did school districts give for nonrenewing school administrators' term contracts that were appealed to the Texas commissioner of education? A thorough and exhaustive review of Texas commissioner dockets revealed the legal claims that petitioners raised in their appeals.

The following nine categories emerged:

- Prejudice

- Retaliation
- Not allowed to present witnesses
- Predetermination
- Denied TCNA protections
- Untimely filing
- No evidence to support decision
- Civil Rights violation
- Constitutional rights violations

Most legal claims examined involved the belief that the board denied one or more TCNA protection. The remaining cases challenged the language found in this statute. Among these cases, commissioners provided clarity on the statute by citing case law or by setting case precedent. Most appeals provided evidence to support the cases, while some made claims that were not supported by facts or were not made during the evidentiary hearing. Constitutional claims are not under commissioners' purview; therefore, all were dismissed. The prevalent reason school boards gave administrators for nonrenewal was mismanagement. As Hughes (1989) found, school boards provided well-documented evidence to support mismanagement claims. All but one respondent provided well-documented evidence to support their appeals.

Research Question 2

Research Question 2 stated: What legal grounds did Texas commissioners of education use to make their decisions concerning term contract nonrenewal appeals filed by Texas school administrators? The researcher extrapolated the legal grounds given by Texas commissioners from the findings of fact and conclusions of law found in each case

docket. Commissioners provided the following nine reasons or legal rationales for their decisions:

- Claim not made at local hearing
- No public record to support claim
- No evidence to support claim
- Lack of substantial evidence
- Untimely filing
- No TCNA protection
- Substantial evidence standard met
- Predetermination
- Board violated TCNA

All cases tested the substantial evidence standard of review as required by state law with mixed results. While only one reason that meets the preponderance of evidence standard is needed to support a nonrenewal decision, several boards failed to provide adequate evidence to make their cases (*Smelley v. Higgins*, 1986, *Weaver v. Santa Maria*, 1999 and *Leo v. Brooks*, 2005). However, this pattern was not the norm. Respondents carry the burden of proof. Therefore, most lost their appeals because they failed to provide evidence in the local record or present substantial evidence in the evidentiary hearings.

Research Question 3

Research Question 3 stated: What patterns exist for decisions in which Texas commissioners of education ruled against or for school districts, and in favor or against appealing school administrators? The first pattern found pertained to the use of the

substantial evidence standard of review. Initially, the *Gerst v. Cain* (1965) decision defined this standard. From 1983 to 1994, commissioners cited the *General Telephone Company v. Public Utility Commission* (1982) decision as the new standard, as well as other Texas commissioners' decisions (e.g., *Shelton v. Aquilla*, 1983). In 1994, the City of *Alvin v. Public Utility Commission* decision became the third iteration of the substantial evidence standard of review. As of 2013, this standard remained; however, is subject to change in future cases.

The second pattern found concerns with the strict adherence to statutory requirements in light of potential evidence that may be discovered after an appeal. Commissioners must base their decisions on the local record; they cannot use evidence unless the petitioner submits a Petition for Review and makes a compelling case to add the new evidence. This legal process was evident in many cases reviewed. Additionally, making a claim at an evidentiary hearing does not constitute evidence in the local record. Rather, evidence must be provided to support each claim the commissioner considers. Even so, the board needs only one reason, supported by a preponderance of evidence, to support a nonrenewal decision.

A third pattern that emerged from the data concerned school boards' lack of understanding when interpreting board policy. Some granted appeals revealed that boards did not fully understand their own policies. This finding was evident in four cases that listed reduction of the workforce as their reason for nonrenewal. A fourth pattern concerned following timelines as outlined by statute. All parties must abide by the timelines, and, if they are missed for any reason, a reasonable explanation must be provided in the Petition for Review.

Implications for Practice

The findings of this study benefit school boards when they make decisions to nonrenew term contracts and benefit administrators when they make appeals to their respective school boards and commissioners. Reasons for appeals and commissioners' methods of legally processing these cases can shed light on the importance of following all aspects indicated in the TEC. Commissioners' rationales for denying and granting appeals were clearly delineated based on a review of previous cases.

The current findings in this study can benefit school boards when considering the nonrenewal process for school administrators. First, school boards must provide at least one reason that meets the substantial evidence standard to support their decisions to nonrenew, and this reason must pass the preponderance of evidence test. A best practice should include providing as many reasons as possible that meet the preponderance of evidence standard. However, if the decision to nonrenew is based on mismanagement, it may be incumbent upon the board to show that the deficiencies were duly noted in evaluations and that the petitioner was given ample opportunity and time to correct these deficiencies prior to making the decision to nonrenew. Therefore, professional growth plans should be a standard for all administrators who may be considered for potential term contract nonrenewal.

