

STEVEN SUMROW

v.

CARDO MILLS INDEPENDENT  
SCHOOL DISTRICT

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BEFORE THE

COMMISSIONER OF EDUCATION

THE STATE OF TEXAS

**DECISION OF COMMISSIONER**

**STATEMENT OF THE CASE**

Petitioner, Steven Sumrow, complains of actions and decisions of Respondent, Caddo Mills Independent School District (“District”). Merle Dover is the Administrative Law Judge appointed by the Commissioner of Education to hear this cause. Petitioner is represented by Mark W. Robinett, Attorney at Law, Austin, Texas. Respondent is represented by Dennis J. Eichelbaum, Attorney at Law, Plano, Texas.

The primary issue in this case concerns whether Respondent’s reassignment of Petitioner in the middle of the first year of his two-year contract from the position of Athletic Director to Disciplinary Alternative Education Center (“DAEC”) teacher constitutes a change in professional capacity in violation of Texas Education Code § 21.206(b) and/or a demotion in violation of his contract. Respondent contends that Petitioner is not entitled to remain Athletic Director because he does not have administrator certification. However, although the position of Athletic Director is considered an administrative position, administrator certification is not required for the Athletic Director position by the Texas Education Code or the Texas Administrative Code. Petitioner served in this position at the District for fifteen years under a certified administrator contract without administrator certification. Petitioner’s contract requires him to maintain required certification for his position and allows the Superintendent to reassign him at any time. Petitioner was reassigned from the position of Athletic Director to DAEC teacher in the middle of the first year of his continuing contract because he did not have administrator certification. His salary was not decreased until the second year of his contract. Although Respondent’s abrupt change in its course of dealing with Petitioner is disturbing, the District was within its rights to enforce the

contract as written. Because Petitioner was given adequate notice that his salary would be reduced the next year, the district lawfully reduced Petitioner's salary. Petitioner's appeal is denied. Exceptions were filed and considered, and appropriate changes were made. No Response to Exceptions was filed.

#### FINDINGS OF FACT

After due consideration of the record and matters officially noticed, it is concluded that the following Findings of Fact are supported by substantial evidence according to the standards set forth in Texas Administrative Code section 157.1073(h):

1. Petitioner was employed by Respondent with a two-year term contract for the 2018-2019 and 2019-2020 school years.
2. Petitioner's contract states that he is employed as a "Certified Administrator."
3. Petitioner's contract states that he must maintain certification required by the Texas Education Agency, the State Board for Educator Certification, or the district throughout the term of his contract.
4. Petitioner holds a teacher's certificate.
5. Petitioner's contract states that Respondent has the right to assign or reassign Petitioner to positions, duties, or additional duties and make changes in responsibilities at any time during the contract.
6. At the start of the 2018-2019 school year, Petitioner was assigned to the position of Athletic Director.
7. On January 2, 2019, Petitioner received a Notice of Reassignment from the Superintendent assigning him to a teaching position at the Disciplinary Alternative Educational Center (DAEC) and informing him that his salary would remain the same for the remainder of the 2018-2019 school year but would be commensurate with his assignment for the 2019-2020 school year.
8. Respondent did not modify Petitioner's contract or issue him a new contract.

9. The Athletic Director's salary in 2018-2019 was \$93,996.00.
10. Petitioner's salary as a DAEC teacher for 2019-2020 was \$58,401.00.

### DISCUSSION

#### Jurisdiction

The Commissioner has jurisdiction under Texas Education Code § 7.057(a)(2)(A) and (B), which states:

[A] person may appeal in writing to the commissioner if the person is aggrieved by:

- . . . .
- (2) actions or decisions of any school district board of trustees that violate:
    - (A) the school laws of this state; or
    - (B) a provision of a written employment contract between the school district and a school district employee, if a violation causes or would cause monetary harm to the employee.

The Commissioner has jurisdiction over this cause.

#### Change in Professional Capacity

Petitioner's contract contained a reassignment clause which allows the district to make changes in duties, responsibilities and position. Changes in position and responsibilities are usually lawful as long as there is no change in professional capacity.

