

Decision

DOCKET NO. 003-R10-10-2022

VERONICA SALINAS, Petitioner,	§	BEFORE THE
	§	
v.	§	COMMISSIONER OF EDUCATION
	§	
ARLINGTON INDEPENDENT SCHOOL DISTRICT,	§	
Respondent.	§	THE STATE OF TEXAS

DECISION OF THE COMMISSIONER

STATEMENT OF THE CASE

Petitioner, Veronica Salinas, complains of actions and decisions of Respondent, Arlington Independent School District. Christopher Maska is the Administrative Law Judge appointed by the Commissioner of Education to hear this cause. Petitioner is represented by Daniel A. Ortiz and Gianna Ortiz, Attorneys at Law, Arlington, Texas. Respondent is represented by Dennis J. Eichelbaum, Attorney at Law, Plano, Texas.

The primary issue in this case is whether Respondent abused its discretion when it abated Petitioner's grievance through final resolution of her Equal Employment Opportunity Commission (EEOC) complaint and any related subsequent litigation. While in some cases, school districts can abate grievances, in this case, neither comity nor quasi-judicial economy support abatement.

FINDINGS OF FACT

After due consideration of the record and matters officially noticed, it is concluded that the following Findings of Fact are established by the record and file in this case:

1. Petitioner filed a grievance with Respondent claiming she was given a promotion later rescinded based on a policy that does not apply to her. The grievance itself raised the issue that the promotion was rescinded because Petitioner took medical leave soon after it was communicated to her, but she indicated she would file a separate grievance under a different grievance policy concerning disability and discrimination.

2. Petitioner completed the first two levels of Respondent's grievance process.

3. Petitioner filed a Level III grievance, which under Respondent’s grievance policy is a required settlement conference with the superintendent. After the Level III hearing, the superintendent issued a Level III decision which abated the case because Petitioner commented about filing (or potentially filing) with the Equal Opportunity Commission (EEOC). The superintendent indicated that the district’s practice was to abate grievances in such cases and when the EEOC complaint and/or litigation was complete that Level III would be reconvened.

4. Respondent’s grievance policy allows a grievant to appeal a Level III decision to Level IV, which is a school board hearing. Petitioner appealed the Level III decision to the board, which took no action in 30 days. On the 31st day after the Level III decision, Petitioner appealed to the Commissioner.

5. Petitioner filed an EEOC charge of discrimination against Respondent after she filed her appeal with the Commissioner.

6. Petitioner has a written employment contract with Respondent.

DISCUSSION

Petitioner contends that Respondent’s board of trustees improperly failed to hear her grievance. Respondent denies this and contends that the Commissioner lacks jurisdiction to hear this case.

Jurisdiction

The Commissioner has jurisdiction under Texas Education Code § 7.057 to hear appeals from school board actions or decision alleged to violate (1) the school laws of this state or (2) provisions of written employment contracts that cause or would cause monetary harm. Tex. Educ. Code § 7.057(a)(2)(A), (B). Petitioner asserts both jurisdictional grants.

School Laws of this State

Petitioner contends Respondent’s board violated Texas Education Code §§ 11.1511(b)(13) and 11.1513(i). The former provides, in relevant part,

The board shall:

• • •

(13) by rule, adopt a process through which district personnel, students or the parents or guardians of students, and members of the public may obtain a hearing from the district administrators and the board regarding a complaint.

Tex. Educ. Code § 11.1511(b)(13). Section 11.1513 provides, in relevant part,

(i) The employment policy must provide each school district employee with the right to present grievances to the district board of trustees.

Tex. Educ. Code § 11.1513(i). These statutes require a school board to adopt a particular type of rule or policy. *Emerine v. Neches School District*, Docket No. 028-R10-02-2021 (Comm’r Educ. 2021). Petitioner is not complaining about rules or policies themselves but rather their implementation. Petitioner has not pled a potential violation of either statute.

