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Hillman appealed, and the Texas Supreme Court held that Sabine Pilot did not waive governmental immunity from Hillman's wrongful-termination claim. The Supreme Court affirmed the trial court's judgment and dismissed the case. *Hillman v. Nueces County*, Texas Supreme Court (March 15, 2019).

FAPE under IDEA. The parents of C.J., a student with disabilities enrolled in Houston ISD, were dissatisfied with the education and services C.J. received. After a four-day due process hearing, the hearing officer issued a written decision in Houston ISD's favor, and the parents appealed. The parties both moved for summary judgment, and the district court granted the district's motion and denied C.J.'s cross-motion. In *Cypress-Fairbanks Independent School District v. Michael F.* (1997), the Fifth Circuit identified four factors for district courts to analyze in determining whether a school district has substantively denied a student FAPE. C.J. asserted that the U.S. Supreme Court's recent decision in *Endrew F. v. Douglas County School District* (2017) articulated a new standard and that the hearing officer applied the wrong test in reaching his decision. C.J.'s parents argued that the Fifth Circuit had yet to address the impact of *Endrew F.* on the Fifth Circuit's approach to claims related to FAPE. They urged the court to overrule *Michael F.* and to remand the case back to the district court for application of a standard consistent with *Endrew F.* The Fifth Circuit issued an opinion finding no procedural or substantive violations of the law or regulations, affirming the district court's dismissal, and reaffirming the validity of the *Michael F.* test in light of *Endrew F.*

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

Sincerely,

Mark Tilley, *Lead Attorney*
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 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.

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Dear LAF Member:

Thank you for being a member of the TASB Legal Assistance Fund. 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 2018-19.

Participation as Amicus Curiae

In the past year, LAF received 16 requests for assistance. The LAF Board approved 12 of those requests and declined four requests. LAF also filed 9 *amicus curiae* briefs in jurisdictions including the 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.

Criminal Penalties for "Walking Quorums." A Montgomery County judge and two county commissioners were prosecuted for allegedly violating the OMA by knowingly conspiring to circumvent the Act by meeting in numbers less than a quorum for the purpose of secret deliberations. This is sometimes referred to as a "walking quorum." The indictment alleged the county officials engaged "in a verbal exchange concerning an issue within the jurisdiction of the Montgomery County Commissioners Court, namely, the contents of the potential structure of a November 2015 Montgomery County Road Bond." The officials argued that the statute creating the criminal offense was unconstitutional because it violated the free speech provisions of the First Amendment and was vague and overbroad. The trial court granted their motion to dismiss the indictments, however the Ninth Court of Appeals in Beaumont reversed the dismissal of the indictments and remanded the case back to the trial court. The officials appealed to the state's highest court for criminal cases, the Texas Court of Criminal Appeals, which struck down the provision for being unconstitutionally vague. *State v. Doyal*, Texas Court of Criminal Appeals (Feb. 27, 2019).

Governmental Immunity from Sabine Pilot Wrongful Termination Claims.

Eric Hillman was working as an assistant district attorney in the Nueces County District Attorney's office when he discovered exculpatory evidence favorable to a defendant, which his supervisor instructed him not to disclose. Hillman objected, feeling it was unethical to withhold the evidence; shared the evidence with the defendant; and was subsequently fired. Hillman sued Nueces County based on the *Sabine Pilot* doctrine—an exception to the at-will employment doctrine—which requires a plaintiff to prove that: (1) he was required to commit an illegal act which carries criminal penalties; (2) he refused to engage in the illegality; (3) he was discharged; and (4) the sole reason for his discharge was his refusal to commit the unlawful act. The County and District Attorney's Office argued that the county was immune from Hillman's claims. The trial court agreed, and the court of appeals affirmed, finding that the Legislature never waived immunity from such a claim.

