

FALL 2013 NEWSLETTER

SCHOOL LAW UPDATE

by John D. Husted

SUPREME COURT OF TEXAS

***Canutillo Independent School District v. Farran*, No. 12-0601, 56 Tex. Sup. J. 1174 (Tex. August 30, 2013)**

A school district employee's complaints to the school board, superintendents, and internal auditor are not good-faith complaints of a violation of law to a "law enforcement authority" under the Texas Whistleblower Act.

Farran was the Executive Director of Facilities and Transportation with the Canutillo ISD. According to his pleadings, Farran observed employee theft and falsification of time cards. He further observed that the District's waste disposal contractor was overpaid, failed to dispose of waste as specified in its contract, and violated state law regulating the use of government funds and city regulations governing waste disposal. Farran reported these issues to the District superintendent, assistant superintendent, internal auditor, and school board. He alleges that a trustee told him that if he valued his job, he should refrain from making these reports. He was later terminated and brought suit under the Whistleblower Act.

The Texas Supreme Court agreed that the District's plea to the jurisdiction should be granted because reports to these internal District officials were not good-faith complaints of a violation of law to a law enforcement authority, as required under the Whistleblower Act. Evidence of the District's duty to "self-regulate and self-enforce" was insufficient.

TEXAS COURT OF APPEALS

***William Marsh Rice University v. Spears*, No. 14-13-00235-CV, 2013 Tex. App. LEXIS 13780 (Tex. App. – Houston [14th] November 7, 2013, no pet. h.)**

A peace officer of a private university is not entitled to an interlocutory appeal of a denial of a motion for summary judgment based on an assertion of immunity because he is not an "officer or employee of the state," as the statutory exception requires.

Spears is a police officer employed by the Rice University Police Department. Rice is authorized to employ and commission peace officers pursuant to the Texas Education Code. Rasheed Rafaey sued Rice and Spears alleging unlawful arrest and detention. Rice and Spears's motion summary judgment asserting that the claims are barred by official immunity was denied, and they pursued an interlocutory appeal pursuant to the Tex. Civ. Prac. & Rem. Code § 51.014. Section 51.014(a)(5) grants authority for a person to appeal an interlocutory order that "denies a

motion for summary judgment that is based on an assertion of immunity by an individual who is an officer or employee of the state or a political subdivision of the state.”

Finding that nothing in the education code or any other statute provides that all peace officers are entitled to be treated as if they were officers or employees of the state for purposes of Section 51.014, the court held that Rice and Spears were not authorized to bring the interlocutory appeal from the denial of their motion for summary judgment based on the affirmative defense of official immunity.

***Sharyland Independent School District v. Molina*, No. 13-12-00625-CV, 2013 Tex. App. LEXIS 11908 (Tex. App. – Corpus Christi, September 19, 2013, no pet. h.)**

If a school district employee exhausts her administrative remedies under the Texas Labor Code, she is not required to exhaust her administrative remedies under the Education Code before bringing suit.

Molina, an assistant principal with Sharyland ISD, was notified that her contract would not be renewed because of a reduction in force. Molina filed a charge of discrimination with the Texas Workforce Commission—Civil Rights Division (TWC) against the District alleging retaliation and discrimination. After receiving a right to sue letter, she filed suit against the District alleging retaliation and discrimination on the basis of her disability under the labor code.

The District filed a plea to the jurisdiction, asserting that Molina failed to exhaust her administrative remedies under the Texas Education Code, specifically the Term Contract Nonrenewal Act. The trial court’s order granting Molina’s motion for new trial effectively denied the plea, so the District pursued an interlocutory appeal.

Finding that Molina was only pursuing claims under the labor code, the Court held that Molina was not required to exhaust her remedies under the education code when she did so under the labor code.