

G. FLOYD,	§	BEFORE THE
Petitioner,	§	
	§	
v.	§	COMMISSIONER OF EDUCATION
	§	
DALLAS INDEPENDENT SCHOOL	§	
DISTRICT,	§	
Respondent.	§	THE STATE OF TEXAS

**DECISION OF THE COMMISSIONER**

**STATEMENT OF THE CASE**

Petitioner, G. Floyd, complains about actions and decisions of Respondent, Dallas Independent School District. Christopher Maska is the Administrative Law Judge appointed by the Commissioner of Education to hear this cause. Petitioner appears pro se. Respondent is represented by J. David Giddens and Taylor M. Montgomery, Attorneys at Law, Dallas, Texas.

The primary issue in this case is whether Petitioner brought his case before Respondent’s board of trustees. While exhaustion of remedies before a school board is generally not a jurisdictional issue, if there is no quasi-judicial board action or decision to appeal, then the Commissioner lacks appellate jurisdiction. Further, because Petitioner has not even attempted to present his issues to Respondent’s board, the Commissioner cannot reach them.

**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 the record in this case.

1. Petitioner contends that he is entitled to a term contract for the 2022–2023 school year and to be paid under that contract while on paid administrative leave until the termination recommendation is resolved.

2. Petitioner has not brought his contentions identified in Finding of Fact No. 1 to Respondent’s board through a grievance or other proceeding. Petitioner has not even begun the grievance process.

## DISCUSSION

Petitioner contends that because Respondent did not notify him of the proposed nonrenewal of his term contract, it must employ him under the same professional contract, and he is entitled to paid administrative leave until his contract is finally terminated. Respondent contends that the Commissioner lacks jurisdiction over this case.

### Jurisdiction

As a general rule, failure to follow a school district's grievance procedures is not a jurisdictional failing:

Assuming the grievance was untimely under DISD rules, nothing in the statute conditions the Commissioner's jurisdiction on the timelines or procedural validity of the complainant's actions at the district level. Instead, the legislature has mandated that a person "may appeal" if the person is "aggrieved by" an "action or decision" of the school board that violates the school laws or a written employment contract.

*Davis v. Morath*, 624 S.W.3d 215, 222 (Tex. 2021). However, such a failing may be fatal to one's case:

The Education Code authorizes school boards to adopt rules and procedures for hearing complaints from teachers and others. TEX. EDUC. CODE § 11.1511(b)(13). DISD's rules provide: "A grievance must be filed no later than ten [business] days from the date the employee first knew or, with reasonable diligence, should have known of the decision or action giving rise to the grievance or complaint." No party disputes that this rule must be followed. Nor do the parties dispute that the Commissioner may consider whether the appeal should be denied—not as a jurisdictional matter but on the merits—due to the failure to comply with the District's grievance procedures, including the ten-day deadline. We find no basis in section 7.057 to doubt that the Commissioner should deny relief to a party whose appeal arises from a grievance that was not timely brought at the District level. Although the Commissioner has *jurisdiction* over such an appeal so long as it meets the requirements of section 7.057(a), the proceeding is nonetheless an "appeal." *Id.* § 7.057(a). The Education Code authorizes the Commissioner to *review* local school board decisions and actions, but it does not authorize him to reach the merits of a complainant's arguments regardless of how the complaint was handled at the school-district level. If the District was prohibited by its internal procedures from reaching the merits of the grievance, the scope of the Commissioner's appellate review is likewise limited.

*Id.* at 223. The *Davis* Court continued, explaining that failure to obtain a decision from a school district could deprive the Commissioner of jurisdiction:

Of course, if a party attempted to "appeal" to the Commissioner without obtaining a decision from the school district at all, the Commissioner might argue that such a *de novo* proceeding is not within the Commissioner's *appellate* jurisdiction

because there is no local decision that the party “may appeal.” We do not address this hypothetical situation. Here, the Teachers sought and obtained a ruling from the district. That the District’s ruling rested on procedural grounds does not deprive the Commissioner of *jurisdiction* to hear the Teachers’ appeal, as long as the appeal otherwise fits within the text of section 7.057(a).