Written Employment Contract

Petitioner argues that her contract incorporates both statutory and constitutional provisions requiring school boards to hear grievances. The Texas Supreme Court held in *Central Education Agency v. George West Independent School District*, 783 S.W.2d 200 (Tex. 1989):

[L]aws which subsist at the time and place of the making of a contract . . . enter into and form a part of it, as if they were expressly referred to or incorporated in its terms.

The constitutional provision and statute on which Petitioner relies are, respectively,

The citizens shall have the right, in a peaceable manner, to assemble together for their common good; and apply to those invested with the powers of government for redress of grievances or other purposes, by petition, address or remonstrance.

Tex. Const. Art. I, § 27. And:

This chapter does not impair the right of public employees to present grievances concerning their wages, hours of employment, or conditions of work either individually or through a representative that does not claim the right to strike.

Tex. Gov’t Code § 617.005. These two laws require school districts to allow employees to present remonstrances or grievances. A school district could violate a contract by not allowing an employee to present a grievance or remonstrance. Petitioner has cited a provision of her contract that the board could have violated. The Commissioner could have jurisdiction over such a claim.

Present Case

In this case, Petitioner completed the first two levels of Respondent's grievance process. Petitioner filed a Level III grievance, which under Respondent's employee grievance policy is a required settlement conference with the superintendent. After the Level III hearing, the superintendent issued a Level III decision abating the case because Petitioner commented about filing (or potentially filing) an EEOC charge of discrimination. The superintendent indicated that the district's practice was to abate grievances in such cases and reconvene the grievance after the EEOC charge and/or litigation was complete. Petitioner appealed the Level III decision to the board of trustees, as Respondent's policy allows. The board did not act within 30 days, and on the 31st day, Petitioner appealed the grievance to the Commissioner. Respondent contends that Petitioner has not alleged a cause of action over which the Commissioner has jurisdiction that there is no board action or decision to appeal or, alternatively, that 31 days is insufficient time to conclude that the board rejected the grievance. Petitioner filed an EEOC charge of discrimination after filing her appeal with the Commissioner.

Abatement

School districts are not prohibited from abating cases. In some instances, an abatement may be required to protect due process rights. As the United States Supreme Court held:

A fundamental requirement of due process is "the opportunity to be heard." *Grannis v. Ordean*, 234 U.S. 385, 394. It is an opportunity which must be granted at a meaningful time and in a meaningful manner.

Armstrong v. Manzo, 380 U.S. 545, 552, 85 S. Ct. 1187, 1191 (1965). An abatement might be required to ensure that a hearing concerning a property right is heard at a meaningful time. In some instances, it may be appropriate for a school district to abate a case to allow for a different tribunal with concurrent jurisdiction to decide its case. Court abatements are often intended to promote judicial economy or comity.¹

¹ Other reasons to abate a grievance could be settlement negotiations, natural disasters, and the need of additional development of issues. This list is not exclusive.

Comity

Texas courts generally recognize the doctrine of comity:

Finally, we note that today's decision according deference to the first-filed Florida action, besides honoring the parties' contractual commitment, also honors principles of interstate comity. Our federal system benefits from a measure of state-to-state comity, which, while not a constitutional obligation, is "a principle of mutual convenience whereby one state or jurisdiction will give effect to the laws and judicial decisions of another." When a matter is first filed in another state, the general rule is that Texas courts stay the later-filed proceeding pending adjudication of the first suit.

In re Auto Nation, Inc., 228 S.W.3d 663, 669–70 (Tex. 2007). But comity does not apply to this case, as the initial action was Petitioner's grievance, not her EEOC charge of discrimination, which she had not even filed when Respondent abated her grievance.

Quasi-Judicial Economy

Judicial economy is a principle that can support abatement. *See Hazen v. Allstate Ins. Co.*, No. 4:16-CV-3068, 2017 U.S. Dist. LEXIS 130416, at *8 (S.D. Tex. 2017). While a school board hearing is not a judicial hearing, it is quasi-judicial, so abatement may be appropriate. A decision to abate a grievance should be reviewed under an abuse of discretion standard. The Texas Supreme Court has held:

The test for abuse of discretion is "whether the court acted without reference to any guiding rules and principles" or, stated another way, whether its decision was arbitrary or unreasonable. *Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 242, 29 Tex. Sup. Ct. J. 88 (Tex. 1985).