Second, the use of hearing officers should be a standard practice in all nonrenewal hearings. If a board does not use a hearing officer, it should establish its own findings of fact and conclusions of law. Third, boards need to be continually aware and updated on changes to existing government codes, and ensure the changes are reflected in local

policy properly. Fourth, boards need to ensure that timelines are strictly monitored and met; failure to follow timelines may render nonrenewal decisions moot.

Fifth, when enacting reorganization or reduction in force efforts, affected employees must be considered for other positions in the district before they are dismissed.

Sixth, the Texas Association of School Boards (TASB) should develop a fluid guide or manual regarding timely information and procedures to advise and guide school boards. Finally, boards should be trained on the changes in education law through workshops, training, and regular updates from their attorneys or through various trade or association venues. The notion of due process is fluid, as demonstrated in changes in commissioner, state, and federal court decisions, as well as by statutory changes by the Texas Legislature.

The findings of this study can also benefit school administrators who may have their term contracts nonrenewed. School administrators should have a clear understanding of why their superintendents have recommended nonrenewal, and these reasons should be provided prior to the hearing. Once reasons are provided, it is incumbent that school administrators provide reasonable evidence that counters the deficiencies noted by their superintendents.

All evidence should be transcribed and entered into local record, as typical hearings are time bound and all evidence must be submitted within the time allotted for the hearing. If more time is needed, a request to continue or extend the hearing can be requested. Third, objections need to be made if a superintendent presents new evidence that the administrator has not had time to prepare for or defend. Objections are a matter

of public record, and commissioners can explore such objections if they are explicated in the petitioner's notice of appeal or supplemental pleading.

If making an appeal to the commissioner, it is important to submit a Petition for Review that includes new evidence that may have been discovered after the local hearing. As per statute, commissioners can only consider evidence from the record and the Petition for Review; therefore, new evidence must be included in the Petition for Review. Finally, petitioners should seek legal counsel or guidance if they choose to challenge a board's nonrenewal proposal and decision.

Recommendations for Future Study

This researcher offers the following recommendations for future research on decisions rendered by the Texas commissioners of education concerning term contact nonrenewal decisions:

1. Expand this study to include non-administrators. Would the data found in this study change if teachers were added to the sample population?
2. Design a study to investigate the decline of appeals made by school administrators. This paper highlights possible causes; however, further research is needed to determine the influence of statute changes in terms of cause and effect.
3. Determine the relationship between the use of legal counsel and the outcomes of all cases.

Conclusion

Inherent in the employment relationship between a school district and term contract employee is due process, as the courts hold that employees have property rights

in the term contract renewal process. As the current findings demonstrate, administrators in the state of Texas have challenged the TCNA since 1983 at the agency level, as well as in the state and federal courts with little success. Since the TCNA was subsumed into 19 TAC, primarily, in the TEC in 1995, appeals have diminished to the point that Texas commissioners of education have not decided any administrator appeals since 2008.

The Texas Legislature's intent in creating the TCNA was to provide clarity in the term contract employment relationship between school employees and school districts. Since its inception, the TCNA has been challenged and modifications through legislative actions have appeared every 2 years. This constant change has allowed the TEC to comport to any changes from state or federal laws or mandates and to support the rights of employees and districts in applying the rules of law when making adverse employment decisions. In short, the intent of the 1981 legislative decision to ensure procedural safeguards for employees was realized, and the employee and employer relationship with term contracts was well defined.

APPENDIX A

DENTON INDEPENDENT SCHOOL DISTRICT

BJCF (LOCAL) POLICY NUMBER 061901

Denton Independent School District
BJCF (LOCAL) Policy Number 061901
Date issued: 11/13/2008
Update 84

Superintendent Nonrenewal
Denton INDEPENDENT SCHOOL DISTRICT
061901

SUPERINTENDENT BJCF (add this to header)
NONRENEWAL (LOCAL)

REASONS

The Board's decision not to renew the Superintendent's contract shall not be based on the Superintendent's exercise of rights guaranteed by the Constitution, or based unlawfully on race, color, religion, sex, national origin, disability, or age. Reasons for the nonrenewal of the Superintendent's contract shall be:

1. Deficiencies pointed out in evaluations, supplemental memoranda, or other communications.
2. Failure to fulfill duties or responsibilities.
3. Incompetency or inefficiency in the performance of duties.
4. Insubordination or failure to comply with Board directives.
5. Failure to comply with Board policies or administrative regulations.
6. Failure of the District to make measurable progress towards the goals stated in the District improvement plan. [See BQ]
7. Conducting personal business during school hours when it results in neglect of duties.
8. Drunkenness or excessive use of alcoholic beverages; or possession, use, or being under the influence of alcohol or alcoholic beverages while on school property, while working in the scope of the employee's duties, or while attending any school- or District-sponsored activity.
9. The illegal possession, use, manufacture, or distribution of a controlled substance, a drug, a dangerous drug, hallucinogens, or other substances regulated by state statutes.
10. Failure to meet the District's standards of professional conduct.
11. Failure to report to the Board any arrest, indictment, conviction, no contest or guilty plea, or other adjudication for any felony, any crime involving moral turpitude, or other offense listed at DH (LOCAL). [See DH]
12. Conviction of or deferred adjudication for any felony, any crime involving moral turpitude, or other offense listed at DH(LOCAL); or conviction of a lesser included offense pursuant to a plea when the original charged offense is a felony. [See DH]
13. Failure to comply with reasonable District requirements regarding advanced coursework or professional improvement and growth.
14. Disability, not otherwise protected by law that prevents the Superintendent from performing the essential functions of the job.

15. Any activity, school-connected or otherwise, that, because of publicity given it or knowledge of it among students, faculty, or community, impairs or diminishes the Superintendent's effectiveness in the District.
16. Any breach by the Superintendent of an employment contract or any reason specified in the Superintendent's employment contract.
17. Failure to maintain an effective working relationship, or maintain good rapport, with parents, the community, staff, or the Board.
18. Assault on a person on school property or at a school-related function, or on an employee, student, or student's parent regardless of time or place.
19. Use of profanity in the course of performing any duties of employment, whether on or off school premises, in the presence of students, staff, or members of the public, if reasonably characterized as unprofessional.
20. Falsification of records or other documents related to the District's activities.
21. Falsification or omission of required information on an employment application.
22. Misrepresentation of facts to the Board or other District officials in the conduct of District business.
23. Failure to fulfill requirements for Superintendent certification.
24. Failure to fulfill the requirements of a deficiency plan under an Emergency Permit or a Special Assignment Permit.
25. Any attempt to encourage or coerce a child to withhold information from the child's parent or from other District personnel.
26. Any reason constituting good cause for terminating the contract during its term.

NOTICE

If the Board determines that the Superintendent's contract should be considered for nonrenewal, the Board shall deliver to the Superintendent by hand or certified mail, return receipt requested, written notice of the proposed nonrenewal. This notice shall contain the hearing procedures and shall be delivered not later than the 30th day before the last day of the contract term.

HEARING

If the Superintendent desires a hearing after receiving notice of the proposed nonrenewal, the Superintendent shall notify the Board in writing not later than the 15th day after receiving the notice. When the Board receives a timely request for a hearing on proposed non-renewal, the hearing shall be held not later than the 15th day after receipt of the request, unless the parties mutually agree to a delay. The Superintendent shall be given notice of the hearing date as soon as it is set.

HEARING PROCEDURE

The hearing shall be conducted in closed meeting unless the superintendent requests that it be open, with only the members of the Board, the Superintendent, their chosen representatives, and such witnesses as may be called in attendance. Witnesses may be excluded from the hearing until it is their turn to present evidence. The Superintendent and the Board may each be represented by a person designated in writing to act for them. Notice, at least five days in advance of the hearing, shall be given by each party intending to be represented, including the name of the representative. Failure to give such notice may result in postponement of the hearing.

The conduct of the hearing shall be under the Board President's control and in general shall follow the steps listed below:

1. After consultation with the parties, the Board President shall impose reasonable time limits for presentation of evidence and closing arguments.
2. The hearing shall begin with the Board's presentation, supported by such proof as it desires to offer.
3. The Superintendent may cross-examine any witnesses for the Board.
4. The Superintendent may then present such testimonial or documentary proofs, as desired, to offer in rebuttal or in general support of the contention that the contract be renewed.
5. The Board may cross-examine any witnesses for the Superintendent and offer rebuttal to the testimony of the Superintendent's witnesses.
6. Closing arguments may be made by each party.

A record of the hearing shall be made so that a certified transcript can be prepared, if required.

BOARD DECISION

The Board may consider only such evidence as is presented at the hearing. After all the evidence has been presented, if the Board determines that the reasons given in support of the recommendation to not renew the Superintendent's contract are lawful, supported by the evidence, and not arbitrary or capricious, it shall so notify the Superintendent by a written notice not later than the 15th day after the date on which the hearing is concluded. This notice shall also include the Board's decision on renewal, which decision shall be final.

