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District peace officer not an “appropriate person” under Title IX for purposes of imposing liability for employees’ sexual harassment of student.

A student at Edgewood ISD endured two years of sexual harassment and assault by her chemistry teacher and an officer in the district’s police department. Both employees were arrested and criminally prosecuted. The student sued the school district under Title IX and Section 1983, alleging that the district failed to train school district employees regarding sexual harassment or abuse, had insufficient sexual harassment and child abuse policies, and had insufficient employee hiring policies and practices. The district court granted summary judgment to the district on all the claims.

On appeal, the Fifth Circuit Court of Appeals recognized the “contemptible misconduct” of the employees and the cruelty suffered by the student, but held that the peace officer was not an appropriate person for purposes of imposing Title IX liability on the school district because he did not have supervisory power over the abusers and the power to arrest and enforce laws did not mean he had the power to eliminate a hostile environment. *Doe v. Edgewood Indep. Sch. Dist.*, 964 F.3d 351 (5th Cir. 2020).

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 2019-2020.

Participation as *Amicus Curiae*

In the past year, LAF received 13 requests for assistance, which were all approved for participation. LAF also filed 11 *amicus curiae* briefs in jurisdictions including the Office of the Attorney General, state district court, the Texas Supreme Court, federal district court, and the 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.

Governmental bodies are immune from claims for declaratory relief under the Texas Open Meetings Act.

In a case that originated from an employment dispute between the Town of Shady Shores and a former town secretary, the Texas Supreme Court ruled that governmental bodies, including school districts, are immune from claims for declaratory relief under the Texas Open Meetings Act. In addition, the Court held that governmental entities may assert claims of immunity by means of a procedural device known as a no-evidence motion for summary judgment. In so holding, the Court reversed the judgment of the Fort Worth Court of Appeals. *Town of Shady Shores v. Swanson*, 590 S.W.3d 544 (Tex. 2019).

Evidence from similarly situated districts is not necessarily required when terminating a continuing contract.

Dehann Riou was employed by North East ISD as an elementary school teacher under a continuing contract. After discovering that Riou had not conducted any reading benchmark testing and had not electronically recorded student grades for half of the school year, the school board voted terminate her continuing contract.

On appeal, the commissioner of education upheld the board’s decision finding that good cause was proven *per se*. The San Antonio Court of Appeals reversed, holding that the district was required to present evidence that similarly situated school districts in the state would consider the teacher’s alleged conduct a failure to meet accepted standards of conduct for the teaching profession.

On appeal, the Texas Supreme Court rejected the idea of “good cause *per se*” but disagreed that evidence from other school districts was always required to establish good cause for terminating a continuing contract. When “state or federal law provides a standard,” stated the Court, “specific evidence from other school districts is unnecessary to establish that the standard is one ‘generally recognized and applied’ in all other school districts.” *North East Indep. Sch. Dist. v. Riou*, 598 S.W.3d 243 (Tex. 2020).

