

WINTER 2014 NEWSLETTER

SCHOOL LAW UPDATE

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SUPREME COURT OF TEXAS

***Ysleta Independent School District v. Franco*, No. 13-0072, 2013 Tex. LEXIS 1034 (Tex. December 13, 2013)**

Under the Whistleblower Act, Tex. Gov't Code §554.001, reports of alleged violations of law made to a chief academic officer charged only with internal compliance is jurisdictionally insufficient. In the school context, reporting to school officials not charged with enforcing laws outside the district falls short.

Franco, a principal at a pre-K Academy in the Ysleta ISD sent a memorandum to his immediate supervisor, the chief academic officer, reporting various asbestos hazards. Eventually, the ISD indefinitely suspended Franco, and he filed a whistleblower claim. The ISD filed a plea to the jurisdiction, which was denied by the courts below

The Supreme Court reversed the courts below, noting that a report to someone charged only with internal compliance is jurisdictionally insufficient, and that Franco failed to show an objective, good-faith belief that the ISD qualifies as an appropriate law-enforcement authority under the act.

TEXAS COURT OF APPEALS

***Davison v. Plano Independent School District*, No. 05-12-01308, 2014 Tex. App. LEXIS 2007 (Tex. App. – Dallas, February 20, 2014, no pet. h.)**

Under Texas Education Code § 11.161, awarding costs and fees to a school district upon dismissal of tort claims barred by governmental immunity and employment contract claims for which the plaintiff failed to exhaust her administrative remedies may not abuse discretion.

Proceeding *pro se*, Davison, an elementary school teacher with Plano Independent School District (“PISD”), sued PISD and various administrators and PISD Board of Trustee members, alleging several tort claims, including tortious interference with an existing employment contract, conspiracy, fraud, negligence, intentional infliction of emotional distress, abuse of process, and breach of fiduciary duty. She also alleged a breach of employment contract claim.

Prior to suit, Davison sent PISD’s counsel a demand letter, stating her claims and demanding payment of \$5 million in damages. Counsel for PISD responded, and informed Davison that her claim for breach of employment contract was barred because she failed to exhaust her

administrative remedies, as the Texas Education Agency Commissioner found in a previous decision on this matter, and that her various tort claims were barred by governmental immunity as a matter of law, since they did not involve a motor vehicle. Counsel also advised Davison that PISD would seek reimbursement of its attorney's fees and costs as sanctions for a groundless and frivolous pleading.

After Davison filed suit, PISD filed a plea to the jurisdiction and motion for sanctions, and the trial court granted both. The Dallas Court of Appeals affirmed the dismissal of Plaintiff's claims, and found that the trial court did not abuse discretion in awarding costs and reasonable attorney's fees under Texas Education Code § 11.161 to PISD, even where Davison brought the claims *pro se*. The Court relied on the fact that PISD's counsel warned Davison that the school district was immune from her tort claims and that she failed to exhaust her administrative remedies, and therefore, Davison had specific knowledge of the legal bars to her claims prior to filing suit.

***Jennings v. Scott*, No. 04-12-00845-CV, 2014 Tex. App. LEXIS 131 (Tex. App. – San Antonio, January 8, 2014, no pet. h.)**

When a school district employee's constitutional claim is only ancillary to the underlying claim about the school district's board of trustee's actions regarding her employment contract, the employee must first exhaust her administrative remedies.

Jennings was a teacher at Bouerne Independent School District ("BISD"). Shortly after she received notice that the BISD Board had voted to propose nonrenewal of her contract on April 1, 2011, she timely requested a hearing on the nonrenewal under Texas Education Code 21.207. Before that hearing, Jennings also filed a grievance complaining of an unfair performance appraisal, which stated in part that the BISD administration had been acting in bad faith, and manufacturing negative documentation against her in an attempt to procure a nonrenewal of her contract. BISD advised Jennings her grievance would be heard on June 14, 2011, in conjunction with the nonrenewal hearing. When the board began to consider the nonrenewal of her contract at the hearing, Jennings and her attorney walked out. The hearing continued, and the board decided Jennings's contract would not be renewed.

Jennings appealed the nonrenewal decision to the commissioner of education, and the commissioner upheld the nonrenewal. Jennings appeal did not concern her additional grievance. Jennings then filed a petition to the trial court seeking judicial review of the commissioner's decision, and also claiming that the board violated section 617.005 of the Texas government code and article 1, section 27 of the Texas constitution by failing to hold a hearing on her grievance. The trial court affirmed the commissioner's decision and denied Jennings's statutory and constitutional claims against BISD.

On appeal, the court affirmed the trial court's decision. Generally, a party asserting claims relating to the administration of school laws must exhaust her administrative remedies with the education commissioner before turning to the courts, with certain exceptions. Jennings alleged that her statutory and constitutional claims fell under the exception for claims concerning a

violation of constitutional or federal statutory rights; however, when a constitutional claim is only ancillary to or supportive of a complaint about the board's handling of an employment contract, as was the case here, the complaining party must first exhaust the administrative process.