

## **FALL 2014 NEWSLETTER**

### **SCHOOL LAW UPDATE**

**By John D. Husted**

#### **TEXAS COURT OF APPEALS**

***Williams v. Sterling City Independent School District*, No. 11-12-00035-CV, 2014 Tex. App. LEXIS 11442 (Tex. App. – Eastland, October 16, 2014, no pet. h.)**

When determining the amount of local tax revenue that the State may “claw back” from a School District as “excess revenue,” State Law authorizes the Commissioner of Education to calculate only the types of revenue explicitly laid out in Texas Education Code §42.2516(h), and not all tax revenue of a district. Taking into consideration additional sources of revenue besides those listed in the statute to calculate how much the State may claw back constitutes an ultra vires act by the Commissioner.

***Marquez v. Clint Independent School District*, No. 08-13-00092-CV, 2014 Tex. App. LEXIS 10662 (Tex. App. – El Paso, September 24, 2014, no pet. h.)**

Complaints against a school district for alleged violations of state constitutional rights, as opposed to violations of school laws, are within the jurisdiction of a trial court and not the Commissioner of Education, and the general rule requiring exhaustion of administrative remedies under Tex. Educ. Code § 7.057 does not apply to such complaints.

Several parents brought suit against Clint ISD on behalf of their minor children seeking a declaratory judgment, temporary injunction, and permanent injunction for alleged violations of the Texas Constitution. Specifically, the Parents allege that the school district violated, and continues to violate, the rights and equal rights of their children, and those similarly situated, by failing and refusing to provide their children with equal education funding appropriately weighted according to the state funding formula. In response to the Parents’ petition, the school district filed a motion to dismiss and plea to the jurisdiction, alleging, in part, that the Parents failed to exhaust administrative remedies. The trial court heard the school district’s motion and found that the Parents failed to exhaust their administrative remedies, and dismissed the Parents’ action, and the Parents appealed.

The Court of Appeals concluded that the trial court erred in finding that it was without jurisdiction and in dismissing the Parents’ action for failing to exhaust administrative remedies, due to the constitutional nature of the Parents’ pleadings. Constitutional issues are not appropriate for administrative appeal and may be taken directly to the courts. Since the Parents’ complaints did not relate to violations of “school laws,” the Commissioner of Education had no jurisdiction over the claims.

***Tejano Center for Community Concerns, Inc. d/b/a Raul Yzaguirre Charter School for Success v. Olvera*, No. 13-13-00289, 2014 Tex. App. LEXIS 9657 (Tex. App. – Corpus Christi – Edinburg, August 29, 2014, no pet. h.)**

A parent’s allegation that a bus driver was negligent for abruptly braking the school bus after having directed a student to take attendance while the bus was in motion and while the floors were wet and slippery challenged the manner in which the bus was used and operated for purposes of determining whether the Texas Tort Claims Act’s (TTCA) limited waiver of a school district’s immunity for the use and operation of a motor-driven vehicle, and was not a premises defect claim.

Student Lizbeth Olvera (through her mother Laura as next of kin) brought a negligence suit against the charter school for injuries sustained by falling while riding on one of the school’s buses. According to Olvera’s first amended petition, the school’s bus driver asked Lizbeth to take attendance while the bus was in motion and while the bus floors were wet and slippery. Olvera was standing in the bus aisle when the driver unexpectedly braked, causing Olvera to fall and fracture her arm. She contends the driver was negligent because he failed to keep a proper lookout for Olvera’s safety; failed to warn her of the danger present of having a child standing while the bus was in motion; placed Olvera in a position of peril; and failed to maintain the floor of the school bus in a reasonably safe condition.

The school filed a plea to the jurisdiction, arguing that the court lacked subject matter jurisdiction, and characterizing Olvera’s claim against the school is a premises-defect claim, which is not covered by the TTCA waiver of governmental immunity. The TTCA does not waive a school district’s immunity for premises-defect claims. For school districts, the TTCA provides a limited waiver of governmental immunity only for tort claims that “arise[] from the operation or use of a motor-driven vehicle or motor-driven equipment.”

The school’s plea to the jurisdiction was denied and they filed this interlocutory appeal. Finding that the school bus is not real property, the Court of Appeals construed Olvera’s pleading liberally, and held that her claim targeted the use or operation of the school bus rather than the driver’s supervision of the students or a premises defect claim. Based on Olvera’s petition, the Court found that it was the combination of the braking, wet floor, and instruction to take attendance that allegedly caused Olvera’s fall and injury, and thus was a challenge to the manner in which the bus was used.