City of San Benito v. Rio Grande Valley Gas Co., 109 S.W.3d 750, 757 (Tex. 2003).

Petitioner's EEOC Charge of Discrimination

In the present case, it is unclear what type of EEOC charge of discrimination is at issue. At Level III, the abatement was ordered because Petitioner stated she might file an EEOC charge. The record does not indicate what type of potential complaint(s) she intended to file. This alone is significant evidence of abuse of discretion, as there was no EEOC filing at the time, and the type of any potential EEOC charge was unknown. While Petitioner has now filed an

EEOC charge of discrimination, it is not in the record. Again, that indicates an abuse of discretion, because is not apparent how an undefined EEOC charge warrants abatement.

Other reasons abatement appears inappropriate include that, from what little is known of Petitioner's EEOC charge, it likely concerns different legal issues than her grievance; the abatement is indeterminate; and Petitioner's grievance proceedings were nearly complete when abated.

Different Matters

Petitioner's grieved issue is that she was given a promotion that the administration then revoked based on a policy inapplicable to her. In her grievance, Petitioner raised the issue that her promotion was revoked because she took medical leave, while she also indicated that she would file a separate grievance for disability and discrimination under a different grievance policy.² Thus, the grievance primarily addressed Respondent's alleged misapplication of the school policy. EEOC charges are about employment discrimination. Since these are essentially different issues, notwithstanding some potential overlap, it is unclear how abating the grievance could significantly further quasi-judicial economy.

Indeterminate Time

The abatement's duration is indeterminate, as it would end only after the EEOC charge and/or any subsequent litigation is resolved at some future unknown time. In the case of *In re Amarillo Urgent Care, LLC*, the issue was whether a party had an adequate legal remedy when a court stayed proceedings until final resolution of a federal court suit. The court held:

The order at bar stays proceedings until the "final resolution" of the federal court suit. "Final resolution" includes "any rights of appeal." While "final resolution" of an action in an independent court may suggest some finite time when that end actually arrives is left to conjecture. It could be within a month, a year, or longer. The end of the stay being unknown, the stay's duration actually is indefinite. *See In re Benge*, 2018 Tex. App. LEXIS 4981, at *6-7 (wherein the trial court ordered the "abatement of the underlying case 'pending the conclusion (by trial or settlement) of cause no. 11466 pending in the Probate Court of De Wittt [sic]

² Petitioner did not file a second grievance.

County, Texas” and concluded that “[t]hough the order is not by its technical terms indefinite, the abatement’s uncertain termination date causes us to conclude that it was an abuse of discretion”). Thus, under the authorities mentioned above, we conclude that Amarillo lacks means to attack the trial court’s decision other than by seeking a writ of mandamus. In short, it has no adequate legal remedy.

In re Amarillo Urgent Care, LLC, No. 07-20-00240-CV, 2020 Tex. App. LEXIS 7784, at *3–4 (Tex. App.—Amarillo Sep. 24, 2020, no pet.). The court held that the stay was an abuse of discretion. This case, likewise, would allow proceedings to continue only after litigation is complete at some indeterminate time, likely remote. That is also an abuse of discretion. *See id.*

Grievance Near Completion

Another factor against abatement is that Petitioner’s grievance was well underway, with three of the four grievance levels complete. According to Respondent’s policy, the Level IV hearing before the school board is generally limited to issues and documents considered at Level III. Accordingly, abating the grievance at the Level III point would not significantly save resources.

For all of these reasons, it was an abuse of discretion to abate Petitioner’s grievance.