In the seminal case concerning professional capacity, *Barich v. San Felipe-Del Rio Consolidated Independent School District*, Docket No. 175-R3-898 (Comm'r Educ. 1985),<sup>1</sup> the Commissioner held that a district may not reassign a teacher to a different position unless that position is in the same professional capacity, stating:

For example, an administrator who does not receive the required notice by April<sup>2</sup> may not be placed in the capacity of a classroom teacher; a classroom teacher may not be placed in the capacity of a counselor; a counselor may not be placed in the capacity of a nurse; a nurse may not be placed in the capacity of a librarian, etc.

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<sup>1</sup> Respondent argues that *Barich* is not applicable to this case because of the reassignment clause in his contract. A reassignment clause alone does not overcome the established precedent that an administrator cannot be reassigned to the position of classroom teacher.

<sup>2</sup> In 1995, the deadline for notice of nonrenewal was changed to "not later than the 10<sup>th</sup> day before the last day of instruction in a school year." Tex. Educ. Code § 21.206(a).

Examining changes in authorities, duties, and salary of the two positions can determine if there was a change in professional capacity. *Id.* Petitioner's salary was \$93,996.00 as Athletic Director and \$58,401.00 as DAEC teacher. As Athletic Director, Petitioner had supervisory responsibilities. He interviewed, selected, and oriented new staff; conducted staff evaluation conferences; assigned and promoted campus personnel; developed budgets and maintained fiscal responsibility; provided staff development on student discipline management. As DAEC teacher, Petitioner no longer had supervisory or fiscal responsibilities. He no longer trained, selected, or conducted evaluation conferences with other professionals. His responsibilities were limited to students. This is a substantial reduction in authority, duties and salary. Thus, the changes in duties, responsibilities and salary support the conclusion that Petitioner's professional capacity was changed.

Failing to provide Petitioner the notice required by Texas Education Code § 21.206(a) ten (10) days before the last day of instruction in the 2017-2018 school year constituted notice of Respondent's election to employ him in the same professional capacity for the 2018-2019 school year. Tex. Educ. Code § 21.206(b). Removing Petitioner from his position as Athletic Director to DAEC teacher on January 2, 2019 was an unlawful change in professional capacity. However, Respondent argues that the change in professional capacity is justified because the District is merely enforcing Petitioner's contract. Although this explanation is disingenuous because Petitioner's contract as a Certified Administrator was never amended and Petitioner was reassigned to a teaching position while still employed under the Certified Administrator contract, it is within the Superintendent's authority to enforce the contract as written.

Texas Education Code section 21.206

Texas Education Code section 21.206 states:

- (a) Not later than the 10<sup>th</sup> day before the last day of instruction in a school year, the board of trustees shall notify in writing each teacher *whose contract is about to expire* whether the board proposes to renew or not renew the contract. . . . (emphasis added).
- (b) The board's failure to give the notice required by Subsection (a) within the time specified constitutes an election to employ the teacher in the same professional capacity *for the following year*. (emphasis added).

Petitioner was in the middle of the first year of a two-year contract at the time of his reassignment. The Commissioner has consistently held that the requirement to employ a teacher in the same professional capacity is triggered only when a contract is about to expire and timely notice of proposed nonrenewal is not given. *Hughes v. Lancaster Indep. Sch. Dist.*, Docket No. 048-R3-0112 (Comm'r Educ. 2013).

At the time of his reassignment in January 2019, Petitioner's contract was not about to expire. However, Petitioner argues that the focus should be on the words in 21.206(b) requiring that without the appropriate notice, the teacher must be employed in the same professional capacity for the entirety of the following year. Therefore, without the appropriate notice 10 days before the last day of the 2017-2018 school year, Respondent was required to maintain Petitioner in the same professional capacity for the 2018-2019 school year. In this case, that means that Respondent was required to maintain Petitioner in an administrative position that did not require administrator certification.

In *Wheeler v. Austin Independent School District*, Docket No. 008-R3-1108 (Comm'r Educ. 2011), Wheeler signed a three-year term contract as a "professional employee" in May 2007. In June 2007, he was reassigned from the Assistant Principal position which he held in 2006-2007 to a teacher's position for 2007-2008, with a \$7000.00 reduction in salary. The Commissioner found that this was an improper change in professional capacity and that Wheeler was entitled to be employed for the 2007-2008 school year in the position of Assistant Principal.