*Id.* at 223 n.7. In *Granger v. Lancaster Independent School District*, Docket No. 024-R10-01-2021 (Comm’r Educ. 2021), the Commissioner decided that if there is no quasi-judicial action or decision by a school board, then the Commissioner lacks jurisdiction over an appeal brought under Texas Education Code § 7.057(a)(2).

In the present case, Petitioner does not and cannot point to any quasi-judicial action or decision of the school board from which to appeal, as the board has not been presented with, heard, or decided his issues. Petitioner contends that Respondent did not give him notice of the proposed nonrenewal of his term contract, which Respondent does not contest. Petitioner argues that failure to give proper notice of a proposed term contract nonrenewal requires a school district to employ the teacher for the next school year, which Respondent also does not contest, and which correctly states the law. *See* Tex. Educ. Code § 21.206. While Respondent has offered Petitioner a term contract for the current school year, Petitioner contends that it is not the correct contract and that he is entitled to pay while on leave until the recommendation to terminate his contract is resolved. Respondent contests both claims.<sup>1</sup> However, Petitioner did not start the grievance process<sup>2</sup> and, hence, Respondent’s board of trustees has not addressed these claims in any way, including in a quasi-judicial posture. Accordingly, the Commissioner lacks jurisdiction over this appeal, as there is no underlying action or decision to review. *See Granger*, No. 024-R10-01-2021. Alternatively, even if it was within the Commissioner’s appellate jurisdiction, this appeal should be denied because Petitioner failed to follow Respondent’s grievance procedures. *See Davis*, 624 S.W.3d at 223.

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<sup>1</sup> Respondent argues that since the proposed termination has been withdrawn, there is nothing left to be resolved. Respondent claims Petitioner was offered the proper contract.

<sup>2</sup> If Petitioner had started the grievance process this would be a significantly different case.

## Conclusion

This case should be dismissed for lack of jurisdiction or, alternatively, be denied for Petitioner's failure to follow Respondent's grievance procedures.

### CONCLUSIONS OF LAW

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

1. The Commissioner lacks jurisdiction over this case under Texas Education Code § 7.057.

2. An action brought before the Commissioner under Texas Education Code § 7.057 must be an appeal. "Appeal" is fundamentally a judicial term. An appeal occurs after a lower body arbitrates the rights of adversaries in a specific case, and that decision is reviewed by a higher body. When a judicial or quasi-judicial body considers an executive or legislative action in the first instance, it cannot be conducting an appeal. Under Texas Education Code § 7.057(a)(2), the Commissioner only has jurisdiction over a case if a school board has taken an action or decision while acting in a quasi-judicial capacity. Otherwise, the Commissioner would not be hearing an appeal.

3. Because Respondent's actions and decisions about which Petitioner complains are not quasi-judicial, the Commissioner lacks appellate jurisdiction to review them.

4. Texas Education Code § 7.057 supports the Commissioner's denial of relief to a party whose appeal arises from a grievance not timely brought at the school district level. Although the Commissioner has *jurisdiction* over such an appeal that meets the requirements of § 7.057(a), the proceeding is nonetheless an "appeal." Tex. Educ. Code § 7.057(a). The Education Code authorizes the Commissioner to *review* local school board decisions and actions, but it does not authorize him to reach the merits of a complainant's arguments regardless of how the complaint was handled at the school district level. If the District was prohibited by its

internal procedures from reaching the merits of the grievance, the scope of the Commissioner's appellate review is likewise limited.

5. Because Respondent's internal procedures prohibited it from addressing the issues Petitioner now attempts to raise before the Commissioner, the Commissioner cannot review those issues.

6. This cause should be dismissed for lack of jurisdiction. Alternatively, it should be denied because Petitioner failed to follow Respondent's grievance procedures.

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 4th day of January 2023.

**Mike Morath**

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MIKE MORATH  
COMMISSIONER OF EDUCATION