Board Decision

Respondent contends that since there is no board decision, the Commissioner cannot consider this appeal. Texas Education Code § 7.057(a) gives the Commissioner jurisdiction over actions and decisions of school boards:

- (a) Except as provided by Subsection (e), a person may appeal in writing to the commissioner if the person is aggrieved by:
 - (1) the school laws of this state; or
 - (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.

Tex. Educ. Code § 7.057(a). The Legislature chose to grant jurisdiction both when a board takes an action and when it makes a decision. Texas Education Code § 11.041(a-1) provides:

The board of trustees may act only by majority vote of the members present at a meeting held in compliance with Chapter 551, Government Code, at which a quorum of the board is present and voting.

Thus, school board action requires a vote. However, the Texas Education Code does not define what constitutes a school board decision. The word “decision” is defined as:

1a: the act or process of deciding
the moment of *decision* has come

b
: a determination arrived at after consideration: **CONCLUSION**
made the *decision* to attend graduate school

<http://www.merriam-webster.com/dictionary/decision>. A school board determination or conclusion that is not the result of a board vote may be appealed to the Commissioner.

After obtaining a Level III decision, Petitioner filed a Level IV grievance with the school board. After the school board received the grievance, it may not have taken a vote, but it decided not to hear the grievance. A “no action” decision on the grievance is precisely what the Level III decision ordered. The board *decided* not to hear the Level IV grievance, which effectively affirmed the Level III decision to abate the matter for an indefinite time. The Commissioner has jurisdiction over the issue of whether indefinite abatement of the grievance through completion of the EEOC charge and any ensuing litigation was appropriate.

Respondent argues that Petitioner’s appealing to the Commissioner only 31 days after filing her Level IV appeal did not give its board sufficient time to take responsive action. While there is some merit to this claim, nothing prohibited the board from acting on Petitioner’s grievance after she appealed to the Commissioner. However, the board has made no decision to lift the abatement. The holding of this case is not that a grievant can appeal to the Commissioner anytime a school board does not set a grievance for hearing in thirty days.

Relief

Petitioner seeks a ruling from the Commissioner that she prevails on the merits of the grievance. The Commissioner has long held that school boards must hold grievance hearings. *Garza v. Grand Prairie Indep. School District*, Docket No. 032-R10-02-2020 (Comm’r Educ.

2020). In *Craig v. North Forest Independent School District*, Docket No. 175-R10-699 (Comm'r Educ. 2000), the Commissioner held:

School districts are put on notice that if in the future they fail to provide a hearing without a good faith reason for doing so, the Commissioner may decide that the district has in fact denied the grievance and since there is not substantial evidence to support the board's decision, the grievant would prevail.

The question becomes whether Respondent had a good faith reason to not hear Petitioner's grievance. In this case, Respondent had a good faith reason. The Commissioner has not previously addressed the question of whether a grievance can be abated until another administrative proceeding and any related litigation is concluded. This decision sets out the standards for making such a determination. It is determined that Respondent acted in good faith. Hence, there is no need to determine whether Petitioner should prevail on the merits.

Conclusion

The Commissioner has jurisdiction over the issue of whether it was appropriate for Respondent to abate Petitioner's grievance. It was an abuse of discretion for Respondent to abate the grievance. This case should be remanded to Respondent to hear the merits of Petitioner's grievance.

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 has jurisdiction over this case based on Texas Education Code § 7.057(a)(2)(B).
2. The Commissioner lacks jurisdiction over this case based on Texas Education Code § 7.057(a)(2)(A).
3. Texas Education Code §§ 11.1511(b)(13) and 11.1513(i) require school districts to adopt grievance policies. Petitioner does not contend that Respondent failed to adopt a

grievance policy and, therefore, has not pled a potential violation of Texas Education Code §§ 11.1511(b)(13) and 11.1513(i).

4. Laws that subsist at the time and place of the making of a contract enter into and form a part of it, as if they were expressly referred to or incorporated in its terms.

5. As Petitioner has a contract with Respondent, the laws that subsisted at the time and place of its execution enter into and form a part of the contract, as if they were expressly referred to or incorporated in its terms.