In *Jenkins v. Crosby Independent School District*, Docket No. 043-R10-1211 (Comm'r Educ. 2013), the Commissioner found that Jenkins, a Principal from 2003 until the end of the 2010-2011 school year who signed a contract for 2011-2013 could not be reassigned to Assistant Principal in the first year of her contract because the district was required to employ her in the same professional capacity as she held during the 2010-2011 school year. The Commissioner held that Jenkins could, however, be reassigned for the second year of her contract.

The prohibition against reassignment applies to an educator's entitlement to employment in the same professional capacity for the entire following school year, as Petitioner argues. This is a reasonable interpretation.

#### Violation of Contract

Petitioner's employment contract states that he is employed as a "Certified Administrator" for school years 2018-2019 and 2019-2020. The category "certified administrator" is not found in the Texas Education Code or the SBEC rules. SBEC is the entity responsible for regulating and overseeing all aspects of educator certification. Tex. Educ. Code § 21.031. SBEC's categories of certificates include: superintendent, principal, classroom teacher, reading specialist, master teacher, librarian, counselor and educational diagnostician. 19 Tex. Admin. Code § 230.33(b). SBEC's categorization of certificates associates a certificate with specific job duties or functions. 19 Tex. Admin. Code § 230.33(a)(1). There is no class of certificate for generic "administrator." *Id.* Neither is there a special certificate for Athletic Director. *See* 19 Tex. Admin. Code § 231.643(d).

SBEC does not currently offer a generic administrator certificate or mid-management administrator certificate and has not offered such certificate since 2000. Superintendent and principal certificates are the only administrator certificates currently offered. 19 Tex. Admin. Code § 137.304 (1994). The Commissioner has noted that it is not wise to limit employment to those who have achieved a certificate that is no longer issued. *Gustafson v. Canutillo Indep. Sch. Dist.*, Docket No. 113-R10-0812 (Comm'r Educ. 2014).

Petitioner held a teacher's certification not an administrator's certification at the time the contract was offered to him. Although the position of Athletic Director is not specified in the contract, that is the position Petitioner was assigned to fill for the 2018-2019 school year until January 2, 2019 when he was reassigned to the position of teacher at the DAEC. Petitioner's employment contract requires that he *maintain* any applicable certification throughout the term of the contract. Petitioner possessed teacher certification at the time of the contract's inception and maintained that certification as required. Respondent argues that Petitioner knew he was not a "certified administrator" when he signed the contract. However, Respondent employed Petitioner as Athletic Director for the previous 15 years with a certified administrator contract and Respondent knew or should have known that Petitioner did not have administrator certification.<sup>3</sup> While Respondent is correct that the burden is on the Petitioner to prove his claim, it is also true that a contract is interpreted against the drafter.

The Texas Supreme Court has held:

In Texas, a writing is generally construed against its author and in such a manner as to reach a reasonable result consistent with the apparent intent of the parties. If two constructions are possible, a construction rendering the contract possible of performance will be preferred to one which renders its performance impossible or meaningless.

*Republic Nat'l Bank of Dallas v. Northwest Nat'l Bank of Fort Worth*, 578 S.W.2d 109, 116 (Tex. 1978) citing *Portland Gasoline Co. v. Superior Mktg. Co.*, 243 S.W.2d 823, 824 (Tex. 1951).

The Commissioner will look to the parties' intent and actions to reach an interpretation that will harmonize and give effect to all provisions of the contract. *Trevino v. West Oso Indep. Sch. Dist.*, Docket No. 003-R3-989 (Comm'r Educ. 1991) citing *Mattison v. Larson*, 529 S.W.2d 271, 272 (Tex. Civ. App. – Amarillo 1975, writ ref'd n.r.e.). When the 2018-2020 contract was offered

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<sup>3</sup> Respondent cites to Texas Rule of Evidence 1002 and argues that without the previous contracts in the record, there is no evidence of what previous contracts say. However, in a Texas Education Code § 7.057 appeal against a school district, the evidence in the local record is everything considered by the school board in making its decision. Petitioner references his employment as Athletic Director under a Certified Administrator contract without administrator certification for 15 years at each level of the grievance process and at the board hearing. This fact could have been readily controverted but is nowhere contradicted in the record. Respondent states only that the past contracts are irrelevant.

to Petitioner, both Petitioner and Respondent knew that Petitioner was not a certified administrator and that an administrator's certificate was not necessary for the position of Athletic Director. The most reasonable interpretation is that Respondent intended to continue to employ Petitioner in the position of Athletic Director when Petitioner was offered his contract for 2018-2019 and 2019-2020 based on the parties' course of conduct for the preceding fifteen years.

