

DAVID T. MC LEOD

V.

GARY OVERSTREET and
GARY PAMPIN
QUINLAN
INDEPENDENT SCHOOL DISTRICT

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BEFORE THE

COMMISSIONER OF EDUCATION

THE STATE OF TEXAS

PROPOSAL FOR DECISION

Statement of the Case

Petitioner, David T McLeod, appeals the denial of his grievance by Respondent, Quinlan Independent School District. Christopher Maska is the Administrative Law Judge appointed by the Commissioner of Education to preside over this cause. Petitioner appeared pro se. Respondent is represented by Stephen E. Dubner, Attorney at Law, Lake Dallas, Texas.

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 and are the Findings of Fact that best support Respondent's decision¹.

1. The Petition for Review does not allege a violation of a written employment contract or a violation of the school laws of this state.

2. By Order of March 19, 2012, it was found that the Commissioner lacked jurisdiction over the Petition for Review. Petitioner was directed to file an Amended Petition for Review on or before March 19, 2012. The Order specified that a failure to replead in conformity with the Order could result in the case being dismissed.

3. Petitioner has not filed an Amended Petition for Review.

¹ See 19 TEX. ADMIN. CODE §157.1073(h); *Bosworth v. East Central Independent School District*, Docket No. 090-R1-803 (Comm'r Educ. 2003).

4. Petitioner's Response to Respondent's Plea to the Jurisdiction and Motion to Dismiss was filed on April 13, 2012. This document fails to allege a violation of a written employment contract or a violation of the school laws of this state.

Discussion

Petitioner asserts that Respondent improperly ended his employment with the district. Respondent denies this and maintains that the Commissioner lacks jurisdiction over this cause.

Jurisdiction

The Commissioner's jurisdiction under Texas Education Code section is limited to alleged violations of the school laws of this state and violations of written employment contracts. "The school laws of this state" are defined as the first two titles of the Texas Education Code and the rules adopted under those titles. Petitioner has not alleged a violation of the school laws of this state. While Petitioner alleges that he was improperly fired, Petitioner does not have a written employment contract with Respondent. While Petitioner was directed to file an Amended Petition for Review, he has failed to do so. Even if one accepts Petitioner's Response to Respondent's Plea to the Jurisdiction and Motion to Dismiss as an Amended Petition for Review, Petitioner has still failed to allege either a violation of the school laws of this state or a violation of a written employment contract. This cause should be dismissed for lack of jurisdiction.

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 lacks jurisdiction over this case under Texas Education Code section 7.057.

2. The Commissioner's jurisdiction under Texas Education Code section 7.057 is limited to alleged violations of the school laws of this state and violations of written employment contracts.

3. Petitioner has not pled a violation of the school laws of this state or a violation of a written employment contract.

4. This cause should be dismissed for lack of jurisdiction.

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 25th day of May, 2012.


CHRISTOPHER MASKA
SENIOR ADMINISTRATIVE LAW JUDGE