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enforceable and that Allen's failure to return the contract was not excusable under the facts. *Allen v. Rio Vista Indep. Sch. Dist.*, Tex. Comm'r of Educ. Decision No. 033-R10-08-2017 (June 5, 2018).

School District Contributions to Scholarship Programs. The Potter County Attorney asked the attorney general whether Amarillo ISD could contribute public funds to the ACE scholarship program—a partnership among Amarillo ISD and local institutions of higher education. The program guaranteed payment of tuition, fees, and books for up to 130 semester hours if eligible students maintained an 85 GPA, a 95% attendance record, and exhibited appropriate behavior while attending high school. When discussing proposed changes to the ACE program, parties questioned whether Amarillo ISD's contribution was appropriate or a gift of public funds prohibited by the Texas Constitution. The attorney general concluded that school boards in Texas have considerable discretion to expend funds for purposes necessary in the conduct of schools. School district expenditures are not gifts of public funds when the board finds that an expenditure (1) serves a public purpose; (2) has sufficient controls to ensure the public purpose is accomplished; and (3) results in a return benefit to the district. The school board determines whether a particular expenditure satisfies this three-part test in the first instance, subject to judicial review. Op. Tex. Att'y Gen. No. KP-204 (2018).

Thank you for your continued support of the TASB Legal Assistance Fund.

Sincerely,
Mark Tilley
Lead Attorney for Legal Resources,
LAF Coordinator, TASB Legal Services

CONTACT US

LAF may be interested in *your* case! If you think your district is involved in litigation with potential statewide impact, please contact TASB Legal Services at legal@tasb.org.

The LAF Wocket

ANNUAL REPORT 2017-18

Dear LAF Member:

Thank you for being a member of the TASB Legal Assistance Fund (LAF). Your membership with LAF makes it possible to positively influence the outcome of important cases that have significant impact on public schools across Texas. LAF is pleased to share this report on the Fund's ongoing activities, as well as a summary of selected cases that closed in Fiscal Year 2017-18.

Participation as Amicus Curiae

In the past year, LAF received 11 requests for assistance. The LAF Board approved all of those requests. LAF also filed 11 amicus curiae briefs in jurisdictions that included the Texas Commissioner of Education, Texas Attorney General, Travis County District Court, Texas Courts of Appeals, Texas Court of Criminal Appeals, Texas Supreme Court, and Fifth Circuit Court of Appeals.

Successes on Behalf of Members

LAF has played an important role in securing favorable outcomes in several significant court cases affecting public schools.

Jurisdiction for Retaliation Claims under TCHRA. Catherine Clark sued Alamo Heights ISD under the Texas Commission on Human Rights Act (TCHRA), alleging discrimination and retaliation arising from her termination as a PE teacher and coach at Alamo Heights Junior High School. The district challenged the trial court's jurisdiction because it had a legitimate, nondiscriminatory reason for her termination, but the court denied the district's plea to the jurisdiction and the Fourth Court of Appeals in San Antonio affirmed. With LAF's support, Alamo Heights ISD appealed to the Texas Supreme Court, which held that when the district produced evidence that negated her prima facie case, Clark was then required to show some evidence raising a fact issue on retaliatory intent. Because she did not, the court reversed the court of appeals' judgment and dismissed Clark's TCHRA claims. *Alamo Heights Indep. Sch. Dist. v. Clark*, 544 S.W.3d 755 (Tex. 2018).

Expiration of Offer Provisions in Educator Contracts. Jeri Allen was employed by Rio Vista ISD as a classroom teacher and was given a term contract for the 2017-18 school year. The contract had been signed by the board president and contained an expiration of offer provision stating that the contract was an offer of employment that expired unless she signed and returned the contract on or before a certain date. Failure to sign and return the contract was considered a resignation from employment at the end of the existing contract term. After receiving the contract, the superintendent placed Allen on administrative leave pending an investigation into alleged misconduct. In May, the superintendent directed Allen to report to his office, where he informed her that she was returned from administrative leave, but because she failed to sign and return her contract by the return date, she was not employed for the 2017-18 school year. Allen filed a grievance, claiming that she did not know about the expiration of offer because she left her contract on her desk and did not have the opportunity to read it while she was out on administrative leave. The board denied her grievance, and Allen appealed to the commissioner of education, who denied her appeal, holding that the expiration of offer provision was

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THE MISSION OF THE LEGAL ASSISTANCE FUND (LAF) IS TO FAVORABLY IMPACT THE OUTCOME OF LEGAL ISSUES THAT SIGNIFICANTLY AFFECT PUBLIC EDUCATION. LAF IS GOVERNED BY THE TEXAS ASSOCIATION OF SCHOOL BOARDS, THE TEXAS ASSOCIATION OF SCHOOL ADMINISTRATORS, AND THE TEXAS COUNCIL OF SCHOOL ATTORNEYS.

FOR MORE INFORMATION, VISIT
legal.tasb.org/laf.

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PENDING CASES	COURT	LAF BOARD APPROVAL	LAF'S ATTORNEYS	ISSUE	STATUS
<i>TCEQ v. Freestone Power</i>	Texas Supreme Court	March 2018	Thompson & Horton	Are power plants that use heat recovery steam generators (HRSGs) entitled to an ad valorem tax break intended for pollution control devices?	Petition for Review by TCEQ pending; briefing on the merits requested.
<i>Kilgore ISD v. Axberg</i>	Sixth Court of Appeals (Texarkana)	March 2018	Walsh, Gallegos, Treviño, Russo & Kyle	Did school districts violate Texas Tax Code section 11.13(n-1) by rescinding their local option homestead exemption (LOHE) after the governor signed the bill but before voters approved the constitutional amendment that gave the statute effect?	Case ready to be set for oral argument.
<i>Doyal v. Texas</i>	Texas Court of Criminal Appeals	May 2018	Eichelbaum Wardell Hansen Powell & Mehl	Is the prohibition on "walking quorums" in the Texas Open Meetings Act unconstitutionally vague?	Petition for Discretionary Review granted. Oral arguments set for October 3, 2018.