6. Two laws existing when Petitioner entered into her contract with Respondent are Texas Government Code § 617.005 and Texas Constitution Article I, § 27, which are incorporated into Petitioner's contract. These laws require Respondent to hear Petitioner's complaint that she was given a promotion and then revoked it based on a policy that does not apply to her.

7. A school district may abate a grievance for reasons of comity or quasi-judicial economy. Such a decision is reviewed under the abuse of discretion standard.

8. The doctrine of comity provides that in Texas, when a matter is first filed in another state or other jurisdiction, Texas tribunals stay the later-filed proceeding pending adjudication of the first suit.

9. Comity does not apply to this case because the grievance before Respondent was filed prior to the EEOC charge of discrimination.

10. Quasi-judicial economy may be a reason for a school district to abate a grievance. Whether quasi-judicial economy supports a decision to abate a grievance is determined by applying the abuse of discretion standard.

11. Quasi-judicial economy is not a valid reason to abate the grievance because the abatement was granted before the EEOC charge of discrimination was filed; the subject of the EEOC charge is unknown; by its nature, an EEOC charge would concern different issues than the grievance; the abatement is for an indeterminate period of time, and the grievance itself was

nearly complete when the abatement decision was issued. It was an abuse of discretion to abate the grievance.

12. Texas Education Code § 7.057(a)(2) gives the Commissioner jurisdiction over certain actions and decisions of school boards. Texas Education Code § 11.041(a-1) provides that Board action requires a board vote. However, the Texas Education Code does not define what constitutes a board decision. The word “decision” is defined as:

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A school board determination or conclusion that is not the result of a board vote may be appealed to the Commissioner.

13. Because Respondent’s board decided not to place Petitioner’s grievance on its agenda after Petitioner properly filed a Level IV grievance concerning the decision to abate the grievance, Respondent decided not to hear Petitioner’s grievance concerning abatement, which had the effect of abating the grievance. The Commissioner has jurisdiction under Texas Education Code § 7.057(a)(2) to consider Petitioner’s claim that Respondent improperly abated the grievance.

14. Respondent’s decision to abate the grievance was taken in good faith, as the Commissioner had not previously ruled on abating grievances, and its argument was not frivolous. For this reason, it would not be appropriate for the Commissioner to find for Petitioner on the merits of her grievance.

15. Because it was an abuse of discretion to abate the grievance, the abatement should be rescinded. Respondent should hear the merits of Petitioner’s grievance.

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, GRANTED.

SIGNED AND ISSUED this 30 day of May 2023.

Mike Morath

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MIKE MORATH
COMMISSIONER OF EDUCATION

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v.	§	COMMISSIONER OF EDUCATION
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ARLINGTON INDEPENDENT SCHOOL	§	
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PROPOSAL FOR DECISION

STATEMENT OF THE CASE

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The primary issue in this case is whether Respondent abused its discretion when it abated Petitioner’s grievance through final resolution of her Equal Employment Opportunity Commission (EEOC) complaint and any related subsequent litigation. While in some cases, school districts can abate grievances, in this case, neither comity nor quasi-judicial economy support abatement.

FINDINGS OF FACT

After due consideration of the record and matters officially noticed, it is concluded that the following Findings of Fact are established by the record and file in this case:

1. Petitioner filed a grievance with Respondent claiming she was given a promotion later rescinded based on a policy that does not apply to her. The grievance itself raised the issue that the promotion was rescinded because Petitioner took medical leave soon after it was communicated to her, but she indicated she would file a separate grievance under a different grievance policy concerning disability and discrimination.

2. Petitioner completed the first two levels of Respondent’s grievance process.

3. Petitioner filed a Level III grievance, which under Respondent’s grievance policy is a required settlement conference with the superintendent. After the Level III hearing, the superintendent issued a Level III decision which abated the case because Petitioner commented about filing (or potentially filing) with the Equal Opportunity Commission (EEOC). The superintendent indicated that the district’s practice was to abate grievances in such cases and when the EEOC complaint and/or litigation was complete that Level III would be reconvened.