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ACTIVE CASES	COURT	LAF BOARD APPROVAL	LAF'S ATTORNEYS	ISSUE	STATUS
<i>Dixon v. West Orange-Cove CISD</i>	US District Court—Eastern District of Texas	June 2018	Rogers, Morris & Grover	Does following DFBB(LOCAL) when nonrenewing a term contract employee constitute a violation of due process under the US Constitution?	brief not filed
<i>Fort Bend ISD v. Paxton</i>	Travis County District Court	June 2018	Mounce, Green, Myers, Safi, Paxson & Galatzan	Are the phone records of board members' and employees' personal devices public information under the Public Information Act (PIA)?	brief not filed

PENDING CASES	COURT	LAF BOARD APPROVAL	LAF'S ATTORNEYS	ISSUE	STATUS
<i>Mission CISD v. Solis</i>	Texas Supreme Court	September 2018	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?	Supreme Court of Texas requested responses to the petition for review on May 3, 2019.
<i>North East ISD v. Riou</i>	Texas Supreme Court	October 2018	Rogers, Morris & Grover	When terminating a continuing contract, may a district show good cause per se, or must the district present expert testimony of what other school districts would do in response to the misconduct in question?	Petition for review granted; case set for oral argument on January 7, 2020.
<i>Doe v. Dallas ISD</i>	Fifth Circuit Court of Appeals	January 2019	Underwood Law Firm	When must a plaintiff exhaust administrative procedures under the Individuals with Disabilities Education Act (IDEA) if she is suing for damages for student-on-student harassment under Title IX of the Education Amendments of 1972 (Title IX)?	Oral argument heard on September 6, 2019.
<i>Town of Shady Shores v. Swanson</i>	Texas Supreme Court	January 2019	City of Arlington, City Attorney's Office	Are governmental entities prohibited from using no-evidence motions for summary judgment to challenge a plaintiff's claims when the plaintiff bears the burden of establishing a waiver of governmental immunity in order to establish jurisdiction? Does the Texas Open Meetings Act (OMA) expressly and unambiguously waive governmental immunity for declaratory relief?	Petition for review granted; case set for oral argument on September 24, 2019.
<i>Bruno v. Northside ISD</i>	Fifth Circuit Court of Appeals	June 2019	Underwood Law Firm	What does the IDEA require with regard to the delivery of "comparable services" when a student receiving special education services transfers from one state to another?	Case tentatively calendared for oral argument for the week of November 4, 2019.

CLOSED CASES	COURT	LAF BOARD APPROVAL	LAF'S ATTORNEYS	ISSUE	OUTCOME
<i>TCEQ v. Brazos Valley Energy</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?	Yes. TCEQ abused its discretion in issuing negative use determinations on energy companies' applications for tax exemptions for HRSGs.
<i>Doyal v. Texas</i>	Texas Court of Criminal Appeals	May 2018	Eichelbaum Wardell Hansen Powell & Muñoz	Is the prohibition on "walking quorums" in the Texas Open Meetings Act unconstitutionally vague?	Yes. Statute creating criminal offense of conspiracy to circumvent the OMA was declared unconstitutionally vague.
<i>Axelrod v. Wimberley ISD</i>	Commissioner of Education	September 2018	TASB Legal Services	Must a board policy that is changed by a District of Innovation plan be posted online for 30 days before approval?	No. Commissioner's final decision limited to issue of mootness; confusing dicta related to District of Innovation process removed from proposed decision.
<i>Renee J v. Houston ISD</i>	Fifth Circuit Court of Appeals	September 2018	Thompson & Horton	Did the US Supreme Court's holding in <i>Andrew F.</i> affect the Fifth Circuit's existing standard for determining whether a student has received a Free Appropriate Public Education (FAPE) under IDEA set forth in <i>Michael F.</i> ?	No. The Fifth Circuit's standard under <i>Michael F.</i> is consistent with the US Supreme Court's holding in <i>Andrew F.</i>
<i>Hillman v. Nueces County</i>	Texas Supreme Court	September 2018	Viada & Strayer	Do governmental entities enjoy sovereign immunity from <i>Sabine Pilot</i> claims for wrongful termination?	Yes. Governmental entities are immune from <i>Sabine Pilot</i> claims for wrongful termination.
<i>Kountze ISD v. Matthews</i>	Texas Supreme Court	October 2018	Thompson & Horton	Are cheerleaders' run-through banners government speech or private speech for purposes of First Amendment claims?	Texas Supreme Court declined to review Beaumont Court of Appeals' decision that cheerleader banners were private speech.
<i>Kilgore ISD v. Axberg</i>	Texas Supreme Court	April 2019	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?	Texas Supreme Court declined to review Texarkana Court of Appeals' decision that school districts unlawfully rescinded LOHE.