DATE ISSUED: 11/13/2008 add footer

1 of 4

UPDATE 84

BJCF (LOCAL)-A

APPENDIX B
DENTON INDEPENDENT SCHOOL DISTRICT TERM CONTRACT
NONRENEWALS

Denton Independent School District Term Contract Nonrenewals
DFBB (LOCAL) Policy Number 061901
Date issued: 10/19/2012
Update 95

2. TERM CONTRACTS
NONRENEWAL
header

DFBB
(LOCAL)

REASONS

The recommendation to the Board and its decision not to renew a contract under this policy shall not be based on an employee's exercise of Constitutional rights or based unlawfully on an employee's race, color, religion, sex, national origin, disability, or age. Reasons for proposed nonrenewal of an employee's term contract shall be:

1. Deficiencies pointed out in observation reports, appraisals or evaluations, supplemental memoranda, or other communications.
2. Failure to fulfill duties or responsibilities.
3. Incompetency or inefficiency in the performance of duties.
4. Inability to maintain discipline in any situation in which the employee is responsible for the oversight and supervision of students.
5. Insubordination or failure to comply with official directives.
6. Failure to comply with Board policies or administrative regulations.
7. Excessive absences.
8. Conducting personal business during school hours when it results in neglect of duties.
9. Reduction in force because of financial exigency. [See DFFA]
10. Reduction in force because of a program change. [See DFFB]
11. A decision by a campus intervention team that the employee not be retained at a reconstituted campus. [See AIC]
12. The employee is not retained at a campus that has been re-purposed in accordance with law. [See AIC]
13. Drunkenness or excessive use of alcoholic beverages; or possession, use, or being under the influence of alcohol or alcoholic beverages while on school property, while working in the scope of the employee's duties, or while attending any school- or District-sponsored activity.
14. The illegal possession, use, manufacture, or distribution of a controlled substance, a drug, a dangerous drug, hallucinogens, or other substances regulated by state statutes.
15. Failure to meet the District's standards of professional conduct.
16. Failure to report any arrest, indictment, conviction, no contest or guilty plea, or other adjudication for any felony, any crime involving moral turpitude, or other offense listed at DH (LOCAL). [See DH]
17. Conviction of or deferred adjudication for any felony, any crime involving moral turpitude, or other offense listed at DH(LOCAL); or conviction of a lesser included offense pursuant to a plea when the original charged offense is a felony. [See DH]
18. Failure to comply with reasonable District requirements regarding advanced coursework or professional improvement and growth.

19. Disability, not otherwise protected by law that prevents the employee from performing the essential functions of the job.
20. Any activity, school-connected or otherwise, that, because of publicity given it, or knowledge of it among students, faculty, and community, impairs or diminishes the employee's effectiveness in the District.
21. Any breach by the employee of an employment contract or any reason specified in the employee's employment contract.
22. Failure to maintain an effective working relationship, or maintain good rapport, with parents, the community, or colleagues.
23. A significant lack of student progress attributable to the educator.
24. Behavior that presents a danger of physical harm to a student or to other individuals.
25. Assault on a person on school property or at a school-related function, or on an employee, student, or student's parent regardless of time or place.
26. Use of profanity in the course of performing any duties of employment, whether on or off school premises, in the presence of students, staff, or members of the public, if reasonably characterized as unprofessional.
27. Falsification of records or other documents related to the District's activities.
28. Falsification or omission of required information on an employment application.
29. Misrepresentation of facts to a supervisor or other District official in the conduct of District business.
30. Failure to fulfill requirements for certification, including passing certification examinations required by state law for the employee's assignment.
31. Failure to achieve or maintain "highly qualified" status as required for the employee's assignment.
32. Failure to fulfill the requirements of a deficiency plan under an Emergency Permit, a Special Assignment Permit, or a Temporary Classroom Assignment Permit.
33. Any attempt to encourage or coerce a child to withhold information from the child's parent or from other District personnel.
34. Any reason that makes the employment relationship void or voidable, such as a violation of federal, state, or local law.
35. Any reason constituting good cause for terminating the contract during its term.

RECOMMENDATIONS FROM ADMINISTRATION

Administrative recommendations for renewal or proposed nonrenewal of professional employee contracts shall be submitted to the Superintendent. A recommendation for proposed nonrenewal shall be supported by any relevant documentation. The final decision on the administrative recommendation to the Board on each employee's contract rests with the Superintendent.