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DISCUSSION

Petitioner contends that Respondent’s board of trustees improperly failed to hear her grievance. Respondent denies this and contends that the Commissioner lacks jurisdiction to hear this case.

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In the present case, it is unclear what type of EEOC charge of discrimination is at issue. At Level III, the abatement was ordered because Petitioner stated she might file an EEOC charge. The record does not indicate what type of potential complaint(s) she intended to file. This alone is significant evidence of abuse of discretion, as there was no EEOC filing at the time, and the type of any potential EEOC charge was unknown. While Petitioner has now filed an

EEOC charge of discrimination, it is not in the record. Again, that indicates an abuse of discretion, because is not apparent how an undefined EEOC charge warrants abatement.

Other reasons abatement appears inappropriate include that, from what little is known of Petitioner's EEOC charge, it likely concerns different legal issues than her grievance; the abatement is indeterminate; and Petitioner's grievance proceedings were nearly complete when abated.

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 - (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.

Tex. Educ. Code § 7.057(a). The Legislature chose to grant jurisdiction both when a board takes an action and when it makes a decision. Texas Education Code § 11.041(a-1) provides:

The board of trustees may act only by majority vote of the members present at a meeting held in compliance with Chapter 551, Government Code, at which a quorum of the board is present and voting.

Thus, school board action requires a vote. However, the Texas Education Code does not define what constitutes a school board decision. The word “decision” is defined as:

1a: the act or process of deciding
the moment of *decision* has come

b
: a determination arrived at after consideration: **CONCLUSION**
made the *decision* to attend graduate school

<http://www.merriam-webster.com/dictionary/decision>. A school board determination or conclusion that is not the result of a board vote may be appealed to the Commissioner.

After obtaining a Level III decision, Petitioner filed a Level IV grievance with the school board. After the school board received the grievance, it may not have taken a vote, but it decided not to hear the grievance. A “no action” decision on the grievance is precisely what the Level III decision ordered. The board *decided* not to hear the Level IV grievance, which effectively affirmed the Level III decision to abate the matter for an indefinite time. The Commissioner has jurisdiction over the issue of whether indefinite abatement of the grievance through completion of the EEOC charge and any ensuing litigation was appropriate.

Respondent argues that Petitioner’s appealing to the Commissioner only 31 days after filing her Level IV appeal did not give its board sufficient time to take responsive action. While there is some merit to this claim, nothing prohibited the board from acting on Petitioner’s grievance after she appealed to the Commissioner. However, the board has made no decision to lift the abatement. The holding of this case is not that a grievant can appeal to the Commissioner anytime a school board does not set a grievance for hearing in thirty days.

Relief

Petitioner seeks a ruling from the Commissioner that she prevail on the merits of the grievance. The Commissioner has long held that school boards must hold grievance hearings. *Garza v. Grand Prairie Indep. School District*, Docket No. 032-R10-02-2020 (Comm’r Educ.

2020). In *Craig v. North Forest Independent School District*, Docket No. 175-R10-699 (Comm'r Educ. 2000), the Commissioner held:

School districts are put on notice that if in the future they fail to provide a hearing without a good faith reason for doing so, the Commissioner may decide that the district has in fact denied the grievance and since there is not substantial evidence to support the board's decision, the grievant would prevail.

The question becomes whether Respondent had a good faith reason to not hear Petitioner's grievance. In this case, Respondent had a good faith reason. The Commissioner has not previously addressed the question of whether a grievance can be abated until another administrative proceeding and any related litigation is concluded. This decision sets out the standards for making such a determination. It is determined that Respondent acted in good faith. Hence, there is no need to determine whether Petitioner should prevail on the merits.

Conclusion

The Commissioner has jurisdiction over the issue of whether it was appropriate for Respondent to abate Petitioner's grievance. It was an abuse of discretion for Respondent to abate the grievance. This case should be remanded to Respondent to hear the merits of Petitioner's grievance.

