

FALL 2015 NEWSLETTER

SCHOOL LAW UPDATE

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TEXAS COURT OF APPEALS

***Neighborhood Centers Inc. v. Walker*, No. 01-14-00844-CV, 2015 WL 4593436 (Tex. App. – Houston [1st Dist.] July 30, 2015, no pet. h.)**

Neighborhood Centers is a private, non-profit corporation that provides various services to low-income communities in Houston and also operates the Promise Community School, an open-enrollment charter school.

Walker was hired as the charter school's principal. She filed a workers' compensation claim for health issues that she asserts were caused by health code violations that she observed at the school. She alleges that after she filed her workers' compensation claim, Neighborhood Centers demoted and reassigned her as an Interventionist and Girl Scout Leader. Walker reported observations of testing violations to the Texas Education Agency and health code violations to the Texas Health Department. She alleges that after making these reports, Neighborhood Centers terminated her employment.

Walker filed suit alleging Labor Code and Whistleblower Protection Act claims of retaliation, claiming that she was retaliated against for filing the workers' compensation claim and for reporting violations of law.

Neighborhood Centers filed a plea to the jurisdiction arguing that, as a charter school, it enjoyed governmental immunity from Walker's workers' compensation claim. It also argued, however, that it is not a "local governmental entity" subject to the Whistleblower Act. The trial court granted Neighborhood Center's plea to the jurisdiction as to the workers' compensation anti-retaliation claim, and denied the plea as to the Whistleblower Act claim. Both parties appealed.

The Court of Appeals held that Neighborhood Centers, as a charter school, enjoys immunity from Walker's suit under the anti-retaliation provision of the Workers' Compensation Act, just as a public school district does. The Court of Appeals further held that open-enrollment charter schools do constitute governmental entities for which governmental immunity from suit for claims under the Whistleblower Act have been waived. Accordingly, the Court of Appeals affirmed the order of the trial court on both counts.

***Robinson v. Williams*, No. 03-13-00244-CV, 2015 WL 3654652 (Tex. App. – Austin June 11, 2015, no pet. h.)**

A school district may terminate a public school teacher's term contract when a financial exigency that requires a reduction in the school district's personnel exists, even if the teacher

applied to other teaching positions in the district that are open, when the total number of positions is greater than the number of new positions, and when there is no evidence that the teacher was more qualified than other applicants to the open positions.

The District employed Robinson as an English teacher pursuant to a three-year term contract; however, before her contract expired, the District's Board of Trustees voted to declare a district-wide "financial exigency" and the need for a "program change" and "reorganization." The Board approved the recommendation that 1,153 positions throughout the District be eliminated, of which 568 were teaching positions. The principal of Robinson's school recommended that four of the nine English teacher positions be eliminated, one of which was Robinson's.

Robinson protested the termination, and a hearing was conducted upholding the termination. During the Board's meeting to consider the hearing examiner's recommendation, Robinson's attorney attempted to present new evidence that, in part, showed that the District was increasing forces in areas that Robinson was certified to teach. The Board denied Robinson's counsel's request to consider the proffered evidence and upheld the termination.

Robinson appealed to the Commissioner of Education, who concluded that the District was only required to give Robinson preference over external applicants for open positions in the District for which she was qualified and for which she applied up until the date of the hearing before the hearing examiner. The Commissioner further concluded that Robinson was one of many teachers who lost their jobs and who were not rehired, and that nothing in the record indicated that Robinson was not considered for the other open positions for which she applied, or that she was more qualified than other teachers affected by the reduction in force who applied for them.

Robinson filed suit for judicial review of the Commissioner's decision. The district court affirmed the Commissioner's decision, and Robinson appealed. The Court of Appeals found that the Board had authority to terminate Robinson's contract due to a financial exigency that required a reduction of force, and that such an exigency existed in this case. Tex. Educ. Code § 21.211(a). Even though other positions became open and even though some new positions were added, it did not mean the overall workforce was not reduced. The evidence showed that the workforce was reduced by 568 teachers, 202 of those teachers returned to employment, 112 resigned, and 254 had not returned to employment, netting 366 reduction in teaching positions. The Court further found that the Board did not err when it refused to consider Robinson's counsel's additional evidence. Regardless, the evidence did not show that the District hired either external applicants for the other open positions or less qualified internal applicants.