***Houston Independent School District v. PERX*, No. 14-13-01115-CV, 2014 Tex. App. LEXIS 9605 (Tex. App. – Houston [14<sup>th</sup>] August 28, 2014, no pet. h.)**

The assault of a student on a school bus does not arise from the school district’s failure to operate a security camera on the school bus, such that the school district has waived governmental immunity under the Texas Tort Claims Act.

PERX, the mother of WRRX, a special-needs student attending elementary school at Houston ISD, was contacted by the school and informed that WRRX had been sexually assaulted by two other students while on the bus. Soon after, PERX learned from WRRX that other

similar assaults occurred in the days leading up to the complained-of assault. PERX filed suit against the school district, seeking damages and alleging various negligent acts and omissions that proximately caused WRRX's personal injury. The school district filed a plea to the jurisdiction, contending that it had not waived governmental immunity. The trial court denied the school district's plea to the jurisdiction, and the school district filed an interlocutory appeal.

The Texas Tort Claims Act provides a limited waiver of governmental immunity for school districts for personal injury that "arises from the operation or use of a motor-driven vehicle or motor-driven equipment." Tex. Civ. Prac. & Rem. Code § 101.021. The parties disputed whether the school's failure to operate the security camera on the bus, and the failure to review the footage, constitutes the operation or use of a motor-driven vehicle, and that WRRX's injuries "arise from" that operation or use. "Arises from," as it is used in the statute, requires a nexus between the injury and the operation or use of the vehicle, and requires more than a mere involvement of the party, and the operation or use of the motor vehicle must do more than furnish the condition that makes the injury possible.

The Court of Appeals held that, because the nexus between the injury and the use of the motor vehicle in this case involves no more than the mere involvement of the security camera, the student's injury did not "arise from" the failure to operate and monitor the camera, so the school district's governmental immunity had not been waived.

***El Paso Independent School District v. McIntyre*, No. 08-11-00329-CV, 2014 Tex. App. LEXIS 8567 (Tex. App. – El Paso, August 6, 2014, pet. filed)**

Even though under Texas Supreme Court case *Tex. Educ. Agency v. Leeper*, a home school can be a private school within the meaning of the statutory exemption to compulsory attendance law requirements, a school district has the authority to investigate truancy claims or to request information from parents of home school children regarding their curriculum, and the requirements to exhaust administrative remedies before bringing suit against a school district may still apply to homeschool parents and students.

This lawsuit brought by Michael and Laura McIntyre and five of their nine children against the school district and various school district employees, concerns the balance between parents' right to home school their children and the rights of a school district to investigate the curriculum utilized.

After the Fall 2004 semester, the McIntyres began homeschooling their children. In January 2006, the school district's attendance officer Mark Mendoza received complaints from Michael McIntyre's parents that their grandchildren were not attending school or otherwise receiving a proper education. Shortly thereafter, Mendoza confirmed that the oldest McIntyre child, Tori, had run away from home at age seventeen so she could "attend school," and that when she enrolled with the school district, she was unable to provide any information regarding the level of her education or her parents' curriculum.

In December of 2006, school district representatives visited the McIntyre home and inquired about the curriculum and attempted to obtain a signed home school verification form, which the

McIntyres refused to provide. In January 2007, after the McIntyres refused to cooperate with the school district's requests for information, Menodza filed truancy complaints relying on the information provided by the grandparents and Tori. The school district informed the McIntyres that they could submit documentation showing that they were, in fact, providing an education at home, but Laura McIntyre responded that she did not feel that it would be right to do so. In July 2007, the McIntyres initiated the instant suit. Shortly thereafter, an assistant district attorney dismissed the truancy complaints because Tori and the grandparents did not want to testify.

The McIntyres brought various state and federal claims against the school district and various district employees. The District defendants' pleas to the jurisdiction and motion for summary judgment were denied, so they brought this appeal.

The court held that the McIntyres failed to exhaust their administrative remedies as to their state law claims. Generally, an aggrieved party must exhaust all administrative remedies for grievances arising under school laws, unless they are exempt for reasons such as the aggrieved party would suffer irreparable harm, the claims are for a violation of constitutional or federal right, the cause of action is purely a question of law and not a factual dispute. The court found that the Texas Education Code administrative remedies still applied to the McIntyres, even though they homeschooled, that the McIntyres claims included questions of fact, not just questions of law, that even though their claims included constitutional allegations, they all relate to the administration and applicability of school laws, and that they would not suffer irreparable harm. The court also dismissed the federal law claims against Mendoza based on qualified immunity, based in part on the fact that, the Leeper decision did not preclude an attendance officer from requiring the McIntyres to produce evidence regarding their curriculum. Further, the McIntyres failed to raise a fact issue that a sincerely held religious belief was substantially burdened, such as in *Wisconsin v. Yoder*. The court remanded the remaining claims.