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ACTIVE CASES	COURT	LAF BOARD APPROVAL	LAF'S ATTORNEYS	ISSUE	STATUS
<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 yet filed
PENDING CASES	COURT	LAF BOARD APPROVAL	LAF'S ATTORNEYS	ISSUE	STATUS
<i>Sheldon ISD v. Romero</i>	Harris County District Court	October 2019	Karczewski Bradshaw Spalding Nichols Lamp Langlois	Can the board of trustees of a school district place a teacher on leave without pay pending termination before completing a due process hearing with an independent hearing examiner?	Brief filed; oral arguments scheduled for October 20, 2020
<i>Davis v. Morath</i>	Texas Supreme Court	February 2020	Walsh Gallegos Treviño Russo & Kyle	Does filing an untimely grievance at the school district level constitute failure to exhaust administrative remedies that deprives the commissioner of jurisdiction over an appeal of the grievance?	Brief filed; briefs on the merits requested
<i>William V. v. Copperas Cove ISD</i>	Fifth Circuit Court of Appeals	February 2020	Eichelbaum Wardell Hansen Powell & Muñoz	Is a student with dyslexia automatically a student with a "specific learning disability" under the Individuals with Disabilities Education Act (IDEA)? Does a district provide special education services if it provides services in conformity with the Texas Dyslexia Handbook?	Brief filed; oral argument not required
CLOSED CASES	COURT	LAF BOARD APPROVAL	LAF'S ATTORNEYS	ISSUE	OUTCOME
<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?	The court rejected the commissioner's "good cause per se" standard; however, when state or federal law establishes a standard of conduct, specific evidence from other school districts is unnecessary to establish that the standard is generally recognized and applied in similarly situated school districts in the state.
<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?"	No. A governmental entity can properly raise governmental immunity as a jurisdictional bar to suit in a no-evidence motion for summary judgment. No. The OMA does not waive a governmental entity's immunity from suit for claims under the Uniform Declaratory Judgment Act."
<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)?	If a disabled person seeks Title IX relief that a non-disabled person could seek and requests relief that is different from or in addition to a Free Appropriate Public Education (FAPE), IDEA's exhaustion requirement does not apply.
<i>Bruno v. Northside ISD</i>	Fifth Circuit Court of Appeals	June 2019	Underwood Law Firm	What does IDEA require with regard to the delivery of "comparable services" when a student receiving special education services transfers from one state to another?	Providing comparable services under IDEA requires a school district's interim Individualized Education Program (IEP) to provide services that are "similar" or "equivalent" to those provided in the previous district, but it does not require a district to adopt the previous district's IEP in its exact form.
<i>Dixon v. West Orange-Cove CISD</i>	U.S. District Court—Eastern District of Texas	June 2019	Rogers, Morris & Grover	Does following DFBB (LOCAL) when nonrenewing a term contract employee constitute a violation of due process under the U.S. Constitution?	No. A term contract employee does not have a property interest in her contract that would give rise to due process rights.
<i>Pluecker v. Klein ISD and Lewisville ISD</i>	Fifth Circuit Court of Appeals	September 2019	Rogers, Morris & Grover	Are TASB (LEGAL) policies considered school district policies for purposes of municipal liability under 42 U.S.C. § 1983 (Section 1983)?	The lower court's order was vacated as moot after the Texas Legislature exempted sole proprietors from "No Boycott Israel" certification requirement.
<i>Fort Worth ISD v. Palazzolo</i>	Texas Supreme Court	September 2019	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?	In the Fort Worth Court of Appeals, a school board's decision to grant a teacher backpay rather than reinstatement could restart the timelines for initiating a pre-suit grievance.
<i>Spring Branch ISD v. O.W.</i>	Fifth Circuit Court of Appeals	October 2019	Thompson & Horton	Under IDEA's child find requirement, how quickly must a school district evaluate a student once it is aware of facts or behavior that indicate the student has a disability?	A school district does not necessarily commit a child-find violation if it pursues Response to Intervention (RtI) or 504 accommodations before pursuing a special education evaluation; however, such accommodations are not a substitute for an evaluation once a school district is on notice of acts or behavior likely to indicate a disability.
<i>Mission CISD v. Solis</i>	Texas Supreme Court	December 2019	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. Under the facts of this case, the Texas Supreme Court declined to review the appellate court's decision that the commissioner had jurisdiction and there was no failure to exhaust remedies.
KP-0300	Texas Attorney General	December 2019	Texas Municipal League	What authority does a political subdivision have to regulate public comment during open meetings under Texas Government Code section 551.007?	A school board may adopt reasonable rules regarding the public's right to address the board, including time limitations, holding a single public comment period at the beginning of an open meeting to address all items on the agenda, and capping the total amount of time a member of the public has to address all items on the agenda.
<i>Doe v. Edgewood ISD</i>	Fifth Circuit Court of Appeals	December 2019	Thompson & Horton	Is a school district peace officer an "appropriate person" for purposes of imposing liability on a school district under Title IX?	No. An "appropriate person" under Title IX, must have authority to both repudiate the conduct and eliminate the hostile environment. The power to arrest someone is not the same as the ability to eliminate a hostile environment.
<i>Wilson v. Houston Community College District</i>	Fifth Circuit Court of Appeals	April 2020	Walsh Gallegos Treviño Russo & Kyle	Does a board member who is publicly censured by the rest of the board have a Section 1983 claim for a violation of their First Amendment rights?	Yes. A public official's allegation of censure in retaliation for speaking out about a matter of public concern is sufficient to establish an injury under Section 1983.