CLOSED CASES	COURT	LAF BOARD APPROVAL	LAF'S ATTORNEYS	ISSUE	OUTCOME
<i>Mission CISD v. Solis</i>	Third Court of Appeals (Austin)	September 2016	J Cruz & Associates	Does the commissioner of education have jurisdiction under Texas Education Code section 7.057 over a claim of entitlement to a Chapter 21 contract that was not raised at the local level?	Yes. The commissioner erred by dismissing the petition for review for lack of jurisdiction. The trial court properly reversed the commissioner's decision and remanded the case.
<i>Alamo Heights ISD v. Clark</i>	Texas Supreme Court	September 2016	Rogers, Morris & Grover	Are the second and third steps of the McDonnell Douglas burden-shifting framework part of the jurisdictional analysis when a plaintiff brings a Texas Commission on Human Rights Act (TCHRA) retaliation claim that relies solely on circumstantial evidence?	Yes. All three steps of the McDonnell Douglas burden-shifting framework are jurisdictional when the employer presents evidence to rebut the plaintiff's prima facie case.
<i>Palazzolo v. Fort Worth ISD</i>	Texas Supreme Court	September 2016	Mounce, Green, Myers, Safi, Paxson & Galatzan	Must a terminated employee who requests a termination hearing under Chapter 21 file a Whistleblower claim within 30 days of the termination of the grievance procedure?	Petition for Review by Fort Worth ISD denied. Remanded to trial court.
<i>Wallis v. Paxton</i>	Travis County District Court	March 2017	Abernathy, Roeder, Boyd & Hullett	Are a superintendent's self-evaluation and related documents confidential under Texas Education Code section 21.355, which provides that a document evaluating the performance of a teacher or administrator is confidential?	Maybe. The trial court determined that many documents at issue in this case were confidential, but many were not. The court's final judgment did not resolve whether section 21.355 applies to documents that are evaluative but are not actual evaluations.
<i>PlainsCapital Bank v. Keller ISD</i>	Fifth Circuit Court of Appeals	August 2017	Walsh, Gallegos, Treviño, Russo & Kyle	Does the actual notice/deliberate indifference standard apply to claims under the ADA and Section 504 based on allegations that a teacher mistreated a disabled student?	Unresolved. The Fifth Circuit held in favor of Keller ISD without resolving this legal issue.
<i>Allen v. Rio Vista ISD</i>	Commissioner of Education	October 2017	Karczewski Bradshaw Spalding	Is an Expiration of Offer provision in a Chapter 21 term contract enforceable if an employee fails to sign and return their contract by a specific date?	Yes. Because petitioner failed to timely accept her term contract before the expiration of offer, no contract was formed for the subsequent school year.
<i>Clear Creek ISD v. Cotton Commercial</i>	Texas Supreme Court	October 2017	Mounce, Green, Myers, Safi, Paxson & Galatzan	Does a school district waive its immunity from breach of contract claims under Texas Local Government Code section 271.152 by entering into a written agreement that contains no description of the work to be performed?	Petition for Review by Clear Creek ISD denied. Unfavorable court of appeals decision stands.
KP-177	Texas Attorney General	December 2017	Leasor Crass	Is it an unconstitutional gift of public funds for a school district to provide transportation to polling sites to encourage voting? What are the legal constraints related to a school district encouraging employees and students to vote?	A court would likely conclude that providing transportation to polling locations for students and employees serves no public purpose. A court would likely conclude that the use of public funds to link to a website promoting a specific candidate or measure is prohibited political advertising.
KP-204	Texas Attorney General	December 2017	Underwood Law Firm	May a school district contribute funds to a scholarship program that pays for graduates of the school district to attend community college?	Yes. A school district's expenditure for a scholarship program is constitutional if it satisfies the three-part test for gifts of public funds. Whether a particular expenditure satisfies the three-part test is a determination for the school district in the first instance, subject to judicial review.
<i>EXLP v. Galveston Central Appraisal District</i>	Texas Supreme Court	February 2018	J Cruz & Associates	Is the statutory formula for determining the value of compression units held by oil and gas companies as heavy equipment rental inventory unconstitutional?	No. The statutory formula for determining the taxable value of leased natural-gas compressors does not violate the Texas Constitution's requirement that taxation "shall be equal and uniform" and that property "shall be taxed in proportion to its value." The county failed to rebut the presumed constitutionality of the statutes at issue.
<i>Texas Workforce Commission v. Wichita County</i>	Texas Supreme Court	February 2018	Eichelbaum Wardell Hansen Powell & Mehl	Can an employee taking leave under the federal Family and Medical Leave Act (FMLA) get unemployment benefits under the Texas Labor Code?	Yes. The Unemployment Act expressly and unambiguously defines "unemployed" in a manner that does not require severance of the employer-employee relationship; an individual on unpaid medical leave, even if protected under the FMLA, satisfies the Act's definition of unemployed and may qualify for unemployment benefits if she meets the Act's eligibility requirements.
<i>Caleb A. v. Leander ISD</i>	State Office of Administrative Hearings	May 2018	Thompson & Horton	Are surveillance recordings from special education classrooms (recorded pursuant to Texas Education Code section 29.022) discoverable in special education due process hearings?	After LAF approval, district chose not to oppose special education hearing officer ruling.