CONCLUSIONS OF LAW

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

1. The Commissioner has jurisdiction over this case based on Texas Education Code § 7.057(a)(2)(B).

2. The Commissioner lacks jurisdiction over this case based on Texas Education Code § 7.057(a)(2)(A).

2. Texas Education Code §§ 11.1511(b)(13) and 11.1513(i) require school districts to adopt grievance policies. Petitioner does not contend that Respondent failed to adopt a

grievance policy and, therefore, has not pled a potential violation of Texas Education Code §§ 11.1511(b)(13) and 11.1513(i).

3. Laws that subsist at the time and place of the making of a contract enter into and form a part of it, as if they were expressly referred to or incorporated in its terms.

4. As Petitioner has a contract with Respondent, the laws that subsisted at the time and place of its execution enter into and form a part of the contract, as if they were expressly referred to or incorporated in its terms.

5. Two laws existing when Petitioner entered into her contract with Respondent are Texas Government Code § 617.005 and Texas Constitution Article I, § 27, which are incorporated into Petitioner's contract. These laws require Respondent to hear Petitioner's complaint that she was given a promotion and then revoked it based on a policy that does not apply to her.

6. A school district may abate a grievance for reasons of comity or quasi-judicial economy. Such a decision is reviewed under the abuse of discretion standard.

7. The doctrine of comity provides that in Texas, when a matter is first filed in another state or other jurisdiction, Texas tribunals stay the later-filed proceeding pending adjudication of the first suit.

8. Comity does not apply to this case because the grievance before Respondent was filed prior to the EEOC charge of discrimination.

9. Quasi-judicial economy may be a reason for a school district to abate a grievance. Whether quasi-judicial economy supports a decision to abate a grievance is determined by applying the abuse of discretion standard.

10. Quasi-judicial economy is not a valid reason to abate the grievance because the abatement was granted before the EEOC charge of discrimination was filed; the subject of the EEOC charge is unknown; by its nature, an EEOC charge would concern different issues than the grievance; the abatement is for an indeterminate period of time, and the grievance itself was

nearly complete when the abatement decision was issued. It was an abuse of discretion to abate the grievance.

11. Texas Education Code § 7.057(a)(2) gives the Commissioner jurisdiction over certain actions and decisions of school boards. Texas Education Code § 11.041(a-1) provides that Board action requires a board vote. However, the Texas Education Code does not define what constitutes a board decision. The word “decision” is defined as:

1a: the act or process of deciding
the moment of *decision* has come

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: a determination arrived at after consideration: **CONCLUSION**
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A school board determination or conclusion that is not the result of a board vote may be appealed to the Commissioner.

12. Because Respondent’s board decided not to place Petitioner’s grievance on its agenda after Petitioner properly filed a Level IV grievance concerning the decision to abate the grievance, Respondent decided not to hear Petitioner’s grievance concerning abatement, which had the effect of abating the grievance. The Commissioner has jurisdiction under Texas Education Code § 7.057(a)(2) to consider Petitioner’s claim that Respondent improperly abated the grievance.

13. Respondent’s decision to abate the grievance was taken in good faith, as the Commissioner had not previously ruled on abating grievances, and its argument was not frivolous. For this reason, it would not be appropriate for the Commissioner to find for Petitioner on the merits of her grievance.

14. Because it was an abuse of discretion to abate the grievance, the abatement should be rescinded. Respondent should hear the merits of Petitioner’s grievance.

RECOMMENDATION

After due consideration of the record, matters officially noticed and the foregoing Findings of Fact and Conclusions of Law, in my capacity as Administrative Law Judge, it is hereby RECOMMENDED that the Commissioner of Education adopt the foregoing Findings of Fact and Conclusions of Law and enter an order consistent therewith.

SIGNED AND ISSUED this ' 5 day of March 2023.

**Christopher
Maska**

Digitally signed by Christopher
Maska
Date: 2023.03.30 15:23:53
-05'00'

CHRISTOPHER MASKA
ADMINISTRATIVE LAW JUDGE