SUPERINTENDENT'S RECOMMENDATION

The Superintendent shall prepare lists of employees whose contracts are recommended for renewal or proposed nonrenewal by the Board. Supporting documentation, if any, and reasons for the recommendation shall be submitted for each employee recommended for proposed nonrenewal. The Board shall consider such information, as appropriate, in support of recommendations for proposed nonrenewal and shall then act on all recommendations.

NOTICE OF PROPOSED NONRENEWAL

After the Board votes to propose nonrenewal, the Superintendent or designee shall deliver written notice of proposed nonrenewal in accordance with law. If the notice of proposed nonrenewal does not contain a statement of the reason or all of the reasons for the proposed action, and the employee requests a hearing, the District shall give the employee notice of all reasons for the proposed nonrenewal a reasonable time before the hearing. The initial notice or any subsequent notice shall contain the hearing procedures.

REQUEST FOR HEARING

If the employee desires a hearing after receiving the notice of proposed nonrenewal, the employee shall notify the Board in writing not later than the 15th day after the date the employee received the notice of proposed nonrenewal.

When a timely request for a hearing on a proposed nonrenewal is received by the presiding officer, the Board shall notify the employee whether the hearing will be conducted by the Board [see HEARING BY THE BOARD, below] or an attorney designated by the Board [see HEARING BY AN ATTORNEY DESIGNATED BY THE BOARD, below].

In either case, the hearing shall be held not later than the 15th day after receipt of the request, unless the parties mutually agree to a delay. The employee shall be given notice of the hearing date as soon as it is set.

HEARING BY THE BOARD

Unless the employee requests that the hearing be open, the hearing shall be conducted in closed meeting with only the members of the Board, the employee, the Superintendent, their representatives, and such witnesses as may be called in attendance. Witnesses may be excluded from the hearing until called to present evidence. The employee and the administration may choose a representative. Notice, at least five days in advance of the hearing, shall be given by each party intending to be represented, including the name of the representative. Failure to give such notice may result in postponement of the hearing.

HEARING PROCEDURES

The conduct of the hearing shall be under the presiding officer's control and shall generally follow the steps listed below:

1. After consultation with the parties, the presiding officer shall impose reasonable time limits for presentation of evidence and closing arguments.
2. The hearing shall begin with the administration's presentation, supported by such proof as it desires to offer.
3. The employee may cross-examine any witnesses for the administration.
4. The employee may then present such testimonial or documentary proof, as desired, to offer in rebuttal or general support of the contention that the contract be renewed.
5. The administration may cross-examine any witnesses for the employee and offer rebuttal to the testimony of the employee's witnesses.
6. Closing arguments may be made by each party.

A record of the hearing shall be made.

BOARD DECISION

The Board may consider only evidence presented at the hearing. After all the evidence has been presented, if the Board determines that the reasons given in support of the recommendation to not re-new the employee's contract are lawful, supported by the

evidence, and not arbitrary or capricious, it shall so notify the employee by a written notice not later than the 15th day after the date on which the hearing is concluded. This notice shall also include the Board's decision on renewal, which decision shall be final.

HEARING BY AN ATTORNEY DESIGNATED BY THE BOARD

The hearing must be private unless the employee requests in writing that the hearing be public, except that the attorney may close the hearing to maintain decorum. If the employee does not request a public hearing, only the attorney designated by the Board, the employee, the Superintendent, their representatives, and witnesses will be permitted to be in attendance, and witnesses may be excluded from the hearing until called to present evidence. The employee and the administration may choose a representative. Notice, at least five days in advance of the hearing, shall be given by each party intending to be represented, including the name of the representative. Failure to give such notice may result in postponement of the hearing.

The conduct of the hearing shall be under the control of the attorney designated by the Board and shall generally follow the steps listed at HEARING BY THE BOARD.

Not later than the 15th day after the completion of the hearing, the attorney shall provide to the Board a record of the hearing and his or her recommendation on renewal.

BOARD REVIEW

The Board shall consider the record of the hearing and the attorney's recommendation at the first Board meeting for which notice can be posted, unless the parties agree in writing to a different date. The Board shall notify the employee of the meeting date as soon as it is set. At the meeting, the Board shall allow each party an equal amount of time to present oral arguments. The Board shall notify the employee in writing of the Board's decision on renewal not later than the 15th day after the date of the meeting.

NO HEARING

If the employee fails to request a hearing, the Board shall take the appropriate action and notify the employee in writing of that action not later than the 30th day after the date the notice of proposed non-renewal was sent.

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