The Texas Supreme Court has held that the "school district's right to modify the contract does not imply the right to substitute something entirely different or confer the power to destroy the agreement." *Central Educ. Agency v. George West Indep. Sch. Dist.*, 783 S.W.2d 200, 202 (Tex. 1989); *see also, Uranga v. Culberson County-Allamore Indep. Sch. Dist.*, Docket No. 015-R10-11-2017 (Comm'r Educ. 2018). But that is not what happened here. Here, the school district did not modify the contract but invoked its right to enforce the contract as written. Despite the parties' course of dealing, Respondent did not breach the contract by enforcing it as written.

Moreover, in order to successfully plead a breach of contract claim under Texas Education Code section 7.057(a)(2)(B), Petitioner must show how his contract was violated and show monetary harm. Petitioner cannot do this. Administrator certification was required by his contract. And although his Athletic Director salary was maintained for the first semester of his reassignment, he was told that his salary would be commensurate with his position the following year, and in fact, the following year his salary was lowered from \$93,996.00 to \$53,401.00, a reduction of \$35,595.00. However, because Petitioner received notice that his salary would be decreased the following year prior to ten days before the end of the 2018-2019 school year, this reduction was not unlawful. *See Worthy v. Port Arthur Indep. Sch. Dist.*, Docket No. 016-R10-12-2014 (Comm'r Educ. 2015) (having given Petitioner sufficient warning, Respondent did not violate the Texas Education Code or Petitioner's employment contract by reducing Petitioner's salary by approximately \$22,000).



## Conclusion

Having concluded above that the mid-year reassignment was a change in professional capacity, it was not unlawful because while Petitioner held the appropriate certificate for his position, he did not hold the certificate required by his contract. It was not a demotion in violation of Petitioner's contract because Petitioner did not suffer financial harm at the time of the reassignment and was given adequate notice of the reduction in salary for the following year.

## Exceptions to Proposal for Decision

Changes were made to the Proposal for Decision in response to Exceptions that were granted. All other Exceptions are denied.

## CONCLUSIONS OF LAW

After due consideration of the record, matters officially noticed, and the foregoing Findings of Fact, in my capacity as the Commissioner of Education, I make the following Conclusions of Law:

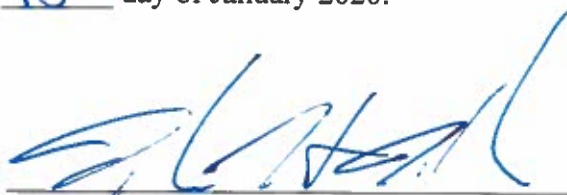
1. The Commissioner has jurisdiction over this cause under Texas Education Code section 7.057(a)(2)(A) and (B).
2. Assignment to the position of Athletic Director is allowed with teacher certification. 19 Tex. Admin. Code § 231.642(d).
3. A school district has the authority to require administrator certification for the Athletic Director position.
4. Administrator is a different professional capacity than teacher.
5. Athletic Director is a different professional capacity than DAEC teacher.
6. A board's failure to give notice, not later than 10 days before the last day of instruction in a school year, constitutes an election to employ the teacher in the same professional capacity for the following school year. Texas Educ. Code § 21.206.
7. Respondent's reassignment of Petitioner from Athletic Director to DAEC teacher was a change in professional capacity but it was not unlawful because the action enforced Petitioner's contract as written.

8. Because Petitioner was given adequate notice that his salary would be reduced the following school year, the salary reduction was not unlawful.

**ORDER**

After due consideration of the record, matters officially noticed, and the foregoing Findings of Fact and Conclusions of Law, in my capacity as Commissioner of Education, it is hereby ORDERED that the Petitioner's appeal be, and is hereby, DISMISSED.

SIGNED AND ISSUED this 13<sup>th</sup> day of January 2020.



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MIKE MORATH  
COMMISSIONER OF EDUCATION